

MINE SAFETY AND HEALTH ADMINISTRATION

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PUBLIC HEARING

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TUESDAY

OCTOBER 28, 2008

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The Public Hearing convened at 1100  
Wilson Boulevard, in the 23rd floor Conference

Room, Arlington, Virginia pursuant to notice at  
9:00 a.m., Patricia W. Silvey, Chairperson,  
presiding.

PANEL MEMBERS PRESENT:

PATRICIA SILVEY	CHAIRPERSON
JOHN ARRINGTON	PANEL MEMBER
KEVIN BURNS	PANEL MEMBER
ELENA CARR	PANEL MEMBER
GENE AUTIO	PANEL MEMBER
LINDA ZEILER	PANEL MEMBER
JENNIFER HONOR	GENERAL COUNSEL

## TABLE OF CONTENTS

Welcome and Opening Statement, Patricia Silvey, Chairman . . . . .	.4
Witnesses:	
Dan Kane . . . . .	18
Linda Ralsovich-Parsons . . . . .	29
Danny Callies . . . . .	38
Jim Starns . . . . .	45
Randy Wideman . . . . .	49
Dale Byram . . . . .	55
Joe Weldon . . . . .	57
Daryl Dewberry . . . . .	61
Jimmy Yates . . . . .	67
Charles Carden . . . . .	70
Patrick Watson . . . . .	73
Steven Miller . . . . .	81
Sandra Blackston . . . . .	87
Grady Robertson . . . . .	98
Wendell Rigsby . . . . .	.103
Randall Green . . . . .	.105
Harold Sickles . . . . .	.108
Larry Turner . . . . .	.115
Ray Lee . . . . .	.121
Thomas Wilson . . . . .	.123
Chastity Farr . . . . .	.132
Patton Bruce . . . . .	.134
James Blankenship . . . . .	.137
Terrell Stevens . . . . .	141
Ron Lovel . . . . .	143
David Mlakar . . . . .	.147
John Tasson . . . . .	.148
Steve Narhi . . . . .	.151
Mike Maleska . . . . .	.154
Glenn Saarinen . . . . .	.156
Mike Woods . . . . .	.158
Phillip Johnson . . . . .	.161
David Toole . . . . .	.162
Pat Brady . . . . .	.166
Michael Pauley . . . . .	.175
George Hill . . . . .	.179
Tanya James . . . . .	.183
Ricky Clark . . . . .	.187
Barbara Ward . . . . .	.188
Adam Vance . . . . .	.190
Albert Coleman . . . . .	.193

Max Kennedy . . . . .195

## TABLE OF CONTENTS

## Witnesses:

Walter Seeba. . . . .	.201
Dennis O'Dell . . . . .	.206
Michael Maynor. . . . .	.223
Charles Graham. . . . .	.224
Jay Pruitt. . . . .	.225
Jon Stewart. . . . .	227
James Blankenship . . . . .	.231
Melissa Earnest . . . . .	.235
James Johnson . . . . .	.240
Sean Reach. . . . .	.244
Ryan Weston . . . . .	.247
John Lindsay. . . . .	.251
Randy Bakes . . . . .	.255
Larry Spencer . . . . .	.257
Riley Hullett . . . . .	.259
Morris Wilson . . . . .	.261
Dwight Cagle. . . . .	.263
Joe Weldon. . . . .	.272
Deandre Bolden. . . . .	.277
Ned Kimbrell. . . . .	.280
Antoine McGhee. . . . .	.307
Closing Remarks	
Patricia Silvey, Chairman . . . . .	.314

1 P R O C E E D I N G S

2 9:08 A.M.

3 MS. SILVEY: Good morning. We are  
4 back to start the Mine Safety and Health  
5 Administration's public hearing on MSHA's  
6 proposed rule for alcohol and drug-free mines,  
7 policy, prohibitions, testing, training, and  
8 assistance.

9 Before we start, can I please confirm  
10 that people are at the various locations other  
11 than the Washington, D.C. area? We are located  
12 at MSHA's headquarters building at 1100 Wilson  
13 Boulevard, Washington, D.C.

14 Is Birmingham, Alabama on the line?

15 BIRMINGHAM: Yes, we are here.

16 MS. SILVEY: Okay, thank you. Is  
17 Virginia, Minnesota on the line?

18 VIRGINIA: Yes, we are.

19 MS. SILVEY: And Beckley, West  
20 Virginia?

21 BECKLEY: Yes, Beckley's on the line.

22 MS. SILVEY: Okay, thank you very  
23 much.

24 My name is Patricia W. Silvey and I

25 am the Director of the Mine Safety and Health

1 Administration's Office of Standards,  
2 Regulations, and Variances. I will be the  
3 moderator of this public hearing on MSHA's  
4 proposed rule on alcohol and drug-free mines.

5 On behalf of Acting Assistant  
6 Secretary of Labor, Richard E. Stickler, I want  
7 to welcome you to this hearing today and  
8 including, obviously, all of those who are  
9 joining us via audio.

10 At this time, I will provide the  
11 logistics surrounding today's hearing. The  
12 hearing is being held via audio in Washington,  
13 D.C. and as you just heard, Birmingham, Alabama;  
14 Beckley, West Virginia; and Virginia, Minnesota.

15 I will start with the persons who --  
16 in the order, as is MSHA's usual practice, I will  
17 start with the persons in the order that they  
18 signed up and the United Mine Workers signed up  
19 first and what I will do is take the United Mine  
20 Workers who are present in Washington, D.C. first  
21 and then the representatives of the United Mine  
22 Workers who are in Birmingham, Alabama. And just  
23 so to provide people with notice, I would then go  
24 to Virginia, Minnesota with representatives of

25 the United Steel Workers, Local 45950; and then



1 to Beckley, West Virginia.

2           And on my list I have Murray Energy  
3 Corporation and I don't know if there are any  
4 United Mine Workers members in Beckley, West  
5 Virginia or not, but if there are then -- and  
  
6 obviously, as most of you know, at the end, the  
7 presentations from all persons who have signed up  
8 in advance, persons will then have an opportunity  
  
9 to speak after that.

10           This is the second public hearing on  
11 the proposed rule. As many of you know, we had  
12 the first hearing on Tuesday, October 14th, via a  
  
13 webcast in Washington, D.C.; Pittsburgh,  
14 Pennsylvania; and Englewood or Denver, Colorado;  
15 and via audio in Beckley, West Virginia;  
  
16 Birmingham, Alabama; and Madisonville, Kentucky;  
17 and Price, Utah.

18           For purposes of today's hearing,  
19 persons who signed up in advance will make their  
  
20 presentations first, as I just said. But persons  
21 who did not sign up will be permitted to make  
22 presentations.

23           At this point I'd like to introduce  
24 the members of the MSHA panel. To my right is



1 Department's Drug Policy Coordinator for Drugs.

2 To her right is Kevin Burns. He's with MSHA's  
3 Education Policy Development Office and the Small  
4 Mines Office. And to his right is John Arrington  
5 with the Coal Mine Safety and Health. To my left  
6 is Jennifer Honor and I will graciously refer to  
7 her as our learned counsel. To her left is Gene  
8 Autio and Gene is with the Office of Metal,  
9 Nonmetal Mine Safety and Health.

10 As most of you know, the comment  
11 period for the proposal will close on November  
12 10th at midnight Eastern Daylight Savings Time  
13 and I would like to reiterate, Eastern Daylight  
14 Savings Time. You can view the comments on the  
15 Agency's website, [www.msha.gov](http://www.msha.gov).

16 The proposal would amend the existing  
17 metal and nonmetal standards for the possession  
18 and use of intoxicating beverages and narcotics  
19 and make a new standard applicable to all mines.  
20 The proposal would designate the substances that  
21 cannot be possessed on mine property or used  
22 while performing safety-sensitive job duties,  
23 except when used according to a valid  
24 prescription. Mine operators would be required

25 to establish an alcohol and drug-free mine

1 program which includes a written policy, employee  
2 education, supervisory training, alcohol and drug  
3 testing for miners who perform safety-sensitive  
4 job duties and their supervisors and referrals  
5 for assistance for miners and supervisors who  
6 violate the policy.

7           The proposal would also require those  
8 who violate the prohibitions to be removed from  
9 the performance of safety-sensitive job duties  
10 until they successfully complete the recommended  
11 treatment and their alcohol and drug-free status  
12 is confirmed by a return to duty test. As part  
13 of its mission to improve safety and health  
14 conditions in mines, MSHA has proposed this rule  
15 to protect the safety of all miners from the  
16 dangers of alcohol or drug use at mines by  
17 prohibiting miners from using, possession or  
18 being under the influence of alcohol or drugs  
19 while performing safety-sensitive job duties.

20           Before I go further in discussing the  
21 proposal, I want to describe the role of the  
22 Department of Labor, Working Partners for an  
23 Alcohol and Drug-Free Workplace or I will refer  
24 to Working Partners in the development of this

25 proposal. Since the late '80s, Working Partners

1 has educated businesses about the impact  
2 of workplace substance abuse on productivity and  
3 safety and equipped them with tools and resources  
4 to address the problem. Working Partners  
5 provides consultation and assistance to all DOL  
6 or Department of Labor programs since workplace  
7 substance abuse affects many of the Department's  
8 policies and missions.

9 Working Partners has expertise in the  
10 development of five step drug-free workplace  
11 programs and has worked closely with MSHA to  
12 develop this proposal. The alcohol and drug test  
13 provisions will apply only to miners who perform  
14 safety-sensitive job duties under the proposal.

15 Under the proposal a safety-sensitive  
16 position is defined as a miner who is required to  
17 have comprehensive training under part 46 and 48,  
18 as applicable. Managers who supervise these  
19 miners are also considered to hold safety-  
20 sensitive positions under the proposal.  
21 Administrative personnel would be exempt from the  
22 proposal.

23 Under the proposal, mine operators  
24 would be required to establish an alcohol and

25 drug-free mine program that includes a written



1 policy. A mine's written policy could be  
2 tailored to the specific conditions at the mine.  
3 However, the policy must address the purpose of  
4 the policy, and contain a clear description of  
5 prohibited behavior.

6 The policy must outline the means  
7 including testing for determining if the policy  
8 has been violated including an explanation of the  
9 consequences for violating the policy and include  
10 requirements for training.

11 MSHA intends to assist mine operators  
12 in developing their policy by providing a sample  
13 template that can be used to address all required  
14 elements of the proposal. Operators can tailor  
15 the template to the specific needs and conditions  
16 of their mine. A mine operator must assure that  
17 every miner has been informed of the policy and  
18 the proposal would require that the policy be  
19 reviewed during training and made available upon  
20 request to miners and their representatives.

21 Each operator would be required to  
22 implement an education and awareness program for  
23 nonsupervisory miners to provide them with the  
24 information they need to fully understand and

25      comply with the proposal. Miners who are

1 required to take comprehensive training under  
2 existing Parts 46 and 48 would be required to  
3 take the training under the proposal. The  
4 proposal would require newly hired miners to  
5 receive 60 minutes of training before they are  
6 assigned to safety-sensitive job duties and  
7 nonsupervisory miners would be required to  
8 receive at least 30 minutes of annual retraining.

9 The proposal would require that time allotted for  
10 this training be added to the total number of  
11 hours required under existing part 46 or part 48  
12 so that there is sufficient time to cover all  
13 required training topics.

14 Operators would also be required to  
15 implement training programs for their supervisors  
16 and to make them aware of their responsibilities  
17 for assuring compliance with the proposal. Under  
18 the proposal, supervisors would have to receive  
19 at least two hours of initial training and one  
20 hour of training annually.

21 The proposal would require operators  
22 to make miners who voluntarily admit use of  
23 prohibited substances aware of available  
24 assistance through an employee or miner

25 assistance program, a substance abuse

1 professional or other qualified, community-based  
2 resources. Under the proposal, mine operators  
3 would be required to implement an alcohol and  
4 drug testing program that is valid, reliable, and  
5 protects the privacy and confidentiality of  
6 miners tested.

7 Mine operators would be required to  
8 follow the U.S. Department of Transportation or  
9 the DOT drug and alcohol testing requirements in  
10 49 CFR Code of Federal Regulations Part 40,  
11 Procedures for Transportation, Workplace Drug  
12 Testing Program.

13 Although operators would be  
14 responsible for implementing the testing program  
15 and making decisions as to when to test,  
16 consistent with DOT, mine operators may use  
17 qualified service agents to carry out the  
18 collection, laboratory analysis, and medical  
19 review and verification of test results.

20 Consistent with the DOT procedures,  
21 MSHA's proposal would require testing for alcohol  
22 and the following five controlled substances:

23 amphetamines, including meta amphetamines,  
24 cannabinoids, meaning marijuana or THC, cocaine,

25 opiates and PCP, phencyclidine. The proposal

1 also includes testing for barbiturates,  
2 benzodiazepines, methadone, propoxyphene, and  
3 synthetic and semi-synthetic opioids,  
4 specifically hydrocodone, hydromorphone,  
5 oxymorphone, and oxycodone and all of these drugs  
6 that are covered in the proposal and the proposal  
7 is on the Agency's website.

8                   And do we have copies of it here? We  
9 have copies of the proposal in the back of the  
10 room and we have copies in the back of the room  
11 for persons who are in attendance here.

12                   The proposal would allow operators to  
13 test for additional substances beyond those in  
14 the proposal and would allow the Secretary of  
15 Labor to add to the list of prohibited  
16 substances. Under the proposal, testing would be  
17 conducted in the following circumstances:  
18 preemployment, randomly at unannounced times,  
19 post-accident, if a miner may have contributed to  
20 the accident, based on a reasonable suspicion  
21 that a miner has used a prohibited substance,  
22 and as part of a return-to-duty process for  
23 miners who have violated the rule.

24                   Consistent with DOT procedures,

25 testing for drugs would be conducted using urine



1 as a specimen and alcohol testing would be  
2 conducted using a breathalyzer. However, unlike  
3 the DOT procedures that have a bifurcated  
4 standard, no actions to remove miners from work  
5 would be required unless the breathalyzer results  
6 showed that the blood alcohol content or the BAC  
7 level is .04 or greater and is deemed to be a  
8 positive test.

9 Under the proposal, miners who fail  
10 an alcohol or drug test would be removed from the  
11 performance of safety-sensitive job duties until  
12 they complete a return-to-duty process. During  
13 the time required to complete the process, the  
14 mine operator may, but would not be required to,  
15 assign the miner to nonsafety-sensitive job  
16 duties.

17 A miner found to be in violation of  
18 the alcohol and drug-free mine policy for the  
19 first time would be allowed to complete treatment  
20 under the proposal. If treatment is successfully  
21 completed and miners comply with the return-to-  
22 duty requirements, they would be allowed to resume  
23 safety-sensitive job duties. Operators would  
24 address the consequences for subsequent

25 violations at their discretion.

1                   The proposal would prohibit mine  
2 operators from taking adverse action affecting  
3 the miner prior to receiving verified test  
4 results.

5                   The Medical Review Officer or the MRO  
6 would be responsible for providing verified test  
7 results to the mine operator. The Medical Review  
8 Officer process would include determining whether  
9 a miner possesses a valid prescription for any  
10 prohibited substances and if so, whether the  
11 miner is using the substance in accordance with  
12 the prescription.

13                   Miners who have failed their test or  
14 refuse to submit to a test, would be prohibited  
15 from performing safety-sensitive job duties until  
16 they have been evaluated by an SAP and complied  
17 with the Substance Abuse Professional's  
18 recommendations for education and/or treatment.  
19 After completing the Substance Abuse  
20 Professional's recommendation, the miner would be  
21 reevaluated to determine whether the miner can  
22 return to performance of safety-sensitive duties.

23                   The proposal would require that  
24 operators maintain records related to alcohol and

25 drug testing. The DOT

1 regulations, require mine operators to use  
2 the OMB-approved alcohol test form and the  
3 controlled custody form to document the integrity  
4 and security of alcohol and drug tests.

5 MSHA has estimated the economic  
6 impact of the proposal and included discussions  
7 of the costs and benefits in the preamble, as  
8 well as in the preliminary regulatory impact  
9 analysis.

10 The Agency welcomes any comments that  
11 you have on the data and assumptions that the  
12 Agency used to develop the estimates of  
13 information collection and cost estimates and all  
14 other data assumptions that the Agency used in  
15 the proposal. As you provide your comments,  
16 please be as specific as possible and include  
17 with your comments your specific suggested  
18 alternatives if you have any, your suggested  
19 rationale for alternatives, and your suggestions  
20 with respect to safety and health benefits to  
21 miners and specific data to support your  
22 comments.

23 Please include any technological and  
24 economic feasibility information as appropriate.

25 The Agency will use this information to help

1 evaluate the requirements in the proposal.

2           As many of you know, the hearing will  
3 be conducted in an informal manner. Also, the  
4 Agency asks a number of specific questions in the  
5 proposal and as you provide your comments either  
6 today or before the record closes on November  
7 10th, we would like it if you would address the  
8 specific questions that the Agency included in  
9 the proposal.

10           With respect to today's hearing, it  
11 will be conducted in an informal manner. Formal  
12 rules of evidence and cross examination will not  
13 apply. The Panel may ask questions of the  
14 witnesses. The witnesses may ask questions of  
15 the Panel.

16           MSHA will make a verbatim transcript  
17 of the hearing available on the Agency's website  
18 within one week of the hearing.

19           If you wish to present written  
20 statements or information, please clearly  
21 identify your material and give it to the Court  
22 Reporter or a Designated Agency Representative at  
23 one of the designated locations.

24           You may submit comments following the

25 hearing and as I said earlier, the last date for



1 submitting commits, November 10th, and I will  
2 reiterate again midnight Eastern Daylight Savings  
3 Time.

4 We will now begin today's hearing and  
5 as you come to the microphone please begin by  
6 clearly stating your name and your organization  
7 and I would ask if you would spell your name so  
8 that the Court Reporter will have an accurate  
9 record.

10 At this point we will begin today's  
11 hearing and we will first hear from Dan Kane,  
12 Secretary-Treasurer of the United Mine Workers of  
13 America and Linda Raisovich-Parons.

14 So United Mine Workers of America.

15 MR. KANE: Good morning. My name is  
16 Dan Kane. I'm Secretary-Treasurer of the UMWA.  
17 Kane is spelled K-A-N-E.

18 I don't have a prepared text this  
19 morning to give you, but I would like to raise a  
20 couple of really important points and I'd like to  
21 start by strongly encouraging the Agency to  
22 return to the practice of holding hearings  
23 throughout the field in person. I think it makes  
24 it much easier for rank-and-file miners to

25 participate and bring their particular point of

1 view to the rulemaking process.

2 I'm told that there were a number of  
3 miners from Pennsylvania who wanted to testify  
4 today, but they couldn't get to Beckley, West  
5 Virginia and back in time to go to work this  
6 afternoon. And I think their voices need to be  
7 heard. I think what we've done in the past has  
8 served us much better. I think we need to return  
9 to that forum for rulemaking.

10 I'd like to begin by saying that  
11 MSHA's commentary presents this proposed rule as  
12 an urgent need, but it provides no statistical  
13 data to prove that alcohol and drug use in the  
14 mining industry is attributed to accidents and  
15 injuries. The Department of Labor internal  
16 review of injury and accident reports referred to  
17 in the preamble of this rule revealed only a  
18 number of instances where drugs or drug  
19 paraphernalia were found. Whether the miner was  
20 impaired or whether drugs or alcohol contributed  
21 to any accident was not addressed. This is not a  
22 sound basis for this rule.

23 The majority of the coal industry,  
24 about 80 percent, already has drug testing

25 programs in place that have been used for many

1 years. Furthermore, some states like Virginia  
2 and Kentucky, also have regulations governing  
3 alcohol and drug testing. Nearly four out of  
4 five workers in the coal industry are already  
5 subjected to preemployment drug and alcohol  
6 testing.

7           In addition, three quarters of those  
8 working in the mining industry are randomly  
9 tested which is more than double the reported all  
10 industry average. In spite of the frequency of  
11 such testing, neither MSHA nor the mine operators  
12 shows any demonstrated benefit. Apparently,  
13 neither do they see a need for showing any  
14 benefit.

15           UMWA fails to see the urgent need for  
16 these regulations. Statistical data for mining  
17 accidents injuries does not support that there is  
18 a significant enough problem in this area to  
19 justify spending Government resources to  
20 duplicate what the industry is already doing.  
21 Instead, among other well-documented problems,  
22 the Agency should be using these tax payers'  
23 dollars to promulgate improved dust controlled  
24 standards. Data published by NIOSH shows that

25 black lung is once again on the rise and the use

1 of Government resources for a proven problem area  
2 would be far more productive and save more lives.

3           Neither drugs nor alcohol were  
4 involved in any of the recent major disasters.  
5 Instead, those miners died as a result of the  
6 actions of mine management and MSHA itself. For  
7 the Agency to try to deflect focus away from  
8 their own culpability in the death of these  
9 miners by proposing rules to blame the miner,  
10 when there is no evidence to support the need for  
11 such rule is unethical.

12           Miners are tested following  
13 accidents. So should mine management, especially  
14 when they are shown to be at fault. The proposal  
15 would also exclude administrative and clerical  
16 personnel from the drug testing requirement.  
17 These workers do drive on mine property. They  
18 often go underground to deliver supplies and  
19 usually purchase supplies. We have seen the  
20 disastrous effects of incompatible fittings on  
21 fire hoses at Aracoma. Why should they be  
22 exempt? Miners would be subject to their comings  
23 and goings on mine property.

24           Further, the proposal does not make

25 clear who will be responsible for the testing of



1 contract workers on mine property or even if  
2 contract workers must be tested. Mine operators  
3 have historically taken a hands off approach to  
4 contractors, accepting no responsibility for  
5 these employees. The rule must make clear that  
6 the mine operators are responsible for these  
7 employees, if they are hired to perform work on  
8 mine property. Eight of the 24 fatal accidents  
9 to this date had been the employees of  
10 contractors.

11 The rule is not clear on which  
12 supervisors would be included in the testing or  
13 how they will be supervised. If a miner suspects  
14 his supervisor is under the influence of alcohol  
15 or drugs, who would he report this to? Would the  
16 miner then have the same right to require that  
17 his supervisor be tested for reasonable  
18 suspicion? The manner in which the proposal is  
19 written only subjects miner to random and  
20 reasonable suspicion testing when in fact  
21 supervisors are often alcohol and drug users.

22 In the State of Kentucky, 40  
23 certified mine foremen were reported for drug or  
24 alcohol violations. Of those 40, 4 were

25 rescinded, and 36 have had their certification

1 suspended. The proposal must be revised to allow  
2 any person to reasonably suspect drug or alcohol  
3 used by an employee on the property, including  
4 supervisors and provide for oversight in the form  
5 of a second opinion.

6 As proposed, miners would have no  
7 recourse if they suspect a supervisor of drug or  
8 alcohol abuse.

9 The union also recommends that in  
10 lieu of a substance abuse professional that a  
11 licensed mental health professional be required  
12 to evaluate miners who have violated a mine  
13 operator's alcohol and drug testing program.  
14 Alcohol and drug addiction are recognized mental  
15 disorders and should be treated by a licensed  
16 mental health professional. The loyalty of those  
17 providing assistance should be to the miner and  
18 should not be a part of any procedure that could  
19 lead to disciplinary action.

20 This substance abuse professional,  
21 their location should be convenient, just as the  
22 chest x-ray facility is required to be  
23 conveniently located for the chest x-ray  
24 surveillance program. It does no good to have

25 these located at long distances from where the

1 need is.

2 Services provided by the SAP should  
3 also be covered by the miner's health insurance  
4 plan or paid directly by the mine operator.

5 Another problem is the term "under the

6 influence." I believe it's defined incorrectly  
7 to include a positive urine test for drug  
8 metabolites. It's well recognized that a

9 positive urine test for drugs or metabolites is  
10 only an indicator of previous use that's previous  
11 to the test. And it is not an indicator of being  
12 influenced or impaired by the drug.

13 The proposed rule again would  
14 incorporate alcohol and drug awareness training  
15 into part 48 training. The union believes that  
16 part 48 training is currently overloaded with  
17 every new training requirement that has been  
18 promulgated in recent years. Such training  
19 should not be crammed into the part 48 training.

20 The Agency has proposed that  
21 supervisors be trained to be the frontline level  
22 of detection for alcohol and drug use among  
23 miners. The supervisors will receive a minimum  
24 of two hours of initial training and an

25 additional one hour annually. The union

1 questions whether a two-hour canned training  
2 presentation would qualify anyone to recognize  
3 and deal with such a sensitive issue.

4 Further, as raised before, who would  
5 be authorized to recognize and deal with a  
6 supervisor who has an alcohol and drug problem?

7 As the proposal is written, that  
8 authority is granted only to the supervisors to  
9 test miners. Under the alcohol drug program in  
10 the State of Kentucky, 36 persons holding mine  
11 foremen certifications have had their  
12 certifications rescinded for a positive test.

13 This problem is not exclusive to miners and the  
14 rule should be rewritten to reflect this.

15 The union questions the availability  
16 of substance abuse assistance programs to the  
17 rural coal field communities. If a miner is to  
18 participate in such a program, in reality, they  
19 are going to have to travel many miles to gain  
20 access to assistance. If substance abuse  
21 programs are to be successful, they must be  
22 easily accessible to rural mining communities.

23 The union would ask that the Agency take a survey  
24 of what programs are available and that their

25 locations to supply as a resource to the mining



1 community.

2           Further, the rule requires the use of  
3 certified facilities and agents under the HHS and  
4 DOT. When one examines those laboratories  
5 certified under HHS, none are listed as being  
6 located in the major coal states such as West  
7 Virginia, Illinois, or Kentucky. If specimens  
8 are transported great distances to other states,  
9 to reach a certified HHS lab, would exposure to  
10 conditions of transport affect the outcomes of  
11 the tests? We don't know. The union would not  
12 object to post-accident survivors being tested  
13 for alcohol or drugs. However, we feel that it  
14 is unethical to test deceased miners without  
15 permission of the next of kin.

16           We question whether anyone should be  
17 authorized to do such an invasive test without  
18 the victim's family's permission. To propose  
19 such a thing as this intrusion at the time  
20 family's grief is unethical and immoral.

21           Most would agree that testing for  
22 reasonable suspicion is a useful tool. However,  
23 anybody that works in a mine can have problems  
24 with drugs or alcohol and this includes

25 supervisors. Therefore, again, anyone should be

1 able to suggest testing for reasonable suspicion,  
2 including the miners.

3           We would also like to point out that  
4 we think it's extremely important that the  
5 miner's job would be protected. This proposed  
6 rule only protects the miners after the first  
7 positive test. Apparently thereafter, for the  
8 miner's lifetime his fate is in the hands of his  
9 employer. The union would recommend that any  
10 person in recovery for drug or alcohol addiction  
11 be kept out of harm's way in an alternate non-  
12 safety-sensitive position until they are reformed  
13 and ready to come back to their former job. A  
14 person who is honestly trying to rehabilitate  
15 himself should be encouraged, not punished. A  
16 person who is in rehabilitation is most likely to  
17 fail in the initial stages of his or her  
18 recovery, therefore they should be provided  
19 adequate time and chances to get their life in  
20 order.

21           Addiction is a serious social and  
22 medical problem which should be dealt with  
23 compassionately. If a miner tests positive and  
24 for any reason goes to work for another operator,

25 any positive tests while working for that second

1 operator should be treated as the first positive  
2 test for that operator. And after the miner's  
3 first positive test, this proposed rule is  
4 unclear about their fate. Again, it's in the  
5 miner's hands.

6 We would recommend that the follow-up  
7 testing period be used as a recovery period for  
8 the miner. He or she should not be faced with  
9 losing their job while on the long road to the  
10 recovery. Follow-up testing period recommends  
11 six unannounced tests in the first 12 months and  
12 continuing for a maximum 24 months. The miner  
13 should be placed in a non-safety-sensitive  
14 position and while he or she is on the road to  
15 recovery.

16 Again, I'd like to point out two  
17 important things and first is that we do need to  
18 return to the idea of holding in the field face-  
19 to-face hearings. I think it's much more  
20 effective than talking to somebody on the  
21 telephone. And secondly, I would like to also  
22 point out again that it's important that we use  
23 Government resources and target them at the most  
24 seriously demonstrated problems in the industry.

25 We've had a number of tragedies over the past few

1 years with no statistical demonstration that  
2 drugs or alcohol contributed. Let's focus our  
3 resources on those particular problems.

4 And I would like to leave you with  
5 the observation that we're seeing a new rise in  
6 black lung in this industry. It seems like  
7 younger miners coming in now are being subjected  
8 to more dust, finer dust and I don't want to see  
9 another generation suffer from the ravages of  
10 black lung. Clearly, the law isn't working in  
11 that area as it should be, so either regulations  
12 are not being enforced or they're inadequate.

13 I'd like to see you point your efforts at  
14 something like that.

15 Thank you very much.

16 MS. SILVEY: Thank you, Mr. Kane.

17 MS. RAISOVICH-PARSONS: Good morning.

18 My name is Linda Raisovich-Parsons. That's R-A-  
19 I-S-O-V-I-C-H hyphen P-A-R-S-O-N-S. And I serve  
20 as the Deputy Administrator for the UMWA  
21 Department of Occupational Health and Safety.

22 I should begin by saying that the  
23 UMWA is troubled by the manner in which MSHA has  
24 accelerated the rulemaking pace on this

25 particular rule. I have worked in the UMWA



1 Department of Occupational Health and Safety off  
2 and on for over 25 years. Part of the experience  
3 has been in a role which monitored and  
4 participated in MSHA's rulemaking since 1983. In  
5 that 25 years, I have had no recollection of any  
6 rule that was provided a mere 30-day comment  
7 period with a hasty one-day hearing conducted  
8 from multiple sites as was the case on October  
9 14th.

10 Today, we are here with a three  
11 working day notice of this hearing which again is  
12 cramming three sites into one hearing. How could  
13 the Agency expect anyone to adequately prepare  
14 and respond to the three-day notice?

15 Even with such a ridiculous short  
16 notice, the UMWA was able to rally our members  
17 and respond with a number of participants at each  
18 hearing site. I just hope their efforts have not  
19 been in vain and today they are not turned away  
20 without the opportunity to have their say.

21 MSHA generally asks the public to  
22 provide a five-day notice of their desire to  
23 testimony before any public hearing. In this  
24 case, MSHA only provided the public with a three-

25 day notice of this hearing, so providing MSHA

1 with a five-day notice of our desire to testify  
2 was impossible.

3 The bottom line is the Agency has  
4 filed to follow their established practice of  
5 providing sufficient time for commenting on this  
6 rule and sufficient advance notice of hearing.

7 In addition, they have abandoned their practice  
8 of scheduling multiple days for hearings in

9 different locations throughout the coal field.

10 The jamming of different hearing  
11 sites into one single day is illogical,  
12 irresponsible, and has never been done on any  
13 other rulemaking that I can recall.

14 I hope it is not the case, but today  
15 we are most likely to see a repeat performance of  
16 October 14th.

17 Many of our members have come to  
18 testify today after working the midnight shift at  
19 the mine. I hope that the Agency shows them the  
20 courtesy to be the first to testify so they can  
21 go home and get some sleep for their next  
22 scheduled shift.

23 Since so many of our miners are here  
24 today to testify I will keep my comments short so

25 MSHA can hear from those who would be most

1 directly affected by this new rule.

2           In reviewing the proposed rule, I  
3 must say that the most frustrating fact is that  
4 MSHA provided no data to substantiate such an  
5 urgent need for this rulemaking. There is no  
6 evidence that alcohol or drug use has  
7 significantly contributed to mining injuries or  
8 fatalities or is on the rise.

9           The UMWA does not support the  
10 Agency's actions in proposing this rule. We do  
11 not want anyone who is under the influence of  
12 drugs or alcohol working in mines, nor do our  
13 members want to work next to them because their  
14 lives are jeopardized. However, we do not  
15 believe this is as great a problem as has been  
16 portrayed by the Agency. UMWA has worked with  
17 dozens of our employers to implement drug and  
18 alcohol testing programs we can all live with  
19 because we remain committed to providing the safest  
20 and healthiest environment for our miners. In  
21 fact, some of those programs have been in place  
22 for over 20 years now. These programs have been  
23 successful in minimizing this problem, so why has  
24 MSHA chosen to pursue this rule with such

25 vigilance when other legitimate health and safety

1 issues are neglected?

2 The Agency's resources would be  
3 better spent on such issues as pursuing better  
4 control of respirable dust at a time when black  
5 lung cases are on the increase among our miners.

6 After reviewing the proposed rule, I  
7 guess the one issue that irritated me the most is  
8 that the rule is completely written for the  
9 supervisors' oversight of the miners for  
10 suspected drug or alcohol abuse. The supervisors  
11 are provided additional training to recognize  
12 signs of alcohol or drug use among the miners. I  
13 question who will be watching the supervisors.  
14 This leads you to think that drug and alcohol use  
15 is exclusive to miners? I think not.

16 Supervisors are charged with many  
17 responsibilities in the day-to-day operation of  
18 the mine. Many may have turned to substance  
19 abuse as a means of dealing with those stresses.  
20 If a miner suspects the supervisor is under the  
21 influence who would he report it to? Would the  
22 miner have the same right to have a supervisor  
23 tested for reasonable suspicion?

24 The manner in which the proposal is

25 written only subjects miners to random and



1 reasonable suspicion testing when in fact  
2 supervisors are often alcohol and drug users.  
3           The proven point is the fact that 40  
4 certified mine foremen in the State of Kentucky  
5 which has a drug and alcohol law in place has  
6 been reported for drug and alcohol abuse  
7 violations. Of those 40, 4 charges were  
8 rescinded; 36 had their certificates suspended by  
9 the state. The proposal must be revised so allow  
10 any person to reasonably suspect drug or alcohol  
11 use by any employee, including supervisors and  
12 provide a means to have those persons subjected  
13 to the same testing. With that, I'll shut up and  
14 let the miners who have come here to testify  
15 today have their say.

16           MS. SILVEY: Thank you. Before we go  
17 to Birmingham, I'd like to make just two  
18 comments, Mr. Kane and Ms. Parsons.

19           And the first is with respect to the  
20 scope of the rule, the coverage of who is  
21 included in the rule, in the -- we pointed out  
22 that the rule covers miners who perform safety-  
23 sensitive job duties and the persons who  
24 supervise them. So we therefore made it very

25 clear. Now when you say very clear, you can

1 always probably make things clearer, but we made  
2 it very clear that management and that disclosed  
3 to both of the comments that you both made.  
4 Management and administrative personnel who  
5 supervise persons performing safety-sensitive job  
6 duties are considered to perform safety-sensitive  
7 job duties. So throughout the rule and the  
8 preamble, the term miner is used to include such  
9 supervisors. So therefore, supervisors, persons  
10 who supervise miners who perform safety-sensitive  
11 job duties would be covered under the proposal.  
12 That's one thing I want to make clear.

13           The second thing I want to say is  
14 that with respect to the training, while we said  
15 that training would be under part 46 or part 48  
16 -- in the case of the coal industry it would be  
17 under part 48, why we said that the training  
18 would come under either one of those parts. We  
19 did say that the training required had to be in  
20 addition to the existing training that is  
21 required under part 46 or part 58. So that one  
22 hour of training, initial training, and 30  
23 minutes of training for miners, retraining, would  
24 have to be added on to the training that's

25 required under the existing rule because we

1 recognize and we've got that comment before that  
2 person tell us so much is put into part 48. So  
3 we specifically said that that had to be  
4 additional training.

5 So those are the only two things that

6 I just wanted to clarify and we appreciate your  
7 comments. Does anybody else have anything?

8 MR. ARRINGTON: I have a question for

9 Mr. Kane. In your comments you said that 80  
10 percent of the miners out there already have  
11 testing programs and 75 percent of the miners  
12 have already been tested? Question is what

13 research information did you get that and two,  
14 did you include surface mines with the  
15 underground?

16 MR. KANE: I got that from our  
17 Department of Occupational Health and Safety. We  
18 included all operations. We've worked with a  
19 number of companies to make sure that when they  
20 implement testing programs that they are  
21 effective and they respect the rights of the  
22 miners.

23 MR. ARRINGTON: Surface and  
24 underground?

MR. KANE: It's my understanding,

1     yes.

2                   MR. ARRINGTON:  Thank you.

3                   MS. SILVEY:  Thank you very much.

4     We will now, as I stated earlier, we will now go  
5     to Birmingham, Alabama so we will start with our  
6     first witness in Birmingham and when you come to  
7     the mic if you would please state your name and  
8     spell your name for the reporter.

9                   Are we at Birmingham?

10                  BIRMINGHAM:  Yes.

11                  MS. SILVEY:  Okay, thank you.

12                  (Pause.)

13                  First speaker?

14                  BIRMINGHAM:  He's out of the room  
15     right now.

16                  MS. SILVEY:  Okay.

17                  (Pause.)

18                  BIRMINGHAM:  Hello, are you ready for  
19     Birmingham?

20                  MS. SILVEY:  I'm ready for  
21     Birmingham.

22                  BIRMINGHAM:  Did you get my list?

23                  MS. SILVEY:  Bring the first speaker  
24     to the mic, please.

BIRMINGHAM: Okay.



1 MS. SILVEY: Thank you.

2 BIRMINGHAM: If you'll get ready to  
3 come on down. Jimmy Starns, Randy Wideman, Dale  
4 Byram, Daryl Dewberry.

5 MS. SILVEY: I have your list. Just  
6 bring the first speaker to the phone, please.

7 BIRMINGHAM: He's coming and we have  
8 some more that we haven't faxed, so I'll just go  
9 ahead and compile them?

10 MS. SILVEY: I'll get them from  
11 there. Okay, when I run out of the names, then  
12 I'll just call the next speaker, okay?

13 Will the first speaker come to the  
14 mic, please?

15 MR. CALLIES: Good morning. My name  
16 is Danny Callies, C-A-L-L-I-E-S. I'm the  
17 Corporate Safety Director for G & R Mineral  
18 Services. We're a union contractor working on  
19 mine sites. I'm also the president of the  
20 Central Alabama Joseph A. Holmes Safety  
21 Association and don't have a prepared statement,  
22 but a few things I do want to talk about.

23 So far this morning I have not heard  
24 anything about contractors. We do work on mine

25 sites and the problem, if someone tests positive,

1 as far as holding their jobs, most of our jobs  
2 are 7 to 14 to 21 days. The job would be over  
3 and we'd move on to another site. We get our  
4 gentleman from the local unions, iron workers and  
5 the operators/engineers. We also have steel  
6 workers and boilermakers.

7 My biggest concern is first of all  
8 all the unions that we have dealt with have drug  
9 policies. All the mine operators we have dealt  
10 with have had drug policies. Every contractor  
11 that I know of has drug policies and I do not see  
12 the need for the Federal Government to come up  
13 with some more regulations. That's my biggest  
14 concern.

15 I don't think we need more  
16 regulations. I think the unions themselves need  
17 to police themselves. Now I am not naive enough  
18 to hear because I know for a fact we've had four  
19 or five injuries of employees that have tested  
20 positive for alcohol or drugs. So to say that  
21 because no one has died in the depths that no one  
22 has tested positive. There are thousands and  
23 thousands of people getting hurt on the job that  
24 do test positive. And so I think there is a

25    need, but I don't think that should be the

1 Federal Government. I think that should be the  
2 companies themselves that police themselves, the  
3 strong unions. They're there to protect the  
4 miners. So I have a problem.

