

BEFORE THE

MSHA PANEL

* * * * *

IN RE: MINE RESCUE TEAMS

PUBLIC HEARING

* * * * *

BEFORE: PATRICIA W. SILVEY, Chair
Michael Kalich, Member
Tom MacLeod, Member
John Urosek, Member
Cherie Hutchison, Member
Matt Ward, Esquire, Member
Phuc Phan, Member

HEARING: Tuesday, October 30, 2007
9:00 a.m.

LOCATION: Civic Center
Room 105
200 Civic Center Drive
Charleston, WV

WITNESSES: Doug Pauley, James Murray, Kenneth Perdue,
Dennis O'Dell, Jeffrey Stanchek

Reporter: Autumn D. Furby

Any reproduction of this transcript
is prohibited without authorization
by the certifying agency.

I N D E X

1		
2		
3	OPENING REMARKS	
4	By Chair	4 - 13
5	STATEMENT	
6	By Mr. Pauley	13 - 14
7	DISCUSSION AMONG PARTIES	14 - 22
8	STATEMENT	
9	By Mr. Murray	22 - 28
10	DISCUSSION AMONG PARTIES	28 - 39
11	STATEMENT	
12	By Mr. Perdue	40 - 52
13	DISCUSSION AMONG PARTIES	52 - 64
14	STATEMENT	
15	By Mr. O'Dell	65 - 72
16	DISCUSSION AMONG PARTIES	72 - 86
17	STATEMENT	
18	By Mr. Stanchek	86 - 92
19	DISCUSSION AMONG PARTIES	92 - 98
20	CLOSING REMARKS	
21	By Chair	98 - 99
22	DISCUSSION AMONG PARTIES	99 - 102
23	CERTIFICATE	103
24		
25		

E X H I B I T S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

		Page
<u>Number</u>	<u>Description</u>	<u>Offered</u>
MSHA-1	Mine Rescue Teams Public Hearing	
	Opening Statement	6
Murray-1	Comments of James Murray	22
Perdue-1	Comments of Kenneth Perdue	40
Stanchek-1	Approximate Costs for Additional	
	Mine Rescue Stations in Marion	
	Center	86

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIR:

Good morning. My name is Patricia W. Silvey. I am the Director of the Mine Safety and Health Administration Office of Standards, Regulations and Variances. I will be the moderator of this public hearing on MSHA's proposal for the mine rescue team. On behalf of the Assistant Secretary of labor for Mine Safety and Health, Richard E. Stickler, I want to welcome all of you here today.

The MSHA members of the panel --- and these are the people who are primarily responsible for drafting the proposal. And I must say they do have --- I want to put it in the record so that the record shows that they have practical mining experience with the mine rescue team, not all of them, but some of them.

To my left, Michael Kalich, and he's from MSHA's Office of Coal Mine Safety and Health and team leader for the project. To his left, Tom MacLeod from the Office of Educational Policy and Development. And to his left, John Urosek from MSHA's Technical Support Center in Pittsburgh. On my right is Cherie Hutchison. Cherie is in my office. And to her right

1 is Matt Ward, and he's our lawyer on the project. He
2 is also the solicitor. And to his right, Mr. Phan,
3 who is an economist in my office.

4 Before we start the hearing this morning,
5 I would like to ask you if you would join me in a
6 moment of silence in memory of all the miners and
7 rescuers who have lost their lives to mine accidents,
8 including those in the more recent tragic event at
9 Crandall Canyon. So right now, if you would join me
10 in a moment of silence.

11 MOMENT OF SILENCE

12 CHAIR:

13 Thank you. This is the third of four
14 public hearings on the proposal. As many of you know,
15 we had a first hearing last Tuesday in Salt Lake City,
16 the second hearing last Thursday in Lexington,
17 Kentucky. And the last hearing will be held this
18 Thursday, November 1, in Birmingham, Alabama. We will
19 be holding a public hearing on mine rescue team
20 equipment this afternoon at 2:00 p.m. I say 2:00
21 p.m., but it depends on what time we conclude this
22 hearing. We may start that hearing at one o'clock.

23 We are holding two hearings each day so
24 that persons interested in both rules can attend the
25 hearing. The mine rescue team proposal applies only

1 to underground coal mines. In the back of the room,
2 we have copies of the Federal Register that contains
3 the proposal.

4 (MSHA Exhibit One marked for
5 identification)

6 CHAIR:

7 The comment period for the proposal ends
8 on November 9th. For the first time, we have noted in
9 the Federal Register that we must receive your
10 comments by midnight Eastern Standard Time on that
11 date. This is the first time that we have included a
12 time zone. And we are doing that so there's no
13 confusion, that folks don't receive these because of
14 the different time zones as to exactly when the
15 comments will be due. As of October 19th, we have
16 received three comments on the proposal. And you can
17 view the comments on MSHA's website, www.msha.gov.

18 The proposed rule implements the
19 provision of Section Four of the Mine Improvement and
20 New Emergency Response or MINER Act of 2006, which
21 strengthens training requirements and addresses
22 composition, availability and certification
23 requirements for coal mine rescue teams. The purpose
24 of this hearing is to receive information from the
25 public that will help us evaluate the requirements in

1 the proposal and produce a final rule that will
2 improve overall mine rescue service, mine emergency
3 response time, mine rescue team effectiveness and
4 quality of mine rescue team training.

5 The preamble to the proposal discusses
6 the provisions in the rule and includes a number of
7 specific requests for information. As you address
8 these provisions, either in your testimony to us today
9 or in your written comments, please be as specific as
10 possible about how these changes would affect the
11 safety and health of miners and mine rescue team
12 members. And this I cannot underscore as to the
13 importance of being as specific as possible with
14 specific information that we are able to make
15 decisions about some of these provisions that we
16 propose. We also request detailed information and data
17 on costs and feasibility of implementing the
18 provision.

19 At this point, I want to reiterate the
20 specific requests of information that are in the
21 preamble in the proposal. The first request we make
22 is on our proposed reorganization of 30 CFR part 49
23 and on the approach taken. We requested comments on
24 the designation of existing standards as subpart A for
25 underground metal and nonmetal mines, and the creation

1 of a new, separate subpart B containing both existing
2 standards and the proposal to the MINER Act provisions
3 for underground coal mines.

4 Also, I'm going to deviate from my
5 prepared statement to say it is a proposal. We did
6 not propose any changes to the existing standards.
7 This proposal was only prepared to implement MINER Act
8 provisions.

9 MSHA is proposing that any member of
10 state-sponsored teams who are full-time state
11 employees may substitute their regular job experience
12 for 50 percent of the training requirements. The
13 Agency requests comments regarding the type of state
14 relationships with teams and team members that would
15 qualify the team members as employees and the team as
16 state-sponsored.

17 MSHA is proposing that mine rescue teams
18 be available at the mine within one hour from the mine
19 rescue station in accordance with the MINER Act. MSHA
20 solicits comments on whether some existing stations
21 may need to be moved to meet this requirement. To
22 assist in developing our regulatory economic analysis,
23 the Agency would like to know how many additional mine
24 rescue stations would be needed to comply with the new
25 requirement. Where would the new rescue station be

1 located?

2 The Agency also solicits comments on
3 whether mine operators, state agencies or other
4 entities will encounter any difficulties in meeting
5 the requirements. The Agency asks that commenters
6 include specific feasibility information, such as
7 costs or technical capability, in support of their
8 positions.

9 MSHA requests comments on the proposed
10 64-hour annual training requirement, specifically
11 whether the proposed hours of training should be
12 increased or decreased in the final rule. The
13 existing annual training requirement is 40 hours.
14 Commenters should address the rationale for the amount
15 of training, type of training, the number of hours of
16 training that should be required for specific
17 activities and the impact of such a requirement on the
18 mining industry's ability to form additional mine
19 rescue teams or retain current mine rescue team
20 members.

21 The proposal requires mine rescue teams
22 to train at each mine serviced by the team. Under the
23 MINER Act, teams serving mines with 36 or fewer
24 employees must train at each covered mine
25 semi-annually. Mine site teams and state-sponsored

1 teams, which are required to train at large mines
2 annually, would have to train at small mines
3 semi-annually if they service a small mine. Contract
4 mine rescue teams would have to train quarterly at
5 each of the large mines they service. Composite teams
6 would have to train semi-annually at each of the large
7 mines they service. MSHA invites comments regarding
8 the training. MSHA also requests comments on whether
9 this training at the covered mine needs to be
10 conducted underground.

11 The Agency solicits comments regarding
12 the type of teams that are available to mines having
13 36 or fewer employees, and whether these teams should
14 be able to use other types of teams, such as composite
15 teams, consisting of one team member from each covered
16 mine rather than two team members from each covered
17 mine as required by the MINER Act. Would additional
18 mine rescue teams be needed to comply with the new
19 requirement for teams to train at each covered mine?
20 What would be the makeup and composition of new teams?
21 Commenters should explain any suggested alternative,
22 including supporting documentation and data. And as I
23 stated at the outset, please be as specific as
24 possible as to the impact on your particular
25 situation.

1 The proposal requires underground coal
2 mine operators to provide certified mine rescue teams
3 and includes criteria for certifying a team. The
4 proposal would require each mine operator to submit an
5 annual statement to the district manager certifying
6 the qualifications of the mine's mine rescue teams.
7 To make this certification less burdensome, the Agency
8 developed a form that can be filed online. MSHA
9 welcomes any suggestions on this form and requests
10 comments and recommendations for other alternatives
11 for the certification of mine rescue teams.

12 The proposal requires mine rescue teams
13 to participate in two local mine rescue contests each
14 year. MSHA developed criteria for local mine rescue
15 contests and requests comments on the proposed
16 criteria.

17 The Agency solicits comments on whether
18 there should be a minimum amount of annual training
19 prescribed for contest judges. MSHA is considering
20 allowing attendance at training on contest rules and
21 interpretation to satisfy the requirement for annual
22 training for judges. MSHA requests comments on this
23 approach or whether some other type of training is
24 more appropriate.

25 The proposal would allow other training

1 that provides an equivalent realistic simulation
2 exercise, such as Mine Emergency Response Development,
3 or MERD drills, to substitute for participation in a
4 local mine rescue contest. The agency requests
5 comments on this alternative.

6 MSHA has prepared a preliminary
7 regulatory economic analysis for the proposal, which
8 contains estimated costs --- data on costs and
9 benefits. MSHA estimated that the proposal would
10 result in 28 additional mine rescue stations, 56
11 additional mine rescue teams and no change in the
12 level of service provided by state-sponsored teams and
13 stations. The Agency estimated a total annual
14 compliance cost of \$3.1 million and requests comments
15 on all the assumptions and data used in deriving this
16 estimate.

17 This hearing, as many of you who
18 participated in an MSHA hearing know, will be
19 conducted in an informal manner, and formal rules of
20 evidence do not apply. The panel may ask questions of
21 the witnesses, and the witnesses may ask questions of
22 the panel. Cross Examination, however, is not
23 allowed. MSHA will make a transcript of the hearing
24 and post it on the Agency website within one or two
25 weeks after the conclusion of this hearing.

1 If you wish to present a written
2 statement or information today, please clearly
3 identify your material and give it to one of the panel
4 members. You may also submit comments following the
5 public hearing by any of the methods listed in the
6 proposal. And to be considered, MSHA must receive
7 your comments, as I said earlier, by November 9th.

8 I would like to ask everyone in
9 attendance this morning to sign the attendance sheet.
10 And if you plan to testify, sign the list of speakers.
11 If you have a hard copy or electronic version of your
12 presentation, please provide it to the court reporter.
13 And we will now hear from those of you who signed up
14 to speak. Please begin by clearly stating your name,
15 and just so that we have an accurate record, please be
16 sure to spell your name for the reporter. Our first
17 speaker is --- okay. And if anybody would like water,
18 it's right outside the door. Our first speaker is
19 Doug Pauley with the Pocahontas Mine Rescue
20 Association. Mr. Pauley?

