MINE SAFETY AND HEALTH ADMINISTRATION

PUBLIC HEARING ON THE PROPOSED RULE TO ADDRESS RECOMMENDATIONS OF THE TECHNICAL STUDY PLAN ON FLAME-RESISTANT CONVEYOR BELTS, FIRE PREVENTION AND DETECTION AND THE USE OF AIR FROM THE BELT ENTRY

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REPORTED BY: Dana Gordon

Certified Court Reporter

and Notary Public

A P P E A R A N C E S

MODERATOR:

Patricia Silvey

PANEL MEMBERS:

Michael Hockenberry

Ron Schell

William Francart

Michael Kalich

Matthew Ward

Debra Janes

P R O C E E D I N G S

MS. SILVEY: Good morning. My name is Patricia W. Silvey. I am the director of the Mine Safety and Health Administration, Office of Standards, Regulations and Variances. I will be the moderator.

This public hearing is on MSHA's proposed rule to address the recommendations of the Technical Study Panel or the TSP on flame-resistant conveyor belts, fire prevention and detection and the use of air from the belt entry.

On behalf of acting assistant secretary Richard E. Stickler, I would like to welcome all of you here today.

Before -- at this moment, I would like to ask that in recognition that we just passed the one-year anniversary of the tragic accident at Crandall Canyon and in memory of the miners, the six miners who lost their lives in that accident and three heroic miners who lost their life -- lives in -- in the rescue attempt, including one of MSHA's own, I would like to ask if you

would pause with me in a moment of silence. And as we reflect, I would also ask you to remember all the miners who have lost their lives in mine accidents in this country and throughout the world this year. And particularly we go back to September of 2001 and the tragic accident at Jim Walters Number 5. So, if you would pause with me for a moment.

(A moment of silence was observed.)

MS. SILVEY: Thank you very much.

As we remembered and reflected for that moment, that remains our omnipresent for lack of a better -- goal and that is to see that every day as we approach mine safety and health that we try to approach it with a program where every miner will go home every day safely to his or her spouses, children and entire family. And that's our goal here today.

And let me introduce the members of MSHA's panel who were principally responsible for drafting the proposal that is the subject of this public hearing.

To my right is Ronald Schell, and Ron is a retired MSHA -- for many years an MSHA employee who agreed to come back to help us get this rulemaking through. And he is the team leader for our project.

To his right, Michael Hockenberry. Michael is with the Office of Technical Support, MSHA's Approval and Certification Center.

To my left, William Francart, and Bill is with the Office of Technical Support, also.

To his left, Michael Kalich. Michael is with the coal mine safety and health -- our Office of Coal Mine Safety and Health.

And to his left, Matthew Ward who is with the Office of the Solicitor, the division that supports MSHA, the Division of Mine Safety and Health.

And least I not forget, in the back of the room, Debra Janes, and Debra Janes is a regulatory specialist who is in my office.

This is the final public hearing

on this proposal. As many of you know, we held hearings in Salt Lake City -- the first hearing in Salt Lake City; then in Lexington, Kentucky; in Charleston, West Virginia on Tuesday -- last Tuesday and then this being the final hearing.

The comment period for the proposal ends on September 8th. We must receive your comments by midnight, Eastern Daylight Savings Time, on that day.

You can view all comments on the Agency's website at www.msha.gov. In the back of the room we have a few copies of the proposal.

At this point, I would also like to note that we have extended the time -- we published a companion request for information on smoke density and toxicity. In that request for information we have extended the time to provide comments on that until September the 8th.

Section 11 of the Mine Improvement and New Emergency Response or the MINER's Act of 2006 required that the Technical Study Panel be established. The

TSP issued its report in December of 2007 and this proposal is consistent with the TSP's recommendations.

Let me summarize some of the more significant provisions and issues in the proposal.

First, the proposal would establish a new Part 14 and require that conveyor belts in underground coal mines meet the Agency's Belt Evaluation Laboratory Test.

In addition, it would revise MSHA's quality assurance, audit and recordkeeping requirements. MSHA requests comments on the proposed five-year retention period for approval holders to retain conveyor belt sales records.

The proposal would allow applicants for approval, approval holders, and those seeking extensions, a one-year period to gain approval of the new conveyor belt or to transition to approval of the new belt.

During this period, approval holders could apply for an existing Part 18

acceptance or a new Part 14 approval. After one year, all approvals would be processed under Part 14. The Agency solicits comments on the impact of the one-year transition period on manufacturers' inventories.

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

The proposal would require that miners assigned tasks as atmospheric monitoring system or AMS operators be qualified before they perform these duties and that AMS operators demonstrate proficiency to MSHA inspectors.

The proposal would require existing AMS operators to become qualified. To assist operators with training programs, MSHA intends to develop a model training plan and make that plan available to the

mining community.

The proposal would require that an AMS operator's duty be a primary responsibility. It would specify the contents of annual retraining and require AMS operators to travel underground every six months. The proposal would provide a two-month delayed effective date for operators to submit AMS training plans.

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

The proposal would require that the use of air from a belt entry to ventilate the working section be permitted only when evaluated and approved by the district manager in the ventilation plan.

In the ventilation plan the operator would have to provide information that the use of air from the belt entry affords at least the same measure of protection where belt haulage entries are not used to ventilate working sections. MSHA proposes to allow mine operators currently using air from the belt entry to ventilate working sections three months to submit a revision to the ventilation plan to the district manager.

If the district manager does not approve the use of air from the belt entry to ventilate working sections, a citation would be issued for failure to have an approved plan. MSHA would not revoke the plan until completion of current mining. The Agency solicits comments on this proposed process.

The proposal would establish a minimum air velocity of 50 feet per minute in mines that do not use air from the belt entry to ventilate the working section.

The proposal would establish a minimum of a thousand feet per minute and -- a minimum of a hundred feet per minute,

excuse me, and a maximum of a thousand feet per minute air velocity in mines that use air from the belt entry to ventilate working sections.

These proposed velocities assure that contaminants of a fire are carried downwind to carbon monoxide sensors. Under the proposal where these velocities cannot be maintained, adjustments may be approved in the mine ventilation plan. This proposal includes a 12-month delayed effective date.

The proposal would require that where miners on the working section are on a reduced respirable coal mine dust standard below 1.0 milligrams per cubic meter of air, the average concentration of respirable dust in the belt entry must be at or below the lowest applicable respirable dust standard on that section. The Agency solicits comments on this proposal.

The proposal would require that smoke sensors be installed in areas where air from the belt entry is used to ventilate working sections. It would become effective one year after the secretary has determined

that smoke sensors are available to detect fires in underground coal mines. These sensors would be in addition to carbon monoxide sensors. MSHA will provide notice when the sensors are available. MSHA solicits comments on this approach to requiring smoke sensors.

The proposal would establish new requirements for lifelines in underground bituminous and anthracite coal mines. They would -- it would require that lifelines and escapeways have tactile signals to identify impediments to travel, SCSR caches, personnel doors to adjacent escapeways and refuge alternatives.

And at the end of this opening statement, I will comment further about the lifeline requirement.

The proposal, which has a six-month delayed effective date, would also require that all tactile signals be standardized in all underground coal mines. Under the proposal each of the signals would have to be distinguishable from other markings. The Agency specifically solicits

comments on alternative tactile signal markings.

The proposal would require that the primary escapeway have a higher ventilation pressure than the belt entry. Under the proposal the operator can submit an alternative in the mine ventilation plan to protect the integrity of the primary escapeway. This proposal would apply to all mines using belt haulage and would have a six-month delayed effective date.

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

MSHA is proposing that the warning level for carbon monoxide sensors be 10 parts per million above the ambient level. The Agency is soliciting comments on

this proposed level.

Proposed 1731 would be a new requirement for belt entry and belt conveyor maintenance applicable to all underground coal mines using belt haulage. The proposal would require damaged rollers and other malfunctioning belt components to be immediately repaired or replaced, require conveyor belts to be properly aligned, prohibit the accumulation of non-combustible material in the belt entry and require that splicing of any approved conveyor belt maintain the flame-resistant properties of the belt.

We have taken comment -- some comments on this last issue and would like to specifically request that you provide your suggestions for the types of splices that would maintain the flame-resistant properties of the approved belt. Specifically we have heard from some manufacturers that they will market splice kits which can be used to demonstrate that the splice will maintain the flame-resistant properties of the approved belt as they

market their belt.

At this point in the rulemaking, MSHA is considering implementing a program to evaluate splice kits. The Agency solicits comments on this approach to the splice requirement for approved conveyor belts. This proposal would include a two-month delayed effective date.

MSHA has estimated the economic impact of the proposal and has included a discussion of the costs, benefits and paperwork requirements in the preamble to the proposal and in the Preliminary Regulatory Economic Analysis, which I might refer to as the PREA. The PREA contains estimated supporting data on costs and benefits.

The Agency is also soliciting comments on the following:

MSHA is considering including a specific requirement in the final rule that the operator make changes or adjustments to reduce the concentration of Methane present in the belt entry as measured 200 feet outby the section loading point. At this point in

the rulemaking MSHA is considering requiring that operators take action when Methane is between 0.5 and 1.0 percent. MSHA is soliciting comments on the appropriateness of such a standard and on the specific level at which changes or adjustments should be made.

MSHA has proposed a requirement that point-feed regulators must be equipped with a means to be remotely closed. However, the Agency has not included a requirement for providing a means for reopening the regulator as recommended by the TSP. This is because MSHA believes that once evacuation is completed, the need for remote opening of the regulator will be rare. The Agency solicits comments on whether a requirement to remotely reopen the regulator should be included in the final rule. And if you have such a suggestion, please include the rationale for your suggestion.

MSHA requests comments on all proposed delayed effective dates.