5           Also, as far as the businesses are  
6 concerned, I don't have a problem with an  
7 employee comes to us and says hey, I got a  
8 problem with drugs or alcohol. I need some help.

9 And as long as he pays for it himself, I don't  
10 have a problem with it. If it's in his medical  
11 insurance, that's great. But a small contractor  
12 or contractor can't afford to pay for rehab for  
13 an individual who's been on the job -- sometimes  
14 we get them out of the hall. They work a seven-  
15 day job and now we're going to be putting them  
16 through rehab. I don't think that's the  
17 employer's role. That's the employee's role.

18           And once the employee is hurt, once a  
19 miner is hurt, that's his responsibility to take  
20 responsibility for the action that he tested  
21 positive and could have killed fellow workers.  
22 So I don't have much sympathy when someone tests  
23 positive after an accident. I just want everyone  
24 to realize that there are a lot of people out

25    there, there are a lot of rules, there are a lot

1 of regulations and I don't think the Federal  
2 Government needs to regulate on drug testing.

3 As I said, every site that G & R has  
4 been on, we have had to prove our policy and show  
5 our policy. And the International Ironworkers  
6 and the Boilermakers and Steel workers and the  
7 miners in the coal industry, we all have  
8 standards and we all have testing. If one of the  
9 local unions aren't enforcing it, shame on them.  
10 But I don't think the Federal Government needs to  
11 take any more action than what we already have.  
12 Protect the miners and that means everyone of  
13 site. That means everyone on site.

14 When we do random testing, it's the  
15 president of the company, it's the secretary.  
16 Because the number one killer in the workplace,  
17 the number one killer in the workplace is  
18 transportation, going to work, working during the  
19 day, running to the Post Office. That's the  
20 killer. It's not mine disasters. So everyone  
21 should be tested, not just the miner. Thank you.

22 MS. SILVEY: Thank you. Let me ask  
23 you a few questions for clarification, please.  
24 You mentioned a couple of things.

MR. CALLIES: Yes, ma'am.



1                   MS. SILVEY: You mentioned we have to  
2 prove our policy when you go on the work site.  
3 First you mentioned that, that most of your jobs  
4 are 7 to 21 days. I understand that, but you  
5 said we have to prove our policy, show our  
6 policy. Now when you say "our policy" what  
7 policy are you talking about?

8                   MR. CALLIES: G & R's drug and  
9 alcohol policy.

10                  MS. SILVEY: So you have a policy, G  
11 & R has a policy?

12                  MR. CALLIES: Yes, ma'am. I will  
13 tell you that every contractor that I know of and  
14 there's several in our association, but any time  
15 we do work on a mine site, that is part of the  
16 safety prequalification, do you have it? So it's  
17 being asked of all the contractors.

18                  MS. SILVEY: Okay, now let me just  
19 ask you another thing then. So I assume that  
20 your policy has some type of drug testing  
21 component, right?

22                  MR. CALLIES: Yes, ma'am.

23                  MS. SILVEY: Okay, who does the drug  
24 testing under your policy?

MR. CALLIES: We do.

1 MS. SILVEY: G & R does?

2 MR. CALLIES: G & R does, except for  
3 when there's an accident or if we have a  
4 nonnegative. That's a political term for  
5 positive. If we have a positive test, we will  
6 take that miner, that employee to a special  
7 center and have him tested or her tested so that  
8 we do not -- we are not in the habit of firing  
9 people over a test that could be wrong. So we've  
10 got to be careful when we give drug tests because  
11 sometimes these tests are not correct. And so we  
12 take the extra measure of sending a person for  
13 that second test to make sure that that  
14 determination is true, that test result is true.

15 MS. SILVEY: Okay, like you said,  
16 when you say "we" you mean G & R?

17 MR. CALLIES: I'm talking about G &  
18 R. I'm not talking about the Joseph A. Holmes  
19 Safety Association.

20 MS. SILVEY: I understand. Okay.  
21 How -- what kind of experience do you have under  
22 your policy?

23 How often have you had to -- I don't  
24 know what I want -- how often have you had to --

25 for an example, test somebody after an accident,

1 hypothetically?

2 MR. CALLIES: After -- 100 percent  
3 after every accident we've had and in the last  
4 two years we've had four people test positive.

5 MS. SILVEY: You have?

6 MR. CALLIES: Yes, ma'am.

7 MS. SILVEY: And what about do you  
8 have a certain percentage of people who are

9 randomly tested?

10 MR. CALLIES: Yes, ma'am.

11 MS. SILVEY: And what's that  
12 percentage?

13 MR. CALLIES: Well, ours is a little  
14 bit unique. If someone comes on our site out of  
15 the local, we test them. That's our random and  
16 our random for our other employees is once a  
17 month we go out to the jobsite and we test I  
18 would say 20 percent.

19 MS. SILVEY: Okay. I just sort of  
20 wanted to get a little understanding of how your  
21 policy worked.

22 MR. CALLIES: Yes, ma'am. And when  
23 someone tests positive, they are removed from the  
24 site, not just the work site. They are removed

25 from G & R's policy for 30 days and then we'll

1 take some drug tests and the second time, they're  
2 removed permanently and what we're doing is we're  
3 working with the local unions so that they  
4 enforce it, not that they send them from one  
5 jobsite to another union jobsite. If he's  
6 positive with G & R. He's positive for Drummond  
7 Coal, so we don't need anyone positive working on  
8 site.

9 MS. SILVEY: Okay. I appreciate your  
10 providing us that information.

11 MR. CALLIES: Thank you, ma'am.

12 MS. SILVEY: Okay, thank you. We  
13 will next hear from on my list I have Jimmy  
14 Starns.

15 MR. STARNES: Jimmy Starns.

16 MS. SILVEY: Jimmy Starns, right.  
17 Okay, sir. You're next. Local 1926 North River.

18 MR. STARNES: Yes, ma'am. I am Jim  
19 Starns, a safety committeeman from Local Union  
20 1926, District 20. I have more comments, I  
21 guess, more than questions.

22 We disagree with the type of forum  
23 that you're holding. We've been to the last  
24 couple and we disagree with them. We'd like to

25 see people sitting in front of us talking to us



1     instead of over an intercom. We get a better

2     feel of what's going on in the conference.

3                 We also feel that the contractors

4     that we have come on to our mines should be

5     tested immediately prior to them coming on site

6     instead of having a slip from their employer

7     saying that they had been drug tested two months

8     ago or whatever, because as the previous guy

9     said, they keep them for a short period of time

10    and they could have a drug test two months ago.

11    They could fall off the wagon and get right back

12    on the drugs and come to our mines and do

13    something that will hurt some of our individuals

14    at our local. We don't like that.

15                 The training of the supervisors, we

16    feel that -- some of us feel that if you don't

17    train these people they need to be trained by a

18    competent person that's already in the field with

19    several credentials behind themselves to train

20    and not just train just the supervisors for two

21    hours.

22                 I think all individuals in the coal

23    mine that's working in a coal mine should be sent

24    to this training. It should be at least -- no

25 less than eight hours because there's a lot of

1 things out there people can hide drugs with.

2 They can do different things. It really goes  
3 into a lot of detail. And two hours is not going  
4 to give a man or an individual much time to  
5 accept what kind of training he's going to have  
6 to have.

7 We also don't think that it should be  
8 put in part 48 due to the fact that part 48 is  
9 already jammed full of everything and you got  
10 time frames of 15 minutes to 2 hours, you work on  
11 one certain thing. It's already full and we  
12 don't think it should be pushing part 48.

13 We do agree with drug testing. We do  
14 want people drug tested. Contractors,  
15 supervisors, our own people, our own local  
16 people. We're all doing a dangerous job. The  
17 safety-sensitive part, we feel, my company feels  
18 that all jobs underground are safety-sensitive.  
19 There's not one person on site that shouldn't be  
20 a safety-sensitive job. If a man or lady has got  
21 a problem with drugs, they ought to be sent to  
22 rehab and try and get this problem of their's  
23 resolved.

24 Ma'am, that's all I've got to say.

MS. SILVEY: Okay, thank you, sir. I

1 would only add one thing and you've heard me say  
2 it earlier today and that is with respect to the  
3 training you said you don't agree that it should  
4 be in part 48. And I want to reiterate to  
5 everybody, here and in every location why we put  
6 it in part 48.

7 We put the requirement there so that the  
8 amount of time had to be added to what is  
9 required currently in part 48, so it had to be in  
10 addition, not jammed into what's in part 48 right  
11 now. But there may be some way that we need to  
12 look at that and make it clear because I'm  
13 getting this comment from everybody that this  
14 training that we said that miners have to have in  
15 here, miners and their supervisors, is not  
16 training that has to be jammed into the current  
17 training, but in addition to the current  
18 training. So I just wanted to say that.

19 Next -- and thank you very much for  
20 your comments.

21 Next we'll have Dale Byram with Joe  
22 Weldon.

23 Dale? I'm sorry, thank you very  
24 much. Next is Randy Wideman who is with Local

25 1948, Shoal Creek.

1 Randy Wideman.

2 MR. WIDEMAN: Yes, ma'am.

3 MS. SILVEY: How are you?

4 MR. WIDEMAN: My name is Randy

5 Wideman, W-I-D-E-M-A-N. I'm on the Mine

6 Committee at Drummond Company's Shoal Creek Mine

7 near Birmingham, Alabama.

8 I haven't had time to dissect this

9 document, but I've read through it briefly and I

10 found three or four areas that concerns me

11 greatly.

12 Due to time constraints I'll just

13 address the one issue. If you'll be so kind to

14 turn --

15 MS. SILVEY: Hello?

16 (Pause while teleconference is

17 reconnected.)

18 MS. SILVEY: Do we have Birmingham

19 again?

20 MR. BAILEY: You've got Ken Bailey at

21 Lehigh Cement who is just joining in on the

22 conference. I'm at the location in my office.

23 MS. SILVEY: No, okay -- I -- do we

24 have Birmingham?

BIRMINGHAM: We're back on the line.



1 MS. SILVEY: Did you all know that  
2 you -- did you recognize that you had  
3 disconnected the phone?

4 BIRMINGHAM: No, we didn't.

5 MS. SILVEY: You didn't. So can I  
6 please ask and please just indulge with me,  
7 please. If you pay attention to the phone  
8 wherever you are, I don't know where the phone is  
9 in location to the speaker, and I'll say this for  
10 everybody who can hear in Virginia, Minnesota, as  
11 well as Beckley, West Virginia, if you would  
12 please pay attention to where you are with  
13 respect to the phone and do the best you can in  
14 terms of the disconnection.

15 We disconnected with Mr. Wideman, I  
16 believe. And I think we disconnected Mr. Wideman  
17 right at the beginning of your testimony.

18 Did you continue?

19 MR. WIDEMAN: Yes, ma'am. I'll start  
20 from the beginning.

21 MS. SILVEY: I think you need to  
22 start from the beginning.

23 Thank you. So we will continue with  
24 Mr. Wideman.

MR. WIDEMAN: I didn't have time to

1 study this document, but I did go over it briefly  
2 and found several things of concern. Due to time  
3 constraints, I'll get right to it.

4 The first part that concerns me is if  
5 you'll turn to page 52146, section 66.300,

6 purpose and scope. I'll be reading from the  
7 third column, top of the page.

8 "MSHA is offering mine operators the  
9 option to use service agents to perform the  
10 functions required by this subpart including  
11 services for collection of urine specimens, a  
12 certified breath alcohol technician, a  
13 laboratory, a medical review officer, and a  
14 substance abuse professional. The proposed rule  
15 includes definitions for the various types of  
16 service agents."

17 And if you will, please turn to page  
18 52158, subpart A66.3 are definitions. I'll be  
19 reading from the lefthand column, top of the  
20 page.

21 The definition of a medical review  
22 officer. "A medical review officer is a licensed  
23 physician who is responsible for receiving and  
24 reviewing laboratory results generated by mine

25 operators' drug testing program and evaluating

1 medical explanations for certain drug test  
2 results. An MRO can be an employee of the mine  
3 operator or a service agent." I'd like you to  
4 keep that in mind as we go on.

5           If you will, turn back to page 52150,  
6 Section 66.402. First column, bottom of the  
7 page. "Substantiating legitimate use of  
8 otherwise prohibited substances." This section  
9 states that "it is up to the mine operator to  
10 make sure that miners have ample opportunity to  
11 demonstrate that any use of a prohibited  
12 substance has been authorized by a physician. It  
13 further specifies that the possession of a valid  
14 prescription alone is not sufficient proof of  
15 legitimate use. This provision allows the miner  
16 an opportunity to provide evidence that the  
17 prohibited substance has been legitimately  
18 prescribed and allows the MRO to conduct the  
19 medical interview of each miner following a  
20 confirmed positive test." Now it looks to me  
21 like you're saying that if I've got a legitimate  
22 prescription, you're now declaring this a  
23 positive test instead of a negative test.

24           It also says that the MRO company

25     employee may review the miner's medical history,

1 circumventing the HIPAA law and now consider not  
2 only the possession of a valid prescription, but  
3 any other relevant biomedical factors presented  
4 by the miner.

5 "The MRO may also direct miners to  
6 undergo further medical evaluation and/or contact  
7 the miner's physician or other relevant personnel  
8 for further information." They're going to allow  
9 the company employee to overrule my doctor of 20  
10 years and allow further evaluation on account of  
11 him prescribing pain medication, let's say. This  
12 looks to me like not only are you circumventing  
13 the HIPAA law, but you're opening the door for  
14 age discrimination. Any miner that's been in the  
15 industry very long has been injured in some  
16 shape, form, or fashion. I'd say 90 percent.  
17 What you're doing here is allowing them to -- if  
18 they become a liability to the company's  
19 insurance which our company is self-insured. If  
20 we become a liability to their insurance, they're  
21 going to put us through this ringer directed by  
22 an MRO who is an employee of the company who can  
23 overrule my personal doctor of 20 years and since  
24 you all have determined this is a positive test

25 now, I'm not going to get paid through this whole



1 process.

2           Before, if it was a negative test  
3 which usually a prescribed drug is, if it's being  
4 followed by the prescription, is usually negative  
5 test. Now you've determined it's a positive  
6 test. The company don't have to pay us for being  
7 off for a positive test result. They're going to  
8 be able to drag us around months on account  
9 they're wanting to get rid of somebody who is  
10 determined to be a liability to the company, now  
11 too much of an insurance call. He had a rock  
12 fall on him and hurt his back.

13           I'm not going to -- I'll leave this  
14 to some more people, but this really is  
15 disturbing so say the least. This is giving  
16 them, you all are giving them powers that I don't  
17 think you can and we may can win this in a court  
18 of law. It's going to cost us tens of thousands  
19 of dollars for each miner that they submit to --  
20 this is really disturbing. Thank you.

21           MS. SILVEY: Thank you, Mr. Wideman.

22           MR. WIDEMAN: Yes, ma'am.

23           MS. SILVEY: Thank you very much for  
24 your comments. We will be looking at that. I

25 appreciate it very much.

1                   Our next speaker will be Dale Byram.

2           Jim Walter Resources.

3                   Mr. Byram.

4                   MR. BYRUM: Good morning.

5                   MS. SILVEY: Good morning.

6                   MR. BYRAM: My name is Dale Byram and  
7 I'm with Jim Walter Resources in Brookwood,  
8 Alabama.

9                   Jim Walter Resources supports an  
10 alcohol and drug-free workplace and we appreciate  
11 the opportunity to speak today. Since the last  
12 comment session, we continue to review the  
13 proposed regulation and identified a concern that  
14 we failed to address on October 14th.

15                   And this is related to the type of  
16 drug test they conducted. Under 66.3 definitions  
17 prohibitive substance, it lists about ten or so  
18 drugs that will be tested. And it appears that  
19 this -- the drugs listed would require a ten-  
20 panel drug test to determine if there was a  
21 positive test in a miner's system.

22                   Under 66.300 alcohol and drug testing  
23 requirements, purpose and scope, it references  
24 the fact that the Department of Transportation,

25 DOT requirements found in 49 CFR part 40,

1 procedures for transportation workplace drug  
2 testing programs would be the one that would be  
3 used.

4 Again, in 56.301, substances subject  
5 to mandatory testing, the tests would be  
6 conducted for the drugs listed there and again  
7 there were about 11 or so drugs that were listed.

8 If you go back to the 49 CFR part 40,  
9 the DOT test reflects only a five-panel test.  
10 This conflicts with the proposed regulation if it  
11 intends to test for all the drugs listed under  
12 definitions.

13 In paraphrasing, in 49 CFR part 40.85  
14 to be specific, states that the DOT test  
15 requirement is isolated to only five drugs to be  
16 tested, and no others.

17 Our concern also is that the Alabama  
18 Workman's Compensation drug testing requirement  
19 follows the DOT which is a five-panel test. And  
20 so if the test that the regulation is proposing  
21 is a ten-panel, this is going to create conflict  
22 with existing regulations that are used today in  
23 Alabama.

24 And that's all of my comment.

MS. SILVEY: Okay, all right. I

1 understand. I appreciate your comment. I don't  
2 think I have any questions.

3 I don't -- I don't think -- I don't  
4 want to speak for them. I don't think any of my  
5 panel has any questions.

6 I guess I am speaking for them.

7 Okay. Well, we appreciate your  
8 comments very much. Thank you.

9 Next speaker on the list is Dale  
10 Dewberry. UMWA, District 20.

11 BIRMINGHAM: He has left the room.  
12 They've gone to see if they can find him.

13 MS. SILVEY: Okay, well, I'll go on  
14 to the next one and he can -- I'll go back to him  
15 after the next speaker.

16 What about Joe Weldon, UMWA District  
17 20.

18 MR. WELDON: Good morning.

19 MS. SILVEY: Good morning.

20 MR. WELDON: My name is Joe Weldon,  
21 that's W-E-L-D-O-N. Local 1948. Shoal Creek  
22 Mines, Drummond Company.

23 Safety Committee Member.

24 First of all, I want to say that we

25 would like to see you all face-to-face instead of



1 sitting here talking to a microphone, but we've  
2 had conflict -- it's already went off one time,  
3 so hopefully that don't happen again. That's  
4 irrelevant right now. It's the fact that what  
5 we've got at hand.

6 We feel like and I feel like as a  
7 safety committee member that's there's too many  
8 vague interpretations and it can go too many  
9 different ways and there's too many unknowns in  
10 this policy which you all are trying to mandate.

11 I feel like we need to redirect the  
12 funds that is probably renting this building and  
13 all the studies that have been done would do  
14 better in enforcing some other different laws of  
15 which we have a lot more different problems than  
16 this, the way we feel.

17 We feel like that some of the funds  
18 need to be directed towards several different  
19 areas which would be diesel emissions and  
20 stringent work hours. We have just got back from  
21 Beckley, West Virginia on some safety committee  
22 training and we talked in depth about diesel  
23 emissions and underground coal mines. We've had  
24 numerous miners not only here in Alabama, but in

25 other states that has contacted different types

1 of cancer and have been disabled because of  
2 noxious gases and dust.

3 We feel like these funds could be  
4 directed towards trying to find a solution to  
5 some of those problems. We feel like the  
6 policies we have at our mines is an adequate  
7 policy, that we as a union can police our own  
8 people and the company has some policies that are  
9 in effect that takes into consideration that a  
10 man can have another chance.

11 We feel like some of these laws are  
12 very lacking. According to the diesel regs  
13 compared to West Virginia, Pennsylvania, state  
14 laws, our laws are lacking and I know we'll have  
15 to deal with that on another level, but we feel  
16 like these funds that is for these hearings,  
17 investigations and studies will be better used to  
18 make more stringent laws in dust control and more  
19 stringent laws in diesel regulations and  
20 particulates.

21 We feel like people need more  
22 training in the industry, not only our operators,  
23 not only our mechanics, but also MSHA as well in  
24 how to look and how to search for dust, diesel

25 particulates and emissions. We realize in the

1 coal industry that we do have a problem. We do  
2 have a problem in the drug abuse, but not only  
3 that, we have a drug problem in this country and  
4 we feel like that this policy that you all are  
5 trying to implement is too vague and it has too  
6 many unknowns.

7           And we feel like we need some more  
8 funds put into studying the effects of people who  
9 work too many hours. We've had dozens, if not  
10 hundreds of people go to sleep going home and had  
11 automobile accidents. Several people have been  
12 killed trying to get home after working six,  
13 seven days a week, 10, 12 hours a day. We feel  
14 like that these funds could be directed in those  
15 areas. And not only those areas, but some other  
16 areas that are having more problems than this.

17           I do again say I realize we do have a  
18 problem, but we feel like that some of these  
19 other problems with people dying of different  
20 type of cancers and COPD poisoning and different  
21 lung diseases that we still have a dust problem.  
22 We still have a black lung problem. We still  
23 have a diesel problem in this country and we want  
24 to block to you all to make a stand and redirect

25 some of these funds in those areas.

1 I thank you for your time.

2 MS. SILVEY: Okay, thank you for your  
3 comments.

4 If we can now -- can we go to Mr.  
5 Dewberry? Is he back in the room?

6 BIRMINGHAM: Yes, he's coming.

7 MS. SILVEY: Okay, thank you.

8 MR. DEWBERRY: Good morning.

9 MS. SILVEY: Good morning.

10 MR. DEWBERRY: My name is Daryl  
11 Dewberry, D-A-R-Y-L D-E-W-B-E-R-R-Y. I'm  
12 International Vice President of United Mine  
13 Workers of America, District 20.

14 I rise in opposition of this policy  
15 as others have said before. We've addressed  
16 these problems some 20 years ago in this  
17 District. All of our mines, our contractors have  
18 drug policies in effect that are basically  
19 working and as the years have gone on we have  
20 tweaked them. We've negotiated, come to mutually  
21 agreed to drug programs that are not punitive in  
22 nature. Run a confirmation test on them to  
23 certify the fact that they are, in fact, a  
24 positive. There are a lot of problems as the

25 other speakers spoke to and I won't be



1     repetitious that much, but I do want to touch on  
2     a few points.

3                     Let me say first of all that I  
4     appreciate you holding another hearing. A lot of  
5     our people and I don't know if that was the  
6     intent, gave up last time and I guess they  
7     anticipated that the same thing would occur  
8     today. We hope we've got a crowd full of people  
9     here today and I wish that you were here to see  
10    them. The problem being I don't think that's the  
11    intent of a little conference call to address a  
12    public hearing. You need to see the body  
13    language. You need to see the response and of  
14    course, that's my opinion, and the majority of  
15    these coal miners here. But this is a sensitive  
16    area.

17                    Most of our coal miners are of the  
18    age of around, average age from 55 to 58 years of  
19    age. Most of them have 25 to going on 30 years  
20    of service in the industry. Most of them are  
21    wore out and broke down. As they've said and as  
22    I've said before, we've worked them to the point  
23    of fatigue. The practices are that if they get  
24    injured and I had testimony in an arbitration

25 last week, wherein the doctor testified and said

1     that he would give the individual a lower tab,  
2     but he couldn't take it eight hours before he  
3     returned to work. Now my opinion there is the  
4     doctor is in error for allowing someone, if he's  
5     in so much pain that he's prescribed that  
6     medication, but he can keep him off of workman's  
7     comp. until he is completely off of it and then  
8     return him. But in an effort to get him back to  
9     work so that he won't be on workman's comp.,  
10    won't have a loss time injury that's accountable,  
11    they release him to return to work with pain  
12    under ibuprofen, causing a danger to themselves  
13    and others while in the workplace because as you  
14    know a coal miner needs to be sharp. He needs to  
15    have his attention span directed on what he's  
16    doing and not worried about my leg is killing me  
17    or whatever the injury may be and I've got to go  
18    to work because if I don't, if I miss two  
19    consecutive days I will be terminated.

20                    So that's one of the problems.

21                    The other problem is that we've  
22    addressed this issue. I'll use Jim Walter  
23    Resources for an example. That is a negotiated,  
24    mutually-agreed program that's been in effect

25 for 20 years. It basically allows a second shot.

1 Most of the other miners I'd say Drummond's P&M,  
2 has a random drug testing policy that's very  
3 effective. We do not. We do not. Let me  
4 reiterate that. We do not want drugs in this  
5 industry.

6 I'm a strong advocate to tell  
7 everybody that there's two things that we can't  
8 defend you on. That's absenteeism and drug  
9 abuse. If you intend on doing one of those then  
10 we will not be able to help you when the time  
11 comes. And we've arbitrated a lot of cases that  
12 we've -- if there were specific issues, but  
13 that's been I guess shortened up over the last I  
14 guess 15 years simply because we truly believe  
15 that we've got a handle on it.

16 In addition to that, the State of  
17 Alabama Workman's Comp., if you have an injury,  
18 you've got a zero tolerance drug test that they  
19 take at the hospital. I mean if you're found  
20 with drugs in your system, then they don't have  
21 to pay your doctor bill, basically. So there are  
22 a lot of deterrents.

23 We feel like that this money could be  
24 well spent and well served curtailing black lung.

25 Let me just bring to your attention here in

1 Alabama alone 1979, '78, '79, we had 18,500  
2 miners working. That includes construction. We  
3 mined around 12 million ton of coal, 12 to 12.5  
4 million. Now we have some 3200 miners working  
5 here in Alabama and we'll mine over 26 million  
6 ton of coal with that amount of people. The  
7 exposure to dust levels, respirable dust levels  
8 are just unbelievable. I believe that the  
9 standards are proper. This is my opinion.  
10 However, we need to put more emphasis on  
11 controlling the dust, respirable dust.

12 In addition, we need to put more  
13 emphasis on diesel equipment. We feel and see a  
14 great rise in cancer and I know that it's been  
15 touched on, but our people are succoming, they're  
16 not getting to enjoy their retirement. They're  
17 not getting to enjoy the fruits of their labor  
18 that they worked for simply because they have  
19 succomed to disease and injury. But this is a  
20 problem that we're dealing with and have dealt  
21 with for the last 20 years.

22 Now I wouldn't have a problem if you  
23 decided that what we need to do is allow anyone  
24 that has a drug policy in effect that we don't

25 put these proposed regs on them that they've



1 already taken care of their own business. Non-  
2 union entities that don't have them, I believe  
3 that you should possibly put this program in on  
4 them. But if you've already got collective  
5 bargaining agreement in place, we feel like it's  
6 a mandatory subject to bargaining, as long as  
7 it's reasonable, we sit down and discuss it and  
8 come to some agreeable resolution.

9 I've been in discussions with Jim  
10 Walters doing some additional probing on their  
11 drug policy and we're receptive to that. But let  
12 me say that I think that at this time it's  
13 completely misplaced, that we need to put more  
14 emphasis in other areas such as respirable dust  
15 and the chemicals that are in these mines that  
16 are causing great harm to our miners in the  
17 longer interim.

18 I feel like we have had a problem  
19 with drug abuse, and I think it's a national  
20 crisis. I think one thing that needs to take  
21 place is if you'll look around in the State of  
22 Alabama, we don't have that much assistance  
23 programs to deter this. And if you do, it costs  
24 an arm and a leg and I think MSHA not only --

25 this proposed reg would put such an undue

1 hardship on the operator and run the price of  
2 coal on up, but I think it should be some federal  
3 mandated drug assistance programs that the  
4 federal puts money in that wouldn't be a cost to  
5 these operators because it is a national problem  
6 that needs to be addressed by the Government. In  
7 my opinion, it's a disease that needs to be  
8 addressed in its infancy when people first  
9 contract it.

10 I'll answer any questions you may  
11 have.

12 MS. SILVEY: Thank you. Thank you  
13 very much. I really don't -- I appreciate your  
14 comments very much. I don't have any questions.

15 MR. DEWBERRY: Thank you.

16 MS. SILVEY: Our next speaker is Jim  
17 Yates, UMWA, Local 2245.

18 MR. YATES: Good morning, ma'am.

19 MS. SILVEY: Good morning.

20 MR. YATES: Jimmy, J-I-M-M-Y, Yates,  
21 Y-A-T-E-S.

22 I have just three points I wanted to  
23 hit on, but first of all, we have a great many of  
24 folks who is here today who are wanting to speak,

25    so I'm going to make my comments fairly brief.

1                   I am -- the first point I want to  
2                   make is I am adamantly opposed to this  
3                   teleconference. This should have been an on-site  
4                   hearing with eye-to-eye contact would have been  
5                   much better to get your point across.

6                   I want to turn my pages. These are  
7                   three points I want to talk to you about.

8                   The proposal would exclude  
9                   administrative and clerical personnel from drug  
10                  testing requirements. These workers do drive on  
11                  mine property, often go underground to deliver  
12                  supplies and newly purchased supplies. We have  
13                  seen the disastrous effects of incompatible  
14                  fittings on fire hoses. Why should they be  
15                  exempt? Miners would be subject to their comings  
16                  and goings on the mine site property. A good  
17                  example would be a person under the influence of  
18                  some type of drug coming in and while the coal  
19                  miner is going over to pick up his pay check on  
20                  Friday morning, he gets run over. That would be  
21                  an excellent example. So I'm saying anyone that  
22                  comes on the property they've got to be drug  
23                  tested at some point.

24                  Next point, the proposal does not

25 make clear who will be responsible for testing

1 contract workers on my property or even that the  
2 contract worker must be tested. Mine operators  
3 have historically taken a hands off approach to  
4 the contractors, accepting no responsibility for  
5 the employees. This rule must make clear that  
6 the miner operator is responsible for those  
7 employees if they hire to perform work on the  
8 property. Eight of the 20 fatal accidents to  
9 date have been employees of contractors.

10 My last point is this, ma'am, the  
11 proposal is not clear on which supervisor will be  
12 included in the testing or how they will be  
13 supervised. If a miner suspects his supervisor  
14 is under the influence of alcohol or drugs, who  
15 would he report it to? Would the miner have the  
16 same rights to require that a supervisor be  
17 tested for reasonable suspicion?

18 The manner in which the proposal is  
19 written on subjects miners to random and  
20 reasonable suspicion testing when in fact the  
21 supervisors are often alcohol and drug users. In  
22 the State of Kentucky, 40 certified mine foremen  
23 were reported for drug and alcohol policy  
24 violations. Of those 40, 4 were rescinded and 36

25 had their certifications suspended. The proposal



1 must be revised to allow any person to reasonably  
2 inspect drug or alcohol use by any employee on  
3 the properly. That's including the supervisors.  
4 We want every supervisor subject to drug testing  
5 from the top to the bottom. We're talking about  
6 the mine manager all the way down. And provide  
7 for the oversight in the form of a second  
8 opinion. As proposed, the miners would have no  
9 recourse if they are suspected of drug or alcohol  
10 abuse.

11 That's all I have, ma'am. Thank you.

12 MS. SILVEY: Thank you, sir. I  
13 appreciate your comments. We will take them into  
14 consideration.

15 Our next speaker is Charles Carden  
16 with UMWA Local 1948.

17 MR. CARDEN: Good morning.

18 MS. SILVEY: Good morning.

19 MR. CARDEN: Charles Carden, UMWA  
20 Local 1948.

21 As I was reading the proposal, the  
22 commentary that it presents it says there's an  
23 urgent need about this, but you know, from  
24 everything that I've read about the last major

25 disasters, I don't believe drugs or alcohol or

1 either one of them was involved. If it was, it  
2 wasn't listed. Without you all testing the mine  
3 owner and he tested positive -- and we don't  
4 understand why the Agency is trying to deflect  
5 their focus away from the death of these miners  
6 without their trying to propose that it's the  
7 miners' fault for getting killed.

8           Most of the mines, just to reiterate  
9 a little bit, are the working mining force,  
10 already are random drug tested. We don't have a  
11 problem with that. But we feel that it should be  
12 focused on different areas and myself, I'm a  
13 diesel mechanic. I've seen inspectors come in  
14 and really just overlook the diesel equipment  
15 altogether because they're not educated enough to  
16 really go through the process of what actually  
17 needs to be done to the equipment.

18           Now we feel that the Department  
19 should go back and look at this and spend more  
20 money on that and time instead of putting more  
21 emphasis on drugs and not only that, but it  
22 leaves the administrative end completely out of  
23 the picture for drug testing and just over the  
24 past two or three years, we've had two or three

25 supervisors that were dismissed on account of

1 drugs.

2 That's all I've got to say.

3 MS. SILVEY: Thank you very much, Mr.  
4 Carden. Let me ask you a question. When you say  
5 you've seen inspectors come in and overlook

6 diesel equipment, I guess as you say apparently  
7 because they were not trained to --

8 MR. CARDEN: That's correct.

9 MS. SILVEY: Where was this?

10 MR. CARDEN: Where was this, in the  
11 mines.

12 MS. SILVEY: I understand that.

13 MR. CARDEN: Shoal Creek Mine.

14 MS. SILVEY: At Shoal Creek. And so  
15 when the inspector came and overlooked something,  
16 whatever, did you say anything about it to  
17 anybody?

18 MR. CARDEN: Did I what?

19 MS. SILVEY: Did you report that to  
20 anybody that --

21 MR. CARDEN: I sure did.

22 MS. SILVEY: You did not?

23 MR. CARDEN: I sure did.

24 MS. SILVEY: You did, okay. All

25 right. Okay. Thank you.

1                   Okay, thank you very much. The next  
2 speaker will be -- Mr. Carden, before I leave  
3 you, I'm sorry, let me just ask you one more  
4 question. You said you reported it to somebody.  
5 Who did you report it to?

6                   MR. CARDEN: Resident inspector.

7                   MS. SILVEY: You reported it to the  
8 resident inspector?

9                   MR. CARDEN: Yes, ma'am.

10                  MS. SILVEY: Okay, all right. Thank  
11 you.

12                  Our next speaker will be Patrick  
13 Watson, Local 2397.

14                  MR. WATSON: My name is Patrick  
15 Watson, P-A-T-R-I-C-K W-A-T-S-O-N.

16                  Local 2397, Jim Walter Resources.  
17 First off, we don't get disconnected. It turns  
18 out we're having to talk over a speaker through a  
19 microphone instead of in person.

20                  First off, this is ridiculous,  
21 absolutely ridiculous. Just about anybody that  
22 works in the mines, the contractor or as a miner,  
23 you know, people who have come just to visit,  
24 whatever, if anybody in that mine thinks or

25 suspects that someone doing a job that would put



1 someone else in danger that even looks like  
2 they're on drugs, they're going to be reported  
3 eventually instead of sitting there. I'm not  
4 going to work beside somebody that makes stupid  
5 decisions as if they're on drugs. But most  
6 people that are on prescription that's not an  
7 illegal drug by no means.

8 Over probably 80 percent of anybody  
9 that works and uses their physical body the way  
10 we do are on some type of prescription drug,  
11 whether it be blood pressure, pain reliever,  
12 antidepressants, anything. What do you all call  
13 it that is something that would put anybody in  
14 danger? Nobody really knows. You've got a list  
15 of some here, but that don't mean you can't use  
16 something all together different and there's  
17 another thing in here that I think someone else  
18 has already covered earlier about the medical  
19 history, about the employer being able to look  
20 over your entire medical history.

21 Would you want somebody looking over  
22 your entire medical history for something in your  
23 medical history that did not pertain to your job  
24 at all? That was a question, ma'am.

MS. SILVEY: Well, I know that in

1 certain situations the employer, and it depends  
2 on the situation, the employer does have the  
3 right to look over an employee's medical history  
4 and I think it just depends on the situation.

5           Now whenever the employer does that,  
6 there are a lot of other requirements that come  
7 into play, like confidentiality. For example, if  
8 the employer in the course of doing that looks at  
9 or sees some other things there, I mean these  
10 things would -- whether they are related to the  
11 job or unrelated to the job, if there's a  
12 requirement for confidentiality, that has to be  
13 maintained and so all other existing regulations  
14 and requirements, health requirements. I know  
15 now that you asked me that question. I've heard  
16 several people talk about the HIPAA regulations.  
17 And all the other requirements related to  
18 privacy, related to confidentiality, those would  
19 pertain and would have to be complied with.

20           MR. WATSON: How do we know that will  
21 be done? We don't know that. I mean you've got  
22 a group of company people sitting in a room with  
23 someone's medical history, that's not  
24 confidentiality. Anyone in that room can go to

25 anyone in that mine and say something about their

1 medical history that does not pertain to drugs  
2 and alcohol-related business.

3 If there's anything that they need to  
4 look it's just drug and alcohol-related business.  
5 It's not their entire medical history at all.

6 Is that not right?

7 (Pause.)

8 Are you still there?

9 MS. SILVEY: I'm here. I'll just  
10 reiterate what I said. You said how do I know  
11 they would do that, maintain a confidentiality,  
12 but the requirement is that they have to do it  
13 and so that's what I'm saying to you, stating to  
14 you, that there is the requirement that privacy  
15 and confidentiality, those are legal requirements  
16 and they have to be complied with.

17 MR. WATSON: I understand that. And  
18 also, you know, where I'm at we have a drug and  
19 alcohol program and if you're going to work there  
20 you have to comply by it. You're not to do any  
21 illegal drugs and now you all are wanting to do  
22 this, to test us, saying that you all don't trust  
23 us. So how are we supposed to trust you all with  
24 a medical history?

MS. SILVEY: I'm here. I'm

1 listening.

2 MR. WATSON: Drug and alcohol  
3 technician, it says here page 62157, top right,  
4 rug and alcohol technician, a person who assists  
5 the miner in alcohol detection process and  
6 operates an individual breath testing device. A  
7 DAT can be an employee of the mine operator, must  
8 have received qualification training that  
9 includes training and alcohol testing procedures  
10 and operation of alcohol test devices.

11 Confirmed drug test. Confirmed drug  
12 test results received by medical review officers,  
13 MRO, from a laboratory. If I'm not mistaken back  
14 earlier there was a gentleman talking about the  
15 MRO. And it didn't say anything about being from  
16 a laboratory, an officer from a laboratory. It  
17 said that it could be anyone of the company. I  
18 don't know exactly where it was at. I can  
19 probably find it if I sit here and look for it.

20 (Pause.)

21 MS. SILVEY: Were you talking about  
22 the medical review officer?

23 MR. WATSON: Yes, I've got it here  
24 now. Medical review officer, MRO, a licensed

25 physician who is responsible for receiving and



1 reviewing laboratory results generated by a mine  
2 operator's drug testing program and evaluation of  
3 medical explanations for certain drug test  
4 results. An MRO can be an employee of the mine  
5 operator and service agent.

6                   And then back here, if I can find it  
7 again, on 52157 it says that a confirmed test  
8 result received by a medical officer from a  
9 laboratory. Last I checked, we don't have a  
10 laboratory on my site.

11                   (Pause.)

12                   While you all are thinking about that  
13 I'll mention something else and I'm going to be  
14 done for now.

15                   MS. SILVEY: Before you go from that,  
16 I know you probably don't have a laboratory on  
17 your site. This just is talking about in terms  
18 of whatever testing provision that the operator  
19 would have set up there and the laboratory might  
20 be on site, it might not be on the site.

21                   MR. WATSON: Well, it says on site.  
22 And in this one it says on site.

23                   Another thing it talks about -- well,  
24 the alcohol. In the law, you all are using a .04

25 as a legal limit. And the state law is .08.