21 MR. PAULEY:

22 Thank you. Hello. You want me at the
23 podium?

24 CHAIR:

25 Yes, sir.

1 MR. PAULEY:

2 I'm Doug Pauley from the Pocahontas ---.

3 CHAIR:

4 Okay.

5 MR. PAULEY:

6 I'm Doug Pauley. I'm on the Board of
7 Directors of Pocahontas Mine Rescue Association.

8 CHAIR:

9 I'm sorry. You're not close enough.

10 MR. PAULEY:

11 All right. We've been in existence, I
12 think, ten years. It's a foundation that deals with
13 small mines in Elk County. And of the small mines,
14 almost all of them are under 36. They're familiar
15 with the mom-and-pop operations. A lot of mines and a
16 lot of folks are familiar with the association.

17 One of my first questions is when we go
18 to Bill Hess Mining, my rescue team goes to that mine,
19 the said mines, it didn't give him enough time to be
20 sitting there, to be training while he's taking a
21 break.

22 CHAIR:

23 First of all, the first question I put
24 down when you're talking about the mines is security.
25 I gather you're going to cover that.

1 MR. PAULEY:

2 No. That was not where I was going.

3 CHAIR:

4 Oh, I thought you said that. You were
5 probably going to get to that?

6 MR. PAULEY:

7 Yeah.

8 CHAIR:

9 Okay. And they all were less than 36?

10 MR. PAULEY:

11 Yes, ma'am.

12 CHAIR:

13 Okay. As I started out saying, we didn't
14 change the existing requirement, so the makeup of the
15 existing training stays the same in terms of how we're
16 going to get them to train four hours every month or
17 eight hours every two months, I think.

18 MR. PAULEY:

19 Right.

20 CHAIR:

21 And they even have to wear the apparatus.
22 That stays the same.

23 MR. PAULEY:

24 Right.

25 CHAIR:

1 The additional training, we said that you
2 have to have mine rescue contests and then some other
3 additional training. No. We didn't say --- the
4 training, you have to, people with operation at the
5 mine, and meet some relief requirements in the MINER
6 Act. And you have to have two local mine rescue
7 contests. But it didn't say how much time the Act
8 covered, but it did say that you have --- now you have
9 to have a total of 64 hours annually of training. And
10 we gave some alternatives to the local mine rescue
11 contests in terms of the MERD rule. So long as you
12 come up with 64 hours of annual training, that's the
13 requirement.

14 MR. PAULEY:

15 Okay. How much time would you say that
16 the miners, the individual miners would have? Will
17 that be in there?

18 CHAIR:

19 Yes. And that probably will vary
20 depending on the mine. That could vary depending on
21 the makeup of the mine. I mean, I may not spend any
22 amount of time at a one-section mine and you might
23 have a mine that operates 24/7 and, you know, it has
24 multi sectors.

25 MR. PAULEY:

1 What areas of the mine do you want the
2 team to be knowledgeable about? What areas of the
3 mine do you want them to go to?

4 CHAIR:

5 I'm thinking that is the same as the
6 MINER Act requires. But they will take at least
7 annually and two local contests. There may be that we
8 provide alternatives for the contest. We didn't say
9 what area of the mine that the team can go into. They
10 have to be knowledgeable about the operations and
11 knowledgeable about the ventilation. And the MINER
12 Act directs that someone, for lack of a better word,
13 perform some training. So I think, you know, every
14 mine rescue team training association or team may
15 depending on the mine, the setup of the mine in terms
16 of what it takes to know that mine if an emergency
17 situation were to occur.

18 MR. PAULEY:

19 Your proposal overlooks the amount of
20 time spent going through that mine and the amount of
21 time to get out of that mine. You should consider out
22 here more or less a contract mine and mine rescue
23 team. And if you've spent time going through that
24 mine, learning how to work that mine, that'll be one
25 higher way to be safer. It takes us a long time to be

1 available when you're not committed. It's a lot of
2 time, a lot of rules and regulations. The amount of
3 time can be important. These guys are all volunteer
4 people.

5 CHAIR:

6 Well, let me say two things. And we did
7 ask the question whether all the training needed to be
8 conducted underground. We had asked a question about,
9 you know, like I said earlier, whether there would
10 actually be an alternative to the mine rescue contest.
11 Now, in terms of how you foresee that, obviously in
12 your mind you have some idea of how these rules and
13 regulations will be implemented. In terms of how you
14 think that they would be implemented in your opinion
15 in a situation --- in your particular situation the
16 impact in terms of additional time, if you would
17 submit that to us in the record, you can't tell me
18 today, but you can submit that to me in the record, I
19 mean, before the record closes.

20 And secondly, if you have ideas about how
21 it should be implemented and proof, you know, specific
22 times and those types of things, we would submit that.
23 I would hasten to say, though, you know, putting a
24 specific time on something. You know, I understand.
25 What works in one situation may not be the same time

1 as another situation, so you have to be careful when
2 you say that, I think.

3 MR. PAULEY:

4 Okay

5 CHAIR:

6 So your thought is it should have been
7 like 50 percent credit for the training?

8 MR. PAULEY:

9 Yes.

10 CHAIR:

11 Okay. What else? You have to ---. I
12 thank you. We are going to take many of your comments
13 and testimony into consideration. But in some
14 respect, we want to try and balance these concerns.
15 And third --- after delineation, the third thing is up
16 to you.

17 MR. PAULEY:

18 Okay. It says in these rules that come
19 the middle of next month, these rules will be
20 implemented ---.

21 CHAIR:

22 December. The time table is December of
23 '07.

24 MR. PAULEY:

25 Are you going to have a grace period
or ---?

1 CHAIR:

2 I can't exactly say to you how --- what
3 --- I can't say to you today how the final rule is
4 going to look. But I will say that MSHA does not
5 intend to negatively affect mine rescue teams, mine
6 rescue team service or any conditions or
7 considerations with respect to the long history and
8 tradition of mine rescue teams. And in terms of
9 predicting the makeup and the construction of the
10 final rule, that's probably all I can say right now.

11 I would add that MSHA, the members on
12 this panel --- and I want everybody to understand
13 that. I mean, we want to do the best that we can do
14 for mine rescue teams and emergency response, mine
15 emergency response that's provided by the teams. And
16 we appreciate what the teams do. You mentioned that,
17 you know, they spend a lot of time. We know that.
18 And we sincerely believe that there's no more noble
19 cause than the service provided by mine rescue teams.
20 So that's probably, in terms of being predictable
21 about what the final ruling is going to look like,
22 that's probably the best I can say to you right now.

23 MR. PAULEY:

24 Like I was saying before, we've been in
25 existence about 15 years. And with the new criteria

1 and stuff, it's made quite a few operators pretty
2 excited to say the least. And the reason why I
3 mentioned a grace period is I personally don't know
4 whether our mine rescue team will be --- our teams
5 will be around after the first of the year due to this
6 criteria and the impact it's making on the small
7 mines.

8 CHAIR:

9 And that's where I ask you to be
10 specific. If you think it's going to negatively
11 impact you, you've got to let us know before November
12 9th. If, you know, you have --- if you service 26
13 mines right now, you got to let us know whether it
14 will allow you to continue servicing those mines or if
15 you can only service ten mines or if you don't think
16 you can do any of them or if you don't think you can
17 meet the training requirements. I mean, I don't know
18 and I don't want to put words in your mouth. But as
19 to how it will specifically impact you, you've got to
20 let us know.

21 MR. PAULEY:

22 Okay. I'm finished.

23 CHAIR:

24 Okay. Thank you very much, Mr. Pauley.

25 MR. PAULEY:

1 Thank you.

2 CHAIR:

3 Our next speaker will be Vince Cantrell,
4 Pocahontas.

5 UNIDENTIFIED SPEAKER:

6 He's not here.

7 CHAIR:

8 He's not here? Okay. Then we have James
9 Murray, Cobra Natural Resources. Mr. Murray?

10 (Murray Exhibit One marked for
11 identification.)

12 MR. MURRAY:

13 Since Doug sat down, I think I will, too.
14 Ladies and gentlemen of the panel, members of the
15 audience, thank you for allowing me to air my comments
16 and suggestions concerning the proposed regulations
17 for 30 CFR part 49.

18 My name is James Matthew Murray. I'm the
19 senior safety representative and member/trainer of the
20 Cobra Natural Resources Mine Rescue Team. I've been
21 involved with mine rescue since 1975. Kind of tells
22 my age a little bit there. I started as a gas man and
23 had most all positions in the mine rescue team,
24 including tail captain, briefing officer and a two or
25 three-year stand as captain of the mine rescue team.

1 During the past 16 years I have been with the
2 Mountaineer Mine Team now owned by Alpha Natural
3 Resources, which was formerly Arch Coal. I'm a sixth
4 generation coal miner and third generation mine rescue
5 and first aid team member.

6 I've watched as the number of teams has
7 reduced over the past years, and it's been my hope
8 that something could be done to facilitate an increase
9 in the number of competent and qualified mine rescue
10 teams and their capabilities. The old notion that
11 mine rescue teams were no longer needed, which many of
12 us heard for several years, faded into obscurity with
13 the names of Sago, Aracoma and Kentucky Darby. It was
14 my fervent hope that the revision of part 49 would do
15 just that. I believe that it will increase the number
16 of teams available. However, I question whether the
17 competency and qualification of those teams will
18 occur, as I will discuss later.

19 I think this could be achieved by MSHA,
20 the increase in teams and competency and
21 qualification, by requiring each mine to be covered by
22 two teams, as you have proposed, but not require two
23 employees from each covered mine. This would increase
24 the number of teams and hopefully be done in a way
25 where you're not forcing miners to volunteer, and

1 hopefully to grandfather in existing team locations
2 even though they are located more than one hour from
3 each covered mine.

4 In particular, mine rescue teams have
5 traditionally been made up of volunteers from within
6 the industry. We cannot draft the men of the caliber
7 needed into service as mine rescue team members. To
8 be on a rescue team, you have to want to do it. And
9 we volunteers do it not for the recognition. We do it
10 out of a sense of duty to our fellow miners. And this
11 duty cannot be legislated or compelled. Attempting to
12 force two individuals from each mine employing more
13 than 36 to be on a mine rescue team, as required in 30
14 CFR 49.20 paragraph 2(i), will increase the number of
15 teams, but I question whether these team members will
16 be what the mining industry needs. Will they be the
17 dedicated individuals who are committed to be the ones
18 who enter a mine and attempt a rescue when all others
19 are running out? I think this could be an issue.

20 I would ask the panel also to consider
21 another type of team to be included in the
22 regulations, and that would be strictly a company-
23 sponsored team made up of employees of a single
24 company, but not necessarily a single mine, nor two
25 from each of the covered mines that the company owns,

1 and that these teams be permitted to provide the
2 primary coverage to the two mines. Many of this type
3 of team exist today that are neither mine site,
4 composite, contract or state-sponsored teams under
5 49.20 of the current proposal, and need to be included
6 in the proposed regulations. If not, it is likely
7 that most of these teams would have to break up so a
8 company can achieve the two miners from each mine
9 covered, something that I do not think is in the best
10 interest of mine rescue.

11 Additionally, the proposal in 30 CFR
12 49.12 paragraph (f) calls for teams to be available
13 within one hour of ground travel time from the rescue
14 station. As we've seen in the past two years, travel
15 time and response time are not the issue. The
16 existing teams have been able to respond with great
17 speed when notified of an emergency. The real issue
18 is notification, which the MINER Act and subsequent
19 regulations have addressed.

20 If the proposal stands, many current
21 fully-equipped stations with well-trained and
22 qualified teams will be forced to move from their
23 current location and possibly lose members in the
24 process. The Mountaineer Mine Team, which I am
25 currently a trainer and a member of, will be required

1 to move its mine rescue station from its current
2 location at a three-unit coal mine employing
3 approximately 150 men, to a location approximately 45
4 minutes ground travel from the mine to where it can
5 meet the one-hour ground travel requirement to the
6 other mines that we service for our company. In
7 speaking with other team trainers and captains in
8 southern West Virginia, our station and team will not
9 be the only one with that dilemma.

10 I would like to ask the panel to consider
11 a so-called grandfather clause for these existing
12 teams and stations, which would allow the district
13 manager to approve a travel time limit of greater than
14 one hour, but in no case greater than the two-hour
15 ground travel requirement in the existing regulations,
16 and only for these existing teams.