MSHA also requests comments on

the estimates of costs and benefits in the preamble and in the PREA and on the data and assumptions the Agency used to develop its estimates.

As you address these provisions -- and most all of you who heard -- have heard me in these public hearings before have heard this. As you address us either in your testimony today or in your written comments, please be as specific as possible and include the -- your suggested alternatives, your suggested rationale, safety and health benefits to miners, technological and economic feasibility considerations and data to support your comments. The Agency will use this specific information to help evaluate the requirements in the proposal and produce a final rule that will improve safety and health for underground coal miners in a manner that is responsive to the needs and concerns of the mining public.

As many of you know, this hearing will be conducted in an informal manner and by that I mean that formal rules of evidence

will not apply. The panel may ask questions of the witnesses. The witnesses may ask questions of the panel. MSHA will make a transcript of the hearing available on the Agency's website within one week of the hearing. And as most of you know, time is of the essence in developing the final rule which must be finalized by December 31, 2008.

If you wish to present written statements or information today, please clearly identify your material and give a copy to the court reporter.

We ask that everyone in attendance, if you would sign the attendance sheet. And when you begin, if you would please begin by clearly stating your name and organization and spelling your name for the court reporter. This will help ensure that we have an accurate record.

Before we start today's hearing -- and I said earlier that I would talk a little more about the lifeline requirement. Because at our first hearing we heard comment on the requirement for the

indicators -- directional indicators in the lifeline -- in the escapeways. Excuse me.

Now, as -- as most of you know, that was at -- at first a requirement in the emergency mine evacuation rule that was published in December of '06. And we required that in that rule that there be fire resistant lifelines and that the lifelines have directional indicators.

At that time we said directional indicators and we didn't say what they had to be, but we said if cones were used, the cones had to be so that the tapered end pointed in and back. You can see this cone (indicating). And we did not require standardization in the emergency mine evacuation rule.

Subsequent to that time, we got the Technical Study Panel report and the Technical Study Panel recommends standardization, and we followed the recommendation and included that in this proposal that's the subject of today's hearing.

So, we went further and we said

that cones must be used as the directional indicators and we said that the standard -- that they had to be standardized in all underground coal mines and that -- that two cones back to back -- and this was our concept of back to back, as you can see, (indicating). We said two cones would represent impediment in escapeways. Four cones would represent personnel doors and six cones back to back would represent the location of the SCSR caches.

In addition, we said that this spiral cord (indicating) would represent the location of the refuge alternative or refuge chamber.

Well, we have since gotten comments that -- that people think that the lifeline requirement in escapeways is very good for emergency escape. People think that the directional indicators are very good and -- and also, I wanted to add one other thing, that we also believe in addition to the training requirements in the emergency evacuation rule, the training requirements that we're going to have in the

refuge -- refuge alternative rule and the training requirements in this proposal that training will become an important element and significant element in emergency response -- in successful emergency response and escape.

But we were still told that -- that everybody agrees that training is important, too, but that they would like us to do whatever we can do as we go forward in the final rule to see if we can simplify as best as possible the requirement for the tactile indicators and the signals in escapeways.

So, what I want -- what I wanted to do was to state that to you all, let you all know that at this point in the rulemaking and invite any comments from everybody here on this issue and particularly from how miners would respond to that -- this provision.

And one final thing before we start the hearing. At -- at this point I would like to reiterate -- and I think I've done that in every hearing we've had

including the hearings -- the four hearings on refuge alternatives -- that while we're doing all of these requirements and including requirements for emergency response and escape, we continue to ascribe to the philosophy as an agency and I think the entire mining community, the important philosophy that in -- in the event of an emergency underground the first line of defense is for the miners to escape the emergency.

So, I want to underscore that long-standing and significant principle that -- that we continue to underscore and we as an agency continue to support.

At this point, we will start today's hearing, and our first speaker is Bruce Levinson. Mr. Levinson. And you are with the Center for Regulatory Effectiveness, I believe. You just had CRE.

MR. LEVINSON: That's correct. That's me. Bruce Levinson, L-e-v-i-n-s-o-n. The Center for Regulatory Effectiveness.

And I came down here today to Birmingham to thank MSHA for your multiple efforts to further improve underground safety. And in particular, Ms. Silvey, you encapsulated essentially all of my comments today with your last phrase where you said everything is focused following a disaster on helping miners escape. And that really sums up all of my comments.

MSHA has taken several steps with regard to -- to further improving underground safety for which I -- I would like to thank you. One of those steps is this set of hearings. While the rulemaking is required by law, holding hearings around the country and reaching out to mine safety stakeholders around the country was not required. That's an additional step. It goes beyond the sort of inside the beltway notice and comment process. And for that I thank you.

And then a further step was, as you had mentioned earlier, opening the companion proceeding to request information on smoke safety, smoke density and

toxicity. And I think that is just crucial because it is MSHA's recognition that it's only by controlling fire and smoke in tandem that -- that we can protect the ability of miners to escape. And as I'll explain, MSHA's action in moving ahead of congress in terms of safety on that issue.

And an additional way in which MSHA is further demonstrating their commitment to safety is by reaffirming their commitment to smoke safety and that was by reopening the -- the smoke safety docket. And as the Federal Register said, MSHA -- the Agency is reopening the rulemaking record for the RFI to be consistent with the proposed rule on flame-resistant conveyor belts, fire prevention and detection and use of air from the belt entry.

MSHA's recognition and reaffirmation of the importance of ensuring -- ensuring that smoke safety is consistent with this flame-resistance proceeding is particularly welcomed because it's only by controlling both smoke and fire -- and I will go into some technical

detail and scientific studies on that -- that miners can be protected and chiefly that they are able to escape.

I know that the Agency has a number of important safety rulemaking issues under way and that everyone here is more than busy and I do appreciate your time.

Now, the good news with regard to smoke safety is that there are already -- for smoke density there are standards and regulations in place and that have been in place in the Code of Regulations for many years and they can be very rapidly adopted by MSHA for use in underground mines. No delays are required.

The Department of Transportation has set smoke density standards along with flame resistance for just about every component in the passenger cars and locomotives of trains. And the FAA has done similar standards for cabin materials used in commercial aircraft.

And all of those standards, all of those regulations use the same test. It's a very widely used laboratory scale

test by ASTM, which is called the American Society for Testing Materials, and the test is ASTM E-662, standard test methods for optical -- specific optical density of smoke generated by solid materials.

And for MSHA's convenience, I'll attach a copy of the standard to my comments that I'll give to the court reporter and this is the exact same version that's used by DOT.

And I'd also note that the National Fire Protection Association, NFPA, had a very similar standard called NFPA 258, but they withdrew that in favor of the ASTM standard. And in withdrawing it they said in -- in its current form NFPA 258 cannot be used as a mandatory reference. ASTM E-662 is similar to NFPA 258 and is referenced in numerous regulator documents.

In light of current harmonization efforts with -- with regard to fire test standards, the committee finds no reason to revise it and goes with the same test -- similar test method maintained by ASTM.

Now, one question is -- I've been

talking about trains and airplanes. What does that have to do with underground coal mines? They are very different environments and you have different types of materials. And the answer is because they're both enclosed burning environments that people need to escape from. And those visibility requirements are the same.

In fact, in any situation where you have burning or smoldering materials, a smoke-generating situation, smoke controls are essential because other precautions have already failed.

And one -- one point that becomes clear when you look at the different DOT regulations is that while there are different standards set for different materials, they're all in about the exact same range. And that's because irrespective of the material emitting the smoke, people need the same level of visual acuity. They need the same level of visibility in order to escape.

Now, of course, mines are different than planes and -- and Amtrak

because you have no -- no outside light and you have vastly longer distances to transfer to street safety. But those differences highlight the increased importance for smoke limitation in mines compared with public transport.

You requested that we provide specific detailed standards and what we recommend, CRE is that MSHA adopt the smoke density standards for elastomers that is already in the Code of Federal Regulations. All conveyor belts are made of elastomers. And the specific standard as measured by ASTM E-662 is a specific optical density of no greater than 100 after 90 seconds and in an optical density of less than or equal to 200 after four minutes.

And as I said, this is similar -- this is used by the railroad administration for a multitude of materials ranging from mattresses to windscreens.

And the FAA has also adopted a specific optical density of no greater than 200 after four minutes for the materials used in passenger aircraft.

Now, one question that -- that immediately comes to mind is why do we need a smoke standard if we're controlling fire resistance? And the DOT standard is a very stringent one. The DOT, which has been setting -- researching and setting smoke limitations for 30 years, came across this variation in their proceedings on smoke safety and on fire retention. After all, no fire, no smoke. Or at least if you limit fire, you've limited smoke. At least that's -- that can be a popular conception.

And they dealt with this directly and what I'll do is -- this has actually been before the Federal Railroad Administration and the Urban Mass Transit Administration dealt with this some back 25 years ago and in their proceedings they were asked that exact question.

And this is from the 1984 Federal Register notes. "An additional comment was that restrictions on flammability are such that restrictions on smoke emissions are unnecessary. UMTA disagrees. There is not necessarily a relationship between

flammability and smoke emission, so that the flammability test alone does not accurately test for those two characteristics."

For example, some situations may result in very little flame spread but a great deal of smoke. The low flammability will not indicate the smoke emission characteristics of the material.

Now, all the agencies that I've mentioned, UMTA and the railroads and airplanes, that's all part of DOT. And it will be reasonable to think, well, perhaps the issue of smoke alone with flame is something peculiar to DOT, which is why you've mentioned the importance of scientific data.

This country's most prestigious and well credentialed independent scientific research agency, the National Academy of Sciences also looked at this very issue. And they did so not with respect to trains or airplanes, they were looking at what the U.S. Navy was doing with regard to submarines. Because that is also an isolated, enclosed environment where fire

safety is of the absolute utmost importance just as it is in coal mines.

