

# TRANSCRIPT OF PROCEEDINGS

---

PUBLIC HEARING )  
EMERGENCY TEMPORARY STANDARD )  
EMERGENCY MINE EVACUATIONS )

Pages: 1 through 136

Place: Lakewood, Colorado

Date: April 24, 2006

---

## HERITAGE REPORTING CORPORATION

*Official Reporters*  
1220 L Street, N.W., Suite 600  
Washington, D.C. 20005-4018  
(202) 628-4888  
hrc@concentric.net

U.S. DEPARTMENT OF LABOR  
MINE SAFETY AND HEALTH ADMINISTRATION

PUBLIC HEARING )  
EMERGENCY TEMPORARY STANDARD )  
EMERGENCY MINE EVACUATIONS )

9:00 a.m.

Monday,  
April 24, 2006

Morrison Room  
Sheraton Denver West Hotel  
Lakewood, Colorado

I N D E X

<u>SPEAKER / AFFILIATION</u>	<u>PAGE</u>
Melissa Young	17
Linc Derick	22
Rebecca Boam	53
Ralph Sanich	66
Dale Byram	83
Tain Curtis	104
Marion Loomis	115
Robert Butero	118
David Arnolds	127
Al Quist	129

P R O C E E D I N G S

(9:00 a.m.)

1  
2  
3 MS. SILVEY: Good morning. My name is Patricia  
4 W. Silvey. I am the acting Director of the Office of  
5 Standards, Regulations and Variances for the Mine Safety and  
6 Health Administration. I will be the moderator of this  
7 public hearing today, on EMS, Emergency Temporary Standard,  
8 or ETS for emergency mine evacuations.

9 And at this time, I would like to ask you if you  
10 would please, to join me in a moment of silence in honor of  
11 the miners who lost their lives at the Sago Mine accident,  
12 and the Alma No. 1 Mine, and the miners who were injured in  
13 those two accidents, and all the miners who have either lost  
14 their lives this year, or have been injured thus far this  
15 year. And in honor of all the miners who have lost their  
16 lives and/or been injured working in the mines from the  
17 beginning. So if you would join me in a moment of silence.

18 (Pause.)

19 MS. SILVEY: Thank you. On behalf of the  
20 Secretary of Labor, Elaine Chao, David G. Dye, acting  
21 Assistant Secretary of Labor for MSHA, I want to welcome all  
22 of you here today. Also attending this public hearing with  
23 me are several individuals from MSHA who are on the  
24 committee drafting this ETS.

25 And they are, to my left, Eric Sherer. And Eric

1 is from Coal Mine Safety and Health, and he is the chair of  
2 this rulemaking committee. Tom Macleod from Education  
3 Policy Development, and working on all the training aspects  
4 of the rule. And Ken Sproul from our Office of Technical  
5 Support, who is working on technical aspects of the rule.

6 To my right, Jeffery Kravitz. And he is from the  
7 Office of Technical Support. And many of you know, Jeff is  
8 well renowned in the mining industry for his expertise in  
9 self-rescues and other emergency issues. Bob Snashall, who  
10 is our lawyer on the Committee. And Pham, who is the  
11 economist from my office, and Debra James, who is the  
12 regulatory specialist from my office.

13 So they have been working diligently to draft the  
14 ETS and will be working along with other people from MSHA in  
15 Arlington, drafting the final rule. This is the first of  
16 four hearings on the emergency standard.

17 The second hearing will be held on Wednesday in  
18 Lexington, Kentucky, April 26. And the third hearing will  
19 be held in Arlington, on Friday 28, April. The fourth will  
20 be held in Charleston, West Virginia on 9 May.

21 In the back of the room, we have copies of the  
22 Emergency Temporary Standard, the Federal Register notice  
23 which rescheduled the Charleston hearing for May 9. And  
24 Volumes I and II of the Compliance Guide that we have  
25 issued, addressing questions that have been raised thus far

1 in the rulemaking.

2           The purpose of these hearings is to receive  
3 information from the public that will help us evaluate the  
4 requirements contained in the emergency standard and produce  
5 a final rule that promotes safe and effective evacuation of  
6 miners during mine emergencies. We also will use data and  
7 information gained from these hearings to help us craft a  
8 rule that responds to the needs and concerns of the mining  
9 public, so that the provisions of the emergency standard can  
10 be implemented in the most effective and appropriate manner.

11           We published the ETS in response to the grave  
12 danger to which miners are exposed during underground coal  
13 mine accidents. The ETS includes requirements in four  
14 areas, as you know. The first area is immediate accident  
15 notification. That provision is applicable to all  
16 underground and surface mines, both coal and metal and non-  
17 metal.

18           The three other areas covered by the rule, self-  
19 contained self-rescuer storage and use, evacuation training,  
20 and installation and maintenance of lifelines apply to  
21 underground coal mines only. During these four hearings, we  
22 will solicit public input on all of these issues. The  
23 hearings will give manufacturers, mine operators, miners and  
24 their representatives, and other interested parties an  
25 opportunity to present their views on these issues.

1 MSHA issued this emergency standard on March 9,  
2 2006 in response to the tragic accidents at the Sago Mine on  
3 January 2, and the Aracoma Alma No. 1 Mine accident on  
4 January 19, 2006. MSHA determined that better notification,  
5 safety and training standards are necessary to further  
6 protect miners when a mine accident takes place.

7 The ETS was issued in accordance with Section  
8 101(b) of the Federal Mine Safety and Health Act of 1977,  
9 which we call the Mine Act. Under Section 101(b), the  
10 emergency standard is effective until superseded by a  
11 mandatory standard, which is to be published in the Federal  
12 Register no later than nine months after publication of the  
13 emergency standard.

14 The emergency standard. Under the Mine Act  
15 requirements, the emergency standard serves as the proposed  
16 rule. As stated earlier, we will use the information  
17 provided by you to help us decide how best to craft the  
18 final rule. In addition to the provisions of the emergency  
19 standard, we are also considering the following issues, and  
20 seek further information from you on these issues.

21 As you address these issues, either in your  
22 comments to us today, or in comments sent to us in  
23 Arlington? Please be as specific as possible with respect  
24 to impact on miner safety and health, mining conditions, and  
25 feasibility of implementation. Here are the additional

1 issues.

2           1. Should miners have the ability to tether  
3 themselves together during escape through smoke-filled  
4 environments? If so, what length of tether between miners  
5 should be required?

6           Should a miner's tether be capable of clipping  
7 easily to another's, so that any number of miners could be  
8 attached together to work their way out of a mine? How  
9 should the tether be attached to the miners' belts, or  
10 should there be a place other than the miners' belt to  
11 attach the tether to the miners.

12           Should the tether be constructed of durable  
13 and/or reflective material? Where should the tether be  
14 stored on the section, or could it be a part of the miner's  
15 belt? Should it be stored with additional SCSRs in a  
16 readily accessible and identifiable location, or in a  
17 separate location?

18           2. Should a training record under new paragraph  
19 75.1502(c)(3) not only include a requirement that mine  
20 operators certify all miners who participated in each  
21 emergency evacuation drill, but also additional information  
22 such as a checklist. The checklist could be used to itemize  
23 the successful completion of each step of the training, as  
24 outlined in the approved program of instruction.

25           3. When should a miner don an SCSR during an



1 evacuation? Currently, miners are told to don an SCSR when  
2 they believe they are in danger, or when smoke is  
3 encountered. This may leave miners vulnerable to  
4 irrespirable air, such as air that contains lethal carbon  
5 monoxide levels or low oxygen. MSHA is considering  
6 requiring that at least one miner in a group of miners, and  
7 an individual miner when working alone have at least one  
8 multi-gas or air quality detector with them.

9           4. In the preamble to the ETS, we discuss a  
10 method to locate additional SCSRs, based on a joint MSHA-  
11 NIOSH heart rate study. MSHA solicits comments on the heart  
12 rate method; whether this is the most appropriate method to  
13 determine location, whether it is realistic, and any other  
14 comments you may have on the heart rate method. What other  
15 reliable alternatives exist for determining where to  
16 position additional SCSRs in the mine.

17           5. MSHA is considering a requirement that  
18 additional SCSRs under new paragraph 75.1714-4(c) be stored  
19 in all escapeways at intervals of 5,000 feet for mines where  
20 the escapeway height is above 48 inches, and 2,500 feet for  
21 all other mines. Would such a specification standard be  
22 more appropriate than the performance oriented heart rate  
23 method provided in this ETS?

24           Regarding such a specification oriented standard,  
25 what would be more appropriate? 5,000 and 2,500 foot

1 intervals for heights greater than 48 inches, and heights 48  
2 inches or less, respectively, or some other specific  
3 interval?

4 6. Should all underground coal miners be  
5 required to use SCSRs exclusively? If so, is it appropriate  
6 to prohibit the use of filter self-rescuers in all  
7 underground coal mines.

8 In addition, MSHA is considering adding a new  
9 provision to 75.1714-4 that would allow the use of new SCSR  
10 technology to comply with the standard, such as SCSRs that  
11 have the ability to provide up to two more hours of oxygen  
12 per unit. Is such a provision appropriate?

13 7. Manufacturers sometimes lose track of which  
14 mines purchase their SCSRs. When a mine shuts down, SCSRs  
15 are often sold to another mine. In the past, problems have  
16 been discovered with all brands of SCSRs.

17 MSHA is considering requiring that the following  
18 information be reported for each SCSR at each mine. The  
19 total number of SCSRs, the manufacturer, the model, the date  
20 of manufacture, and the serial number. Is it appropriate to  
21 require mine operators to report to the relevant MSHA  
22 district manager the total number of SCSRs in use at each  
23 underground mine? If so, should any additional information  
24 be reported?

25 8. Because in the past, MSHA did not always

1 learn of problems associated with SCSRs, MSHA is considering  
2 a requirement that mine operators promptly report to the  
3 MSHA district manager in writing all incidents where an SCSR  
4 required by 75.1714 is used for an accident or emergency,  
5 and all instances where such SCSR devices do not function  
6 properly.

7           In addition, when any SCSR device does not  
8 function properly, the mine operator would be required to  
9 retain the device for at least 90 days for an MSHA  
10 investigation. These requirements would help assure that  
11 MSHA is notified of problems in a timely manner, so that  
12 MSHA can provide timely notice to both manufacturers and  
13 users to assure that the affected SCSRs are available for  
14 testing and evaluation. Should MSHA include such  
15 requirements in the final rule?

16           9. SCSR storage locations in escapeways may not  
17 be readily accessible to all persons underground, such as  
18 pumpers, out by crews and examiners. Are there other ways  
19 to provide readily accessible SCSR coverage for these  
20 miners? Are there other storage locations that would be  
21 readily accessible to such persons?

22           10. MSHA sought comments on the appropriateness  
23 of requiring that signs to help locate SCSR storage areas be  
24 made of reflective material. MSHA also asks whether there  
25 are alternative methods available for making SCSR storage

1 locations easy to locate when conditions in the mine might  
2 obscure storage location. What methods exist that would  
3 made SCSR storage locations readily visible.

4 11. Under new paragraph 75.1714-4(c), operators  
5 are required to have separate SCSR storage in search  
6 escapeway. Where a mine has parallel and adjacent  
7 escapeways, under what circumstances would it be appropriate  
8 to allow a hardened room, or a "safe haven" to serve both  
9 escapeways with one set of SCSRs?

10 A hardened room is a room constructed with  
11 permanent seal techniques, submarine type doors opening to  
12 both escapeways, and positive ventilation from the surface  
13 through a borehole. Is a safe have an acceptable  
14 alternative? If so, what should be the minimum criterial  
15 for MSHA to accept a hardened room or safe haven?

16 12. Currently, cone systems on lifelines vary,  
17 some with the cones pointing toward the face, and others  
18 pointing away from the face. Miners may become confused in  
19 an emergency as to the direction of escape.

20 Should cones, or other directional indicators on  
21 lifelines be standardized? Following a NIOSH  
22 recommendation, and for ease of movement, should the point  
23 end of the cone be toward the face?

24 13) Miners should be able to safely evacuate a  
25 mine without the use of mechanized transportation. There

1 may be unique escapeway conditions, including ladders, man  
2 doors, airlocks, and overcasts, where hands-on experience of  
3 these conditions is required in order to quickly and safely  
4 escape the mine. It is reasonable to require that miners  
5 walk the escapeways at least under these unique escapeway  
6 conditions.

7           Should all miners be required to walk the  
8 escapeway in its entirety rather than use mechanized  
9 transportation during the drills required by new paragraph  
10 75.1502 (c)? We are considering including a requirement in  
11 the part 48 training program for new miners that new miners  
12 travel, at least in part, both escapeways. Would this  
13 training be appropriate, and should the training include  
14 walking part or all of the escapeways?

15           14. A more instructive emergency evacuation  
16 practice may be provided by using realistic drills. For  
17 example, conducting a drill in smoke, or using a realistic  
18 mouthpiece that provides the user with the sensation of  
19 actually breathing through the SCSR, commonly referred to as  
20 expectations training, are more realistic than simulation  
21 training. What other realistic emergency evacuation  
22 practices and scenarios would ensure that miners are better  
23 prepared to act quickly and safely in an emergency?

24           We intend that scenarios required by the Approved  
25 Program of Instruction under paragraph 75.1502(a) be used to

1 initiate the drill, and to conduct the mine emergency  
2 evacuation drills required under that paragraph. For  
3 example, to initiate the drill, a section foreman may choose  
4 one of the mines approved explosion scenarios.

5           The foreman would gather the miners on the  
6 section and state where the explosion occurred, any special  
7 circumstances of the event, and conditions requiring  
8 immediate donning of SCSRs. The foreman and miners would  
9 then physically follow the best options for evacuation as  
10 they evacuate the mine. When the miners travel to the place  
11 or into conditions that require immediate SCSR donning, the  
12 need to don the SCSR must be made clear, so that it is  
13 understood by all.

14           15. We expect that scenarios developed as part  
15 of the mine emergency and firefighting program of  
16 instruction under 75.1502(a) would be included as part of  
17 the emergency evacuation drills, under 75.1502(c), making  
18 the drills more realistic. Should we further clarify this  
19 issue in the final rule? Are there additional requirements  
20 that should be included in this training to make it more  
21 realistic, such as conducting SCSR donning in a smoke-filled  
22 environment?

23           16. We are considering putting all emergency  
24 evacuation drill requirements in 75.1502. As you know, for  
25 example, the escapeway drill requirement under 75.383

1 pertaining to the frequency of drills, how far miners travel  
2 in the drills, and the number of miners involved in each  
3 drill. I am sure you are familiar with those. They would  
4 be incorporated in two requirements under 75.1502.

5 Under 75.383(b)(1), each miner must participate  
6 in a practice escapeway drill at least once every 90 day,  
7 but is only required to travel to the area where the split  
8 of air ventilating the working section intersects a main air  
9 course, or 2,000 feet out by the section loading point,  
10 whichever distance is greater. Under new 75.1502, during  
11 the emergency evacuation drills, the miners must travel to  
12 the surface, or to the exits at the bottom of the shaft or  
13 slope.

14 Section 75.383(b)(2) and (b)(3) require that  
15 practice escapeway drills occur at least once every six  
16 weeks, but this only involves two miners and a supervisor.  
17 Miners systematically rotate taking these drills, so that  
18 eventually all miners would have participated under that  
19 provision. Under new 75.1502, emergency evacuation drills  
20 are required for all miners and at periods of time not to  
21 exceed 90 days. We will have to reconcile these time  
22 differences.

23 MSHA is requesting comments on incorporating all  
24 evacuation drill requirements in 75.1502. We are also  
25 considering requiring section bosses to travel both

1 escapeways in their entirety, prior to acting as a boss on  
2 any working section or at any location where mechanized  
3 mining equipment is being installed or removed.

4 17. And I believe this is the last issue,  
5 anyway, that I am going to read at this time. We are also  
6 considering requiring that all mine fires be reported to  
7 MSHA, including fires shorter than 30 minutes duration.