17 The additional practice time required in
18 30 CFR 49.20 paragraph (c) may make it difficult for
19 some current members to stay on a team. Our team,
20 like many others, is made up of a combination of
21 miners, both hourly and salary individuals who work
22 together as a team. However, the training proposed at
23 each covered mine may cause many volunteers to second
24 guess their time commitments. If they do continue on
25 a team, there will be many men taken away from their

1 regular jobs, and would likely be replaced, while
2 training, with an individual who is not as experienced
3 with that miner's workplace or his equipment and
4 likely to have a higher risk of injury as a result of
5 being placed in this work area or job.

6 I would ask that the regulation be
7 reconsidered or refined to require a limited number of
8 team members, but not all team members, visit the mine
9 or mines, covered mines, to familiarize them with
10 their location, the maps, equipment and functions of
11 that operation.

12 If we look at a mine rescue team as you
13 would a local or municipal fire department, do we
14 require them to train at each structure they cover?
15 Of course not. This would limit or eliminate many
16 volunteer departments because of the time required to
17 train at each structure, and it just completely is not
18 necessary. As with a structure fire, a mine fire
19 changes everything. And places visited by the team
20 members may not even be there, or be radically
21 changed. This requirement would add nothing to or
22 change the way a mine rescue team would approach a
23 fire, and in fact, may destroy more teams than it
24 helps create.

25 I do, however, want it understood that I

1 do believe training underground is of the utmost
2 importance. Just in this past week, my team trained
3 underground with a theatrical smoke machine that
4 simulates realistic conditions which they might
5 encounter in a fire. The training session was a first
6 for my two newest team members having been exposed to
7 these type of things. The session only served to
8 reinforce my belief that underground training of this
9 type is essential and must remain, but need not be
10 required at all of the mines a team services.

11 In conclusion, please consider that I
12 have never before felt compelled to speak at a public
13 hearing concerning a proposed regulation. But my
14 commitment to mine rescue and continued training of
15 qualified teams and individuals has forced me to
16 express my concerns about some of these proposed
17 regulations. I feel that we need to direct our
18 efforts as an industry in cooperation with labor and
19 government to add new qualified teams and committed
20 individuals trained in realistic conditions, and keep
21 established teams and stations together. Thank you.

22 CHAIR:

23 Thank you, Mr. Murray. And also, thank
24 you for your commitment to mine rescue team service.
25 I have a few comments, and probably some members of

1 the panel do. First of all, how many mines do you all
2 service?

3 MR. MURRAY:

4 That's increased recently with the
5 purchase of our operation.

6 CHAIR:

7 Oh, okay.

8 MR. MURRAY:

9 Right now I think it's about 14.

10 CHAIR:

11 Fourteen (14)?

12 MR. MURRAY:

13 Yes, ma'am.

14 CHAIR:

15 Okay. And are they all large mines?

16 MR. MURRAY:

17 No. There are ---.

18 CHAIR:

19 Or are they a combination?

20 MR. MURRAY:

21 There's a combination.

22 CHAIR:

23 Small and large?

24 MR. MURRAY:

25 Some small and some large, yes.

1 CHAIR:

2 In your statement, you said you didn't
3 think it needed to be two employees from each covered
4 mine. And we ask a question on that ---

5 MR. MURRAY:

6 Yes.

7 CHAIR:

8 --- in the proposal. So any time any of
9 you all disagree with the proposal, if you would state
10 what --- if you have a suggestion, if you would
11 provide the suggestion. So if you think that it
12 should not be two employees from each covered mine,
13 then what would be your suggestion? What do you think
14 it should be?

15 MR. MURRAY:

16 I think one employee from each mine would
17 be more than sufficient ---

18 CHAIR:

19 Okay.

20 MR. MURRAY:

21 --- if you have an individual
22 knowledgeable of that mine. Because like when you go
23 to a rescue or a recovery operation, it's ---
24 everything's going to be dictated by the conditions at
25 that time, not by what existed in the mine before.

1 CHAIR:

2 You also mention, and we've heard this
3 before, just so everybody knows, that if you would
4 grandfather --- if we would grandfather existing
5 teams, even if they're more than one hour away --- can
6 all of your teams --- can you meet the one-hour
7 requirement now?

8 MR. MURRAY:

9 No, ma'am.

10 CHAIR:

11 And I guess later you did say that you
12 would have to move.

13 MR. MURRAY:

14 Yes.

15 CHAIR:

16 Can you tell me how many stations would
17 be forced to move?

18 MR. MURRAY:

19 I don't know the exact number, ma'am. I
20 know that we will be forced to move.

21 CHAIR:

22 Can you provide that for the record how
23 many would be forced to move if you had to meet the
24 one-hour requirement?

25 MR. MURRAY:

1 I can only speak for my particular
2 company.

3 CHAIR:

4 I understand. That's all I'm ---.

5 MR. MURRAY:

6 I know that we will have two stations
7 basically that have to move.

8 CHAIR:

9 Okay.

10 MR. MURRAY:

11 Our station and then another station ---.

12 CHAIR:

13 So if you move, you could meet the
14 one-hour requirement?

15 MR. MURRAY:

16 Yes, ma'am.

17 CHAIR:

18 Okay. When you mentioned the part about
19 grandfathering, I would like to ask you, if at all
20 possible, if you could provide criteria --- when you
21 say grandfather existing stations, allow the district
22 manager to approve. And you gave what I consider to
23 be one criteria, which was so long as you didn't
24 exceed the existing two-hour requirement.

25 MR. MURRAY:

1 Yes.

2 CHAIR:

3 But if there are other criteria that you
4 can think about adding to that, because that --- I
5 mean, that will help us. The more specific you all
6 can be, the better it will help us make an informed
7 decision about what to do.

8 MR. MURRAY:

9 You know, I'm basically speaking about
10 stations that exist today ---

11 CHAIR:

12 Yes, I understand that.

13 MR. MURRAY:

14 --- and teams that exist today.

15 CHAIR:

16 Yes, sir.

17 MR. MURRAY:

18 You know, they would have to exist prior
19 to the regulations. You know, any new teams, I think,
20 should be --- will have to meet the one-hour
21 requirement. We're very close, but it's about an hour
22 and 20 minutes to the furthest mine that we serve.
23 But I think if the team exists, that's the only
24 criteria that I was looking at.

25 CHAIR:

1 Okay.

2 MR. MURRAY:

3 It exists today and falls within the two
4 hours.

5 CHAIR:

6 Okay. If you could still, in terms of
7 impacts, put where your stations are right now and how
8 far they are from the mines that they service, that
9 would be helpful to us.

10 MR. MURRAY:

11 I will.

12 CHAIR:

13 And then you made the statement that
14 teams would have to break up. I would like to know
15 --- and this is for everybody, how many teams do you
16 think would have to break up because of these proposed
17 regulations?

18 MR. MURRAY:

19 The ones I can think of in southern West
20 Virginia, there would probably be maybe a half a dozen
21 that would have to rearrange their members, have
22 members on different teams. My team right now, all of
23 our employees come from the mine that I work at, all
24 of our members. To meet the composite team
25 requirement, our team would have to break up into at

1 least two other teams to be able to meet that
2 requirement, because we're not a contract team. We're
3 not a composite team. We're a state team.

4 CHAIR:

5 Yes.

6 MR. MURRAY:

7 And we are a mine site team, but we do
8 service other mines within our company.

9 CHAIR:

10 Other mines. Yes. I got you. I
11 understand. Right.

12 MR. MURRAY:

13 Okay. But specifically, I don't know how
14 many would have to break up. But I know that we would
15 have two teams at least that would have to break up
16 and ---.

17 CHAIR:

18 So everything that I'm asking Mr. Murray,
19 if people here don't want to testify today, but if
20 they have stations that need to be moved, teams that
21 will have to break up, if you would send that
22 information to us before November 9th, that'll be
23 helpful to us. Now, to the fact that you think ---
24 you said that you didn't think that all team members
25 had to visit the mine.

1 MR. MURRAY:

2 Yes, ma'am.

3 CHAIR:

4 Just some of them. Okay. On a typical
5 mine rescue team, then what's the minimum amount of
6 the members that need to visit the mine that they
7 service, in your opinion?

8 MR. MURRAY:

9 I think that, you know, you would need to
10 at least take --- each time you go to a mine, at least
11 two members, not the same one each time.

12 CHAIR:

13 So rotate?

14 MR. MURRAY:

15 Rotate the members.

16 CHAIR:

17 So that's the next thing I was going to
18 ask you.

19 MR. MURRAY:

20 Yes.

21 CHAIR:

22 So in the run of a year then, do you
23 think all of them on the team should go to the mine at
24 least in the run of a year?

25 MR. MURRAY:

1 Yes, ma'am, I do.

2 CHAIR:

3 Okay.

4 MR. MURRAY:

5 You don't know who's going to be driving
6 the truck, and they may need to know where it's at.

7 CHAIR:

8 No other reason than that; right?

9 MR. MURRAY:

10 That's right.

11 CHAIR:

12 I guess that makes sense. Okay. Well,
13 that's all I have. Anybody else have anything?

14 MR. KALICH:

15 Yes.

16 CHAIR:

17 Thank you. Thank you.

18 MR. MURRAY:

19 You're welcome.

20 MR. KALICH:

21 You also mentioned the amount of training
22 at each underground mine. How many times in a year do
23 you feel the team should train at the underground
24 mine?

25 MR. MURRAY:

1 At each mine are you saying?

2 MR. KALICH:

3 Yes.

4 MR. MURRAY:

5 I think if each member goes --- you know,
6 is allowed the opportunity to be at a mine at least
7 once that year, possibly no more than twice, I think
8 that's sufficient to familiarize yourself with their
9 ventilation and practices and things that goes on
10 there.

11 MR. KALICH:

12 Do you think the training should also
13 include underground at the mine, that the members
14 would need to go underground?

15 MR. MURRAY:

16 I don't think you need to go underground
17 at each mine. The operations that I've been involved
18 in have all been dictated by the conditions at the
19 time, not the way it was before. We all need to know
20 whether it's a mine that liberates methane, how much
21 it liberates, and these types of things. But once an
22 explosion occurs or a fire starts, everything changes.

23 MR. KALICH:

24 That's all I have.

25 CHAIR:

1 Anybody? Okay, Mr. Murray. Thank you
2 very --- now, this is putting a little bit of a burden
3 and a duty on you all, the ones who are coming
4 forward, and maybe the ones in the audience who may
5 not be coming forward but may be listening. And that
6 duty is where we are asking these questions, if you
7 have information on them, I'm asking you, please, to
8 get that to us before the record closes. I can't
9 overemphasize the importance of doing that, because
10 that's the only way. Listening to general
11 conclusionary statements and making statements like
12 that will not provide the information that we need to
13 make any changes in the proposal. It's only with the
14 specific information that we will be able to use that
15 and define impacts and maybe come up with some change.
16 So I can't --- I'm asking you all to please provide
17 the specific information to us before the record
18 closes if it impacts your existing mine rescue team
19 situation. Thank you.

20 MR. MURRAY:

21 Thank you.

22 CHAIR:

23 My colleague was just informing me that
24 as you present your impact data in terms of whether it
25 means teams move, teams breaking up, teams going out

1 of business, stations moving, to make sure you add
2 cost data to it also. Thank you. Next we have Ken
3 Perdue, Alpha Natural Resources.

4 MR. PERDUE:

5 I don't know if you want ---.

6 CHAIR:

7 Yes, I'll take them. Thank you.

8 (Perdue Exhibit marked for
9 identification)

10 MR. PERDUE:

11 My name is Kenneth M. Perdue. That's
12 P-E-R-D-U-E. I would like to thank the members of the
13 panel today for the opportunity to offer comments and
14 suggestions concerning the proposed regulations of 30
15 CFR part 49.

16 I volunteered to be on a mine rescue team
17 for the company I worked for in 1974. In 1975, I
18 became the captain of that team and remained a team
19 member through 1995. Since 1995, I've remained active
20 in mine rescue and recently established two teams at
21 the present company I work for now. I understand
22 fully the time and dedication required to be one ---
23 to be a member of this elite organization within the
24 mining community.