And what the National Academy of Sciences did was they also found the need for ASTM E-662. And more than that, they said that you don't -- no single -- no single test covers all the different aspects of flame resistance. This is from their 1995 report and this is by the National Academy of Sciences. "No single metric and hence, no one test method, is adequate to completely evaluate the fire hazard of a particular material system."

For example, the testing procedures for evaluating composite material systems for naval submarine interiors, DOT 1991, include oxygen temperature index; flame spread, ASTM E-162; ignitability, ASTM E-1354; heat release, ASTM E-1354; smoke obscuration, ASTM E-662; combustion gas generation, ASTM E-1354; and toxicity, N-gas method.

So, what we have is the National Academy of Sciences looked at this now from a completely different aspect and found you

need multiple tests, but they're all lab scale. These are all standard testing methodologies that have been long established including for smoke density.

And Congress has also recognized the importance of having a smoke safety standard. Earlier this year the House of Representatives passed a bill called the S-MINER Act. And that has not yet been considered by the Senate and it is not yet law, which is what I was referring to initially when I said that MSHA is actually getting ahead of Congress in promoting safety in its safety leadership.

And what the S-MINER Act states is this: Not later than -- not later than 90 days after the enactment, the secretary shall publish interim final rules to revise the requirements for flame-resistant conveyor belts to ensure that they met the most recent recommendations from NIOSH and to ensure that such belts are designed to limit smoke and toxic emissions.

Now, an additional question that is -- that is obviously important is we're

here because of recommendations from the Technical Study Panel that was -- that was established by Congress. And in that final report the Technical Study Panel did not mention smoke. And the question is why? And the answer to that comes from Congress which established the panel. And in the report language, which accompanies the S-MINER Act, which is legislative history, says, the mandate and recommendations of the technical review panel were confined to flame resistance.

The reported bill requires the use of material which can simultaneously reduce all three risks: Flammability, smoke density and smoke toxicity. And this report had been consistent with the recommendations of the technical review panel but expands upon them to provide additional protections.

Now, we've seen that multiple agencies are doing this, that the National Academy of Sciences has said it's necessary and the idea of no fire, no smoke really -- really doesn't -- doesn't apply.

But there's still two additional

questions. One, is this practical for conveyor belts in underground coal mines? If it's not practical, then, you know, all the rest is -- becomes academic.

And another question is why is it just now that we're talking about smoke? Certainly concerns about smoke in underground mines have been around for a long time.

Well, with regard to the first issue, it is practical and I'll discuss that in a second, but also, this is not a new issue of controlling smoke in underground mines.

A dozen years ago in 1996, Monsanto, which is a chemical supply house, wrote to MSHA -- and this is part of the previous rulemaking docket -- and they requested that MSHA set smoke safety standards along with flame resistance.

And let me -- and they also raised an issue we've heard again more recently if you increase flame retardants without controlling smoke, you can get more smoke.

And these are excerpts from Monsanto's 1996 letter to MSHA. It is not uncommon for flame retardants to actually increase the amount of smoke produced per unit of material burned. The net effect of this is often NOT, all caps, the desired reduction in smoke. Sometimes the total smoke generated goes up. Nice summation point.

Even if less material is consumed as a -- as a result of flame retardant, total smoke generated could be greater because of the higher production of smoke per unit of mass consumed. Even more significant, this data was generated using formulation very similar to those employed in vinyl mine belt carcasses.

For these reasons we feel your proposed standard can make even greater improvement in mine safety if it incorporated a strict smoke and toxic gas specification, and we strongly urge you to consider adding such a requirement.

And Monsanto went on to add, we feel that it is especially noteworthy that

the prototype smoke suppressed formulation shown here is not more costly per yard of belt than the version made with conventional materials.

So, even a dozen years ago the Agency was called on to set smoke and toxicity standards and that doing so was practical. And I believe in the smoke -- the smoke safety docket, Phoenix I believe submitted knowledge saying they were already selling the halogen free belts, which is smoke controlled belts, in Europe and they're currently doing that. So, we know that this is practical. It is already in the market.

And you asked for comments with regard to cost benefit analysis. When you have an issue that is essentially cost neutral, the increased benefit will last -- is always beneficial.

Now, in terms of the specific -- what we recommend for the specific mechanism for implementing this, we recommend that MSHA simultaneously issue an interim final smoke density rule based on ASTM E-662 with

an optical density limit of no more than 100 after 90 seconds and no more than 200 after four minutes.

And simultaneously with that an interim final flame resistance rule based on the BELT proposal and an advance notice of proposed rulemaking on smoke toxicity to set standards for the primary toxic agents including carbon monoxide and hydrogen chloride using existing consensus standard testing methodologies.

In terms of time, it would require no change. In the time frame set out in the proposed rule, all conveyor belts purchased would need to meet the new flame resistance and smoke density requirements within a year of publication of the interim final rules.

And simultaneously with the interim final rules we would suggest that MSHA open a 60-day notice and comment period for the purpose of finalizing them and a 60-day comment period on smoke toxicity ANPRM to allow for expeditious rulemaking.

Again, I would like to thank

everyone here and the Agency for -- for holding this hearing and I will be glad to take any questions.

MS. SILVEY: Thank you, Mr. Levinson, for your comments. While -- and I -- I want to note this for everybody. While this RFI in and of itself is not the subject of this hearing -- and I'm sure you -- you understand that and are aware of that.

I am going to ask you one question in the furtherance of information -- in getting the information that the Agency might need as it goes forward. And you can answer it right now or you can submit additional information before the record closes on September the 8th.

And that is just -- I just had one -- and as you made your comments -- and I -- and I did get your comments, trust me. And I looked at them, but I don't quite remember exactly what they said.

In using -- you said something about when issuing an ANPRM on toxicity using the consensus standards methodology.

Do -- could you be a little more specific there?

MR. LEVINSON: Oh, sure, absolutely.

MS. SILVEY: Okay. And you don't have to be specific right now. You can be specific in -- in your comments.

MR. LEVINSON: I will be glad to be specific right now.

MS. SILVEY: Okay.

MR. LEVINSON: What I mean is using basic laboratory tests that are well accepted. There is one that is set by Boeing. They use this for their own -- for their suppliers called Boeing support specification standard, BSS, and I believe it's 7369, which is the method for measuring the toxic gases that come off. You basically take a small sample of material, you put in the test chamber, you heat it. There's an element that --

MS. SILVEY: Okay.

MR. LEVINSON: And then the -- the smoke of hydrogen chloride, carbon monoxide, hydrogen cyanide and other

components are registered in parts per million.

MS. SILVEY: And if you -- if you had -- if that is included in your comments, then that's fine. Is that -- is that already included?

MR. LEVINSON: That will be -- that Boeing support standard will be included in the --

MS. SILVEY: Okay.

MR. LEVINSON: In the formal docket.

MS. SILVEY: Okay. All right. That's -- that's all I have.

MR. LEVINSON: And 662 is in docket -- included in the -- in the comments that are included here.

MS. SILVEY: Right.

MR. LEVINSON: And they're even on the rulemaking itself because it's important, as Congress said, to determine that smoke -- that at all times using belt air provides at least the same measure of safety.

MS. SILVEY: I understand.

MR. LEVINSON: So, it is an essential and integral portion.

MS. SILVEY: Okay. Thank you very much.

MR. LEVINSON: Thank you.

MS. SILVEY: Our next speaker will be Al Craig, UMWA 2133.

MR. CRAIG: My name is Al Craig, local 2133, UMWA. That's C-r-a-i-g.

Listening to the sum of Ms. Silvey's opening statements, I was concerned with the part on page 35034 on that proposal. And this was the middle column where you were stating that the proposal includes new procedures to approve the use of air from a belt entry to ventilate working sections. And I had some concerns with the word "sections" simply because we have been cited for using belt air twice.

And so by putting this S on the word "sections," it was -- it seems as if this same air was being used twice, plural. And we felt that if that statement had been to ventilate a working section -- at the

mines that I work at they have been cited in the past for using air off the main belt and then using that same air going down the primary escapeway to ventilate other working sections.

So, by having this S on the word "sections," you know, it -- we were thinking maybe -- maybe that statement should read to ventilate a working section so this would not sound as if it -- we were ventilating more than one section on this split of air.

Because we were feeling as if it conflicted with the CFR Part 30 under 75.332 which states that when two or more sections are mining or they are using mechanized mining equipment that they must use a separate split of air. And we felt as if to have the statement changed to ventilate a working section that this would be more direct at being single and using that air once.

We felt as if the two rules and the rule that's already applied, that this would more or less have a conflict of interest.

If you have any questions --

MS. SILVEY: Yeah. I would just like to say, I -- and I believe that I speak for my -- the panel. You know what people say when you speak for the panel, but I think we were just using the plural form of the -- just the plural -- the sentence in the plural, but we didn't -- we were not changing the meaning of anything. The meaning was intended that it be just as you stated, ventilate a working section. Each one of them have to be -- all we were doing was putting that -- we were just putting it in the plural -- making a sentence in the plural form. That's all. It wasn't meaning to change the meaning of the standard.

MR. CRAIG: Yes, ma'am.

MS. SILVEY: Okay. I understand what you're saying --

MR. CRAIG: All right.

MS. SILVEY: -- how somebody could -- maybe could take it that way.

Does anybody want to add anything? That's basically it. We weren't

changing the meaning.

MR. CRAIG: Okay. Thank you.

MS. SILVEY: Thank you for -- thank you for your comment because anytime somebody can take something -- you know, the wrong meaning from something, then if you can clarify it, it's better to do that. So, I appreciate what you just said.

MR. CRAIG: Well --

MS. SILVEY: We'll make it as clear -- we'll try to make it as clear as possible where -- so that it says ventilate a working section.