8 This would address all mine fire hazards,  
9 including situations where a number of short duration fires  
10 occur. Should the definition for accident in 50.2(h)(6) be  
11 revised to include all unplanned underground mine fires, or  
12 fires of a particular type or duration, or occurrences at  
13 particular locations in the mine?

14 To date, well, at the time, I should say, when I  
15 left Arlington, we had received two comments on the  
16 emergency standard. You can review the comments by going on  
17 our website at the following address, [www.msha.gov](http://www.msha.gov), under  
18 the section entitled rules and regulations.

19 We have also asked several questions on  
20 compliance with the ETS covering a range of issues. These  
21 questions and answers -- and I spoke earlier of the  
22 compliance guide -- are included in the compliance guide,  
23 and are posted on our web page also.

24 Finally, we have received questions as to whether  
25 the emergency evacuation training provision for metal and



1 non-metal mines are affected by the ETS. While the ETS  
2 amends part 48 by adding references to the requirements for  
3 emergency evacuation plans in existing 57.11053 for  
4 underground metal and non-metal mines, these references do  
5 not affect or change in any way existing training  
6 requirements for metal and non-metal miners and operators.

7           And it is our intent not to change the existing  
8 part 48 emergency evacuation training provisions for metal  
9 and non-metal mines. We will clarify this in the final  
10 rule.

11           As many of you know, the format of this public  
12 hearing will be as follows: formal rules of evidence will  
13 not apply, and this hearing will be conducted in an informal  
14 manner. Those of you notified MSHA in advance of your  
15 intent to speak, or have signed up today to speak will make  
16 your presentations first. After all scheduled speakers have  
17 finished, others will be allowed to speak.

18           We also have an attendance list, and I ask that  
19 if any of you have not signed it in the back of the room,  
20 would you please do so before you leave? If you wish to  
21 present written statements or information to me today, you  
22 can do so.

23           Please clearly identify your material. I will  
24 identify the material, and it will be so identified in the  
25 record by the title that is submitted to me. And you may

1 also submit comments following the public hearing today.  
2 The comments must be submitted to MSHA by close of the  
3 comment period which is May 30, 2006. Comments may be  
4 submitted by any of the methods identified in the ETS.

5 And this is important for you to know; that MSHA  
6 will post the transcripts of all of the public hearings on  
7 our website. Each transcript will be posted there  
8 approximately one week after the completion of the hearing.

9 The transcript will include the full text of my opening  
10 statement, and the specific issues for which the Agency  
11 seeks additional comment.

12 We will now begin. And we will begin with  
13 persons who have requested to speak. Please begin by  
14 clearly stating your name and organization for the reporter,  
15 to make certain we obtain an accurate record. And how our  
16 first speaker is Melissa Young with Colorado Rock Products.

17 MS. YOUNG: Good morning.

18 MS. SILVEY: Good morning.

19 MS. YOUNG: Is this on?

20 MS. SILVEY: Yes.

21 MS. YOUNG: Okay. My name is Melissa Young, and  
22 I am the regulatory specialist for the Colorado Rock  
23 Products Association.

24 On behalf of the Association, I would like to  
25 thank the Mine Safety and Health Administration, and the

1 public for the opportunity to speak today about the  
2 Emergency Temporary Standard. CRPA represents 34 producer  
3 members and 28 associate members throughout the state, who  
4 produce over 38 million tons of aggregates, crushed stone,  
5 sanding gravel and clay, which are used in various forms of  
6 construction for highways, sidewalks, residential and  
7 commercial buildings and water and sewage treatment plants.

8 As stated before, on May 9, MSHA issued an  
9 emergency temporary standard, which included a requirement  
10 for immediate accident notification applicable to all  
11 underground and surface mines. MSHA defined immediate  
12 notification as contacting MSHA at once, and without delay  
13 and within 15 minutes of an accident.

14 This brings me to the concerns of our industry.  
15 Requiring that MSHA be notified within 15 minutes of an  
16 emergency event is impractical, and may be dangerous.

17 First, in the event of an emergency, mining  
18 personnel immediately are engaged in the rescue effort,  
19 excuse me, are engaged in the steps needed to save lives,  
20 and limit harmful effects, such as being focused on the  
21 rescue effort, securing the equipment and area, and letting  
22 the emergency responders in mine. In questioning our  
23 members about the time it currently takes them to notify  
24 MSHA of an accident, the response was anywhere from 30  
25 minutes to one hour after the accident has occurred.

1           Second, what if there is only one cellular phone  
2 in the area, and that phone is used to contact 9-11? The 9-  
3 11 operator keeps the caller on the phone until the  
4 emergency responders arrive. The time that takes for the  
5 emergency responders to arrive could be longer than 15  
6 minutes after the accident.

7           Third, in some locations, the mine operator is  
8 the emergency responder, since it takes emergency personnel  
9 too long to get to the site. In this case, the operator  
10 again would be focused on the rescue effort, and not in  
11 contacting MSHA within 15 minutes.

12           Fourth, the Emergency Temporary Standard will  
13 adversely affect small mines, and mines that operate on the  
14 weekends. Some operations are not fully staffed on the  
15 weekends, and just like small mines, if one or two people  
16 are injured in an accident, again, the other miners should  
17 be focused on the rescue effort, and not on contacting MSHA  
18 within the 15 minutes.

19           Fifth, most mine operations have an emergency  
20 management action plan that denotes whose responsibility it  
21 is to contact MSHA in case of an accident. In implementing  
22 the action plan, it may take longer than 15 minutes to  
23 follow the chain of command and get a hold of the person  
24 with the responsibility to contact MSHA.

25           In conclusion, we believe that a reasonable

1 notification period is necessary, but not one that has the  
2 potential to distract miners from life-saving activities.  
3 To the heretofore mentioned concerns, the Colorado Rock  
4 Products Association respectfully requests that the 15-  
5 minute notification requirement of the Emergency Temporary  
6 Standard not be finalized. Thank you, and I would be happy  
7 to answer any questions.

8 MS. SILVEY: Okay. Thank you. I would bring to  
9 your attention, as I am sure if you are the regulatory  
10 specialist you know, that the standard -- I was looking at  
11 it -- the standard does say within 15 minutes of having  
12 that -- you mentioned the issue of the cell phone, of having  
13 access to a telephone, or other means of communication.

14 And I would also say that I would think that, and  
15 I mean, we have some of our MSHA people here today, that we  
16 would be reasonable under circumstances, depending on what  
17 circumstances are. But one of the things that led us to do  
18 this was that not only in terms of -- and I understand  
19 clearly what you are saying.

20 But not only in terms of the mine, and the mine  
21 in terms of guarding any necessary emergency resources  
22 needed to respond in this situation of an accident, but also  
23 in terms of MSHA, in terms of getting any necessary  
24 resources that it needs to help assist the mine. So for  
25 those many reason that led us to come with this provision.

1 But you know, and as I stated to you, I think we probably  
2 would intend to be reasonable under the circumstances in  
3 terms of the requirement.

4 MR. SNASHELL: As an additional clarifying point  
5 Pat, the standard triggers when the operator has determined  
6 that an accident has occurred. It is not 15 minutes from  
7 the occurrence of an accident, so much as it is 15 minutes  
8 from the time that the operator has determined that an  
9 accident has occurred, so the operator has a reasonable  
10 amount of time to investigate to determine whether there has  
11 been an accident. Consonant with the intention of a  
12 standard that the action be done promptly and vigorously to  
13 make that determination.

14 MS. YOUNG: I just, two things I just would go in  
15 to about in the standard, where it does say it takes, you  
16 know, you are supposed to call MSHA as soon as like a phone  
17 is available. And the consensus from my members was it just  
18 wasn't clear. I mean, obviously a phone is available, if  
19 they are on the line with 911.

20 But so, there was some confusion there. Okay, a  
21 phone is available, but they are using it to call 911. So  
22 that is just a concern that I wanted to bring.

23 MS. SILVEY: Okay. Well, we appreciate that.  
24 That is a valid concern.

25 MS. YOUNG: The other concern, right, about the

1 you know, it wasn't clear to us that it basically is from  
2 when an operator determines the accident occurs. It looks  
3 like in the preamble and everything, that it is from the  
4 moment that accident happens. And so that is what the other  
5 big issue. So that is what I wanted to talk about. So,  
6 thank you.

7 MS. SILVEY: Thank you very much. And so if we  
8 can -- need to make any clarifying -- do any clarifying in  
9 the final rule, we would do that.

10 MS. YOUNG: Thank you.

11 MS. SILVEY: Thank you. Our next speaker is Linc  
12 Derick. And Linc is with Twentymile Coal Company.

13 MR. DERICK: My name is R. Lincoln Derick,  
14 Technical Safety Manager for Twentymile Coal Company. I  
15 appreciate the opportunity to present comments here today on  
16 behalf of Twentymile Coal Company. I have been very active  
17 in the subject of mine emergency for over 30 years.

18 The format of my comments starts with the  
19 specific MSHA request for comments, followed by comments  
20 specific to the emergency standard as published in the  
21 Federal Register. Several additional comments that are  
22 outside the scope of these specific regulations but relate  
23 to the overall topic are also included, and designated as  
24 such.

25 With the opening statement, I request that the

1 record be extended for two more months, because there are  
2 way more requests for comments from MSHA than were ever in  
3 the Federal Register, in fact, probably twice as many as  
4 that I commented on. So I think the record should be  
5 extended to be able to address those.

6 MS. SILVEY: Duly noted.

7 MR. DERICK: Okay. The comments you have before  
8 you are in a format, going to the Federal Register, and then  
9 I used the every where MSHA requested comments. And it is  
10 like I said, quite a few more requests came from the opening  
11 statement.

12 But MSHA requested comments on whether miners  
13 should be required to walk the escapeway, rather than use  
14 mechanized equipment or transportation during the drill.  
15 This could result in serious medical concerns. Without  
16 actually donning an SCSR, the airflow or temperature could  
17 be a serious concern.

18 At Twentymile, both escapeways are in fresh  
19 intake air with over 300,000 cubic feet per minute. At this  
20 quantity, the velocity exceeds 30 miles per hour and can  
21 have a wind chill effect of more than minus 100 degrees in  
22 the winter months. No miner should be exposed to this  
23 temperature for the length of time required to walk out of  
24 the escapeway when mechanical transportation is available  
25 and normally always utilized.



1           In a real emergency situation the fact that SCSR  
2    is being used would protect the miner's lungs from  
3    temperature or high velocity air flow. And the very fact  
4    that an SCSR if donned, would most likely address the  
5    temperature variation. The time it takes to walk an  
6    escapeway when mechanical means are available only would  
7    measure endurance of miners, versus increasing their  
8    knowledge.

9           The walking is going to be continually disrupted  
10   if walking the primary intake escapeway and mobile equipment  
11   is also utilizing that airway. The chances of a vehicle-  
12   pedestrian accident increases.

13           A confusing requirement has existed in the  
14   current regulations, and continues in the emergency  
15   temporary standards. Drills should be required quarterly  
16   versus every 90 day. The drills should take place in the  
17   first two week of each quarter, which would allow for two  
18   weeks of flexibility.

19           The 90 day only accounts for 360 of 365 or 366  
20   days. Therefore the drills would be at different calendar  
21   times every year versus January, April, July, and October.  
22   The annual retraining requirements allow for training until  
23   the end of the month in which the certificate is dated.

24           Also, if someone returns to the mine and missed a  
25   drill, a two week period should be granted to conduct the

1 drill with all employees who missed that drill. Then all  
2 the employees who missed that drill could be given a mine  
3 emergency drill as a group, but never work greater than two  
4 weeks upon return until the drill is performed. And I  
5 noticed that in your standard, you are actually saying until  
6 the next drill is scheduled.

7           So that is -- immediate notification, MSHA  
8 invites comments on whether 50.10 should be further amended  
9 to require that the notification specify the type of  
10 accident for existing 50.2(h). The 15-minute requirement or  
11 a more reasonable 30-minute requirement should only be  
12 required for emergencies that are still ongoing, and  
13 personnel safety is still at risk.

14           The current requirement within one hour is  
15 sufficient for other emergencies or reportable events. A  
16 roof fall in an out by location usually isn't even  
17 investigated by MSHA until a convenient time allows. In a  
18 recent attempt to do an immediate notification that resulted  
19 solely from a power outage took over 15 minutes of constant  
20 calling and multiple contacts with spouses and MSHA  
21 officials.

22           A call to the office with a voice mail should be  
23 sufficient notice. The responsibility of the response  
24 should then should be MSHA. Should the call be placed to  
25 the national number, call backs to clarify the incident

1 would be very time consuming. Again, under immediate  
2 notification, MSHA asks whether it should call, or should  
3 report all underground mine fires.

4 MSHA has utilized a 30-minute fire for reporting  
5 under Part 50 for years. We would hope that MSHA would  
6 verify a press article before using in the Emergency  
7 Temporary Standard. I would like to -- MSHA related to a  
8 press article. It was reported in the press that there had  
9 been a fire previously at the same spot along the beltline  
10 in the Aracoma Alma No. 1 Mine, and that the belt had been  
11 running hot for days before the fire.

12 That, this standard was published on March 9.  
13 Six weeks have passed. I would have thought the MSHA  
14 investigation would have confirmed a fact like that, instead  
15 of using the press for part of its information for  
16 publishing standards. Has there been a determination of  
17 whether those are true facts?

18 MS. SILVEY: Are you asking me that?

19 MR. DERICK: If I can.

20 MS. SILVEY: Yes. You can ask anything. The  
21 investigation is ongoing at this time.

22 MR. DERICK: But has that fact been verified  
23 through the investigation?

24 MS. SILVEY: Well, the investigation is ongoing.  
25 So the investigations are not final now.

1 MR. DERICK: Okay.

2 MS. SILVEY: When they are, we are going to make  
3 them public.

4 MR. DERICK: Okay. I just believe referring to a  
5 press article is not really proper in a public standard.  
6 Paragraph would lead one to believe that any type of fire  
7 should be reported under Part 50.

8 Therefore, an immediate reportable event would be  
9 considered to have occurred, even though it has been totally  
10 abated before any notification could be made. This could be  
11 as simple as cutting sparks smoldering that are quickly  
12 extinguished. The clear and concise definition of what  
13 constitutes a reportable fire must be made available.

14 How does spontaneous combustion get clarified  
15 with the oxidation of coal process? Approved ventilation  
16 plans have had defined terms such as oxidation, increased  
17 oxidation, elevated oxidation and spontaneous combustion for  
18 that specific mine. In these cases, smoke or flame may  
19 never have been encountered.

20 The mine operator usually discusses these issues  
21 with the appropriate MSHA personnel, versus a must report  
22 situation. Again, under immediate notification, MSHA wants  
23 to know how the definition of accident, if it should be  
24 revised to take fire hazards that miners face into  
25 consideration.

1           If all situations of fire are smouldering would  
2 constitute a Part 50 reporting event, then Part 50 should be  
3 revised to allow for the operator to keep a log of such  
4 events versus triggering an immediate reportable event.  
5 This could be similar to the OSHA log for reporting injuries  
6 versus the MSHA need to submit a 7000-1 report within ten  
7 days.

8           MSHA also requested comments on whether miners  
9 should have the ability to tether themselves together during  
10 escapes through smoke filled environments. This is a  
11 reasonable requirement for section crews, or fixed location  
12 crews performing work.

13           Examples of method to quickly implement,  
14 makeshift tether lines should be provided to the mine  
15 operators and miners. Electricians' tape, baling wire,  
16 firehose, tagline from an out by, a used SCSR case are some  
17 examples. As a last resort, miners can be taught to simply  
18 grasp the miner's belt of the miner in front of them.

19           However, consideration must be made than it may  
20 be safer to only have each miner holding the crew life line,  
21 versus being fastened to it, with the miner being  
22 continually stepping on the heels of the miner in front of  
23 them all the way out of the mine. MSHA is asking for  
24 comments and suggestions on alternative realistic emergency  
25 practices, to ensure the miners are prepared to act in an

1 emergency.