25 In the 18th century, Samuel Johnson, a

1 well-known philosopher, stated that most people need
2 to be reminded more than instructed. I would remind
3 this panel that during my entire career in the mining
4 industry, which began in 1974, I've never known of an
5 event where the existing mine rescue team structure in
6 our industry has failed. And I'm concerned that these
7 new regulations and rules would weaken our current
8 mine rescue capabilities.

9 Proposed Section 49.40 requires that a
10 mine employing over 36 employees has to provide
11 primary mine rescue coverage by either providing a
12 mine site team or a composite team. I think there's a
13 possibility that this requirement could weaken mine
14 rescue capabilities. For example, many states have
15 highly-trained and qualified teams that now will not
16 be able to provide primary mine rescue services to
17 these mines, even though they have invested thousands
18 of dollars in equipment, personnel and training.
19 Likewise, Virginia has a program where companies
20 provide coverage to other mines through a contract
21 with Virginia's Department of Mines and Minerals.

22 And these regulations without a
23 grandfathering provision will result in making it
24 impossible for these companies to continue to
25 participate in this program. Therefore, MSHA should

1 consider grandfathering these teams so they can
2 provide primary coverage to mines as they have done
3 for years.

4 Section 49.12(2)(b) states that a team is
5 made up of five members and an alternate. I assume
6 MSHA has inadvertently left out the words, at least
7 five members and an alternate, similar to what it's
8 included in table 49.50 number one. In particular, if
9 a composite team is to serve the needs of over three
10 mines and have two members from each mine, then this
11 composite team would have to have more than six
12 members to comply with the composite team
13 requirements.

14 When dealing with a composite team, some
15 questions that need to be addressed are, if a team of
16 more than six people compete in a contest, would all
17 the alternates be counted as participating in the
18 contest? And if a team member is not permitted to
19 compete if he goes to the contest, will he be
20 considered to have met the contest standard?

21 Section 49.15., mine rescue stations, I
22 think the established mine rescue stations, even
23 though they may be more than one hour travel to a
24 mine, should be grandfathered, as Mr. Murray stated,
25 and should be able to continue to provide coverage to

1 the mines to which that station has previously
2 provided coverage. If this grandfathering does not
3 occur, we will have to relocate an established station
4 to meet the one-hour travel limit.

5 In particular, our company's West
6 Virginia operations, we have a station at a
7 multi-section mine in a secure location. If this
8 station has to be relocated to satisfy the one-hour
9 travel limitations to the other mines, it will have to
10 be moved to a rental property where security will
11 definitely be an issue, and existing team members will
12 have to travel a longer distance to get to the
13 station. This move is likely to result in experienced
14 mine rescue team members resigning from the team. Of
15 the mines being covered, clearly the multi-section
16 mine has the most potential to need mine rescue
17 services. To move a station to merely gain compliance
18 is not in the best interest of anyone.

19 Concerning the training requirements of
20 state-sponsored teams, it would be my belief that
21 those inspector personnel who inspect the mines that
22 they are providing coverage for should be credited to
23 50 percent of their training. Additionally, I think
24 mines that have composite teams or mine site teams
25 with persons should also be credited for 50 percent of

1 their training, as these individuals work at these
2 mines daily and these members are intimately familiar
3 with all aspects of the mine and participate in
4 quarterly evacuation drills.

5 Also, there are many mine rescue
6 associations that are currently providing primary
7 coverage to mines with greater than 36 employees.
8 This too is now not possible because of the proposed
9 standard subsequent to the MINER Act needs to be
10 considered.

11 On a related training issue, in the
12 preamble on page 51325 paragraph E, it is stated that
13 MSHA interprets the MINER Act to mean at least one of
14 the training sessions must be conducted at the
15 underground covered mine. I want to be clear. I
16 support underground training by mine rescue teams.
17 And the existing proposed Section 49.18(b)(1) requires
18 that training must be held underground at least each
19 six months, which our teams do and will continue to
20 do. However, to have a team train underground at each
21 covered mine is not necessary or practical. MSHA
22 should consider training at a covered mine, not each
23 covered mine.

24 Team members who volunteer to be on a
25 mine rescue team also perform their duties on their

1 regular job at their respective mines. These
2 additional practices may cause additional trained and
3 qualified mine rescue personnel to quit due to the
4 excessive amount of practice time. For example, if a
5 composite team covering five mines and another
6 composite team covering four mines were the two teams
7 of record, this would mean that these teams would have
8 to train underground 36 times a year if this proposal
9 is implemented. I seriously question the need to have
10 that many training activities underground.

11 The proposed regulations also failed to
12 account for the inability of many mines to have
13 transportation available for underground mine rescue
14 training due to the mine being in production status or
15 on Saturdays or idle day pre-shift examinations for
16 the mine, the days that the team may be available for
17 practice and even required SCSR availability for mine
18 rescue personnel when they're practicing.

19 The MINER Act has some specific terms in
20 it along with this regulation that also differs vastly
21 from the previous part 49 requirements. Under Section
22 49.20(b)(2)(i), it states, only a member who is from
23 each covered mine can make up a composite team. There
24 are many mine rescue teams that have been together for
25 years and provided services for multiple mines but are

1 not members from the mine. This definition
2 effectively eliminates these types of teams, and
3 therefore will eliminate many qualified mine rescue
4 persons. These men will be replaced, if volunteers
5 come forward, with inexperienced persons that will
6 take several years to attain the skill level of those
7 that they are replacing. I urge the panel to
8 grandfather these members even though they are not
9 from each covered mine.

10 MSHA should also consider a provision
11 similar to the one outlined for anthracite teams, as
12 discussed on page 51231, number three, Section
13 49.2(b), to allow these teams to continue to function
14 as they are now and continue to provide coverage to
15 the mines within the respective one-hour travel time,
16 even though they are not from each covered mine. It
17 clearly is the right thing to do.

18 Section 49.20(b)(3) seems to envision a
19 contract team as one that provides coverage for
20 profit. The MINER Act uses the term commercial
21 instead of the proposed definition of a contract team.
22 A commercial team should be a team formed to provide
23 coverage for profit. However, in reality, a contract
24 team, as defined by the regulations, may be another
25 team at our company or a team from another company

1 that provides mine rescue coverage but does not have
2 employees from the covered mine, but the team does not
3 do this for profit. These teams are providing
4 secondary coverage to mines where their team members
5 do not work. These teams should have the same
6 training requirements as a composite team, not the
7 requirements that a team that provides mine rescue
8 coverage for profit --- a true commercial team, not a
9 contract team.

10 Also in this same section, 49.20, there
11 needs to be some clarification concerning whether or
12 not a member who provides or does work at multiple
13 mines, such as myself, can be considered as an
14 employee for mine rescue purposes at each mine where
15 they perform this work. This is critical in that we
16 all work to try to advance ourselves through any
17 organization. To prevent a member from being on a
18 mine site or composite team for this reason would be
19 in the wrong interest to the member and it would be a
20 detriment to mine rescue teams everywhere.

21 The economic feasibilities studies
22 published on page 51328 is woefully inadequate. In my
23 company alone, we have five mines that we are
24 currently covered from a central two-hour station. We
25 will have to move this station and create another one

1 as well and train additional mine rescue personnel if
2 volunteers step forward. Our economic impact for the
3 fiscal year 2008 could be as high as \$530,000 by the
4 time we purchase equipment, train new team members and
5 acquire temporary personnel to fill in during
6 absences.

7 Our mines only represent less than three
8 percent of the underground mines in West Virginia.
9 Therefore, I believe the financial impact will be
10 substantially greater than the \$3 million annual
11 projections on which MSHA has made assumptions. We
12 alone will have to expend one sixth of this projected
13 spending in 2008 for our five mines in West Virginia.

14 Based on the following mine scenarios and
15 sizes in Kentucky, Virginia and West Virginia, I think
16 this economic assumption is drastically wrong.

17 Kentucky has 155 mines, 75 are more than 36. Virginia
18 has 49 mines. Twelve (12) are more than 36. West
19 Virginia has 171 mines, 90 of which are over 36. So
20 you see why I make these assumptions.

21 Section 49.60 deals with the new
22 requirement of mandatory contests. In 2006, prior to
23 the passage of the MINER Act, our company started two
24 mine rescue teams. During the past summer, we
25 attended five contests. Due to the amount of time

1 spent practicing and being away from their homes, we
2 now only have seven active team members, as the others
3 have quit due to the fact that too much time is
4 involved.

5 It is my belief contests should never be
6 mandatory, even though the MINER Act mandates it. And
7 teams that want to practice MERD drills or use real or
8 simulated mines for smoke training or advanced
9 firefighting training should be allowed to do so in
10 lieu of attending a contest. Also, I believe that
11 breaching of seals and doing exploration work in mines
12 being prepared to be reopened while MSHA or state mine
13 rescue personnel are present should be acceptable in
14 lieu of contests as well. That's actual mine rescue
15 work.

16 It has been my recent experience that
17 current contests consist of ventilation simulations
18 that are very unlikely to be encountered in an actual
19 mine disaster. Gas tests are simulated, as well as
20 everything else. We found the most beneficial contest
21 attended this year to be a contest held by the
22 recently formed West Virginia Mine Rescue Alliance
23 that actually tests teams in firefighting techniques,
24 smoke searches, equipment searches, first aid, written
25 skills, problem solving on the field and actual gas

1 testing. I would urge contests in the future to look
2 at this as a model from which to build and learn if
3 they become mandatory.

4 MSHA has also requested information on
5 what training contest judges should have. In order to
6 be a judge, they should be required to have at least
7 the same training a mine rescue personnel is required
8 to have to become certified by either MSHA or the
9 state. Sitting in on a reading of the rules can't
10 qualify anyone to be a judge. And the teams that are
11 judged by these individuals and discounted errantly
12 are punished due to the lack of knowledge of a judge.
13 This is clearly wrong.

14 My last comment concerns the proposed
15 emergency evacuations under 75.1501. It is my belief
16 that these proposed training requirements go well
17 beyond what a responsible person at the mine should be
18 required to do, including duties MSHA will not allow.
19 The responsible person should not be expected to
20 organize a command center. That will be done by
21 someone else. He should be not allowed to direct mine
22 rescue personnel. Notify them, yes. Direct them, no.
23 They should not be establishing the first aid --- or
24 fresh air base. That's the responsibility of mine
25 rescue teams. They should not deploy the mine rescue

1 teams. Many teams would not be deployed or would
2 refuse to be deployed by the person that was
3 responsible.

4 In conclusion, it is my sincere belief
5 that these regulations will not advance mine rescue
6 and that these regulations as proposed or implemented,
7 it will take years and millions of dollars for us to
8 overcome these mine rescue changes. To change a mine
9 rescue system that is not broken or in disrepair and
10 was functioning properly and responsibly because of
11 mistakes of others is not the right thing to do.

12 There is a philosophy term known as
13 Occam's Razor. This means when seeking a solution to
14 a problem with multiple answers, the simplest of
15 solutions provided should be accepted. It is clear to
16 me that if someone had to change the existing part 49
17 rescue requirements, that changing the two hour to one
18 hour travel while grandfathering in existing stations
19 and leaving everything else the way it was provides
20 not only the simplest solution, but would continue to
21 encourage new personnel to be introduced into mine
22 rescue.

23 Many people my age are leaving this
24 industry. The negative impact that the many hundreds
25 of additional practices will now have to occur will

1 have many young miners not volunteering their services
2 as a result of too much personal time being involved.
3 This is a reality. And before the older generation
4 leaves and the proposed regulation becomes a reality,
5 MSHA and the Congress should take these comments to
6 heart.

7 CHAIR:

8 Thank you. I see Mr. Perdue has a second
9 job, that he's a philosopher in addition to being a
10 mine rescue team member. But thank you for your mine
11 --- seriously, thank you for your mine rescue team
12 service. And we will take your comments to heart.
13 I'd like to say again that --- and you know, I'm going
14 to continue to say it, that we do not intend to
15 negatively impact mine rescue teams, existing teams,
16 mine rescue team service.