1     Meaning if you get pulled over by a state trooper  
2     and do a breathalyzer and you have .08 in your  
3     system changes are they'll let you go and won't  
4     say nothing to you, but you all are telling us if  
5     we have .04 in our system, pretty much we're not  
6     going to get paid for the rest of that day, be  
7     sent home, and the next year be drawn out for six  
8     more tests.

9                     MS. SILVEY:  Okay, the .04, as I  
10    stated in my opening statement, you were using  
11    the alcohol level as consistent with the  
12    Department of Transportation regulation.

13                    MR. WATSON:  You can take anybody  
14    that you want to and if they've had -- if they've  
15    been to a bar and they get slap drunk and they  
16    are due to be at work in the next eight hours,  
17    when they come to work that next eight hours,  
18    there's nothing wrong with them, they're fine,  
19    but if get off the elevator and take steps and  
20    they trip over something and twist their ankle  
21    and the company sends them, makes them do this  
22    drug test and they still got .04 in their system,  
23    but there's no way that they're by no means  
24    drunk, maybe hung over or feeling pretty rough,

25 but they're not drunk.

1 (Pause.)

2 MS. SILVEY: Okay, thank you.

3 MR. WATSON: I've got another  
4 question here. Under this here law in this  
5 statement, if we have a federal inspector come  
6 into our site and they step through our line or  
7 rail work out in the washer and they just walk by  
8 stuff and don't make any comment about it, don't  
9 write it up, don't see it, how do we know that  
10 they're not impaired by drugs? Do they need to  
11 be tested or are we allowed to say hey, I think  
12 that federal inspector there needs to be tested.

13 MS. SILVEY: I think in that  
14 situation you probably would say something either  
15 to your supervisor or as the other gentleman  
16 said, if you had a resident inspector there or to  
17 the inspector's supervisor about what the  
18 inspector passed up, at least what you thought  
19 the inspector passed up in that situation.

20 MR. WATSON: I don't know if you've  
21 ever been down there where we are, you do that  
22 you're pretty much going to be going through your  
23 next drug test anyway.

24 (Laughter.)

They're going to send you right on

1 out, you go stepping in front of them and telling  
2 them they ain't doing their job, they need to go  
3 back and look at something. That just won't fly.

4 But how do we know that an inspector  
5 can come down there and make our life-threatening  
6 decisions on whether something looks the way it  
7 needs to be or operates the way it needs to be  
8 without us knowing whether he's in his right  
9 state of mind to make that decision? That's all  
10 I've got to say. If you have any questions, go  
11 ahead.

12 MS. SILVEY: No, thank you very much.

13 Thank you.

14 Our next speaker will be Steven  
15 Miller, Local 1949.

16 MR. MILLER: My name is Steven  
17 Miller, Local 1949.

18 Regarding this, I'm just wondering  
19 why we're even trying to have such a thing  
20 passed, due to the drug testing. Unfortunately,  
21 mining is dangerous and people do get injured and  
22 drug testing does not determine if you're  
23 impaired, you know. When you take a drug test,  
24 it doesn't determine if you're impaired. It will

25 tell you if you have any type of drugs in your



1 system. It doesn't tell that you're impaired at  
2 the time or not.

3           The extent of alcohol and drug  
4 problems in the mining field has not been  
5 directly measured. Data collected suggests that  
6 mines' pre-employment tests and random testing  
7 has been doing fine. Every mine that I've worked  
8 at before has been doing fine with the random  
9 testing and pre-testing. Every mine that I've  
10 worked at has done it and has been doing it.  
11 I've never seen anything wrong with any company  
12 that I've ever worked at.

13           The cost of this, like the first year  
14 alone, \$16 million that could go for other  
15 problems. It could go towards drug testing for  
16 advancement -- I got lost track here. It can go  
17 for noise control, diesel control and dust  
18 control.

19           Also, drug testing for advancement  
20 for another job, for bidding for other jobs makes  
21 no sense. All the jobs down there, it says for  
22 advancement for other jobs that are more  
23 dangerous, makes no sense because every job down  
24 there is a dangerous job.

Also, anyone on the mine site should

1 be subject to drug test and that's even upper  
2 management, secretaries, vendors, contractors,  
3 especially contractors. We're up for random drug  
4 testing. I don't know how the contractor do it,  
5 if they just give one drug testing when their  
6 company hires them, if they do any drug testing  
7 at all. They should be subject to because  
8 they're down there with us underground, above  
9 ground, whatever they're doing, but they're right  
10 along with us, subject to get injured just like  
11 us, to injure us.

12 It is proven that alcohol and drug,  
13 it is a proven fact that alcohol and drugs  
14 impairs judgment, you know. With upper  
15 management, planning for the employees, it is  
16 their responsibility to keep their minds clear.

17 (Pause.)

18 Upper management and contractors that  
19 come on the job site to oversee and work, they  
20 come upon the same risks as its employees and  
21 supervisors that are underground working.

22 I also have a question about these  
23 prescription pills and stuff. Some people have  
24 to take sleeping pills at night and stuff and

25 antidepressants that they take at home. Taking

1       them at home and stuff, were they to take a drug  
2       test.  You take them at home, but you don't take  
3       them at work, your sleeping pills and you take a  
4       drug test, will that make you fail your drug test  
5       and how would that work?  I don't understand  
6       that.

7                       (Pause.)

8                       Ma'am?

9                       MS. SILVEY:  Well, if the sleeping  
10       pills are one of the ten listed categories that I  
11       read in my opening statement, they would be  
12       covered by the rule, but they would be -- if the  
13       person taking them had a valid prescription for  
14       them, they would come under that provision of the  
15       rule and they were taking them in accordance with  
16       a valid prescription.

17                      MR. MILLER:  Okay.  Also, this  
18       confidentiality you guys speak about.  They say  
19       you'll be removed and put on a different task and  
20       keep your same grade pay, how would that be  
21       keeping your confidentiality -- you know what I'm  
22       saying, sorry, I can't speak today.

23                      How would you keep your  
24       confidentiality?

MS. SILVEY: Are you saying how can

1 it remain confidential if you're being  
2 transferred?

3 MR. MILLER: Yes, when somebody sees  
4 that you've been removed from your task and put  
5 on a different task, everybody is going to know  
6 that something is up there. You wouldn't be able  
7 to keep it, that's for sure. That would not make  
8 no sense whatsoever.

9 With that going on, I agree that drug  
10 testing is appropriate in the industry and I  
11 believe that companies are doing a good job and  
12 the money could be spent on other problems in the  
13 industry and that's about all I have to say about  
14 that.

15 MS. SILVEY: Okay, thank you. Mr.  
16 Miller, I do have one thing, just for  
17 clarification. When you started off, you said  
18 drug testing for advancement. I didn't quite  
19 understand what you meant then.

20 MR. MILLER: In here it says for -- I  
21 had it highlighted here, hold on just a second  
22 while I find it.

23 (Pause.)

24 MS. SILVEY: Were you talking about

25 any time you were transferred or anybody having



1 to have preemployment testing?

2 MR. MILLER: No. Hold on just a  
3 second. Let me find it just right quick.

4 (Pause.)

5 It is 52160 first paragraph at the  
6 very bottom of the page. "Any miner who is to be  
7 transferred to a position involving the  
8 performance of a safety-sensitive job duty must  
9 be tested for the presence of alcohol or drugs  
10 prior to beginning the performance of safety-  
11 sensitive job duty."

12 MS. SILVEY: Okay. That's sort of  
13 basically the preemployment type. Okay, I  
14 understand. Thank you. I understand.

15 All right, thank you very much.

16 MR. MILLER: Thank you.

17 MS. SILVEY: Okay. The next person I  
18 have on the list from Birmingham is Grady  
19 Robertson.

20 BIRMINGHAM: I'd ask if Sandy  
21 Blackston can go next because she has to leave.

22 MS. SILVEY: That's fine.

23 BIRMINGHAM: Thank you.

24 MS. BLACKSTON: Hello.

MS. SILVEY: Hello.

1 MS. BLACKSTON: Hi, I'm a

2 laboratorian, I'm not a coal miner.

3 MS. SILVEY: Excuse me, would you  
4 state your name again, please?

5 MS. BLACKSTON: Sandra Blackston, B-

6 L-A-C-K-S-T-O-N.

7 MS. SILVEY: Okay.

8 MS. BLACKSTON: All right, first of

9 all, I'm a laboratorian. I have my associate's,  
10 my bachelor's and a specialty in laboratory  
11 medicine. I have a question. There's no federal  
12 law as far as CLIA 88 Joint Commission or any

13 other federal regulation that you all put on me  
14 as a laboratorian for these company men to abide  
15 by. There's nothing. CLIA 88 is federal and you

16 all put that on me especially with drug testing  
17 all because these men are company and they think  
18 they can get away with doing it privately that's  
19 a complete federal regulation of what you all  
20 have already implemented.

21 MS. SILVEY: You said there's no  
22 federal law for what now? I didn't understand  
23 what you said.

24 MS. BLACKSTON: CLIA 88 is a federal

25 law set by the Government to make sure

1     laboratorians do their job.  If this is going to  
2     be testing, why are they not having to go by the  
3     same regulations that I do?

4                   MS. SILVEY:  Give me that --

5                   MS. BLACKSTON:  You can google it.

6     It's on the internet.

7                   MS. SILVEY:  Just tell me what you  
8     said again, CLIA 88, what did you say?

9                   MS. BLACKSTON:  You should know it's  
10    a federal regulation.  I should not have to go  
11    over that.  It's CLIA 88.

12                   MS. SILVEY:  CLIA 88, okay, but I'm  
13    asking --

14                   MS. BLACKSTON:  It is CLIA 88 and it  
15    was implemented in '93.  There are all the  
16    regulations there for drug testing.

17                   MS. SILVEY:  Okay, all right, thank  
18    you.

19                   MS. BLACKSTON:  My question is where  
20    the chain of command on these people?  If they're  
21    going to draw the specimens we have to do chain  
22    of command just like evidence in a police thing.  
23    We have to sign in and sign out whoever takes a  
24    specimen.  What if somebody falsely contaminates

25 it because they don't want an employee to work

1     there any more?

2                   MS. SILVEY:  There is a chain of  
3     command requirement in there.

4                   MS. BLACKSTON:  You forgot to put  
5     that in there.

6                   MS. SILVEY:  No, the chain of command  
7     requirement is incorporated.  They have to follow  
8     all the DOT procedures and that includes the  
9     chain of command requirement, that is in there.

10                  MS. BLACKSTON:  Where at?

11                  MS. SILVEY:  Yes, that's in there.  I  
12     talked about that in my opening statement this  
13     morning, that you have to follow, yes.

14                  MS. BLACKSTON:  My question is too  
15     I've had almost eight years' experience and I'm  
16     considered almost still incompetent to do these  
17     tests.  How can you tell a man all because he can  
18     take a two-hour course to determine positive or  
19     negative that he can do this?

20                  MS. SILVEY:  Well, you mean the  
21     supervisor?

22                  MS. BLACKSTON:  No, a man.  He's not  
23     -- he don't have no degree on this.  He's a man.  
24     He's a civilian.

MS. SILVEY: Okay, that was a two-



1 hour course he can do what?

2 MS. BLACKSTON: He can test those  
3 men.

4 MS. SILVEY: I think what you are  
5 talking about when I said a man, and basically  
6 that requirement is for supervisors who to make a  
7 determination that people -- if somebody is to be  
8 -- if somebody is to be tested due to reasonable  
9 suspicion, there's a two-hour training on that.  
10 That must what you're talking about. But that's  
11 two hours of training to determine --

12 MS. BLACKSTON: I've had eight years  
13 and I'm still considered not able to do some of  
14 these specialty testing.

15 MS. SILVEY: They wouldn't be doing  
16 testing. That requirement does not have anything  
17 to do with testing. That's why you confused me.  
18 And when you said it's for a supervisor, whether  
19 that supervisor is a man or a woman, it's a  
20 supervisor where the supervisor feels that there  
21 is a determination of reasonable suspicion that  
22 the person should be tested, but that supervisor  
23 is not then doing the testing.

24 MS. BLACKSTON: So the company man is

25 not going to do the testing?

1 MS. SILVEY: No, ma'am.

2 MS. BLACKSTON: Is that what they're  
3 saving?

4 MS. SILVEY: That's what I'm saying.  
5 That's exactly what I'm saying.

6 MS. BLACKSTON: All right. I just  
7 wanted to make sure you're clear on that.

8 MS. SILVEY: I am clear on that.

9 MS. BLACKSTON: Next question, record  
10 keeping and reporting, we're all humans. We're  
11 all going to make error. Whoever is doing the  
12 drug testing is going to make error. Okay, you  
13 have no CLIA 88 regulation in this, so who is to  
14 hold them responsible for the mistakes they make  
15 when these men lose their job and no pay? The  
16 company will be liable and then there will be  
17 lawsuits.

18 MS. SILVEY: We have a lot -- a  
19 number of provisions in there about the testing  
20 and about the verification of the testing and  
21 those types of things. Those are all covered in  
22 the Department of Transportation regulations for  
23 testing and they have to follow this -- what is  
24 this, the SAMHSA guidelines.



1 of the Department of Transportation that also  
2 includes the mandatory substance abuse and mental  
3 health services guidelines are incorporated by  
4 reference so that chain of custody and the  
5 laboratory process and the collections processes  
6 are all dictated by the same requirements.

7 MS. BLACKSTON: Okay, my question  
8 here is they said they can do on-site testing.

9 Am I correct?

10 MS. CARR: They can do it as per DOT.  
11 They can collect the test on site, as long as  
12 they use trained collectors.

13 MS. BLACKSTON: What's going to be  
14 their requirement to the trained collector? That  
15 goes back to CLIA 88 again.

16 MS. CARR: They would be the same as  
17 required under the Department of Transportation.

18 MS. BLACKSTON: But it technically  
19 could be a company man, correct?

20 MS. CARR: If he is, a company man or  
21 woman, if he goes to the same requirements to be  
22 --

23 MS. BLACKSTON: It's a two-hour  
24 course.

MS. CARR: No, it's not a two-hour

1 course.

2 MS. BLACKSTON: The testing  
3 requirements are separate from what you've done  
4 is you've confused the testing requirements with  
5 the requirements for a supervisor who makes a  
6 determination that a person should be tested due  
7 to a reasonable suspicion. That's all that two-  
8 hour training is for and that's the end of the  
9 inquiry. The testing is then done in another  
10 manner and the testing has to be done in  
11 accordance with Department of Transportation and  
12 Department of Health and Human Services,  
13 certified laboratory requirements.

14 And so hypothetically, if Jim Walters  
15 wanted to do it on site they have to do it in  
16 accordance with all the -- which are probably the  
17 requirements that you use today and they include  
18 chain of custody and everything else.

19 MS. BLACKSTON: My question is is  
20 this going to be available for the miners, you  
21 know the fact that as a laboratorian, you know,  
22 we're held competent to what we do. The Federal  
23 Government sends me specimens multiple times a  
24 year to test me on my ability. Well, considering

25    there's nobody for these people to regulate back



1 to, where is the corrective action on human  
2 error? Where is all this documentation where  
3 these people are doing the tests, are technically  
4 considered competent in doing their testing?

5 Anybody can look at a positive or  
6 negative, but there's too many false positives,  
7 there's too many diseases. There's other things  
8 that can consider these men false positives and  
9 then they lose pay just because they have to  
10 prove they have a liver disease?

11 MS. SILVEY: This regulation doesn't  
12 change any drug testing requirements. The drug  
13 testing requirements have to be in accordance  
14 with established and verified drug testing  
15 requirements as they are today. This rule  
16 doesn't change any of that.

17 MS. BLACKSTON: I agree, we all need  
18 drug testing. Nobody in here is probably arguing  
19 that statement. The statement is the way it's  
20 going about -- you know it was talked prior about  
21 HIPAA. Would you want your bosses sitting around  
22 a table if you're working in a job that requires  
23 manual labor discussing your drug test when they  
24 might find out you have a back problem? They're

25 not going to keep that a secret. And that's why

1 HIPAA is where it's at to protect these people  
2 from the company. That's what HIPAA, one of the  
3 goals of HIPAA.

4           You're separating company from men  
5 when these men hire on Jim Walters, they're  
6 saying the company does not have drug testing?  
7 Well, if I hire on, whether I'm put in an office  
8 or whether I'm put underground, that's almost job  
9 discrimination. I can't help where you all put  
10 me, so I get drug tested based on where you put  
11 me?

12           Do you have additional comment?

13           MS. BLACKSTON: I mean I would really  
14 like you all, you know, advise the CLIA 88 in  
15 here because that holds everybody accountable and  
16 that holds the Federal Government. That's you  
17 all's law. You all made that. You all made it  
18 in '88. You all started enforcing it in '93.  
19 There's nothing in here on that.

20           MS. SILVEY: I just want to reiterate  
21 that the drug testing requirements are in  
22 accordance with the Department of Transportation  
23 rules and the HHS requirements for certified  
24 testing laboratories. And I'm sure if you are a

25    laboratorian as you said and I know you are, I'm

1     sure these are the same requirements that you  
2     indeed follow when you do your drug testing  
3     analysis.

4                   MS. BLACKSTON:  They are under one  
5     consideration.  When we do drug testing, we have  
6     to be either CAP or JACHO which is Joint  
7     Commission which is another federal agency to be  
8     required to do drug testing.

9                   MS. SILVEY:  Okay, I understand.

10                   MS. BLACKSTON:  You know, it's  
11     contradicting what I've been taught all through  
12     school when I see things like this.  But yet ever  
13     law that I've been taught has been left out of  
14     this little pamphlet we give to these men.

15                   MS. SILVEY:  All of those  
16     requirements are in here.  I can guarantee you  
17     that.  Some of them we incorporated them by  
18     reference and maybe you did not see them, but --

19                   MS. BLACKSTON:  Okay, if I can't see  
20     them how do you expect --

21                   MS. SILVEY:  That's something that we  
22     need to look at and we will do that, but as you  
23     just said earlier, using CAP, only laboratories  
24     certified by CAP as well as -- and we talked -- I

25 talked about earlier HHS Substance Abuse Mental

1 Health Services Administration shall be used to  
2 test collected samples. And I want to reiterate  
3 to everybody who can hear me, every one of these  
4 locations, only laboratories certified by CAP as  
5 well as HHS/SAMHSA, Substance Abuse Mental Health  
6 Services Administration, shall be used to test,  
7 collect the samples. And that means nobody at  
8 one of these locations, this is how we started  
9 this, will be testing these who have not -- who  
10 is not qualified to do the testing.

11 MS. BLACKSTON: And this should be  
12 made publicly available which if everything like  
13 you said, there's only things I understand as a  
14 laboratorian, these men should have a paper with  
15 what these acronyms mean where they can go  
16 themselves on the internet and understand what's  
17 happening to them.

18 MS. SILVEY: Okay, thank you. I  
19 appreciate your comments. Thank you.

20 MS. BLACKSTON: I appreciate you too.  
21 Thank you.

22 (Applause.)

23 MS. SILVEY: Mr. Grady Robertson, are  
24 you there?

MR. ROBERTSON: Yes, ma'am. I'm



1 Grady Robertson, District 20, Local 2133.

2 I think we have a drug policy between  
3 the union and the company that's good enough. If  
4 prescription drugs that your doctor gives you to  
5 maintain your health is took from you, then you  
6 ain't going to be able to go on to work. So if  
7 you ain't able to go on to work, and no money,  
8 disability rate is going to climb sky high,  
9 especially in the coal industry.

10 HIPAA law is between -- it's a policy  
11 set between you and your doctor. I've sent my  
12 wife to do some business since I work 6 days a  
13 week, 10 hours a day. I sent my wife to some  
14 business at the doctor's office and she come back  
15 with nothing. And why she did is because of the  
16 HIPAA. I had to go up there and sign papers for  
17 my wife to get my history or to get what I needed  
18 to get that day. So if my wife, that's the one  
19 that's me and her against the world, ain't able  
20 to get it, if she ain't able to get it, why  
21 should you be able to get it. I ain't speaking  
22 of you. I know who you are. I'm speaking of the  
23 company.

24 That's the law that will protect you

25 from any riffraff that wants to detour you or

1 something or to get you. It ain't no secret.

2 There's some issues that can out of this if we  
3 don't watch and protect the HIPAA law.

4 And on the drug testing part, the  
5 drug testing part of it, in my case, would be the  
6 one that looks over the drug testing of the UMWA  
7 men. So if Danny Sergeant is looking over the  
8 drug testing of UMWA men, the Daryl Dewberry  
9 should look over them or Daryl Dewberry's  
10 assistants.

11 I mean -- if the doctor says when I  
12 prescribe medicine to you, if the doctor said  
13 take off a day, see how it acts with you and see  
14 what the medicine does, see if it will help you,  
15 see if you're able to go to work. After that's  
16 said, that should be -- I mean you've got to go  
17 on to work. If you got a twisted knee at 35, it  
18 ain't time for surgery. You got to put that off  
19 as long as you can, so your career can go on as  
20 far as you can, hopefully to retire. That's what  
21 prescription drugs are. And as prescription  
22 drugs getting out of hand or something like that  
23 or come to the job messed up or whatever, I think  
24 as a union, as men ourselves we can take care of

25     our own between the company's policy and the UMWA

1     itself. We've got a policy, let's stick with the  
2     policy and the money we spend on this we could  
3     have spent it with research of black lung.

4             You don't even hear of black lung no  
5     more. It disappeared. We call it cancer or  
6     something else. But we could have spent this  
7     money and other money that's going to be spent on  
8     this for research on black lung and other things  
9     of that nature.

10            I just don't agree with the  
11     Government coming in to drug test you. About the  
12     HIPAA law, if my wife ain't got rights to it, I  
13     be dag gum if somebody else -- if I want somebody  
14     else to have rights to it.

15            The lady that spoke before me, I  
16     forgot her name, but she brought up some good  
17     points. It can be contaminated. Just because  
18     they want to get rid of a man. And if you don't  
19     think that will happen, you're living in a  
20     fantasy land because I've been through some stuff  
21     like that. And thanks to Dewberry and his  
22     assistants, I'm able to support my four kids and  
23     my wife. This does upset me. You all are  
24     getting into my rights and how I support my

25 family.

1                   If I abuse that, we done got lost in  
2 regulations to take care of it. But other than  
3 that, that's about all I got to say.

4                   MS. SILVEY: Okay. Thank you.

5                   MR. ROBERTSON: Thank you.

6                   MS. SILVEY: Okay. Is there anybody  
7 else in Birmingham who wishes to speak?

8                   Anybody else in Birmingham who wishes  
9 to speak?

10                  BIRMINGHAM: Yes. I didn't get these  
11 faxed in, but I did leave a message --

12                  MS. SILVEY: Let me stop you, please?

13                  Would you just let them come to the phone in the  
14 order that they are signed up.

15                  BIRMINGHAM: Okay.

16                  MS. SILVEY: Just come to the phone,  
17 okay?

18                  BIRMINGHAM: The next speaker is  
19 Wendell Rigsby.

20                  MS. SILVEY: Just let them come to  
21 the phone and state their name and spell their  
22 name. You don't need to do that.

23                  MR. RIGSBY: Good morning.

24                  MS. SILVEY: Good morning.

MR. RIGSBY: My name is Wendell



1 Rigsby, W-E-N-D-E-L-L R-I-G-S-B-Y. I am an  
2 International Field Representative for the UMWA  
3 at District 20.

4 I thank you for letting me speak.  
5 I'm here today to express my concerns over this  
6 policy. I would rather it be in person, so I  
7 could see you, but anyway --

8 MS. SILVEY: I appreciate that all of  
9 these people want to see me. That really makes  
10 me feel good.

11 (Laughter.)

12 MR. RIGSBY: You sound like an  
13 attractive woman.

14 (Laughter.)

15 MS. SILVEY: I'm sure you mean that.

16 (Laughter.)

17 MS. SILVEY: Okay, a little humor  
18 everybody.

19 MR. RIGSBY: Anyway, I'm a District  
20 Representative and I represent four mines in this  
21 area that have some form of a drug policy already  
22 in place, has been for several years. Seems to  
23 be what we have is working. None of us, being  
24 union people or any miner that I know of are

25 either a coal operator, I don't believe none of

1 us condone any kind of illegal drugs. We're dead  
2 set against it, hate them.

3 But I'm here with concerns about some  
4 of our miners that take legal prescription drugs  
5 that have been give to them because of their time  
6 in the mines and the job injuries they've had  
7 trying to work toward retirement, to get a chance  
8 to set back and maybe retire and draw a  
9 retirement.

10 The part that Mr. Wideman related in  
11 this policy about the MRO is exactly correct.  
12 I'm dealing with it now. There won't be a  
13 substance abuse professional. It will be nothing  
14 more than a company doctor and this policy will  
15 give them the right to review your medical  
16 history. If he's off of a job injury before he  
17 goes back to work, if he's taking certain  
18 medications that will give him a right to either  
19 -- I'm dealing with three people right now that  
20 the company wants him to sign over their medical  
21 records and let them review their medical records  
22 and two of them they want to take physical  
23 agility tests and they're over 50 something years  
24 old with 25 years service.

My concern is if this policy is

1 passed that basically will give them the right to  
2 have this. It will become law and probably will  
3 be administered by MSHA. And that's one of the  
4 main problems that I've got with this. When you  
5 have people that's been in the mines 25 years,  
6 we've got some severe medical problems that they  
7 deal with every day in order to come to work and  
8 work and having to work with a hot seat change  
9 out, 9, 10 hours or more, 6 days a week, it puts  
10 a burden on them and their family.

11 That's, like I say, if this is  
12 implemented and enforced, it's going to be  
13 detrimental to our miners, I think, instead of  
14 helping the industry as far as the drugs. We  
15 seem to be working well with what we're doing.  
16 If we can get past the part about turning over  
17 our medical records, I've got a good chance under  
18 our contract through collective bargaining to  
19 have a chance to get these three people back to  
20 work right now, but if this MSHA law is  
21 implemented, then I probably have no chance at  
22 all. They'll tell you right quick that they  
23 won't give them no Social Security disability.  
24 They'll tell them they're able to go out there to

25 work at Wal-Mart or something like that. So

1 their quality of life is -- it will really go  
2 downhill. But that's basically my concern and  
3 would look forward to MSHA maybe going back.

4 I worked in the mines 34 years before  
5 I took this job. I would favor MSHA going back  
6 to these public hearings being what they're  
7 supposed to be, a public hearing and I appreciate  
8 your time and letting me speak.

9 MS. SILVEY: Okay, thank you. I  
10 appreciate your speaking. Thank you very much.

11 Would the next speaker in Birmingham  
12 come to the mic and state your name and spell it  
13 for the reporter, please, the next speaker.

14 MR. GREEN: My name is Randall Green,  
15 R-A-N-D-A-L-L G-R-E-E-N. I'm with the UMWA. I'm  
16 a safety committeeman and president with Local  
17 1948 and also president of the local.

18 I've got a few comments I wanted to  
19 make on some of the past testimony and some of  
20 the questions you all had this morning. First  
21 thing I'd like to say that the drug testing  
22 policy that we have in our mines is a very  
23 stringent one and over the past 15 years it's  
24 done a good job in policing the mines. And of

25 course, we don't want people in the mines, it's a



1 hazard to themselves and the people around them.

2 So think a lot of funds has been put to that.

3 But going back to the question on  
4 diesel in the mines and dust and also a question  
5 to the testimony a gentleman had this morning, we  
6 don't have the funding in areas particularly in  
7 diesel with the hazards that are occurring in the  
8 mines. In our mines we're having a lot of

9 serious diseases that's linked to the mine  
10 environment. We've also learned that diesel  
11 particulates enter the person's body even further  
12 than coal dust and can cause a lot of serious  
13 diseases.

14 A question came this morning about  
15 training and I think about MSHA here in District  
16 11. The first thing I want to say is we've got a  
17 lot of good inspectors at District 11 that have  
18 always been very courteous and helpful in their  
19 inspection of the mines here at District 11 and  
20 to the miners' representatives, but they have  
21 expressed to me and of course I'm a safety  
22 committeeman and a president of local that the  
23 problems we have with diesel entering the  
24 industry, they do need more training and I think

25 that was the question the diesel mechanic put

1     forth this morning.  But they have expressed  
2     that, numerous ones of needing additional  
3     training.  And of course, we realize this takes  
4     additional funding.

5             And we believe that the problems we  
6     have particularly there that MSHA ought to look  
7     at funding these areas today, addressing these  
8     today first before we try to address the drug  
9     policy that's already heavily funded in the  
10    industry.

11            We also expressed that we need better  
12    training in the industry with diesel.  And I will  
13    say this that we have had some training and  
14    engine personnel has had some training, but it's  
15    very limited -- in talking to MSHA personnel it's  
16    because of limited resources.  It's limited  
17    personnel to look at the diesel and of course,  
18    the training.  That's just some of the comments  
19    that I wanted to make to you that we feel that  
20    MSHA should be going in this direction and I  
21    think as far as again, we'd like to have you all  
22    in Birmingham, as usual, where we can stand face  
23    to face and you can see the people here and see  
24    the interest that we have.

And of course, we want a safe

1 industry, but I'd just like to make that comment  
2 on to the other brother who brought up about  
3 diesel that MSHA theirselves has expressed the need  
4 for better training in this area.

5 Thank you.

6 MS. SILVEY: Thank you, Mr. Green,  
7 and I have to say I'm sorry I'm missing seeing  
8 you today. I appreciate your comments here today  
9 and as usual I appreciate your participation in  
10 all of our hearings.

11 MR. GREEN: All I can say is roll  
12 tide to that.

13 (Laughter.)

14 MS. SILVEY: And I agree with you,  
15 they are doing quite well, you know.

16 I would like to say though that with  
17 respect to your comment on the MSHA inspectors  
18 needing more training, I will pass that  
19 information on to our Coal Mine Safety and Health  
20 Office and make sure we look into that.

21 The next speaker in Alabama,  
22 Birmingham, please.

23 MR. SICKLES: My name is Harold  
24 Sickles. I'm from Local 1948. And I'm going to

25 go ahead and bring up something that's important

1 to me. We have in here persons performing  
2 safety-sensitive job duties. Down here towards  
3 where the last paragraph it says "general  
4 administration and clerical personnel are not  
5 considered to perform safety-sensitive job  
6 duties."

7 Up in the next column it says  
8 "safety-sensitive job duties, any type of work  
9 activity where a momentary lapse of critical  
10 concentration could result in an accident,  
11 injury, or death." The CO men, I would really  
12 like to know where he's going to fall in. Is he  
13 going to fall in under general administrative or  
14 the clerical part? Because if this man has a  
15 lapse in concentration, if something happens on  
16 the coal mines, you're talking about every man in  
17 the coal mine is going to be in jeopardy because  
18 they have no outside communication except for the  
19 CO man.

20 MS. SILVEY: Okay, I appreciate what  
21 you're saying.

22 MR. SICKLES: You appreciate what I'm  
23 saying?

24 MS. SILVEY: I understand your

25 comment with respect to the CO man as you said.



1 The CO, the person, the AMS operator, that person

2 has to go underground sometimes, doesn't he?

3 MR. SICKLES: No, ma'am.

4 MS. SILVEY: Not at all?

5 MR. SICKLES: No.

6 MS. SILVEY: Okay, he doesn't have to

7 go underground, but he's required to take

8 comprehensive training under 48, isn't he?

9 He would be --

10 MR. SICKLES: I'm looking around for

11 an answer. Yes.

12 MS. SILVEY: He would be. I'm sure

13 he would be, so if he's required to take part 48

14 training, then he's considered to perform safety-

15 sensitive job duties.

16 MR. SICKLES: Okay.

17 MS. SILVEY: You helped me figure out

18 the answer to that question.

19 MR. SICKLES: Okay. I want to go to

20 Section 66402. And it's about the MRO. I want

21 to pick this paragraph out. It says "it is not

22 the intent of this provision to have the MRO

23 determine whether the use of a given substance is

24 compatible with the performance of a safety-

25 sensitive job duty as this is a determination

1 that is best made by the miner's position."

2           What I'm trying to figure out is what  
3 would be the MRO's job to conduct an interview of  
4 me if my doctor has prescribed or a workman's  
5 comp doctor, either one, has prescribed a  
6 medication for me to take.

7           MS. CARR: I believe you're reading  
8 from the preamble and I think it does go on to  
9 describe in the rule text that the job of the  
10 medical review officer is to substantiate that  
11 you are, in fact, taking the medication as your  
12 physician has prescribed. If you are taking it  
13 accordingly, it is not the job of the MRO to  
14 disqualify you. He would report that back as a  
15 negative test result and you would continue  
16 performing your job functions and there would be  
17 no adverse action. That's the role of the  
18 medical review officer.

19           MR. SICKLES: The other part of this  
20 that worries me, it says "it is not the intent" -  
21 - well, it wasn't the intent of these  
22 pharmaceutical companies to make drugs that  
23 people abuse. It wasn't the intent of Budweiser  
24 to make a bunch of drunks. But some of these

25 companies, it will be their intent to use this to

1 get rid of hurt miners. And I say hurt miner --

2 I'm not an old miner. I'm 35 years old with a  
3 back problem. Sometimes I have to take drugs to  
4 be able to make it through a shift of work. Not  
5 all the time, but there are some miners down

6 there that could not work and they'd be sent to  
7 the house with no pay, not way to support their  
8 families. I believe Mr. Grady touched on that a  
9 while ago.

10                   And then that's what the intent part  
11 of it means. Well, they don't a lot of things  
12 intend to happen, but I would like to see  
13 something that says it will not happen. You  
14 can't let a company or anybody else say that  
15 well, you're taking this prescription and  
16 whatever level it is, because I mean when you go  
17 in the levels, I see back here where -- it's go  
18 standards like 300 and 200 and 100 and all that.  
19 Well, up in the paragraph it said it's going to  
20 be each individual case required. It will be  
21 individual analysis. Well, you got a man that's  
22 150 man. You got a man like me who's 270 pounds.  
23 Yes, stuff is going to affect differently. Who  
24 is going to pay this man or me if they send me to

25 the house and say well, you got 310 in your

1 system. Who's going to pay for that?

2 Being lost time, lost work time for  
3 the employee?

4 (Pause.)

5 I couldn't find anything in there  
6 where there would be any pay for you. You'd just  
7 be sitting at the house until somebody makes a  
8 decision.

9 MS. SILVEY: I think under the rule  
10 that's all determining -- a determination of the  
11 -- of the situation of the particular operator.  
12 That's what I'm trying to say. Whatever is in  
13 place at your mine, what is governed by  
14 collective bargaining or not, whether you're  
15 under collective bargaining. I know that some  
16 operations are. I mean you all said -- I know  
17 that. You spoke about it this morning. Some  
18 mine operations are not. But it would be  
19 governed by the requirements at the mine.

20 MR. SICKLES: Okay, this is leading  
21 into this. If this does go through and pass,  
22 like it stands, well then what you're talking  
23 about it will be going to arbitration. And I  
24 know some people at our mines that was off three,

25 four, five months. I know one man he won his



1 case and he got a big chunk of money, but who was  
2 his light bills and buying him groceries for them  
3 kids up until that point? That's what I'm  
4 getting at. Whether it's right or wrong, I  
5 believe in drug testing. I honestly do. Every  
6 industry needs it, but the word "intent" or  
7 "intended" -- a lot of this is not intended to  
8 hurt anybody. It's to help make everybody safer,  
9 but you've got companies and other things that  
10 are -- they're finding that there's a way to get  
11 rid of people. That's what I'm saying . So the  
12 drug policy at Drummond Coal Company right now,  
13 it's pretty much zero tolerance. If you're  
14 caught with illicit drug and you haven't come to  
15 them with help and you need help beforehand,  
16 you're gone. You're terminated.

17 I feel like we've got a good policy  
18 down here. I just really feel in my heart if  
19 this right here is implemented on us down there  
20 it's going to be -- it'll be used as misintent  
21 for us, rather than help us and that's all I got  
22 to say.

23 MS. SILVEY: Okay. Thank you very  
24 much.

MR. SICKLES: Thank you.

1                   MS. SILVEY: Our next speaker -- will  
2 the next speaker in Birmingham come to the mic  
3 please and state your name and spell it for the  
4 reporter?

5                   MR. TURNER: It's Larry Turner, L-A-  
6 R-R-Y T-U-R-N-E-R. Local 2245. Safety Committee  
7 Chairman.

8                   Ms. Silvey, first of all I want to  
9 say that we all do love you here in Birmingham.

10                  MS. SILVEY: Thank you. I love you  
11 too.

12                  MR. TURNER: I'd like you to give Mr.  
13 Stickler a notice for us that we would like for  
14 these meetings to resume on a face-to-face basis  
15 because we think we're important enough to be  
16 heard on a face-to-face basis where I can express  
17 my concerns to you and your panel instead of  
18 doing it over a teleconference. And I have  
19 written that to Mr. Stickler and you can give him  
20 that message personally.

21                  MS. SILVEY: Okay.

22                  MR. TURNER: I'm looking across the  
23 room and I see a lot of my union brothers. I see  
24 several company officials here. People are

25      concerned about drugs in the workforce, but I'm

1 going to tell you something personally. What I  
2 don't want is the U.S. Government in my life any  
3 more than they already are. You take more of my  
4 money, not you personally, but your Government  
5 and your Agency rule my life and take more from  
6 me than I'm willing to give you. I think I'm  
7 speaking for a lot of people here.

8                   What I don't see, Ms. Silvey, is I  
9 don't see any nonunion brothers here. It is my  
10 right as a union official and a union-paying  
11 official to come to this microphone, but every  
12 time that I am allowed to come and testify before  
13 you and other committees about other issues that  
14 we have, belt air and escape ways and things like  
15 that, one thing that I'm reminded of that I don't  
16 see my union, nonunion brothers come to the  
17 microphone. That's because if they come to this  
18 microphone they probably will not have a job when  
19 they return tomorrow. But I do as a United Mine  
20 Worker have the right to come and speak to you  
21 and go and face my employer tomorrow and still  
22 have my job. I'm proud of that. I'm proud of  
23 that heritage and I'm proud that I do pay my  
24 union dues and it does give me the right to speak

25 before you and an audience.

1                   You are the contact person right now  
2                   so we are laying a lot of this on you. I think  
3                   that the Government is opening a can of worms, as  
4                   my grandfather used to say, that you cannot  
5                   control. This can of worms that you're about to  
6                   open and try to implement on me as a miner and my  
7                   brothers that I represent has so many holes and  
8                   so many avenues that the salary people that  
9                   control our mines that can implement programs on  
10                  me and my brothers that I cannot fight against.  
11                  So you have to be considerate of my wages and my  
12                  family and my brothers and sisters that I  
13                  represent to make sure even though we do not want  
14                  drugs or alcohol in our mines. The United Mine  
15                  Workers stands firm on that.

16                  If any of my nonunion brothers could  
17                  come to the microphone they would feel the same  
18                  way. I don't believe that you have proved as an  
19                  Agency that drugs and alcohol are a contributor  
20                  to most accidents in the mines. I do not feel  
21                  that your Agency has proved that drugs and  
22                  alcohol is a driven contributor to any problem,  
23                  to any disaster, in coal mines. The disasters  
24                  recently that we've had in our mines and in our

25 country, I have not seen any documentation that



1 has been proven that drugs and alcohol has been  
2 the problem in those disasters.