2           Current regulations result in the miner operator  
3 and responsible person being in a difficult situation,  
4 because of questionable alternative options of evacuation or  
5 escape, versus solely instructing on designated escapeways  
6 as specified by the regulations. Hand-on fire fighting  
7 training, realistic smoke training, and other training  
8 should be considered as compliance with these regulations,  
9 as long as MSHA is properly notified in advance to  
10 participate and to determine the effectiveness of the  
11 training. MSHA must recognize the possibilities of other  
12 escape or evacuation options that do not include solely the  
13 primary and alternate escapeways.

14           MSHA is soliciting comments on whether the record  
15 of training should include additional information, such as a  
16 checklist. These regulations are already in place with the  
17 current fire drill requirements. The checklist should be  
18 optional for the operator and used to consider whether a  
19 miner as being trained, as a trained mine emergency person  
20 who could respond to an emergency.

21           MSHA also solicited comments on whether specific  
22 specification standard would be more appropriate than the  
23 performance oriented approach provided in the ETS. A design  
24 type standard is reasonable to be the minimum requirement  
25 with the performance testing being used to allow an increase

1 in storage distances.

2 MSHA solicits comments on the appropriateness of  
3 eliminating filter self-rescuers from all underground mines.

4 A reasonable change, as long as time period for removal of  
5 the SCSRs is flexible. MSHA had discourage in the past for  
6 many mines than desired utilizing short duration oxygen  
7 units which resulted in the use of the FSRs. It appeared to  
8 us that once the United States Navy ordered a very large  
9 number of these units, their acceptance by MSHA started to  
10 change.

11 MSHA also solicited comments on the  
12 appropriateness of requiring mine operators to report the  
13 total number of SCSRs with appropriate information semi-  
14 annually. This should be a prudent business practice for  
15 operators to perform, especially with the large investment  
16 resulting from these new regulations. It may be a  
17 reasonable expectation by MSHA to have these records  
18 available.

19 MSHA is therefore soliciting comments on storage  
20 locations that are readily accessible to such persons, and  
21 this was referring to out by personnel. Out by personnel  
22 would have sufficient SCSR units available for escape with  
23 the two units required to be available. And I have a  
24 further comment later on that.

25 If the mine escapeway distances exceeds that

1 capability, then they would be covered under the amount of  
2 SCSRs needed in each out by storage area. The regulation  
3 mandates a sufficient number of SCSRs be made available in  
4 both the primary and alternate escapeway for all employees  
5 who might use either of those escapeways.

6 Storage locations within stoppings should be  
7 considered readily accessible. Escapeways oftentimes go  
8 through stoppings, or miners have to go through stoppings to  
9 get to an escapeway. And this location could offer better  
10 protection to the units that storing the devices in the  
11 intakes at below freezing temperatures.

12 If the travelway utilized by out by personnel or  
13 section crews is the same as the escapeway, we do not  
14 believe that an additional SCSR gives additional protection,  
15 since the miners will always be within one hour of a storage  
16 location. Carrying additional units will only result in  
17 more damage from frequent handling and being misplaced and  
18 forgotten at shift change, and other times.

19 MSHA solicits comments on the appropriateness of  
20 requiring signs to be made of reflective material and  
21 alternative methods. This is a reasonable requirement. The  
22 alternative method should only have to provide an equivalent  
23 level of identification. Future intake storages may allow  
24 for the possibility of strobe lights activated from the  
25 surface, or other similar method.



1           This was under maps and locations, but the  
2 comment was on MSHA solicits comments on the reporting of  
3 failures or usages of SCSRs. This would discourage testing  
4 of SCSRs, since what might be perceived to be a failure  
5 might be improper donning or premature removal of the unit.

6       Many removal of the units by employees during testing is  
7 because of uncomfortable feeling and not a unit failure.

8           MSHA would need to demonstrate to industry that  
9 reporting would be beneficial to learning, versus  
10 enforcement. The safety of the miners is what is important,  
11 not the manner of enforcement.

12           We have had numerous reports of SCSR failures  
13 during tests to MSHA and in one, we were promised the  
14 results and never received them. And eventually, it caused  
15 a recall. But they would never release the information,  
16 even though it was our testing.

17           Now back on to just that aren't specific requests  
18 for comments, but are in the scope of the ETS. Under  
19 general discussion, because MSHA keeps referring to hands-on  
20 training, in the transferring of self-rescuer devices.  
21 Information on the correct procedures is not provided by the  
22 manufacturer, especially from one manufacturer's unit to  
23 another. Also, no instructions are available to transfer  
24 from a chemical generating oxygen unit to a compressed  
25 oxygen type unit or vice-versa.

1           In the research and studies, we had participated  
2 in notice of trial with the Bureau of Mines, NIOSH now, on  
3 training since the 1980s. We were the first mine at Orchard  
4 Valley to install self-contained self-rescuers in the United  
5 States. Part of that training was SCSRs donning was deemed  
6 to be a motor skill.

7           So NIOSH, or the Bureau then, they provided each  
8 miner with their own mouthpiece and corrugated hose,  
9 developed their own training unit. They would simulate the  
10 resistance. And each miner wouldn't be considered  
11 proficient until they could do five perfect three plus three  
12 donnings.

13           The training models available today make that  
14 type of training almost impossible and it needs to be  
15 relooked at. It is a motor skill, and to really become  
16 proficient simulating in a mouth piece and nose clip is not  
17 really providing that type of training.

18           The recently published NIOSH Informational  
19 Circular 9481, Fire Response Preparedness for Underground  
20 Mines was preceded by Informational Circular 9452, An  
21 Underground Coal Mine Fire Preparedness and Response  
22 Checklist; the Instrument. That publication was a  
23 cooperative research effort between NIOSH and Twentymile  
24 Coal Company, which was conducted over a period of years.

25           In both of those instruments, there is a lot of

1 recommendations that we are still having trouble getting  
2 approved to be used in the mines today. And I will  
3 specifically talk about the green lasers. On page 12,258,  
4 there was the need for additional self-contained self-  
5 rescuers. Too much emphasis is being placed on all miners  
6 evacuating the mine that are not needed to respond to an  
7 emergency. Once an employee is out by an emergency, they  
8 may be needed to obtain additional supplies from out by  
9 locations.

10 Now that emergency drills are required on  
11 different types of emergencies, are the employees now deemed  
12 to be considered a trained person to respond to such  
13 emergencies? If not, will additional mine emergency  
14 training, such as hands-on fire extinguisher, fire hose  
15 usage, et cetera be sufficient to classify them as a trained  
16 mine emergency employee. Does MSHA have any plans on  
17 developing training guidelines that would qualify a miner  
18 for emergency?

19 These next two are out of the first compliance  
20 guide. The second compliance guide came out when I was on  
21 vacation, and I haven't responded to those either. But  
22 there is one question in there. It says, can I store the  
23 SCSRs in a room or entry that is adjacent to the escapeway  
24 that may be reached by going through a man door? And the  
25 answer is no.

1           This is understandable, if you need to enter the  
2 other air course, but using the answer to that is no, to the  
3 next question is wrong. And that is, can I -- I have a mine  
4 where a primary and alternate escapeways are adjacent to  
5 each other.

6           Can I build a room between these two escapeways  
7 with block stoppings and two manors that is accessible from  
8 either escapeway to store one set of extra SCSRs required by  
9 the standards. The answer is no.

10           This prohibits the mine operators from storing  
11 the SCSRs in the most preferred locations. Temperature  
12 would be one reason, and it may be the most logical location  
13 to test to see if another airway is now smoke free, or has  
14 less smoke.

15           In our situation, we plan to store the additional  
16 units between machine doors that isolate two intake  
17 escapeways that are also isolated from the belt. We want  
18 escaping employees to be led into this area, so they can  
19 test the escapeway on the other side of the belt, or secure  
20 additional unites if needed. If the issue is the quantity,  
21 versus going through door, then if the quantity is needed  
22 for both escapeways, MSHA should actually encourage this  
23 situation.

24           A note that is not there, a little extra note is,  
25 we are in the process of putting in another intake shaft.

1 And we have escapeways going out all directions out of the  
2 mine. We had put our effort in additional escapeway  
3 directions, versus thinking somebody is going to come all  
4 the way out on of the mine from one SCSR to another.

5 But when this shaft is completed, the four miles  
6 of our mine that have dual intake escapeways on both sides  
7 of the belt will be reduced to one designated escapeway. We  
8 will naturally use those other SCSRs for the developing area  
9 of the mine that is going on at that time. So what this  
10 would result in, is both escapeways are going to be left  
11 intact, but only one of them will be designated.

12 And that is again, why we would rather have the  
13 SCSRs stored between the equipment doors that isolate those  
14 two escapeways. Otherwise, if you were in the non-  
15 designated escapeway, you would have to enter the  
16 contaminated escapeway to get to an SCSR. I don't believe  
17 that has really been thought of too much.

18 And there is a lot of comments against storing  
19 them in through manors. I think that everybody has always  
20 been taught that periodically, you should be evaluating the  
21 air courses next to you. And in the mines where this is,  
22 there is actually three intake escapeways, plus an intaking  
23 belt. And to not store these units out of 100 degree below  
24 zero windchill, and be where miners should access them, I  
25 think really needs strong consideration.

1           These other comments are related to the Emergency  
2 Temporary Standard, but they are outside the scope of the  
3 actual standard themselves. But similar to your  
4 introduction, you went into many requests for comments that  
5 are outside the scope. Getting into the refuse chamber  
6 area, to drill holes from the surface, and the submarine  
7 type doors.

8           So I feel that these comments are very  
9 appropriate, too. Fire researcher items needed. High  
10 expansion phone generator tests. We have been conducting  
11 high expansion phone generator tests in conjunction with  
12 NIOSH for over ten years. And in the near future, a NIOSH  
13 report will be issued.

14           MSHA has not demonstrated a confidence in this  
15 type of fire fighting, and therefore, industry hasn't  
16 accepted it widespread. Additional firefighting equipment,  
17 methods and training must be pursued.

18           With barricade chambers being considered as new  
19 approaches, firefighting is more important than ever. We  
20 will not want to seal a mine with miner still barricaded  
21 inside, but sealing seems to be the standard method chosen  
22 at this time.

23           The gas chromatography data from the 1986 Orchard  
24 Valley fire in Colorado indicated that high expansion foam  
25 controlled a very large fire to a fuelstar fire with high

1 oxygen and lower levels of carbon monoxide for hours. When  
2 the foam supply was exhausted. The fire immediately went to  
3 a fuel rich fire, and dropped the oxygen by 5 to 7 percent.

4 Carbon monoxide when from a level of within filter self-  
5 rescuer protection range to many times that range in only  
6 five minutes after foam depletion.

7           The test several years ago at the Twentymile Mine  
8 demonstrated foam could be pushed up dip for a 280 foot  
9 elevation rise over a 1,000 foot distance, in two entries  
10 and connecting crosscuts. This was the equivalent of  
11 pushing foam up to the top of a 28 story building from the  
12 ground floor.

13           We have been asking NIOSH and MSHA for years for  
14 research on foam generator to answer some of the questions  
15 from the Deserato Mine in 1996, due to a lot of the  
16 hesitations of using high expansion foam. Other fire  
17 fighting improvements of issues; we have been requesting for  
18 years, research is needed in determining the products of  
19 different types of fires along with products as different  
20 types of fire fighting measures are being applied.

21           This research could easily be done at the Lake  
22 Lynn facility. And that has been requested numerous times.

23           Probably most important in our mind, we would  
24 rather think of evacuation or escape. And part of these  
25 regulations depending on the mine, and that is why it is

1 hard to pass a regulation for each mine.

2 But our mine is set up that once you could get  
3 out of the CM gateroad, there are no more return escapeways,  
4 but there are other ways out of the mine. And the self-  
5 rescuer concept is leading people maybe towards an  
6 emergency.

7 And a lot of other options exist that aren't the  
8 designated way. One that we are interested in and we are  
9 trying to pursue a little further with NIOSH is see through  
10 smoke. Research needs accelerated, that our mine has twelve  
11 miles of mains. And it would be a shame to have a fire that  
12 is eleven or twelve miles from the miners, and all they need  
13 to do is get maybe 5,000 to then have safe access to other  
14 escapeways that -- we would rather pursue see through smoke,  
15 infrared capabilities to drive through the smoke to get to  
16 better ways out of the mine.

17 That research capability is available, but it is  
18 one we would like to see accelerated to feasibility. One we  
19 have been talking with District Nine, that has been very  
20 cooperative and receptive to hearing things, is air changes  
21 that may be made during emergencies. Our mine is set up.

22 We are investigating air changes that could be  
23 made quickly in the mine by remote computer controls that  
24 would contain the products of fire. In our mine, we have  
25 isolated intake escapeways that are separated by the



1 beltlines, except a connecting overcast areas with hydraulic  
2 equipment doors. We also have steep slopes, so a fire  
3 spreads similar to a high rise building.

4 Additional computer controlled doors are being  
5 investigated to control air from intake to returns, with  
6 additional carbon monoxide sensors in the intakes, a fire  
7 may be detected, shorted to an up-dip return, and adjacent  
8 intake air fed to the fire, thus allowing the intakes in by  
9 to be cleared of smoke. Additional doors that are installed  
10 in entries to separate several sections from other sections  
11 contain hydraulic doors that could be opened and closed,  
12 thus allowing the intake air from a clean air escapeway to  
13 ventilate that section, versus a contaminated intake airway.  
14 MSHA needs to be receptive to this different approach to  
15 aid, evacuation or escape from a mine emergency.

16 With multiple -- this is an extra comment that is  
17 not on there -- with multiple potentials to escape, travel  
18 may be diverted away from the area of the mine involved,  
19 where the fire may spread, as miners travel towards the  
20 problem. That is one thing with the idea of long escape and  
21 multiple SCSRs.

22 We need to consider that the conditions can  
23 change by the time a miner gets there. And we would rather  
24 if we had a belt fire that was smoking, or an intake fire,  
25 we would rather people go a different direction, versus

1 going from one SCSR to another, only to find out that the  
2 fire compromises the stopping line.

3 Past advances that were not supported by the  
4 agencies. We developed a fire suppression system for power  
5 centers. Orchard Valley Coal and Ansul designed and tested  
6 an inexpensive Halon Fire Suppression System that could  
7 detect a small fire, extinguish the fire with no damage, de-  
8 energize the power, and notify the atmospheric monitoring  
9 system.

10 That system was developed for less than \$500, and  
11 they have all the -- I was going to rediscuss this with  
12 District Nine. We ran into just nothing but roadblocks from  
13 the national office to on down to try to develop that  
14 system. The power center fires.

15 Robotic fire fighting vehicle. At Cypress  
16 Shoshone, a fire fighting vehicle, very similar to the new  
17 robot was tested. It could drive 500 feet, a 2 • inch fire  
18 hose with camera and nozzle control. No interest was  
19 expressed, so the project was dropped.

20 This was a major project of Bill Pommerly  
21 [phonetic] of the Minneapolis Bureau of Mines at that time,  
22 but no funding or no interest was in that research. And  
23 yet, almost the identical vehicle was then hailed to be this  
24 robotic sensor or sampling device. There is actually a  
25 video made of that driving into the mine, going through

1 crosscuts negotiating, and then simulating extinguishing a  
2 fire.

3           Use of green lasers, the Twentymile Coal Company  
4 and numerous other mines, in cooperation with NIOSH, while  
5 performing in-mine simulated smoke escape exercises, green  
6 lasers were found to be very effective in walking in smoke.

7       Several requests have been made to utilize these during  
8 emergency conditions, but we are having permissibility  
9 issues.

10           MSHA should review the NIOSH data, and help by  
11 getting the units approved. MSHA quotes NIOSH Informational  
12 Circular 2481 which recommends these lasers, but has not  
13 assisted in making these units available.

14           Where is MSHA's documentation of fire  
15 experiences? We need emergency situations and experiences  
16 documented in a teaching tool fashion. The findings of the  
17 investigations are distributed by MSHA. However, the use of  
18 the gas sampling data is not distributed.

19           Fire fighting steps are also not distributed in a  
20 useful fashion. MSHA is present at all mine emergencies,  
21 and many lessons are being learned. But there is no useful  
22 release of that data. There are no guidelines on inert gas  
23 injection and quick response drilling.

