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PUBLIC HEARING
ON
THE MINE SAFETY AND HEALTH ADMINISTRATION'S
PROPOSED RULE TO ADDRESS
THE RECOMMENDATION OF THE TECHNICAL STUDY PANEL
ON FLAME RESISTANT CONVEYOR BELTS,
FIRE PREVENTION AND DETECTION,
AND THE USE OF AIR FROM THE BELT ENTRY

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AUGUST 21, 2008
9:00 A.M.

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HILTON SUITES LEXINGTON GREEN
LEXINGTON, KENTUCKY

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MODERATOR

Ms. Patricia W. Silvey
Director, Mine Safety and Health Administration
Office of Standards, Regulations and Variances

PANEL MEMBERS:

Mr. Michael Hockenberry
Mr. Ronald Schell
Mr. William Francart
Mr. Michael Kalich
Mr. Matthew Ward

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1 MS. SILVEY: Good morning. My name
2 is Patricia W. Silvey, the Director of the Mine Safety
3 and Health Administration's Office of Standards,
4 Regulations, and Variances. I will be the moderator of
5 this public hearing on MSHA's Proposed Rule to Address
6 the Recommendation of the Technical Study Panel, or the
7 TSP, on Flame Resistant Conveyor Belts, Fire Prevention
8 and Detection, and The Use of Air From the Belt Entry.

9 On behalf of Richard E. Stickler, the
10 Acting Assistant Secretary of Labor for MSHA, I want to
11 welcome all of you here today. At this point I would
12 like to, just as we have passed the one-year
13 anniversary of the accident at Crandall Canyon, I would
14 ask if you-all would pause with me for a moment of
15 silence in memory of the miners who lost their lives in
16 that accident, as well as the workers who lost their
17 lives trying to rescue them. And as all of you know,
18 MSHA lost one of its own employees in that accident.

19 So in memory of those workers and the
20 rescuers, and in memory of all of the miners who lost
21 their lives in mining accidents so far this year in
22 this nation's mines and throughout the world, I would
23 ask if you would pause with me for a moment of silence.

24 (Moment of silence observed.)

25 Thank you. At this point I would

1 I like to introduce the members of the MSHA panel. To my
2 right is Ronald Schell. And Ron, as some of you may
3 know, retired from MSHA a few years ago, a retired MSHA
4 employee who came back to help us on a few of the
5 expedited regulatory projects that we have. And Ron is
6 the team leader of this project. To his right is
7 Michael Hockenberry, and Mike is with the Office of
8 Technical Support, the Approval and Certification
9 Center.

10 To my left is William Francart and he
11 is with the Office of Technical Support. To his left
12 is Mike Kalich, and Mike is with the Office of Coal
13 Mine Health and Safety. And to his left is Matthew
14 Ward, and he is with the Office of the Solicitor, the
15 Division of Mine Safety and Health. In other words,
16 he's our lawyer on the project.

17 This is the second of four public
18 hearings on the proposed rule. And we will hold the
19 remaining hearings in Charleston, West Virginia on
20 August 26th and in Birmingham, Alabama on August 28th.
21 The comment period for the proposal, as many of you
22 know, ends on September 8th. MSHA must receive your
23 comments by 12 midnight Eastern Daylight Savings Time
24 on that date. You can view all comments on the
25 agency's website at www.msha.gov. And we have a few

1 copies of the proposed rule in the back of the room if
2 you wish to have a copy.

3 I would also like to note at this
4 point that we have -- we are going to be extending the
5 time for the comment period on the request for
6 information on smoke density and toxicity. And the
7 extension of the -- the official extension of time will
8 appear in today's Federal Register and the time will be
9 extended to September the 8th, 2008.

10 Section 11 of the Mine Improvement
11 and New Emergency Response, or the MINER Act of 2006
12 requires that the Technical Study Panel be established.
13 The TSP issued its report in December of 2007. The
14 proposal is consistent with the TSP's recommendations.
15 At this point I want to summarize some of the more
16 significant provisions and issues in the proposal.

17 The proposal would establish a new
18 Part 14 and require that conveyor belts in underground
19 coal mines meet the agency's Belt Evaluation Laboratory
20 Test or BELT Test. In addition, it would revise MSHA's
21 quality assurance audit and record-keeping
22 requirements. MSHA requests comments on the proposed
23 five-year retention period for approval holders to
24 retain conveyor belt sales records. The proposal would
25 allow applicants for approval, approval holders, and

1 those seeking extensions a one-year period to gain
2 approval of the new conveyor belt or to transition to
3 approval of the new belt. During this period, approval
4 holders could apply for an existing Part 18 acceptance
5 or a new Part 14 approval. After one year, all
6 approvals would be processed under the new Part 14.
7 The agency solicits comments on the impact of the
8 one-year transition period on manufacturer's
9 inventories.

10 Under the proposal, a period of one
11 year -- for a period of one year mine operators could
12 purchase conveyor belts accepted under existing Part 18
13 or approved under new Part 14. After one year, the
14 operator would be required to purchase belts meeting
15 the requirements of proposed Part 14. Under the
16 proposal, operators would be permitted to use existing
17 inventory until replacement is necessary.

18 The proposal would require that
19 miners assigned tasks as Atmospheric Monitoring System
20 or AMS operators be qualified before they perform these
21 duties and that AMS operators demonstrate proficiency
22 to MSHA inspectors. It would require existing AMS
23 operators to become qualified. To assist operators
24 with training programs, MSHA intends to develop a model
25 training plan. The proposal would require that an AMS

1 operator's duties be a primary responsibility, specify
2 the contents of annual retraining, and require AMS
3 operators to travel underground every six months. The
4 proposal would require a two-month delayed effective
5 date for operators to submit AMS training plans.

6 The proposal would apply to all
7 underground mines -- underground coal mines and require
8 an airlock where the air pressure differential between
9 air courses creates a static force exceeding 125 pounds
10 on closed personnel doors along escapeways. MSHA
11 solicits comment on other suitable pressures and on the
12 number and cost of airlocks that would be required
13 under the proposal. Under the proposal, operators
14 would have a three-month period to establish airlocks.

15 The proposal would require that the
16 use of air from a belt entry to ventilate the working
17 section be permitted only when evaluated and approved
18 by the district manager in the ventilation plan. In
19 the ventilation plan the operator would have to provide
20 information that the use of air from the belt entry
21 affords at least the same measure of protection where
22 belt hauling entrances are not used to ventilate
23 working sections.

24 MSHA proposes to allow mine operators
25 currently using air from the belt entry to ventilate

1 working sections three months to submit a revision to
2 the ventilation plan to the district manager. If the
3 MSHA district manager does not approve the use of air
4 from the belt entry to ventilate working sections, a
5 citation would be issued for failure to have an
6 approved plan. MSHA would not revoke the plan until
7 completion of current mining. The agency solicits
8 comments on this proposed process.

9 The proposal would establish a
10 minimum air velocity of 50 feet per minute in mines
11 that do not use air from the belt entry to ventilate
12 the working section. It would establish a minimum of a
13 hundred feet per minute and a maximum of a thousand
14 feet per minute air velocity in mines that use air from
15 the belt entry to ventilate working sections. These
16 proposed velocities assure that the contaminants of a
17 fire are carried downwind to carbon monoxide sensors.

18 Under the proposal, where these
19 velocities cannot be maintained, adjustments may be
20 approved in the mine ventilation plan. The proposal
21 includes a twelve-month delayed effective date for this
22 provision. The proposal would require that where
23 miners on the working section are on a reduced
24 respirable coal mine substandard, below 1.0 milligrams
25 per cubic feet of air, the average concentration of

1 respirable dust in the belt entrance must be at or
2 below the lowest applicable respirable dust standard on
3 that section. The agency solicits comments on this
4 proposal.

