Good morning. My name is Gregory Conrad and I serve as Executive Director of the Interstate Mining Compact Commission. IMCC is a multi-state governmental organization that represents the natural resource, environmental protection and mine safety and health interests of its 26 member states. The states are represented by their Governors who serve as Commissioners.

I am appearing today on behalf of the member states to support the Commonwealth of Pennsylvania’s appeal of the Mine Safety and Health Administration’s (MSHA) decision regarding the Commonwealth’s funding request for its state assistance grant for FY 2013. In order to address what MSHA has characterized as the “equitable distribution of state grant funds” to Pennsylvania (or, for that matter, any state), we must begin with a fuller understanding of and appreciation for the full scope of state assistance grants under the Mine Safety and Health Act of 1977.

A critical component for preventing accidents in coal and metal/non-metal mines in the U.S. are the compliance and training programs offered to individuals and small operators by states pursuant to matching grants they receive under Section 503 of the Mine Safety and Health Act of 1977. As noted in a letter to state grant recipients dated April 25, 2013 by Joseph Main, Assistant Secretary of Labor for Mine Safety and Health, “effective and appropriate training will ensure that miners recognize and understand hazards and how to control or eliminate them”. Despite the Congressionally recognized importance of the States’ role, MSHA has chosen to severely restrict funding for State Assistance Grants in FY 2013 (by 65%) and has proposed to completely eliminate funding for the program beginning in FY 2014. We are uncertain what Congress may choose to do about this now that the budget impasse has been resolved, but we are hopeful that Congress will restore at least a portion of this funding for FY 2014 and prohibit MSHA from reprogramming these monies as the agency did last year.

While the original Congressional intent of these grants was to assist States in enforcing mine safety and health regulations, MSHA has administratively focused them on training. However, in addition to supporting first-class miner training programs for individuals at mines, these grants also serve to support state implementation of a wide array of mine safety activities such as mine rescue training programs, mine rescue competitions, EMT training, miner testing and certifications, accident investigations and reporting, and review and approval of company safety plans – all of which are required by law. MSHA’s assertion that cutting these grants simply shifts the responsibility for training to the mining industry is inaccurate. The impact on states that implement comprehensive mine safety and health programs (such as PA, WV, VA, OH, IL, AL, KY and OK) will go far beyond training. The MSHA action shifts the full cost of State-lead activities to the States, whose only option will be to raise fees on individual miners and increase costs for small operators. The likelihood of this occurring, especially within a single fiscal year, is very minimal.
Even if MSHA’s assertion is that its action simply shifts training costs, recent fatality and accident investigation reports by MSHA have noted that the majority of these occurrences were due to ineffective training (generally done internally by mine operators) and could have been prevented if more had been done to educate miners about the dangers associated with mining operations and conditions. An accurate discussion of the issue would include the reduction in accidents at small mines served by those States that sponsor training through a portion of the cost-shared State grant.

MSHA’s suggested fix for the de-funding of the state grant program is to immediately shift training responsibilities and costs entirely to mine operators. While this idea may have merit, we are uncertain about the ability of the mining industry (especially small operators) to accommodate these new costs and suspect that any realignment of training responsibilities from the states to the industry will take considerable time and planning. Furthermore, our experience over the past 35 years has demonstrated that the states are often in the best position to design and offer this training in a way that insures that the goals and objectives of Sections 502 and 503 of the Mine Safety and Health Act are adequately met. There is some evidence of training programs offered by mine operators (or contractors on their behalf) falling well below what would be considered a minimum standard for these types of programs.

There have been no discussions with the states about the impacts that these funding reductions will have on state training programs or mine safety and health programs or about any sort of transition in how we are currently doing business. To propose such a dramatic shift without first consulting the states is inappropriate and a denigration of the role the states have played in protecting our Nation’s miners. Furthermore, to expect such a drastic change in operations to occur within a single fiscal year is unrealistic and will only result in confusion and potential negative impacts to the availability and quality of miner training and the overall health and safety of miners.