24           It appears that only NIOSH publishes useful  
25 information on mine emergency, yet they are not the ones

1 gaining the first hand experiences at the mine emergencies.

2 This should be a high priority. The change in policy on  
3 how regulations are promulgated.

4 There have been problems with almost every  
5 regulation promulgated in the last ten years, especially  
6 when they are technology forcing, or compliance needs are  
7 not immediately achievable. The process needs to allow for  
8 the record to be reopened after one year, or other time  
9 period, so unforeseen difficulties can be addressed. An  
10 example of this is the need for an operator to file a  
11 petition for modification to use a tested engine certified  
12 by a laboratory but paid by the operator.

13 Since the regulation states that only the  
14 original manufacturer can have an engine tested, and use  
15 that data for obtaining a certification under part 7, the  
16 need to not use front brakes on road graders is another  
17 example that could be alleviated by a logical rewrite of the  
18 regulations. MSHA, without input from industry or other  
19 interested parties can change their interpretation of a  
20 regulation, utilizing the program policy bulletin or  
21 letters. However, the avenue is not open to the other  
22 parties.

23 One comment on the last Emergency Temporary  
24 Standard is, as comments were being made, the responses were  
25 being, that is the law, that is how it is written. But the

1 idea of these comments are for -- the law is already in  
2 effect. What we still have the opportunity to do is to  
3 change the final promulgated standards.

4 And I would hope that a lot of these, that  
5 everybody makes all the comments received. But we usually  
6 don't see too much change from the original standards, as  
7 they are proposed.

8 One last comment that is on this. I don't know  
9 if it is in the scope of MSHA. But we have heard, and are  
10 preparing material for the Colorado Mining Association on  
11 the use of belt air.

12 If there is anybody that disagrees with belt air,  
13 I would sure like to have time to review my comments and my  
14 years of experience with belt air, and the safety that has  
15 brought to the mines, versus the hazard that some people  
16 think it could bring to the mine. So if that issue goes  
17 back up on the table, you will definitely hear more comments  
18 from me.

19 MS. SILVEY: That is clearly without -- that is  
20 outside the scope of this ETS.

21 MR. DERICK: But it is not outside of the scope  
22 of a lot of the legislation and stuff we are seeing. I  
23 appreciate the chance to talk. And again, I would like to  
24 thank the District Nine people that we work with. They are  
25 very open to new ideas and are at least informing us of the

1 right path to take when we have them. And part of that is,  
2 is commenting here today.

3 MS. SILVEY: Thank you, Mr. Derick. I have a few  
4 comments, and maybe some of my colleagues also. First of  
5 all, you ask, and you may, I take it as your official  
6 request that the requirement for the record to be extended  
7 for another two months. And I didn't comment at the time.  
8 And I did say duly noted. That is all I said.

9 But I will also add, for the benefit of the  
10 entire mining public who was here, that Mr. Derick made that  
11 request. But as I said in my opening statement, the legal  
12 requirements for the ETS are in the Mine Act. And as I  
13 said, the ETS serves as the proposed rule. It serves as the  
14 final rule. And then the proposed rule on which we take  
15 comments.

16 But the whole process must be accomplished under  
17 the mine act within nine months. So we are under a somewhat  
18 tight time frame. That is all I would say at this time. We  
19 are under somewhat tight time frames for completing the  
20 rulemaking.

21 MS. SILVEY: With these being listed under grave  
22 concern for the miners, I would think all effort should be  
23 taken --

24 MS. SILVEY: No. I understand. I see your  
25 point. I understand your point. The other thing I would

1 like to say, and I would like to say this clearly, is that I  
2 don't think, and I am reading sort of what I square between,  
3 and I don't really need to read it. I do not think that I  
4 included anything in my opening statement that went outside  
5 of the scope of the ETS.

6 I did ask for comments on a number of issues that  
7 were in, you might say, in addition to issues that were in  
8 the preamble to the ETS. But being in addition to and in an  
9 attempt to clarify or further improve the ETS, but not  
10 outside the scope.

11 Secondly, on page 2, and I do appreciate your  
12 providing your comments in this fashion, on page 2 of your  
13 comments, Mr. Derick, when the issue of the 15 minutes, and  
14 you said the current requirement of within one hour is  
15 sufficient. It is my understanding that the current  
16 requirement for certain twelve categories accidents require  
17 that these accidents be immediately reportable to MSHA. And  
18 for this ETS to do is to further clarify and give some  
19 precision to immediately.

20 But there was not one our requirement that they  
21 be reported within an hour. And I just want to clarify that  
22 for everybody who was here. Okay.

23 The other comment I have is, on your page 3,  
24 under section -- I mean, you cite to page 12264 of the  
25 preamble, the bottom of the page. A design, and we are

1 talking at that time about storage distances. I just wanted  
2 to get a little understanding from you in terms of your  
3 comment here. A designed type standard is reasonable to be  
4 the minimum requirement, with performance testing being used  
5 to allowing an increase in storage distances. And I want to  
6 understand exactly what you mean here.

7 MR. DERICK: Yes. Probably the word maximum  
8 might have been a better term.

9 MS. SILVEY: Okay. So what -- the word maximum,  
10 where?

11 MR. DERICK: It probably would have read better  
12 to say a design type standard is reasonable to be the  
13 maximum requirement distance.

14 MS. SILVEY: Okay. Yes. Now I understand.  
15 Thank you. Yes. Okay. All right. Now on page, and  
16 unfortunately, I should have, so everybody would know, he  
17 didn't just go out on us, Jeff Kravitz.

18 I should have said that as soon -- actually maybe  
19 I should have said it at the beginning, had to leave to be  
20 on a conference call with some people from Arlington; his  
21 boss, my boss, and others at I think the conference call is  
22 at 10:30. So it is sort of unfortunate, but sort of  
23 unavoidable.

24 So he will be back as soon as he can, for  
25 everybody's information, because the next issue kind of



1 deals with something he is involved in, and that is on your  
2 page 5, 12265. And you spoke of us, the reporting  
3 requirement for all, for SCSRs where that had either been  
4 involved in an incident of possible failure, and reporting  
5 all these. And keeping them for 90 days, so they could be  
6 investigated by MSHA.

7 And you talked about you all had numerous reports  
8 of perceived failures and equipment that had been tested.  
9 You all's equipment, but you never received the results.  
10 Could you be a little -- you don't have to do it right  
11 now -- but could you be a little specific on the incidents  
12 in terms of when you sent stuff to MSHA, so I can check into  
13 that, and didn't get any response back from us?

14 MR. DERICK: Yes. MSHA Technical Support  
15 actually participated in the --

16 MS. SILVEY: Yes. I gathered that. Yes.

17 MR. DERICK: Took our units. So I would rather  
18 do that separate, since it is --

19 MS. SILVEY: Yes. You can do it separate. I  
20 just want to make sure. You can do it separate later. That  
21 will be fine. On page 7, these get to some of the questions  
22 that were included in the compliance guide for everybody's  
23 information.

24 The particular question talked about the storage  
25 of SCSRs where the primary and alternate escapeway are

1 adjacent to it, and parallel to each other. And you talked  
2 about our answer of just no, in the compliance guide. But I  
3 believe that I addressed that in my opening statement, sort  
4 of signaling a situation where there might be some  
5 consideration to doing that. And I asked for further  
6 comment on that.

7 MR. DERICK: Right. And that one is the one I am  
8 thinking went beyond the scope, as that was really different  
9 wording to describe a barricade chamber.

10 MR. SHERER: Well Lincoln, it may be beyond the  
11 scope. But what we are looking for is reasonable, practical  
12 ways to ensure that everybody has enough air to escape the  
13 mine. If you have alternatives to what we have proposed, or  
14 better ways to do it, we are certainly open to that.

15 MR. DERICK: Yes. One of the comments, I don't  
16 even remember saying so, as I was reading that, it was on  
17 the 15-minute notification. When you are saying the other  
18 alternative is -- if we are receptive to that, but the other  
19 alternative is, we have got to realize the burden that the  
20 last Emergency Temporary Standard put on the responsible  
21 person.

22 And that is where we were saying that these other  
23 alternatives, though you might not be able to make a list all  
24 inclusive, well we have got to be careful that we haven't  
25 done is made a person that has all the capabilities of being

1 a responsible person, but we have taken his decision making  
2 away.

3 And it pretty much has responsible people nervous  
4 right now, that their only reaction is issue a total mine  
5 evacuation order, and that is the only way anybody is going  
6 to accept his decision. But there is so many decisions in  
7 some of these larger, complicated mines that could take  
8 quick thinking from the data and EMS systems given. And  
9 some of it can be preplanned.

10 And that is what we tried to discuss with  
11 District Nine is just show some types of preplanning that  
12 you could actually test prove its worth, that it would do  
13 what you are asking it to do, and then maybe putting it in  
14 the Mine Emergency Plan. But that is going to be, like I  
15 say, not an all-inclusive list.

16 And the worst thing we can't do is have people  
17 that can think all of a sudden just get more worried of the  
18 regulation that I better just get everybody out of the mine.

19 I mean, I have a lot of problems in a mine fire of people  
20 leaving the mine, once they are out by the emergency area,  
21 because they should be assembled at that point, and then  
22 decided whether they are not needed or -- there is always  
23 things people can be used for.

24 But right now, the mentality is, you are not a  
25 defined emergency person. There is an emergency in

1 progress. Get out of the mine. And with people maybe  
2 trapped in by, I think we are going into a reverse  
3 progression of mine emergency preparedness.

4           You know, just some other comments that I had  
5 kind of read in this whole subject of mine safety is kind of  
6 getting like a balloon that is in a bag. And the balloon is  
7 getting bigger and bigger, and it is getting filled up. And  
8 all of a sudden, if it ever bursts, we are right back to an  
9 empty bag.

10           And we have got to be careful that we are really  
11 meeting the goal. And that is, either prevent a fire. Not  
12 many of these regulations are back to the basics of  
13 prevention, detection and control. This is all control.  
14 And it is not even fire control, it is all just escape  
15 control.

16           So on the 15-minute notice, and if this is  
17 repeating, our mine emergency plan is completely written on  
18 time, not who does what. And in the first 15 minutes have  
19 been involved in several being the first person, because  
20 that time goes by very fast.

21           And if there is an emergency involving people,  
22 that first 15 minutes is the priority of notifying people in  
23 by the emergency, notifying people out by the emergency.  
24 Notifying the responsible person. And all that may have to  
25 be done by one person. And I know I have missed something.

1 And I am glad there are comments in writing.

2 But we always use the approach of Saturday night  
3 swing shift. You have to look at your mine on Saturday  
4 night swing shift, and that is your least level of  
5 protection. And what is at that mine at that time is what  
6 you are going to have to decide may be there.

7 If somebody is making notifications, the most  
8 critical thing is documenting these communications. Crews  
9 are calling out, and saying I am in this section. I am  
10 leaving this way.

11 All that is going to start possibly getting  
12 confused with I had better call MSHA or I am going to get  
13 this large fine, and I had better get all that done.  
14 Notifying critical company personnel doesn't even fall  
15 within the first 15 minutes, unless there is time to do it.

16 So I think we really need to evaluate what might be lost  
17 when all the requirement is, is right now, people are  
18 saying, if I do one thing, it better be, I notify MSHA.

19 We have got to get that burden off of the sole  
20 person that may get that emergency call. I have been in  
21 that situation.

22 MS. SILVEY: I understand.

23 MR. DERICK: I supervise people that are in that  
24 situation. And when you are back asking them, where is so  
25 and so saying they are going to come out --

1 MS. SILVEY: I think we understand. Thank you.

2 MR. DERICK: Because that time is very critical.

3 MS. SILVEY: I think we do. Does anybody have  
4 any questions, further questions of Mr. Derick?

5 (No response.)

6 MS. SILVEY: Okay. Thank you, Mr. Derick.

7 MR. DERICK: Thank you.

8 MS. SILVEY: Thank you very much. Our next  
9 speaker will be Rebecca Boam, the State Mine Inspector, New  
10 Mexico, Office of the State Mine Inspector.

11 MS. BOAM: Good morning.

12 MS. SILVEY: Good morning.

13 MS. BOAM: my name is Rebecca Boam. And I am the  
14 New Mexico State Mine Inspector at the New Mexico Bureau of  
15 Mines and Safety. I also appreciate the opportunity to  
16 comment here today, and I will try not to belabor the panel  
17 or the audience with things that have already been  
18 discussed.

19 Several comments on the ETS, and I have kind of  
20 put them in the order that the ETS was, so they may not be  
21 as compartmentalized. And I have also made some changes  
22 here, just sitting here, to again, not go over the same  
23 material.

24 In 1969, we had the Coal Mine Safety and Health  
25 Act that came into being after we had a significant incident

1 in an underground coal mine in Farmington, West Virginia.  
2 It wasn't until 1977 that we amended that to include the  
3 metal and nonmetal miners. And I guess my first question  
4 is, you know, are we going to repeat history by doing that  
5 again.

6           You know, the focus of this ETS is on underground  
7 coal mines. And I guess my contention is that you know, in  
8 particular, if you look at a mine fire, the gasses and the  
9 CO are what kill people most commonly in a mine fire. And I  
10 would venture to say that CO is no different in a coal mine,  
11 than it would be in a metal non-metal mine. The risk to the  
12 individual miners is still there, because the atmosphere is  
13 irrespirable.

14           At the behest of our Governor Bill Richardson, we  
15 changed the state law in New Mexico, and we do require now,  
16 the law was signed into effect on the 7th of March. We do  
17 require that all underground miners have SCSRs. They also  
18 have to have plans for caching additional units and all  
19 personnel that work underground have to be trained in the  
20 use of such devices.

21           In addition to that, we have requirements for  
22 communication and tracking. The tracking is only mandatory  
23 for the underground coal mines, but there is tracking in  
24 there. It was a concerted effort to draft that legislation,  
25 between the State, the New Mexico Mining Association, and

1 the operators, both coal, and metal non-metal.

2 I think that the operators, particularly, the  
3 metal non-metal should be commended for their willingness to  
4 adopt those standards. There was not a lot of pushback from  
5 that. They recognized the need for that, and the protection  
6 that it gave the miners.

7 On the new training requirements, in the ETS, it  
8 stresses the importance of training and education. In fact,  
9 the quote is that it is critical for instilling the  
10 discipline, confidence and skills necessary to successfully  
11 escape and survive in emergency.

12 My next question is, why would we remove the  
13 hands-on from the annual refresher training, realizing that  
14 we are going to do it in drills four times a year. I don't  
15 get why we would remove a training component. On the  
16 immediate reporting under Part 50, when we talk about  
17 immediate reporting and extenuating circumstances, as it  
18 relates back to the ETS.

19 I guess further clarification on that, I think,  
20 would be a benefit to everyone, because there are lots of  
21 ways that that is looked at, even right now, today, with the  
22 immediate reporting being the requirement.

23 MS. SILVEY: Excuse me. I am sorry. Would you  
24 start at that point again? I am sorry. I missed that. I  
25 was writing your other point.



1 MS. BOAM: In regard to the 15-minute reporting  
2 requirement, I guess I would like to ask for clarification,  
3 you know, through this standard, on what the extenuating  
4 circumstances are. The ETS refers to that as immediate and  
5 within 15 minutes unless there are extenuating  
6 circumstances.

7 I think we all need to be very clear on what that  
8 is, so that at the different districts, in the state, at the  
9 mine operations, that everybody is playing by the same set  
10 of rules. And even now, that is sometimes difficult for us,  
11 just under the immediate. So that was my only point there.

12 MS. SILVEY: Okay. Yes. Thank you.

13 MS. BOAM: We do require the 30-minute reporting  
14 in the State of New Mexico. Again, that was part of our new  
15 law that we passed. However, in that reporting -- and this  
16 kind of goes to the ETS, too -- what information is  
17 reported?

18 Basically, we want the information of what type  
19 of accident you know, has occurred, or they believe has  
20 occurred. And as many details as they can give. But a  
21 contact of someone to contact back.