3 We have some of the best mine  
4 inspectors I think in the nation in Birmingham or  
5 in the Alabama area, but they are very limited to  
6 the resources and to the things that they can do  
7 in our underground coal mines. We have problems  
8 that some of our brothers have already brought  
9 forth to you, diesel and dust. The dust problems  
10 in our mines, if you look at some of your own  
11 Agency's results that are black lung is on the  
12 uprise. Nobody wants to talk about black lung  
13 anymore. Our black lung registrations and  
14 regulatory rules are out of date. The dust now  
15 generated in our mines is much smaller and much  
16 finer than when those rules were implemented  
17 years ago. So that's why I think and feel that  
18 things like this money that you're trying to  
19 spend on trying to rule the way that my doctor  
20 prescribes my medicines and my doctor prescribes  
21 the way I can work under any kind of influence  
22 that he gives me or any drug that he gives me, I  
23 think this money can be implemented to do other  
24 training to some of your local inspectors on

25 diesel regs and dust regs and things like that

1 that control and affect my life directly.

2 I am very much opposed to you and  
3 your Agency trying to implement a drug program  
4 that's going to drive me out of the mines and  
5 give the company people, whether it be a woman or  
6 a man, give them the ability to look at my  
7 records and to achieve what they want because in  
8 my job as a safety committeeman I'm not very well  
9 liked sometimes. I don't have the likability of  
10 some upper officials. So you can take this  
11 format that you have written out and you can  
12 allow the people, the higher powers that may be  
13 to rule over me and to my doctor and I'm very  
14 much opposed to that.

15 So in closing, I would like to say  
16 please tell Mr. Stickler to spend this money in  
17 another area and in another place that affects me  
18 directly, immediately now. Diesel regs, dust  
19 regs, and especially diesel regs in the State of  
20 Alabama are backwoodish and we're not backwood  
21 people any more. We're United Mine Workers and  
22 we're proud to say we're United Mine Workers and  
23 those that have not yet joined the United Mine  
24 Workers I'm speaking for you as well.

(Applause.)

1 MS. SILVEY: Thank you, Mr. Turner.

2 We will -- hello?

3 (Phone disconnected.)

4 MS. SILVEY: Okay, while we're  
5 getting Alabama back on the line, can we take a  
6 five minute break. But five minutes. That's it.  
7 Just so the other locations know, we are going on  
8 a five-minute break.

9 Is Alabama back?

10 BIRMINGHAM: It is.

11 MS. SILVEY: We won't take a break.

12 We were going to take a five-minute break. If  
13 Alabama is back on the line, so we will continue  
14 with the hearing.

15 Mr. Turner, thank you very much.

16 Just as you were going off and we were listening  
17 to all the clapping, we were disconnected. So  
18 thanks for your comments.

19 I will pass on your information to

20 Mr. Stickler.

21 Can the next speaker in Alabama come  
22 to the mic, please?

23 (Pause.)

24 Is the next speaker in Alabama.

BIRMINGHAM: There's one more to

1       come. They've gone to get him.

2                       (Pause.)

3                       MS. SILVEY: Do we have one more  
4 speaker in Alabama?

5                       BIRMINGHAM: Yes, he's coming.

6                       MR. LEE: Yes, I'm here.

7                       MS. SILVEY: Okay, thank you.

8                       MR. LEE: Are you ready?

9                       MS. SILVEY: I'm ready.

10                      MR. LEE: My name is Ray Lee. I'm  
11 the president of Local 2397, Jim Walters No. 7  
12 mines in Brookwood, Alabama.

13                      MS. SILVEY: Okay.

14                      MR. LEE: I was just waiting. I want  
15 to speak on behalf of my local myself and I know  
16 what kind of dealings we've had with the new drug  
17 policy that you all were trying to implement. We  
18 already have a drug policy at our mines.  
19 Preemployment is screened for drug usage. If we  
20 have an accident or injured on the job we are  
21 scrutinized and taken to the hospital and are  
22 drug tested. Plus if we have an excessive amount  
23 of absenteeism, we are also drug tested. So in  
24 my view we have already got a system that is

25 working well with us.



1                   The things that bother me right now  
2     with our new employees is coming in we've had an  
3     increase of black lung. I think it needs to be  
4     more emphasis put on controlling dust in the  
5     mines. We've also been having problems with --  
6     we've had cases of cancer in the mines now that I  
7     think it contributed to the dust particulates in  
8     the mines. I think that we need -- MSHA needs to  
9     put more emphasis on dealing with these  
10    situations.

11                   And another thing also that I'd like  
12    to make a comment on is the amount of hours. I  
13    know that we signed a contract to work a certain  
14    amount of hours, but we're under a mandatory  
15    overtime which is about 60 to 70 hours a week. A  
16    lot of our older miners are having to take --  
17    I've had 33 years myself in the mines and out of  
18    the 33 years, 30 years of that has been six days  
19    a week, 10 hours a day a lot of it, and 12 hours  
20    a day. And a lot of the older miners have to  
21    take medication to be able to even work. They're  
22    wore out. And the U.S. Government regulates  
23    truck drivers to drive a certain amount of hours  
24    and they get rest. There's no regulations for

25 coal miners.

1                   That's about all I've got.

2                   MS. SILVEY: Okay, all right. Thank  
3 you very much, Mr. Lee.

4                   MR. LEE: Thank you.

5                   MS. SILVEY: The next speaker in  
6 Alabama, can you come to the mic? Or is that it?  
7                   Anybody else in Alabama who wishes to  
8 testify?

9                   BIRMINGHAM: Just a moment.

10                  MR. WILSON: Thomas Wilson with UMWA  
11 International.

12                  MS. SILVEY: How are you today?

13                  MR. WILSON: I'm doing well. And  
14 you?

15                  MS. SILVEY: Doing pretty good too.

16                  MR. WILSON: I'll start off by  
17 addressing the mannerism in which you're trying  
18 to hold public hearings.

19                  We have previously commented on the  
20 mannerism and this still is a very ineffective  
21 way to have public hearings. We've already  
22 experienced being disconnected twice today and  
23 we've also encountered miners showing up here and  
24 not being afforded written materials as to copies

25 of the proposed rule.

1                   If you look under the proposed rule  
2     66201, written policy, it clearly stats that mine  
3     operators are not required to distribute the  
4     policy to the miners. As I just stated this is  
5     similar to how MSHA has treated in the miners in  
6     Birmingham this morning in that no copies of the  
7     proposed rule was provided.

8                   I don't agree with that in either  
9     situation. Under the proposed rule miners should  
10    definitely be afforded a copy of the written  
11    policy. That is the policy that's going to  
12    govern his work and possibility maintaining his  
13    employment and denying him a copy of it is just  
14    -- makes no sense under this situation.

15                  I've listened to numerous miners  
16    testify this morning and I still believe there's  
17    a large lack of understanding of how deficient  
18    this proposal is on the miner's ability to  
19    identify a supervisor who is under the influence  
20    and needs to be tested. There was some exchange  
21    earlier today and the record can speak for  
22    itself, but as I understood it, the expectation  
23    of those on the panel that it's quite a simple  
24    matter to, for the miner to just go and request

25 that a supervisor be tested.

1                   What disturbs me is it sounds like  
2     the panel fails to understand what Congress  
3     understood in 1969 and again in 1977 in the  
4     formation of the Mine Health and Safety Act.  
5     Congress clearly understood that miners were  
6     often being discriminated against for their acts  
7     for health and safety. And it alarms me  
8     tremendously that this panel and this proposed  
9     rule seems to indicate that all that  
10    discrimination has simply gone away. I submit to  
11    you that any miner under this proposal that  
12    identifies a supervisor that needs to be drug  
13    tested will cease to be a coal miner.

14                   The discrimination -- this proposal  
15    has done nothing to protect that miner in how he  
16    identifies a supervisor. I believe that serious  
17    consideration needs to be placed on this and MSHA  
18    needs to rewrite this, not just training  
19    supervisors to identify and send miners off to be  
20    tested, but more importantly, give the miners an  
21    avenue for identifying a supervisor that not only  
22    causes that supervisor to be tested, but also in  
23    the same and equal sense protects that miner for  
24    reporting that supervisor out.

I also believe that the proposal



1 falls short in that it doesn't address  
2 supervisors who distribute drugs and alcohol to  
3 their workers. If MSHA is as serious about this  
4 problem as they claim to be, then we need a ban  
5 on any supervisor from working in the industry  
6 who distributes drugs or alcohol to his workers.

7 I believe that is completely missing  
8 from your proposal.

9 This proposal needs to address that  
10 within 24 hours of any mine disaster, all  
11 supervisory personnel starting with the CEO and  
12 extending down must be tested for drugs and  
13 alcohol.

14 I find that this proposal's  
15 suggestion that substance abuse professionals,  
16 SAP, is completely inappropriate and inadequate.  
17 The proposal needs to be revised to include only  
18 mental health professionals.

19 I'm disturbed by the and you're  
20 welcome to correct me if I've overlooked it, but  
21 a very important term "under the influence" is  
22 not listed. There's no definition of it. It's  
23 totally missing from the proposal.

24 On page 52145, Section 66202, I've

25 just got a few things under 202 marked, but the

1 proposed required amount of time for this  
2 training would be 60 minutes for new hires and 30  
3 minutes annually for all nonsupervisor miners.  
4 It goes on to state "MSHA is proposing" and this  
5 is in the third column, "MSHA is proposing that a  
6 minimum of two hours of initial training be  
7 provided to each supervisor with an additional  
8 one hour of training annually thereafter."

9           Based on the amount of time that  
10 you're suggesting to train supervisors for  
11 identifying drug problems, that's not consistent  
12 with the preamble statement that there's a  
13 serious problem in the industry.

14           Section 66202, education and  
15 awareness program for a nonsupervisory miner,  
16 both proposed amount of time for training, 60  
17 minutes for new hires and 30 minutes for all  
18 nonsupervisory miners is not adequate.  
19 Additionally, this training should not be  
20 incorporated with MSHA existing training. The  
21 UMWA has commented for years, proposed rule after  
22 proposed rule, that existing training sessions  
23 are full and that operators can not effectively  
24 cover the require topic.

MSHA has never listened to and/or

1 addressed these comments. If it is truly MSHA's  
2 goal to achieve zero accidents, then they must  
3 expand existing time dedicated to training.

4 Section 66203, training program for  
5 supervisors. Both proposed amount of time for  
6 training, two hours for initial training and one  
7 hour for training annually is not adequate. It  
8 is my belief that the initial should be no less  
9 than eight hours, followed by at least two hours  
10 of training annually. In language under proposed  
11 Section 66203 demonstrate that MSHA is not  
12 interested in identifying problems that exist  
13 with supervisors. Miners and miners'  
14 representatives must be properly trained by the  
15 operator to identify abuse among supervisors.

16 Additionally, this rule needs to be  
17 revised and must address the termination from the  
18 industry of any supervisor who distributes  
19 alcohol or drugs to employees.

20 (Pause.)

21 With that I'll take any questions.

22 MS. SILVEY: Okay, thank you. I just  
23 have a couple of comments.

24 The first comment is and some of

25 these are reiteration of some of my earlier

1       comments is that first of all on your comment  
2       about the miners being provided a copy of the  
3       written policy, first of all, before I get to it,  
4       I think the rule specifically says that the mine  
5       operator must ensure that every miner who is  
6       informed of the policy and is provided a written  
7       copy of the policy to the miner's representative  
8       and posted on the mine bulletin board, if the  
9       miner does not have a representative. So the  
10      rule provides that.

11                   We agree with you that the miners  
12      should be provided on the written policy.

13                   MR. WILSON: Okay.

14                   MS. SILVEY: The second point is --

15                   MR. WILSON: Ms. Silvey?

16                   MS. SILVEY: Yes, sir.

17                   MR. WILSON: That doesn't address my  
18      first point. My point was that the miner himself  
19      or herself deserves a copy of the policy.

20                   MS. SILVEY: Okay, the miner --

21                   MR. WILSON: Not the miner's  
22      representative or posted on a bulletin board.

23                   MS. SILVEY: Okay, all right, duly  
24      noted. Thank you.

The next point is and I'm reiterating



1 this. With respect to the training and I think  
2 the only thing that we could do to make it  
3 clearer, I have continuously said that this  
4 training was not to be -- I'm using your term  
5 now, I may not be using yours, Mr. Wilson, I'm  
6 using somebody else's. This training is not to  
7 be crammed into part 48. This training is to be  
8 in addition to part 48, but we said it could be  
9 integrated into the part 48 training, but it had  
10 to be on top, in addition, had to be additional  
11 time.

12 I think the only thing we can do to  
13 make it clearer would be to put it in to make it  
14 part of 66295 and I just made up 295. I don't  
15 know if something here is 295 or not. But what  
16 I'm saying is the only thing that we could do to  
17 make it clearer that we are talking about  
18 additional time, not time within what the  
19 existing part 48 is now which would be consistent  
20 with exactly what you are saying would be to  
21 include it in this part so that you could see  
22 that is separate because we do say that it has to  
23 be additional time.

24 Now with respect to your comment on

25    impairment, your comment is that we have no

1 definition for impairment. I'm sorry, I said

2 impairment because that's in mind. "Under the  
3 influence."

4 We used "under the influence" -- we  
5 talked about being under the influence or

6 impaired. For an example, with respect to  
7 alcohol and we talked about that by talking about  
8 having a verifiable blood alcohol concentration

9 of .04. We talked about it as being under the  
10 influence of another -- of a prohibited substance  
11 as defined and there we incorporated the  
12 Department of Transportation. But with respect  
13 to a specific definition, we will take into  
14 consideration your comment on a specific  
15 definition.

16 And your comments on training, we  
17 heard those before and we appreciate what you  
18 said. I don't think I have any other comments.

19 Thank you.

20 I take it then that with Mr. Wilson,  
21 that's it from Birmingham, at least at this time?

22 BIRMINGHAM: No, there's more.

23 MS. SILVEY: Oh, okay. The next  
24 speaker from Birmingham?

MS. FARR: My name is Chastity Farr.

1 I'm from 4522, Jim Walter. I would like to ask  
2 you one question.

3 MS. SILVEY: Would you state your  
4 name again, please?

5 MS. FARR: Chastity Farr, C-H-A-S-I-  
6 T-Y F-A-R-R.

7 MS. SILVEY: Okay, thank you.

8 MS. FARR: Anybody over there  
9 listening to us on the intercom would any of you  
10 be willing to hand your medical records over to  
11 your boss?

12 MS. SILVEY: Okay, thank you.

13 MS. FARR: That was a question. That  
14 wasn't a statement.

15 MS. SILVEY: That question was asked  
16 earlier and I answered it to the best of my  
17 ability, that sometimes --

18 MS. FARR: Can you say it for me  
19 again because I must have missed it.

20 MS. SILVEY: Sometimes medical  
21 records are required in the course of employment  
22 in a variety of situations. It's a case-by-case  
23 basis and you can't answer that without a proper  
24 context --

MS. FARR: Put it in a context like

1 this. All of us are already employed by the  
2 mines. We were not asked for our medical jobs to  
3 get these jobs. Why should we have to give them  
4 our medical records to keep our jobs?

5 MS. SILVEY: I didn't -- what did you  
6 just say?

7 MS. FARR: When we were hired on at  
8 these mines, we were not asked for our medical  
9 records, so why should we have to give them our  
10 medical records to keep our jobs?

11 MS. SILVEY: It depends. That's why  
12 I said it depends on the context. So this is --  
13 we're talking about here if in the context of  
14 whether the employee has to take a drug test.  
15 Sometimes certain medical information is  
16 necessary, but whenever, as I stated when I was  
17 talking to the gentleman this morning, whenever  
18 medical records are required by the employer  
19 there are a number of existing requirements with  
20 respect to privacy and confidentiality. And the  
21 employer has to comply, must comply with those.

22 MS. FARR: Okay, apparently you don't  
23 know too much about UMWA and the company. The  
24 company has a way to manipulate the system, to

25    manipulate the laws to where they want to get rid



1 of anybody that might cause a little bit of  
2 trouble that they don't agree with in that mine.  
3 Now what is going to protect us from losing our  
4 jobs because we're speaking out against our  
5 rights?

6 MS. SILVEY: The only thing I can say  
7 to that is I will restate the fact that the  
8 companies must comply with the existing  
9 requirements related to privacy and  
10 confidentiality. In all cases, companies must  
11 comply with that.

12 MS. FARR: Thank you.

13 MS. SILVEY: Thank you. The next  
14 speaker in Birmingham, would you please come to  
15 the mic and state your name and spell your name  
16 for the reporter?

17 BIRMINGHAM: He's coming.

18 MR. BRUCE: Yes, the name is Patton  
19 Bruce, like General Patton from Local 2397.

20 My question pretty much the same as  
21 what she said, you're saying that you're going to  
22 classify that you can bag this up. Is there any  
23 way you're going to put down a written thing to  
24 guarantee us that the company will follow the

25 rules?

1                   MS. SILVEY: You are asking me am I  
2 going to guarantee. I'm going to tell you what  
3 the companies must do. I mean --

4                   MR. BRUCE: What I'm saying is there  
5 a way just like you're telling us that we have to  
6 follow it, can you guarantee that the company has  
7 to follow what you're saying?

8                   If you want us to do it, then you've  
9 got make sure that the companies do their part.

10                  MS. SILVEY: The companies -- there  
11 are rules that the companies must follow if  
12 they're going to do drug testing. When it comes  
13 to -- first of all, when it comes to the drug  
14 test itself, the results, if it's any other  
15 medical information, the companies must maintain,  
16 as I said earlier and I'll say it right now,  
17 privacy and confidentiality and that's my answer  
18 to you.

19                  MR. BRUCE: I understand that, but  
20 that still doesn't tell me if you're guaranteeing  
21 it that they're going to do their part. I mean  
22 it's buddy-buddy under the table thinking also  
23 affected.

24                  MS. SILVEY: I can only -- what I can

25 tell you today is what the companies have to do

1 in accordance with the law.

2 MR. BRUCE: So you're still saying  
3 that you can't guarantee that they're going to  
4 abide by and make them enforce what they're  
5 saying? You've got to be somebody who's got to  
6 be accountable for what they're doing. So now  
7 you're making us accountable to follow the rules,  
8 but you still telling me that you can't make the  
9 company accountable to follow the rules?

10 MS. SILVEY: We're all accountable  
11 for what we have to do.

12 MR. BRUCE: But you're not telling me  
13 the company is going to abide by the rules.

14 MS. SILVEY: You're asking me could I  
15 guarantee, didn't you?

16 MR. BRUCE: Can't you guarantee this?

17 MS. SILVEY: If you had asked me can  
18 I state to you that the companies will follow the  
19 rules I can answer yes to that. You asked me  
20 could I guarantee. I mean I've lived in this  
21 world long enough that there are no guarantees to  
22 anything. And you probably know that yourself.

23 So you put it in the terms of can I  
24 guarantee, but I'm telling you that the companies

25 have to follow the requirements and

1 hypothetically, whatever requirements are in this  
2 rule, whatever requirements are in the Department  
3 of Transportation rules, whatever requirements  
4 related to drug testing are in the Department of  
5 Health and Human Services rules, they have to --  
6 because we use the context of those three rules  
7 in our proposal. They have to follow those  
8 requirements. And that's what I can say to you  
9 with a given certainty.

10 MR. BRUCE: We will see.

11 MS. SILVEY: Okay, thank you. Next  
12 speaker in Birmingham?

13 BIRMINGHAM: Is there anybody else?  
14 Yes, we have one coming up.

15 MS. SILVEY: Yes ,sir.

16 MR. BLANKENSHIP: Good morning.

17 MS. SILVEY: Good morning.

18 Afternoon.

19 MR. BLANKENSHIP: It's morning in  
20 Alabama.

21 MS. SILVEY: That's right, it's  
22 morning in Alabama.

23 MR. BLANKENSHIP: Yes, ma'am. James  
24 Blankenship, B-L-A-N-K-E-N-S-H-I-P.

MS. SILVEY: How are you doing?



1                   MR. BLANKENSHIP: Just fine. How are  
2 you doling? Local 2245, United Mine Workers.

3                   On page 52145, on the bottom it talks  
4 about -- they left up with a company who they  
5 were trained to observe and direct the work force  
6 of activities, opportunities to discover reasons  
7 to suspect the miners misusing substances.

8                   Nowhere could I find in there that  
9 allowed me, as a miner to take any action when I  
10 felt that supervisor also was misusing  
11 substances. And I think that's one-sided. I  
12 think if you really did the research of who does  
13 drugs in the coal mines, and who does alcohol,  
14 you'll find that supervisors are probably a  
15 higher number than the miners are.

16                   And there needs to be some avenue for  
17 me, as a minor to have to go to someone and say  
18 this gentleman or this lady is I suspect misusing  
19 drugs or alcohol, but without any recourse to  
20 come back on me from management or that  
21 supervisor.

22                   I also in reading this, I don't find  
23 where the upper echelon management is going to be  
24 tested. I know Jim Walter Resources, George

25 Richmond is our vice president in charge of

1 resources department. Every decision he makes  
2 affects No. 4 mines. Our mine manager, Keith  
3 Shelby, every decision he makes affects the  
4 minors on the ground.

5 We don't have any say so in the  
6 equipment they buy. We don't have any say so in  
7 the parts or supplies they buy, whether inferior  
8 and they fail and cause us to get hurt and then  
9 we want to be drug tested because they think it's  
10 our fault.

11 I'll give you a good example. They  
12 bought a dual headed roof bolter at No. 4 mines.  
13 Had more pinch points in it than you could shake  
14 a stick at. Keith Shelby, my manager, has three  
15 fingers right now he can't use because he was  
16 watching the bolted work and got his hand in a  
17 pinch point and got it mashed. That wasn't the  
18 miners' fault. We don't buy that equipment. We  
19 have no say so in that equipment.

20 So I suggest that in this proposal  
21 you test everybody from the headquarters in  
22 Tampa, Florida, to the CMO office in Brookwood,  
23 to the secretaries to the vendors, to the guy  
24 that fills up the Coca-Cola machine. If they

25 bring in vendors, test them. If they bring in

1 salesmen, test them. If they bring in service  
2 reps, test them. If they bring in these high  
3 fallutin' visitors, test them, because going on  
4 that property they've got access to the minors  
5 and they could possibly cause an injury.

6                   So if you're going to test me as a  
7 miner, you need to test everybody. I think it's  
8 one-sided. I think there's things that MSHA  
9 could be doing that's more safety-wise for the  
10 miners. We've got people working 10 hours a day,  
11 6 days a week. Some days 12 hours before they  
12 can get out of the mines. I think fatigue is a  
13 lot of the problems of accidents, not drugs and  
14 alcohol.

15                   Diesel emissions, there are studies  
16 done that diesel emissions and truck drivers have  
17 a higher rate of cancer than the normal every day  
18 public. They did that study and found out it was  
19 diesel emissions. Now they're in the open, out in  
20 the atmosphere driving. We're in a captive area  
21 underground where our breathable air is brought  
22 in to us and the oxygen goes out. So I think  
23 money would be well more served in doing more  
24 testing on emissions. I know at No. 4 mines

25 we've got a lot of people that's come up with

1 cancer, a higher number than normal community.

2 My personal opinion is the diesel emissions.

3 MSHA standards are diesel emissions

4 is ridiculous. I mean there's a lot better

5 emissions. State of West Virginia has a lot

6 better program and they do stuff that they more

7 serve the miners underground it's more safety.

8 And with that I'll answer any question you've

9 got.

10 MS. SILVEY: Okay. I don't have  
11 anything. Thank you very much for your comments.

12 MR. BLANKENSHIP: Thank you.

13 MS. SILVEY: Thank you. Any other  
14 speaker in Alabama?

15 BIRMINGHAM: Yes, there's one

16 gentleman approaching the microphone.

17 MS. SILVEY: Okay, thank you.

18 (Pause.)

19 MR. STEVENS: Good morning. My name

20 is Terrell Stevens, S-T-E-V-E-N-S, Local 1867,

21 construction.

22 In regards to also what Mr.

23 Blankenship just said about having supervisors

24 tested, I've worked under several supervisors

25 that was drug abusers, alcohol abusers, and we



1 had to follow the rules. We talked about it.

2 Nothing ever came down unless they really, really  
3 messed up. And as you said this is a one-sided  
4 testing program that should cover everybody, not  
5 just -- we're all for a drug and alcohol-free  
6 environment. But we also wish that all people,  
7 supervisors included, would be covered in any  
8 kind of drug testing that happens.

9 Thank you.

10 MS. SILVEY: Okay, thank you.

11 Anybody else in Alabama?

12 BIRMINGHAM: That looks like it's it  
13 for Alabama right now.

14 MS. SILVEY: Okay, you all hold on  
15 because I'll be back to each location that I  
16 leave, I'll be back there. So right now we'll go  
17 to Virginia, Minnesota.

18 Is Virginia Minnesota on the line?

19 VIRGINIA: Yes, we are.

20 MS. SILVEY: Okay, would the speakers  
21 in Virginia, Minnesota, the first speaker I have  
22 is Ron Lovel. So I'm asking you just let the  
23 speakers in Virginia, Minnesota come to the mic  
24 and state their name, spell the name for the

25 reporter and we're going to go like that. Nobody

1 needs to do anything else.

2 Mr. Lovel, are you there?

3 VIRGINIA: He's here.

4 MR. LOVEL: Good morning, Ron

5 Lovel.

6 MS. SILVEY: How are you?

7 MR. LOVEL: I'm fine this morning.

8 MS. SILVEY: Good.

9 MR. LOVEL: I'm representing United  
10 Steel Workers 4950. We have the iron mines of  
11 Upper Michigan and I want to spend my best  
12 regards to my brothers in the UMWA working coal  
13 down south.

14 I want to speak to this issue on the  
15 policy today that I feel very strongly that there  
16 really isn't a good reason for this regulation to  
17 be issued.

18 Just as many of the other speakers  
19 have mentioned, we have had a long term  
20 established drug policy in our mines and although  
21 it's not a policy that the union was involved in  
22 negotiating with the company, it was a unilateral  
23 implementation of a policy. Nonetheless, it  
24 seems to be doing the job and I'm not aware of

25 any problems that we're having.

1                   At the outset of the implementation  
2                   of this drug policy some years back, there was  
3                   very limited reasons that a person wouldn't get  
4                   tested. If you sneezed the wrong way, you would  
5                   find yourself getting a drug test and when the  
6                   company exhausted all of this excessive testing  
7                   and finally realized that they were spending a  
8                   lot of money on useless testing and we're finding  
9                   that we had a whole workforce full of abusers  
10                  that slowly kind of backed up to the point where  
11                  we're at today where there's very limited drug  
12                  testing done. No random testing other than for  
13                  persons who may have been identified with an  
14                  abuse problem previously.

15                  All I can see is what this proposal  
16                  change does is just provide for mandated random  
17                  testing and frankly, it appears that the policy  
18                  really was written more than company CEOs. We  
19                  had had a federal given to us and we're going  
20                  back to the 1930s called the National Labor  
21                  Relations Act and that allowed us to kind of get  
22                  an even keel with organized labor to negotiate  
23                  contractual bargaining agreements with companies  
24                  and give us a little bit of a level playing

25 field.

1                   This policy right here, although it  
2                   talks periodically throughout the policy about  
3                   the company and/or labor groups negotiating  
4                   things through a contractual bargaining  
5                   agreement, if you read it closely the companies  
6                   are given total license to do whatever they want  
7                   to do with this policy.

8                   We will be in no position to be able  
9                   to bargain anything. We just completed  
10                  bargaining here in Pittsburgh in late August.  
11                  That would have been an opportunity for us to  
12                  bargain a meaningful drug policy that protected  
13                  our membership, protected the rights to continue  
14                  working in the event of false tests and other  
15                  tests in the states that had been made. So we  
16                  will have no capability of negotiating anything  
17                  meaningful in the bargaining area to help us out  
18                  over this proposed rule.

19                  I don't want to belabor this whole  
20                  thing. Many people have gone on very good  
21                  subjects and I don't really want to rehash them.  
22                  I know there's a lot of people that still want to  
23                  talk. But when you look at reasonable suspicion  
24                  testing, I mean there are medical personnel,

25 highly trained out there, police officers, EMTs,



1 and even they would have difficulty determining  
2 someone's specific problem when they're looking  
3 at them at a scene of an accident or whatever.  
4 Is this person have an insulin reaction? Are  
5 they diabetic? Are they under the influence of  
6 drugs, narcotics? And these are people that are  
7 highly trained. They're not getting a two-hour  
8 training period subsequently followed by one hour  
9 annual to recognize.

10                   This rule has too many areas that  
11 open this whole are up to mischief on the part of  
12 an employer. Frankly, my employer, although I  
13 don't have any of them present, I would think  
14 that they're not very excited about this. They  
15 feel they probably have a workable drug program  
16 in place. They don't need MSHA to come up with a  
17 specific rule that would actually take and make  
18 our program probably not work as well as it does  
19 now.

20                   With that, I want to conclude my  
21 comments and thank you.

22                   MS. SILVEY: Thank you.

23                   (Applause.)

24                   MS. SILVEY: Thank you very much for

25    your comments, Mr. LOVEL.  Is there anybody else

1 in Virginia, Minnesota, who wishes to present  
2 testimony?

3 MR. MLAKAR: Yes. This is David  
4 Mlakar with USWM.

5 MS. SILVEY: Would you spell that?

6 MR. MLAKAR: David Mlakar, spelled M-  
7 l-a-k-a-r.

8 I'm with the USWM District Health an  
9 environmental adviser for the District. First of  
10 all I want to thank you for allowing us to speak,  
11 but I really do oppose the way this is set up. I  
12 prefer to have faces here that I could face and  
13 speak to directly.

14 Secondly I vehemently oppose this  
15 drug and alcohol policy. There are too many  
16 loopholes that give an employer too much power to  
17 harass the membership. There were many good  
18 points that were made along the way by a lot of  
19 other people. I'm not going to rehash all of it  
20 either.

21 The other thing is, there are fatigue  
22 factors that limit someone being on drugs. We've  
23 had testimony already that people are working six  
24 hours, 16 hours, 10 hour, 12 hour shifts six days

25 a week.

1                   If MSHA up to put their money into  
2 something, I think they should be looking at  
3 regulation to regulate how long people can work.  
4 I'm not saying that's the way, you know, to put a  
5 number on it, because people are different.

6                   The thing is, what you're doing here  
7 is just regulation. It's putting us at a great  
8 disadvantage.

9                   Another place to look at, if you want  
10 to put your money where your mouth is and really  
11 do something for workers, people have brought up  
12 black lung and that, well, why don't we put the -  
13 go back in 1973, under 1973 threshold limit  
14 value. Let's bring those up to standard, because  
15 there is a lot of information out there that  
16 could bring those up to where they're actually  
17 functioning to where they should be.

18                   And we have asbestos standards that  
19 are way behind the times, and OSHA had an  
20 asbestos standard that was definitely over the  
21 limit.

22                   So in conclusion I'd like to say that  
23 again I really oppose this policy, and I'd hope  
24 you'd reconsider, because we do have negotiating

25 agreements. We don't need the federal government

1 in this part.

2 Thank you.

3 MS. SILVEY: Thank you.

4 The next speaker, Mister - is there  
5 another speaker in Virginia, Minnesota?

6 MR. TASSON: Yes, I'm here.

7 MS. SILVEY: Okay.

8 MR. TASSON: My name is John Tasson,

9 T-a-s-s-o-n. I'm a union safety representative  
10 for Local 4974 in upper Michigan.

11 And I have somewhat of a unique  
12 perspective to safety in the workplace because

13 I'm also part of the safety department. I'm  
14 involved with many aspects from corporate teams  
15 on down to right in the workplace.

16 And my focus is solely to provide and  
17 safe and healthy workplace for our workers and  
18 keep them from being injured on the job.

19 We do have preemployment testing, and  
20 we do have a policy in place where people are  
21 evaluated using our checklist administered by two  
22 people. I believe two people are better than  
23 one to rule out some of the subjective in it.

24 That may or may not, depending on how

25 that checklist plays out, send someone in for



1 random testing.

2           Our alcohol standard is already at  
3 0.02, twice as stringent as the UMSHA proposal.  
4 This fits in with the policy we've had, tested  
5 upwards of 100 people and have had zero positive  
6 results.

7           Additionally I'm involved in weekly  
8 conference calls where all of our reportable all-  
9 serious-incidents-in-North-America are discussed,  
10 and never have drugs or alcohol been a factor.

11           Personally I find it to be  
12 substandard conditions, fatigue, equipment not  
13 being maintained properly, corporate procedures  
14 or training that turns out to be a root cause.  
15 It has never been impaired employees.

16           So we do also have a successful EAP  
17 program that I happen to be a committee member of  
18 that does provide support for people that do have  
19 these issues.

20           Our established policies are working  
21 well. There ha never been a demonstrated need  
22 for further government oversight in this area. I  
23 find it hard to believe that my company would  
24 welcome this further oversight.

I'm concerned that these report

1 standards will drive reporting underground.

2 United mine operators, safety department and MSHA  
3 show relevant information that we need to address  
4 real safety issues.

5 Without a doubt that would be  
6 detrimental to our safety efforts overall. I do  
7 believe that UMSHA should focus its resources on  
8 enforcing standards already in place - dust,  
9 noise, as reported black lung, all those things -  
10 and if you do have the resources to spend more  
11 inspectors in the field would give us a real  
12 benefit and immediate payback.

13 That's all I have.

14 MS. SILVEY: Okay, thank you very  
15 much. Let me ask you just something for  
16 clarification.

17 MR. TASSON: Could you repeat that?

18 MS. SILVEY: Let me ask you something  
19 for clarification. When you talked about your  
20 preemployment testing, and then you said  
21 something about using a checklist that is  
22 reviewed by two people. Could you explain to me  
23 - I just didn't fully follow you there.

24 MR. TASSON: Sure.

MS. SILVEY: Okay.

1                   MR. TASSON: Preemployment testing is  
2 a historical test before anybody gets hired.

3                   MS. SILVEY: Right.

4                   MR. TASSON: The checklist, should  
5 there be an accident, and it doesn't have to be a  
6 serious accident virtually any accident.

7                   MS. SILVEY: Right.

8                   MR. TASSON: We have a checklist that  
9 two people from management go through. And all  
10 the obvious things that would be on there. They  
11 go through it as their checklist dictates. If  
12 there is a cause for further evaluation then  
13 those people would be transported to a local  
14 hospital for testing.

15                   MS. SILVEY: Okay, I got you now. I  
16 understand.

17                   MR. TASSON: Okay, all right.

18                   MS. SILVEY: Thank you very much.

19                   MR. TASSON: Thank you.

20                   MS. SILVEY: Okay. The next person in  
21 Minnesota?

22                   MR. NARHI: Hi.

23                   Ms. SILVEY: Hi.

24                   MR. NARHI: My name is Steve Narhi.

25 I'm a member of 4974.

1 MS. SILVEY: Your last name is what  
2 now?

3 MR. NARHI: Steve Narhi, N-a-r-h-I.

4 MS. SILVEY: Okay.

5 MR. NARHI: I'm a member of 4974 out  
6 of Michigan.

7 I guess I kind of go along with what  
8 Ron and John have both just stated pretty much as  
9 far as the policies that we have in place right  
10 now I believe are more than enough. They've  
11 shown that they produce good results, as far as  
12 our record at Michigan mines. Everything has  
13 come out to be zero.

14 I also have a different perspective  
15 as far as anything that I've heard so far today  
16 as I was the first person to be drug tested in  
17 the Michigan mines between the Tilden and Empire  
18 mines.

19 A lot of these policies weren't in  
20 place at the time between the mines. It was  
21 handled poorly to say the least. There were a  
22 lot of the - I guess the confidentiality rules  
23 weren't followed. I would hope to say that like  
24 you said earlier how it would be governed by MSHA

25 that the company must follow these policies.



1                   It hurt my family, it hurt me, it  
2 hurt my career, to have this information let out  
3 ahead of time, and afterwards to people that had  
4 no business to this information.

5                   I believe that this is not something  
6 that MSHA should be involved in period, other  
7 than the fact that these HIPPA laws and all these  
8 other privacy laws are being violated.

9                   I'm a trained EMT. I've been one now  
10 for almost six years. We have to go through  
11 extensive training to learn to define how people  
12 act, how people look, for alcohol abuse, or just  
13 behavioral problems.

14                   We also are required by law, by the  
15 State of Michigan, to continue our education in  
16 this to learn to determine, you know, what  
17 requires a behavioral problem I guess.

18                   I have my serious doubts that you are  
19 going to be able to train a supervisor in a short  
20 period of time to make an educated guess is what  
21 it's going to be as to whether this person has  
22 been drinking or if they have a serious medical  
23 problem.

24                   This should all be confidential. It

25 shouldn't be the right of our supervisors to make

1 determinations as to whether or not we have a  
2 problem.

3           With our company we have a checklist.  
4 If there is an accident, and it doesn't matter if  
5 it's minor or major, gallery personnel have to  
6 follow this checklist to try to make an informed  
7 decision as to whether or not we need to see a  
8 proper medical professional.

9           I believe that MSHA - and here I'm  
10 outdated again - the drug policies should be left  
11 between the employers and the union; that this  
12 has been working fine. I don't believe that the  
13 federal government needs to step in and do  
14 anything else.

15           That would be it. Thank you.

16           MS. SILVEY: Okay, thank you very  
17 much.

18           MR. MALESKA: Good morning. My name  
19 is Mike Maleska, M-a-l-e-s-k-a. And I represent  
20 about 440 iron ore minors and their families.

21           And on their behalf we stand in  
22 opposition to the changes in MSHA drug and  
23 alcohol standards.

24           I take my position with the belief

25 that these changes would worsen the abuses of

1 existing practices and procedures.

2 I'll be brief, but I brought two  
3 examples. We had an equipment operator that was  
4 directed to operate his bulldozer in the area of  
5 a fire suppression systems building. He asked  
6 the boss to locate to see if there was anything  
7 underground there and was told to go ahead and  
8 dig.

9 The dozer struck the underground  
10 electrical feeder supplying power to the building  
11 leaving the plant without fire protection for an  
12 extended period of time.

13 The operator was subjected to a drug  
14 and alcohol assessment nad the supervisor wasn't.

15 A second example was, our local union  
16 president was in a telephone argument with a  
17 human resources manager. A manager had diagnosed  
18 him over the telephone, and he too was subjected  
19 to a drug and alcohol testing.

20 Both of these tests returned non-  
21 positive. These issues have been grieved, but  
22 there is no recognizable remedy for these types  
23 of abuses. And yet they do serve to insult and  
24 intimidate our workers, our committee persons and

25 union officers.

1 I ask you why would we support an  
2 expansion of management tools to abuse workers?  
3 What hurts and kills miners is poor work  
4 conditions, equipment failures, and lots of other  
5 things including bad judgments on the parts of  
6 management and supervision.