5 The proposal would require that smoke
6 sensors be installed in areas where air from the belt
7 entry is used to ventilate working sections. This
8 provision would become effective one year after the
9 Secretary has determined that smoke sensors are
10 available to detect fires in underground coal mines.
11 These sensors would be in addition to carbon monoxide
12 sensors. MSHA will provide notice when the sensors are
13 available. MSHA solicit comments on this approach to
14 requiring smoke sensors.

15 The proposal would establish new
16 requirements for lifelines in underground bituminous
17 and anthracite coal mines. It would require that
18 lifelines and escapeways have tactile signals to
19 identify impediments to travel, SCSR caches, personnel
20 doors to adjacent escapeways, and refuge alternatives.
21 The proposed rule which has a six-month delayed
22 effective date would also require nationwide
23 standardization of all tactile signals. Under the
24 proposal each of the signals would be distinguishable
25 from other markings. The agency specifically solicits

1 comments on alternative tactile signal markers.

2 And on that issue, we heard comment
3 in Salt Lake City on that requirement and I'll talk a
4 little bit more about it later. The proposal would
5 require that the primary escapeway have a higher
6 ventilation pressure than the belt entrance. Under the
7 proposal, the operator can submit an alternative in the
8 mine ventilation plan to protect the integrity of the
9 primary escapeway. The proposal would apply to all
10 mines using belt haulage and would have a six-month
11 delayed effective date.

12 The proposal would discontinue the
13 use of point-type heat sensors and require the use of
14 carbon monoxide sensors for fire detection along belt
15 conveyors in all underground coal mines. The proposal
16 requires that all point-type heat sensors, except those
17 used to activate fire suppression systems, be replaced
18 with carbon monoxide sensors within twelve months of
19 the effective date of the final rule.

20 MSHA is proposing that the warning
21 level for carbon monoxide sensors be ten parts per
22 billion above the ambient level. The agency is
23 soliciting comments on this proposed level. The
24 proposal would be Proposed 75.1731, would be a new
25 requirement for a belt entry and belt conveyor

1 maintenance applicable to all underground coal mines
2 using belt haulage.

3 The proposed rule would require that
4 damaged rollers and other malfunctioning components be
5 immediately repaired or replaced, require conveyor
6 belts to be properly aligned, prohibit the accumulation
7 of non-combustible materials in the belt entry, and
8 require that splicing of any approved conveyor belt
9 maintain the flame resistant properties of the belt.

10 This proposal would include a
11 two-month delayed effective date. MSHA has estimated
12 the economic impact of the proposal and has included a
13 discussion of the cost, benefits, and paperwork
14 requirements in the preamble to the proposal and in the
15 Preliminary Regulatory Economic Analysis, or the PREA.
16 The PREA contains estimated supporting data on costs
17 and benefits.

18 The agency is also soliciting
19 comments on the following: MSHA is considering
20 including a specific requirement in the final rule that
21 the operator make changes or adjustments to reduce the
22 concentration of methane present in the belt entry as
23 measured 200 feet outby the section loading point. At
24 this point in the rulemaking, MSHA is considering
25 requiring that operators take action when methane is

1 between a range of 0.5 and 1.0 percent. MSHA is
2 soliciting comments on the appropriateness of such a
3 standard, and on the specific level at which changes or
4 adjustments should be made. MSHA has proposed a
5 requirement that point-feed regulators must be equipped
6 with a means to be remotely closed, however, the agency
7 has not included a requirement for providing a means
8 for reopening the regulator as recommended by the TSP.
9 This is because MSHA believes that once evacuation is
10 complete, the need for remote reopening of the
11 regulator will be rare. The agency solicits comments
12 on whether a requirement to remotely reopen the
13 regulator should be included in the final rule and the
14 reasons why such a requirement should be included.

15 MSHA requests comments on all
16 proposed delayed effective dates. MSHA also solicits
17 comments on all of the estimates of cost and benefits
18 in the preamble and in the PREA and on the data and
19 assumptions that the agency used to develop the
20 proposed estimates.

21 As you address these provisions,
22 either in your testimony to us today or in your written
23 comments, and I want to underscore this point, as many
24 of you have heard me say before, please be as specific
25 as possible and include in your comments your suggested

1 alternatives, your suggested rationale for such
2 alternatives, the safety and health benefits to miners,
3 technological and economic feasibility considerations,
4 and data to support your comments. The agency will use
5 your specific information to help evaluate the
6 requirements in the proposal and produce a final rule
7 that will improve safety and health for underground
8 coal miners in a manner that is responsive to the needs
9 and concerns of the mining public.

10 As many of you know, this hearing
11 will be conducted in an informal manner, formal rules
12 of evidence will not apply. The panel may ask
13 questions of the witnesses and the witnesses may ask
14 questions of the panel. MSHA will make a transcript of
15 the hearing available on the agency's website within
16 one week of the hearing.

17 And as most of you also know, time is
18 of the essence in developing the final rule which must
19 be finalized by December 31, 2008.

20 If you wish to present written
21 statements or information today, please clearly
22 identify your material and give it to the court
23 reporter. We ask that every one in attendance, if you
24 would please sign an attendance sheet in the back of
25 the room.

1 We will now begin today's hearing.
2 If you would, please begin by clearly stating your name
3 and organization and spelling your name for the court
4 reporter, this will assure that we have an accurate
5 record.

6 And before we get to our first
7 speaker today, I mentioned to you that we had gotten
8 some comments in Salt Lake on the requirement for the
9 tactile signal escapeways. And Ron remembered, I have
10 to say that, I didn't remember to bring these but he
11 did, so that's why you always have people working as a
12 team. And as all of you know, too, the Emergency Mine
13 Evacuation Rule requires that we have directional
14 indicators in the escapeways. And that rule was the
15 rule that was published in December of '06.

16 And in that rule we said if the cones
17 are used, the cones would be so that the tapered end
18 points in by. So therefore -- we didn't at that point
19 require that cones be used. But in any event, if cones
20 were used they would be this way on the lifeline in the
21 escapeway and, you know, miners would be going out this
22 way (indicating).

23 Then in this rule, the Technical
24 Study Panel recommended that these indicators be
25 standardized. And so what we did is we said that the

1 cones would be used, the tapered end would be pointing
2 in by, two cones would represent impediments to travel,
3 four cones would represent personnel doors, and six
4 cones would represent SCSR caches. And we also said
5 that these would be back-to-back. Now I'm trying to
6 remember the proposal as we have it. And these two and
7 four and six respectively would be back-to-back.

8 Then we said that this spiral -- what
9 did we call this spiral, I call it, would indicate the
10 location of the refuge alternative. So in Salt Lake
11 City we have some -- we got some comments. And people
12 can go to the transcript and read it. And the general
13 substance of the comments was for us -- people would
14 like us to rethink this and to just make sure that we
15 weren't too complicated and that miners in an escape
16 situation, in a smoke-filled environment, you know,
17 maybe you don't have time to be thinking about and
18 counting, et cetera, et cetera. And to just think
19 about how the requirement for locating all of the
20 signals, and also think about what the signals should
21 be. I guess that's a good summary of the substance.

22 And as I said, for more detail or if
23 people have questions on this, they should ask us. One
24 of the things, in talking about this one of the things
25 that made me think about, and I'd like to say it now,

1 and that is to iterate and reiterate, and that is in
2 terms of in an escape -- in a mine emergency situation,
3 in an escape situation, the longstanding principle and
4 it is a principle that I wish to underscore now and
5 reiterate, is that the first line of defense is for the
6 miner to escape the mine. And only if the miner cannot
7 escape underground then would other alternatives come
8 into play.