22 Because again, I think there is a lot of people  
23 out there that are very leery about what is going to happen.  
24 Oh my gosh, I am going to miss this 15-minute window, and I  
25 am going to go to jail, and the mine is going to get shut

1 down. So I think that there is some panic there that we  
2 could alleviate if we addressed those things in a little  
3 more concise manner.

4 We also certainly wouldn't want to call MSHA and  
5 give wrong information and leave MSHA to believe that there  
6 is an accident going on or a disaster going on which causes  
7 you all to deploy resources to something that is truly not  
8 of that nature, because there might be another accident  
9 somewhere else in that immediate area that does need those  
10 resources. So that was also a consideration.

11 In regard to fires, there is a question that has  
12 been coming up repeatedly, particularly about coal stockpile  
13 fires. Are they reportable under Part 50 or are they not?

14 And that has been ongoing for many years, and I  
15 have had people ask me the question, and I have asked a  
16 variety of people within MSHA. And there seems to be no  
17 clear cut answer to that question. So if we are going to  
18 further define fire, it would be nice to be able to define  
19 what we are going to do about coal stockpile fires.

20 The lifelines and tethering folks together, I am  
21 not sure that the ETS is the place to really define that. I  
22 think that each operator at each mine has some very  
23 different sets of circumstances, such as grade of the  
24 escapeway.

25 How many people work in a particular area? What

1 kind of belts do they wear? What kind of SCSRs do they  
2 wear? You know, I would think that the mine operator and  
3 the local MSHA officials and the district officials and the  
4 miners themselves that work there would be the ones to  
5 decide just what it is they need, and how it should work,  
6 and how it would best be utilized.

7           The realistic emergency evacuation procedures. I  
8 think that is a great idea. A lot of mines have done that,  
9 where we do drills and things that are more realistic. I am  
10 wondering if MSHA will play a role in that.

11           Will the agency provide information to mine  
12 operators, particularly small operators that may not have  
13 large training and safety departments that are able to do  
14 that. Will there be additional funding to state grants  
15 recipients, so that those folks can help the small operator  
16 to achieve those training requirements.

17           Will MSHA participate in a drill? Will MSHA have  
18 internal drills? It refers to the emergency response plan  
19 at each district. Is that available to us, so that we can  
20 all take a look at that and figure out who is doing what, or  
21 who would do what, in case of an emergency, so that again,  
22 we are all working off the same page.

23           The check list for emergency evacuation, I  
24 believe that that is a great tool to use. When you use that  
25 checklist, if there is something people struggle with, it

1 gives you that information. You know where to focus your  
2 efforts, particularly in between drills. If four out of  
3 five people missed a certain step, then you can reemphasize  
4 that and then test it again in the next 90-minute drill.

5 The total number of reporting, the total number  
6 of SCSRs in use at each underground mine semi-annually. I  
7 may be off base here, but I thought that when you cached  
8 SCSRs, that you would have an SCSRs storage plan, and so  
9 that would be part of that plan, is that you would give the  
10 list. The inspector is there four times a year.

11 He could verify on his quarterly inspection, you  
12 know, that that plan is current. If the plan changed  
13 significantly you had more or less SCSRs, then I would think  
14 the plan would need to be updated and approved.

15 In the history of mining, it seems that the most  
16 successful or safety years were those in which education and  
17 training were at the forefront of everyone's mission. From  
18 the institution of Part 48 to the slam process that we went  
19 through, there was educational activities focused on  
20 teaching individuals and giving them information and tools  
21 to assess hazards and risks. If we don't have the event,  
22 then we don't have to worry about what do we do with a  
23 disaster.

24 And I believe that risk assessment and being able  
25 to identify potential and correct it, before it becomes the

1 disaster is really the key. We have an enormous influx of  
2 young, inexperienced people coming into the mining industry.

3 Proper training and development of risk assessment  
4 techniques I believe is critical to the safety and success  
5 of the miner as well as the mining industry.

6 I believe that we owe it to the miners to give  
7 them the best training and tools that we possibly can so  
8 that they can protect themselves and their work  
9 environments, and that that is how we will change behavior.

10 Some operators obviously need more assistance than others.

11 But there are a large number of operators that do  
12 go above and beyond what the law requires. And sometimes, I  
13 don't think that is brought to the forefront. The media in  
14 particular likes to pick on those that do not instead those  
15 that do.

16 I believe that MSHA should actively participate  
17 in being part of the solution by committing to the education  
18 process of the miners and the mine operators in adopting  
19 best practices. This should include working with miners and  
20 mine operators, adding inspectors, writing more citations  
21 and levying fines, I don't believe by itself will effect the  
22 desired change that we need for mine safety.

23 MS. SILVEY: Thank you, Ms. Boam. I have a few  
24 comments. And that is, with respect to your New Mexico law,  
25 and -- is your law in effect right now?

1 MS. BOAM: Yes.

2 MS. SILVEY: Your law is in effect right now,  
3 right?

4 MS. BOAM: Yes, it is.

5 MS. SILVEY: And in terms of specifically, and I  
6 don't know if you are able to give me this information now,  
7 but in terms your specific response to the SCSR provision,  
8 you said it is applicable to all underground mines.

9 How do I want to ask this. Are your mine  
10 operators in New Mexico experienced in any issues, or with  
11 any provisions of it, or everything is going smoothly?

12 MS. BOAM: The only issue that they are having is  
13 the same issue of everyone. It is how quickly they can get  
14 these units so they have until the 5th of June to develop an  
15 implementation plan that they will submit to --

16 MS. SILVEY: They have until when.

17 MS. BOAM: June 5.

18 MS. SILVEY: June 5.

19 MS. BOAM: To give an implementation plan that  
20 says these are the types of rescuers that we will use. This  
21 is what the manufacturer says is the approximate date that  
22 we will receive these. And then they will begin to start  
23 putting that plan into effect.

24 That plan may not just happen in 30 days. It may  
25 be that it is a six month plan. That in this month, we will

1 do this, and the next month we will do that. And it will be  
2 ongoing until it is fully --

3 MS. SILVEY: Okay, because the next thing I was  
4 going to ask you had to do. You said caching and training.  
5 The next question I was going to ask you had to do with  
6 training.

7 So I assume that they have -- you have training  
8 plan requirements for the training. And so rather than me  
9 making these assumptions, I would let you say to me about  
10 how the training, how is the training requirement  
11 implemented?

12 MS. BOAM: The training requirement will be the  
13 same, similar as to what we have done with coal, with MSHA.  
14 The three plus three donning technique, okay. And each  
15 miner will be trained in that. They will get it annually in  
16 their training.

17 They will wear the SCSRs on their belt. They  
18 will be trained in the changeover from one unit to another.  
19 And it is up to the operator whether they are going to  
20 change from the same unit to -- you now, or whether they are  
21 going to have one manufacturer's unit and then change to a  
22 different manufacturer.

23 MS. SILVEY: So the training plans then, the laws  
24 have been approved now by -- the various training plans?

25 MS. BOAM: The training plan will be part of the

1 implementation.

2 MS. SILVEY: Okay. Part of this same  
3 implementation package.

4 MS. BOAM: Yes. I am sorry.

5 MS. SILVEY: Okay. All right. I understand.

6 MR. SHERER: Could we possibly get a copy of that  
7 state law?

8 MS. BOAM: Yes, sir.

9 MR. MACLEOD: You had a concern about possibly us  
10 removing the SCSR training from refresher training, which we  
11 technically did not do, but could you expand on that a  
12 little bit, what your concern was?

13 MS. BOAM: Well, I guess my concerns is that for  
14 almost 20 years, I have been doing training in the mining  
15 industry. And we train and train on specific things. And  
16 it seems to be a common thread that some people just don't  
17 know how to put that rescuer on.

18 I have done actual training exercises where I  
19 have had people kneel on the ground, blindfolded them and  
20 asked them to put the rescuer on, and about two or three  
21 minutes later, they still can't get it on. It concerns me  
22 that people are not capable of doing that. I mean, that  
23 truly is their lifeline.

24 And I just don't think we can overdo it. I don't  
25 think that adding one more time in an annual refresher, when



1 you are talking about safety as a whole, and hazards would  
2 cause any burden to anyone.

3 MR. MACLEOD: So you would think that people  
4 should have it five times a year?

5 MS. BOAM: Yes, sir.

6 MR. MACLEOD: Okay. Thanks.

7 MS. SILVEY: Yes. I am glad you brought that up  
8 because I was going to. I just wanted to clarify something.

9 You said removing it from the annual refresher  
10 requirement. But in point of fact, we were not removing it.  
11 We were really letting the training, the additional training  
12 in the drill requirements substitute for the annual.

13 MS. BOAM: Substitute. Right.

14 MS. SILVEY: Right. Yes. So it really -- I just  
15 wanted to clarify that. It is technically not removing it.

16 MS. SILVEY: Exactly.

17 MS. SILVEY: I am glad you -- I had written a  
18 note to myself and forgot. Okay. All right. Thank you.  
19 Anybody else to ask --

20 MR. SNASHELL: You talked about extenuating  
21 circumstances where operators may not be able to notify. Is  
22 that that they haven't had time to determine there is an  
23 accident in the first place, or they have determined there  
24 is an accident, and for some reason, beyond not having  
25 access to communications, some extenuating circumstance

1 prevents them from notifying MSHA.

2 MS. BOAM: Well, I guess I would say it is a  
3 combination of all of those things. We have metal non-  
4 metal, particularly sand and gravel operations that may only  
5 be a two man operation. That person, as Ms. Young stated,  
6 you know, may be the only person doing treatment for the  
7 injured party.

8 So the phone call may not be able to be made  
9 within a 15-minute window, because as soon as he gets the  
10 victim stabilized, he would call 911 first, you know and get  
11 things going. So he might miss that 15 minute.

12 The other thing is that maybe they haven't  
13 ascertained that it truly is a reportable accident. And  
14 again, we have talked about the 30-minute supposed to --and  
15 you know. There are a number of those twelve things that  
16 have time associated with them.

17 So extenuating, and we have the same issue in New  
18 Mexico under our law with the 30-minute reporting. What is  
19 extenuating, you know. And reasonable, I think, was the  
20 term that Ms. Silva used. So if we could further define  
21 what reasonable is going to -- you know, kind of the  
22 parameters around that, or the components that should be  
23 weighed in determining reasonableness, I think that would be  
24 very helpful to everyone.

25 MS. SILVEY: Okay. Thank you. Okay, at this

1 point, and you all are probably looking at me funny. Why  
2 don't we take a ten-minute break, and if we can really come  
3 back in ten minutes, so that everybody will have an  
4 opportunity to speak.

5 (Whereupon, a short recess was taken.)

6 MS. SILVEY: Is everybody ready? At this time,  
7 we will reconvene the Mine Safety and Health  
8 Administration's public hearing on the Emergency Temporary  
9 Standard for emergency mine evacuations. Next on our list,  
10 we have Ralph Sanich with Interwest Mining Company. Mr.  
11 Sanich.

12 MR. SANICH: Good morning. Thanks for the  
13 opportunity to speak here today.

14 MS. SILVEY: Good morning.

15 MR. SANICH: My name is Ralph Sanich. I am the  
16 manager of Health and Safety for Interwest Mining Company.  
17 I would like to make the following comments. These comments  
18 are submitted by Interwest Mining Company in response to the  
19 Emergency Temporary Standard issued by the Mine Safety and  
20 Health Administration on March 9, 2006. We appreciate  
21 having the opportunity to comment on this most important  
22 regulatory initiative.

23 In reviewing the ETS, we attempted to identify  
24 its shortcomings so that its application will meet MSHA's  
25 objective to protect miners from the grave dangers that they

1 face when they must evacuate a mine after an emergency  
2 occurs. Our limited recommendations therefore, are intended  
3 to strengthen the requirements to meet this objective, while  
4 at the same time, safeguard against unintended consequences,  
5 unrealistic performance outcomes, or unrealized expectations  
6 that may result from the ETS as published.

7 Part 50, notification. The accident reporting  
8 revisions incorporated in the ETS are intended to facilitate  
9 rapid response by MSHA to serious mining accidents.  
10 Interwest Mining Company strongly supports this objective.

11 We agree with the need to notify MSHA promptly to  
12 assist mine operators in dealing with mine emergencies.  
13 When accidents occur that threaten the safety of coal  
14 miners, a rapid emergency response is appropriate and  
15 essential. In life threatening situations, or situations  
16 requiring a potential rescue and recovery response, it is  
17 essential to immediately dispatch emergency resources to the  
18 accident scene.

19 While we agree with the intent of the ETS,  
20 Interwest Mining Company maintains that many of the  
21 immediate reportable accidents requiring 15-minute  
22 notification do not justify a rapid response. As a result,  
23 we recommend the development of a rapid response  
24 notification system that requires notification and response  
25 proportional to the nature of the accidents. Clearly, many

1 of the events listed in 30 CFR 50.2(h) should require a mine  
2 operator to notify MSHA within the prescribed 15 minutes.

3 We contend, however, that each event must be  
4 evaluated on its own merits. An appropriate evaluation of  
5 the facts on a case-by-case basis is necessary to determine  
6 whether a true emergency exists.

7 It makes no sense to contact MSHA within 15  
8 minutes for events that occur on a routine basis, especially  
9 when the health and safety of the miners are not at risk.  
10 It would be counterproductive, and serve no useful purpose  
11 to contact MSHA within the required 15-minute time frame for  
12 these non-emergency events. It is not necessary to activate  
13 mine rescue personnel and local emergency response resources  
14 for all immediate reportable accidents.

15 Early notification and rapid response should be  
16 in proportion to the seriousness of the accident. In our  
17 opinion, 15-minute notification period required by this ETS  
18 should be revised for fatalities, serious injuries and  
19 accidents with the potential to require mine rescue and or  
20 recovery responses.

21 MSHA's notification procedures, the ETS is solely  
22 focused on the 15-minute notification requirements following  
23 immediately reportable accident. The ETS fails to address  
24 how MSHA will receive and respond to these notification  
25 calls. We are concerned that this omission will result in a

1 system that unnecessarily delays an effective emergency  
2 response.

3 The current protocol requires a mine operator to  
4 call the district manager, district office when an immediate  
5 reportable accident occurs. If that call is placed outside  
6 of business hours, the caller is forwarded to an answering  
7 service. The answering service provides the mine operator  
8 with other numbers to call to personally reach MSHA district  
9 officials.

10 It is if the caller cannot reach one of these  
11 individuals, he is expected to contact MSHA headquarters.  
12 The toll free answering service maintained by MSHA  
13 headquarters relies on individuals with no knowledge of the  
14 mining industry. These individuals are not capable of  
15 making decisions on how to respond to an event that has been  
16 reported.

17 Fifteen-minute notification should not be based  
18 on each MSHA district. MSHA should establish a 1-800 number  
19 nationwide that would allow operators anywhere in the  
20 country to make one call that satisfies the law. That call  
21 center would then make the additional notifications as  
22 necessary to the districts, to tech support, or whomever  
23 they deem necessary to call.

24 MSHA personnel would be required to provide this  
25 call center with all relevant numbers and persons in charge.

1 Thus, the operator makes one call, and then goes about their  
2 business to address the emergency.

3 Our recommendation that notification system that  
4 fails to differentiate between serious and non-serious  
5 events will generate numerous false alarms and eventually  
6 lead to complacency. It may also contribute to the  
7 unavailability of emergency response resources when a  
8 legitimate emergency occurs.

9 We recommend that MSHA revise Part 50  
10 requirements in the ETS. The revised notification  
11 requirements should distinguish between serious and minor  
12 immediately reportable accidents. As far as revising Part  
13 50 definition of a fire, MSHA has requested comment on  
14 whether to revise the definition of an immediately  
15 reportable fire.

16 Interwest Mining Company maintains that there is  
17 no compelling evidence justifying the revision of the  
18 definition of immediately reportable fire. Current  
19 regulations require a mine operator an unplanned mine fire  
20 that has not been extinguished within 30 minutes of its  
21 discovery.