17 I have a few additional questions about
18 some of the things you mentioned. On some of them I
19 think you were specific. You said that if we didn't
20 do any grandfathering, in your particular situation,
21 you all would have to move one station, relocate one
22 station.

23 MR. PERDUE:

24 And create a station.

25 CHAIR:

1 You would have to create?

2 MR. PERDUE:

3 Yes, ma'am.

4 CHAIR:

5 Okay. Now, so what, you would have to
6 create one additional station?

7 MR. PERDUE:

8 Yes, ma'am.

9 CHAIR:

10 Okay. I'm not going to go in order with
11 some of the questions. I'm going to move ---.

12 MR. PERDUE:

13 And two additional teams.

14 CHAIR:

15 And two additional teams.

16 MR. PERDUE:

17 Yes, ma'am.

18 CHAIR:

19 Now, I'm going to move now to --- closer
20 to the end, because you gave a cost impact of that of,
21 I believe \$530,000.

22 MR. PERDUE:

23 Yes, ma'am.

24 CHAIR:

25 Now, was that a one-time cost or was that

1 an annual cost?

2 MR. PERDUE:

3 That will be one-time cost for the
4 calendar fiscal year of 2008 to establish a new
5 station and two new teams, training and replacement
6 personnel.

7 CHAIR:

8 Okay. I also, while I'm thinking about
9 it --- we heard comments on the responsible person,
10 the duties of the responsible person.

11 MR. PERDUE:

12 Yes, ma'am.

13 CHAIR:

14 And we said --- you said, and we heard
15 that in Salt Lake City also, that the responsible
16 person cannot be expected to do all those things. And
17 I won't, you know, delineate all those numbers of
18 things that the proposal requires. But I will say
19 that if you read the lead-in to that, and maybe we
20 weren't as artful as we should have been, the lead-in,
21 I had it right here in front of me. The lead-in says
22 that the responsible person should have knowledge in
23 those things. I don't think it said that the
24 responsible person should direct those things. If I
25 remember, it said a responsible person --- the

1 responsible person shall have current knowledge of a
2 lot of these things. And so we'll take --- we'll go
3 back and look at exactly how we worded that.

4 You also gave what you thought, your
5 belief that the move would likely result in
6 experienced mine rescue team members resigning from
7 the team. Now, if you have any specific, concrete
8 knowledge, and this goes for anybody in here, about
9 members that --- and it's probably kind of difficult
10 for you to know exactly to a certainty, but if you
11 have any knowledge that members will resign from the
12 team, are likely to resign from a team, why they are
13 likely to resign, if you would tell us that. Why do
14 you think members are likely to resign from the team?

15 MR. PERDUE:

16 An additional hour and a half of travel
17 time each way to practice on their part.

18 CHAIR:

19 You mean when you move the station?

20 MR. PERDUE:

21 Yes, ma'am.

22 CHAIR:

23 Okay. Or create, as you put, create
24 another station.

25 MR. PERDUE:

1 Yes.

2 CHAIR:

3 Okay. You mentioned the impact on state
4 teams. Well, actually, you mentioned that you thought
5 composite teams, members of composite and mine site
6 teams ought to get the credit of --- the same credit
7 as state teams, the 50-percent credit ---

8 MR. PERDUE:

9 Yes, ma'am.

10 CHAIR:

11 --- as state teams.

12 MR. PERDUE:

13 Yes, ma'am. That is correct.

14 CHAIR:

15 That's really what you said. You also
16 said that there were a number of mine rescue
17 associations that probably --- that currently provide
18 primary coverage to mines greater than 36 employees.
19 But with these proposed regulations, they would not be
20 able to. And why exactly do you say that?

21 MR. PERDUE:

22 It's my belief that what's stated in the
23 proposed regulation, if you have more than 36
24 employees, that you only have --- you have to have a
25 mine site team or composite team. I could be errant

1 in that assumption. But that's my reading and
2 understanding of the proposed regulations, that if you
3 have more than 36 employees, one of your teams has to
4 be either a mine site team or a composite team. And
5 if you had a contract team, it could be technically a
6 composite team if two employees of that mine.

7 But the associations use miners usually
8 from smaller mines to be team members of their teams.
9 So they would be barred, essentially, from providing
10 that coverage to a larger mine. It's going to be a
11 severe economic impact on those associations if they
12 can't provide coverage for a mine over 36.

13 CHAIR:

14 Okay. And you know, not to put anybody
15 on the spot, but in terms of the specific number of
16 mine rescue associations that you all think would be
17 negatively affected, if you could provide us that, we
18 would appreciate it.

19 MR. PERDUE:

20 I know for sure two would be negatively
21 impacted.

22 CHAIR:

23 Two associations?

24 MR. PERDUE:

25 Yes.

1 CHAIR:

2 Okay. Okay. Can you be specific?

3 MR. PERDUE:

4 Do you need the names? Pocahontas Mine
5 Rescue Association and Mountaineer Mine Safety.

6 CHAIR:

7 Okay.

8 MR. PERDUE:

9 And I think there's representatives of
10 both of those organizations here today.

11 CHAIR:

12 Okay. Okay. And I think you were clear
13 enough, as well as the prior speaker, about training
14 at covered mines, that you just don't suggest training
15 at each covered mine. But you do --- you did support
16 training at covered mines. You do not think that each
17 team member needs to train at each covered mine?

18 MR. PERDUE:

19 Nor do I need --- nor do I believe that
20 each underground mine has to have underground training
21 at it.

22 CHAIR:

23 Right.

24 MR. PERDUE:

25 You know. Mine rescue teams are never

1 going to have enough time to do anything other than
2 visit mines if you cover multiple mines.

3 CHAIR:

4 I think you really --- I think the next
5 question I have, you answered that. Now, in terms of
6 your own personal situation, you mentioned that there
7 needs to be some clarification about whether or not a
8 member who provides and does work at multiple mines,
9 such as you, would be considered as an employee for
10 mine rescue. You work at multiple mines?

11 MR. PERDUE:

12 Yes, ma'am.

13 CHAIR:

14 And so ---.

15 MR. PERDUE:

16 But I'm not employed at a mine. I'm not
17 a member from a covered mine. But it's my belief,
18 because of my knowledge and background of each mine,
19 that I can still provide the same service at the level
20 of mine rescue at each mine, regardless of whether or
21 not I'm employed at that mine.

22 CHAIR:

23 Okay. So you know --- and not to get
24 into your --- not to --- I guess so that I fully
25 understand this, when you --- so how many mines do you

1 work at?

2 MR. PERDUE:

3 I have five underground mines that I'm
4 directly responsible for.

5 CHAIR:

6 Okay. In terms of --- okay. Okay. When
7 you started giving the state breakouts, and I do
8 appreciate that, would you clarify what you said about
9 West Virginia?

10 MR. PERDUE:

11 West Virginia has 171 mines, 90 ---.

12 CHAIR:

13 Yes. Oh, in your printed --- I thought I
14 heard something different than what was in your
15 printed statement.

16 MR. PERDUE:

17 Ninety (90) have greater than 36. And as
18 I understand the proposed regulation, the mines that
19 are greater than 36, the --- I did not add the total
20 of West Virginia mines up, so ---.

21 CHAIR:

22 I got you. Yes. Okay.

23 MR. PERDUE:

24 But there's 177 coal mines in Kentucky
25 and West Virginia and Virginia that have greater than

1 36 employees that will have the most economic impact,
2 according to these regulations. Those are the mines
3 that are going to be most greatly impacted. The less
4 than 36 mines have an option of either mine site,
5 composite, state or commercial team. Greater than 36
6 don't have that option. They have to have one team
7 that's either composite or mine site. So those are
8 the teams that have the most financial impact or most
9 financial burden to bear.

10 CHAIR:

11 Mr. Perdue gave some alternatives. We
12 ask for alternatives to contests in the proposal. And
13 you provided some alternatives. So for the persons in
14 the audience, we are very interested in any
15 alternatives to local contests. If you have any
16 additional --- you all heard what he said. If you
17 have any additional alternatives, we would appreciate
18 whatever you have to offer. I think those are all the
19 comments and questions I have. My colleagues might
20 have some.

21 MR. PERDUE:

22 Thank you.

23 MR. PHAN:

24 Excuse me. One of the --- when I was
25 doing the economic assessment, one of the questions

1 that I was trying to gather data on this --- the
2 number of state teams in West Virginia. Do you have
3 any knowledge of how many teams are covered --- I
4 mean, how many mines are covered by state teams?

5 MR. PERDUE:

6 It would be my belief, unless I'm wrong,
7 but the State of West Virginia doesn't cover any mines
8 for mine rescue coverage. They have some teams, but I
9 do not think they provide either primary or secondary
10 coverage to any mine in West Virginia.

11 MR. PHAN:

12 And one more question. When you were
13 mentioning the \$530,000 for a one-time cost, can you
14 break down the various components, whether they're
15 equipment or personnel, and how long these equipment
16 will last? For example, if you have to purchase a ---
17 can't come up with one example off the top of my head,
18 but let's say that you have to purchase equipment for
19 mine breathing apparatus, and how long do you expect
20 that to last?

21 MR. PERDUE:

22 I can't give you an estimate on how long
23 a BG-4 or a Biomarine apparatus would last. It would
24 probably depend on the next generation, when they quit
25 making parts for it. I think at the end of this year,

1 the BG-174A becomes extinct because of lack of parts.
2 I would say a minimum of ten years. The equipment
3 purchased would last that long, a minimum of ten years
4 with replacement parts and attrition throughout that
5 would, you know, have to augment that additional cost.
6 But of that \$530,000, about \$300,000 of it is in
7 equipment and \$200,000 is in employees and training
8 and a facility to house and station that equipment and
9 transportation for that equipment for multiple mines.

10 CHAIR:

11 Okay. Thank you. If anybody in here has
12 to relocate a station or open a new station, if there
13 are any costs attendant to facility costs, and you
14 mentioned rental in yours, if you would include, if
15 there are specific costs related to the facility, to
16 either purchase, rent, whatever, if you would include
17 that in your comments. I know we're asking you a lot,
18 but if you would provide some of those, we would
19 appreciate it. Thank you.

20 MR. PERDUE:

21 Thank you.

22 CHAIR:

23 You know, I know --- I'm sure my
24 colleagues here want to take a break, but let's see
25 who --- what's next. What do we have? Two more

1 people. I guess they want out. So can we take a
2 five-minute break, please? Five minutes?

3 SHORT BREAK TAKEN

4 CHAIR:

5 We will now continue with the Mine Safety
6 and Health Administration's public hearing on the
7 proposed mine rescue team regulations. Next on our
8 witness list, we have Dennis O'Dell. And Mr. O'Dell
9 is administrator for safety and health with the United
10 Mine Workers of America.

11 MR. O'DELL:

12 Good morning.

13 CHAIR:

14 Good morning.

15 MR. O'DELL:

16 First, I'd like to thank you for being
17 given this opportunity to speak before this panel
18 about an important issue for many of our miners in the
19 country today. Again, my name is Dennis O'Dell,
20 D-E-N-N-I-S, O, apostrophe, capital D-E-L-L. I am
21 currently the United Mine Workers of America
22 administrator of occupational health and safety. I've
23 been in the mining industry for close to 30 years,
24 nearly 20 as an underground coal miner, the remaining
25 being employed at United Mine Workers of America in

1 their safety department.

2 During my time with the United Mine
3 Workers of America safety department, I've been
4 involved in more mine investigations involving fire,
5 explosions and fatals than I would like to think
6 about. Sadly, I have to say, as I look at some of the
7 members on your panel today, I've spent more time with
8 them in the past ten years at a number of coal mine
9 investigations than I have with my own wife.

10 United Mine Workers of America is pleased
11 to have the opportunity to offer comments on the Mine
12 Safety and Health Administration's mine rescue team
13 and equipment proposed rule. Today I plan to offer
14 some general comments, but I also intend to place
15 written comments on the record in a manner that
16 corresponds to the agency's writing of the proposed
17 rules. Hopefully no one on this panel or in this room
18 is thin-skinned, because some of the things I say
19 today may offend, but that's not my intent.