9 So that's when I said I was going to
10 talk a little bit about that, that's what I would like
11 to do. So would anybody like to add anything? So now
12 we are ready for today's hearing. And our first
13 speaker will be William Caylor with the Kentucky Coal
14 Association. Mr. Caylor.

15 MR. CAYLOR: Madam Chairperson,
16 distinguished members of the committee, my name is Bill
17 Caylor, I'm President of the Kentucky Coal Association.

18 The Kentucky Coal Association is a
19 trade association comprised of surface and underground
20 operations in both the eastern and western Kentucky
21 coal fields. Our members mine a major portion of
22 Kentucky's coal. The Kentucky coal industry is a
23 modern high-tech industry which takes great pride in
24 workplace safety. We have seen dramatic safety
25 improvements in the coal miner's workplace over the

1 years. Our fatalities have continued to decline and we
2 believe we will see a year with no fatalities very
3 soon. Our workplace injuries are comparable to the
4 average Kentucky worker. We have fewer injuries than
5 construction, manufacturing, agriculture, and a host of
6 other occupations.

7 And on the first page I've listed two
8 tables. These tables are different because the US
9 Bureau of Labor Standards changed or mixed and matched
10 the categories, so I had to take it from '96 to 2002
11 and beginning in 2003 to 2006 I had to change the
12 categories. But you can see in the table to the left,
13 I did an average, because in any statistics you have a
14 jagged line so I just did an average.

15 But the average injuries for the
16 period 1996 to 2002, you can see for manufacturing,
17 construction, agriculture, forestry, fishing, coal
18 mining, private industry, which is the average Kentucky
19 worker -- now, this is for Kentucky only -- but it
20 ought to hold true nationally as well, you can see the
21 injury rates.

22 Now, if you look at the table to the
23 right, you can see where they added health care and
24 social assistance, and they seem to have the highest
25 average injury rate as any other worker, especially in

1 Kentucky. But you will notice manufacturing in the
2 first table to the left was 13.2 rate where the second
3 from 2003 to 2006 it went down to 8.7. Coal mining had
4 an injury rate of 8.21 and it went down to 6.1. The
5 average private industry, the average worker on the
6 injury rate in the '96 to 2002 time period was 8.21 and
7 it went down to 6.0.

8 One thing I'd like to point out is
9 that with the exception of agriculture, forestry, and
10 fishing, and they added hunting to it so that probably
11 is what skewed that one, you are seeing in all
12 workplaces the average injury rate going down which is
13 a very, very positive message that we need to get out.
14 So not just in coal, but every industry is getting
15 safer.

16 And when you listen to the news press
17 a lot of times you think just the opposite and it's
18 very frustrating. 2007 was the lowest year for
19 fatalities in Kentucky. We were very proud of that
20 year, that was a record year. Miners become safer from
21 injuries, illnesses and death as improved safety
22 technologies are developed and adapted by the mining
23 industry. From the decade 1920 to 1929 about 1,614
24 Kentucky miners were killed on the job. During the
25 1990s decade 116 mining fatalities were recorded.

1 For the first time since 1980 there
2 were no underground fatalities in 2007. And that went
3 from a period of time from around November the 4th
4 of '06 until about a month ago. So it went for longer
5 than a period of a year where we had no underground
6 fatalities in Kentucky. And during 2007 we only had
7 two surface mining fatalities. So 2007 was a record
8 year for safety in Kentucky, we only had two fatalities
9 and both of them were surface. This year to date we've
10 had two surface fatalities and we've had one
11 underground fatality, which should not have occurred.

12 Other sectors of industry may employ
13 more people but it's still important to note that the
14 number of fatalities each year is lower than the coal
15 mines and many other Kentucky workplaces. So there you
16 see a chart which just has the average fatalities
17 during the period of 2003 to 2006 for the different
18 industry categories in Kentucky. And you can see that
19 Kentucky is way down the list.

20 Now, what this doesn't show, and I
21 always like to clarify, this does not show the fatality
22 rate. A lot of times the fatality rate may be higher.
23 It's hard for me to get the fatality rate charts when I
24 go to the US Bureau of Labor and Statistics. But they
25 don't seem to list it, but it seems that we're maybe in

1 the category of a policeman or cab driver in terms of
2 fatality rates. It will vary each year. I know '06
3 was a bad year across the country, and the fatality
4 rate nationally was horrid compared to a lot of other
5 businesses and industry.

6 This just shows you an example of the
7 average total number of fatalities in Kentucky, and yet
8 the news print will publish and focus on the coal
9 industry when there's a fatality. Yet when there's a
10 fatality in manufacturing, construction, and other
11 industries it seems to be buried. And sometimes you
12 seem to have an inherent bias against the coal industry
13 by the news press and it shouldn't be that way.

14 I don't think they recognize the kind
15 of improvements that we're seeing across the board in
16 the coal industry. The next graph you will see is just
17 a statistical chart that shows a jagged line on
18 statistics on the number of fatalities that we've had
19 per year from 1950 down to 2007. And a great deal, and
20 you can see if you did a trend line, the trend line
21 obviously would be coming down on that.

22 A great deal of credit goes to
23 federal and state mine safety agencies as well as a
24 commitment to safety from coal companies. We should
25 never miss an opportunity to inform the news press of

1 our impressive safety record.

2 And I might add, there's another
3 significant credit that goes to the United Mine Workers
4 Of America, and we have Butch Oldham sitting back here
5 representing the UMWA, and I know Butch is excellent
6 when it comes to reading the regulations, making
7 suggestions on improvements, and I'd like to thank
8 Butch for his hard work in that regard. He does -- I
9 think he does an excellent job. So it's really a team
10 approach to safety and we're all on the same team.

11 As an industry, we are committed to
12 making belt air ventilation a viable option. As you
13 will note in our comments, we would express some
14 frustrations over the process, training requirements,
15 definitions, and over some of the specifications for
16 belt air ventilation. Our intent is to improve the
17 function and sustainability of belt air ventilation.
18 Any quick solution to a problem brings inherent
19 logistical problems. These belt air ventilation
20 changes can be expensive and may be a long way away
21 from perfection. What we strive for are pragmatic
22 solutions that can improve and evolve over time without
23 unnecessary major financial expenditures.

24 The issues we highlight do not argue
25 against safety of our miners, rather our comments argue

1 for building better and sustainable belt air
2 ventilation systems. Please keep this in mind when
3 considering our comments.

4 Now, the following are our general
5 concerns with the proposed belt air ventilation rule.
6 General comment is considering the number of belts in
7 operation, the number of tons of coal being produced,
8 and the general lack of belt air problems, we question
9 whether many of the restrictive provisions are
10 warranted for safety purposes. What's in place today
11 seems to be working fairly well. Failures have
12 generally not been caused by the lack of sensors. We
13 feel in many situations the problems simply do not
14 justify some of the proposals. How many belt fires and
15 fatalities have we seen in the last ten years? Belt
16 air was not the issue in the Aracoma incident, sole
17 issue, it was one of several issues that came together.
18 These new provisions simply make it more difficult for
19 coal mines to use belt air, which we feel is a proven
20 safe alternative.

21 Provisions for blowing systems:
22 There should be provisions for blowing systems. There
23 is no distinction between blowing and exhausting in
24 these proposed rules.

25 The effective dates: The demand will

1 override supply regarding non-combustible conveyor
2 belts, et cetera, other items that will be required
3 under this new rule. We've seen this problem with the
4 SCSR. If so, what's the next step for compliance. So
5 that is a concern sometimes when we cannot get a piece
6 of equipment and material in a timely manner.