22 Historically, this 30-minute period has provided  
23 mine operators with an adequate period to extinguish and  
24 control an unplanned heating event. To shorten this 30-  
25 minute period would result in numerous false alarms. It

1 would lead to the ineffective use of the emergency response  
2 resources.

3           The existing requirements of this area are clear.  
4 Mine operators understand what types of unplanned fires to  
5 report, and the circumstances that require MSHA  
6 notification. While there will always be unique events that  
7 require a mine operator to exercise good judgment, changing  
8 the current requirements will only result in confusion.

9           It will also result in numerous unnecessary phone  
10 calls. The current requirement for notifying MSHA of  
11 unplanned fires after 30 minutes is effective. It should  
12 not be changed.

13           Part 75 Mandatory Safety Standards. The proposed  
14 revisions to Part 75, like those revisions to Part 50, are  
15 intended to address what the Agency deems to be grave danger  
16 when a mine accident occurs. While well-intended, the  
17 proposal may introduce unintentional hazards and should be  
18 revised to address the concerns identified below. We would  
19 note that many of these issues identified in this section  
20 have equal application to the new requirements under Part  
21 48.

22           75.1502(a)(1), this section involves the training  
23 scenarios. Industry wants to reinforce the process under  
24 (a)(1)(iv). We train our employees to fight fires as a  
25 first line of defense, so that we don't have full-blown mine



1 emergencies. Interwest Mining Company recommends that  
2 scenarios not be required within the plan, but require  
3 scenarios to be developed and used for fire fighting drills.

4 75.1502(c)(1), Interwest Mining Company  
5 recognizes that the standard interval for training fire  
6 drill training and subsequently, mine emergency training has  
7 always been not more than 90 days. With the addition of  
8 more extensive training requirements of the ETS, the  
9 industry recommends that the time frame be modified to once  
10 each quarter.

11 This change would enable the operator to train  
12 more effectively without any negative effects on the actual  
13 training standard. Large mines could be training over 300  
14 people on SCSR transfers, escapeway systems, fire fighting  
15 and evacuation drills.

16 This can be accomplished quarterly by providing  
17 timing flexibility, crews can be pulled systematically for  
18 training. If there is a concern that someone might train at  
19 the end of the quarter, or at the beginning of the next, the  
20 rules could be written to provide that training must be  
21 accomplished in a window of time. The schedule can be  
22 listed in the plan.

23 75.1502(c)(2), Interwest Mining Company disagrees  
24 with the idea that all people must travel the entire  
25 escapeway every 90 days as part of the training

1 requirements. This is not training as the term is defined.

2 Physically traveling an entry does not train a person on  
3 escape.

4 It would be more logical to train miners on  
5 escapeways as to the entrance from their working stations,  
6 lifeline systems, SCSR locations, physical issues in the  
7 escapeways for example, areas that are low or are more  
8 difficult to travel through, and locations where decisions  
9 need to be made, such as overcasts, et cetera.

10 The second issue with travel of escapeways by all  
11 employees is the physical condition of the people. The coal  
12 industry has an aging workforce, whose average age is in the  
13 early 50s. Requiring miners to walk escapeways, rather than  
14 traveling by personnel carriers, or walking short distances  
15 could cause undue stress upon cardiovascular systems or  
16 personal injuries such as strains and sprains, which is the  
17 nation's largest injury type.

18 The ETS states in the same section that miners  
19 may have to travel through long and difficult underground  
20 travelways. This confirms that walking escapeways is  
21 laborious and could cause illness such as cardiovascular  
22 failures or injuries upon the aging minor.

23 During the drill, miners could travel by  
24 personnel carriers, or walk short distances, as described  
25 under 75.383(b)(1), 2,000 feet or to a ventilation split.

1 This would have the same effect upon training and education,  
2 demonstrating the condition of the escapeways, lifelines,  
3 and stored SCSRs if applicable. We recommend that this  
4 section be changed to require the operator to provide  
5 quarterly training to all employees on escape routes,  
6 emergency escape scenarios, SCSR locations, and areas in the  
7 escape system where decisions for escape need to be made.

8           75.1502(c)(2)(ii), Interwest Mining Company wants  
9 to reinforce the position that donning and transfer training  
10 on SCSRs can be accomplished more effectively on the  
11 surface. We support the Agency's recognition of this as  
12 reflected in the Emergency Temporary Compliance Guide that  
13 has been posted on the MSHA website.

14           75.1714-2, Self-rescuer Devices, Interwest Mining  
15 Company supports the Agency's effort to enhance the  
16 resources available to our employees and others to evacuate  
17 safely from underground coal mines in the event of an  
18 emergency. In an emergency situation however, it is  
19 critical that additional SCSR storage contemplated by the  
20 ETS be used for prompt evacuation of the mine; barricading  
21 remains the last resort.

22           As far as signage is concerned, while a good  
23 faith desire to improve the exiting standards is apparent  
24 throughout the ETS, it may in many instances, it regulates  
25 language that is restrictive to the point of being

1 counterproductive. For example, the term SCSR is an  
2 industry-wide term that is used throughout the ETS.

3 Yet Section 75.1714-2(f) requires the words self-  
4 rescuer or self-rescuers be used on storage location signs.

5 Under the circumstances requiring miners with existing SCSR  
6 storage location signs to invest the time and capital  
7 installing signs stating self-rescuers is counterproductive.

8 SCSRs in primary and alternate escapeways.  
9 Section 75.1714-4(c) has requirements for additional SCSR  
10 storage in the primary and alternative escapeways to augment  
11 other SCSR requirements where needed to provide enough  
12 oxygen for all persons to safely evacuate. Where the  
13 operator determines additional SCSRs are required, the  
14 operator must submit a plan setting forth the location,  
15 quantity and type of additional SCSRs and may be required by  
16 the district manager to demonstrate the plan's adequacy.

17 Based on the plain language of this provision and  
18 the preamble, a number of operators have proposed as an  
19 alternative the use of airlocks associated between adjacent  
20 escapeways for storage of SCSRs along with important  
21 emergency supplies. The use of airlocks has the additional  
22 benefit of providing employees with an area isolated from  
23 the main air courses for the transfer of SCSR units.

24 Another alternative proposal is to build an SCSR  
25 storage unit into the stopping to permit storage units to be

1 accessible from either escapeway. Both of these proposals  
2 are simple and functional.

3           Moreover, Section 75.1714-4(c) does not require  
4 the identical quantities of additional units to be stored  
5 both in the primary and alternative escapeway. Rather, this  
6 section only requires additional units in the primary and  
7 alternative escapeways.

8           In addition, the operator's alternatives  
9 described above place the SCSRs in locations to satisfy both  
10 as primary and alternate escape storages. And we have a  
11 couple of comments, specific questions raised in the  
12 preamble.

13           MSHA is soliciting comments on whether filter  
14 self-rescuers should be phased out. Our response is that  
15 these units have historically proven serviceable and  
16 provided mineworthy protection against hazardous levels of  
17 carbon monoxide. Thus, while many operators are voluntarily  
18 eliminating filtered self-rescuers, some may still elect to  
19 continue with filter self-rescuers use to supplement the  
20 oxygen units required by the ETS. We recommend that for the  
21 immediate future, that the Agency refrain from any action on  
22 these units.

23           Question, MSHA is soliciting comments on whether  
24 operators should report details such as serial numbers for  
25 SCSRs deployed at the mine to the district manager on a

1 semi-annual basis. Our response is while this information  
2 would facilitate research oriented data gathering and  
3 enhance the thoroughness of any recall effort, the Agency  
4 first needs to arrive at a mechanism, such as a bar code to  
5 facilitate this data gathering.

6 Even with such a mechanism, such data gathering  
7 will be time consuming. In our view, there is no adequate  
8 justification to shoulder this additional responsibility on  
9 the industry.

10 And our final comment is, MSHA is soliciting  
11 comments on storage location for out by persons such as  
12 pumpers. Our response is first, all underground personnel  
13 must be provided with the appropriate protective devices.

14 Further, the question of how to cover out by  
15 personnel, such as pumpers is not a new one for operators  
16 with existing SCSRs storage plans. In general, existing  
17 storage plans provided for smaller SCSR caches to cover  
18 these individuals at designated locations such as belt  
19 drives, designated locations long belts, and along bleeder  
20 travelways. And I thank you for your time in allowing us to  
21 comment.

22 MS. SILVEY: Thank you, Mr. Sanich. I have one  
23 comment to make, and then I have to have a couple of  
24 questions of you. And first of all, I think probably  
25 everybody heard you. And I don't know if anybody here was

1 there.

2 I attended the workshop last week, as some of you  
3 know about. The one, the NIOSH-MSHA workshop on mine rescue  
4 technology. And it was a good workshop.

5 And one of the things I would like to say, and  
6 you made that statement in your comment, is that we continue  
7 to iterate that in the case of a mine emergency that  
8 barricading is the last resort, and that miners ought to be  
9 trained to escape as the -- I guess, if you want to say, the  
10 first line of defense then, that is escape, emergency  
11 escape. And the last line is barricade. So that is an  
12 important point, and that is the Agency's position.

13 On your comments that you made on Part 50,  
14 immediate notification, have you had any and recognizing  
15 that the ETS has been in effect only a short period of time,  
16 have you had any experience under the ETS with respect to  
17 the reporting requirement?

18 MR. SANICH: For our mine specifically?

19 MS. SILVEY: For your mine, yes.

20 MR. SANICH: Not yet.

21 MS. SILVEY: Not yet. Okay. I probably should  
22 have asked somebody else that, but it only came to me now.  
23 The next thing, you mentioned, and these aren't necessarily  
24 in the order. They aren't in the order in which you  
25 commented.

1           But you mentioned in terms of traveling, you said  
2 traveling the escapeway was not training. But at the same  
3 time, you did suggest that there are locations such as  
4 overcast, manors where people do need to know particular  
5 parameters if there are unique things about traveling there.

6       So your position is then that they get out and travel at  
7 those areas, but not -- but in the other parts of the  
8 escapeway, they do not need to travel.

9           MR. SANICH: Yes. Primarily, any area that has  
10 non-routine, so in other words, you just get in an entry and  
11 walk. So where there are obstructions, where there are  
12 areas where conditions change, where there are SCSR caches,  
13 those locations we believe would benefit the miner more than  
14 just the exercise of walking from A to B. So to see those  
15 key areas of their escape route, I believe would serve  
16 better than to just walk for the sake of walking.

17           MS. SILVEY: Okay. Well then, following on to  
18 that, you also mentioned that requiring travel could cause  
19 undue stress, and you spoke about the aging mining  
20 population et cetera. Do you have any specific, and you  
21 don't have to, if you have it, you don't have to give it to  
22 me now, but before the comment period closes, do you have  
23 any specific information or evidence of requiring miners to  
24 travel the escapeway either cause an undue stress or causing  
25 further accidents or whatever danger. If you have any



1 specific information or data on that.

2 MR. SANICH: I will check on that.

3 MS. SILVEY: Okay. If you could provide it.

4 Anybody else?

5 MR. SNASHELL: Have you had any particular  
6 problems under the current notification standard which  
7 requires immediate notification?

8 MR. SANICH: No, we haven't.

9 MR. SNASHELL: So in the past, you haven't had  
10 any problems with, well, I should say the current, but  
11 before the ETS where it just said, immediate notification?

12 MR. SANICH: I would suggest that we probably  
13 have had the opportunity to investigate to a point that we  
14 have or we do not have an emergency prior to making a phone  
15 call. So we do the best we can essentially to follow the  
16 criteria under Part 50.

17 But again, we sense that, I mean you can  
18 determine, I believe, if you do have a true emergency, quite  
19 honestly, right away, in some respects. But others are  
20 going to take some time to investigate the issue.

21 MR. SNASHELL: On the point that you made about  
22 not requiring people to necessarily travel the entire  
23 escapeway in a drill, there is some feeling that it seems  
24 logical that if in a natural emergency you are going to be  
25 required to be on foot, that even to put the miners through

1 a foot drill makes more sense. That perhaps there could be  
2 tethering in conjunction with that.

3 It is a different experience, so that when they  
4 do do an emergency evacuation, the whole sensation of it is  
5 not new to them. So in other words, you try and duplicate  
6 as much as you can the actual circumstances of an emergency  
7 evacuation.

8 Now there is some elaboration on that, but  
9 perhaps there should be smoke training as well. And what  
10 would your response be to that concern?

11 MR. SANICH: Well again, I don't necessarily  
12 agree with the fact that it is -- it shouldn't be almost  
13 like a sports drill if you will, to see what your endurance  
14 is. What it should do is, it should train employees based  
15 on what it is they are going to confront in the time of the  
16 emergency. And again, if the entryway for the most part is  
17 less or lacking obstacles and stuff, that was my point, or  
18 our point as far as why go through that entire exercise when  
19 from a training standpoint, you could show and demonstrate  
20 where specific areas of concern would be.

21 MR. SNASHELL: You also said that in donning and  
22 transferring an SCSR, that is more effectively done on the  
23 surface, that training?

24 MR. SANICH: Yes.

25 MR. SNASHELL: Could you say why?

1           MR. SANICH: I could say that most of the  
2 training SCSRs that we have, they require assembly to put  
3 them back together. If they are in an area where you don't  
4 have the mud and debris and stuff to where as you actually  
5 don these, if you were utilizing the three plus three  
6 method, these things are going to get trashed in a very  
7 quick period of time, versus allowing to be on the surface,  
8 you can simulate lights out, miners lights, put your cap  
9 down, go through that whole process and actually even  
10 utilize smoke-filled rooms if necessary.

11           MR. SNASHELL: Thank you.

12           MR. MACLEOD: Just as a clarification, or maybe I  
13 just misunderstood it, you were talking about the scenarios,  
14 and that they would be useful training exercises for people  
15 who were involved in fire fighting. Was that exclusive in  
16 that the rest of the people would not need this scenario  
17 training?

18           Because in developing the scenario is a concept  
19 that we were thinking of was these are conditions that would  
20 actually require a miner to don the apparatus and evacuate  
21 the mine. And that was the notion of that training. So I  
22 just wanted you -- maybe I misunderstood what you said.

23           MR. SANICH: Well, and I believe our comments  
24 were directed towards the fire fighting portion of it.

25           MR. MACLEOD: Okay. And you don't think it

1 should be for miners, or you think in addition to?

2 MR. SANICH: Well, I think our comment primarily  
3 is to give us some flexibility to determine what scenarios  
4 we want to use rather than be tied to a plan.

5 MR. MACLEOD: Great. Thank you.

6 MS. SILVEY: Yes. That is funny. I had written  
7 that down, because you said you wanted the scenario that  
8 they would be developed and used. But then you said, but  
9 not as a part of what the training plan.

10 MR. SANICH: Correct.

11 MS. SILVEY: So I had asked -- I was going to ask  
12 how exactly that would work. But I think here, I guess you  
13 just didn't -- you wanted the flexibility.

14 MR. SANICH: Right.

15 MS. SILVEY: Okay. Thank you, Mr. Sanich. Our  
16 next speaker is Dale Byram with Jim Walters Resources, Inc.

17 (Pause.)

18 MR. BYRAM: Hello. My name is Dale Byram. I am  
19 General Manager of Safety and Training for Jim Walters  
20 Resources in Brookwood, Alabama.

21 The employees of Jim Walters Resources in Alabama  
22 understand the effect that a mine disaster has on a  
23 workforce and everyone included. And our heartfelt thoughts  
24 and prayers are with the families and everyone affected by  
25 the disaster so far this year.

1           In 2001, we experienced a disaster at our Number  
2 Five coal mine, where we lost 13 of our co-workers and  
3 friends. Having the opportunity to speak to you about your  
4 Emergency Temporary Standard is important to us because  
5 there are certain aspects that we believe that we have input  
6 that we would like to share.

7           There will be times when I am sure I will repeat  
8 some of the things that has already been said today. I  
9 would like to look at that more as in support of our  
10 industry, versus being repetitious. So if you will bear  
11 with me on that, I would appreciate that.

12           And I will try and take it in sections. And my  
13 comments are specific to the Emergency Temporary Standard  
14 and not necessarily to the comments that we heard at the  
15 opening remarks this morning, okay.