MR. CRAIG: Yes, ma'am. Well, I know sometimes the operators take words and they -- I wouldn't say manipulate them, but they use them to their advantage when they're breaking the law and then it turns around that this same statement, they will use it in -- in other words, this same air that they use on this belt line. And we've had that problem. Like I say, we've been cited once, maybe twice --

MS. SILVEY: I understand.

MR. CRAIG: -- for using air off

of one of our main belts. And they -- at that particular spot at the point-feed they didn't have any smoke detectors and there was other things and issues that went with this citation.

MS. SILVEY: I understand. Okay. I don't have any more questions.

MR. CRAIG: Okay. I would like to thank the panel for giving me the opportunity to speak.

MS. SILVEY: Thank you very much for your comment, Mr. Craig.

We next have Randall Green. Mr. Green, UMWA, local 1948.

MR. GREEN: My name is Randall Green, R-a-n-d-a-l-l G-r-e-e-n, United Mine Workers of America.

I want to make some comments on the point-feeds that I see that have been addressed in the -- some of the proposal, particularly on the remote closing doors. And some areas that we have concerns -- we have -- you know, our belt lines are secondary -- secondary escapeways and when we put these point-feeds in again, which we

have remote closing points --

THE COURT REPORTER: Can you speak up a little bit for me?

MR. GREEN: Okay. In the mines I work in we have the point-feeds along the belt lines. We've also put in fresh air -- air shafts in and joined it in the primary escapeways. And one of the problems that we have that -- in our point-feeds is that they came back and called these point-feeds injection points.

And we did have an inspector that cited one of these point-feeds with the door not being able to close. And when they came back, they said that this was an injection point for the air shaft.

In our mines we have a large quantity in primary escapeways of diesel equipment. And -- and of course, our concern as miners, you know, is our belt lines are secondary escapeways and you're talking about smoke and -- and problems that we -- these doors here, you know, as to where we can close them to have a separate escapeway if we need one.

And the doors -- I noticed that you addressed them in here in the 352 proposal and some of the things that you addressed, but I do think in the proposed regulations whether they're calling them injection points, whether they're adjacent to air shafts or whatever on account of smoke or fire -- and particularly with Aracoma that happened. And we know what happens when you have fire -- fire and we have pressures that can even change ventilation directions and stuff that we feel that we should have these remote closing doors on any opening on the belt line as to whether -- as to whatever we call them for the safety of the miners and -- and that we can have a safe escapeway.

Because we do know in disasters different things happen. We don't know what happens.

We do know that in the present regulations we would like to see this changed to any opening that we have on our belt line since at our mines and a lot of mines they're already used for escapeways.

And we know that they're put there for injection points as ventilation on the belt. But we -- we would like to see these remote doors on all openings going to the -- on the belt line regardless of where -- you know, where they're at so that we will have an opportunity to have a separate escapeway and that the miners can close these doors when needed.

And I think this is a problem with the present regulations and -- because it -- our inspectors are real good about citing any openings they find in the stoppings in the belt line when it's between the primary escapeway and -- but, you know, in this situation I think I would appreciate the Agency as they look in changing this, that this is an important -- anytime we make an opening, regardless of what we want to call it, when we're injecting air from the primary to the secondary and we've got roadways with equipment traveling, we do need these remote closing doors where we can close them.

Do y'all have any questions?

That's -- that's all the comments I'm going to have.

MR. KALICH: So -- so, you're -- you're saying that at any point -- at any point where air is introduced you would like to see a door --

MR. GREEN: Yes, sir.

MR. KALICH: -- at the bottom of an air shaft, for instance?

MR. GREEN: Yes, sir. What happened here is we've got belt lines that have been established for years and then we come back and put the same shafts for fresh air and they may be over four or five air courses in the common and the primary. And you've got heavy diesel equipment and stuff.

And of course, the situation we got in, these doors were already on there that were called point-feeds up to this point. The inspector issues a citation and then they'll come back and find out it's vacated because the section of the law -- I think maybe 380 in the present law addresses the -- a change in that part to a point injection system.

But -- and our question was that -- you know, with equipment and pressures and in particular what happened at Aracoma, that it's important that -- with mine fires that we could have doors to close any opening that's in -- and keep our belt way separate.

And this is something that -- that we would, you know, like to address, if it could be addressed. Because you don't know what will happen in any situation and -- but if we've got those doors there on any opening, regardless of what anyone called it, that, you know, we can close it.

That's all I have. Thank you.

MS. SILVEY: Thank you, Mr. Green.

Our next speaker is Ken McReynolds, UMWA, 2133. Mr. McReynolds.

MR. McREYNOLDS: Good morning.

MS. SILVEY: Good morning.

MR. McREYNOLDS: Ken McReynolds, K-e-n M-c-R-e-y-n-o-l-d-s. United Mine Workers, local 2133.

Miners' representative, safety

representative, been in underground mining for 30 years, safety -- involved in safety for 30 years, public speaking one year.

MS. SILVEY: A little humor here to start off.

MR. McREYNOLDS: I rise in support of the emphasis of MSHA and the U.S. Department of Labor in making our mines safe.

The -- one of the things that concerns me most is -- is the examinations in the -- the AMS systems is the systems sometimes have failed. As we know, we had a problem -- we had a potential problem at Oak Grove mine. That's the mine that I work at, Cleveland Cliff.

One of the things I didn't hear when we talked about the -- the new regulations on the fire-resistant belts was what plays hand in hand with that would be deluge systems. I know they have examinations -- monthly examinations on the firefighting systems, but there has not been any -- anything to go along with the deluge system.

And that may play a part in it because at one of the fires we had, the routing of the wires and hoses was directly over the source of the fire. And we had a situation where smoke from it burned the wires in two and the smoke traveled and was not picked up because the sensors were down and pretty much smoked out our longwall face. That's where you had several employees working out on the face.

Well, what I do appreciate is the continued -- or would appreciate the continued study on these particulars that I have talked about, one being the -- the injection point or the point-feed; the continued study on the sensors themselves, the CO sensors, carbon monoxide sensors, continued study with -- at the end of the day, I hope you do whatever it takes to -- and at any cost to save a life. Because if it saves one life, I think that's money well spent.

I could read some of the proposals on the training for the AMS operator, but it's already written.

Hopefully it will be written in stone where right now they are trained annually and the proposal would make it a six months' training. Well, even if it was suppressed more than that, even if it was compressed down to a three months' training, if it saves a life, then I don't -- I don't have a problem with it.

The locations of the smoke sensors, the new location, the 3,000 foot locations of the -- the CO monitors, not a problem; that is, without belt air being -- being used to ventilate the faces. If in the case of that, then I think that if you're going to use belt air to ventilate the face, then it should be just as safe as if you're not using belt air to ventilate the faces.

I've seen mine fires. I've been there.

But at this point, I'll take any questions.

MS. SILVEY: I don't -- I don't have any questions. I just have one comment to say to you.

On your -- on your comment on the deluge type systems, firefighting systems, those are in our fire prevention regulations, fire suppression regs and we are looking at those.

MR. McREYNOLDS: You are?

MS. SILVEY: I appreciate your -- yes, we are. I appreciate your comments. I don't have any more. Okay. Thank you very much.

MR. McREYNOLDS: Thank you.

MS. SILVEY: Our next speaker will be Dwight Kahle, UMWA. Mr. Kahle.

MR. KAHLE: Good morning.

MS. SILVEY: Good morning.

MR. KAHLE: D-w-i-g-h-t K-a-h-l-e.

I've been in the mines 34 years, safety committee for 30, Jim Walter Resources.

THE COURT REPORTER: I need for you to speak up for me.

MR. KAHLE: Like I said, we -- I testified there are -- or some of the comments earlier that most miners are

focused on training, maintenance and fire prevention and a lot of it has been addressed, but some of it we need to add a little more to. I would just like the -- to talk about more training, like I said, on the firefighting people.

Usually there's a section on the firefighting part of it which is hands-on for everyone, but most of the time it's just the first four or five that's in front.

Maintenance -- just -- just lately we had the fire in the past month on a belt line that was running. The smoke sensors we need. We need -- it wouldn't pick up the seal on it. The belt had a bad roller that heated up and -- and once the belt stopped, then the belt burnt in two, and the heat and all set the grease on fire that was in the bearings itself. And at that time then the alarms sounded off.

We need these sensors -- these warning sensors posted in other areas on the section. And we need the CO person, which is the one responsible person at our mines, to be able to knock the power when this

happens. We need other means of alarm if we have a fire.

Getting back to the fire on the -- on this belt line, like I said, this belt burned in two and the smoke was so thick you couldn't see. So, again, touching back on smoke sensors, we need them. We need them bad on the belt lines.

Another thing that was touched on in the proposal was this one year on -- on the belt that they could purchase the belt and use what they have. This -- at this time they can purchase five years of belt material and go into this law and still use it for the next five years.

They should have a date on this that -- on the belts as an approved -- that they can use that non-approved belt for the next five years if they purchase before.

Getting back to the point-feed, too, that was touched on by the miner from Shoal Creek. Also, we have point-feeds. We need a means so that it will automatically close by the responsible person that works in the CO department.

This is -- this is not hard to do. The operator should be able to -- or the responsible person should be able to close or open the point-feed doors from a control room. Not manually, which is what we've got now. It's automatic, but there's -- you have to operate cables to do it. Someone has got to be there to do it.

Another weak point, we need -- even though if the belt is not running, they need to be monitored regardless. I think it's a four-hour period in there that -- once it shuts down, but it should be monitored at all times.

Like I said, getting back to the hot roller that burnt the belt in two. This could still exist even after the four-hour period.