7 The next comment is under Section
8 75.323, Action for Excessive Methane. Under the
9 preamble of 73.323 on Page 35035, it speaks to lowering
10 the methane level to 0.5 percent. We feel the
11 allowable limit for methane in the belt entry should
12 remain at one percent. Operators should be required to
13 take action when the methane level is one percent.
14 Operators are allowed 0.8 percent on the intake but why
15 reduce it in the belt entry. There are other
16 provisions to handle this. MSHA simply has not given
17 strong enough reasons for lowering the methane
18 percentage. We feel the methane level should be left
19 as it is. There is no reason under the current law to
20 deviate.

21 Under Section 75.333(c)(4), operators
22 should be allowed options such as reducing mandoor
23 size, providing a flap or sliding door to reduce the
24 static pressure below 125 pounds in lieu of installing
25 an airtlock. There could be a substantial number of

1 airlocks required to be installed along main
2 ventilation and close to fans. Why is MSHA even using
3 the 125 pound limit? It can be expensive and there are
4 many doors that would have to be installed. Many doors
5 are located in very remote locations. We feel this
6 should be addressed on a plan basis.

7 In the preamble on Page 35036 Section
8 75.350(a)(2) states, quote: "Where the district
9 manager approves such a plan, carbon monoxide sensor
10 spacing would have to be reduced to no greater than 350
11 feet." We feel that 500 feet would be more appropriate
12 spacing for CO sensors if the velocity along the belt
13 is less than 50 feet per minute. We're not sure how
14 the 350 feet figure was justified. We also question
15 how to interpret where the measurement point of 50 cfm
16 is tested.

17 Section 75.351(q)(1) requires the AMS
18 operator to receive much the same training as the
19 responsible person. Why is the duplication necessary
20 and why would this training be needed for personnel who
21 monitor the AMS system when the mine is idle. We do
22 not feel it is necessary for the AMS operator to travel
23 underground every six months. Nothing requires the
24 operator to be trained and certified as an underground
25 miner and there is no explanation as to what the

1 underground trip is to accomplish. It is doubtful this
2 would provide useful information if the operator is not
3 an experienced underground minor. There is a lot of
4 training for the AMS operator. The AMS operator may
5 not be as experienced as others in the mine when
6 traveling through the mine. Should the AMS operator be
7 certified? The responsible person is on site at all
8 times. There are many situations where the AMS
9 operator simply won't understand a situation around
10 him. Who would develop the training program for the
11 AMS operator? Will testing be required in the final
12 regulation? In Section 11.03, MSHA tests and quizzes
13 people on their jobs.

14 Under Section 75.351(q)(3), why is
15 the training record required to be maintained for two
16 years when other record retention, except for seals, is
17 only required to be retained for one year? This
18 section needs to be consistent with other training
19 records.

20 Under 75.352(f), does this apply to
21 all mines or only to those that use belt air to
22 ventilate the face?

23 Under Section 75.1103-4(a)(1)(i), one
24 sensor should be allowed to monitor a belt exchange
25 consisting of a drive, a take-up, and a tail piece if

1 all are in the same ventilation stream including a
2 turn. Mining plans and conditions could require that
3 there would be more than a hundred feet between the
4 units. Additional sensors would be unnecessary
5 duplication and would require additional maintenance
6 and could be the source of false alarms.

7 Under 75.1103-4(a)(1)(iii), there is
8 no guidance as to the length of the belt where
9 ventilation is less than 50 parts per million -- or
10 feet per million before sensors are required to be
11 spaced 350 feet. Items such as these should be
12 addressed in a ventilation plan approval process.

13 Section 75.1103-4(a)(1)(iv) would
14 require unnecessary sensors for little information
15 return. This should be handled in the plan approval
16 process.

17 Section 75.1103-5(a)(2) of the
18 proposed rule uses the term, quote, "assigned post of
19 duty", end quote, which is not defined and needs to be
20 defined to eliminate conflicts in interpretation.

21 Section 75.1105(a)(2)(iii) in the
22 preamble uses the term, quote, "at the manned surface
23 location," end quote. This needs clarification.

24 Section 75.1103-5(d) & (e) both use
25 the term quote, "immediately", end quote in regards to

1 actions that could take longer to accomplish than
2 fifteen minutes and could result in enforcement action.
3 This needs to be taken into consideration for the final
4 rule.

5 Section 75.1103-5(f)(1) would require
6 the verbal notification of personnel in addition to the
7 automatic warning by the system. Is duplication
8 necessary?

9 Section 75.1103-5(f)(1) requires
10 withdrawing affected personnel to a safe location
11 immediately with the receipt of the system warning.
12 This would be a problem with alarms and currently is
13 only done with an alarm with a warning being
14 investigated.

15 Section 75.1103-8(a) requires sensor
16 and warning device systems to be examined each shift.
17 The proposal states inspections and maintenance are to
18 be done by a qualified person. Is shift exam to be
19 done by a qualified person? Are belt examiners
20 qualified? Both terms "examined" and "inspection" are
21 used with no distinction.

22 Section 75.1731 is full of issues.
23 Many terms are undefined and many requirements are very
24 impractical. What does the word "damaged" mean?
25 "Immediately repaired and replaced" may be practically

1 impossible. Why does it have to be immediately? It is
2 possible to keep conveyor belts -- it is impossible to
3 keep conveyor belts properly aligned at all times.
4 Surely this was not the intent of this subsection.

5 The term "non-combustible materials"
6 can mean many items which have no bearing on safety.
7 For example, rock dust would qualify as a
8 non-combustible material as well as a host of other
9 items. Requiring "splicing of any approved conveyor
10 belt" to maintain flame resistant properties may be
11 difficult at this time. When splicing materials which
12 function properly are available this requirement could
13 be feasible. Splices must be durable and they can
14 constitute only a fraction of the length of the
15 conveyor belt.

16 What's the -- now the question is
17 what's the next step to safer mines? And this is what
18 I touched on at the last public hearing, and this will
19 deviate from the belt air ventilation issue today, but
20 the number of fatalities and injuries in Kentucky's
21 coal mines continued to decline. However, the industry
22 has not yet reached the goal of zero fatalities.
23 Behavior modification is the key to ensuring miners
24 know and want to do their work in a safe manner.

25 To affect behavior modification takes

1 time, commitment, and money. The Federal Mine Safety
2 and Health Administration is charged with the primary
3 responsibility of enforcing safety laws in coal mines.
4 Kentucky recently adopted its own enforcement laws
5 duplicating the federal effort. Can't our valuable
6 resources be better used to improve miner safety? We
7 think yes.

8 Kentucky mine safety authorities'
9 primary role should be miner training and education,
10 although inspectors should retain the power to close an
11 unsafe mine. Writing a citation which duplicates one
12 written by a federal agency doesn't make the mine a
13 safer workplace. But activities to observe the miner
14 and correct unsafe work habits can lead to safe mines.

15 As teachers rather than policemen,
16 state inspectors could improve safety. They can teach
17 the importance of working safely to avoid injuries
18 which impact not just the miner, but his family and his
19 employer as well by placing emphasis on training and
20 education instead of duplicating federal roles, the
21 state safety agency can help achieve our goal of zero
22 fatalities.

23 And that concludes my remarks. I'll
24 be happy to try to answer any questions. Thank you
25 very much.

1 MS. SILVEY: Thank you, Mr. Caylor.
2 I'm sure I have some comments and I'm sure maybe some
3 others of us do also.

4 At the outset, let me reiterate and
5 give our appreciation to something that you said, and
6 that is that the approach to safety is a team approach.
7 And it is, indeed, a team approach and we at MSHA
8 appreciate always the combined efforts of industry,
9 labor, and the states in the things that -- and the
10 innovative efforts and practices that they all take
11 together in helping to improve safety. So that's the
12 first thing I would like to say.