16           Part 50, when dealing with a mine emergency,  
17 early notification is essential to both state and federal  
18 agencies. But does MSHA really want a mine site's  
19 responsible person to be distracted from the importance of  
20 managing an emergency scene, and make calls that could cost  
21 precious minutes. The ETS requires operators to notify MSHA  
22 immediately at once, within 15 minutes maximum of a 30 CFR  
23 50.2(h) accident.

24           It is MSHA's belief that early notification will  
25 enhance appropriate emergency response. However, when faced

1 with a serious event, operators cannot rely on MSHA to  
2 remotely manage the first minutes of a mine emergency.  
3 Operators should be allowed to manage their event until it  
4 is controllable or until the need for additional support is  
5 identified.

6           During these early stages, the 15-minute  
7 requirement can literally become intrusive and actually  
8 impair critical emergency management. MSHA's strength lies  
9 in second and third tiered response.

10           We recommend that the 15 minute notification  
11 period required by the ETS be revised to allow flexibility  
12 for the operator to manage the situation involving serious  
13 injuries or entrapment or other related injuries that  
14 require undivided attention in the early stages of the  
15 emergency response. In contrast however, we do support  
16 immediate notification for a fatality or for an event that  
17 would potentially need mine rescue or mine rescue recovery  
18 and response.

19           As stated earlier, the time required to comply  
20 with immediate notification has the potential to become more  
21 intrusive. Per the ETS, an operator is obligated to contact  
22 their district office when reporting a 30 CFR Part 50.2(h)  
23 accident. If the district office is unavailable, the ETS  
24 directs the operator to continue trying to make contact by  
25 following all prompts from their answering services.

1           If unsuccessful in contacting the local MSHA  
2 district office, this ETS continues to require operators to  
3 use an alternate number for contacting MSHA headquarters 800  
4 toll-free line. This line has 24 hour seven day per week  
5 answering protocols.

6           Recently, we got all of our safety department  
7 together on a speaker phone as a learning exercise. And we  
8 called the MSHA 800 toll free line to test the procedures  
9 and to discuss information needed to train our responsible  
10 persons. After several rings our call was answered, and we  
11 were promptly put on hold.

12           After two minutes, the operator again answered  
13 and placed us on hold for a second time. Later, when she  
14 returned, she asked for our complaint. We explained that we  
15 had no complaint; that we just wanted to learn more about  
16 the emergency call line protocols. We were informed that  
17 the person we needed to talk with was at lunch, but that she  
18 would be glad to send an e-mail with our request.

19           And when we did, we asked that she would include  
20 to please return the call as soon as possible. This took  
21 place about 11:40 in the morning, Central Standard Time. We  
22 received a call back from our local district manager at 3:05  
23 that afternoon.

24           And the district manager and I discussed the  
25 issues at hand, and explained clearly why we had attempted

1 to make this call. It wasn't to try the Agency. It was to  
2 learn how to train our people. At Jim Walters Resources,  
3 emergency response is important to us.

4 We recommend that MSHA develop a universal call  
5 system to be used by all MSHA district offices. To prevent  
6 unnecessary delay in after-business hour calls, the system  
7 could be equipped with automatic rollover to the MSHA  
8 headquarters 800 line. We further recommend that district  
9 offices and MSHA headquarters 800 toll free line receiving  
10 the emergency be adequately staffed with persons trained to  
11 be able to cover the intent.

12 Were delays in emergency response prior to this  
13 ETS a failure of the existing regulation? We believe that  
14 requirements listed in 30 CFR Part 49 are clear. Rescue  
15 stations and teams are required be within two minutes of the  
16 miners that they are responsible for covering. The Agency's  
17 attempt to enhance response by requiring more prompt  
18 notification will not change response times to an emergency,  
19 if a mine rescue team fails to respond in a timely manner.

20 This requirement is the same for in-house and  
21 contracted mine rescue teams. And it is the responsibility  
22 of the Agency, the operator and team members to ensure  
23 compliance with this regulation. MSHA can best serve our  
24 miners by evaluating each operator's emergency capability  
25 and facilitating through enforcement when necessary the



1 development of appropriate procedures to meet today's  
2 existing standards.

3           If a mine rescue team response time issues were  
4 partly responsible for generating the ETS, then that  
5 particular aspect of the regulation should also be explored.

6    If delayed mine rescue response is specific to contracted  
7 mine rescue teams or their availability, then MSHA should  
8 consider additional requirements for operators dependent  
9 upon contacted mine rescue teams.

10           In reference to mine fires, MSHA has asked for  
11 comments on whether a revision should be made to cover all  
12 unplanned underground mine fires, or unplanned underground  
13 mine fires of a particular type. We do not support this  
14 position and believe that the definition of accident as  
15 related to 50.2.(h)(6) is adequate to ensure the safety of  
16 miners.

17           A mine may deal with potential fire situations,  
18 such as smoldering material, or hot rollers that are  
19 extinguished within a matter of moments after being  
20 discovered, and these present no serious hazard to the mine  
21 or the miners. Yet if a fire of significant size were to be  
22 located or recognized in the mine, through other  
23 notification requirements, this would already be in the  
24 system.

25           On lifelines, we support the use of lifelines

1 installed in both the primary and secondary escapeway. When  
2 developing future recommendations, we request the Agency  
3 consider potential hazards associated with installation of  
4 lifelines in entries where track mounted or mobile equipment  
5 is operated. We have lifelines in both our primary and  
6 secondary escapeways. And these are some of the challenges  
7 that we have had to face.

8 In addition, consideration should be given to  
9 maintaining the lifelines to within 500 feet of the loading  
10 point on active working sections, long walls or where  
11 equipment is being installed or removed. With the amount of  
12 movement on the sections, lifelines could generate  
13 additional hazards. Some other alternate means of  
14 identifying direction to get to your lifelines should be  
15 thought about.

16 Tethers. We believe that tethers should be  
17 provided, and miners trained to make informed decision as to  
18 how and if they should be used. Since evacuation can be  
19 affected by conditions of the emergency, the use of tethers  
20 should not be mandated.

21 It should be the ability of the miners or the  
22 team that is determining that they must escape whether or  
23 not it would be an asset to use them. Earlier, I understood  
24 that you questioned about tethers, about length and how they  
25 should be connected and everything.

1           Our particular tethers are about 50 to 60 feet  
2 long, they contain twelve loops, not connecting devices.  
3 You never know if the team escaping or the group of miners  
4 escaping may run into a situation where another miner may  
5 impair travel of the entire team, and then other questions  
6 and challenges then are facing the guys trying to get out of  
7 the mine.

8           Under 75.1502, mine emergency evacuation and fire  
9 fighting program of instruction. Under this ETS, we  
10 recommend that 75.1502-1 be changed from a 90 day training  
11 requirement to a quarterly requirement. Quarterly  
12 requirements provide the operator the flexibility to  
13 maximize the training of the miners in emergency evacuation  
14 and it allows us a more timely manner in which to make the  
15 drills for miners that have missed.

16           The paragraph 75.1502(c)(2) is added to enhance  
17 miner evacuation. We disagree with the Agency's position  
18 that all miners must travel the entire escapeway every 90  
19 days as part of the training requirement. Physically  
20 traveling an entry does not train the person on escape. And  
21 I think we have heard that before my presentation.

22           Under the new ETS, operators must establish  
23 continuous lifelines through both the primary and secondary  
24 escapeway. It would be more logical to train the miners as  
25 to how to reach these lifelines from their workstations or

1 workplaces, how to physically locate them. Again, the  
2 locations of SCSRs or other issues that you may run into as  
3 you escape.

4 Another reason for not needing to physically walk  
5 the entire escapeway, if you have continuous lifeline, then  
6 even a visitor who is properly trained to know which  
7 direction the cones are established as you mentioned  
8 earlier, would not what once they were able to make physical  
9 contact to the lifeline, they could escape, even if they  
10 were by their selves.

11 Additional concerns with traveling escapeways by  
12 all employees are the physical conditions of the miners. At  
13 Jim Walters Resources, our mean age is about 51 to 52 years  
14 old. As we hire new miners, this age comes down.

15 We risk knees and backs to walk a miner for five  
16 miles out of our coal mine. In an emergency situation,  
17 knees or backs don't even count. We get them out of the  
18 mine.

19 And in our particular situation, we are unable to  
20 ride our alternate or secondary escapeway, and so in our  
21 application, they would literally physically have to walk.  
22 In the Agency's Q & A, guidelines number two, it prohibits  
23 an operator from using a miner to don an SCSR to establish  
24 the distance for the SCSR storage due to the unnecessary  
25 strain on the miner's physical condition.

1           Having a miner travel the entire escapeway for  
2 training purposes four times a year will subject them pretty  
3 much to the same undue physical stress. The ETS states that  
4 in the same section, the miner may have to travel through  
5 long and difficult underground travelways, confirming the  
6 dangers associated with this task.

7           75.1502 fire drills. This ETS is concerned with  
8 the quality of fire drills, and the efficiency of miners'  
9 ability to fight fires. This ETS eliminates the opportunity  
10 for underground miners to participate in fire fighting  
11 skills on actual fires.

12           We believe that underground mine fire fighting  
13 can be enhanced if this ETS would give credit for at least  
14 one fire fighting drill per year to be conducted on the  
15 surface of a coal mine, where miners could actually fight  
16 fire with fire fighting equipment. The requirement for  
17 conducting underground fire drills in this ETS eliminates  
18 the ability for actual hands-on fire fighting in the  
19 underground setting.

20           75.1502(c)(3), the checklist. The addition of  
21 the four scenarios incorporated into the fire fighting and  
22 evacuation drill ensures miners' exposures to all aspects of  
23 an emergency drill. Required record keeping associated with  
24 these drills suffice for the need of a checklist. However,  
25 if it was needed as an adjunct for training, and the

1 operator chose to do so, we think that would be helpful, but  
2 it should not be mandated.

3 75.1502(a)(1)(ii), the scenarios. We disagree  
4 with the Agency's position that for training purposes, best  
5 options can be predetermined for a mine emergency  
6 evacuation. Options for escape must be determined by the  
7 results and the issues facing the miners at that time.

8 30 CFR 75.1714-4(c), MSHA has rejected a request  
9 to design SCSR storage sites that can be accessed from  
10 either the primary or secondary escapeways when located in  
11 parallel entries. We believe allowing access to cached  
12 SCSRs from either the primary or secondary escapeway where  
13 possible is safe and reasonable.

14 Miners and operators benefit from permitting such  
15 a design from having one known location rather than two  
16 separate caches in different areas. Manufacturers may not  
17 agree, yet storing large numbers of SCSRs increases  
18 potential fire hazards. Manufacturers of SCSRs are  
19 overwhelmed with orders, and are projecting one year wait  
20 times on their backorders.

21 Allowing a cache to be accessed from either the  
22 primary or secondary escapeway we can more accurately  
23 represent the number of additional self-rescuers needed in  
24 storage without reducing the number of SCSRs needed for  
25 miners to escape. The reduction in SCSRs required in

1 duplicate caches would increase an operator's availability  
2 and his ability to comply with the regulation in a more  
3 timely manner.

4           We recommend that MSHA reconsider allowing  
5 operators to cache SCSRs that can be accessed where possible  
6 from either the primary or secondary escapeways. 90 day  
7 tests for a particular type of a stored SCSR should be  
8 revised to eliminate the shake test. This is the CSE unit.

9       If it is not being transported, where you don't risk  
10 breaking the crystals down within the unit, transported or  
11 belt worn.

12           And finally, the section on storage sites. MSHA  
13 has stated in the preamble that an operator may use any  
14 reliable method of choosing SCSR storage locations where  
15 miners can swap to another SCSR. And yet as we talk with  
16 the Agency, and we see new printed information, there seems  
17 to be the Agency taking a position on the 5,000 feet and the  
18 2,500 feet.

19           So as operators, we really need direction on how  
20 the Agency intends for us to determine that distance. There  
21 is inherent danger in swapping from SCSR to another in an  
22 irrespirable atmosphere. We know that. It is going to  
23 require this additional training, and we support the  
24 additional training required to teach miners to swap from  
25 one SCSRs to another.

1           We also appreciate the agency considering the use  
2 of barricade chambers. And we also support the use of the  
3 term barricade chambers. As all of us within the industry  
4 hire new miners, these new miners don't need to be  
5 comfortable with the term safe house or rescue chamber.

6           We need to continue with the message that was  
7 mentioned earlier. That the primary purpose of evacuation  
8 is to exit the mine. That is -- the barricade chamber is  
9 the last tool in the tool box for a miner to survive.

10           We appreciate the opportunity to talk today. It  
11 is a benefit to be here, and to hear the other people  
12 present and you too. Thank you.

13           MS. SILVEY: Thank you, sir.

14           MR. SHERER: Mr. Byram, you were talking about  
15 problems with lifelines.

16           MR. BYRAM: Yes, sir.

17           MR. SHERER: With the tracks and mobile  
18 equipment. Could you expand upon that a bit for us?

19           MR. BYRAM: As much as a mine site tries to hang  
20 the lifeline out of the way of moving equipment, as you  
21 transport materials in the mine, every operator will  
22 experience a situation where a load may become loose and  
23 shift. It is not supposed to, but that is reality.

24           If a lifeline is hooked by moving equipment, then  
25 everyone in proximity of that lifeline could be injured by



1 the lifeline being pulled into their area, their walkway, or  
2 their space. If a lifeline is connected to a timber, and a  
3 piece of equipment jerked the timber down, you could even go  
4 beyond by creating more roof or rib dangers to the mine. So  
5 there is several things.

6 MR. SHERER: You mentioned that you are currently  
7 using lifelines.

8 MR. BYRAM: Yes, sir.

9 MR. SHERER: What is your experience with those  
10 lifelines in those areas?

11 MR. BYRAM: You have to ensure that you have it  
12 out of the way as much as possible, yet accessible to the  
13 miners. And there is challenges with the height of the  
14 coal, if you are twin seaming, or if you are in a lower  
15 area. If you cross over tracks at intersections, all of  
16 these are challenges.

17 MS. SILVEY: I have a few questions, and maybe  
18 some comments. In your comments on Part 50 notification,  
19 you state sort of a two tier approach. And quite honestly  
20 we heard that earlier today.

21 Maybe I am phrasing it as two tiered, but  
22 somebody else made a comment along this line. And do I take  
23 your comment to mean that at least with respect to  
24 notification or fatalities and accidents with a potential  
25 for required mine rescue and/or recovery response that you

1 are in agreement with the ETS requirement of at least of  
2 immediate and at least within 15 minutes?

3 MR. BYRAM: Of the fatalities, for the situation  
4 requiring mine rescue?

5 MS. SILVEY: For the fatalities?

6 MR. BYRAM: Yes, ma'am.

7 MS. SILVEY: Okay. All right. And we will look  
8 into this situation that you gave, as you gave it a training  
9 experience, with respect to when your safety department  
10 called MSHA headquarters. Okay, on the scenarios.

11 MR. BYRAM: Yes, ma'am.

12 MS. SILVEY: You spoke, because quite honestly we  
13 included templates for those four scenarios. And you said  
14 that this option, you disagreed with our position on that  
15 for training purposes; that best options can be  
16 predetermined. You disagree that they can be predetermined  
17 for a mine emergency, and that options for escape must be  
18 determined by the results of issues facing the miners.

19 And I wanted you to go into a little bit on that.  
20 I didn't quite understand that exactly. So when you are  
21 developing the training program and the training plan, what  
22 would you then include in that?

23 MR. BYRAM: Okay. To clarify.

24 MS. SILVEY: Okay.

25 MR. BYRAM: Where we do not agree that you can

1 predetermine the actions of the miners. If we say okay on  
2 Section four, you have just had a water inundation, you  
3 should go and give them a route to go at that point in time.

4 That may not be the best thing if that were to take place.

5 So what you do is you train the miners in, you  
6 have a primary and a secondary escapeway. If you have this  
7 event take place, what would be the safest most efficient  
8 way to get out of this working section?