7 Thanks for the opportunity.

8 MS. SILVEY: Thank you, sir. And what  
9 did you say your last name was, please?

10 MR. MALESKA: Maleska.

11 MS. SILVEY: Could you spell that,  
12 please?

13 MR. MALESKA: Yes, M-a-l-e-s-k-a.

14 MS. SILVEY: Okay, thank you very  
15 much, and thank you for your comment.

16 MR. SAARINEN: Good morning.

17 MS. SILVEY: Good morning.

18 MR. SAARINEN: My name is Glenn  
19 Saarinen, G-l-e-n-n S-a-a-r-i-n-e-n.

20 I'm a member of Local 2705 union of  
21 steelworkers. I'm union training coordinator.

22 One comment and one question. The  
23 comment I really am concerned about is the lack  
24 of detail on how mine operators would deal with

25 contractors.



1                   Our facilities right now, a large  
2           percentage of our people working in our mines are  
3           contractors, and I really don't feel that it  
4           deals with them and their obligation for drug and  
5           alcohol testing.

6                   That's my comment.

7                   My question is, and I'm sure you've  
8           heard this many times, there is definitely  
9           concern about our workers' fears of the testing  
10          being abused and used for harassment.

11                  My question is, will MSHA respond to  
12          complaints by miners as to abuses and  
13          discrimination that will result from the  
14          implementation of this policy?

15                  I guess I'm asking is MSHA prepared  
16          to punish a mine operator for improper  
17          application of reasonable suspicion?

18                  That is my question.

19                  MS. SILVEY: Okay. Well, the - all of  
20          the existing rules and regulations applicable  
21          under the Mine Act would pertain under this rule  
22          if - under the proposed rule. And so if a miner  
23          felt discriminated against, the miner would file  
24          a discrimination complaint. And then MSHA would

25 investigate the complaint.

1                   So that would follow that

2           discrimination complaint procedure.

3                   MR. SAARINEN: Okay, thank you.

4                   MS. SILVEY: Okay, thank you.

5                   Next speaker?

6                   MR. WOODS: Hello, my name is Mike

7           Woods, W-o-o-d-s.

8                   I'm a member of Local 1938, and an

9           employee of U.S. Steel.

10                   I'm also here to oppose the proposed

11           legislation and change it. We have currently

12           with our company, between the union and the

13           company we bargained a drug-and-alcohol policy.

14           It's a for-cause policy.

15                   And even at that the company has

16           tried to use it as a random testing policy.

17           There goal has been to intimidate the people for

18           speaking their opinion. They've had people sent

19           out for voicing their opinion in a grievance

20           hearing, for being upset because a manager

21           instructed somebody to remove a safety lock.

22                   Somebody reporting an accident, it

23           could be something minor like a scratch, and the

24           end result is, we've got people up here that tell

25 us constantly that they will not report another

1 accident unless you are hauling them out in an  
2 ambulance. That is completely counterproductive  
3 to I think any of the goals that we as  
4 steelworkers or any other union member, as  
5 employees of a union, it's totally against - we  
6 can't improve anything if we don't know what's  
7 happened. And if people aren't going to put  
8 forth the effort to let us know, how are we going  
9 to address the hazard?

10 Trust is, we learn every time there  
11 is an accident there is something that can be  
12 learned from it, no matter how minor it is.

13 I don't believe that we need the  
14 federal government to address an alcohol and drug  
15 problem. I don't believe that we have an alcohol  
16 and drug problem in our plants. Out of probably  
17 60 tests that we had over a four-month period,  
18 there was one positive test which was a for-cause  
19 test. It was determined to have a for-cause test  
20 because the manager did his job, he showed up in  
21 the morning, he spoke to the employees and he  
22 made sure that they were all fit for work.

23 I guess I'm a firm believer, if it's  
24 not broke don't try to fix it. We have lots of

25 known hazards already in the plant, that you

1 could talk to a lot of their inspectors and see  
2 from their reports, there's a lot of things.  
3 There is dust exposure. There is housekeeping  
4 problems. There are things that the company  
5 doesn't ever try to address. They will just time  
6 and again pay the fine.

7           At our plant alone we - U.S. Steel  
8 will pay probably between \$1.5 and 2 million in  
9 fines a year just because they figure it into  
10 their budget; that's easier than correcting the  
11 problem.

12           I think that if there was an effort -  
13 if this effort was put forth and directed in the  
14 right way to make our plant safer, maybe in  
15 adding some more inspectors and providing these  
16 inspectors with the means to enforce the  
17 standards that are already in place, so that  
18 companies can't just pay the fine and let things  
19 go on.

20           The accidents that we have in our  
21 plants aren't because of drugs or alcohol.  
22 They're because there are hazards there.

23           And I guess that's really all that I  
24 have.

MS. SILVEY: Okay, thank you, Mr.



1 Woods. I guess the only thing I would say is  
2 that I think we agree with you that something can  
3 be learned from all accidents.

4 But thank you for your comment.

5 The next speaker, please.

6 MR. JOHNSON: Yes, hello. My name is  
7 Phillip Johnson, Local 2705. And I'd like to  
8 thank you for giving us this opportunity to  
9 respond to this proposal.

10 And I guess no different than anybody  
11 else I've heard today, we are adamantly opposed  
12 to the MSHA getting involved in something that we  
13 have been involved in for the last 20-some years  
14 here.

15 I'm chairman of the Local 2705 used  
16 to be called human services, now it's the  
17 employee assistance program. And also district  
18 chairman up at the mine. And we have been  
19 working for many years, since about 1985, with  
20 problems with alcohol and drugs in the mines.

21 And we have established a really good  
22 relationship with the company and with the union  
23 people. That's taken a lot of work. And my  
24 feeling is, MSHA getting involved in this is

25 going to probably do great harm to that program.

1                   And I think it's just going to create  
2 a lot of suspicion and hard feelings, and I  
3 really don't understand why MSHA is getting  
4 involved in it to tell the truth. The company  
5 has spent a lot of time, money and effort getting  
6 the drug and alcohol policy established, and  
7 although it's not perfect, it is working quite  
8 well, and it's taken a lot of work on their part  
9 and on our part to get it to work well.

10                   So that's my feelings anyway. But I  
11 do appreciate you giving us an opportunity to  
12 speak to this.

13                   MS. SILVEY: Okay, thank you.

14                   Next speaker, please.

15                   MR. TOOLE: I'm David Toole, T-o-o-l-  
16 e. I'm a member of Local 1938.

17                   I'd like to start out by thanking you  
18 for the opportunity this morning. I work with  
19 about 1,000 people at U.S. Steel Minntac, and I  
20 don't know of anybody in that plant that doesn't  
21 want an drug-and-alcohol-free work environment.

22                   As a steelworker I have rights and  
23 privileges that I'm allowed because of that, and  
24 because of that we have a drug-and-alcohol policy

25 at our plants already. We don't need a new

1 policy; we just need to fix the policy we have.

2           There are problems with it that we  
3 have used here and there at times. But it's the  
4 policy we have that we can work with.

5           And listening to everybody else here  
6 today they have policies at their plants already,  
7 so they don't need another one.

8           I also realized that not everybody  
9 has policies, and maybe there is a need for them.  
10 But we have a policy, and we don't need another  
11 one.

12           I also agree with a lot of the other  
13 speakers earlier that maybe you need to take  
14 these resources that you putting into this policy  
15 and put them into other places to have more  
16 inspectors around to take care of the problems  
17 and fix the problems that we have in other areas,  
18 or also to fix - these long hours that people are  
19 being forced to work, and being threatened with  
20 discipline if they don't work these long hours.

21 I think MSHA needs to come up with a policy to  
22 fix those areas, and also the dust problems and  
23 guarding issues and housekeeping issues we have.

24           The company I work for already has a

25     doctor on property, and he is bought and paid for

1 by that company. He quotes the company line all  
2 the time. He tries to downplay the issues that  
3 we bring in and talk to him about. In an issue  
4 lately that I brought up to them, and they  
5 basically downplayed the whole issue. Oh, it's  
6 not a big deal. We've done testing on it. You  
7 weren't exposed, this, that, the other thing. I  
8 asked him to prove it, and he couldn't quote it,  
9 but he's quoting the company line. And people  
10 don't tell that doctor lots of information  
11 because it's not any of his damn business what I  
12 have and what I do outside of their property.

13 The one question I have for you is,  
14 how is the random testing going to be done?

15 MS. SILVEY: If I remember correctly  
16 the rule said that about - that there should be a  
17 minimum of 10 percent of the population at the  
18 mine selected for random testing, so a policy has  
19 to make sure that it has the program at the mine  
20 has to have at least 10 percent of the employees  
21 tested annually under the random testing policy.

22 MR. TOOLE: So they - I'm sorry.

23 MS. SILVEY: So they would be  
24 designated every year.

MR. TOOLE: So basically they could



1     come up and say, Dave Poole, you're a union  
2     member, you're a radical because you are a safety  
3     committee man, you are a grievance man, we are  
4     going to test you today just because of that? Or  
5     is it going to be a policy where they're going to  
6     pick them out through their Social Security  
7     number, test those people, or a number, the last  
8     number of your employee number, do it that way?  
9     Or is it not set up yet? Or is it something that  
10    the union could have some say in if this comes  
11    into play?

12                   MS. SILVEY: Well, the proposal  
13    requires that it be a random method, that it  
14    cover 10 percent. Like I said, it has to be a  
15    scientifically valid method. So there probably  
16    could be a variety of ways, but it has to be  
17    under the proposal scientifically valid method  
18    such as random number table or computer-based  
19    random number generated.

20                   MR. TOOLE: Okay, that's all I have.  
21    I don't think we need another policy. But thank  
22    you for your time.

23                   MS. SILVEY: Okay, thank you.

24                   MR. TOOLE: That's all of our speakers

25 from Virginia, Minnesota.

1 MS. SILVEY: That's all your speakers?

2 Well, I'll be back to you all before we close the  
3 hearing, if you all are going to continue to stay  
4 on the line.

5 Thank you all very much for your  
6 participation.

7 We will now go to Beckley. Is  
8 Beckley on the line?

9 Okay, we are ready for Beckley. It's  
10 Pat Brady, Murray Energy. Are you there, Pat?

11 MR. BRADY: Can you hear me?

12 MS. SILVEY: I'm sorry, what did you  
13 say?

14 MR. BRADY: Can you hear me now?

15 MS. SILVEY: I can hear you. I can  
16 hear you now.

17 MR. BRADY: First of all let me thank  
18 you for the opportunity to speak with you, Pat.  
19 And listening to everybody's opinions on this has  
20 helped me to understand the urgency and the  
21 difficulty of proposing a rule such as you are  
22 proposing right now.

23 And my name is Pat Brady, B-r-a-d-y.

24 And I'm the manager of employee development for

25 Murray Energy Corporation. And I likewise would

1 like to see all of you and your panel, certainly  
2 at least for other reasons, to say hi to you.

3 Murray Energy Corporation strongly  
4 objects to the initiative that the Mine Safety  
5 and Health Administration has taken on the  
6 proposed rule on alcohol and drug testing in  
7 mines.

8 We believe that the adoption of the  
9 proposed rule would diminish the level of  
10 workplace safety currently provided by Murray  
11 Energy's policy on drug and alcohol abuse.

12 The level of protection from the  
13 adverse effects of drug and alcohol in the  
14 workplace which is provided to miners employed in  
15 our coal mines and processing facilities by our  
16 policy exceeds the level of protection provided  
17 by MSHA's proposed regulation.

18 We find it irresponsible to propose a  
19 rule that would condone unlawful activity and  
20 diminish miner safety by prohibiting mine  
21 operators from terminating employment of a miner  
22 or an employee who tests positive for being under  
23 the influence of illegal drugs or alcohol while  
24 on mine property.



1 appropriate discipline for miners who violate  
2 mine operator drug drug-and-alcohol free  
3 workplace policy in our opinion runs contrary to  
4 federal statutes such as the Americans with  
5 Disabilities Act which does not prohibit the  
6 termination of illegal drug users; other federal  
7 regulations such as the Department of  
8 Transportation Safety and Health Administration  
9 regulations, which do not prohibit an employer  
10 from terminating workers who report for duty  
11 under the influence of alcohol or illegal drugs  
12 in many other state statutes.

13 We also find it irresponsible to  
14 propose a rule that only applies to safety-  
15 sensitive jobs. At Murray Energy we believe that  
16 all jobs are safety sensitive, and to divide our  
17 employees into sensitive and non-sensitive groups  
18 would be detrimental to our policies and the  
19 standards that we expect all employees to adhere  
20 to.

21 Murray Energy Corporation's current  
22 drug and alcohol abuse policies have proven to be  
23 effective, and all employees of Murray Energy are  
24 required to pass a preemployment drug screen, and

25 are subject to post-accident random and reasonable



1 suspicion drug-and-alcohol testing. Miners who  
2 either refuse to submit to testing as required  
3 under the policy, alter or attempt to alter a  
4 test result, or produce a positive test result,  
5 are subject to termination.

6 Murray Energy encourages any employee  
7 who has a drug or alcohol abuse or dependence  
8 problem to seek professional assistance before  
9 the employee is required to submit to testing  
10 under the policy.

11 Treatment and counseling are  
12 available for employees who voluntarily seek  
13 treatment or counseling. However if an employee  
14 does not seek professional assistance before  
15 being tested under the policy they can not avoid  
16 disciplinary action for the violation of the  
17 policy, or requesting professional assistance.

18 The risk of termination of employment  
19 on a first violation is the best deterrent in our  
20 opinion to violation of the drug-free and  
21 alcohol-free workplace policy.

22 Most of Murray Energy's concern  
23 regarding the proposed regulation can be  
24 addressed by MSHA's deletion of the requirement

25 that employees who violate the drug-and-alcohol-

1 free-workplace program be referred for assistance  
2 by the addition of a provision stating that these  
3 regulations shall not be construed to or preclude  
4 an employer from developing or maintaining their  
5 current drug and alcohol abuse policy; their  
6 substance abuse policy that exceeds a minimum  
7 requirement set forth in the regulation.

8 And again that's a prepared statement  
9 from Murray Energy, and I'd be welcome to answer  
10 any questions.

11 MS. SILVEY: Okay, thank you, Pat.

12 Let me just ask you a couple of  
13 things, that's all. The current Murray policy  
14 applies to all employees, you said. But under  
15 the program treatment and counseling is available  
16 to people who seek the counseling; is that  
17 correct?

18 MR. BRADY: All employees at Murray  
19 Energy are expected to be fit for duty and in a  
20 condition to safely and productively carry out  
21 their assignments. And all employees have  
22 available to them counseling under their medical  
23 benefits programs.

24 MS. SILVEY: Okay, I guess what I'm

25    saying though is, I guess I'm a little bit

1 confused. If under the Murray policy if an  
2 employee voluntarily sought counseling for drugs  
3 or alcohol, then that person does have the - how  
4 should I say - that person under the Murray  
5 policy can seek counseling, can voluntarily seek  
6 counseling and get it, right? Or is that what I  
7 understood you to say?

8 MR. BRADY: That is correct. If they  
9 have a dependence problem, and they voluntarily  
10 recognize that problem and seek professional  
11 assistance, they can submit to do that. But if  
12 they are selected for a random drug test, and  
13 they haven't done that first, then they have to  
14 abide by the policy.

15 MS. SILVEY: Then they what?

16 MR. BRADY: They have to abide by the  
17 policy.

18 MS. SILVEY: Okay, so that's when you  
19 said - then you can terminate them if they are  
20 found to have a positive test?

21 MR. BRADY: That's correct.

22 MS. SILVEY: Okay, I just wanted to  
23 make sure. And then the current policy covers  
24 post-accident reasonable suspicion and random?

MR. BRADY: Yes, the drug test - the

1 drug and alcohol testing is done for

2 preemployment.

3 MS. SILVEY: Okay.

4 MR. BRADY: For return to work, for  
5 reasonable cause, and the policy outlines in  
6 writing what reasonable cause is; post-accident  
7 testing; and any employee involved in a serious  
8 incident.

9 MS. SILVEY: Okay.

10 MR. BRADY: The term, employee, it's  
11 any employee, not just a miner.

12 MS. SILVEY: Okay. Okay, I think  
13 that's all. I don't have any more comments,  
14 clarifying comments.

15 Anybody? I think that's it. Thank  
16 you very much, Pat.

17 MR. BRADY: Thank you, Pat.

18 MS. SILVEY: The next I have on the  
19 list from Beckley, Roger Horton with the UMWA.

20 Are you there?

21 MR. HORTON: Yes, I am.

22 MS. SILVEY: Okay, can you come to the  
23 mike, please.

24 MR. HORTON: Thank you for the

25 opportunity to be here. Although I don't like



1 this type of hearing. I prefer the standard  
2 hearing that is allowed in the act. I will  
3 participate, although I prefer the hands-on. You  
4 know I have five senses, and I like to be able to  
5 use all of them, and I cannot hear.

6 I believe this is a deviation from  
7 the intent of the act. The act clearly allows a  
8 much longer comment period.

9 And when we plan a visual  
10 presentation such as PowerPoint, I actually could  
11 not do that in this type of setting.

12 Now to the policy that you want to  
13 enact itself, I don't think you should interfere  
14 in what is already working well, and I mean that  
15 in my operation and many others, 80-probably plus  
16 percent, there are already standard drug and  
17 alcohol procedures in effect. Many of them are  
18 negotiated by United Mine Workers and their local  
19 unions which in essence allows both sides to  
20 present the good, the bad and the ugly of any  
21 procedure or policy that they want to implement.

22 And it allows us also the opportunity  
23 to bring about some sort of compassionate  
24 dealings with people who have problems. You know

25 for an outside entity to come in and say you have

1 to do this and you have to do that, it takes away  
2 the human side of it. And for that I object to  
3 it as well.

4 We spent a lot of time in discussions  
5 in our meetings that as I said allowed us to  
6 raise our concerns, and since the implementation  
7 years ago of our drug and alcohol policy we have  
8 had both management and salaried and support  
9 people to come forward for counseling, and some  
10 who refused not, and also were terminated.

11 Everyone is tested, and that's the  
12 way it ought to be in all facets of the mining  
13 industry, whether it's clerical or whether it's  
14 someone who is working as a roof bolter or a  
15 truck driver or a foreman or a parts person, they  
16 all should be tested. Their jobs are important,  
17 and we're relying on every one of them to be  
18 straight and clean. So every one who is involved  
19 in mining if there is going to be a policy they  
20 should be tested.

21 I think you should spend your time  
22 promulgating rules that would clearly - and I  
23 don't mean to be redundant here, but I don't  
24 think it can be said enough as well - to

25    eliminate black lung, silicosis, diesel

1 particulates from entering the lungs of the  
2 miners. I think the money would be better spent  
3 in those arenas.

4           Again I want to - I oppose this type  
5 of format. I prefer the longer period of time  
6 one-on-one discussions that I think we should  
7 have.

8           And with that I'll answer any  
9 questions you may have.

10           MS. SILVEY: Thank you very much. I  
11 don't have any questions.

12           Next person on the list is Michael  
13 Paulie.

14           MR. PAULIE: I'm here.

15           MS. SILVEY: Okay.

16           MR. PAULIE: Mrs. Chairperson and  
17 panel, I would like to take this part to go on  
18 record to say that I also oppose the way this has  
19 been handled. I understand that logistics is a  
20 problem and travel is also an expensive thing  
21 that everybody has to deal with. But yet the act  
22 and a policy of this magnitude, as opposed to  
23 pushing it down our throats, I would have  
24 preferred you to come and face us and look us in

25 the eye whether you think this is more important

1 than the policies we already have in hand.

2           And having said that, I want my parts  
3 of my statement. First of all we have no real  
4 proof in the industry that drugs and alcohol have  
5 been a high percentage of accidents.

6           Without that proof positive I think  
7 you may have gone off a little half-cocked on  
8 this because of a few issues in another state.

9           I think you know what we are  
10 referring to in the drug-related problems in some  
11 states.

12           Virginia has taken over a new policy,  
13 but the thing we have in West Virginia mostly are  
14 company-related policies, and they are good  
15 policies. The company I work for is a service  
16 kind of operation. We have zero tolerance. Our  
17 policy is also just like the gentleman who was  
18 representing the coal company. You are given the  
19 opportunity to address the company that you have  
20 a problem. They in return will take you under  
21 their wing: they will give you help, they will  
22 give you psychiatric help, they will give you  
23 medical help and evaluate you for a year. But if  
24 you fail to do so and are tested, it is zero

25 tolerance, exactly what was said.



1                   As a member of the working force  
2           there and of the union, the first I found that a  
3           little hard to deal with, but then as I thought  
4           more about it I had zero tolerance too. I want  
5           nobody around me who is under the influence of  
6           any drug or alcohol, because it is my life that's  
7           put in their hands. I don't want any brother or  
8           sister to go home mangled or worse not go home  
9           that day because somebody had a problem. I want  
10          zero tolerance.

11                   The one thing I do find in our  
12          industry, and your act does not cover it, is  
13          contractors. Those are a higher percentage of  
14          accidents from contractors than actually working  
15          miners, and UMWA miners. I would like to see  
16          that, if this comes into effect, I'd like to see  
17          that as mandatory that everybody is tested - the  
18          clerical, administrative, contractors. I don't  
19          care if you come there just to park a car on our  
20          property, especially surface mines. Everybody  
21          interacts in traffic, and with the engineers, and  
22          individuals who come and go to the mine sites,  
23          they need to be tested too.

24                   Training the supervisors under this

25    medical two-hour class is - that's almost a joke.

1     There is no way that a person could be trained in  
2     two hours to evaluate an individual with a drug  
3     problem or alcohol problem, to evaluate his  
4     problem or what he needs to be doing at the time.

5             I think that what you have done is,  
6     you have taken an act that you are proposing to  
7     put on a blanket that this industry already has a  
8     good blanket over it, and a working blanket, and  
9     you are wanting to put a blanket over the top of  
10    it that has holes over top of it.

11            We prefer the blanket we have, not  
12    the ones with holes in it. You can better spend  
13    that money on a little black lung, you can better  
14    spend it on hearing protection, and hearing  
15    studies, and even more inspectors for surface  
16    mines. Our inspectors of surface mines are just  
17    absolutely worked to death. They can't even  
18    cover the mines they have, and yet we still need  
19    more, yet no more are trained.

20            That money, I wish you'd leave this  
21    alone and put in those areas.

22            That's all I have to say, but if you  
23    have any questions of me I'd be glad to answer  
24    them.

MS. SILVEY: No, I don't have any

1 questions of you. And as you mentioned about  
2 contractors, we have heard the fact that  
3 contractors are a problem from a number of  
4 earlier speakers, both at today's hearing, and  
5 also at the hearing on October the 14th. But  
6 thank you very much for your comments.

7 MR. PAULIE: Thank you.

8 MS. SILVEY: Is there anybody else in  
9 Beckley who wishes to testify?

10 Thank you, come on to the mike. I'm  
11 sorry, I have one more person on the list, I'm  
12 sorry, Mr. George Hill.

13 Are you there?

14 MR. HILL: Yes, I am.

15 MS. SILVEY: Okay, George Hill, UMWA.

16 MR. HILL: Good afternoon.

17 MS. SILVEY: Good afternoon.

18 MR. HILL: My name is George Hill.

19 Spelling of the last name is H-i-l-l.

20 Can you hear me now?

21 MS. SILVEY: Yes, I can hear you,  
22 thank you.

23 MR. HILL: Good afternoon, ma'am, and  
24 members of your committee. I want to thank you

25 for allowing me and others to speak.

1                   I'm speaking on behalf of UMWA Local  
2                   Union 6426. I'm safety committee chairman and  
3                   the recording secretary.

4                   My voice should be heard not only for  
5                   all the miners in the industry, but especially  
6                   for the 25 that have died in the industry in `08  
7                   as of today.

8                   The first thing I'd like to bring to  
9                   your attention is the fact that West Virginia is  
10                  one of the nation's leading coal producers, and  
11                  most of your rules and laws in effect today were  
12                  the result of the blood that was shed from the  
13                  good people in the state of West Virginia.

14                  I think it's a slap in the face of  
15                  the miners in this state that you could not be  
16                  present at the wonderful facility in Beckley,  
17                  West Virginia.

18                  As I said before 25 men have lost  
19                  their lives in the industry this year, eight in  
20                  the state of West Virginia, two of them being  
21                  apprentice miners. I resent the part of your  
22                  rule that includes additional training under the  
23                  Part 48, alcohol and substance abuse.

24                  I want to make it clear that the

25 union does not object to a miner being tested for



1 drugs or alcohol, only the manner you are doing  
2 so in your proposal. Your agency has more issues  
3 that needs dealt with concerning miners health  
4 and safety and testing that has already been done  
5 by operators anyway.

6 If you are going to add additional  
7 training to Part 48 it needs to be pertaining to  
8 coal miner health and safety, and aimed at  
9 reducing miner disabilities and unnecessary  
10 deaths, not training on substance and alcohol  
11 abuse and testing.

12 Your agency has lost touch with its  
13 true purpose, which is to protect the health and  
14 safety of miners in the United States.

15 With respect to the 25 men that have  
16 perished this year, get your agency on track and  
17 reverse this trend.

18 I will close my comments by saying  
19 thanks again, and with saying, remember our  
20 organization, the United Mine Workers, because we  
21 are tired of miners dying a senseless death  
22 around the country, and we will be heard.

23 Thank you, ma'am.

24 MS. SILVEY: Thank you. And as you

25 brought up the point that we've lost our 25

1 miners, 25 coal miners so far this year, which  
2 unfortunately we have suffered 25 coal mine  
3 fatalities. Twenty, and if we have the people  
4 from Virginia, Minnesota, still on the line, 20  
5 from the non-metal mining community have lost  
6 their lives so far this year.

7                   And so at this time we would as an  
8 agency like to take a moment and reflect in  
9 memory of those 45 miners so far this year who  
10 have lost their lives, and to say with you that  
11 every life is one too many, and we pause to  
12 remember them, and so let's do that for a moment  
13 right now, if you all don't mind, wherever you  
14 all are, let's take a moment of silence in memory  
15 of the 45.

16                   (Moment of silence.)

17                   MS. SILVEY: Thank you very much.

18                   MR. HILL: Thank you, ma'am. And  
19 again, we welcome you to the state of West  
20 Virginia and this wonderful facility here in  
21 Beckley. I'd like to also make mention the  
22 traffic is not so hard here. We do have an  
23 Interstate system and an airport here, and we'd  
24 like to see you in person from time to time.

MS. SILVEY: Yes, sir. Thank you.

1                   MR. HILL: This is our business here  
2                   in the state of West Virginia. We'd be glad to  
3                   have you.

4                   MS. SILVEY: Yes, thank you very much.  
5                   I appreciate it.

6                   If there is nobody else at - is there  
7                   anybody else at Beckley? Okay, next speaker in  
8                   Beckley, come to the phone, please.

9                   MS. JAMES: Good afternoon.

10                  MS. SILVEY: Good afternoon.

11                  MS. JAMES: My name is Tanya James, T-  
12                  a-n-y-a J-a-m-e-s. I'm a United Mines Workers  
13                  Local 9909 out of the district 31. And as you  
14                  can tell by all the comments that have been made  
15                  today, none of us here wants drugs or alcohol  
16                  anywhere in the workplace.

17                  But I'm afraid we're kind of losing  
18                  sight of a lot of the problems that affect more  
19                  of us than drugs and alcohol does.

20                  After 20 years the mining industry  
21                  has just recently started hiring younger miners,  
22                  so the majority of us in the workforce are in the  
23                  age range of anywhere from 45 to 50 years old.  
24                  And at our mines we rotate shifts every four

25 weeks. Most of us work on a mandatory six-day-a-

1 week 10 hours plus a day. Although it has an  
2 adverse effect on our safety awareness, most of  
3 us are on scheduled medication. We have to  
4 change the times when we take them and our  
5 systems just start getting used to the new  
6 schedule, it's time to rotating again, and  
7 everything starts all over again. Your body has  
8 to adjust again, and a lot of times you have to  
9 start again.

10           Also as you have heard several times  
11 today black lung is on the rise, and that's to do  
12 with coal being ground up finer nowadays than it  
13 used to be. We have more advanced equipment and  
14 the coal that comes out of the mine doesn't come  
15 out in as big as lumps as what used to. There is  
16 a lot of finer coal out there now, a lot more  
17 respirable dust in the air.

18           We have several brothers and sisters  
19 with several years in the industry being denied  
20 benefits everyday for black lung, and I think  
21 this is a terrible terrible shame.

22           And I have myself 20 years in the  
23 mining industry. I have two grandchildren along  
24 the way, and I would like to be able to play with

25 those children when I finally retire from this



1 mining industry, and not have to have to sit with  
2 an oxygen mask around my face all the time.

3 We need some way to reinforce our  
4 older seals in the mine that don't meet the  
5 requirement any more, that aren't 20 psi. But we  
6 are ready to bring diesel equipment into our  
7 mines, and no one really knows the full effect of  
8 diesel emissions on a human body when they are  
9 inhaled on a daily basis.

10 I understand there have been studies  
11 done, but I don't anybody can say the full  
12 spectrum of what diesel can do to a person. They  
13 say you can't smell it or nothing like that, but  
14 I've talked to many people that have diesel in  
15 their mines, and they say you can smell it. I  
16 think there needs to be further detailed studies  
17 on that.

18 I still don't agree with the fact  
19 that a person with two hours training is making  
20 the call whether someone is under the influence.  
21 I was a certified EMT for 12 years now, and I've  
22 had extensive training, and there are times when  
23 I still can't tell if someone is under - having a  
24 diabetic episode or is under the influence of

25 alcohol.

1                   And if you have this in a workplace,  
2           especially four or five miles under the ground,  
3           and the supervisor says, hey, I think you are  
4           under the influence, I'll take you out and have  
5           you tested, he better be calling an ambulance  
6           instead of a bottle for this person to urinate  
7           in.

8                   It's a very serious situation.  
9           Diabetics, they act, when they have a diabetic  
10          episode they act like they are intoxicated.  
11          Their speech is slurred. They even have the odor  
12          to their breath like a sweet whiskey smell that  
13          is very hard to determine what they are having,  
14          and I don't think two hours training and one hour  
15          every year after that qualifies anyone to make  
16          that judgment.

17                   And I'll close with the fact that the  
18          company would like to see the medical records,  
19          and I'll tell you this: the day the company shows  
20          me their medical records is the day I'll think  
21          about showing them mine. And I don't think  
22          that's any of their business. If I have an  
23          illness I think they need to be aware of such as  
24          diabetes, I'll be sure to tell them about it.

And with that I would like to thank

1 you for your time. And I would also like to have  
2 seen the faces today other than the ones sitting  
3 here with me. A lot of us have traveled a lot of  
4 miles, myself have traveled a few miles to be  
5 here.

6 Appreciate your time, and I thank you  
7 very much.

8 MS. SILVEY: Thank you, and thank you  
9 very much for coming, and thank you for your  
10 participation.

11 Next speaker in Beckley.

12 MR. CLARK: Hi.

13 MS. SILVEY: Hello.

14 MR. CLARK: My name is Ricky Clark.

15 I'm a UMWA Local 5958, and I'm a safety  
16 committeeman, also a third generation UMWA miner.

17 I don't like MSHA involved in the  
18 drug policies when we need more black lung bills  
19 passed. I have had both grandfathers and father  
20 died because of black lung. Why can't we spend  
21 money for black lung bills, because most all  
22 mines have a drug test for their employees, and  
23 it's working very well.

24 And I want to thank you for the

25 opportunity for allowing me to talk at this time.

1 MS. SILVEY: Okay, thank you Mr.

2 Clark.

3 MR. CLARK: Clark, C-l-a-r-k.

4 MS. SILVEY: Okay, Clark, I'm glad you  
5 spelled it, I didn't quite get it. Thank you.

6 Clark, okay I wrote the wrong thing down. Thank  
7 you very much.

8 MR. CLARK: Thank you.

9 MS. SILVEY: Next speaker in Beckley.

10 MR. WARD: My name is Barbara Ward,  
11 that is W-a-r-d. I am from 1713 of Pine Hill,  
12 West Virginia. I am the mine committee safety  
13 committee reporting secretary of my local, first  
14 generation coal miner.

15 First of all we did have an employee  
16 assistance program in place at our mine, and this  
17 program is for employees that were having drug  
18 problems, alcohol problems, any other personal  
19 problem. And they could get assistance there.

20 That, and they can do random testing,  
21 and they're starting to do some of the first in  
22 2008, they were in with their own random drug  
23 test policy.

24 I feel like that we - that the

25 company should be able to manage this problem and



1 not MSHA. MSHA should spend more time inspecting  
2 the mines as they are trained to do, and enforce  
3 the MSHA laws. Because they are protecting  
4 miners and our rights.

5 We have two freshmen inspectors at  
6 our mines, and working for the overtime that they  
7 are working, they couldn't get our mines made  
8 without help and help with overtime.

9 That's - we feel that overtime now  
10 has been cut out for our - with respect to our  
11 mines, and we are worried about the quality of  
12 the inspection that we are going to get, not the  
13 quantity, because they really need the mines made  
14 regardless of how they do it. But we worry about  
15 the quality of the inspection that are going to  
16 come along since they have cut out the overtime.

17 We also feel that this money that you  
18 all are going to waste on this drug testing for  
19 MSHA should go to helping to protecting our  
20 miners from black lung and any other lung disease  
21 that come from the diesel they put into our  
22 mines.

23 Thirdly, therefore I would like to  
24 see the companies enforce their own random drug

25 policy if they have one, and if they don't, they

1 need to adopt one for their own mine.

2 Thank you.

3 MS. SILVEY: Thank you very much.

4 What mine is your mine?

5 MR. WARD: I'm from Cleveland Cliffs,

6 Pine Hill, West Virginia.

7 MS. SILVEY: Okay, all righty, gotcha.

8 Okay, thank you very much.

9 Next speaker from Beckley?

10 MR. VANCE: Yes, ma'am, my name is

11 Adam Vance, from District 17, Local 1713.

12 Spelling of my last name is V-a-n-c-e.

13 On your drug laws that you have  
14 proposed here, on what basis I'd like to ask that  
15 prompted the federal government to want to  
16 propose this law?

17 MS. SILVEY: We did it on two bases:

18 the fact that mining is - and we think we all  
19 said that and we all agree - that mining is a  
20 dangerous occupation; that the use of drugs and  
21 alcohol is present in the mining industry, and we  
22 all agree with that today, that it's present in  
23 the mining industry as well as in the entire, and  
24 you all have said that to us, and I think we

25    agree to that too, in the entire American

1 society.

2           And that to any use, impairment, any  
3 workers being impaired, could adversely affect  
4 safety and health in the mines. And our overall  
5 purpose is to improve safety of mines and mining.

6 So with that in mind we proposed this rule to  
7 improve mine safety and health. And that's why  
8 we are here today. We proposed the rule, but as  
9 the - as we do with all of our proposals, we  
10 provide an opportunity for the public to comment.  
11 And so we are here taking your comment and  
12 testimony on the proposal, and we are doing just  
13 what the public participation phase of the  
14 process allows.

15           MR. VANCE: Okay, you said that one of  
16 the purposes was for the safety of the miner,  
17 right?

18           MS. SILVEY: That's correct.

19           MR. VANCE: Okay, then how come there  
20 are still regulations that are being overlooked  
21 for instance black lung or improper road  
22 support or stuff that like that are causing  
23 fatalities and stuff like that that people are  
24 coming in and overlooking. Instead of putting

25 money towards this drug law I think that we

1     should put it towards black lung, bare  
2     identification of failures of the way a coal  
3     company can mine coal, as well as get it out  
4     safely.

5                     Anyway I'm a third generation coal  
6     miner. My grandfather died from black lung at  
7     the age of 55; I never got to meet the man. My  
8     father is 54 years old now; he has black lung.

9     All my uncles was coal miners, and they had black  
10    lung. But they cannot get their black lung  
11    benefits because they say that they don't have  
12    it, that their lung problems come from their  
13    heart problems, where in fact their heart  
14    problems come from their lung problems.

15                    I think it is a shame that people who  
16    make a standard of living in this state in West  
17    Virginia and in this country make them go through  
18    what they go through, and when something happens  
19    to them, the federal government turns a blind eye  
20    and turns their back to them, and will not get  
21    them the benefits that they deserve.

22                    My father now as well as my uncles  
23    cannot do - they are disabled from the coal mine.  
24    They are retired. But they cannot do the things

25 that they like to do and used to do such as hunt,



1 fish and stuff like that, their hobbies, because  
2 they can't walk more than 10 feet without having  
3 to take a deep breath. And it's all because the  
4 federal government has overlooked certain places  
5 in their own regulations of ventilation and stuff  
6 like that.

7 I think you should put more money  
8 toward that, train better and more intubators,  
9 and I think you'd be a whole lot better that way.

10 That's all I have to say.

11 MS. SILVEY: Okay, thank you. Thank  
12 you, Mr. Vance.

13 Next speaker, please.

14 MR. COLEMAN: My name is Albert  
15 Coleman, A-l-b-e-r-t Coleman C-o-l-e-m-a-n. I am  
16 president of UMWA Local 8783.

17 First I'd like to ask a question:  
18 Under this regulation of testing, would a company  
19 person be allowed to do the testing?

20 MS. SILVEY: If the company person met  
21 the requirements, the requirements for testing,  
22 the company person would. But as I mentioned  
23 earlier today there are specified requirements  
24 for doing the testing, and a person would have to

25 meet those requirements to be qualified to do the

1 testing.

2 MR. COLEMAN: Okay. Just from  
3 listening here today and talking to some of the  
4 people I've got a - I've formed an opinion.  
5 First, I don't think there is any data to support  
6 the regulation, for if there is a significant  
7 problem in the industry. And if we had this  
8 regulation I think it should include all  
9 employees working on mine property, not just  
10 safety sensitive jobs.

11 If you have a positive test that  
12 indicates that you were impaired or in some way  
13 influenced by drugs, not just that there was a  
14 trace in your system, I don't think the  
15 regulation has enough training incorporated into  
16 it, and any records generated from these tests I  
17 think should be completely confidential, and  
18 should only be accessible under the HIPPA rules.

19 There are many shortcomings in this  
20 regulation the way it is today. I believe it  
21 should be reconsidered, because once any  
22 regulation is implemented, no matter how bad it  
23 is, it'd be hard to change it.

24 So if you are going to do it, do it

25 right the first time, and make it something that

1 we can all live with.

2 And I appreciate the opportunity to  
3 speak here today. Thank you.

4 MS. SILVEY: Thank you. Your comments  
5 are well taken, and thank you very much.

6 We talked earlier about the  
7 requirement for confidentiality. And I don't  
8 think that I'm like some of you said, I'm not  
9 going to belabor the point there, because I have  
10 already stated that operators must comply with  
11 all privacy and confidentiality requirements.

12 Thank you for your comments.

13 Next speaker, please.

14 MR. KENNEDY: Good afternoon. This is  
15 Max Kennedy.

16 MS. SILVEY: How are you doing?

17 MR. KENNEDY: Fine.

18 MS. SILVEY: Good.

19 MR. KENNEDY: First I'd like to say  
20 that today we appreciate the second chance to  
21 give comments on the proposal. However, the  
22 testimony given in Minnesota, we couldn't hear  
23 it. The speaker or whatever was muffled, and  
24 some of the questions asked by your panel first

25 of all this morning, we couldn't hear those

1 questions either.