20 United Mine Workers is very concerned
21 that the agency has either misunderstood the directive
22 of Congress regarding mine rescue teams, or decided to
23 ignore its mandate. It is apparent in the first
24 paragraph of the preamble that the regulators at MSHA
25 do not understand the directive of Congress where it

1 says, the goal of the MINER Act is to improve the
2 safety of mines and mining. However, what the agency
3 has determined to be the core of their legislative
4 mandate with regard to the mine rescue team we find to
5 be deficient.

6 The Union would agree with MSHA that to
7 accomplish this goal, the MINER Act includes
8 provisions to improve mine emergency response time,
9 improve mine rescue team effectiveness and increase
10 the quantity and quality of mine rescue team training.
11 While these stated facts represent a part of the
12 overall directive of Congress, they by no means cover
13 the scope of the mandate.

14 In fact, the proposed rule does not
15 accomplish some of the critical aspects laid out in
16 the legislation to enhance the current mine rescue
17 team system. In particular, the proposal does not
18 effectively encourage employers to create new mine
19 site rescue teams, nor does it implement a system by
20 which the agency can objectively evaluate certified
21 mine rescue teams. These two issues were the
22 cornerstone for this section of the MINER Act.

23 The agency has avoided writing a more
24 comprehensive regulation, as was the intent of all
25 parties involved, by citing a lack of legislative

1 history. There is no doubt that the MINER Act does
2 not have the extensive history as the Federal Mine
3 Safety and Health Act of 1977. However, there are
4 credible resources that MSHA could have and should
5 have utilized in order to create the proposed rule.

6 In order to accomplish what Congress
7 broadly defined regarding mine rescue teams, United
8 Mine Workers of America suggests the agency table the
9 current proposal and immediately meet with the parties
10 who are engaged in drafting the legislation. This
11 would afford the agency the insight it needs to
12 properly address the matter and ensure the intent of
13 the legislation is met. The Union does not believe
14 the proposed rule should move forward as it is
15 written.

16 The intent of the legislation was to
17 increase the number of qualified mine rescue teams
18 that would be readily available to mine operators in
19 the event that they are needed. The strict meaning of
20 the congressional mandate is to require that a mine
21 operator must have two such teams available at all
22 times when miners are underground.

23 Based on these requirements, it becomes
24 apparent that different operators will employ
25 different strategic plans to comply. The MINER Act

1 specifically cites these options, including mine site,
2 composite, contract and state-sponsored teams. Mine
3 operators may use whatever method they deem most
4 appropriate for their operation. The mine's specific
5 plan could incorporate a combination of any of the
6 approved means with some necessary restrictions. All
7 rescue teams must meet the minimum criteria to be used
8 in a rescue or recovery operation, including the
9 training requirements, MSHA certification, preparation
10 and rescue contests and others. In the case of first
11 responders, they must be readily available at all
12 times when miners are underground, located within one
13 hour travel time from a mine rescue station and they
14 must have practiced at the facility they are assigned
15 to service a required number of times.

16 Given the possible manpower needs in a
17 given situation, the mine operator could utilize a
18 variety of different teams. The Union would suggest
19 that based on the magnitude of the event, the operator
20 can employ every type of team permitted by the rule.
21 However, as I previously stated, teams that do not
22 meet the onsite training requirement cannot be used as
23 first responders.

24 The Union does not believe that job
25 duties, no matter what the specific duties entail,

1 should permit any mine rescue team member to avoid
2 onsite or specific mine rescue team training. Most
3 team members are highly skilled and motivated
4 individuals with a greater than normal understanding
5 of mining practices, techniques and plans. However,
6 the fact that mining operations --- that each mining
7 operation is different, a fact that mine operators
8 continually commented on, should be recognized in this
9 situation. But the duties of a single team member,
10 even if a member is an inspector, although helpful,
11 cannot adequately prepare the entire team for a rescue
12 or recovery mission. If the rescue team is seeking
13 first responder status at any operation training in
14 mine conditions at each operation they are assigned to
15 service, as is outlined in the MINER Act, this must be
16 done. This will ensure the team is familiar with the
17 conditions at each mine and are able to perform their
18 duties at the highest level.

19 The purpose of the MINER Act was to
20 ensure miners that past events where underexperienced,
21 undertrained and unqualified mine rescue teams were
22 under contract to service operations does never occur
23 again. Recent events we've seen have demonstrated
24 that simply having a team arrive on the mine property
25 does not facilitate rescue and recoverable operation.

1 This fact is extremely evident among contract mine
2 rescue teams. The regulation must eliminate this
3 possibility.

4 Every mine, whether large or small,
5 should have employees at the mine --- have mine rescue
6 trained that is familiar with the mine. Ask any mine
7 rescue team member that responds, and his confidence
8 level goes way up when they are traveling with someone
9 that knows the mine on a firsthand basis. We heard
10 mine rescue team members come to D.C. and testify on
11 the same statement.

12 State and federal teams can still play a
13 vital role. They can travel with teams from
14 operations they are responding to, much as they do
15 today. This will enhance the teams with personnel
16 that can help during decision-making time based on
17 their expertise and experience of being an inspector
18 as well as from past experience they have been
19 involved in in mine rescue events.

20 Everyone in this industry that I've been
21 associated with has told me that the key to a safe,
22 efficient operation is training, training, training.
23 Many mine rescue team members have told me that the
24 most valuable training they've received in the past
25 few years was when they were taken to Lake Lynn in an

1 exercise in smoke under full apparatus. That should
2 tell all of us something. The best insurance policy a
3 mine can have is a well-trained workforce. This
4 includes having their own trained mine rescue team
5 onsite. A mine with 36 employees or 500 employees,
6 each and every one of their lives are precious and
7 they deserve the same level of protection. It is a
8 small investment with a large payoff if the time comes
9 that you need to call on these mine rescue team
10 members. This ability to respond immediately may mean
11 the difference of saving a life or property or not.

12 I can't imagine the cost of maintaining a
13 mine rescue team would put a financial burden on any
14 mine in operation today. And if it is, then maybe
15 they shouldn't be in the business. We have to change
16 our attitude where safety comes before production,
17 where protecting our employees comes before protecting
18 our profit margins. If we are truly honest, everyone
19 in this room who has been around the industry for any
20 length of time knows how we got to where we are today.
21 We all saw this coming. We have all talked about it,
22 yet we have failed to take this issue head on and stop
23 this inevitable train wreck.

24 When I started in the '70s, coal was
25 king. Mine rescue teams were abundant. They were

1 alive and healthy. In the '80s, the coal demand
2 dropped and the agency, through policy changes,
3 relaxed the mine rescue rules. And operators stopped
4 investing into employing their own teams. And so here
5 we sit today with a problem for us.

6 The teams we have today are the most
7 experienced rescue teams in the world bar none, but
8 they are slim. God forbid if a major disaster were to
9 occur right this minute. I'm afraid we would find
10 ourselves shorthanded on the number of experienced
11 teams needed to respond. We are overworking our teams
12 that we have. How many times during the past tragic
13 events that we've been involved in have we heard our
14 team members say that they are exhausted, they need
15 help? It's time that we do the right thing. It's
16 time that we protect our miners the way Congress
17 intended. We need to protect our most valuable
18 resource, not only the miner, but the rescuer. United
19 Mine Workers will offer written comments in more
20 detail before the close of the comment period. And I
21 will be happy to try to answer any questions that you
22 may have. Thank you.

23 CHAIR:

24 Thank you, Mr. O'Dell. As I have done
25 with everybody this morning, I want to underscore with

1 you the significance to getting specific comments on
2 some of the issues that we raised in the opening
3 statement as well as some of the issues that you may
4 have heard this morning with some of the other members
5 in terms of what your reaction would be to some of ---
6 what some of the commenters, earlier commenters have
7 said this morning. And as I said to them, I'm going
8 to say to you. We would appreciate very much the
9 specifics, because the specifics do help us to make a
10 reasoned decision about going one way as opposed to
11 another.

12 I do have a few comments that I want to
13 make in terms of some of the things you said. In
14 terms of --- two things that you said. You talked
15 about our purpose, and you thought the proposal didn't
16 accomplish that purpose of improving mine rescue
17 service. And there I'm going to be a little
18 redundant, but --- and you did say that --- you were
19 providing general, some general comments of the
20 proposal did not allow MSHA to --- does not encourage
21 mine rescue teams and does not allow MSHA to evaluate
22 certified teams. If you would be --- and you wanted
23 us to write more comprehensive regulations, like I
24 said, if you would, to be a little bit more specific
25 in terms of what your suggestions would be and what

1 area should we be more comprehensive. Why doesn't the
2 proposal allow MSHA to evaluate certified teams?

3 In terms of --- you mentioned a couple of
4 specific things that I'd like to ask you about. You
5 said the teams must practice at the facility that they
6 serve, and later, all members must have training at
7 the covered mine. You've heard some of the prior
8 members, some of the prior association members, some
9 of the prior company members say that not all team
10 members had to practice each time at the covered mine.
11 So I want to understand, is it your statement that all
12 team members must train at the covered mine?

13 MR. O'DELL:

14 Yes, ma'am.

15 CHAIR:

16 For each of the training periods ---

17 MR. O'DELL:

18 Yes, ma'am.

19 CHAIR:

20 --- that are --- okay. And when you say
21 to us that you think --- because I mean, you all have
22 been here. You all have heard this with me this
23 morning, how some people say that as long --- that
24 they don't need to train at the covered mine for each
25 of the training segments required, just that maybe

1 they could train annually at the mine. So you were
2 saying, Mr. O'Dell, that they need to train at the
3 covered mine for each training segment required?

4 MR. O'DELL:

5 If I may?

6 CHAIR:

7 Yes.

8 MR. O'DELL:

9 One of the things that I was taught as a
10 miner is that I should always be familiar with my
11 workplace. And I've had that driven in my head from
12 my red hat days and I still believe that to be true
13 today. If I'm going to be efficient and I'm going to
14 be able to perform my job duties, no matter what they
15 are, I need to be familiar with my surroundings. So
16 if I'm a mine rescue team member and I'm going to
17 cover X number of mines, I think it's important that I
18 have some familiarity with those areas of the mines
19 that I'll be covering. It just only makes good sense.

20 CHAIR:

21 Okay. And I guess the point I want ---
22 because I want to make sure that I understand, I mean,
23 that I get it straight. I guess what I was asking you
24 is, for an example, if they have to train four times a
25 year under the proposed rule, you think that they have

1 to train at the covered mine for all that four times,
2 or do you think some rotation is acceptable?

3 MR. O'DELL:

4 That's something that we'll comment on in
5 our written comments.

6 CHAIR:

7 Okay.

8 MR. O'DELL:

9 We're still trying to figure that out.
10 And to be honest with you, I can understand the
11 operators having some problems with that ---

12 CHAIR:

13 That was the next thing.

14 MR. O'DELL:

15 --- based on the need that this --- that'
16 it's going to take place. It may be possible that a
17 rotation be acceptable. Then again, it may not. But
18 we'll address that in our written comments.

19 CHAIR:

20 Okay. The only other thing I have ---
21 well, I have two things right now. You said state
22 teams can play a vital role. They can travel with the
23 teams that know the mine. So what, are you saying
24 there that state teams cannot be a primary team? I
25 didn't understand --- quite understand that statement.

1 MR. O'DELL:

2 We've had several representatives from
3 the State of Kentucky, from the State of Virginia, and
4 I've even talked to some folks from MSHA, State of
5 West Virginia, who have mine rescue teams, state
6 sponsored. MSHA is in the same position with their
7 mine rescue team.

8 CHAIR:

9 Right.

10 MR. O'DELL:

11 Under the proposal, what function can
12 they play? And about every operation that I've been
13 involved in when it comes to a mine rescue event is
14 that teams will break up and they'll have somebody
15 from the state and somebody from MSHA travel with that
16 team. And I don't know why we wouldn't be able to do
17 that today. I just met with a representative from
18 Kentucky last week, and he told me that if there
19 wasn't some special circumstances placed in the rule
20 to allow the state teams to cover small mines, they
21 thought that the team was going to have to disband.