13 With respect to some of your specific
14 comments, and one of the things you-all heard me say
15 today is that to please be as specific as you can. And
16 when you do give us your comments, if you would, and
17 sometimes I know it's easier depending on certain
18 provisions, it's easier than maybe with other
19 provisions but if you would do -- if you would provide
20 specific comments and your specific rationale we would
21 appreciate that.

22 Looking at your comment on actions
23 for excessive methane and your statement is that -- and
24 we ask a question on that, whether that level, the
25 range should be between 0.5, as I said in my opening

1 statement, and 1.0 percent. And your comment is that
2 it should be -- operators should be required to take
3 action when the methane level is at the current level
4 of 1.0 percent.

5 I would like to suggest to you, and I
6 don't know whether you have any intention to provide
7 any additional comments before the comment period
8 closes, but if you do, if you would provide us with
9 rationale as to why it should remain at one percent.
10 Now, in all candor and honesty with you, you say to us
11 that we simply have not given strong enough reasons for
12 lowering the methane percentage, but if you would like,
13 if anybody in here wishes to comment on that, and you
14 would like it to stay at one percent, I would ask you
15 if you could provide specific definitive rationale as
16 to support your suggestion.

17 MR. CAYLOR: I think that comment
18 came from -- there are different levels that are tested
19 in different areas. And it was more a consistency
20 comment than trying to do the rationale. We will get
21 back to you and try to expand upon that.

22 Because I was talking to Michael
23 before this process began, it's easy to criticize and
24 say I don't like this, but the difficult job, the
25 really difficult job is offering constructive

1 criticism, not just criticism. But giving a reason, a
2 suggestion, an alternative that would work. And I know
3 we have our faults and we do that. And I apologize and
4 we will try to get back to you.

5 MS. SILVEY: No, I would say that to
6 you and anybody else in the room. I think I say
7 that -- people hear me say the same thing hearing after
8 hearing. So, no. No. We don't take it as -- no need
9 to apologize.

10 MR. CAYLOR: I just realized that,
11 you know, we're a lot of times guilty as charged.

12 MS. SILVEY: On the issue of
13 ventilation controls, and we did ask, I asked in the
14 opening statement how many -- we wanted comments on the
15 number of airlocks as well as the cost. And here you
16 say that could be a substantial number. But from your
17 members, and now I'm talking about members of the
18 Kentucky Coal Association, if somehow you could -- I
19 don't know if it's possible, but do a survey or
20 something and see if they have a suggestion on how many
21 airlocks would need to be installed, if at all
22 possible -- if they have an estimate. Those of you who
23 have looked at the Regulatory Economic Analysis, we
24 included an estimate in there. So you could let us
25 know whether you think our estimate is right on target,

1 whether you think it's low, or whether you think it's
2 high.

3 On the question of AMS, atmospheric
4 monitoring system operator's training, as you recalled
5 in my opening statement I said that MSHA intends to
6 develop -- you have a question, who will develop the
7 training program for the AMS operator? Well, as with
8 any training obligation, as with any training
9 provision, the obligation is on the operator to develop
10 the training program. But we did state that we were
11 going to develop a model training program and we would
12 make that model training program available to the
13 entire mining community.

14 Then you asked -- I would like to the
15 best I can answer the questions that are asked of us
16 also, you asked would testing be required in the final
17 regulation? The only thing I can say is what was in
18 the proposed rule, and the proposed rule did not
19 include a testing component. Then this other comment
20 you have, in Section 1103, MSHA tests and quizzes
21 people -- I didn't understand that myself, your comment
22 here in Section 1103, MSHA tests and quizzes people on
23 their jobs.

24 MR. CAYLOR: Well, I think that was a
25 little bit more of a follow-up on the training. It

1 might have been some frustrations where they've seen
2 MSHA coming out and talking to individuals about the
3 Diversity Action Plan, you know, do you understand it?
4 And it may be a question where you sit people down in a
5 room and you give them training and you think you have
6 relayed the correct training to them and you think
7 they've assimilated it and then they walk away -- like
8 any classroom, somebody will get an A or an F on a
9 grade they were tested. Sometimes it just doesn't sink
10 in to certain people and we're seeing a trend where
11 MSHA will actually question miners on what they should
12 do under emergency situations. And they don't know
13 when they've been given training, and that's a little
14 bit of a frustrating situation. I don't know what to
15 do about it.

16 MS. SILVEY: What section are you
17 talking about when you say 1103, what are you -- that's
18 on page?

19 MR. CAYLOR: I'll have to get back on
20 you. I've got a different page, but I'll get back to
21 you.

22 MS. SILVEY: This question you asked,
23 under Section 75.352(f), does this apply to all mines
24 or only to those that use belt air to ventilate the
25 face? And that's under Actions and Response to AMS

1 Malfunction, Alert, or Alarm Signals. And I think
2 that's under -- that's only mines that use AMS.

3 MR. CAYLOR: Okay.

4 MS. SILVEY: So that would only be
5 that. On 1103-8(a), Automatic Fire Warning Devices;
6 Actions and Response. On this one you asked a
7 question, is the shift exam -- this is for the new
8 requirement for carbon monoxide sensors. And you say
9 the proposal states inspections and maintenance are to
10 be done by a qualified person. Is the shift exam to be
11 done by a qualified person? And Bill can answer that,
12 if you could answer that.

13 MR. FRANCAERT: We would think, Mr.
14 Caylor, that that would be done as part of the preshift
15 and on-shift examinations. So it would be a qualified
16 person but it wouldn't have to be. But we would expect
17 it to be done at the same time.

18 MS. SILVEY: Maintenance of belt
19 conveyors and belt conveyor entries, and in the
20 proposed rule we included that -- we included it in
21 response to the Technical Study Panel recommendations
22 but thought that was a significant provision to improve
23 belt maintenance. But you say that it is full of
24 issues. And many of the terms are undefined. And I
25 would -- you asked about damaged and immediately. What

1 I would say here, and I will say that to everybody, but
2 if you have different suggestions then you provide them
3 to us.

4 I think that there we intend -- for
5 some terms we intend, I think, the common Webster's
6 dictionary term of damage and immediately. And I mean
7 we know what damaged is, I think some of us know, and
8 immediately. And sometimes it may depend on the
9 circumstances.

10 So if you have a different definition
11 or a different suggestion, then you let us know. But
12 I'm saying to you, when you asked what is a damaged
13 roller, I mean for the people that you have in the
14 mines doing this type of work and looking at them and
15 maintaining them and maintaining the belt, I think if
16 they get to the belt and they see a damaged roller,
17 generally speaking, if they've done that -- if they're
18 experienced in doing that, they will know what a
19 damaged roller is or what -- and then -- sometimes when
20 we say repair immediately, that's a funny thing. And
21 there, I think, our intent in the proposal was to
22 articulate the dictionary term of immediately. It
23 means right away, as soon as possible. But some people
24 would say to us, and I've heard this, well, we don't
25 want you to necessarily be so prescriptive and tell us

1 exactly what you want. So that's what I would say to
2 you today, what our intent is.

3 But if you have some suggestions for
4 us, you know, that we should define damage and it
5 should be defined as this, damage should be defined as
6 this, or immediately should be defined as that, feel
7 free to let us know that.

8 MR. CAYLOR: We'll try to furnish
9 that because they had a lot of terms in there that
10 raised questions. We'll try to get you at least a
11 proposed definition.

12 MS. SILVEY: Would anybody else like
13 to add anything to what I said? You had something.

14 MR. SCHELL: Mr. Caylor, the
15 provision for blowing systems, I was just a little
16 confused, what part of our proposal raised the issue of
17 blowing versus exhaust in ventilation?