2 But anyway I'll go with additional  
3 comments that I'd like to place on the record  
4 with those that I gave you a couple of weeks ago.

5 This whole problem started in East  
6 Kentucky about five years ago, and during that  
7 time there was a rash of miners that were taking  
8 illegal drugs. It ran rampant until finally the  
9 state of Kentucky - until finally the state of  
10 Kentucky took action through its legislator.

11 As far as Virginia, from Virginia's  
12 Coal Mine and Safety Board, which is a regulatory  
13 board group for the Department of Mines, Metals  
14 and Energy. The chief state mine inspector  
15 anticipated that those mines that were tested  
16 positive in the state of Kentucky would cross the  
17 border into Virginia and seek employment in the  
18 coalfields.

19 So therefore there is no data to back  
20 up the promulgation of regulations. However he  
21 was insistent, and also the department was  
22 insistent, because of that anticipation of those  
23 miners seeking employment in Virginia.

24 So that prompted the state

25 legislature to promulgate the statute. And that



1 brings us to today. Which West Virginia itself is  
2 starting to do the same process as Virginia.

3 And personally in 1979 I was employed  
4 at Tyson Mine Construction in Wise County,  
5 Virginia. And the company was in the process of  
6 sinking the shafts in a slope for Lynchfield coal  
7 company, later it would be McClure Number 1 Mine.

8 This was - metal mining and  
9 construction is a harsh environment with that  
10 type of work. The company and this was 1979 had  
11 a refrigerator in the back house, and it had  
12 beer, wine, and liquor. There was a statement  
13 over the top of the refrigerator that said, after  
14 hours only.

15 So we policed ourselves from that  
16 point in 1979 to today. And most responsible  
17 employers and individuals that work in the  
18 industry know that you don't go into a coal mine  
19 in a working environment without all your senses  
20 about you.

21 There has not been and the same  
22 situation in Virginia where they were developing  
23 their statute, there is no data that drives this  
24 promulgation for regulation. It's only

25 speculation.

1                   And with that I would request that  
2           MSHA place the data it has on record for  
3           promulgation of this regulation.

4                   And finally I would like to read a  
5           letter that was submitted to the assistant  
6           secretary that pretty much sums up this whole  
7           event and proposal.

8                   And I'll start with the letter: Dear  
9           Mr. Stickler, I am very concerned about the  
10          timing of the Mine Health and Safety  
11          Administration's proposed rule on substance  
12          abuse.

13                   It troubles me that this proposal was  
14          pursued at a time when MSHA could be making more  
15          appreciable progress on its many other pressing  
16          priorities. Such as addressing coal miners  
17          exposure to coal dust and silicate.

18                   It further troubles me that this  
19          proposal was withheld from the public until the  
20          final months of the administration; that is now  
21          perfected through a comment period that is  
22          unusually restrictive.

23                   Given the concerns raised by mine  
24          operators and miners, who will have to abide by

25      this rule, I strongly urge you to extend the

1 current comment period and to hold a series of  
2 public hearings before this rule takes effect.

3 Further, as we look ahead to a new  
4 administration, and inevitable personnel changes,  
5 I cannot help but feel that MSHA is entering a  
6 potentially dangerous period. Your agency  
7 continues to implement significant changes in the  
8 wake of Sago, Alma, Crandall Canyon, and as a  
9 result the passage by Congress of the first major  
10 mine safety and health legislation in a  
11 generation.

12 As well the agency continues to grow  
13 into the Congress significantly increasing your  
14 budget for coal enforcement.

15 With so many changes still underway I  
16 encourage you to do all you can to prepare for  
17 the upcoming transition to ensure that ongoing  
18 enhancements suffer no unnecessary and that the  
19 federal inspectors have the leadership and  
20 resources they need to protect our nation's coal  
21 miners.

22 Sincerely yours, Senator Robert Byrd.

23 With that I conclude my comments.

24 Thank you.

MS. SILVEY: Okay, thank you very

1 much, Mr. Kennedy. And we appreciate your  
2 comments.

3 But one thing that I must say is that  
4 this is probably the first time that anybody has  
5 ever said that they couldn't hear me, couldn't  
6 hear my voice.

7 So you said some of the things that  
8 the panel said you couldn't hear. I generally  
9 speak so loud that people can hear my voice  
10 anywhere. But anyway.

11 MR. KENNEDY: There was a question  
12 from one of the panels members to Secretary-  
13 Treasurer Kane this morning. We couldn't hear  
14 the question.

15 MS. SILVEY: Okay, from one of the  
16 panel members. Okay. I think I know what the  
17 question was, then, let me just say that right  
18 now. I think one of the secretary-treasury Kane  
19 mentioned in this testimony that 80 percent of  
20 the mines had drug programs, and the panel member  
21 asked him did he have research on that or where  
22 did he get that data, and he responded where he  
23 got that data. And that's what the question was,  
24 I believe.

Okay, next speaker in Beckley?



1 MR. KENNEDY: I believe that's it.

2 MS. SILVEY: Is that it? Okay.

3 Is Alabama still on the line?

4 Alabama? Is there anybody else in Alabama who

5 wishes to testify? Nobody else in Alabama who

6 wishes to testify?

7 If there is nobody else in Alabama

8 who wishes to testify I'm going to go to

9 Virginia, Minnesota. Is Virginia, Minnesota on

10 the line?

11 MR. SEEVA: No, we have one more

12 person.

13 MS. SILVEY: Virginia, Minnesota?

14 MR. SEEVA: No, this is Walter Seeva,

15 S-e-e-v-a. I'm from Local 2705. I'm a safety

16 representative up here, and part of the EAP.

17 I got a couple of questions for you.

18 I guess I like a lot of what was being said as

19 far as I think you should stay out of it.

20 A couple of questions I do have today

21 I hadn't had a chance to read the whole thing,

22 but I just wondered if you'd take into

23 consideration the false positives that could come

24 up? And I know that was somewhat talked about,

25 but I didn't really hear how those would be

1 handled.

2 Also, relapse is part of the disease,  
3 and my understanding was that it looked like you  
4 were going to give the individual one chance, and  
5 I think that was unrealistic.

6 I'd like to know who was on the  
7 panel. I'd like names and qualifications, and  
8 maybe we'll get that before November 10th.

9 In a bulletin sent out about a year  
10 and a half ago, maybe two years, Joseph A.  
11 Holmes, he had talked about in several places in  
12 that bulletin, a special bulletin on workplace  
13 substance abuse about how the company and the  
14 employees should work together, try to put  
15 together a program, and it didn't mention that  
16 MSHA should be involved.

17 And I guess that's about it. Thank  
18 you.

19 MS. SILVEY: Okay. Mr. Seeva, let me  
20 ask you something. Were you here at the  
21 beginning of the hearing this morning?

22 MR. SEEVA: Hello?

23 MS. SILVEY: Were you here at the  
24 beginning of the hearing this morning?

MR. SEEVA: Yes.

1 MS. SILVEY: So did you hear me when I

2 gave the members on the panel?

3 MR. SEEVA: No, I didn't hear that.

4 MS. SILVEY: Oh, you didn't? You

5 missed that part?

6 MR. SEEVA: Must have.

7 MS. SILVEY: Okay, because I gave the

8 members of the panel.

9 MR. SEEVA: And their qualifications?

10 MS. SILVEY: Yes, I did.

11 MR. SEEVA: I didn't hear that.

12 MS. SILVEY: Okay.

13 MR. SEEVA: Are we going to be given

14 copies of this?

15 MS. SILVEY: The transcript will be on

16 the agency's website.

17 MS. SILVEY: How soon?

18 MS. SILVEY: I beg your pardon?

19 MR. SEEVA: When?

20 MS. SILVEY: Within a week. Let me go

21 over the names of the members of the panel

22 anyway, because it'll only take a few minutes.

23 MR. SEEVA: And their qualifications?

24 MS. SILVEY: I'm going to give you

25    their names and their titles.    The fact is that

1 they are Department of Labor employees. I'm  
2 going to give you their names and their - and  
3 where they work, okay?

4 MR. SEEVA: Okay.

5 MS. SILVEY: All right, and I'll start  
6 with myself. I'm Patricia W. Silvey, and I'm the  
7 director of MSHA's Office of Standards,  
8 Regulations and Variances.

9 To my right is Elena Carr. She is  
10 the policy - drug policy coordinator for the  
11 Department of Labor. And she is with the  
12 Department of Labor's Working Partners program.

13 And I gave the - in my opening statement I gave  
14 the - the experience and the purpose of the  
15 Working Partners program. And instead of me  
16 belaboring the point on that now, you can read  
17 all of what the Working Partners program when you  
18 look at the transcript.

19 Next to Ms. Carr is Kevin Burns.

20 Kevin Burns is with the Office of Educational  
21 Policy Development, and he is the director of the  
22 Office of Small Mines.

23 And to the right of him is John  
24 Arrington, and he is with the Office of Coal Mine

25 Safety and Health in the division of safety.



1                   To my left is Jennifer Honor. I  
2 referred to her this morning as our learned  
3 counsel. In other words, she is our attorney on  
4 the project. She is with MSHA's - she is with  
5 the Labor Department's Office of the Solicitor,  
6 and the division in the solicitor's office that  
7 provides counsel on mine safety activity.

8                   And to her left is Gene Autio, and he  
9 is with metal-nonmetal mine safety and health,  
10 and with the Office of Safety and Health in metal  
11 and nonmetal mine safety.

12                   There is another person on the panel  
13 who is Linda Zeiler, and she is with the Office  
14 of Technical Support, and she is - has also  
15 worked on MSHA's drug activities in the past.

16                   So those are the members on the  
17 panel, and I figured since it would only take a  
18 couple of minutes of time I'd state that to you.

19                   MR. SEEVA: Okay, thank you.

20                   MS. SILVEY: Okay, thank you.

21                   Next speaker, please. Anybody else?

22                   MR. SEEVA: No, I don't think so.

23                   MS. SILVEY: No other speaker? Okay.

24                   And I just want to make sure. I think I must

25    have a fondness for Birmingham, Alabama. I want

1 to make sure that there is nobody else in

2 Birmingham who wishes to speak.

3 BIRMINGHAM VOICE: There is no.

4 MS. SILVEY: There is nobody?

5 BIRMINGHAM VOICE: There is not.

6 MS. SILVEY: There is not? Thank you

7 very much. I don't think this will make any -

8 will upset the record any. I think a lot of

9 people know I am from Alabama.

10 Okay, so if - so there is nobody else

11 in Virginia, Minnesota who wishes to speak,

12 nobody else in Birmingham, Alabama.

13 Let's go back to Beckley just to make

14 doubly sure. Anybody else in Beckley who wishes

15 to speak?

16 BECKLEY VOICE: No, there is no one in

17 Beckley.

18 MS. SILVEY: Nobody in Beckley? So is

19 there anybody else in Washington who wishes to

20 speak? Mr. O'Dell, I thought so.

21 MR. O'DELL: My name is Dennis O'Dell,

22 D-e-n-n-i-s, O apostrophe capital D-e-l-l. I'm

23 the administrator of Occupational Health and

24 Safety for the United Mineworkers of America.

And I have about 31 years of

1 experience in the coal industry, 20 years of that  
2 working in the ground.

3           There's been a couple of problems I'd  
4 like to point in respect to what we've heard from  
5 miners today, concerns that I think either need  
6 to be clarified or cleared up, and I'd like to  
7 take the opportunity to do that now with the  
8 panel.

9           And while some of the folks who are  
10 out there may feel like they didn't get their  
11 questions answered or not clarified.

12           One of the things I'd like to clear  
13 up was a question that you had for Danny Kane.  
14 That information did come from my department.  
15 The part of the information, the 80 percent that  
16 shows that the mines out there that already have  
17 programs in place was provided from MSHA. So we  
18 actually got that information from MSHA with the  
19 drug and alcohol - what do you call them when  
20 they did the field a couple of years ago and they  
21 have mine operators come in and they testified  
22 and they spoke about the program.

23           MS. SILVEY: They had the meeting, the  
24 public meeting.

MR. O'DELL: Yes, thank you. It was

1 reported, and that was part of the information,  
2 where we got the 80 percent.

3 And it may be even more than 80  
4 percent have their own policies in place now.  
5 That information is a little bit old.

6 I'd like to address if I could first  
7 under 66.304 the preemployment, and it's listed  
8 on page 52148 of the Federal Register.

9 And this is something that was  
10 brought up today, and I don't think the answer  
11 was clarified. Because I understood what the  
12 brother was asking when he asked you, where it  
13 says, under Section 66.304, preemployment  
14 testing, if you go down to where the sentence  
15 starts out, preemployment testing includes  
16 testing new applicants for safety-sensitive  
17 positions as well as incumbents miners if they  
18 are switching from positions that do not involve  
19 safety-sensitive job duties to positions that  
20 involve safety-sensitive job duties.

21 And the way I read this is that if  
22 I'm a block mason at the mine, and in UMWA mines  
23 you can bid from one job to the other, and if I'm  
24 a block mason, which isn't really considered a

25 safety sensitive - or belt shoveler or something



1 to that nature, and I bid on a job such as a  
2 boulder operator or miner operator, when you read  
3 this you could take that that the operator could  
4 give me another preemployment testing.

5 Is that what you are saying?

6 MS. SILVEY: No, I follow what you're  
7 saying there. So now when you tell me I want  
8 everybody here that the scope of this rule covers  
9 miners who are subject to Part 48 who have to  
10 take Part 48 training.

11 So you are giving me an example of a  
12 miner who doesn't have to take Part 48 training,  
13 and is therefore going from that job to a job  
14 where he has to take Part 48 training.

15 MR. O'DELL: No, you get retrained  
16 every year, right?

17 MS. SILVEY: Right.

18 MR. O'DELL: So say for example me. I  
19 worked in the mine for 20 years. And I started  
20 out as a general inside laborer. Okay? That's  
21 how they actually restricted me. So then they  
22 classified me general inside labor, and I bid on  
23 a job.

24 MS. SILVEY: But you have to take Part

25 48 training after general. So see, you would be

1 under the rule.

2 MR. O'DELL: So they could test me  
3 every time that I bid on a different job  
4 according to this. If I bid from a mine operator  
5 back to a belt cleaner, and then a belt cleaner  
6 back to a roof bolter operator, the way I read this  
7 is that they could test me every time I bid on a  
8 new job.

9 MS. SILVEY: I wouldn't think so.

10 MR. O'DELL: That's where the  
11 confusion comes in.

12 MS. SILVEY: There might be some  
13 confusion. So I understand what you are saying.

14 MR. O'DELL: It says - read it - it  
15 says preemployment testing includes testing new  
16 applicants for safety-sensitive positions as well  
17 as incumbent miners if they are switching from  
18 positions that do not involve safety-sensitive  
19 job duties to positions that involve safety-  
20 sensitive job duties.

21 MS. SILVEY: Okay, but that's but -  
22 even assuming that that is how we wanted it, that  
23 is talking about hypothetically. I'm just making  
24 this - saying this now. That's talking about if

25 the miner was in an administrative or clerical

1 job going to a job that requires Part 48

2 training; that's basically what it's talking  
3 about.

4 MR. O'DELL: Well, that's not what it  
5 says.

6 MS. SILVEY: Okay, but I'm just  
7 telling you. So it wouldn't require this testing  
8 every time the miner switched a job where the  
9 miner was already covered under the rule, no. We  
10 can clarify that.

11 MR. O'DELL: Clear that up, because I  
12 can see that being used.

13 MS. SILVEY: Okay, I understand. Our  
14 learned counsel has that for me. No, it wouldn't  
15 require that. I can say that right now I think.

16 MR. O'DELL: Thank you. I hope that  
17 clears it up for our members.

18 There is also a concern about  
19 privacy, and I think this is a valid concern.

20 You've heard a lot of our brothers and sisters  
21 speak about this today. It's not only a concern  
22 of ours, but it must be a concern of our whole  
23 country. And I think that's why the HIPPA laws  
24 were provided to protect all workers.

So I hope that this rules falls, and

1 mines are still protected under the rules and the  
2 laws of HIPPA. I guess down the road if this  
3 proposal were to move forward, I guess we'll find  
4 out down the road whether those protections will  
5 exist or not.

6 I can see that it may be challenge,  
7 and I'm just putting it on the record that it  
8 possibly could be a problem for some folks that  
9 want to take advantage of that.

10 And let me say, some of the problems  
11 that we've seen take place already in respect to  
12 what we call impairment versus a test positive,  
13 because there is a big difference between  
14 impairment and a positive test that comes out.  
15 We've seen this with a spiking of a prescribed  
16 drug, or somebody that may be - well, let's take  
17 an example, a beer on somebody's Super Bowl  
18 Sunday, and a lot of people have Super Bowl  
19 Sunday parties. And they may drink six cans of  
20 beer or a 12-pack, whatever, I don't know. I'm  
21 not a drinker. But the rule of thumb they tell  
22 us is for every can of beer you drink you should  
23 let one hour of time go between you. It's just a  
24 rule of thumb; it doesn't mean it's a positive





1                   But say I'm watching the Super Bowl  
2     with a bunch of my friends, and I drink a 12-  
3     pack, that means there has to be 12 hours before  
4     the time I stop drinking and go to work. Well,  
5     there are not going to be 12 hours for a lot of  
6     guys that have to go to work. But let me tell  
7     you, when they go to work there may be eight  
8     hours in between time, but they are not going to  
9     be impaired.

10                   And that's where the problem with  
11     this positive testing comes into play. I think  
12     we have to make sure people understand there has  
13     to be a difference between test positive and  
14     somebody actually being impaired. And I think  
15     that has to be somehow squared out to where we  
16     don't get people into trouble - in Pennsylvania -  
17     let's talk about prescription drugs for example.  
18     We've already seen this happen. We had a miner  
19     who was on a prescribed drug. And their policy  
20     allows monitors to take prescription drugs.

21                   But what happened was that this  
22     individual took a prescribed drug at the  
23     beginning of the shift - that's when the doctor  
24     prescribed him to take it - he happened to be

25 randomly tested. Well, he tested positive, as

1 being - and because he was tested positive they  
2 fired him. No way to fight to get his job back.

3 Now here is a case of where these  
4 kinds of things need to be fixed so that that  
5 miner should not have been fired.

6 What happened was - they said what  
7 happened was, I guess - I'm not a doctor - but  
8 they say when you initially take a medicine it  
9 will spike I guess until it gets through your  
10 bloodstream. And that initial spike was when  
11 they took this test. So it actually showed that  
12 this guy was under the influence, and he wasn't.

13 So I think it's another reason that  
14 we need to be able to look at whether impairment  
15 versus test positive, we have to address those  
16 kinds of things if we decide to move forward.

17 We heard a silent but a strong  
18 message from a friend of mine, Pat Brady, who  
19 went to work for the dark side. He used to be an  
20 MSHA employee, but now he works on the dark side.  
21 But it reflects -

22 MS. SILVEY: You're on the record.

23 MR. O'DELL: I know I'm on the record.  
24 I won't say anything that I wouldn't say to his

25 face.

1                   But let me tell you, this is a  
2                   message that is out there with most of industry.  
3                   A first offense is - and if it's not self  
4                   reported, they are fired. And we have a lot of  
5                   plans out there with our brothers and sisters  
6                   that that's what they have to live with.

7                   See, that's one of the things that we  
8                   did agree with on your proposal is that it  
9                   actually gives a miner second chance, versus  
10                  these operators playing on zero tolerance and  
11                  self reporting.

12                  As I told you last time I spoke,  
13                  addiction in many cases you also have a state of  
14                  denial. I told you about my grandfather, loved  
15                  him to death, and I know other people I've worked  
16                  with in the past, and other people out there,  
17                  they've got problems, but let me tell you they  
18                  don't realize they have a problem.

19                  So the rules are not completely bad.  
20                  There is one part that I liked about that, and I  
21                  wish that a lot of operators would take that into  
22                  consideration and give people the opportunity to  
23                  actually - so that they could contribute to  
24                  society.

But the failure with the proposal,

1 even though it gives a person a second chance, is  
2 that it leaves the final decision up to the  
3 operator. It's gray. I mean you can give a  
4 person a chance, and then it's up to the operator  
5 whether they put them back in a safe and  
6 sensitive job.

7           And you heard Pat also say that if  
8 they are not able to step in and perform that  
9 job, you know that's part of the criteria that  
10 they use, and chances are they are going to be  
11 fired.

12           So if we're going to do something, I  
13 think those are the kind of things that we need  
14 to address and talk about. I mean even a DUI  
15 person that comes clean and completes rehab, they  
16 get their driver's license back. In many cases -  
17 and they end up being great contributors to  
18 society.

19           So if we really and truly - and if  
20 these operators out there are listening - if we  
21 are really and truly wanting to do something in a  
22 positive manner that is going to help these  
23 people out, you need to get away from zero  
24 tolerance and self reporting, you need to do

25 something that is actually going to reach out and



1 help miners to where they can get the proper

2 help that they need.

3 Many chances a miner - like I said,

4 you know, a mine operator or other safety-

5 sensitive job holder may not get his

6 classification back under this rule, which could

7 lead to discharge, because miners have to have

8 the ability to step in and perform their job or

9 they could be discharged.

10 You heard a lot of concerns about the

11 supervisor with two-hour training to be able to

12 identify problems. Let me tell you, I worked

13 underground for 20 years, and sometimes miners -

14 I did it - you get goofy. You're tired. You get

15 disconnected. Or whatever. There are a number

16 of times that because of horseplay or just acting

17 crazy I was accused of being on drugs or drunk or

18 whatever. And I don't do any of that. But

19 because of the manner in which I was acting, if

20 you look at some of the ways that people - I mean

21 I tell you right now, if you look around even at

22 the panel, a lot of us could be accused of being

23 on drugs and alcohol because we are tried, you

24 know what I'm saying. And I don't think that

25    this two-hour training is adequate enough to be

1 able to qualify somebody to be able to identify  
2 if somebody is under drugs or alcohol.

3 I don't drink; I don't do drugs. But  
4 like I said, under the description of possible  
5 signs of impairment, and the fact that I was a  
6 union activist, they would have to run a  
7 continuous bus in and out of the coal mine for  
8 me. They'd have taken me outside everyday just  
9 because that's the nature of it. But we have to  
10 be able to address that.

11 The breath alcohol technician, and  
12 the MRO, the medical review officer, where it  
13 does say it can be an employee of the operator,  
14 this does risk a monitor's confidentiality. And  
15 it almost reminds of the days of the company  
16 doctors and the company stores.

17 I think you need to go back and  
18 remove that language; that of an employee of the  
19 operator; and make those persons a third party  
20 impartial group that has no conflict of interest  
21 with either the company or the workers. I don't  
22 think that they should be allowed to be employed  
23 by the operator, because people are people, and  
24 if they are employees, and they get to be buddy-

25     buddy with folks at work, they are going to say,

1     hey, did you hear about such and such and this  
2     and that, and I think we're just opening up a can  
3     of worms that shouldn't be.

4             And it'd just make it a lot cleaner  
5     if you make it somebody who is a non-employee if  
6     we move forward.

7             I question again because of the lack  
8     of data who is pushing this proposal. I mean  
9     you've heard miner operators and miners alike  
10    voice their opinions that there is no real need  
11    for this, for different reasons you've heard.

12            I'm curious who is behind this rule  
13    and who really benefits. The proposal suggests  
14    that the first year costs would be over \$16  
15    million, and the reoccurring costs would be over  
16    \$13 million, and half of that cost I guess goes  
17    to testing.

18            So it almost makes me feel like it  
19    may be the firms who would be contracted out to  
20    do the testing who is behind this rule, because  
21    it seems like that's where the largest chunk of  
22    money goes, to those firms who are pushing it.

23    I'm just wondering if that is an outside of  
24    influence of those contractors.

Which leads me to say this: that if

1     this rule does go forward, these firms, these  
2     contractors that do this testing, they should be  
3     chosen like arbitrators and jurors: give a list.  
4     Make that list provided to us and the operators,  
5     and let us use the strike and select process that  
6     COB chosen to do the test. I mean I think that  
7     is fair and impartial; don't let the operators  
8     decide, let the miners have a voice like we  
9     choose arbitrators, and like jurors are chosen.  
10    If everybody thinks this guy wouldn't be  
11    impartial we'll strike them, and this one  
12    strikes, and strike until we get a list that  
13    everybody thinks is fair and impartial.  
14                 We have already seen cases of  
15    contractors that don't follow the guidelines of  
16    things like split testing - I'm talking about the  
17    operators out there now that have drug policies  
18    in place. We've found problems already with  
19    these contractors. They don't follow the  
20    guidelines of split testing. They don't use a  
21    proper chain of custody. And we've even  
22    witnessed collectors not using sanitary measures  
23    to make sure everything is clean and not  
24    contaminated during testing at the mine.

These are problems. And it's bad



1 because miners lose their jobs over things

2 aren't followed properly.

3 So my point is that we just have to -

4 I mean these little fine details that people

5 don't really think about sometimes are details

6 that we should be concentrating on if the rule

7 moves forward. No one wants someone working that

8 would be a danger to themselves and others.

9 You've heard that said today. We have been

10 advocates of mine safety since 1890; that's how

11 long we've been around. And we don't want our

12 members or anybody else endangered, to

13 themselves, or a danger to others.

14 But honestly, Pat, we feel that

15 MSHA's time could be spent better on enforcing

16 those laws that we have on the books today.

17 There are other health-related issues

18 we should be looking at that are actually

19 supported by data that show a need to be

20 addressed, things such as black lung, you've

21 heard that said today; things like diesel

22 emissions that cause cancer; the hearing loss

23 that we are still fighting today; job stress;

24 chemical exposure; extended work hours as well as

25 safety issues such as the use of proximity

1 devices to prevent accidents such as the ones

2 we've seen this year.

3 We need to work on equipment so that  
4 it is more quiet and produces less dust.

5 A lot of those things I think we need

6 to focus on more so than the drugs and alcohol.

7 I don't know who is behind it; I don't know who  
8 is pushing it. But I would like to see MSHA

9 table this, provide data that shows that there's  
10 a real need. I've asked for data; haven't really  
11 seen it yet. And I think that this is something  
12 that should be table; it should be removed. We

13 should move forward with those problems that we  
14 know are killing miners today, put this one on  
15 the back burner, let's concentrate on the hazards

16 that are killing miners today as I previously  
17 mentioned, and I thank you for your time.

18 MS. SILVEY: Thank you. I don't have  
19 any comments. Thank you very much.

20 Does anybody else wish to testify?

21 Anybody else?

22 If nobody else here or in the three

23 locations that we have - did anybody else wish to  
24 testify?



1 in Alabama.

2 MS. SILVEY: Okay, Alabama, would you  
3 just come to the phone and state your name and  
4 spell your last name for the reporter, and we'll  
5 just take them in the order that you come to the  
6 phone. Would you please come to the phone.

7 MR. MAYNOR: Yes, ma'am. My name is  
8 Michael Maynor, last name M-a-y-n-o-r.

9 MS. SILVEY: Okay.

10 MR. MAYNOR: Yes, ma'am, I was in this  
11 case, MSHA, I believe this ain't nothing but  
12 another battering ram for the coal companies to  
13 push up on the union.

14 If you want to find drug dealers and  
15 everything go to the toast lines, not blue collar  
16 workers like us.

17 This just gives a company a way to  
18 harass us, and single us out, in some way, and  
19 like I said it's just a battering ram for the  
20 union, knock the way into the union and single  
21 people out.

22 And I feel like this is a waste of  
23 time, and the government should spend money on  
24 other things like the pushed work hours - that's

25 what's causing accidents to go up. And when

1 somebody is down under ground with the rest of  
2 us, and they are on something, the rest of us  
3 know it, and it's dealt with, because we don't  
4 want nobody like that down there around us.

5 And that's pretty much as short and  
6 sweet as I can put it.

7 MS. SILVEY: Okay, I understand.  
8 Thank you very much.

9 Next speaker in Alabama.

10 MR. GRAHAM: Yes, ma'am. My name is  
11 Charles Graham, G-r-a-h-a-m.

12 I'm a miner operator on No. 7 mine.

13 I'd like to give - I noticed that these miners  
14 that did a drug test and all that, those who deal  
15 with about the process and MSHA folks, and  
16 contractors and everything like that, are they  
17 going to be drug tested as well as us?

18 MS. SILVEY: The MSHA employees are  
19 subject to drug testing right now, all the Labor  
20 Department employees are subject to drug testing,  
21 all inspectors, and the people here in  
22 headquarters are subject to drug testing.

23 MR. GRAHAM: Okay, now where a union  
24 man suspects a company man being on drugs, and

25     rat him out, and let's say he does go for that -



1 did not pass a drug test, and the next day that  
2 employee will be taunted and all that, might lose  
3 his job. Is there any way, anything in there for  
4 that to be stopped?

5 MS. SILVEY: No, I appreciate the fact  
6 - I've heard the testimony on that.

7 MR. GRAHAM: I guess that's about it  
8 from me.

9 MS. SILVEY: You know, earlier I  
10 talked about the fact that the existing  
11 protections under the Mine Act remain in place,  
12 so if a miner felt like - to Mr. Graham, if a  
13 miner felt like - and this goes to the other  
14 gentleman I spoke to - that he was discriminated  
15 against wrongly discriminated against, they could  
16 file a complaint under the Mine Act, which MSHA  
17 has to investigate.

18 Okay next speaker in Birmingham.

19 MR. PRUITT: Jay Pruitt, P-r-u-i-t-t.

20 So if you - you are saying that if a doctor  
21 prescribes someone with heart medication, blood  
22 pressure medication, you are saying that that  
23 person is unable to work and they take a drug  
24 test and test positive for that, that they are

25     unable to do their job and unfit to do their job?

1 MS. SILVEY: Give me your - what did  
2 you just say again?

3 MR. PRUITT: Are they disabled to do  
4 their job?

5 MS. SILVEY: No, the proposed rule  
6 doesn't say that.

7 MR. PRUITT: So anything like Lortabs  
8 or blood pressure medication that a doctor  
9 prescribes, and you test positively randomly, you  
10 will not - that person will not be disabled to  
11 work?

12 MS. SILVEY: No, the person won't be  
13 disabled to work; not at all.

14 MR. PRUITT: Well, I think in my  
15 opinion, like I've heard a lot of people say  
16 before me, I think that y'all need to focus your  
17 minds on something else other than this random  
18 drug testing, since we already have drug testing  
19 procedures, and focus on more things like safety,  
20 dust control, silicosis, and things of that  
21 nature.

22 This is kind of redundant, and it  
23 really don't make much sense. Y'all need to  
24 focus on safety, and if y'all can focus on safety

25 then I think the drug - the whole accidents and

1 all that which y'all really worry about more than  
2 anything will fall in place. Because working six  
3 days a week, and some guys working seven days a  
4 week, you get tired, and when you are tired you  
5 make mistakes. And that all falls into play;

6 it's nothing drug related.

7 That's pretty much all I've got to  
8 say.

9 MS. SILVEY: Okay, all right, thank  
10 you. Anybody else in Birmingham?

11 MR. STEWART: Yes, ma'am, I'm John  
12 Stewart, STEWART. I just want to say something.

13 I think it's kind of ridiculous particularly  
14 worrying about things like - I work at No. 7 mine  
15 at Jim Walters. We stay on a section for about 4  
16 hours without an emergency bus, the overtime guy  
17 brings the bus in. I think you guys need to  
18 worry about getting the bus in there for us just  
19 in case something happens, a man gets cut or  
20 bleeds, it's going to take us two hours - it  
21 takes us 45 minutes to get to the section, and  
22 another 45 minutes to get a bus down there, what  
23 if something happens? Instead of drug testing,  
24 let's worry about getting a bus on the section,

25 an emergency bus. What if a man has a heart

1     attack, what are we going to do, wait 45 minutes  
2     to get him out, two hours?

3                     And that's all I got to say.

4                     (Applause.)

5                     MS. SILVEY: Okay, thank you.

6                     Back to your comment about emergency,  
7     having an emergency bus on the section, you don't  
8     have any provisions if there is an emergency on  
9     the ground?

10                    MR. STEWART: Well, we've got an  
11     emergency bus. They sit on the long wall. Half  
12     the time it don't crank up. All our buses are  
13     out of date, but y'all need to come down there  
14     and check these buses out instead of worrying  
15     about these drug tests. Let's check these buses  
16     out and let's get some running buses. Let's get  
17     some emergency buses, you know.

18                    MS. SILVEY: Okay. That was Jim  
19     Walters No. 7.

20                    MR. STEWART: Yes, ma'am. It takes us  
21     35 minutes to get to a section.

22                    MS. SILVEY: Okay.

23                    MR. STEWART: At the time we don't  
24     have a bus - we need an emergency bus on the

25 section.



1 MS. SILVEY: Okay, we'll look into

2 that.

3 MR. STEWART: And limited work hours.

4 MS. SILVEY: Next speaker please.

5 (Pause.)

6 MS. SILVEY: Any other speakers in  
7 Alabama? Are there any other people in Alabama  
8 who wish to speak.

9 BIRMINGHAM VOICE: No one's coming  
10 forward.

11 MS. SILVEY: Okay, thank you.

12 Is there anybody else who can hear me  
13 at any of the other locations who wish to speak?

14 (Pause.)

15 MS. SILVEY: If nobody else wishes to  
16 speak then, I would like to say on behalf of MSHA  
17 that we want to thank everybody for participating  
18 in today's hearing. We want to thank the people  
19 who attended the hearing here at our  
20 headquarter's location. We want to thank the  
21 people who attended in Birmingham, Alabama, the  
22 members of the United Steelworkers who attended  
23 in Virginia, Minnesota, and the members who  
24 attended, the persons who attended, in Beckley,



1                   I want to say that we appreciate the  
2                   time and effort you took to provide us with your  
3                   comment and testimony; that that information you  
4                   provided us is a lot of useful information, and  
5                   that will be useful to us as we move forward  
6                   toward making a decision with respect to the  
7                   final rule.

8                   I would like to encourage persons who  
9                   heard the testimony today that if you have  
10                  further comment and testimony that you would like  
11                  to make, please, or supplement testimony that you  
12                  made today, please feel free to do so before the  
13                  record closes on November 10th, midnight, Eastern  
14                  Daylight Savings Time on November 10th.

15                  And again, on behalf of our agency,  
16                  thank you very much, and this public hearing on  
17                  the Agency's proposed rule on drugs - the  
18                  Agency's proposed rule on alcohol and drug free  
19                  mines policy, prohibition, testing, training and  
20                  assistance, the proposed - the public hearing is  
21                  concluded.

22                  Thank you.

23                  (Whereupon at 2:30 p.m. the  
24                  proceeding in the above-entitled

matter went off the record and

1 resumed at 4:10 p.m.)

2 MS. SILVEY: We will now reconvene the  
3 Mine Safety and Health Administration's public  
4 hearing on the agency's proposed rule of alcohol  
5 and drug-free mines, policy, prohibitions,  
6 testing, training and assistance.

7 At this point we will take testimony  
8 from persons who are in our - just to reiterate  
9 we are taking testimony from persons in the  
10 headquarters location, Washington, D.C., in  
11 Birmingham, Alabama, Beckley, West Virginia, and  
12 Virginia, Minnesota.

13 At this point we will take testimony  
14 from persons in Birmingham, Alabama. So will the  
15 first speaker in Birmingham, Alabama, come to the  
16 mike, state your name, and spell your last name  
17 for the court reporter, please.

18 MR. BLANKENSHIP: James Blankenship,  
19 B-l-a-n-k-e-n-s-h-I-p.

20 I've got a couple of questions before  
21 we get started. Are we testifying before a full  
22 committee?

23 MS. SILVEY: Yes, you are.

24 MR. BLANKENSHIP: Okay, second

25 question is, why didn't MSHA provide copies of

1 the proposed rules? You had about 250 miners  
2 here testifying, and we only got what rules the  
3 miners brought with us to pass around.

4 MS. SILVEY: Okay, thank you.

5 MR. BLANKENSHIP: I don't get an  
6 answer.

7 MS. SILVEY: I said thank you for  
8 passing around the rules. The copies that you  
9 did.

10 MR. BLANKENSHIP: But that's not my  
11 job. MSHA should have had copies here for the  
12 miners to read and study and figure out what's  
13 wrong with them.

14 MS. SILVEY: I'm sure you have some  
15 comments for me.

16 MR. BLANKENSHIP: I would like to have  
17 an answer before I continue.

18 MS. SILVEY: As I stated thank you for  
19 passing out the copies that you did. So if we  
20 can proceed with the testimony we would  
21 appreciate it, we would appreciate it.

22 MR. BLANKENSHIP: All right.

23 A couple of points. Like I said  
24 earlier, drugs and alcohol is not the problem

25 that MSHA is trying to make it out to be.



1 Fatigue is the biggest problem we've got in these  
2 mines here in Alabama. Ten, 12 hours a day, six  
3 days a week, the miners my age, or older, 52, the  
4 government can regulate truck drivers, how many  
5 hours they work, there is no reason why they  
6 couldn't regulate miners.

7 I think if you lessened the hours a  
8 miner had to work, I think you'd see a lot less  
9 accidents because the fatigue factor wouldn't be  
10 in play.

11 Part 48 training, I understand there  
12 is some training for what the proposed rules is  
13 going to be with the Part 48. Part 48 has got  
14 enough training. I mean we get eight hours. Are  
15 we going to get another eight hours to that and  
16 make it 16 a year? Question.

17 MS. SILVEY: The training is eight  
18 hours under the existing rule. The way it is  
19 under this proposal is that the miners have to  
20 have an additional hour initial training. So if  
21 - so let me just give you an example. That means  
22 that - but it can be integrated into Part 48. So  
23 if it's a surface miner, that means the miner  
24 will get 25 hours of initial training. If it's

25 an underground miner, the underground miner will

1 get 41 hours. It can be integrated into 48, but  
2 it has to be in addition to the numbers of hours  
3 in the existing rule, and then the half an hour  
4 of annual retraining would be 8-1/2 hours a year.  
5 It would be added onto; it's not to be taken  
6 within the context of the amount of time of the  
7 existing training.

8 MR. BLANKENSHIP: Do you actually  
9 think that a half an hour is enough?

10 MS. SILVEY: Well, your comment to me,  
11 then, is that a half an hour is not enough,  
12 right?

13 MR. BLANKENSHIP: Right, that's  
14 correct.

15 MS. SILVEY: All right, I'll take  
16 that.

17 MR. BLANKENSHIP: And like I said  
18 earlier, I want to make sure that you understand  
19 this, there is no avenue that I can find to test  
20 upper echelon management. They are the ones who  
21 make the decision of where we go, what we mine,  
22 what kind of equipment we use. You got to put in  
23 there that they can be tested. You've got to  
24 give me an avenue as a miner if I observe a

25 foreman or supervisor that I feel is under the

1 influence, I've got to have an avenue to have him  
2 tested just like he's got the avenue of having me  
3 tested.

4           If you don't test everybody that  
5 comes on that property then this drug policy is a  
6 failure, because everybody that comes on that  
7 property has an opportunity to cause an accident  
8 to someone else. Like I said, even if it's just  
9 the guy that's filling up the drink machine, he  
10 brings a truck on that property, he backs it into  
11 areas where miners are loading on and off to put  
12 the cages down in the ground. He can back over  
13 them. He should be drug tested.