Also, we're having a problem with the ventilation and the -- at the -- at that time during which they -- the alarm goes off, they can continue to run if they monitor the belt with people controlling the belt.

Again, at our mines we got into

this. They would take whatever person is available. He might not have been in the mine six months and give him an instrument and tell him, go monitor that belt.

We need to stipulate what type of training to give this person, what he needs to do. Not just how to operate an instrument, what he needs to look for. That was someone with six months' experience. We need to stipulate -- again, that's a weak law. We need to know what -- a good bit of training.

Also, getting back to training on the -- what we call the CO person, which is the responsible person there in the mines, and the new proposal, all the training that's listed, we need to also include any new plans that is listed at our mines. We need to be familiar with all the plans.

Any questions?

MR. FRANCART: Mr. Kahle, thanks for coming in this morning, first of all. I have two questions for you.

On the fire you had, can you give me a date on the fire? Do you have that?

MR. KAHLE: No, I haven't got the date with me. It's been in the past month.

MR. FRANCART: Which mine was it?

MR. KAHLE: Jim Walter Number 7, number 10 belt.

MR. FRANCART: One other question. You mentioned that we need to have a requirement to close the point-feed regulator and also open it. And one of the things we're concerned with is a reason for requiring the -- the requirement to open a point-feed regulator once it's closed. Can you give us some more information on why you think that's important?

MR. KAHLE: To -- to close --

MR. FRANCART: To reopen it.

MR. KAHLE: To reopen? Ventilation.

MR. FRANCART: We plan on --

MR. KAHLE: To restore.

MR. FRANCART: We're planning on closing it to evacuate miners.

MR. KAHLE: Right.

MR. FRANCART: Once they're evacuated, why would you have to reopen it

at that point from the surface?

MR. KAHLE: To restore the ventilation in my opinion. You know, it's according to -- if you've got a drop curtain up to ventilate, the way ours operate, if -- if you don't have enough air coming around say one entry, which is track entry, if the -- the ones we've dropped, if it's open, then it's just a matter of short circuiting the air, whichever regulator controls, which side the regulator is on that controls the air.

MR. FRANCART: I guess I have a hard time picturing why then a point-feed regulator would affect a drop-down curtain.

MR. KAHLE: In our track entry, which is our primary, the intake -- like I said, we've got to run through -- okay -- whichever regulator controls. You've got a regulator on both sides. Okay? The belt entry is the next entry. You can control that by opening and shutting the point-feed. That's -- that's the reason they put it in to start with.

What we call long crosscuts, the

first crosscut inby, the feeder or the tailpiece, that would -- it would go to the least resistance there.

MR. FRANCART: Okay. Thank you.

MS. SILVEY: Thank you, Mr. Kahle.

Our next speaker will be Joe Weldon, UMWA. Mr. Weldon.

MR. WELDON: Good morning.

MS. SILVEY: Good morning.

MR. WELDON: Joe, J-o-e, W-e-l-d-o-n. Chairman of the safety committee, Drummond Coal Company, local 1948. I passed my class in public speaking, too.

And I want to read a few sections of the law which pertain to sections in which the district manager, assistant district manager can make provisions or recommendations to approve the plans.

Section 75.350 -- and it's going to be a bunch of them. 350(a)(2). 75.350(b), which is talking about the use of belt air has to be approved by the district manager in the ventilation plan.

75.350(b)(3), 75.350(b)(7) and (8), which are -- these are in the proposed plan. 75.350(d)(1), 75.371, 75.371(jj), 75.371(mm), 75.371(nn), 75.371(yy), 75.371(zz), 75.380(f), 75.381(e).

And I've read all that for this: In District 11 we have suffered and we have had a history of problems, one being September 23rd, 2001 in Jim Walter Number 5.

Another one of our major problems is we basically have been without a district manager for the last three years. Our -- and I'll explain why. Our district manager has been called upon to investigate the Sago mine disaster and is also investigating the Crandall Canyon disaster now.

And I realize he is doing and -- and is investigating as he was instructed to do, but where does that leave us?

To add insult to injury, it left us with an assistant manager who for quite some time has been seeking a position in employment at a large coal operation and from all indications has acquired this position and will shortly leave to assume

this position. Then that's going to leave us without either one. We're going to basically be without an assistant or a district manager in our District 11.

We're in desperate need of a full-time district manager that is fully dedicated and available in District 11.

We also must have a qualified, caring assistant district immediately, both of which are more involved and more hands-on in our day-to-day business at hand.

Section 75.156 also deals with task training. And brother Kahle here kind of spoke on this a little bit. In June of '07 I believe it was, on page 36 in the 131st page of the report of the technical study on utilization of belt air and compositions for fire retardant properties of belt materials in underground mines, I made the statement which dealt with our AMS operators, which is at -- at our mines is our CO operator.

I made the statement -- and it's in there, if you would like to look at it, page 36 of that. And I made the statement

and I spoke about all the qualifications and all the jobs that this operator had.

At our mines he has to deal with the CO systems. He has to deal with the contractors coming in the mines. He has to take names. He has to get lunches. He works 12-hour shifts. So, he has more on him than he can handle.

And if you'll look at that, you'll -- you might bring it to your remembrance. We would like to see this dealt with in this proposal.

We feel like that our CO person in our mines -- and some of the other guys that I have talked to in the safety departments has the same problems. That we would like a quick response, that we would like them to be able to monitor these systems and that would be their sole job and that they need more training to be able to recognize a situation and they can call the shots and get the people out of the mines immediately in the event of an emergency situation.

And that section of law that I'm

alluding to is 75.156. It says, to be a qualified AMS operator, the person shall be provided with task training on duties and responsibilities at each of the mines where an AMS operator is employed according with the mine operator approval plan, Part 48 in the training plan.

So, basically all they have to do is give them task training and say they can do the job and there they are. We feel like that this training is not sufficient, especially when you have at our mines and some of these other mines four to 500 people whose lives is on the line expecting one man with just a minimal amount of training to be able to call them out of the mines and recognize the dangers and the hazards of which we face every day in the mines.

Do you have any questions?

MS. SILVEY: I have a few comments. Thank you, Mr. Weldon. And you are -- you are -- you are correct in that we do have your comments to the Technical Study Panel.

I would like to say that with

respect to your discussion of the AMS operator and the training, that as you -- as I stated in my opening statement, that MSHA was going to develop a model training program and we're going to make it available to the entire mining -- our intent is to make it available to the entire mining community. And so -- and we anticipate doing that about the time that this rule goes into effect.

And with respect -- and also, in response to the Technical Study Panel recommendations, we propose that the AMS operator -- that that be a primary duty of that person, a primary -- we have taken some comments so that everybody can hear this because you can go to the -- to the transcript and you can -- anybody can read the comments. And -- and we got one comment that said that they went along with the fact that it should be a primary duty. They said they felt -- that they felt in the case of an actual emergency then it should be the AMS operator's only duty in the -- in the event of an actual emergency.

And so, you know, one of our goals is to -- one of our goals is to clearly make sure that we've laid out the requirements for training as best we can and to -- and to try to assure that the people who have duties -- responsible duties under this rule, that they are indeed adequately and sufficiently trained.

And on your comment -- I guess I feel obligated to comment as representing the Agency on your comment about the -- the -- your -- not that it's the subject of this hearing, but the fact that District 11 has been, as -- as you put it, sort of without a district manager -- basically been without a district manager the last three years. And so that everybody knows, you are indeed accurate.

I know that people understand that organizations have to make a lot of decisions sometimes in taking -- you know, in terms of how they assign their personnel and et cetera, et cetera. And you are right, that the district manager in this district has been the -- the leader of now

two unfortunate accident investigations as you commented, Sago and then more recently Crandall Canyon and which probably -- not probably. I can strike probably. Which has taken him unfortunately out of the district for a lot of the time.

And you know, when agencies make that decision, often times they decide to pick what -- who they perceive can be maybe the -- not that there are other people that they can't pick, but they pick people who they perceive may be the best people to lead that task.

And -- and it's something that has to be done. And particularly, unfortunately, as many of you know what we've been undergoing for the last two or three years, we've had a number of events to -- tasks to do sort of that came together. So, we were pulling people out of various different -- not to defend what we did, but I guess at some point to defend it, we were pulling people out of various different positions.

And so sometimes, you know, when

you do that, you just kind of have to do -- I sort of fall back on maybe some things my parents said to me. You sort of do the best you can. And I -- I hope that we did -- I think we did the best we could, but we will take your comments -- you know, we will take your comments in that regard to the people who are higher than me here. So, I just did want to respond to that.

So, thank you. Thank you very much for your comments.

MR. WELDON: Thank you.

MS. SILVEY: I'm -- I'm sure we must have one more speaker. Do we have one more speaker?

Mr. Wilson. We may have more than one more speaker.

MR. WILSON: Good morning.

MS. SILVEY: Good morning.

MR. WILSON: I'm Thomas Wilson with the UMWA International.

I would like to start just by commenting on our last speaker, brother Joe Weldon's comments.

With all the references to

district managers approving belt air usage in ventilation plans and with the recognition that district managers are often called on to do other duties besides the district manager, I believe that would be a responsible -- responsibility better carried out by the Arlington office.

Over the years we've often had different levels of enforcement from district to district. And I believe also that if that was centralized into the Arlington office, we would get a more standardized application.

I want to start in the final report of the Technical Study Panel on utilization of belt air and composition and fire retardant properties of belt materials in underground coal mines. First on page six.

The panel stated -- perhaps the most important safety recommendation made by the panel was the recommendation that -- perhaps the most important safety recommendation made by the panel was the recommendation that deals with the

application of improved belt availability standards.

MS. SILVEY: Maybe we'll take a -- I'm sorry to do this. Do you want to take -- we want to take a 10-minute break because we can't -- we can't go through with this noise.