18 MR. CAYLOR: Ron, I'll give you an
19 honest answer, that came from one of our people and I
20 wasn't quite sure on that as well. But I will try to
21 get a clarification on that for you.

22 MR. SCHELL: I just wanted to make
23 sure I understood your concern.

24 MR. FRANCAERT: Mr. Caylor, one of
25 your questions, you asked about the 350 foot sensor

1 spacing when velocities are less than 50 feet per
2 minute. And that spacing requirement came from NIOSH
3 research that was conducted quite a few years ago now,
4 that wasn't just haphazardly selected. So there is
5 some research basis behind that number, and we can
6 provide that report to you if you'd like to have a
7 copy.

8 MR. CAYLOR: I'd appreciate that if
9 you could.

10 MS. SILVEY: It is probably in the
11 list of references.

12 MR. CAYLOR: Okay.

13 MS. SILVEY: We have a list of
14 references that we used to support the proposal.

15 MR. CAYLOR: When we were making our
16 comments, a lot of times a lot of our people don't have
17 access to that type of information so that's why --
18 just about how the comments are generated.

19 MR. FRANCAERT: You also had a
20 question about where the 125 pound limit came from for
21 the airlock door? That was proposed by the Technical
22 Study Panel as a number to use. If you have some other
23 research or information that would show us another
24 value, maybe better than 125 pounds, we would like to
25 know about that. But that was strictly from the TSP

1 recommendati on.

2 MR. CAYLOR: A lot of times we would
3 like to have -- we always encourage the agency to try
4 to build in flexibility because a lot of times there
5 may be a situation where you need flexibility down the
6 road. You think we've written a perfect rule but
7 sometimes there's a situation that doesn't quite fit
8 into that. We'd like to see as much flexibility built
9 in, maybe 125 pound would not be adequate in certain
10 situations but maybe in most. Where we could maybe
11 work it in our plan or have some flexibility.

12 MR. FRAN CART: One thing we did try
13 to do in the preamble is specify that there were
14 options in changing the sizes in providing the flaps
15 and sliders to accommodate that pressure. So I think
16 in the preamble it's clear that we do have some
17 provisions in there to account for that.

18 MS. SILVEY: On the issue of
19 effective dates, Mr. Caylor, you said that the demand
20 will override supply regarding non-combustible conveyor
21 belts. I'm assuming you mean the new belt --

22 MR. CAYLOR: It could be like the
23 SCSRs, they may not be able to supply them as quickly
24 as --

25 MS. SILVEY: Well, we only require

1 under the proposal , I let me put it this way, under the
2 proposal the new belt would only be required when the
3 existing belt needed to be replaced. So it's not
4 exactly the same as SCSRs in that you have to go out
5 and purchase the SCSRs every so many feet depending on
6 the table we had in the rule. So this one is mine
7 operators would be purchasing the -- when their
8 existing inventories was required to be replaced,
9 that's the set-up as presently it is under the proposed
10 rule.

11 MR. CAYLOR: Correct. But we went
12 through a stretch about three years ago when we had
13 problems getting rubber tires because China was buying
14 up every tire that wasn't -- so we just wanted to make
15 sure that -- a lot of times there may be some
16 flexibility, if we got an order in, we cannot get it in
17 immediately, they'll promise to have it in three months
18 but we need to have maybe some flexibility if that
19 situation does arise. It shouldn't, as you mentioned.

20 MS. SILVEY: It's not exactly the
21 same. Right. Okay. Okay. Anybody else?

22 MR. KALICH: Yes. 351(q)(3), the
23 training record, you say that we're asking it be kept
24 for two years instead of one year. And that's just to
25 verify that the previous year's training has been done

1 since the training is only required to be done on an
2 annual basis. And that was the rationale behind that.

3 MS. SILVEY: Okay. Well, I think
4 that's it then. We appreciate very much your comments
5 and testimony, and if you are providing us additional
6 comments before September the 8th we appreciate very
7 much if you can touch on some of the things we talked
8 about this morning. But we do appreciate the comments
9 you made.

10 MR. CAYLOR: We'll try our best to
11 get additional comments. And I appreciate it very
12 much. Thank you for your attention.

13 MS. SILVEY: Our next speaker will be
14 Edgar Oldham with the UMWA, I almost said Butch, but he
15 had written his name down.

16 MR. OLDHAM: My name is Edgar Oldham,
17 O-L-D-H-A-M, Jr. I'm with United Mine Workers of
18 America. And Madam Chairwoman, distinguished panel
19 members, I appreciate the opportunity to speak. It's
20 going to be brief, what I have to say. But I agree
21 with the comments that the United Mine Workers have
22 submitted and will be submitting further comments at a
23 later date.

24 What I'd like to just talk about is a
25 couple of experiences I've had with the belt fires and

1 problems that we've had with the belt air.

2 And one of the things that I'd like
3 to comment on is 75.380(f) where you mention that the
4 intake entry primary escape will be maintained as the
5 highest pressure entry. But the problem we have with
6 that, and we deal with it when we go in the mines, say
7 you have got a pressure of ten in the belt entry and
8 it's 10.1 in the intake, that's the higher pressure.
9 You have a fire we all know what a fire does, it
10 increases that pressure in those entries and,
11 therefore, it may not end up being the higher pressure
12 entry by the time that fire gets going.

13 So I'd like to see at least a high
14 enough number that will ensure the integrity of that
15 primary escapeway to be set instead of just saying it's
16 to be maintained as a higher pressure entry. I've
17 dealt with it at the mines many a times splitting
18 hairs. And you know, as long as that 0.1 is there the
19 company is going to say that's all we're required to
20 have. But we all know, you get in a fire situation
21 those pressures are going to change and change quick.

22 So I think we need a number, that
23 wouldn't be adequate, and I don't really have a
24 suggestion right now of what that number might be. But
25 at least something -- ventilation people could say, you

1 know, run some programs and stuff and say here is, you
2 know, what we feel like -- if we had a fire this might
3 be what the pressure would end up.

4 MS. SILVEY: So instead of saying
5 higher, you are saying a specific amount higher?

6 MR. OLDHAM: Yes.

7 MS. SILVEY: But as you said, you
8 don't have a recommendation for what that should be?

9 MR. OLDHAM: Not at this time.

10 MS. SILVEY: And I'm sure the UMWA
11 will be submitting written comments. If you have a
12 recommendation for what a specific level higher should
13 be, if you would include that in your comments.

14 MR. OLDHAM: We will.

15 MS. SILVEY: Okay.

16 MR. OLDHAM: Also, with the increased
17 air pressures or air on these belt lines, I've seen
18 many a time it's created another situation for us and
19 that's dust problems and spillage problems, especially
20 around overcast/undercast where the belt intersects.

21 We've had a mine, it was a ground
22 three mine, we had a dust problem there once they went
23 to the belt air. They had to clean it every shift
24 because the amount of air that was on the belt, that
25 they put on there, so you know, we swapped one problem

1 for another. And we had to actually have a person
2 shovel that area every shift.

3 So you know, I think they ought to
4 have to do surveys and if they can't keep that dust on
5 the belt and keep the coal -- I mean it was even
6 blowing pieces of coal off the belt. So I mean it
7 increased the pressure that much and that air coming
8 through there, and those restrictive areas causes
9 problems. You know, you have got an area that's
10 cribbed out a lot, it causes problems.

11 But Crown Point was definitely one of
12 them that we had a series of problems with dust once
13 they used belt air, not only for the mine for the
14 spillage problem, but also for the people having to go
15 in those areas and deal with that dust.