14           And this proposal says miners are the  
15 only ones who do drugs. I just don't think  
16 that's true. I think if you did an actual drug  
17 policy, you'll see the supervisors are a lot more  
18 apt to have the drugs now caught on their system  
19 than the miners are.

20           I appreciate it.

21           MS. SILVEY: Okay, thank you.

22           The next speaker, please.

23           MS. EARNEST: My name is Melissa

24 Earnest, E-a-r-n-e-s-t.

MS. SILVEY: Okay, thank you.

1                   MS. EARNEST: Yes, ma'am. I'd like to  
2           just voice my opinion today that I really think  
3           that MSHA trying to pass a law to make drug  
4           testing mandatory, that sort of defeats the  
5           purpose of the companies that they already have  
6           their drug policies. They have worked fine for  
7           years at our mines, specifically. We don't have a  
8           real problem.

9                   And I do think that MSHA does do a  
10          wonderful job trying to keep us safe, which is  
11          great. But I think they need to do a little  
12          better job on finding better solutions for our  
13          roof problems, dust control, black lung, all of  
14          this, that would be money better spent in keeping  
15          us miners safe.

16                   And if you do want to do something as  
17          far as the drug so-called problem, the only thing  
18          that I would see would be a problem is maybe  
19          regulating workmen's comp and some of their  
20          doctors who send the miners back to work too  
21          soon, who regulates them? No one. If somebody  
22          is on painkillers, okay, he's on workmen's comp,  
23          it's okay for him to be down there. Who  
24          regulates that doctor? Who regulates workmen's

25 comp and say, you need to send him back to work.



1 That's not right. That's puts all of us in  
2 danger, not just illegal drugs and alcohol, it's  
3 prescription stuff too.

4 And I don't see where the way this  
5 proposal is going to benefit everyone. It does  
6 not benefit everyone. It needs to benefit  
7 everyone. It doesn't have anything in there for  
8 the supervisors. The supervisors are coal miners  
9 too. They need to be drug tested. Everyone  
10 needs to be drug tested, just like that other man  
11 said. Anybody who comes on that property needs  
12 to be tested. There is too much danger just  
13 being there. It needs to be rethought. This is  
14 just not a good plan.

15 And that's all I have to say.

16 MS. SILVEY: Okay, thank you.

17 I want to make a comment here  
18 though. And I understand the comments that you  
19 have stated to us about the fact that the  
20 proposal should have a provision in it that  
21 allows the miners to request the supervisors to  
22 be tested.

23 But with respect to your testimony,  
24 Ms. Earnest, that there is nothing in there on

25 supervisors, the rule does cover, and I stated

1     that earlier today, the rule does cover miners  
2     who perform safety-sensitive duties and the  
3     supervisors who supervise them. So the  
4     supervisors who supervise miners who perform  
5     safety-sensitive duty fall under the definition  
6     of the rule, under the definition. Every time a  
7     miner is used, you are talking about the  
8     supervisors who supervise them.

9             So the rule itself, I don't want  
10    anybody to leave without understanding that. I  
11    understand the comment, the earlier comment,  
12    about a provision being put in there about a  
13    person can also identify supervisors who may need  
14    to be - miners can do that, who may need to be  
15    tested. That's a separate issue. I understand  
16    that.

17            But the rule does cover supervisors  
18    of miners in safety-sensitive positions. And I  
19    don't want people to think that the rule does not  
20    cover supervisors; it does. And as I say that, I  
21    don't want anybody to say that - I'll say it  
22    before you say it.

23            I also understand the comments from  
24    people who said that everybody should be - that

25 they suggest that everybody be drug tested. And

1 I also understand it from the CEO on down, and  
2 everybody who comes on the mine also.

3 So but I did want to clarify that;  
4 the rule does cover supervisors.

5 MS. EARNEST: Okay, well what about  
6 the doctors in workmen's comp? Would that law be  
7 - would it have a mandate or something to say you  
8 can go behind someone and say, yes, this person  
9 can come back to work or not as far as the drugs.

10 MS. SILVEY: Well, you are mixing two  
11 - when you say the workmen's comp, this rule  
12 doesn't have anything to do with workmen's comp.

13 So I'm not -

14 MS. EARNEST: Well, the miners that  
15 come back to work are nine times out of ten on  
16 painkillers or some type of medication. But who  
17 would regulate that?

18 MS. CARR: This is Elena Carr. The  
19 rule - the proposed rule doesn't speak to  
20 regulating worker's comp doctors. But there is a  
21 provision where someone who is on medication who  
22 returns to work who subsequently tests - has a  
23 confirmed positive, the medical review officer's  
24 role then is to make sure that that prescription

25 is being taken as the personal physician has

1 prescribed, and if so then that person then is  
2 not considered to be tested positive.

3 So there is some oversight over that,  
4 but it really remains a matter of the personal  
5 physician.

6 MS. EARNEST: Well, what's the  
7 difference between a worker's comp doctor and  
8 somebody else's personal doctor? Why would there  
9 be a difference?

10 MS. CARR: As Pat said we are not  
11 speaking to the worker's comp issues. They are  
12 not addressed in this rule proposal.

13 MS. EARNEST: Okay, that's all I have  
14 to say.

15 MS. SILVEY: Thank you.

16 Next speaker, please.

17 MR. JOHNSON: My name is James  
18 Johnson, J-o-h-n-s-o-n. My question would be  
19 that a lot of the miners like myself who are older  
20 and on maintenance drugs from their private  
21 doctors.

22 How would we be effected as far as  
23 blood pressure medicines and stuff like that  
24 under this new rule?





1 covers the 10 categories of drugs that are listed  
2 in there that I named this morning. Now I don't  
3 know whether blood pressure medicine - in my gut  
4 I would think that blood pressure medicine  
5 wouldn't fall under one of those categories.

6 But if someone was taking a  
7 medication that fell under one of the categories,  
8 then if they were taking it, they had a valid  
9 prescription, and they were taking it in  
10 accordance to the valid prescription, then they  
11 would not then be deemed to be in violation of  
12 the regulation.

13 MR. JOHNSON: And who makes that  
14 determination?

15 MS. SILVEY: A doctor would make that  
16 determination.

17 MR. JOHNSON: My personal doctor?

18 MS. SILVEY: Your personal doctor. A  
19 medical review officer, okay.

20 MR. JOHNSON: A medical review  
21 officer.

22 MS. SILVEY: The medical review  
23 officer would be a licensed physician. I think  
24 under the proposal it could be an employee of the

25 mine operator. But the medical review officer

1       could consult with your personal doctor.

2                       MR. JOHNSON: And what if my doctor  
3       disagrees with the medical review doctor? Where  
4       would it go from there?

5                       MS. SILVEY: We're here, just a  
6       minute.

7                       MR. JOHNSON: Okay.

8                       (Pause.)

9                       MR. JOHNSON: I might say while you  
10      are looking, I'm at a disadvantage because I have  
11      not seen the proposal.

12                      (Pause.)

13                      MS. SILVEY: In the final analysis, I  
14      think, if there is a decision about whether you  
15      are taking a prescription, whether you are taking  
16      - you have a valid prescription, you are taking  
17      the medication in accordance with the  
18      prescription, and then how that - whether that is  
19      compatible with your performance of your job  
20      duties, that final decision would be made by your  
21      personal physician, by the miner's personal  
22      physician.

23                      MR. JOHNSON: Personal physician?

24                      MS. SILVEY: Yes.

MR. JOHNSON: Okay. One more question

1 about the contractors. Contractors, a lot of  
2 time what they'll do is they'll contract a job  
3 and they'll go out and get somebody from off the  
4 street that's not a miner, no experience or  
5 anything like that, and they'll bring them on the  
6 mine site. Who is going to regulate these  
7 people?

8 MS. SILVEY: The contractors are  
9 covered. And I understand that probably we need  
10 to refine and make sure we provide clarification  
11 of the coverage for contractors.

12 But the rule covers any persons who  
13 are required to have 30 CFR Part 46 or in the  
14 case of a coal miner, 30 CFR Part 48 training.  
15 And I know that there are a lot of contractors  
16 that have to have that training, that they are on  
17 the mine, on a continuous basis, and they have to  
18 have Part 48 training.

19 So for those contractors they would  
20 be covered by the rule and subject to the  
21 requirements of the rule.

22 MR. JOHNSON: Okay, thank you. That's  
23 all I have.

24 MS. SILVEY: Okay.

The next speaker, please.

1 MR. REACH: Sean Reach, R-e-a-c-h.

2 I just wondered if MSHA has their  
3 drug and alcohol policy? Does their employees  
4 get tested like we're going to be random tested?

5 MS. SILVEY: All Labor Department  
6 programs have drug and alcohol policy, and there  
7 is a drug and alcohol policy for MSHA, yes.

8 MR. REACH: Okay. Well, if you send  
9 the employees to the mines, and they get hurt,  
10 are they to report that and go and get tested?

11 MS. SILVEY: I didn't -

12 MR. REACH: Are you supposed to be  
13 tested right then, or are they going to have time  
14 enough to go to their doctor and get tested at a  
15 later date?

16 MS. SILVEY: Oh, you mean in case of  
17 an accident?

18 MR. REACH: Yes.

19 MS. SILVEY: In case of an accident I  
20 think there is a certain period of time for  
21 testing for alcohol and a certain period of time  
22 for testing for drugs, within a certain period of  
23 time, if I'm not mistaken, within after an  
24 accident within eight hours testing for alcohol,

25 and within 32 hours testing for drugs, within



1 that time period.

2 MR. REACH: Okay, they've got plenty  
3 of time to leave the mine site and go get their  
4 urine cleaned before they can pass a test.

5 MS. SILVEY: Well -

6 MR. REACH: But we have to be tested  
7 on site?

8 MS. SILVEY: Okay, I didn't understand  
9 your question. I thought about that too. I  
10 started to further clarify, because you started  
11 off asking about MSHA requirements.

12 You were talking about an MSHA  
13 inspector?

14 MR. REACH: Yes, ma'am.

15 MS. SILVEY: If an MSHA inspector gets  
16 hurt on the property, you say?

17 MR. REACH: Have they got to be tested  
18 right there on our property, or have they got to  
19 go to an MSHA doctor.

20 And you say within eight hours.

21 MS. SILVEY: No, I'm sorry, I was  
22 giving you the eight hours and the 32 hours in  
23 this room. I wasn't giving you the Department of  
24 Labor rules for MSHA personnel. I wasn't giving

25    you the rules there.

1 MR. REACH: But they're on our mine

2 site, right?

3 MS. SILVEY: If they got hurt on your  
4 mine site? They wouldn't be subject to this  
5 rule. The MSHA inspector or employee would be subject to the  
6 Department of Labor drug testing requirement.

7 MR. REACH: But you said earlier  
8 everybody on that mine site would be subject to  
9 this rule. Now MSHA -

10 MS. SILVEY: No, I didn't. I said -  
11 wait a minute. I said, I said for this rule  
12 people who have to take 30 CFR Part 46 and 30 CFR  
13 Part 48 training would be subject to this rule.

14 I then said, earlier I said I  
15 realized that some people have told us all  
16 persons should be subject to the testing. But I  
17 basically said that people who have to take 30  
18 CFR Part 46 and 30 CFR Part 48 training and  
19 subject to this rule.

20 And that wouldn't be the MSHA  
21 employee.

22 MR. REACH: Sound like discrimination  
23 to me. I mean UMSA needs to be worried about gas  
24 problems, dust problems, when we've got our own

25 problems, and our company already has a drug

1 policy for us if we get hurt.

2 And that's all I've got to say.

3 MS. SILVEY: Okay, thank you.

4 The next speaker please.

5 MR. WESTON: Ryan Weston, W-e-s-t-o-n.

6 I want to first say that I feel at a  
7 disadvantage because I haven't seen the proposal.

8 My question is, who is able to

9 discern the term, under the influence? Who says  
10 someone is under the influence? Who discerns  
11 that to say that they are under the influence?

12 MS. SILVEY: There are a variety of  
13 persons who can make that determination under the  
14 rule. It could - the operator can make that  
15 determination, the supervisor can make an initial  
16 determination. But that all has to be verified.  
17 That is the whole purpose of the drug testing;  
18 that is not done without verification through the  
19 drug testing.

20 MR. WESTON: Can you define under the  
21 influence for me?

22 MS. SILVEY: Well, we have the  
23 required - the definition in here for what is a  
24 positive, what would be determined to be a

25 positive test result. And that's what the rule -

1 that's what somebody would have to comply with  
2 with respect to the rule.

3 MR. WESTON: That doesn't answer my  
4 question. That's talking about the test that you  
5 have to go take when someone said that you are  
6 under the influence. I want to know who discerns  
7 and says that I'm under the influence or not,  
8 because to me that leaves a big door open for  
9 discrimination.

10 MS. SILVEY: Okay. You want to answer  
11 that? Okay, I understand.

12 MR. WESTON: Next question would be,  
13 okay let's take for instance I hurt my back at  
14 work. I pull a muscle in my back, and I go to a  
15 workmen's comp doctor who the company has paid.  
16 The company pays his bills and pays him for me  
17 going.

18 He says to go back to work the next  
19 day, he gives me a prescription for say Loritab  
20 for instance. He says, don't take these at work,  
21 but you need to take these if you're hurting.  
22 Well, if I'm hurting I have to take the  
23 prescription drugs. Let's say a supervisor or  
24 someone doesn't like me because of a previous

25      circumstance or something has happened, who's to



1 say he can't come to me and say I'm under the  
2 influence because he knows that I went to the  
3 doctor, and I'm on the medication that the doctor  
4 is prescribing, and then I'm out of a job,  
5 correct?

6 MS. SILVEY: Okay. You know as I said  
7 before, if the miner has a valid prescription and  
8 is taking the medication in accordance with the  
9 valid prescription then the rule - that miner  
10 would not be deemed to be in violation of the  
11 rule.

12 MR. WESTON: Excuse me, I'm sorry, I'm  
13 at a disadvantage like I said because I haven't  
14 seen the proposal. Okay if say that if a miner  
15 is on prescription medication and the company  
16 says or somebody says that he is under the  
17 influence, let's say he does lose his job for  
18 taking prescription medication that has been  
19 prescribed for him, are y'all going to go after  
20 that doctor who prescribed that to him and take  
21 his license and his job and his income away from  
22 his family?

23 MS. SILVEY: If the miner is on a -  
24 has a valid prescription, is taking the

25 prescription in accordance with the instruction,

1 as I said earlier, that's the - that - if that is  
2 what's happening, then that person would not be  
3 deemed to be in violation of the proposal.

4 MR. WESTON: Okay. Does the policy go  
5 all the way up to management in the company?

6 MS. SILVEY: The policy goes to miners  
7 and to supervisors who supervise them. If a  
8 particular miner happens to be supervised by a  
9 vice president of the company, then the policy  
10 goes to the vice president of the company. If  
11 the company happens to be supervised by the  
12 general superintendent of the mine, it goes to  
13 the general superintendent, or the mine manager,  
14 it goes to the mine manager. It just depends on  
15 where the supervisory chain is in the mine.

16 MR. WESTON: So would it go to human  
17 resources on the people that decide who comes  
18 into the mine and who they hire into the mine?

19 MS. SILVEY: I don't know, it depends  
20 on the setup the supervisory setup of the mine.  
21 Human resources might hire them in, but if - they  
22 could make somebody else to supervise them. I've  
23 got to know what the setup is and who supervises  
24 the mine.

MR. WESTON: Well, I personally

1 believe that this proposal is a big window for  
2 discrimination for supervisors, whoever, saying  
3 that they don't like one person and can just pull  
4 them out of a crowd and say, I think you are  
5 under the influence. And I think it's going to  
6 happen, and I do not think this is a good  
7 proposal. And that's all I have to say.

8 MS. SILVEY: Okay, thank you.

9 Next speaker please.

10 MR. LINDSAY: How are you doing today?

11 MS. SILVEY: How are you doing.

12 MR. LINDSAY: Fine. My name is John

13 Lindsay, L-I--d-s-a-y.

14 I have a question: are you saying  
15 that the drug test, the supervisor, everybody has  
16 to be tested, what you got here says, the ruling  
17 is not clear on the supervisors which are  
18 included in this test, how they would be  
19 supervisors of the miners or inspectors. So what  
20 you are telling us there? Ain't nobody going to  
21 be tested but the miners, and the supervisors are  
22 going to go without being tested?

23 MS. SILVEY: I said the rule covers  
24 miners who perform safety-sensitive job duties,

25 and the persons who supervise them. The rule

1 covers them. Those people are within the scope  
2 of the rule.

3 MR. LINDSAY: But it says here it's  
4 not clear on the supervisor.

5 MS. SILVEY: Where does it say it's  
6 not clear on the supervisor.

7 MR. LINDSAY: On the second page,  
8 second paragraph.

9 MS. SILVEY: Second paragraph of what?

10 MR. LINDSAY: On the second page of  
11 this - you don't have it?

12 MS. SILVEY: I don't have it, do I?

13 You must be reading from your prepared comments  
14 now. I don't have them.

15 MR. LINDSAY: You don't have them?

16 MS. SILVEY: No sir. But it's still  
17 the same thing, if you're going to test anybody  
18 for drugs, a supervisor gets more people killed  
19 than the workers can.

20 MS. SILVEY: The rule covers  
21 supervisors. It covers supervisors of miners  
22 performing - the category of miners that are  
23 covered by the rule, the rule covers the persons  
24 who supervise them. So miner X is a long wall

25 operator, and miner B is his supervisor, the rule



1 would cover miner X and miner B.

2 MR. LINDSAY: But still it ain't - as  
3 it is the miners all of us would be tested  
4 regardless of what they'll be doing for just the  
5 miners? Like the guy said a few minutes ago, you  
6 get a supervisor you had a run-in before, and he  
7 come back and say you are under the influence,  
8 and get you for sniffing glue or something. Okay,  
9 when they take you off your equipment, or what?

10 I mean there are just too many things  
11 that they could do to hurt you with the drug  
12 test, what they're doing, which ain't fair.

13 MS. SILVEY: Anything else?

14 MR. LINDSAY: I'd like another  
15 comment. You just saying the way we are going to  
16 be testing, okay, some supervisors or management  
17 might not be in it. If they get hurt are they  
18 going to be covered under the same thing?

19 MS. SILVEY: The rule covers miners  
20 and their supervisors. So supervisors are  
21 covered.

22 MR. LINDSAY: The manager too?

23 MS. SILVEY: Miners and the people who  
24 supervise minors.

MR. LINDSAY: The management?

1 MS. SILVEY: That's management, yes.

2 MR. LINDSAY: Okay, you are saying  
3 that, why can't we make it more safe for us as  
4 far as dust and some of the equipment down like  
5 the track, stuff like that, safety that needs to  
6 be taken care of beside the drug. Because we  
7 have a drug test. If anyone of us gets hurt  
8 today, the management would come down and say,  
9 everybody in the sector, y'all take a drug test,  
10 we got to take a drug test. What do we need  
11 another drug test besides the one we already  
12 have? I was tested before I went to work.

13 MS. SILVEY: Let me go back to talk a  
14 little bit about the coverage. Everybody is  
15 talking about miners and supervisors and  
16 contractors. The rule actually covers miners,  
17 supervisors, contractors, it exempts - it does  
18 not cover - administrative and clerical  
19 personnel. For example, a payroll clerk. That's  
20 the only category that the rule is all-out  
21 exempting, administrative and clerical personnel.  
22 It covers miners, management, and it covers  
23 contractors.

24 MR. LINDSAY: The job I was at before

25 I came to the mine, even the office personnel

1 they was drug tested. I say everybody. If you go  
2 with a company, the majority of companies, they  
3 have drug testing, and they test everybody in the  
4 company, go through a random drug test, the  
5 secretaries and everybody else. Anybody who is  
6 on that company's property is subject to testing.  
7 They had to take their test.

8 It would be a random, they would go  
9 by computer, they would pull them up, and  
10 sometime that supervisor would tell you to go two  
11 or three times a month.

12 MS. SILVEY: Okay. Okay, is that it?

13 MR. LINDSAY: Yes, ma'am. That's it.

14 MS. SILVEY: Okay, thank you.

15 MR. LINDSAY: You're welcome.

16 MS. SILVEY: Next speaker please.

17 MR. BAKES: How you doing, ma'am.

18 MS. SILVEY: How are you?

19 MR. BAKES: My name is Randy B. Bakes.

20 I've been in a coal mine 29 years. We used to  
21 drink beer and have parties when we first started  
22 running coal for him. Most of them got more  
23 problems than we got. Like this country has been  
24 around drugs and moonshiners to prohibition. The

25 government didn't want to legalize marijuana.

1 Now they got

2 Quaaludes, and then they cut them out, and they  
3 substitute in with Valiums, and they substituted  
4 with Loritabs.

5 We have a contract we work under, and  
6 if this is passed, they'll be able to take on  
7 anybody that they want to from working too long,  
8 fatigued, and everything thing else.

9 I didn't come here to ask questions  
10 when I came here, but I just came to speak. And  
11 I know I've seen more than I could tell. If I  
12 could tell half of what I know I'd be  
13 assassinated before I left this building. I've  
14 seen bosses go to the turn and know good and well  
15 what they are doing, they don't turn, they go so  
16 far off that they go and use the bathroom,  
17 knowing good and well what they are doing.

18 I've even gone in behind places and  
19 found needles on the roof or anything else. It's  
20 hard to prove. If you go speaking up, if this is  
21 passed, then somebody else gets picked off.

22 I never tried to do nothing, no drugs  
23 - I was always told any drug you do that's white  
24 you get addicted to it. If this country would

25    legalize marijuana it probably wouldn't have all



1 these other big drug problems.

2 Drugs is big business in this  
3 country. This country was built on drugs, always  
4 your farmers go out on their contractors with a  
5 shot of moonshine.

6 And that's probably why the Indians  
7 lost their land because they smoke so much  
8 marijuana.

9 And this - I guess I done said  
10 enough. You got any questions for me?

11 MS. SILVEY: No, sir, thank you.

12 Next speaker please.

13 MR. SPENCER: Good afternoon. My name  
14 is Larry Spencer, S-p-e-n-c-e-r. I'm the - I  
15 work for the United Mineworkers of America. I'm  
16 district rep for the International. I've been  
17 sitting here listening all day, and I've listened  
18 to comments about the policy that is out there.  
19 And one thing we do want to reiterate, the United  
20 Mineworkers stands for a drug-free workplace.

21 The thing that concerns me more today  
22 than anything is that out of all the mines that  
23 we represent in Alabama, 100 percent of our union  
24 mines have drug policies. Not 85 percent, not 75

25 percent, but 100 percent of our union mines have

1 drug policies that are much better than the  
2 policies y'all are trying to put into place  
3 today, because they are also testing all the  
4 personnel people, anybody that comes onto the  
5 property that works for one of these mines now  
6 are subject to be drug tested.  
7           And now you are wanting to change it  
8 and just allow the miners and the supervisors  
9 that supervise miners to be tested. The people  
10 that are making the decisions such as the mine  
11 managers, if they are not supervising someone  
12 they don't have to be drug tested, but they still  
13 make the decisions that can cost people's lives.  
14 And I do not understand why the U.S. government  
15 is trying to make a decision that will still cost  
16 people's lives by not drug testing them too. Why  
17 can't we leave these policies in effect. Because  
18 if you put this policy in effect now, all the  
19 companies are going to step back to the lesser  
20 policy than what they've got in effect today, and  
21 I think you need to spend your money on testing -  
22 doing more dose testing, diesel emissions, black  
23 lung. We've got a lot of other problems. And  
24 today the inspectors can't even get all their

25 routes down without getting help into the mines.

1 And you are asking them to do more than what they  
2 are doing today. And I can't see that happening.

3 And what that, that's my comments.

4 And I will answer any questions.

5 MS. SILVEY: Okay, thank you very

6 much. I don't have any questions.

7 The next speaker, please.

8 MR. HUGHLETT: Hello. My name is

9 Riley Hughlett, H-u-g-h-l-e-t-t.

10 I again at a disadvantage. We don't  
11 have the interest given to us, full writing and  
12 everything. But I'm in agreeance with the last  
13 speaker that the policy they have is already a  
14 good policy. Why does the government want to  
15 jump in and change a policy and go backwards when  
16 they already have a good policy. It doesn't make  
17 any sense.

18 I just wanted to know why does the  
19 government want to come in and change the policy  
20 that we already have in place. Question?

21 MS. SILVEY: Well, the rule would not  
22 seek to change a policy that is in place. It  
23 would put in place a rule that all mine operators  
24 would have to comply with.

MR. HUGHLETT: They already do - I'm

1       sorry, I didn't mean to cut you off.

2                       MS. SILVEY: Well, it would put in a  
3       place a policy that all mine operators would  
4       comply with, a standardized drug program.

5                       MR. HUGHLETT: Now we already have  
6       that program. Now another thing -

7                       MS. SILVEY: Well, let me finish.  
8       What it does say is that any operator who has a  
9       program that meets the requirements of this rule,  
10      that program would be held as being - would be  
11      viewed as being in compliance with the rule. So  
12      in other words it would not seek to undo good  
13      operator programs that are in place. And I've  
14      heard a lot of testimony from people who say that  
15      a lot of their operators, not from the labor  
16      sector, UMWA, the Steelworkers, as well as  
17      operators who say that they have good programs in  
18      place.

19                      This proposed rule would not seek to  
20      undo those good programs.

21                      MR. HUGHLETT: Okay, and another  
22      question, who is paying for this policy? Is this  
23      a government policy, or is the company paying for  
24      it? Who's paying for it? Is it taxpayers?

25 Who's paying for it?



1                   MS. SILVEY: It would be a company  
2 policy. Mine operators would have to pay for  
3 the requirement.

4                   MR. HUGHLETT: Okay, so it's coming  
5 out of the company's pocket then.

6                   MS. SILVEY: Yes.

7                   MR. HUGHLETT: I was just wondering  
8 why the government wants to impose more rules,  
9 and how much deeper does it go from there? Are  
10 they next going to come to the house and seeing  
11 what we're doing there?

12                  MS. SILVEY: I doubt it.

13                  MR. HUGHLETT: You doubt it, but  
14 possible huh?

15                  MS. SILVEY: No I doubt it very  
16 seriously. MHPA wouldn't do that.

17                  Okay, is that - do you have anything  
18 else?

19                  MR. HUGHLETT: No, I don't have  
20 nothing else.

21                  MS. SILVEY: Okay, thank you.

22                  Next speaker please. Is there  
23 another speaker?

24                  MR. WILSON: Yes, Morris Wilson.

MS. SILVEY: Okay.

1 MR. WILSON: Nickname Stretch.

2 I wanted to ask you, did they have  
3 any particular drugs that they were really  
4 targeting on this?

5 MS. SILVEY: Any particular drugs?

6 The drugs that are listed in the proposal. It's  
7 a 10 panel drug.

8 MR. WILSON: Oh, 10 panel drug? I  
9 haven't seen that paperwork. But this is totally  
10 wrong.

11 MS. SILVEY: I called them all this  
12 morning.

13 MR. WILSON: Okay. You have evening  
14 shift in here now.

15 MS. SILVEY: I understand that.

16 MR. WILSON: Is this one of those Bush  
17 policies?

18 (Laughter.)

19 Excuse me?

20 MS. SILVEY: I'm here.

21 MR. WILSON: Is this one of those Bush  
22 policies?

23 MS. SILVEY: The rule was proposed by  
24 the Mine Safety and Health Administration.

MR. WILSON: Is that a part of the

1 Bush policy?

2 MS. SILVEY: I don't understand your  
3 question.

4 MR. WILSON: MHSA is the federal  
5 government, right?

6 MS. SILVEY: That is correct.

7 MR. WILSON: So this is a part of the  
8 Bush policy then, right?

9 MS. SILVEY: MHSA is an agency of the  
10 Department of Labor, and MHSA proposed this rule.

11 MR. WILSON: Send him a message from  
12 us. We going to give him a treat after this  
13 election.

14 Thank you.

15 MS. SILVEY: Thank you.

16 The next speaker please.

17 MR. CAGLE: On my way.

18 MS. SILVEY: Okay.

19 MR. CAGLE: My name is Dwight Cagle,

20 D-w-I-g-h-t C-a-g-l-e. I'm with the UMWA.

21 I need a definition on safety-  
22 sensitive job duties.

23 MS. SILVEY: Okay, we - safety-

24 sensitive - miners are determined to be in

25 safety-sensitive job duties. Any miners who have

1 to take 30 CFR Part 46 and 30 CFR Part 48

2 comprehensive training. And I know you know who  
3 those are. I'm sure you know who those are at  
4 your mine.

5 MR. CAGLE: Everyone that's in the  
6 mine.

7 MS. SILVEY: Everyone - most everybody  
8 in the underground mine.

9 MR. CAGLE: Okay, say that you have  
10 reasonable suspicion for testing. You challenge  
11 this man and take him at that time you'll be  
12 taking him to, at our mines, about an hour and  
13 half away to be tested, where he'll be waiting  
14 five hours to be tested, if they get to him  
15 within five hours. In the past before this  
16 proposal come up, you challenged a man and he  
17 comes back clean, not a positive test, there is  
18 no language in this proposal who is going to pay  
19 this man.

20 Could you answer that?

21 MS. SILVEY: The rule doesn't specify  
22 pay. That would be a decision made by the mine  
23 operator.

24 MR. CAGLE: Well, if you are trying to

25    implement - ma'am.



1 MS. SILVEY: It does say that there is  
2 to be no adverse action against any miner if it  
3 is later determined that the test was not - that  
4 there was no positive test, that there can be no  
5 adverse action taken.

6 Mr. CAGLE: And some of the tests, you don't get  
7 results back within two or three days, what does  
8 this miner do?

9 MS. SILVEY: I think that decision is  
10 left up to the operator. He can - the operator  
11 can put him in a nonsensitive job duty, during  
12 that period of time. And no loss of pay.

13 MR. CAGLE: There is no job like that  
14 in the mines.

15 MS. SILVEY: Well, no loss of pay  
16 anyway.

17 MR. CAGLE: Does the proposal state  
18 that?

19 MS. SILVEY: Yes. It does.

20 MR. CAGLE: But what I'm saying there  
21 is no job like that, safety-sensitive job.

22 MS. SILVEY: I understand. But I'm  
23 saying the miner can't suffer any loss of pay  
24 though.

MR. CAGLE: Otherwise it's not a good

1 plan, leaving all these unanswered questions.

2 MS. SILVEY: No, I'm saying to you,  
3 I'm answering that one, I'm saying in the  
4 situation you just described the miner can suffer  
5 no loss of pay. That is in the rule. So I don't  
6 want you to go away thinking that that is  
7 answered. So I've answered every question you  
8 asked.

9 MR. CAGLE: If left up to the  
10 operator.

11 MS. SILVEY: No, I said that the miner  
12 must suffer no loss of pay. I didn't say it's  
13 left up to the operator. In the event that  
14 Section 66.403 covers operator actions after  
15 receiving a verified test result.

16 MR. CAGLE: But at that time they may  
17 not get that -

18 MS. SILVEY: In the event that there  
19 is a verified negative test or a test that is  
20 cancelled, the miner will be immediately returned  
21 to the performance of his duty; the miner will  
22 suffer no adverse personnel consequences.

23 You gave me the situation where the  
24 test came back later negative.

MR. CAGLE: Right. But the question

1 was about the safety-sensitive jobs. We do not  
2 have jobs like that.

3 MS. SILVEY: But the bottom line is  
4 that the miner suffers no loss of pay.

5 MR. CAGLE: So if the supervisor  
6 challenged this man with his three hours of  
7 training, two initially and two yearly by this  
8 plan, and this supervisor, which we've got  
9 several that's in their early 20s, and he's going  
10 to be able to challenge these folks with three  
11 hours training to recognize conditions to  
12 challenge these people, giving reasonable  
13 suspicions for testing?

14 MS. CARR: Your point is simply that  
15 the supervisor doesn't have sufficient training  
16 to make this reasonable suspicion determination;  
17 is that your concern?

18 MS. CAGLE: That's one of them, yes.

19 MS. CARR: Remember, it's reasonable  
20 suspicion. It's not an absolute determination.  
21 The drug test itself is the objective  
22 determination as to whether or not there was  
23 prohibited use. And if it comes back negative  
24 there is no adverse personnel consequences, even

25 if the miner isn't placed on another job; if he

1 has to sit out, be suspended, he would be

2 returned with no adverse personnel consequences

3 and no loss in pay, so he would be paid.

4 MR. CAGLE: As the people that come in

5 earlier, they all have the same belief that a

6 little bit of discrimination here would be if a

7 supervisor doesn't like that employee, challenge

8 him, with three hours training, two yearly.

9 Also is Part 36, who gives that

10 training?

11 MS. SILVEY: What do you mean who gives

12 Part 46?

13 MR. CAGLE: A competent person?

14 MS. SILVEY: Or -

15 MR. CAGLE: Or an MHSA trainee?

16 MS. SILVEY: A competent person.

17 MR. CAGLE: So just anybody competent

18 could give this training?

19 MS. SILVEY: Part 46 training. You

20 wouldn't take Part 46. You'd take Part 48

21 training.

22 MR. CAGLE: Yes, I'm underground.

23 What about the contractors and all that come on

24 that site, are they Part 36 if they don't go

25    underground?



1 MS. SILVEY: They would be Part 48

2 too.

3 MR. CAGLE: Metal or non-metal, that's  
4 Part 46?

5 MS. SILVEY: Part 46 is metal, non-  
6 metal, only part of metal, non-metal. Metal/non-  
7 metal surface, stone, and aggregate.

8 MR. CAGLE: That would be a competent  
9 person?

10 MS. SILVEY: What did you say?

11 MR. CAGLE: And that would be a  
12 competent person?

13 MS. SILVEY: A competent person could  
14 give the training yes, for that segment of the  
15 training.

16 MR. CAGLE: On the drug and alcohol  
17 recognition?

18 MS. SILVEY: For the people who fall  
19 under Part 46.

20 MR. CAGLE: Okay, thank you.

21 On the other one, the lady that  
22 testified about the workmen's comp, about sending  
23 these people back to work with a back injury or a  
24 bruise, whatever, back strain. And they

25 prescribe them Loritabs, don't take these at

1 work. It's still in your system.

2 And you say that they get challenged,  
3 and as long as the doctor with workmen's comp  
4 prescribed this it's going to be okay?

5 MS. CARR: As long as it's being taken  
6 according to prescription it would be okay, and  
7 that is the role that the medical review officers  
8 role is to assure, to review the medical  
9 evidence, to talk to that worker's comp doctor  
10 and determine whether or not in his best medical  
11 judgment it is being taken as prescribed.

12 So if the prescription was, take it  
13 in the morning or as needed, the medical review  
14 officer, trained licensed physician, would make a  
15 judgment, and in all likelihood in that scenario,  
16 it would come out a negative - be reported as a  
17 negative test result.

18 MR. CAGLE: I want to say that this is  
19 the way it works at our - with our company. They  
20 send you to the hospital with an injury. They  
21 treat you and then you got to go see the company  
22 doctor before you return to work. And at that  
23 time you either take away or prescribe and send  
24 you back to work the next day.

Don't you think this plan would

1     either take away the painkillers and he'd tell  
2     you to take two aspirins, what this plan would  
3     lead to?

4                   MS. CARR: That is your speculation.  
5     There is nothing specific in this rule that would  
6     require that or even necessitate that.  
7     Legitimate use of prescription painkillers so  
8     long as they are being used for a particular  
9     medical condition and as prescribed.

10                   MR. CAGLE: As prescribed.

11                   MS. CARR: So if you take twice the  
12     amount and you show up that might be a problem.

13     But if you are taking the amount prescribed for  
14     pain, for a medical condition, it is the medical  
15     review officer's job to determine that and report  
16     that as a negative.

17                   MR. CAGLE: Say it's prescribed, take  
18     one every eight hours, we don't have eight-hour  
19     shifts at our mines. So it would be in your  
20     system and you would be taking your medication at  
21     work.

22                   MS. CARR: And you'd be taking it as  
23     prescribed.

24                   MR. CAGLE: Every eight hours.

MS. CARR: As long as you take it as

1     prescribed you are not in jeopardy of being in  
2     violation of the proposed rule.

3                   MR. CAGLE: That's all I have at this  
4     time.

5                   MS. SILVEY: Next speaker please.

6                   MR. WELDON: Hello, how are you doing?  
7     This is Joe Weldon, United Mineworkers of  
8     America, 1948, that's W-e-l-d-o-n.

9                   MS. SILVEY: How are you doing?

10                   MR. WELDON: I'd be doing better if I  
11     was at home right now, but I'm not.

12                   I still question the explanation  
13     concerning the supervisors being tested, and when  
14     I finish maybe you can explain to me a little bit  
15     more.

16                   I personally don't believe that this  
17     panel fully understands what it's really like in  
18     the coal mines. And I doubt very seriously if  
19     any of y'all have been in the coal mines, but if  
20     you had you would understand more about what we  
21     are trying to portray here, and how we are trying  
22     to tell you about some of the things and issues  
23     that we are trying to describe.

24                   First of all, discrimination does

25 still exist in the coal mines. If you stand up



1 for what you believe in and push issues such as  
2 safety issues or grievance issues, you will be  
3 reprimanded in one way or another if not fired.  
4 They will put you to doing dirty work, and one  
5 prime example that I can give myself personally  
6 is that me and Mr. Wilson was on an inspection of  
7 the mines here a few months ago, and we rode up  
8 about 50 crosscuts of bad cop, broken straps, bad  
9 roof bolts, and such as that.

10 Well, guess who got to fix all that?

11 It was me. And believe it or not I done it  
12 smiling the whole time. And they put me - took  
13 me off my regular job, put me to running a roof  
14 drill, setting pins, putting up straps, timbers,  
15 setting building cribs. And doing everything  
16 that nobody else wanted to do. Why? Because I  
17 stood up for what I believed in. I stood up and  
18 I took a stand, and tried to make that mine as  
19 safe as possible for my fellow workers to work  
20 in. But yet I was reprimanded, and I was  
21 discriminated against because I'd done that.

22 But I wouldn't let them know that.

23 Like I said, I smiled the whole time that I was  
24 doing it.

But the fact still remains that if

1 some of us did have the ability to turn in a  
2 supervisor, and he was under the influence of  
3 drugs or alcohol, and we did turn him in,  
4 absolutely 100 percent we would be reprimanded  
5 one way or another, whether it be fired, whether  
6 it be put off somewhere shoveling mud in a place  
7 that it didn't need to be shoveled, we would be  
8 reprimanded for that, standing up for what we  
9 believed in.

10 We believe that this policy that  
11 y'all are putting into effect, we don't agree  
12 with it, none whatsoever. We believe that the  
13 policies that we have in effect at all of our  
14 union mines are adequate, and they've been  
15 working, and like the old saying goes, and other  
16 brothers have said it before, if it's not broke,  
17 don't fix it.

18 We believe that you will either be  
19 fired if you do turn in a supervisor, or they'll  
20 make it so hard on you you will want to quit,  
21 especially if you push safety issues and/or  
22 grievance issues.