22 CHAIR:

23 Uh-huh (yes). I heard. I heard.

24 MR. O'DELL:

25 And my comment to him was that it sounds

1 to me like it's just a budgetary issue, because that
2 state team --- that state mine rescue team can still
3 function. They just can't be the primary team that
4 responds to that operation. In other words, if we do
5 our job and we do our job right, every operation in
6 this country will have mine rescue team personnel
7 employed at that mine. And we should want that. The
8 operator should want that. That's the best insurance
9 policy anybody can ever offer their miners, is to have
10 trained mine rescue team personnel at their site. I
11 don't care if it's 36 employees or 3,600 employees.

12 CHAIR:

13 One of the things we've heard so far, and
14 we've put all the transcripts up so everybody can
15 hear, is that the mines are having difficulty getting
16 members to volunteer for mine rescue service. What's
17 your --- and particularly, small mines, now that you
18 mention numbers. So what's your reaction to that?

19 MR. O'DELL:

20 We have some small mines that we
21 represent, but for the bigger part, we represent
22 larger mines.

23 CHAIR:

24 Yes.

25 MR. O'DELL:

1 I can tell you that our larger mines, we
2 have people standing in line that want to be involved
3 in mine rescue. But because there's no vacancies yet
4 on these teams, they haven't been able --- now they're
5 starting to have more teams to make it available for
6 these guys to want to participate.

7 CHAIR:

8 Yes. Well, we've heard --- just so
9 everybody --- and I want to hear everybody's reaction
10 to this. We heard --- and particularly at small mines
11 --- and like you said, you generally represent big
12 mines. We heard that there are problems getting ---
13 real problems, tangible problems, people gave us an
14 example, of getting people to volunteer for mine
15 rescue service. And they thought this proposal would
16 even exacerbate that situation, make it a little more
17 difficult.

18 MR. O'DELL:

19 Ms. Silvey, if I may, I will have to tell
20 you today that anybody that serves on a mine rescue
21 team is probably one of the most respectable miners we
22 have in this country today.

23 CHAIR:

24 Yes, I agree.

25 MR. O'DELL:

1 Because they put their life behind
2 somebody else's. They'll put somebody else's life
3 ahead of theirs. But I can't believe that, knowing
4 coal miners as I've been around coal miners for 30
5 years, that we'd have trouble fulfilling --- having
6 somebody serve on a mine rescue team, whether it be a
7 company personnel or whether it be an hourly
8 personnel. It seems like the coal mining community
9 always comes together when it comes to events like
10 this, that they want to help out. Look what happened
11 in Utah, prime example of people willing to put their
12 lives at risk to help other people. I just can't
13 imagine the problem is as large as what we say it is.

14 CHAIR:

15 And make no mistake, it was not that we
16 heard that mine rescue teams wouldn't respond. I
17 mean, we heard universally, and I think that's clear,
18 like you just said, Mr. O'Dell, that if you look at
19 the history of American coal mining, or mining period,
20 not just coal mining, that mine rescue teams will
21 respond, respond quickly and respond willingly. So I
22 don't think that anybody has any second thoughts about
23 that. I think all I was saying is we heard that they
24 --- people were having difficulty getting members to
25 serve on the teams.

1 MR. O'DELL:

2 Ms. Silvey, if I may? I honestly believe
3 that everybody that's in this room today is here
4 because they care. They care about coal miners or
5 they wouldn't be here. Most of the people that sit
6 behind me, I personally know. They're dedicated
7 people. We may differ on our viewpoints about how
8 things should go. But I think that everybody here
9 today, including your panel, is dedicated to helping
10 miners. And I think we have to be very careful as we
11 move forward and we have to keep in mind that we have
12 to go beyond and think outside of the box and keep ---
13 first and foremost, we have to understand --- and I
14 hate to say, John, you and I have been involved in
15 mine rescue meets, and you know how these mine rescue
16 guys bleed for each other, but we're not sufficient in
17 that area today. We need to fix the broken wheel.
18 And I think as we move forward, we can do that. But I
19 think it's important, whether it's a small mine or a
20 large mine, I think we can come together as an
21 industry and protect these guys and have mine rescue
22 teams available at each mine site and be training
23 them.

24 CHAIR:

25 And I'm going to take you up --- when you

1 said we need to fix the broken wheel, then just one
2 final time, when you send your comments in by the 9th,
3 be specific as to how we fix the broken wheel. I
4 mean, be specific in suggestions that you might have.

5 MR. O'DELL:

6 Yes, ma'am.

7 CHAIR:

8 We'll appreciate that.

9 MR. O'DELL:

10 What we've actually done is we've taken
11 each section and responded ---.

12 CHAIR:

13 Okay. Good. That's fine. And I only
14 have one more thing. You mentioned the Lake Lynn
15 training, and a lot of us think that that's good
16 training. But do you think that that training would
17 provide an alternative to training at the covered
18 mine?

19 MR. O'DELL:

20 No, I don't. I think it's a good
21 training as an extra training. Let me tell you, I've
22 talked with some mine rescue teams members who --- we
23 have teams that are competitive teams today and teams
24 that are noncompetitive. It's starting to change a
25 little bit. But some of the teams that I was familiar

1 with who were noncompetitive teams who didn't
2 participate in mine rescue team events, they filled
3 the mandate of mine rescue teams by carrying concrete
4 blocks in the outside yard from here to that wall
5 under apparatus. And did they get anything out of
6 that? I mean, they got to feel what a mine rescue
7 unit felt like, but did they really get to know what
8 it's like under a mine rescue event where they would
9 have to respond to a tragic --- no, they said they
10 didn't.

11 What they did say was that when they went
12 to Lake Lynn and they were under apparatus and they
13 were given a problem and they were put under smoke,
14 they said that was valuable to them. Is that as good
15 as being able to do it at the mine that they
16 represent? No. But it's a step in the right
17 direction. It's something that I think is an
18 improvement on what we do today.

19 MS. HUTCHISON:

20 You spoke about --- there's a number of
21 people available to start new teams. And we heard
22 earlier that the existing teams don't want to break
23 up. Well, I was just wondering how you go about
24 making effective new teams without using mine rescue
25 team members that are currently active on existing

1 teams. Where would that --- where would be the value
2 in a new mine rescue team just starting up with six
3 people with no mine rescue experience?

4 MR. O'DELL:

5 Well, it would be the same as what
6 occurred when I started in the mines in the '70s.
7 There were new teams that were formed with people who
8 were inexperienced, new members on a mine rescue team.
9 There's a growing period that's going to have to take
10 place. There's no question. They won't have the
11 experience that our mine rescue teams have today, but
12 we have to start somewhere. It's just like MSHA's
13 hiring new inspectors. We have new inspectors who are
14 in the mines today who have absolutely no mining
15 background, but we've sent them to the Mine Academy to
16 be trained to try to prepare them to be good
17 inspectors. We have to take the same attitude and
18 approach with new mine rescue team members.

19 And it's possible if a large mine that
20 employs two or three mine rescue teams, that new team
21 can train with those other teams and gain the
22 knowledge and know-how just by shadowing and
23 practicing with them. We keep our fingers crossed and
24 we say a prayer at night and hope that nothing happens
25 between now and the time we get these guys the

1 experience they need. And that's the best we can do
2 today.

3 CHAIR:

4 Well, I would have a different type of
5 question, and that is, since we heard about the
6 difficulty in getting new teams, I want everybody to
7 talk about --- think outside of the box. I want
8 everybody's ideas on if we have to form these teams,
9 where are they coming from? That's really my ---
10 that's my big question. Are there the members out
11 there to form these new teams?

12 MR. O'DELL:

13 Employees at the operations, absolutely.

14 CHAIR:

15 Okay. All right. I just want to make
16 sure that I ---.

17 MR. O'DELL:

18 If you have a coal miner, you have a
19 potential for a new mine rescue team member.

20 CHAIR:

21 Okay. I mean, but we are hearing the
22 gamut on this. And that's right.

23 MR. O'DELL:

24 And John --- I hate to say this again,
25 but John can tell you that mine rescue teams are like

1 a well-oiled machine, and they hate to split up
2 because they know each other's moves.

3 CHAIR:

4 No, I understand that.

5 MR. O'DELL:

6 Do you understand?

7 CHAIR:

8 I've been to many contests.

9 MR. O'DELL:

10 But we've been involved in events where
11 we've had to split these teams up with other members.
12 And you know, it works. But we do what we have to do
13 when we need to respond.

14 CHAIR:

15 Okay. Thank you. Thank you.

16 MR. O'DELL:

17 Thank you.

18 CHAIR:

19 Okay. Our next speaker is Mr. Stanchek.

20 Mr. Stanchek?

21 (Stanchek Exhibit One marked for
22 identification.)

23 MR. STANCHEK:

24 Hello, everybody. My name is Jeffrey
25 Stanchek, S-T-A-N-C-H-E-K. I'm with the Commonwealth

1 of Pennsylvania, Department of Environmental
2 Protection, Bureau of Mine Safety. I am the chief of
3 emergency response and training in the state. I am
4 responsible for maintaining and operating the mine
5 rescue stations and the training of the
6 state-sponsored mine rescue teams throughout the
7 Commonwealth.

8 Just a synopsis of what we do in the
9 Commonwealth, we have over 40 coal mines in the
10 Commonwealth, 35 of which are covered by the
11 state-trained program. Also in the Commonwealth,
12 there are ten underground stone mines, or non-coal
13 mines, if you wish, and 100 percent of them are also
14 in our program. In the eastern part of the state,
15 there are 12 underground anthracite mines and which
16 all are also under the state program. So with the
17 exception of those five mines and two smaller mines
18 outside of there, we cover basically almost 100
19 percent of all the mining activity in Pennsylvania.

20 Currently, what we also do in our state
21 is we have what you would call --- I call it
22 composite, cross-trained rescue teams. Due to when
23 the mines were shutting down about ten years ago, we
24 approached Cheryl McGill and Mr. James Petrie out of
25 the district offices in western PA for permission to

1 combine the coal and the non-coal mine rescue teams.
2 In the current provision, there is nothing that says
3 you can't do it.

4 So we combined the teams in stations in
5 Uniontown, Pennsylvania, which is in the southwest
6 corner, Ebensburg, PA, which is about central PA, and
7 also in the Tremont area, which is eastern PA. We
8 currently have two rescue teams in Uniontown, four in
9 Ebensburg and two in the anthracite. All of those
10 teams are basically composite stone and coal teams.

11 Now, what we do to make sure that
12 everyone gets the proper training is we do cross
13 training, which means we do go to different types of
14 mines. So the stone boys get to see the coal, the
15 coal gets to see the stone. And as a matter of fact,
16 it's progressed so well that actually, a lot of our
17 team captains are actually non-coal miners. So that
18 is one of my questions that when you do go back to
19 D.C. to discuss this --- I see a lot in there about
20 coal mine rescue teams, but I see --- is it going to
21 be that a coal --- you know, the rescue teams have to
22 be coal miners, or can we continue to use the
23 composite team makeup as we do right now? So that
24 will be one of my comments to the panel that we could
25 --- further discussion down the road.

1 All right. Also, I do have figures for
2 you. We talked before about with the new rule. We
3 are going to be complying with the new setup that's
4 going to be coming that --- the Commonwealth is going
5 to have to build a new rescue station to comply with
6 the one-hour rule. What that does, it leaves one
7 mine, as Pat knows from many e-mails, out of the loop
8 there, so it'll be up to that mine to apply for an
9 alternate remote mine rescue service.

10 It is going to cost the Commonwealth
11 approximately \$800,000 to build this rescue station.
12 I have the figures here I can provide to you. These
13 are just base estimates right now. But it's a
14 sizeable investment with approximately \$150,000 per
15 year just to maintain that station. So there is a
16 significant cost for maintaining these stations.

17 Once again, we are committed in the State
18 of Pennsylvania to supply mine rescue service to all
19 of our operators who ask for it. The previous
20 commenter said that it would be wise to have mine
21 rescue team members from each --- our current program
22 requires a one per 50 rule from each of our
23 operations. So every operation has at least one team
24 member, and once they reach 50 employment underground,
25 they're required to supply another one. What we are

1 requiring to do is --- with the new act coming, we are
2 going to require at least two people per mine rescue
3 --- you know, per mine. And once again, we're going
4 to keep that 50 rule there, which means once they hit
5 50 underground employment, they're going to supply a
6 third person.