16 And I know a lot of the mines say
17 well, just put a dust mask on. Well, if you have seen
18 some of the dust masks that you have seen on the mines
19 it's the little mask with the little rubber band around
20 it, it doesn't have a good seal around it, it's not
21 worth 15 cents. It doesn't have a good seal around it.
22 And also, the other dust masks that were out in the
23 industry that were supposedly so good, with some of the
24 lawsuits that's out here now over these dust masks,
25 that actually don't protect people as they say they

1 did. And there's several lawsuits going on right now
2 with -- and I won't name the companies' names but
3 they're out there.

4 And I was even reading the paper on
5 one of them that said this dust mask was 65 percent
6 efficient. Well, me as miner sits there and looks at
7 that and says, well, those smaller particles that are
8 injected into the lungs, is that the 35 percent I'm
9 breathing? Am I just putting this mask on thinking I'm
10 protected and I'm really not? So the increased dust
11 problems is another issue for miners out there with
12 belt air and having to work in the air.

13 The AMS system, the operator and
14 responsible person on the surface, in my opinion they
15 shouldn't be one in the same. And in a lot of these
16 mines they are. And in a lot of these small mines
17 they're usually the security guard sometimes. So the
18 AMS and the responsible person should not be the same
19 person on the surface. Especially in an emergency.

20 And I think at Jim Walter No. 5 we
21 seen what the AMS operator and responsible person being
22 one in the same did. It caused a lot of confusion,
23 caused some problems, and we just feel like that should
24 be separate people. And also, the training of the AMS
25 operator, I know Bill said, you know, don't really see

1 a need for that person going underground, but we do see
2 a need. At least if that person is familiar with the
3 areas and stuff that's underground -- and maybe every
4 six months may not be enough. He may should have to go
5 even more often that that to familiarize himself and
6 know when he's looking at the AMS system that he knows,
7 you know, what he's looking at and the area that he's
8 trying to tell these people to escape from. So that is
9 one of them.

10 And also the training of the AMS
11 operator, they should have extensive training because
12 they're the person on the surface that's trying to get
13 miners out from underground. And in an emergency
14 situation those miners need all of the help they can
15 get. So I think the AMS operator in a lot of these
16 places don't have enough training and they should have
17 more training.

18 You talked about the lifelines, at
19 first when we was discussed a little bit about that,
20 you know, do you have two, three, four? And it is a
21 problem. But it's also a problem if miners are trying
22 to escape and they pass up an SCSR station or an escape
23 door or something where they could get out. So my
24 answer to that probably is training, training,
25 training. The more we train miners, the better

1 familiar they become with the system and, you know, it
2 may not just take one eight-hour annual retraining a
3 year, it may take a little extra effort on everybody's
4 part to train these miners that here's the system, when
5 you come to this one, it's a door; when you come to
6 this one, that's where you get your extra SCSRs.

7 And in a smoke-filled environment,
8 you know, they're blind, they might as well be a blind
9 person because they can't see and they're relying on
10 that lifeline, and they're relying on a system that's
11 in place that's going to lead them if they need more
12 oxygen and need additional SCSR to escape to get to
13 that point.

14 So maybe those are better ideas than
15 what we're giving them credit for. But I think with
16 the proper training and with miners escaping that are
17 tethered together somebody is going to realize, hey,
18 we're at this point, we need to pick up some additional
19 SCSRs or we need to check and see if we can get through
20 a door and escape somewhere else.

21 So I thought a little bit about that
22 and I'm not so sure that's not a bad idea, or at least
23 some type of system that stops them to that point.

24 Ohio 11 belt fire, I'd like to talk a
25 little bit about that because the placement of the CO

1 monitor is very critical. I didn't realize how
2 critical it was until we had the fire at Ohio 11 and
3 the sensor that was there within a hundred feet of the
4 fire didn't pick it up for one reason only. They was
5 using belt air but they also had another entry that run
6 parallel with it and air was coming through that entry
7 and the sensor was located right on the corner of that
8 entry and fresh air was coming across there and the
9 smoke was going around behind the belt. So they didn't
10 even pick it up until the next sensor down a thousand
11 feet away.

12 And they was looking for the fire at
13 a thousand feet away and actually it was right almost
14 at the air. And when we got to the fire and stuff how
15 critical it was, we picked the CO sensor off -- and
16 they had it hung on a timber and the smoke was -- it
17 was hanging on the back side of that timber, not out in
18 the open air, picked it up, moved it over one foot out
19 into the air and the alarm went off.

20 So I know that sensor placement is
21 critical. And I'd like to make sure that either a
22 smoke test is done or something -- or at least a
23 requirement that these sensors are held or hung up out
24 in the open where they can do their job and pick it up
25 like it's supposed to. I believe in the AMS system. I

1 think they're a good system, but if they're improperly
2 installed then they're not worth the money that they're
3 putting in them.

4 So that is something I think is
5 critical and I harp on it every time I go to the mines,
6 where are these sensors located? Because I seen how
7 that one -- they could have responded a lot quicker had
8 that sensor been located, say, over the center of the
9 belt or at least next to the belt out in the open air.

10 And at this time that's all I have
11 unless you have any questions. I appreciate it.

12 MS. SILVEY: On your comments on belt
13 air, so I take it that you have -- I say you have, but
14 you are in some belt air mines, I mean you work in some
15 belt air mines?

16 MR. OLDHAM: Yes, I've had some mines
17 that were belt air, yes.

18 MS. SILVEY: You had some.

19 MR. OLDHAM: They have since closed.

20 MS. SILVEY: So are you familiar with
21 any now working, do you work around any now?

22 MR. OLDHAM: No.

23 MS. SILVEY: Not now?

24 MR. OLDHAM: No.

25 MS. SILVEY: All right. I won't ask

1 any further questions in regard to that. So the ones
2 you did work in have closed?

3 MR. OLDHAM: Yes.

4 MS. SILVEY: Okay. I don't think I
5 have anything else. Okay. Thank you very much.

6 MR. OLDHAM: Appreciate it.

7 MS. SILVEY: At this point we can
8 take a ten-minute break and then if everybody could
9 come back in ten minutes and we will proceed. So take
10 a ten-minute break.

11 (A brief break is taken.)

12 MS. SILVEY: At this point we will
13 reconvene the Mine Safety and Health Administration's
14 Public Hearing on the Agency's Proposed Rule that would
15 Implement the Recommendation of the Technical Study
16 Panel on Improved Fire Resistant Conveyor Belt, Fire
17 Prevention and Detection, and the Use of Belt Air in
18 Underground Coal Mines.

19 I would like to ask now if there is
20 anybody else who wishes to make comment, additional
21 comment or testimony? Anybody else? Any additional
22 questions? Anybody has a question? Yes, sir.

23 MR. PORTER: I've got a question.

24 MS. SILVEY: Can you come to the --

25 MR. PORTER: My name is Gary Porter.

1 I'm vice president of sales with Price Rubber
2 Corporation in Montgomery, Alabama. We manufacture
3 conveyor belts.

4 My question is, I was reading over
5 some of the guidelines in here, especially about the
6 testing and audit procedures proposed in the proposal.
7 One of my questions is, we are an American
8 manufacturer, one of the only privately-held belt
9 manufacturers in the United States now. The audit
10 procedures and stuff that we would be exposed to, what
11 are your proposals or how are they going to be handled
12 for foreign manufacturers, people in China, Korea, that
13 are currently selling belt in the United States, are
14 they going to be held to the same audit standards? Are
15 you going to be sending people over there to audit
16 their records as you audit ours? I think that's one of
17 the questions that needs to be raised.

18 If we here in the United States are
19 required to keep these records and you-all come in and
20 do audits on an annual basis or as needed, as required
21 in the proposal, are you-all going to be sending people
22 to China or Korea or Pakistan or India to do these same
23 types of things?