MR. WELDON: That's fine.

(A break was taken at 10:34 a.m. and the hearing resumed at 11:00 a.m.)

MS. SILVEY: At this time we will reconvene the Mine Safety and Health Administration's public hearing on the Agency's proposal that would implement the recommendations of the Technical Study Panel including flame-resistant conveyor belts, fire prevention and detection and the use of air in the belt entry.

We will now continue the testimony of Mr. Thomas Wilson, United Mine Workers International.

MR. WILSON: As I stated earlier, I was going to start reading from the final report of the Technical Study Panel --

THE COURT REPORTER: I'm sorry. The microphones aren't working at all

MR. WILSON: Third attempt. Reading from the final report of the Technical Study Panel on the utilization of belt air and composition in fire retardant properties of belt materials in underground coal mining on page six, perhaps the most important safety recommendation made by the panel was the recommendation that deals with the application of improved belt flammability standards to belt materials used in U.S. underground coal mines. The aim of the belt is to prevent belt entry fires and not merely to suppress them.

The panel found that belt fires continued to occur in MSHA accepted belts, that the belt standard should more closely resemble real in-line conditions and that underground mining conveyor belt flame resistant standards worldwide are more stringent than the standards applied in the United States.

Thus, the panel recommends that more rigorous belt standards should be

applied to belt materials used in underground coal mines.

I believe that proposed 75.1108 completely fails to achieve this purpose. Please let me explain. If you look at 75.1108 proposed language under 2(b), it reads effective, and then in parentheses, insert date, one year after date of publication on final rule in the Federal Register, close parentheses, all conveyor belts purchased for use in underground coal mines shall be approved under Part 14 of this chapter. I strongly disagree with the word "purchased".

There was some discussion earlier and I want to attempt to elaborate on it. As I read this proposed rule, there's going to be a one -- one year after the final rule comes out, gets published, there's one year before implementation. During that year, I could stock -- if I was a coal operator, I could start stockpiling conveyor belts. Knowing the life of the mine that I'm running, I could virtually stockpile enough conveyor belts to close that mine without

ever complying with this standard and without my miners ever having the safety feature that was intended by this standard.

And this is not just hypothetical. In the past as we were negotiating petitions for modifications when we were negotiating for fire retardant belts as part of those petitions, we actually had operators stockpile belts to keep from complying -- from including the new belt which they had agreed to.

I'm simply saying that for this to be effective to all the miners which it's intended to serve that language should be changed to all conveyor belts used.

On page seven, the same report, a considerable amount of panel time and thought was given to the efficiency of the atmospheric monitoring system including the level of training the AMS operator receives, the specific tasks assigned to the AMS operator and the type of electronic sensors used in such system.

The AMS related recommendations are that all AMS operators be certified and

that the highest priority of the AMS operator must be the proper operation of the response to the AMS.

Again, I am concerned on how 75.156 addresses this issue. 75.156 -- or proposed 75.156, ASM operator, qualifications, little a, to be a qualified AMS operator a person shall be provided with task training on duties and responsibilities at each mine for an AMS operator who is employed in accordance with the mine operator's approved Part 48 training plan.

Little b, an AMS operator must be able to demonstrate to an authorized representative of the secretary that he or she is qualified to perform in the assigned position.

Again, I am going to attempt -- there's been other testimony on what all an AMS operator does. But unfortunately, in the aftermath of the Jim Walter Number 5 mine disaster, we found out just how dramatically his responsibilities and his role changes the instant an emergency starts.

We've testified about this to the Technical Study Panel. I take the blame in that undoubtedly we didn't get it across very clear.

We live in a cell phone age. Just about everybody carries a cell phone.

At Jim Walter Number 5 on September 23rd, the phone system simply worked that it held the calls in the order that they was received. So, miners underground calling out to get emergency information or to report emergency information were competing for the same phone line that everybody in the community was competing for trying to get information as to what was unfolding at Jim Walter's Number 5 mine. I don't see anything in the proposal that remedies that problem.

Ultimately, as the phone calls started backing up, it virtually shut down communications with the underground coal miners. The AMS operator, CO room operator or responsible person, whatever the title is -- and at most of our mines the CO operator is the responsible person. He was

absolutely held captive by having to answer each and every call in the order that it came in.

Miners underground in the midst of the aftermath of an explosion had to wait on hold while the CO operator answered phones from curious passerbys or upper level management that was calling in. Everybody competed for the same phone line.

I'm urging this panel between now and the final closing of this rule to correct that wrong. Failing to do it -- you can have the best system in the world, but if your operator or responsible person cannot respond to it, we've gained nothing.

We've already had a situation -- and I know you have access to all the reports, the MSHA report, the UMWA report on September 23rd. They all clearly laid out at the time the emergency starts -- I don't know if you switch off outside phones, if you -- if you -- but there has to be someway that that CO operator can focus on the emergency at hand.

Continuing to read from -- in

the same report, in June of 2008, I testified before that panel. And I'm still concerned with the problem -- should the problem be corrected that I pointed out in 1108 earlier and all belts are going to be required to be new belts.

And I'm still curious as to the improvement to remove combustible belts from the mines, why we still allow operators who choose to use belt air to ventilate the working face to fill those entries with combustible wooden roof supports.

As I testified on -- in June of '07, it is essential that a non-combustible standing support -- standing roof support be utilized if that air is going to be used to ventilate the working face. Anything less is just removing one combustible and adding another; removing one fuel, adding another. There is a non-combustible standing roof support and every operator -- every operator is capable of doing that.

Some of the worst mine fires -- belt mine fires that I have ever been associated with was smoldering that later --

later turned into a full-fledged fire of wooden material in the belt entries. Again, I would urge this panel to seriously address that.

I'm going to page 35029 of the proposal, 35029. Proposed 14.3, derived from 18.9(a), would limit the individuals who may be present during testing and evaluation to MSHA, representatives of the applicant, and other persons as agreed upon by MSHA and the applicant.

That language concerns me. More particularly, the last part of it where it says -- I'm going to start reading -- as agreed upon by MSHA and then it continues on, and the applicant. I believe MSHA should be determining participation in that and we shouldn't include language where the applicant would have to agree with you as to whether or not the miners' representatives or others would have -- would have representation. And again, just the "and the applicant" is the language that concerns me.

On page 35030, proposed 14.7(d)

is new and would require that the applicant maintain sales records for five years following the initial sale of any proposed conveyor belt. I rise in disagreement with the five years and believe that the sales records should be maintained with the belt for the duration, including being maintained through any sale or resale of that belt.

On page 35031, proposed 14.11(d) would provide for immediate suspension of the approval of the product without prior written notice to the approval holder if the product poses an imminent danger or hazard to the safety or health of miners. The suspension may continue until revocation proceedings are completed. Consistent with MSHA's practice, once an approval is suspended, MSHA would notify the public of this action to recall notices on its website.

I -- I don't believe posting it on the website is adequate. Many miners and miners' representatives do not have computer access and I believe written notification should also be provided.

On page 35053, proposed 75.156, AMS operator, qualifications. Just to recap that, I strongly believe that AMS operators need far more than task training. His world totally changes when that emergency starts unfolding.

75 -- I mean, excuse me, page 35054, in the first column under 350(d)(1) about the middle of the page it reads, the air current that will pass through the point-feed regulator must be monitored for carbon monoxide or smoke at a point within 50 feet upwind of the point-feed regulator. I rise in support of must be monitored for carbon monoxide and smoke.

The same page, the last column, little four at the top of the page reads, this provision shall be effective one year after the secretary has determined that a smoke sensor is available to reliably detect fire in an underground coal mine.

I personally believe that the technology is already available and I rise in disagreement to the one-year extension after the secretary has determined that it's

available.

Under (q)(1), all AMS operators must be trained annually in the operation -- proper operation of the AMS. This training must include the following subjects. And it lists all the subjects.

At every one of the underground mines that I represent and that I know of plans are constantly being submitted to MSHA and constantly being changed. Ventilation changes, section startup, section shutdown. Annual training is not adequate to have a knowledgeable AMS operator.

In addition to what's listed, he should also be trained or receive retraining after any approval of any plan that changes the scenario which he is monitoring.

Moving on down and under number two, that's (q)(2) which states at least once every six months all AMS operators must travel to all working sections. I believe that should be -- there should be an addition to that to say and at the startup of any new section.

He could be doing his six months'

underground visits and one week after he's underground the scenario changes. Those miners are for six months relying on him with outdated knowledge. The burden on the operators for all these changes would only be limited to their proper planning and designing the mines if they plan ahead and every -- every other day they don't have to submit a supplement their training requires them to do.

Looking down under 75 -- still on the same page -- 352, starting with (f), minimum air velocity is not maintained when required under 75.350(b)(7), immediate action must be taken to return the ventilation system to proper operation. While the ventilation system is being corrected, operation of the belt may continue only while -- and I want to put emphasis on these words -- a trained person controls and continuously monitors for carbon monoxide or smoke as set forth in 75.352(e)(3) through (7) so that the affected areas will be traveled in their entirety.

That language in itself I believe is not comparing apples to apples. Simply having a trained person that controls and monitors is not the same as what -- the system that needs replacing. The system that that person is replacing is continuously sending information to the CO operator. What I believe has been left out of that language is that that person that's doing the controlling and monitoring must have the ability to continuously communicate to provide that equal protection.

On page 35055 under 75.380 and that's Roman numeral little six reads, securely attached to and marked to provide tactile feedback indicating the location of any SCSR storage locations in the escapeways. The tactile feedback for SCSR storage locations shall be six back-to-back directional cones.