7 Our plan, with Uniontown being --- if we
8 do not get the change for the composite, let us say
9 that it's going to be all non-coal and all coal teams,
10 is Uniontown will be the main stone mine rescue
11 station, because the stone regs will stay the same
12 two-hour response time, and that'll comply with the
13 law. And that's where most of the stone boys will
14 report to.

15 What our plan is then is in the new
16 Marion Center station, which is around Punxsutawney
17 area, that will be a new mine rescue station there, as
18 I mentioned. To have that, we're going to have four
19 complete rescue teams out there, and in Ebensburg,
20 four mine rescue teams there, with approximately 30
21 apparatus at each station to make sure that there is
22 plenty of coverage to respond to any emergency.

23 Also, we have a question that will be
24 coming a written comment from our Bureau officially
25 about the anthracite. Currently, we have a provision

1 of variance on the anthracite because of the number of
2 people and the way to get around an anthracite mine is
3 pretty tight, for two four-man teams. And in the
4 current provisions, I see that is still proposed,
5 however, with the exception of using any mine that has
6 electrical face equipment. The problem is there will
7 be two mines out there that's going to be using
8 electrical face equipment using conventional mining.
9 So what we have to decide is if we could continue with
10 the four-man teams there, or do those two mines have
11 to have a conventional six mine rescue team, which
12 means then we have to increase to 12 team members? We
13 are also in anticipation of increasing the amount of
14 apparatus and equipment out in the anthracite. So
15 this cost analysis I have given you also includes
16 equipment going out to the anthracite region as well.

17 Also in our program, we do use currently
18 Lake Lynn facility, which is in the southwest corner.
19 We use the Bruceton facility up in Pittsburgh, PA. We
20 use the Pioneer Tunnel, which is a tourist mine out in
21 the anthracite, and the Seldom Seen Mine for our
22 underground exercises.

23 I don't want to comment too much because
24 there will be a written comment coming for some of the
25 other things, but I do agree that the surface visits

1 is a very good idea. However, I am a little concerned
2 about the proposed requirement that all the teams must
3 train underground at all the mines. I think that
4 might be an undue hardship, not speaking for a small
5 operator, but also from our end because of the amount
6 of equipment that we may have to incur on the cost of
7 that. For example, just to fill one of the Dräger
8 BG-4 apparatus would cost approximately \$25 to do
9 that. And as you can see, if I have 24 to 30 people
10 per station and be able to do that, our costs will be
11 significant if we have to do that on a continual
12 basis.

13 Also, we would also like to know if MSHA
14 is still proposing to use the MERD in lieu of one of
15 the local contests. Currently, we do one MERD at
16 Bruceton per year, all right, and we have recently
17 started up our local contest. So if the MERD will be
18 counted where we use the liaisons, state, federal MSHA
19 people, we believe that would also count toward the
20 local contest rule, and we would appreciate that.
21 That is basically all I have. I'm free to answer any
22 questions.

23 CHAIR:

24 Thank you. When you mentioned that the
25 state provides coverage to the designated mines, you

1 gave the underground coal and the underground stone
2 and the anthracite mines. The state of --- I should
3 say the state --- the Commonwealth. The Commonwealth
4 of Pennsylvania provides --- is that the designated
5 --- does the state-designated team the primary
6 coverage?

7 MR. STANCHEK:

8 Yes, with the exception of five
9 southwestern mines and two which would use a
10 corporation from West Virginia. All the other mines
11 in the state which signed a mutual aid agreement with
12 us contract --- it has the training requirements in
13 there, compensation, what happens if they're --- you
14 know, if they're hurt on the road, if they're hurt at
15 the mine, the rate of pay. All that is covered in
16 there. And they are the primary --- you know, primary
17 rescue teams for that mine.

18 CHAIR:

19 Okay. I take it from your comments --- I
20 want to make sure I have this right. Rather, I should
21 ask you --- rather, say I assume your training --- you
22 mentioned you train at Lake Lynn, you train at
23 Bruceton. Do you train at the covered mines?

24 MR. STANCHEK:

25 Currently, we do not. We do not

1 currently train at the mines. We have been having
2 MERDs or underground training at some of these
3 facilities. However, to bring 14 team members --- in
4 order to do a proper underground training with a mine
5 rescue team at a mine site, in my opinion, you have to
6 have the two rescue teams there. That means that's
7 14-plus people. Now, with the new laws, with the new
8 MINER Act, you have the SCSR problems. I understand
9 that the SCBAs that they use right now can be used in
10 lieu of the SCSRs. However, the problem with these
11 small mines, if you have a small, one-unit mine, now
12 you're going to be taking 14-plus people underground
13 plus observers plus instructors plus the NIOSH folks,
14 you know, plus if you want to do it right, you want to
15 smoke up part of the mine so you can have --- you
16 know, you're basically asking that operation to shut
17 down for the day.

18 CHAIR:

19 Well, please, you know, specifically in
20 your comments, let us know how you do it now ---

21 MR. STANCHEK:

22 Right.

23 CHAIR:

24 --- you know, if you had to do it at each
25 underground covered mine that impacted that. I'm

1 asking everybody sort of to give --- be as specific
2 --- you mentioned that if you had to do training at
3 all underground mines, that would be an undue
4 hardship. Be specific in your comments.

5 MR. STANCHEK:

6 Okay.

7 CHAIR:

8 Please, everybody in here, I cannot
9 overemphasize the importance of being very specific in
10 any comments you submit to us before the record closes
11 on November 9th. The composite team, I gather ---
12 when you used the term composite team, I think, you're
13 talking about metal, non-metal and coal?

14 MR. STANCHEK:

15 Right. I understand that the term
16 composite can mean something else, ---

17 CHAIR:

18 Right. In the MINER Act.

19 MR. STANCHEK:

20 --- but, you know ---.

21 CHAIR:

22 Okay.

23 MR. STANCHEK:

24 But I'll put it this way. It works for
25 us right now. It really does. And once again, if

1 we're going to split these guys up, we are going to be
2 losing quality mine rescue team members off of those
3 teams that have ten-plus years of training in mine
4 rescue. So you know, we'll do what we have to do, but
5 you see what our problem's going to be. Now we're
6 going to have to retrain new people to come on these
7 rescue teams.

8 CHAIR:

9 And so why --- tell me exactly why you
10 say you will be losing team members.

11 MR. STANCHEK:

12 Because what we'll have to do is --- if
13 the current rule stands the way I read it is, a coal
14 mine rescue team can only respond to a coal mine.

15 CHAIR:

16 Okay.

17 MR. STANCHEK:

18 And if that's the case, we're going to
19 have to take, you know, up to half the mine rescue
20 teams off of some of our teams. Now they'll have to
21 be only the primary response team to a non-coal mine
22 and then we'll lose those quality guys and we're going
23 to have to start bringing up mine rescue team members.
24 And I'll mention a person's name, Mr. Ty Coleman from
25 ICG Group, that he made a very good statement. It

1 takes three to five years to make a good mine rescue
2 team member. And that's how long it takes. And you
3 know, we have people that's been on a team five years
4 plus, and you know, we hate to see that happen.

5 MR. MACLEOD:

6 So you actually have captains for some of
7 these --- on the teams that are metal and non-metal
8 operations ---

9 MR. STANCHEK:

10 Yes.

11 MR. MACLEOD:

12 --- that potentially, they may no longer
13 be able to serve in that capacity because of the ---?

14 MR. STANCHEK:

15 If the current reg looks the way I read
16 it, interpretations, you know, it basically says ---
17 it's, you know a little gray area there, but it says
18 coal mine, non-coal, you know, so it looks like that
19 they --- you know, that they may have to go back to
20 being a strict non-coal mine rescue team and a coal
21 mine rescue team. And I'd also urge our anthracite,
22 because right now we do it --- it's also being applied
23 in the anthracite too.

24 MR. MACLEOD:

25 Thanks.

1 CHAIR:

2 Okay, Mr. Stanchek. Thank you very much.
3 Yes, you can pass that to us. Thank you very much for
4 your comments. And again, Mr. Stanchek, before --- I
5 want to ask Mr. Stanchek and reiterate to everybody
6 here, please be specific when you send your comments
7 in. Please be specific about impacts. Please be
8 specific if you make comments, if you make
9 conclusions. Please provide supporting documentation.
10 This is very important.

11 Is there anybody else who wishes to make
12 a statement, comments? Anybody else? If there's no
13 one else who wishes to make a statement, then at this
14 point, I'm going to conclude the Mine Safety and
15 Health Administration's public hearing on mine rescue
16 teams for underground coal mines. As I do so, I want
17 to reiterate that we appreciate very much the time and
18 attention that you gave to this matter this morning.
19 For those of you who came, and I see obviously a lot
20 of you came, and who did not testify, we appreciate
21 your interest in the rulemaking, your interest in mine
22 safety and health, and more particularly, your
23 interest in this rulemaking. But I'm hoping that I
24 can count on some members in the audience to provide
25 additional information to MSHA before the record

1 closes on November 9th.

2 What I am going to do, and it's going to
3 be a little bit of a deviation from the hearing ---
4 excuse me, from the proposed rule notice, I am going
5 to start the public hearing on mine rescue team
6 equipment proposed rule. I'm going to start that at
7 one o'clock so that --- and that proposal relates, as
8 you know, to underground coal and underground metal
9 and non-metal. So I want to put everybody on notice
10 that I would like to start that hearing at one
11 o'clock. At this time, we will conclude the hearing.
12 Thank you.

13 OFF RECORD DISCUSSION

14 CHAIR:

15 We will now reopen the hearing, the Mine
16 Safety and Health Administration's hearing on mine
17 rescue team proposal. Mr. Stanchek had a comment. I
18 appreciate it.

19 MR. STANCHEK:

20 My apologies.

21 CHAIR:

22 At this time, we've reopened the Mine
23 Safety and Health Administration's proposal on mine
24 rescue teams.

25 MR. STANCHEK:

1 My comment is toward the certification
2 form that is enclosed in the proposed proposal. As we
3 are aware, once again, in Pennsylvania, we have a
4 state program which will be using composite teams. My
5 comment and question is going to be who ultimately
6 will be responsible for the filling out and the
7 completion of this certification form since we are
8 basically, I'm going to use the word responsible, and
9 in charge of the mine rescue program? Will it be the
10 operator which is supplying the mine rescue team
11 members, or is it going to be the Commonwealth, which
12 is providing the training?

13 CHAIR:

14 So the State of Pennsylvania is the
15 designated --- provides the designated mine rescue ---
16 but the members come from the operator?

17 MR. STANCHEK:

18 It says the --- the memo says it's the
19 operator, so our question and comment is clarification
20 on who will be responsible for having these records,
21 keeping them on record and ultimately responsible for
22 making sure --- providing to MSHA that these forms are
23 being filled out properly and on record?

24 CHAIR:

25 Okay. Well, wait a minute. Just give me

1 one minute. Okay. The way the form --- now, let's
2 get this right; okay? The form --- the regulation
3 says, for each mine rescue team designated to provide
4 mine rescue coverage at an underground coal mine, the
5 mine operator shall send to the district manager an
6 annual statement certifying that the team member ---
7 that the team meets the requirements of this part and
8 their various --- all of the requirements are that
9 they physically --- they meet the physical
10 requirements, they meet the training requirements and
11 they meet all the other requirements. So I guess it's
12 the operator's certification.

13 MR. STANCHEK:

14 Okay. That's ---.

15 CHAIR:

16 Yes. And actually, the form --- the
17 suggested form that we included in the proposal says,
18 operator's certification of mine rescue team
19 qualifications.

20 MR. STANCHEK:

21 That's my only comment.

22 CHAIR:

23 Anything else?

24 MR. STANCHEK:

25 That's all I have. That's all I wanted

1 was some clarification. Thank you.

2 CHAIR:

3 Well, you know, they said, be careful
4 what you do. But since we've opened up the mine
5 rescue team, anybody else have any comment? Thank
6 you. I appreciate it. So at this point, we will
7 conclude the mine rescue team.

8 * * * * *

9 HEARING CONCLUDED AT 1:37 P.M.

10 * * * * *

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25