24 MS. SILVEY: I think the proposal set
25 up the audit procedures, and they are the same audit

1 procedures we have for any products that we approve
2 now. And if I believe we said at least -- no more than
3 once a year, I think it said --

4 MR. PORTER: Right.

5 MS. SILVEY: -- that the facility
6 could be subject to audit when MSHA notified the
7 approval holder. And then we gave the parameters under
8 which we would audit, and the type of records we could
9 come in and see the process and look at the records and
10 that type of thing.

11 And I would -- at this point I would
12 say that we would do that for any manufacturer, whether
13 the manufacturer is located in Montgomery, Alabama or
14 Washington D.C. or China, as you said, the People's
15 Republic of China. So that's what we would do.

16 MR. PORTER: Are you still going to
17 be carrying the same thing that 1865 does that
18 basically manufacturers are the ones that submit belts
19 for approval and only manufacturers, because I've
20 noticed on some of the recent stuff that you-all have
21 posted on the acceptances under 1865, now there are
22 companies listed that aren't manufacturers that are
23 actually trading companies with addresses in Miami or
24 stuff like that that are actually importing belt.

25 MS. SILVEY: It's not limited just to

1 manufacturers, the regulations says the applicant, and
2 the manufacturer could be the applicant or some other
3 entity could be the applicant, and it's been that way
4 for awhile. Not solely to the manufacturers. And
5 sometimes we use the term third party, and the third
6 party, it could be the manufacturer and applicant or
7 third party. So I'm just saying to you, it's not
8 solely limited to just manufacturer.

9 MR. PORTER: I think that's all I've
10 got. I was just trying to peruse some of the
11 information in there on the approval process and --

12 MS. SILVEY: What was the name of
13 your company?

14 MR. PORTER: Price Rubber
15 Corporation.

16 MS. SILVEY: So you manufacture --

17 MR. PORTER: We manufacture conveyor
18 belt for the coal industry now, and we do have our
19 acceptances on the current standards. I know that with
20 the new standards there could be a possibility of belt
21 prices skyrocketing because of the new requirements for
22 flame resistance currently --

23 MS. SILVEY: Are you-all planning to
24 get into the new process?

25 MR. PORTER: We are currently working

1 on some stuff right now. Neoprene seems to be the best
2 fit and it is quite a bit more expensive than what is
3 currently being used with the SPRs right now. And it
4 is in a lot shorter supply. That could pose some
5 problems with supply down the road with everybody
6 trying to go over -- if everybody uses neoprene for the
7 rubber.

8 MS. SILVEY: When you say quite a bit
9 more expensive, in a percentage of what?

10 MR. PORTER: It's about three times
11 the cost of SPR. Whereas a 36-inch wide belt right now
12 might be \$30 a foot, with the new neoprene belts it
13 could be \$60, \$90 a foot.

14 MS. SILVEY: Are you going to be
15 submitting additional written comments?

16 MR. PORTER: I am. I wasn't prepared
17 to do this today but just some things came up.

18 MS. SILVEY: No, I appreciate that.
19 I was going to ask you did you have any specific
20 comments on provisions in the proposal?

21 MR. PORTER: I will be sending a
22 letter in and addressing those specifics when I have
23 more time to review the documentation.

24 MS. SILVEY: That's one of the things
25 I was going to ask you about, if you would comment

1 specifically on the provision then with splicing.

2 MR. PORTER: Yes, I can do that too.

3 All right.

4 MS. SILVEY: I appreciate it very
5 much. Anybody else have -- would anybody else --

6 MR. LOVITZ: I've got a question.

7 MS. SILVEY: Thank you, please.

8 MR. LOVITZ: I'm Jerry Lovitz. I'm
9 the territory manager for Fenner Dunlop. We're a
10 manufacturer of conveyor belt and we're based in
11 Atlanta, Georgia. I really wasn't prepared to ask
12 questions but one thing did come to mind.

13 We mentioned splice kits or splicing
14 materials for conveyor belts and, of course, with the
15 new regulation the cover shock on conveyor belt it's
16 going to have to change to meet the new regulations.
17 I'm just curious about splicing materials, you know,
18 splice kits, they contain cover shock, and I'm just
19 wondering if they're going to -- splicing kits or
20 splicing materials are going to have to be certified
21 like the conveyor belt?

22 MS. SILVEY: I think that's a good
23 question.

24 MR. LOVITZ: Of course, we do
25 manufacture splice kits also.

1 MS. SILVEY: I was going to ask you,
2 first, do you make a recommendation with your belts --
3 do you make a recommendation for how splices are to be
4 done, I assume?

5 MR. LOVITZ: Absolutely. We have
6 different compounds for different applications in
7 underground coal mining which all meet specifications
8 and, they will meet the new spec too. But our splice
9 kit materials match exactly the compound on the belt
10 itself. I was just wondering.

11 And there's a lot of companies out
12 there that make bulk materials that don't match, and I
13 was just curious if there would be a certification
14 process for the splice materials.

15 MS. SILVEY: As I said, I think
16 that's a good question and that's -- in terms of
17 uniformly having a splice kit requirement. I don't
18 know that we have one at this time but that's something
19 we have taken -- that's one of the reasons, one of the
20 things I was getting to that we would be interested in
21 comments on that. And we'll look more into that also.

22 MR. LOVITZ: We have a team in place,
23 our technical department has been working with MSHA and
24 attending all of the hearings and public meetings. And
25 I'll pass that on to that group and make sure our

1 comments are submitted.

2 MS. SILVEY: That's one of the things
3 I was -- when Mr. Porter came I was saying if anybody
4 has any comments on it I would be interested in it.
5 But we appreciate the question.

6 MR. LOVITZ: Okay.

7 MS. SILVEY: I knew eventually it was
8 going to come up anyway.

9 MR. LOVITZ: Okay. Thank you.

10 MS. SILVEY: Thank you. Does anybody
11 else have any comments? Questions or comments? If
12 nobody else has any questions or any additional comment
13 then I would like to say that we appreciate those of
14 you today who provided comment and testimony.

15 For those of you who didn't, we
16 appreciate your attending this hearing because the fact
17 that you came and attended shows that you have an
18 interest in this rule making. As we all know, the
19 comment period closes September the 8th and then we
20 have to proceed with the development of the final rule
21 by December 31st.

22 A number of issues have been raised.
23 For those of you who commented today and who would tend
24 to provide additional comment before the record closes,
25 we appreciate that very much. We appreciate you being

1 very specific with your suggestions, with the rationale
2 for your suggestions, as we said earlier, the data to
3 support your suggestions. And where you can be
4 specific, please do so and provide alternatives.

5 If we propose something and you
6 disagree with it, if you would provide your suggested
7 alternative. We will do our best to take the comments
8 and suggestions and the testimony from today's hearing
9 to craft a rule that provides the most effective safety
10 and health for underground coal miners and it does so
11 in a manner that's responsive to the needs and concerns
12 of the mining public.

13 Again, thank you so much for your
14 attendance and at this point we will conclude today's
15 hearing.

16 (Whereupon the hearing was concluded.)

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1 STATE OF KENTUCKY)

2 COUNTY OF FAYETTE)

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4 I, SUSAN R. ELSENSOHN, Certified Court
5 Reporter and Notary Public, State of Kentucky at Large,
6 certify that said testimony was taken down in stenotype
7 by me and later reduced to typewriting, by computer,
8 under my direction.

9 My commission expires: September 5,
10 2010.

11 In testimony whereof, I have hereunto set
12 my hand and seal of office on this the ____ day
13 of _____, 2008.

14

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SUSAN R. ELSENSOHN
Certified Court Reporter
Certification No. 95010
Notary Public, State-at-Large

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