23 I also want to make a comment: is it  
24 just because that you all are putting this policy

25 into effect or this policy does go into effect,

1     what makes y'all believe that the company is  
2     going to adhere to it? What makes y'all think  
3     that the company is going to do what y'all say in  
4     these standards? You can look at the number of  
5     citations at every one of these mines, especially  
6     in Alabama, at the number of citations that  
7     they've got written, and look at the number  
8     they've paid. They drag them out in court, they  
9     drag them out in court. Every one of them goes -  
10    we used to have citation conferences every two  
11    weeks. We don't have them any more. Why?  
12    Because they take them all to court.

13                 So just because this policy goes into  
14    effect doesn't mean that the companies are going  
15    to adhere to it, and they are not going to do  
16    what they are supposed to do.

17                 That concerns me that just because  
18    y'all say that they have to go along with this  
19    policy doesn't mean that they are going to do it.  
20    They'd just as soon to pay it and go on to the  
21    next issue, or drag it out until it just goes  
22    away.

23                 And that's all I had, Ms. Silvey. If  
24    you have any questions.

MS. SILVEY: No, I don't have any

1 questions per se, except to make a comment that,  
2 and I'm sure you know this too, that in the last  
3 year, year and a half, the civil penalty, we put  
4 in new civil penalty regulations, in addition to  
5 the Miner Act, there was a provision in the Miner  
6 Act if an operator fails to notify MSHA it's a  
7 minimum penalty for that, and also flagrant  
8 violation penalty, and also minimum penalties for  
9 unwarrantable failure.

10           You ask me, now why do I say that?  
11 Because I would suspect that - I know that the  
12 penalties have gone up tremendously. So a lot of  
13 mine operators are at a different - are dealing  
14 somewhat differently with the penalties today  
15 maybe than they were a little over two years ago.

16           MR. WELDON: Yes, ma'am, I understand  
17 completely what you're saying. And our mines is  
18 on D status as I speak; we are still on D status,  
19 have been for awhile. And of course everything  
20 that they get they take it to court. And so I  
21 understand that as well.

22           But what I want you to understand is  
23 this of course, and my last point being that we  
24 will be discriminated against if there are not

25 provisions in there if we have the policy, if we



1     turn a supervisor in, and we ought to have that  
2     ability to do that, Ms. Silvey, because we feel  
3     like that everyone that comes on that property, I  
4     know it's a broken record and you keep hearing  
5     that, but we believe that everybody that comes on  
6     that property, every job in that mine is a  
7     sensitive job.

8                     And so I want y'all to please take  
9     that into consideration if you will.

10                    MS. SILVEY: I understand. I  
11     understand what you're saying. And I do want to  
12     say one other thing, because I've heard several  
13     people talk about you feel like you would be  
14     discriminated against. And I just want to  
15     reiterate that there are provisions in the Mine  
16     Act, if a miner feels discriminated against for  
17     filing a discrimination complaint which MSHA must  
18     investigate.

19                    So but I hear what you are saying.

20     Thank you.

21                    MR. WELDON: Yes, ma'am. Thank you.

22                    MS. SILVEY: Next speaker, please.

23                    MR. BOLDEN: Deandre Bolden, B-o-l-d-  
24     e-n.

I basically have one question. As an

1 American taxpayer, I just want to know how will  
2 this be funded, this program that you implement?

3 MS. SILVEY: It will be funded by the  
4 mine operator.

5 MR. BOLDEN: It's being funded by who?

6 MS. SILVEY: No, it would be funded,  
7 the costs would be - would go to the fall on the  
8 mine operator.

9 MR. BOLDEN: The company?

10 MS. SILVEY: The company, that's  
11 right.

12 MR. BOLDEN: Okay, with that being so,  
13 our company has a pretty good standard on not  
14 using drugs at the workplace. I mean who is -  
15 excuse me.

16 MS. SILVEY: That's good then.

17 MR. BOLDEN: Yes, yes. And we stand  
18 fully for that. We stand at all on our premises.  
19 With this coming into effect, why should you  
20 regulate what a company already has in place?  
21 It's like you don't have a trust in a company  
22 that is doing something that is good for America  
23 that is producing coal. Like you don't have  
24 faith in other Americans, you're taking over.

MS. SILVEY: No, what we did is, we

1 gave - we recognized in the proposal companies  
2 that have - many companies have good existing  
3 programs, and we recognize that companies with  
4 those programs, as long as those programs met the  
5 requirements of the proposal, they would be  
6 deemed to be in compliance with the proposal.

7 So we understand that a lot of  
8 companies do have good programs, and programs  
9 that work.

10 MR. BOLDEN: Okay. Another question.  
11 When is the rule on this law that you are trying  
12 to pass, when are you trying to pass this law,  
13 what date?

14 MS. SILVEY: We don't have a certain  
15 date. There is a - this is - we are in the  
16 public comment phase. And then generally you  
17 dealt with me with rulemaking before. And what  
18 happens then, we'll go back and we'll review and  
19 evaluate the comments and develop a final rule.  
20 That is the process.

21 MR. BOLDEN: Excuse me, do you feel  
22 like this policy is in good review? Do you think  
23 it needs to be reviewed, you personally?

24 MS. SILVEY: What do you mean? We

25 have to review the comments. That's part of this

1 public rulemaking process.

2 MR. BOLDEN: Okay. One more question.

3 Have you ever been discriminated against  
4 personally? The reason I say that, I don't mean  
5 to put you on the spot, the reason I say that,

6 this company - not this company, but this United  
7 States of America, we have been discriminated  
8 against through white, black, Hispanic, Africans,

9 whatever you want to call it. This policy I  
10 think right now would leave a big window for it.

11 Like my other brothers came up here and said  
12 before, you have never worked in a coal mine

13 before. I haven't worked in a coal mine February  
14 of this year. There is nothing like it.

15 And what they are trying to explain

16 to you, I mean you have to be in that coal mine  
17 to understand. This leaves a wide open space for  
18 discrimination, and I think y'all need to review  
19 it. Thank you.

20 MS. SILVEY: Okay, I appreciate it.

21 Thank you.

22 Next speaker, please.

23 MR. KIMBRELL: My name is Ned

24 Kimbrell. I work for Jim Walter Resources, UMWA

25 2937.



1                   MS. SILVEY: Can you spell your last  
2 name, please?

3                   MR. KIMBRELL: K-I-M-B-R-E-L-L.

4                   MS. SILVEY: Okay, thank you.

5                   MR. KIMBRELL: One of the previous  
6 speakers up the drug that you would be testing  
7 for. I have the proposal in front of me on page  
8 52142, or I guess that maybe page number what  
9 have you.

10                  MS. SILVEY: That's right.

11                  MR. KIMBRELL: The list of the drugs  
12 that you have in here or that you are proposing  
13 to test for, I think there are a few issues that  
14 a lot of miners have, and one being that you are  
15 willing to test for prescription drugs. And I  
16 understand that as far as the prescription drugs  
17 it will be up to the licensed medical physician  
18 and that sort of thing to determine whether you  
19 are taking those drugs properly; correct?

20                  MS. SILVEY: That's correct.

21                  MR. KIMBRELL: You also stated that  
22 the drug program is going to be paid for by the  
23 mine operator; correct?

24                  MS. SILVEY: Correct.

MR. KIMBRELL: So the doctor that's

1 going to be taking a look at your case is going

2 to be paid for by the mine operator; correct?

3 MS. SILVEY: Might not. Could be.

4 MR. KIMBRELL: Could be?

5 MS. SILVEY: Yes.

6 MR. KIMBRELL: Who else would be  
7 paying the doctor to take a look a look at your  
8 drug test that the company paid for?

9 MS. SILVEY: Well, you say paid for.  
10 Could be an employee of the mine operator or it  
11 could be a personal contract. It depends on how  
12 the program is set up: directly paid or in some  
13 other manner.

14 MR. KIMBRELL: So it's being paid for  
15 by the mine operators. Someone has to take a  
16 look at the test. Who is footing the bill? The  
17 mine operator.

18 Who is that doctor going to be loyal  
19 to? The one that's paying his paycheck.

20 Second issue is, I was reading this  
21 and it says although the proposed rule requires  
22 mine operators to provide one opportunity for  
23 those violating the rule to get help and retain  
24 their job, it leaves it to the mine operator to

25 determine the disciplinary consequences for

1 violations.

2           That's giving too much power to the  
3 mine operator, lay a man off who tests positive  
4 for hydrocodone because he wore his back out  
5 workings 6X12s a week and he is taking his  
6 medicine like he's suppose to, but it's giving  
7 too much power to the mine operator to lay that  
8 miner off for 30 days. What is that miner  
9 supposed to do when the operator can determine  
10 his consequences for the disciplinary action?  
11 What is that man going to do for 30 days when  
12 he's laid off? He was taking his medication  
13 properly, but he still violated the rules, so  
14 therefore he still gets consequences imposed on  
15 him.

16           MS. SILVEY: But if he was taking this  
17 medicine properly - you said he was taking it  
18 properly, right?

19           MR. KIMBRELL: Yes, ma'am.

20           MS. SILVEY: Well, then he doesn't  
21 violate the rule.

22           MR. KIMBRELL: According to a paid  
23 physician or a physician that is being paid for  
24 by the mine operator, correct?

MS. SILVEY: Well, I wouldn't - if

1 he's taking it properly?

2 MR. KIMBRELL: Ma'am, who pays your  
3 bills? Who do you work for? The taxpayer, I  
4 heard somebody say, that's funny. But actually  
5 who writes your check is who, the U.S. government  
6 or MSHA. You are very loyal to them aren't you?

7 UMWA writes my paycheck. That's who  
8 I belong to. And believe me, I'm very loyal to  
9 them. If they are paying my bills I'm loyal to  
10 them.

11 Do you understand what I'm saying?  
12 The simple fact is a lot of people have brought  
13 up the fact of being discriminated against. And  
14 that's a big problem with this proposal because  
15 it says, testing also be required for any  
16 additional drugs designated by the security of  
17 labor, and nothing in the rule restricts mine  
18 operators from testing for additional drugs  
19 beyond those for which the rule requires testing,  
20 meaning, if I'm being discriminated against  
21 because of whoever I may have pissed off down at  
22 the mine site for whatever reason, bringing up a  
23 safety issue or what have you, they can take drug  
24 testing to the walls for anything.

Well, I have a heart condition - I'm



1     sorry, I have high blood pressure. I have high  
2     blood pressure medicine in my system. What if I  
3     done broke the rule, I get laid off for 30 days  
4     even though I take it as I'm supposed to, the  
5     determination comes down from the doctor who is  
6     ultimately going to be loyal to the company  
7     because he's paying for his mansion.

8                     Do you understand what I'm getting  
9     at? Do you understand the problems in your  
10    proposal when you start linking illegal drugs and  
11    prescription medication?

12                    Do you understand the problems there?

13                    MS. SILVEY: I appreciate - I hear  
14    your comments.

15                    MR. KIMBRELL: Okay. Are you going to  
16    answer any of my questions? Talking about the  
17    current program, is that correct?

18                    MS. SILVEY: We want to ask you some  
19    questions about your current program.

20                    MR. KIMBRELL: I'll answer them to the  
21    best of my knowledge.

22                    MS. SILVEY: I know you will.

23                    MR. KIMBRELL: But I just want to know  
24    if you are going to answer any of my questions,

25 because you haven't done that yet. You didn't

1 even tell me who you work for, or who pays your  
2 check.

3 MS. SILVEY: Well, we work for the  
4 U.S. Department of Labor. You know that quite  
5 honestly.

6 MR. KIMBRELL: No, actually, I didn't.  
7 I'll be honest with you, I was ignorant on that  
8 subject, and I didn't know.

9 MS. SILVEY: Okay, well, let me answer  
10 it for you.

11 MR. KIMBRELL: Okay.

12 MS. SILVEY: We work for the U.S.  
13 Department of Labor, and the taxpayers pay our  
14 pay. The federal government is funded by the  
15 American taxpayers.

16 MR. KIMBRELL: So are you voted into  
17 office, or were you hired by somebody or were you  
18 voted in? Your company is funded by the American  
19 taxpayer, but you do not take your money from the  
20 taxpayer because you weren't voted in; you were  
21 hired, is that correct?

22 So don't try to tell me that you  
23 actually get your paycheck from me. I can  
24 guarantee you one thing: you are very loyal to

25 the Department of Labor, aren't you?

1 MS. SILVEY: You say I was hired by

2 what now?

3 MR. KIMBRELL: Someone, by someone.

4 You are not an elected official, are you?

5 MS. SILVEY: No, I'm not.

6 MR. KIMBRELL: So you were hired by a

7 superior at the Department of Labor.

8 MS. SILVEY: That's correct. MSHA.

9 MR. KIMBRELL: By MSHA, yes, ma'am, so

10 I understand MSHA. So you're loyal to them,

11 correct?

12 MS. SILVEY: I work for -

13 MR. KIMBRELL: You are loyal to your

14 company, is that correct?

15 MS. SILVEY: I'm a professional. I'm

16 a professional to do my job.

17 MR. KIMBRELL: That's being loyal. If

18 you do your job, that's being loyal.

19 MS. SILVEY: To the best of my

20 ability.

21 MR. KIMBRELL: Hey, I never said

22 differently, I promise you that.

23 MR. BURNS: Just a follow up question.

24 MR. KIMBRELL: Go ahead.

MR. BURNS: Do you work for a company

1 that has a drug testing program?

2 MR. KIMBRELL: I'm sure I do.

3 MR. BURNS: Who makes the  
4 determinations under the current program that the  
5 company and the union have?

6 MR. KIMBRELL: What was your question  
7 again exactly?

8 MR. BURNS: I mean any good -

9 MR. KIMBRELL: I know when I was hired I  
10 was drug tested in a cup, and I also had a hair  
11 sample done on me. But I don't believe that was  
12 your exact question. What was your question  
13 again?

14 MR. BURNS: Right now under this  
15 proposal the physician makes that determination  
16 in conjunction, if you're talking prescription  
17 drugs, in conjunction with talking with your  
18 treating physician.

19 Now under the company programs  
20 certainly there has to be some medical person  
21 that makes these determinations for these tests.  
22 I was just curious how that was set up, if you  
23 know.

24 MR. KIMBRELL: There is one difference

25 there. That's a preemployment drug testing that



1 was - the one I had. So I haven't had a chance  
2 to piss anyone off yet for them to have a grudge  
3 against me to send me to a doctor that they pay  
4 for to piss test me for anything and everything  
5 under the sun just to find a way to get me either  
6 out of there or laid off long enough to where I  
7 keep my mouth shut the next time something comes  
8 up.

9           It's like somebody said just before  
10 me, you have never worked in a coal mine, and  
11 nine times out of ten you have never worked in  
12 any type of situation that - or I should say any  
13 type of labor-intensive situation, that those  
14 kind of things happen in.

15           So until you get somebody on a panel  
16 that understands this type of work, this type of  
17 environment, you have no reason coming up with a  
18 drug - or you actually have no business coming up  
19 with a drug policy that mingles illegal drugs and  
20 prescription pain medication, or prescription  
21 pain medication at all.

22           Because in your own proposal you  
23 don't have anything that stops the mine operator  
24 from not testing someone for something like a

25    Allevé cold and sinus, or Tylenol, or Aspirin.

1 Believe me, those things will get tested - will  
2 be tested for when the right person comes along  
3 making the right notation on the citation or what  
4 have you.

5           It's going to happen, and you have  
6 nothing in here to protect someone except a  
7 trained medical professional. Even medical  
8 professionals get bought out day-in and day-out  
9 for enough money. It happens.

10           MS. SILVEY: Let me ask you a  
11 question. Under the current testing program at  
12 your mine.

13           MR. KIMBRELL: Yes, ma'am.

14           MS. SILVEY: How many drugs are tested  
15 for, under the program, how many drugs?

16           MR. KIMBRELL: Nine panel.

17           MS. SILVEY: A nine-panel test?

18           MR. KIMBRELL: Yes, ma'am.

19           MS. SILVEY: Okay, now my question to  
20 you is, are some of the drugs on that panel both  
21 as you put it, and I'm using your phraseology,  
22 illegal drugs and legal prescription drugs?

23           MR. KIMBRELL: Yes, ma'am, they are.

24           MS. SILVEY: They are? Now let's go

25 to the next point.

1 MR. KIMBRELL: Okay.

2 MS. SILVEY: Then when it gets to a  
3 miner who then is taking legal prescription  
4 medicine, who makes the decision in that  
5 situation?

6 MR. KIMBRELL: Are you asking who  
7 makes the decision on what?

8 MS. SILVEY: On whether the taking of  
9 the prescription medication is legal, is -

10 MR. KIMBRELL: Oh in other words, are  
11 they taking it properly or are they abusing it?

12 MS. SILVEY: Yes.

13 MR. KIMBRELL: I'll guess a trained  
14 medical person like you said.

15 MS. SILVEY: Well, the rule would  
16 operate the same way, the proposed rule would  
17 operate that same way. Okay?

18 MR. KIMBRELL: Okay. But here is the  
19 issue with that. You have nothing in there that  
20 is protecting the miner himself. There is  
21 nothing in there that protects him being  
22 discriminated against for whatever reason. You  
23 are opening the doors on people being  
24 discriminated against and costing untold amounts

25 of people their livelihood, because you are

1 giving this much power to the mine operator.

2 MS. SILVEY: And I earlier said any  
3 miner who felt like that person had been  
4 discriminated against can file a discrimination  
5 complaint under the Mine Act.

6 MR. KIMBRELL: Yes, ma'am, they can.

7 MS. SILVEY: Right.

8 MR. KIMBRELL: So are you robbing  
9 Peter to pay Paul here or what? You want to make  
10 a situation better, all you got to do is make a  
11 situation worse on the other side.

12 MS. SILVEY: Okay.

13 MR. KIMBRELL: Okay is not an answer.

14 MS. SILVEY: No, I'm saying, I'm  
15 thanking you for your comment. I've gotten that  
16 from a number of people, that comment. It's not  
17 okay - it's - I understand your comment. That's  
18 what the okay is.

19 MR. KIMBRELL: Well, you guys have a  
20 lovely afternoon and thank you very much.

21 MS. SILVEY: Thank you.

22 The next speaker please.

23 Next speaker please. Is there  
24 anybody else there in Birmingham? Nobody else in

25 Birmingham? If there is nobody else in



1 Birmingham, Mr. O'Dell, do you have comments?

2 Mr. Dennis O'Dell, United Mine Workers,  
3 administrator of Occupational Safety and Health.

4 MR. O'DELL: Just real quick if I may,  
5 again, Dennis O'Dell from UMWA.

6 You can clearly see some of our  
7 frustrations. No disrespect to anybody on this  
8 panel.

9 It's tough out there. You can see  
10 our frustrations. Our guys are frustrated. You  
11 know coal is in large demand right now. Our guys  
12 are being overworked. So you kind of see the  
13 concerns out there as far as us and our concerns.

14 These guys brought up some key points  
15 listening today, some things that we didn't even  
16 think about in our department, and I'm sure that  
17 they pointed out some things that y'all didn't  
18 think about as well.

19 One of the things that I think I kept  
20 hearing our brothers and sisters talking about,  
21 among a number of things, but one of the things I  
22 kept hearing being brought up that I hope you  
23 will consider and try to give us an answer to is  
24 if - part of the frustration is even though we

25    have come to terms as far as labor and industry

1 working together, there is still some distrust  
2 out there. And part of it is because of what is  
3 going on. If supervisors are random tested, and  
4 if those results reported, supervisors tested and  
5 the results are reported, how are we to really  
6 know that the supervisors are being treated in  
7 the manner as what the miners are, because they  
8 are going to be privy to that information.

9 Because like I heard a brother and sister say,  
10 the operators are paying for this whole thing.

11 So there is really no check and  
12 balance in that part of it. I mean the operator  
13 pays for it. They are going to know what our  
14 test results are, but we are not really going to know  
15 what their test results are. You see what I'm  
16 saying? It's kind of an unlevel playing field.

17 And if our brothers and sisters in  
18 the field suspect a supervisor is impaired, I  
19 mean who can they go to that would be impartial  
20 and fair about them reporting?

21 I heard you say that there is a means  
22 in there to report if somebody felt like they  
23 were being discriminated against. But that's not  
24 going to take care of the problem right then and

25      there.  IF a miner is really concerned about his

1 supervisor putting him in harm's way, he may have  
2 to go to another supervisor who is his friend who  
3 may not really take care of the problem like it  
4 should. I mean that's the reality of the whole  
5 thing.

6 In some cases the reputable operators  
7 are going to take care of problems. But there  
8 are some operators out there that aren't as  
9 reputable, and they are going to turn a blind eye  
10 to it, and it could endanger our brothers and  
11 sisters.

12 We're just trying to get some fair  
13 and, as Fox Network would say, fair and balanced.  
14 I don't know if that's true or not, but that's  
15 how they like to put it.

16 So that's all that we're asking.  
17 That's all we've ever asked is that the laws be  
18 enforced, and that there be a fair treatment to  
19 the miners, and that we know that that is being  
20 carried out.

21 Training is provided to supervisors  
22 to recognize problems, but nobody, no place in  
23 this rule does it say that the nonsupervisory  
24 personnel or miners get any kind of training to

25 where they are going to be able to recognize if

1 one of their foremen are under the influence or  
2 if they are impaired.

3           So, see, it is unbalanced. And I  
4 understand that the operators, they operate the  
5 mine, they take care of the mine. But when it  
6 comes to drugs and alcohol, there should be no  
7 discrimination. It should be fair, it should be  
8 balanced, it should be - workers are empowered  
9 with the same tools and the same education as  
10 what supervisors will be empowered with. Because  
11 we are all underground together, and we are all  
12 being subjected to the same work environment.

13           So that's why you keep hearing this  
14 time and time again. There is nothing that  
15 breaks that discrimination In fact 105(c)s, and  
16 we know how the process takes, and discrimination  
17 doesn't - you know sometimes it works, sometimes  
18 it doesn't. But for that problem, that needs to  
19 be addressed.

20           The other thing I heard them say that  
21 was pointed out very well, and I was kind of  
22 ignorant to this, because when I testified  
23 earlier I said, Sam, a block mason or a belt  
24 painter or something like that. I was thinking

25 in my head that's not a non safety-sensitive



1 job. But it's not. There are no non-safety-  
2 sensitive jobs. So I think that is something you  
3 have to go back and look at as far as how you  
4 define - because under Part 48, Part 46, all  
5 jobs, I don't know of any jobs that, with the  
6 exception of maybe a payroll clerk. Of course  
7 the payroll clerk drives on and off the property,  
8 so are they subject to it too because they use  
9 the access road that could endanger someone if  
10 they come to work drunk, sharing the same parking  
11 lot with the workers.

12 I don't know where you cut that line,  
13 if it really is just miners under Part 46 and  
14 Part 48, or should it be anybody who is on mine  
15 property. Maybe we need to look at it from that  
16 aspect, that anybody on mine property is subject  
17 to drug testing or alcohol testing, because then  
18 everybody has to be on their - you know what I'm  
19 saying, they have to be held accountable for  
20 their actions. Even a pizza delivery guy if he  
21 comes to the mine, and if he's taking drugs or if  
22 he's drunk, he could hurt one of our guys who's  
23 walking from his car to the other car.

24 So maybe MHSA needs to go back and

25 look at anybody on mine property, not just safety

1 sensitive, but anybody and everybody. I mean I  
2 think that is fair; I think that is something you  
3 should consider.

4 Most policies, to try to clear this  
5 up I think, kind of what you said, most policies  
6 - see I think that you asked the question - most  
7 of the policies that have been associated with  
8 our members, they'll have a list of drugs to be  
9 tested under their policies. But if they decide  
10 that they want to add other drugs to that, they  
11 have to renegotiate that with the union.

12 MS. SILVEY: But some of them include  
13 prescription medication, though. I think that's  
14 what the question was going to. Some of it would  
15 include medication that could be given according  
16 to a valid prescription, and taken according to a  
17 valid prescription.

18 MR. O'DELL: But on the bigger picture  
19 in the proposed rule it leaves it open-ended that  
20 the operator can add more - anything they want  
21 to. See, right now they are held to - okay,  
22 you've got a list of 10 drugs that they test for.  
23 If they are going to add 11, 12, 13, they have to  
24 go back to the union and renegotiate that, and

25 then everyone knows where they're coming from and

1 what's going on.

2                   And I told you earlier today when I  
3 talked about the Pennsylvania miner who got  
4 fired who was on a prescribed drug, that is a  
5 problem. A guy that is on a prescribed drug can  
6 get tested positively, can be fired, and wait to  
7 get his job back. That is something that needs  
8 to be addressed.

9                   Listen, our guys respect the job that  
10 MSHA does, and we appreciate MSHA is out there  
11 doing their job as far as inspecting the coal  
12 mines, take care of business. But this is  
13 something that affects - different than any other  
14 rule that's been proposed, this affects each  
15 individual personally, and that's why - that's  
16 why you are getting the feedback that you are  
17 getting. Because a lot of proposed rules that go  
18 out don't necessarily affect each individual like  
19 this one does.

20                   So with that I thank you.

21                   MS. SILVEY: Okay.

22                   MR. BURNS: Dennis, was I just - my  
23 question was - I mean there is a lot of attention  
24 on this medical review officer being paid by the

25 company. They are always asking if you guys have

1 a better way of coming up with - because it does  
2 take a medical person to make these  
3 determinations.

4 MS. SILVEY: Actually you were asking  
5 how is it done now. I assume that it is probably  
6 done now quite the same as it is done under the  
7 proposal. Because it would be a doctor's  
8 determination. It might be a doctor employed by  
9 the company. But as we said earlier, that doctor  
10 then - if the miner had a personal physician who  
11 prescribed the drug, the medical review officer,  
12 if that medical review officer happens to be an  
13 employee of the company, would have to consult  
14 with the miner's own physician.

15 MR. O'DELL: That's what I heard  
16 earlier today, for the benefit of these guys that  
17 weren't here earlier today, I said that the  
18 medical review officer for the - what's the  
19 other - substance abuse professional should not  
20 be employed by the operator. I only deal with  
21 like Oracle 3 under Oracle and Track, which is  
22 safety. I'm not a grievance procedure guy. But  
23 I think that there is provisions in our contract  
24 that if a guy gets fired, that they have some

25 kind of process in place where they can actually



1 ask for another doctor's opinion, you know  
2 somebody in some way, if they don't agree what  
3 that doctor came up with, they can go to another  
4 doctor and get another opinion or something.  
5 Maybe that's something that needs to be looked  
6 at, where a guy if he doesn't believe that the  
7 split sample was done properly, or the chain of  
8 custody wasn't handled correctly, another avenue  
9 for them to go to to get a second opinion.

10 I mean it's just like anything else.  
11 My wife had open heart surgery. She went to  
12 three doctors before she actually found a doctor  
13 she was comfortable with to go to. You know to  
14 get open heart surgery. So maybe that's  
15 something.

16 MS. SILVEY: We do, we've got another  
17 comment from Alabama. I assume everyone is still  
18 there.

19 MR. O'DELL: And if you guys that are  
20 out there that can hear me, if you disagree or  
21 you think there is something else that I need to  
22 touch on, please step up to the mike and tell me.

23 MS. SILVEY: The comment that I have  
24 goes to the additional, any other drugs that can

25 be added by the operator. And you were talking,

1 Dennis, about how they would have to negotiate  
2 before - through the collective bargaining  
3 agreement before they could add that would be in  
4 addition to it.

5 And the rule provides that the  
6 operator could add additional drugs. But I want  
7 to be clear: it may be that - and I don't want to  
8 say this without - it may be that under the rule  
9 even if the operator wanted to add an additional  
10 one, it might still have to be negotiated through  
11 the collective bargaining agreement.

12 MR. O'DELL: Here's what it says: the  
13 Secretary of Labor and nothing in the rule  
14 restricts mine operators from testing for  
15 additional drugs beyond those for which the rule  
16 testing -

17 MS. SILVEY: No, I got that. But I  
18 want - I'm talking about the effect on the  
19 collective bargaining agreement. That still  
20 might have to go through the collective  
21 bargaining process in that the rule could not  
22 constrain the collective bargaining process.

23 But I'm going to look at that, and  
24 that's what I was looking for before you left.

25 No, I understand that. But I wanted to see

1       whether we said something specific -

2                       MR. O'DELL: I do think that our first and  
3       foremost is that you take this whole thing off  
4       the table, that you remove it. We don't like it,  
5       we don't want it. But I'm just saying if you  
6       move forward we think these are things that we  
7       really think you need to consider.

8                       MS. SILVEY: No, I understand that.

9                       Okay, thank you.

10                      MR. O'DELL: Thank you.

11                      MS. SILVEY: Okay. Is it anybody in  
12       Birmingham who wishes to make any additional  
13       comments? Anybody else -

14                      MR. KIMBRELL: Yes, ma'am, this is  
15       Nick Kimbrell again. I was taking a look at the  
16       proposal that you guys have. And in your  
17       proposal I'm trying to rapidly find, so I  
18       wouldn't waste any of your time to find the  
19       regulations that you are putting forward to not  
20       just test the miners but the mine supervisors.  
21       And I wanted to know a couple of things.

22                      What is the - is there - who is being  
23       proposed to be tested as far as supervisors,  
24       foremen and that sort of thing? Anyone that is

25 in direct - I'm sorry, go ahead.

1 MS. SILVEY: What did you say? I was  
2 distracted.

3 MR. KIMBRELL: As far as management  
4 within the mines, who are you proposing that need  
5 to be tested? Those that are in a safety-  
6 sensitive, is that correct, area of the mine?

7 MS. SILVEY: Those are in a safety-  
8 sensitive job and the miners who supervise them -  
9 and the persons who supervise them.

10 MR. KIMBRELL: Okay. I have a quick  
11 question. It goes back to the drug testing  
12 itself. Who actually receives the results from  
13 the drug testing? Who is privy to that  
14 information?

15 MS. SILVEY: Who is privy to that?

16 MR. KIMBRELL: Yes, ma'am, a mine  
17 operator, a third party, the UMWA, MSHA, who is  
18 privy to that information, meaning if I fail a  
19 drug test, who gets the paperwork on it? I know  
20 the mine operator himself because he's got to  
21 discipline me.

22 MS. SILVEY: Right, the mine operator  
23 would get it.

24 MR. KIMBRELL: Who else?

MS. SILVEY: The - MSHA doesn't get



1 it.

2 MR. KIMBRELL: Okay, if a foreman at  
3 the mine site failed a drug test, who gets that  
4 result?

5 MS. SILVEY: The mine operator.

6 MR. KIMBRELL: The mine operator?

7 MS. SILVEY: Yes.

8 MR. KIMBRELL: Okay, so basically it  
9 could happen that a foreman failed a drug test,  
10 but because he produces a whole lot of coal for  
11 us we're going to overlook it and send him back  
12 underground; is that correct?

13 MS. SILVEY: I wouldn't know that. I  
14 wouldn't say that.

15 MR. KIMBRELL: You wouldn't say that?

16 MS. SILVEY: I would hope not.

17 MR. KIMBRELL: You would hope not, but  
18 it could happen, though, correct?

19 MS. SILVEY: I'm not going to say  
20 correct to that, because I don't know that.

21 MR. KIMBRELL: Okay, is there any way  
22 that we could actually have the mine foreman's  
23 test be privy to the UMWA so they can make sure  
24 and ensure safe working environment for their

25 miners?

1 MS. SILVEY: Is that your comment?

2 You can make that suggestion.

3 MR. KIMBRELL: No, I'm asking, I'm  
4 asking a question. Is there any way that we  
5 could have the information or the results of a  
6 drug testing be known to the UMWA so that they  
7 can assure the UMWA members that are going  
8 underground with that supervisor that hey, even  
9 though he acts like that, he's actually not on  
10 drugs.

11 MS. SILVEY: Well, you are asking me  
12 a question. I'm saying to you, you can make that  
13 as a comment. But again I would advise you that  
14 just as you all have told me all day today since  
15 9:00 o'clock this morning, there are privacy  
16 considerations, and confidentiality  
17 considerations that would pertain.

18 MR. KIMBRELL: Okay. But you are  
19 still putting a miner in jeopardy because a  
20 supervisor who can produce a lot of coal is on  
21 drugs. There is no type of policing of that. I  
22 mean one thing you have to understand, and please  
23 everyone who is listening understand this, I am  
24 insured from the day I was hired for \$1 million.

25 If I die at the mine site or anywhere, my family

1 might get \$160,000. The rest of that money goes  
2 to the company. They honestly will probably make  
3 money if I die.

4 So if they have a supervisor that is  
5 producing a lot of coal for them, they are not  
6 going to too much give a shit if he is on drugs.  
7 And you have no policing of that fact.

8 But the miner himself, you are almost  
9 willing to crucify him if he takes a Loritab  
10 because his back is hurting him because he's  
11 working six days a week.

12 And those are things that you really  
13 need to truly look at with this proposal.

14 MS. SILVEY: Okay. Thank you. Thank  
15 you.

16 Anybody else? If nobody - okay, next  
17 speaker.

18 MR. MCGHEE: Antoine McGhee, Mc-G-h-e-  
19 e. Local 2397. I have only one question for you  
20 basically. When you do a random drug test, how  
21 would it be decided who gets pulled or whatever?  
22 Will you do it on computer, or how will they be  
23 doing it?

24 MS. SILVEY: That question was asked

25 earlier, and it's a random drug test based on a

1 valid statistic sample which could be computer  
2 based or equivalent to a computer based, yes.

3 MR. MCGHEE: When they do that random  
4 test, will there be a union official there to  
5 make sure that they are not pulling names out of  
6 the hat, or maybe adding one or two here and  
7 there.

8 MS. SILVEY: That they are not pulling  
9 what?

10 MR. MCGHEE: Will there be a union  
11 official there to make sure that they are not  
12 pulling names out of a hat or adding one or two  
13 in or picking who they may?

14 MS. SILVEY: Well, it has to be a  
15 valid - there has to be a valid statistical base  
16 system for doing random system.

17 MR. MCGHEE: Who decides how that  
18 system is set up, the company?

19 MS. SILVEY: Well, I mean the company  
20 - it is the company's policy and program.

21 MR. MCGHEE: So they would basically  
22 set up how they want to pull names however they  
23 choose to do so?

24 MS. SILVEY: The random program,

25 testing, has to be done in accordance with the



1 rule. And the rule sets up the minimum

2 requirements for that. So it has to be a

3 statistically valid sampling process.

4 MR. MCGHEE: Meaning that there will

5 be a union official there when they do that

6 process?

7 MS. SILVEY: I didn't say that, no.

8 MR. MCGHEE: There will not be a union

9 official there when they do that process? So we

10 don't know if we are doing it fairly or not;

11 we'll just have to go by what they say?

12 MS. SILVEY: What was your last

13 comment?

14 MR. MCGHEE: We would not know if they

15 were doing it fairly or not, we would just have

16 to go by what they say? Because if there is not

17 a union official there, we'll have to go by

18 whatever the company says.

19 MS. SILVEY: When you say if there is

20 not a union official there, what do you mean,

21 there?

22 MR. MCGHEE: When they are getting

23 ready to give you a random drug test, and they

24 pull it on a computer, and they say, 590 pop up,

25 when they come to us and say, well, your name

1 popped up, will there be a union official or  
2 somebody there to say, well, we didn't get your  
3 name and put it in the barrel with the rest of  
4 them.

5 MS. SILVEY: That is not included in  
6 the proposed rule that a union official be there.  
7 But there is a requirement for how the random  
8 sampling program should be set up.

9 MR. MCGHEE: And it should be set up  
10 how?

11 MS. SILVEY: Valid statistically based  
12 program, computer based or other valid; valid,  
13 statistically valid methods such as a random  
14 number table or a computer-based random number  
15 generator.

16 MR. MCGHEE: Okay, so basically the  
17 computer would just spit the numbers out, or the  
18 names out?

19 MS. SILVEY: That's right. Each miner  
20 shall have an equal chance of being tested each  
21 time selections are made. So the only thing I  
22 would say to you is, whatever random program is  
23 set up has to be set up in accordance with the  
24 provisions of the proposed rule.

MR. MCGHEE: Okay, I understand.

1 Thank you.

2 MS. SILVEY: Thank you.

3 Next speaker please.

4 BIRMINGHAM VOICE: There's no more  
5 speakers.

6 MS. SILVEY: Are you sure?

7 BIRMINGHAM VOICE: No, I'm not sure.

8 MS. SILVEY: Well, let's be sure.

9 MR. WELDON: Ms. Silvey, this is Joe  
10 Weldon again. I was just wanting to make a  
11 comment. On the random testing.

12 MS. SILVEY: Yes.

13 MR. WELDON: I heard what the  
14 gentleman said, and I heard what you said. But  
15 again I want to reiterate that sometimes  
16 discrimination does come into play.

17 I'd had a pretty heated discussion  
18 with a company official, a few months ago, and so  
19 it came time for drug testing, and I randomly  
20 came up about the next five times that they had  
21 it in a row.

22 I questioned them about it, and it  
23 just happened. They said that somebody was off,  
24 and I just happened to be the next one to take

25    their place.

1                   I don't feel like the random that  
2                   they do is fair. I feel like that if somebody is  
3                   there, specifically a union official, who tries to  
4                   do his job and do right, sometimes is put ahead  
5                   of other people to be randomly checked.

6                   And I told them they could check me  
7                   anytime and they could find orange juice and  
8                   oatmeal. And I got tested as many times as they  
9                   wanted to. But I don't feel like it's always  
10                  fair in the way that they do it.

11                  And maybe there should be some  
12                  provisions put in the random testing to assure  
13                  people that they are not being discriminated  
14                  against and that it's done properly, it's done  
15                  fair, straight across the board.

16                  And any of the times that I have been  
17                  in there, I've never had a company man in there  
18                  any of the times that I have went. So I don't  
19                  feel like their random testing, any of them that  
20                  they are doing, is not being done and not being  
21                  discriminated against.

22                  And I thank you for your time, and  
23                  maybe y'all will look into that as well.

24                  Thank you.

MS. SILVEY: Okay, thank you. I



1 appreciate it.

2           Anybody else? Anybody else who  
3 wishes to make testimony? Anybody else in  
4 Birmingham? Nobody else in Birmingham?

5           Okay, thank you. If nobody else  
6 wishes to provide testimony, then I want to again  
7 say that MSHA, the Mine Safety and Health  
8 Administration, appreciates your comment and your  
9 testimony, your suggestions to us, your concerns  
10 about the proposal, and we appreciate your  
11 attendance here, and for those of you who have  
12 been here from the beginning, this morning, until  
13 now, we sincerely appreciate that.

14           I would like to state to you that we  
15 will take your comments and your concerns, your  
16 testimony, look at that and evaluate that in  
17 terms of making a decision, with respect to the  
18 final rule.

19           I encourage everybody if you have  
20 additional comments that you get them to us  
21 before the record closes on November 10th,  
22 midnight Eastern Daylight Savings Time.

23           And again on behalf of MSHA we  
24 appreciate everybody's attendance, and at this

25 time the public hearing on MSHA's proposed rule

1 on alcohol and drug-free mine policy,  
2 prohibitions, testing, training, and assistance  
3 is concluded.

4 Thank you.

5 (Whereupon, at 6:05 p.m., the

6 proceeding in the above-entitled  
7 matter was adjourned.)

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