All the language that's pertaining to the improvements in the lifelines, I want to applaud y'all for taking those steps. Since we've been installing lifelines in the mines -- I get

the privilege of going to various mines. The use of the cones are not the same at any other locations. And that's -- that's troubling in several -- we do have contractors that go from mine to mine, and expecting them to understand and -- and grasp different and non-standard use of lifelines is unreasonable.

There's some operators which have been using -- for example, we have a branch line that goes to your SCSRs. They've been using and -- and training on an additional cone at that location.

We've got other operators that absolutely refuse to put any -- any type of signal on a branch line. With no visibility you're supposed to know when you come to a branch line to branch off. I believe the additional cones are the proper direction to go. Again, I would rise in support of that language.

On page 35056, again, under 75.1108, I want to again encourage this panel to revise that language so that it reads all conveyor belts used for use in

underground coal mines shall be approved in Part 14 of this chapter.

The reality of the hazard that comes with a belt fire is far too real for coal miners. I don't know the exact timing of this, but my understanding is y'all were in Charleston, West Virginia on Tuesday. And I believe that y'all were leaving the state and preparing to come here and I believe you dodged a bullet.

The Justice mine at southern West -- in southern West Virginia, which is owned by Massey, had a fire at a belt transfer point. It took four miners to put the fire out. One of the four did go down in the smoke. It's been essentially reported to me that I believe that he's going to be okay.

Belt fires is not a rare thing. It's a common thing. And we need all the protection we can to help us in those situations.

I did understand you earlier when -- Ms. Silvey, when you said that MSHA's plans are to come up with AMS

operator training and make it available to all operators. That in itself -- I appreciate that, but I think there needs to be language changed to actually -- to ensure that that AMS operator is up for the task that he has to do because everybody's lives depends on him performing that task.

With that, I thank you and I'll answer any questions.

MS. SILVEY: I think I -- thank you, Mr. Wilson. I think I said that we would make the training program available to the entire mining community.

Since I'm thinking about IT, information technology, now and your comment -- I have to do these things as I think about them. And your comment about the website, everybody doesn't have access to the website, on the -- when we sent our users notice that we were suspending the approval, if -- and you said that we should send notification and I believe you said we should send out written notification.

MR. WILSON: I did.

MS. SILVEY: If we sent out -- in

such a situation where we had to send out a recall notice, if we sent a letter to the UMWA International or -- either you can answer -- answer me now or before the record closes on September the 8th what you consider would constitute -- suffice written notification.

If we sent our -- if we sent a letter to the International or for an example -- I mean, who do you see us in terms of sending specific written notification to? Would that suffice and then the International could get it to all its local unions? Anyway, something along that line.

You know, I like -- we asked in the -- and I'm going to try to remember now. And the panel can help me, if I can't remember. We put some -- when we did the regulatory economic analysis -- the Preliminary Regulatory Economic Analysis, we had in there a suggested time period for the service life of a belt and I think of a conveyor belt and I think we used two periods.

We used -- one was seven years and 10 years respectively for the -- seven years for the -- seven -- seven years for the section -- for the section belts and 10 years for the main line belts. Or is it six years and 10? Six years for the section belt and 10 years for the main line belts.

And if anybody wants to comment on our estimate of the service life for those particular belts in those particular sections of the mine, we would -- I -- we would appreciate that.

With respect to training for the AMS operator -- and you said we needed more than task training. Now, when we -- as you pointed out -- and you gave -- you have given some added suggestions about when to train. But we put specific subjects that were to be covered in the training in the -- as you noted in 75 -- in proposed 75.156.

And when you say more than task training, would you sort of be more specific in -- because we proposed that under the task training section of 4827. Would you be more specific when you say more -- and you

don't have to do it right now. If you want -- you can do it right now, if you want to, or you can do it before the record closes.

MR. WILSON: I will go forward and say that any person that's expected to deal with an emergency situation must go through mock training or the disaster training, emergency response training, those types of hands-on scenarios.

The first time that you are called upon to deal with an emergency shouldn't be the real thing if you want favorable results out of it. We'll look at what we need to expand that.

MS. SILVEY: Okay. That will be fine.

With -- with respect to the comments that you made on tactile feedback with lifelines -- and I -- I mentioned that in the opening statement. I -- and I -- and I appreciate your comments, but -- so, I take it that the specific proposal that we proposed, you are in agreement with that?

MR. WILSON: Yes, ma'am.

MS. SILVEY: The specific proposal?

MR. WILSON: Yes, ma'am.

MS. SILVEY: As other people have heard, I would like it if everybody would provide comments to us on that.

Your comment about the -- you gave the scenario at Jim Walters, the ability to continuously communicate to provide protection -- wait a minute. I don't mean that one.

The one -- the one you gave on communication where the AMS operator had to wait in line to answer inquiries because he was answering inquiries from everybody the way the communication was set up. So, he had to wait in line even if people were calling from underground. That comment, are you suggesting -- that -- you are suggesting -- I'm understanding what you said that that went to the basic communication system in the mine; is that right, the way the communication system was set up, the phone system?

MR. WILSON: Yeah. The phone

system in the CO room.

MS. SILVEY: Okay. I just wanted to make sure I got that. I think that's all.

MR. KALICH: I did have a question about the -- just to clarify the communication, what Pat had just asked you about. So, in the mine communication the phone lines are also tied in with the outside phone lines so someone from outside could actually call underground?

MR. WILSON: That's correct.

MR. KALICH: And then -- and during the emergency it tied up the system?

MR. WILSON: That's correct.

MR. KALICH: And one other question on the AMS operator training. You suggested there's some type of hands-on actual -- well, emergency type drills to be performed with the AMS operator?

MR. WILSON: Yes.

MR. KALICH: I guess something like an emergency exercise?

MR. WILSON: Yes.

MS. SILVEY: I thank you very

much. I thank you.

MR. WILSON: Thank you.

MS. SILVEY: At this point, is there someone else who wishes to comment?

MR. McNIDER: Tom McNider, Jim Walter Resources. M-c-N-i-d-e-r.

There was a comment about the communication system in the mine and I just want to clear that up. You can't call directly underground. You can call the dispatcher on the -- not the dispatcher, but the control room operator who is outside. He can dispatch you underground. You can talk to somebody outside, but you cannot call directly underground.

I'm not sure what phone systems exactly we had in place at that time. There probably was a Bell type phone system that I believe was in place at the mine then and also there were probably some pager type phones that were scattered throughout.

MS. SILVEY: Well, I gather -- and I'm trying to -- I gather what Mr. Wilson said is whatever type phone system it was, the AMS operator was

answering calls from people that -- and I'm just making this up hypothetically. People calling from Northport to -- into the mine, then the underground -- the miners who were underground were calling to the same AMS operator and the way the -- that line was set up is that the AMS operator had to answer them in the -- in the manner in which they came in.

So, if -- if the person from Northport was number one, I'm just saying hypothetically, in line and the -- and a person from Tuscaloosa was number two and an underground miner was number three, the AMS operator took Northport, Tuscaloosa and Brookwood -- let's say that was three. And then took the number four, took the person from underground?

MR. McNIDER: I'm not sure about that.

MS. SILVEY: Okay.

MR. McNIDER: We can find out.

MS. SILVEY: Yeah. Okay.

MR. McNIDER: There is a common phone type panel that you can look at. You

know, I wouldn't want to sit here on the record right now and tell you what it was, but we can look into that.

MS. SILVEY: So, is there anything else you would like to say? I would -- I wouldn't mind if -- if you all are going to submit comments -- and everybody I'm asking this. So, everybody who is here sees that. If you would please submit the comment -- the last comment I just asked on the -- on our estimate -- and that was clearly our own Agency estimate on the service -- on the service life of the belts, the section belts and the main line belts.

And if you would also submit comments on -- what I used in my opening statement about repairing -- a splicing kit and that is the requirement that it be spliced to maintain the -- its original fire-resistant qualities. And if you would have any suggestions on how we would evaluate that, I would appreciate -- we would appreciate that.

MR. McNIDER: As far as the

record and you requesting comments, I will say one thing about the -- MSHA is requesting whether -- what actions operators should take on the .5 to one percent of Methane.

MS. SILVEY: That's right.

MR. McNIDER: And I've been in ventilation -- directly associated with ventilation for 32 years in probably some of the gassiest mines in the world, particularly in north America.

And I can tell you that in my experience -- and this coal here at Jim Walter typically would run four to 600 cubic feet per ton of Methane, which is extremely gassy. But where you would get into a problem on the belt line -- you might get some liberation from the coal, but typically it's from the stride. And -- but as you approach the higher levels of Methane, the best action for the operator is to keep positive ventilation on the belt; in other words, where it's going in one direction as much as it can and dilution. That's the two best things.

Then, you know, you have in the record where velocity is a thousand feet, but you can go to the district manager and try to get approval for higher velocities.

So, you know, my position has always been that there -- there shouldn't be an upper limit on -- on velocity. When you need belt air and you have a gassy mine, you need to put the velocity necessary to dilute the gas and render it harmless and to assist the sections.

Behind that you have to deal with the dust situation. So, as your velocities go up, you might be getting other problems like float dust or something like that. But there's already regulations in place to -- for inspection of float dust and things you can do to control float dust.

But the -- the biggest hazard to the miner is Methane. And if you get into a problem, if you try to go and start taking Methane and taking it away as you're going into upper levels on the gas -- let's say you looked at trying to limit that somehow, like taking it to a return and not taking

that to the face, which is going away from belt air, to me that is the biggest mistake that MSHA can make.

Because what you've done then -- and I've commented before in Birmingham -- I went through an exercise of showing where you go from ventilation directed to the face to taking that and then you start trying to regulate one split and then also take it and dump it into a section of the return. The control on that becomes extremely difficult.

And then you get to where you struggle with positive pressure from the intake escapeway or from the smoke-free intake into the belt line. You also struggle with where you've got two splits going in and one of them is going to be the predominant split. Trying to keep control between those two splits that you're trying to take air away from the face and dumping it into a return, that is a huge hazard and it is a very difficult thing to do.