Specifically with regard to the appeal process before us today pursuant to Section 503 (c) of the Mine Safety Act, this is clearly a case of first impression for both MSHA and the states. One of the primary concerns that IMCC has with regard to the process is how we got here. While Pennsylvania obviously perfected its appeal in MSHA’s estimation, there are other states, particularly North Carolina who you will hear from shortly, that found themselves in the position of either being denied an opportunity to appeal or being so unfamiliar with the appeal process that, due to time constraints, were unable to perfect an appeal. Some of this was due to the convoluted process that attended the grant process earlier this year when the states were trying to determine what amount of funding would be available, when it would be available, when grant applications needed to be submitted and the format in which they should be submitted to obtain available funds and at the same time preserve the potential for appealing a grant application decision by MSHA in an attempt to obtain a larger amount of funding based on our understanding of the budget process.
As you may recall, IMCC sponsored a conference call with MSHA to discuss the funding situation and the grant process on June 27 and the states were given approximately two weeks within which to submit either an initial or an amended grant application. Many of the states had received conflicting information about what amounts to request and how to structure their grant applications, which prompted the conference call. However, at that point, there were so many variations in terms of what states had done or were about to do that the potential for following through with an appropriate and valid request for appeal became untenable. Some states simply gave up; others, out of an abundance of caution and a desire to preserve some semblance of funding, opted to forgo the opportunity to appeal. Still others believed they could pursue an appeal at a later time and when they learned this was impossible, also gave up.

Given the importance of state grant funding, as articulated earlier in my statement, and the fact that this was the first time that states found themselves in the position of appealing a grant application decision, we believe it would have behooved MSHA to have proceeded in a more deliberate, clear and transparent fashion. As it is, we are still mystified about why and how MSHA was able to reduce state grants by 65% in FY 2013, to say nothing of the appropriateness of doing so in light of the agency’s statutory obligation to support the states. To further exacerbate the situation with a confused application submittal and approval process only added salt to the wound. We are hopeful that as MSHA moves forward with a decision on Pennsylvania’s appeal, the agency will better articulate how this process will proceed in the future and will provide a detailed explanation of the basis for its decision on Pennsylvania’s appeal, which of course we hope will be upheld.

In terms of whether MSHA’s distribution of funds to Pennsylvania was “equitable”, we must first look at what was actually appropriated for this purpose – which was an amount almost 50% greater than what MSHA eventually chose to distribute following it reprogramming of moneys from the Education, Policy and Development account. While we can appreciate MSHA’s concern for enhanced enforcement capability, which is where the training grant money was redirected, Congress never intended for this to happen and did not specifically authorize such a transfer. As a result, Pennsylvania and all of the other states found themselves with significantly less money to be distributed among their respective training programs – which is really an issue of fairness and effective program implementation under the Mine Act. In our view, we are all in this together and the entire mine safety and health program would have been better served if MSHA had respected the statutory mandate of Section 503(a) and Congress’s intent for the expenditure of these funds.

With respect to Pennsylvania’s appeal, we assert that MSHA should grant Pennsylvania’s request to restore full funding for its grant (as we believe the agency should have done for all the states) given the clear congressional intent to support state assistance grants. There was nothing in the Continuing Resolution for FY 2013 that authorized or anticipated cuts to state assistance grants beyond the impact of the 5.1% sequestration reduction. MSHA on its volition, apparently through a reprogramming maneuver, chose to move forward with its proposed cut of 55% for state assistance
grants, as contained in its proposed budget for FY 2013, and added an additional percentage for sequestration for a total reduction of 65%. While we have come to better understand how MSHA accomplished this feat, we believe it was inappropriate and will undercut the effectiveness of state regulatory and training programs nationwide, to the detriment of our Nation’s miners. As a result, it is wholly appropriate that Pennsylvania should move to appeal its approved grant amount and seek restoration of the amount that should have been distributed without the reprogramming adjustment made by MSHA. The same holds true for all of the other states that received grants in FY 2013.

Thanks for the opportunity to appear before you today. I will provide you with a written copy of my testimony by January 17. I would be happy to answer any questions you may have.