And I've seen many situations -- when I first started with Jim Walter Resources before belt air was in place to

where we had what we call ventilate to neutral and not ventilate into the face and directing it back to a return. And I've seen many times where that would become a big problem where you get stagnant flow and you would get Methane that would build up and could potentially get to the explosive level.

Positive ventilation is the best thing you can do in a gassy coal mine. You need air directed to the face. And when you start getting into the upper levels of Methane, you need to be where you can add dilution, not take it away. And to me that is the way MSHA needs to look at this.

You know -- like I said, you know, I'm not -- from our position, you know, I'm not -- the rule before was 500 feet per minute on velocity. Now it's gone up to a thousand feet. You know, I think that is accepting probably comments that have been made in the past and -- and it's also opened it to going to the district manager if you need to go over and above thousand.

I think -- I think it should be in the rule. It shouldn't be limited. I think there are safeguards in place to address what -- how velocities can create -- I know there has been some comment about these sensors, you know, react to the higher velocities. And you met our guy that -- Randy Watts commented from Jim Walter's point of view and, you know, we buy off-the-shelf sensors. To my knowledge, that's not been an issue.

So -- but the danger lies when you're going -- and I don't know exactly what MSHA is looking for, but just because the belt line is approaching one percent, the other actions you can take could be potentially way more hazardous to the mine than to put dilution in there. To me that's the most straightforward way to do it.

The only other comment I had -- and, you know, since I've been talking, I'll go ahead and address this -- is where you -- and the rule addressed like -- under 1700, maintenance. And to me that's extremely subjective. It gets into another one like

what's a bad -- is the roller bad, is it not bad and you shut the belt down. And then it says you will immediately change the roller.

There again, I believe that -- in talking about alignment for the belt, you know, what's proper alignment? One person comes in and thinks the belt is aligned. The next person comes in and he thinks the belt is not aligned.

Under old shift examinations and hazards, that's already -- to me there's provisions in the law today that address that. I don't see where this adds benefit to it.

It's already in MSHA's prerogative if they think they have a hazard or if it's an operator and he thinks he has a hazard, you address it. But to put it in here to where, you know, it's addressing a bad roller or an alignment, those are operation type things that to me are too loosely, you know, identified. There's too much subjectivity. That's basically it as far as --

MS. SILVEY: Okay. Thank you.

On your last comment, we have taken other comments on that whole issue of belt maintenance and some of them -- some of the comments were like you said that they were too subjective.

I would only -- I would add two things. One, in terms of MSHA's intent -- and -- and we do appreciate some of the comments we got. In terms of MSHA's intent -- and I have said this before. We talked about damaged rollers and one of the persons used that term, "damaged rollers". What do you mean by damaged? They used the term "immediately" and they gave some examples of -- you know, of how immediately it could be problematic.

But we intended -- and I'm saying -- and I'm probably saying this for the third time now. We just intended sort of the common dictionary term of damage -- what damage was. But I would suggest to everybody in here, if you have other suggestions that -- where you believe that that would make that proposed provision more definitive and clear, more clear, if you

could submit them to us before the record closes.

And then I would also add -- another thing I would add is that we will go back and look at that provision so that we sort of -- we try to make it as -- as clear and as definitive as we can in the final rule.

One other thing. On your -- on you all's lifelines -- and this is not putting you on the spot, but since you are up here now, on your lifelines in your mines now in terms of -- well, right now it's just the directional indicators, just the requirement for directional indicators right now. Do you all use cones?

MR. McSNIDER: Yes.

MS. SILVEY: You do use cones. And are they standardized in all your mines?

MR. McSNIDER: Yeah.

MS. SILVEY: But I would still go back to my original comment and ask you to comment on that. We would -- you know, we're interested in comment on that provision, too, just from -- only from the

standpoint of making it -- trying to be as clear and as simple as we can with the ultimate goal being that miners can be easily trained in what to do in the event of an emergency.

MR. McSNIDER: All right. Let me -- I would like to make one other comment I just thought of. You know, the position of the control room operator, the CO person outside --

MS. SILVEY: You all call that -- you are saying the CO person. I'm calling it -- just so I make sure we're talking about the same person, I'm calling it the AMS operator.

MR. McSNIDER: Okay. Yeah, the AMS operator.

MS. SILVEY: Tom used the CO -- or somebody else used -- maybe used the CO person. I think so, yeah.

MR. McSNIDER: Right.

MS. SILVEY: Maybe not. But I'm just -- so that we know we're all talking about the same person.

MR. McSNIDER: Right.

MS. SILVEY: Okay.

MR. McSNIDER: You know, that is an extremely important position. And I mean, I -- I certainly appreciate the comments coming from the union. And we did experience that in 2001. We saw the need and where that became a responsible party, and I fully endorse what Tom says about the need for that person knowing his job and being responsible.

But I would like to say that that person's job as an -- in our case, after 2001, he also became a responsible party. MSHA needs to be very -- his job needs to be more encompassing than just watching the CO monitors and that job only.

He needs to know the mine. He needs to -- and our guy is involved in the actual operation of the mine. It keeps him fully aware of tracking people as part of his responsibility.

So, you know, we do commend MSHA about the -- the training. How often do you do it? You know, what does he train? We've already set up some -- and I say some. I

mean, that's coming under our safety department. So, I'm not that familiar exactly.

But I know they go through emergency preparedness for -- for that person. And annual training -- you know, there is a question of how often do you train. And if that guy is involved in the mine, believe me he is fully -- that keeps him at point on knowing what's going on in the mine.

MS. SILVEY: Well, if that person, if -- if the AMS operator is the responsible person at your mine, that person is doing -- doing -- should be -- is doing the emergency mine evacuation training; is that right?

MR. McSNIDER: That's correct.

MS. SILVEY: So, they are doing -- they're doing the expectations training.

MR. McSNIDER: That's my point. They're getting over and above at the mine. And I know it's part of Jim Walter's position that that guy needs to be involved

in, you know, where people are. That keeps him involved in what's running in the mine. That keeps him involved in the -- in the day-to-day operations of the mine. And MSHA needs to be very careful about trying to limit his exposure to what's going on in the mine.

Now, you know, is there a limit to what a person can physically do and keep up with? Sure, there is. But -- but he needs to be more involved than just watching the CO monitor system.

The only other thing I was going to say is that there are people who do these jobs that are fully qualified to do the job as an AMS operator, but he may have a physical limitation of physically going underground. We question, you know, the real need for him to go underground.

Sure, he's seen the mine, but most of these people are miners. They are people that have come up through the mines. They've been in management. They may have come out of the workforce. So, you know, I -- we're not sure what real benefit you

gain by doing that.

MS. SILVEY: Well, we got that comment before. We've gotten that comment. I can't remember who, but as I've said to everybody in here, you can go on the website and see the transcript.

There are two points I guess -- I I guess would make. And one is -- because I asked this gentleman the same thing. Do you have any people at your mines who fit in that category who would be physically incapable of -- or couldn't go underground?

MR. McSNIDER: I'm not in a position to answer that. I think there are people that I think would have -- that that could be -- could be a question, yes.

MS. SILVEY: Okay. And if you would let us know that if you do.

And the second comment I have is the only thing I would say about that now is -- and this person brought this out to us, that this could be a person who had many years of underground mining experience and of course, you know, know -- know all the aspects of underground coal mining.

But might the mine change as mining progresses or advances and might that -- might there be changes that might require -- might -- that person might need to go underground to notice the changes? I'm asking you that.

MR. McSNIDER: Well, I'm -- I'm telling you sitting here that I can't think of a reason --

MS. SILVEY: Okay.

MR. McSNIDER: -- that it would absolutely be necessary for him to go underground.

MS. SILVEY: Okay.

MR. McSNIDER: If he's been underground and he understands underground systems and what goes on, I think you could train that guy annually and probably from the surface to do that. I don't necessarily see that he would be -- where it would be a benefit for him to go actually see what's there.

MS. SILVEY: Of course, I assume that in that case where you're telling me that the person is physically unable to go

underground, that in that particular case, if you have people who fit in that category, that person and the responsible person are not the same person, I would assume.

MR. McSNIDER: Well, they are the responsible person.

MS. SILVEY: Oh, they are the designated responsible person on the surface?

MR. McSNIDER: Right. Not underground.

MS. SILVEY: Right, not underground. Okay. All right. Thank you.

MR. McSNIDER: I appreciate it.

MS. SILVEY: Is there anybody else who wishes to make a comment or provide testimony? Anybody else?

If nobody else wishes to provide comment or testimony, then I would like to say that we, MSHA appreciate very much you all coming and providing your input on this important rulemaking.

I want to also add that we appreciate the people who have provided the

testimony and as well we appreciate -- we appreciate the people who came to attend today and did not provide testimony because that shows to us that you are interested in this rulemaking.

You heard me say that the questions that we posed in the opening statement, some of the questions that were posed during the time that people provided comment and testimony, we -- we will appreciate very much your getting additional -- your additional information to us that you have on those issues that were raised prior to the comment period closing on September the 8th.

And having nobody else who wishes to comment, at this point then, and giving appreciation to everybody, we will conclude today's hearing.

END OF HEARING

(The hearing concluded at 12:03 p.m.)

C E R T I F I C A T E

STATE OF ALABAMA)
JEFFERSON COUNTY)

I hereby certify that the above and foregoing deposition was taken down by me in stenotype, and the questions and answers thereto were reduced to computer print under my supervision, and that the foregoing represents a true and correct transcript of the deposition given by said witness upon said hearing.

I further certify that I am neither of counsel nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.

_____

Dana Gordon, Commissioner
ACCR #146