9 And as an operator, I need to facilitate that  
10 crew in that discussion. Not me predetermining and tell  
11 them where to go, other than the primary and secondary  
12 escapeways.

13 MR. MACLEOD: I am a little concerned with the  
14 term predetermined only from the standpoint that I am  
15 hopeful we didn't write something that gave that impression.

16 But the intent was that the scenarios would be situational,  
17 and that they would be additional tools that the miners  
18 would be able to use to do just what you were saying.

19 Something that occurs in your mind that reach the  
20 level of where they needed to don an apparatus,  
21 notwithstanding inundation, but they would know to make the  
22 right decisions in these scenarios would give them some  
23 additional knowledge tools if you will to be able to make  
24 those decisions that you are talking about. So I was hoping  
25 to sort of may re-articulate it in the preamble we did.

1 Okay.

2 MR. BYRAM: Yes. And, but in trying to make the  
3 best of all worlds, when we developed our scenarios, every  
4 scenario, including water inundation ended up requiring the  
5 use of a self-rescuer by blocking ventilation and reducing  
6 the oxygen content and increasing methane. So you can be  
7 flexible with every option that you use. We just didn't  
8 agree from the wording of the ETS that you predetermined.

9 MS. SILVEY: Yes. We will look into that.

10 MR. SPROUL: I have another question on the  
11 lifeline issue. Did I understand you to say that you were  
12 concerned about extending the lifeline all the way up to the  
13 section loading point, because it might be problematic, and  
14 you were suggesting that the life line actually start  
15 something like as much as 500 feet out by and that you have  
16 some way of pointing the miners to it.

17 MR. BYRAM: Yes. It doesn't have to be all the  
18 way out to 500 feet. That is just kind of a planting a seed  
19 for evaluation.

20 MR. SPROUL: Okay.

21 MR. BYRAM: On a working section, you literally  
22 have more mobile equipment in process than anywhere else in  
23 the mine. And so you have the greatest potential of having  
24 problems with lifelines. In addition though, all due  
25 respect, you also have the greatest number of people you

1 want to facilitate to the lifeline in that area.

2 So I don't think we are there yet. I think we  
3 all need to work together on what is the best way to solve  
4 that.

5 MR. SPROUL: But did you have any specific ideas,  
6 or do you have any experience with what methods you would  
7 use to point the miners to locating the lifeline?

8 MR. BYRAM: Yes, sir. We are researching that  
9 right now. We are looking into directional arrows. We  
10 already do that. And we are looking into like, directional,  
11 not cones, but some type of directional methods that we can  
12 place on timbers, identify water lines. I don't think  
13 anybody is too big on using the high line, the high voltage  
14 line to get out.

15 But there again, we are in a learning stage  
16 ourselves. We are trying to determine what is best for our  
17 miners in that scenario. And I don't think -- you know, we  
18 are open if anyone else has suggestions, we would love to  
19 hear it.

20 MR. SPROUL: Thank you.

21 MR. BYRAM: Thank you.

22 MR. KRAVITZ: I wanted to address the 75.1502, or  
23 actually this one he falls under self-rescuer storage. But  
24 in the Q&As guidelines too, I don't believe we say prohibit  
25 the operators having a miner don an SCSR. I think are

1 discouraging it. But I don't think we used prohibit.

2 MR. SHERER: No. We don't recommend it. But we  
3 have actually had numerous operators that have done that.  
4 And some very interesting results that we have heard  
5 anecdotal reports of.

6 MR. KRAVITZ: One of the things we are trying to  
7 discourage is people using old SCSRs that have been beat  
8 around and they are about ready for the garbage heap and  
9 then they say we are going to do a walkout trial with this.  
10 And they end up getting into some pretty bad stuff, where  
11 you might loosen up some KO2 dust and get somebody sick just  
12 using the thing.

13 And that is the purpose of the shake test, to  
14 determine how much chemical bad degradation you actually do  
15 have. And one of the comments you made, you recommend doing  
16 away with the 90 day shake test. I think that one of the  
17 problems it would seem in the past is, the center designated  
18 for storage.

19 Sometimes we will go to a storage and we will  
20 find there are dirty units. You know that they haven't been  
21 in the storage room 100 percent of the time. So that was  
22 one thing we were trying to avoid. If we can do the shake  
23 test, regardless of whether or not the designated storage,  
24 it still proves that those self-rescuers are worthy of  
25 taking a person out of the mine alive. So that is what we

1 are trying to promote.

2 MR. BYRAM: I appreciate those comments, Jeff. I  
3 am trying to find, it was in the number two. And I may have  
4 misread it. But where it refers to not supporting using an  
5 SCSR --

6 MR. KRAVITZ: Yes. Well, we are not supporting,  
7 but we are not prohibiting it, either.

8 MR. BYRAM: And one other comment too, that  
9 concerned me, because of the rescuer is reaching its end  
10 life, you may not accurately get the distance that you would  
11 normally get. Well guys, and this, if they are still  
12 acceptable, what are they doing in the mine? I have to  
13 be -- my primary objective is to help the safety of the  
14 miner.

15 MR. KRAVITZ: Sure. Well hopefully, you don't  
16 have the situation where we have been to other mines where  
17 they haven't been keeping up with their visual examinations,  
18 and we found SCSRs with dents in them, and other types of  
19 problems. So you know, those are the types of SCSRs we  
20 really don't want to see used.

21 But SCSRs that pass the shake test, you know, I  
22 don't have any problem with you using those things. In  
23 fact, MSHA can require the use of a demonstration if someone  
24 submits a plan for a SCSR storage location, and MSHA  
25 questions whether or not that is realistic. And so in fact,

1 MSHA could do that, request using a walkout trial using an  
2 SCSR.

3           And the last thing I wanted to talk about was,  
4 you know, the switchover between one SCSR from the other in  
5 irrespirable atmospheres. And what NIOSH and MSHA are doing  
6 right now, we are developing a procedure, which we are going  
7 to field test. And then we are going to disseminate that  
8 just as we had with the three plus three donning procedure.

9           MR. BYRAM: Okay.

10           MR. KRAVITZ: And I think that will help a long  
11 way to coming up with a tried and true. We have got the  
12 same researchers that addressed the three plus three  
13 addressing the transfer now too.

14           And we are going to redo all the training modules  
15 we have. The ones you see up on the interactive, for  
16 MSHA.gov. We are going to do redo those and include that  
17 transfer into our videos and into our computer based  
18 training.

19           MR. BYRAM: Okay.

20           MR. KRAVITZ: And thanks for your comments.

21           MR. BYRAM: Okay. Thank you. We will respond in  
22 writing to the comments from your opening statement.

23           MS. SILVEY: Thank you very much. Can we go off  
24 the record for just one moment, please?

25           (Off the record.)



1 MS. SILVEY: Next on our list, we have Tain  
2 Curtis, Local 1769 UMWA, Deer Creek Mine. Mr. Curtis.

3 MR. CURTIS: Thank you for the opportunity to  
4 voice our concerns. We have heard a lot of talk today about  
5 the miner. And I am a miner. I have 25 years of experience  
6 as a coal miner. I am not a safety professional, just a  
7 miner. And I represent 276 miners at the Deer Creek Mine in  
8 Huntington, Utah.

9 The ETS in my opinion, stresses many places that  
10 there is improvements. But it also falls short in many  
11 other places, and I will try to address those places.  
12 Number one, notification of MSHA. I am not aware of any  
13 problem with our mine, our facility, with the way that  
14 notification has been going. I feel comfortable with it.

15 I know as a member of the mine rescue team, when  
16 Willow Creek had the explosion that we were on the site  
17 before MSHA was. Many of us was there before the survivors  
18 were brought out of the mine from our team, to back up their  
19 team. So notification, I am not sure if that is an area  
20 that needs to be reevaluated.

21 Training and storage of SCSRs. The only concern  
22 I have is SCSRs are rated for one hour. Depending on the  
23 size and the exertion of the person, sometimes that person  
24 will use up an SCSRs in as little as 45 minutes. I believe  
25 the storage should be comparable to that. I am not sure if

1 the 15 percent rule that you have got justifies that 15  
2 minutes.

3 I know we run a deep operation. We are a long  
4 ways from the surface. We do have outer portals that we are  
5 accessing now, that are close, within seven miles of working  
6 sections. So I would think that that 45 minutes might be  
7 something to look at.

8 Training. I noticed that barricading is still  
9 one of the things that needs to be trained on. And the  
10 accidents that happened this year, I worry about the mine  
11 rescue capabilities. In our area, we have mine rescue teams  
12 that are required by law. But the evaluation of those mine  
13 rescue teams, who does that evaluation?

14 The mine operators. There are several teams that  
15 do not complete in mine rescue teams where teams can be  
16 evaluated under stressful circumstances. We have the only  
17 team in our area that competes in any kind of contest where  
18 any kind of evaluation is done on their training.

19 So if we are going to continue to teach people  
20 and have to have people maybe use that as a last resort, a  
21 barricading or even the recovery of people, we need to  
22 better evaluate our mine rescue scenarios. And the only way  
23 to do that is through people participating in contests, and  
24 also have their own teams available for that.

25 I know that is not part of this standards, but it

1 really needs to be looked at because if a team comes in to  
2 help another team, and there is no team there, then you  
3 don't have people to go with you that knows the mine. So I  
4 feel that is very important about mine rescue teams.

5           Number four, the installation and maintenance of  
6 lifelines. This could prove important to us, in a disaster.

7     If you didn't have a -- in a disaster, if they don't get  
8 destroyed, is one of my big concerns. And also a point was  
9 raised earlier about mobile equipment.

10           In the west, we use a lot of diesel equipment.  
11 And our main intakes is our primary escapeways. Our haulage  
12 equipment going in and out of the mine, hauling materials to  
13 the sections travel these entries. So there is big large  
14 considerations that need to be given for these areas on the  
15 placement of the lifelines.

16           Also, the use of link lines. We have already  
17 implemented in our mine that all the mantrips, all the  
18 kitchen areas, all the storage areas for the SCSRs have a  
19 link line there. I am not exactly sure about the lengths.  
20 But I know our mantrips are capable of hauling twelve people  
21 and the ones that are in the mantrips are capable of twelve  
22 people with a loop for them to either clip onto or hang  
23 onto.

24           I think you need to be flexible whether you link  
25 to it, or just hang on to it. You need to have that

1 flexibility. Our primary escapeway now is five miles, and  
2 our secondary escapeway is close to six and half. So that  
3 is a total of eleven and a half miles that these link lines  
4 will be used. I agree with the installation of the link  
5 lines. I am just concerned about the maintenance of them.

6           If you for, example, if you use a metal lifeline,  
7 you are going to be dragging it for a long ways when it  
8 hooks onto a piece of equipment. And that could create an  
9 additional hazard along the roadways. So things like that  
10 need to be considered. Breakaway points and that.

11           I forgot to mention on the third point, excuse me  
12 for my notes here. I don't spend a lot of time in an office  
13 preparing statements.

14           Okay, emergency evacuation and training of the  
15 miners. We have miners at our mine that are approaching,  
16 well, I am not sure about the average, the mean age. We  
17 have hired some younger miners. We have probably brought it  
18 down to maybe 50 or 48.

19           My concern is, these miners, there is miners that  
20 has come to me and said, if I have to walk out, somebody is  
21 going to have to carry me. Their condition is such that  
22 walking out every quarter would be beneficial for them  
23 personally, but maybe unbeneficial for us who may have to  
24 pack them out on those training exercises. So I would  
25 consider that --

1 (Loud talking in background.)

2 MR. CURTIS: It is not bothering me, if it is  
3 bothering you. Having to take into consideration that the  
4 escapeways that we use in the mine, that special emphasis  
5 may have to be put on those areas of concern, overcast,  
6 those kind of things that you can drive to from the primary  
7 escapeway and show the people those hazards that are  
8 associated with them.

9 I know that as Mr. Byram mentioned that we really  
10 don't worry about backs and knees and heart attacks if you  
11 are having to escape. But during a training exercise, it is  
12 important to take care of the miner.

13 MS. SILVEY: Okay.

14 MR. CURTIS: In closing, I appreciate the  
15 opportunity, and I would hope that efforts are given to the  
16 evaluation of mine rescue teams. Again, I can't express the  
17 importance of that.

18 Knowing the capabilities of a team that you are  
19 going to go back up or that they are going to come and help  
20 you is very important, and the only way to do that is  
21 through a contest or having MSHA monitor the training of  
22 mine rescue teams. Also make a consideration is that the  
23 four hours that is done monthly be increased, because we  
24 have talked about more training and more training. But this  
25 is more training for these individuals that do this should

1 be considered also.

2 Talking about the storage of SCSRs -- I apologize  
3 for jumping all over, but I don't see a problem personally  
4 with having an airlock system where you store SCSRs. I  
5 personally would feel more comfortable going into an airlock  
6 and changing an SCSR for another one, even though I know  
7 that I would understand that you would do it, going from one  
8 to the other with trying to retain yourself. So anyway, I  
9 appreciate the opportunity and thank you.

10 MS. SILVEY: Thank you. And particularly thank  
11 you for the specific comments you made. I just had a couple  
12 of things. When you were talking about training and  
13 barricading needs to be trained on. And several of us now  
14 have spoken about that. And I think later you said that you  
15 mean that in terms of barricading being the last resort?

16 MR. CURTIS: Correct.

17 MS. SILVEY: Yes. Okay.

18 MR. CURTIS: I have had an opportunity to see a  
19 rescue chamber, a commercially built one. While I wasn't  
20 personally impressed with them, I know that they are not  
21 really cost effective. But I would hate to be the one to  
22 say how much you put on a life.

23 MS. SILVEY: Yes. I was interested in your  
24 comments about you said that you all have linklines with  
25 loops. And you talked about the length of your escapeways.

1 How long have you all been using the linklines?

2 MR. CURTIS: Since the first of the year, because  
3 of the disasters that have happened.

4 MS. SILVEY: Since the first of this year.

5 MR. CURTIS: Particularly, I think it was the  
6 Alma that prompted us to put them in our mantrips.

7 MS. SILVEY: Okay.

8 MR. CURTIS: And it was because of that. I don't  
9 want to say too many good things about our safety people,  
10 but they are proactive instead of reactive.

11 MS. SILVEY: You can say something good about  
12 them. That was humor.

13 MR. SHERER: Are these linklines what we have  
14 been referring to as tethers?

15 MR. CURTIS: Yes. They are approximately 25 or  
16 30 feet long with a loop in them every three or four feet.  
17 And personally, I don't see a problem with having the loop,  
18 because most miners, with the stuff they carry on their  
19 belt, there is a way that they could link to it, if they  
20 wanted to, if they needed to.

21 MS. SILVEY: So have you -- I take it. You  
22 haven't used them in training or anything, or have you?

23 MR. CURTIS: The training that we have had so far  
24 with them is that everybody has been made aware that they  
25 are there.

1 MS. SILVEY: Okay.

2 MR. CURTIS: We have had training in a smoke  
3 chamber where they have linked them. I am not sure if they  
4 linked themselves together or if they just grabbed it and  
5 walked through.

6 MS. SILVEY: Okay. Thank you very much, Mr.  
7 Curtis. Okay. Next we have Kenneth Gunter with UMWA Local  
8 1769.

9 MR. GUNTER: Thank you for the opportunity to sit  
10 here, but obviously, I am not a professional safety person  
11 either. I was notified pretty late on coming to this  
12 meeting, so I am a little underprepared. But hopefully I  
13 can correct that at a later date with some written  
14 statements. I will go ahead and read what I have got, and  
15 answer any questions.

16 My name is Kenneth Gunter. I represent United  
17 Mine Workers of America, Local 1769. I am a member of the  
18 local Executive Board and a member of the Mine Safety  
19 Committee. I have 31 years underground experience at the  
20 Deer Creek Mine.

21 Through our mine, we travel roughly twelve miles  
22 from the surface facilities to the working sections. The  
23 nearest point to which we can escape to the surface is  
24 nearly six miles from our working sections. With my current  
25 job of pump examiner, I am frequently required to work in



1 long wall bleeder systems that is nearly five miles around.

2           With these distances to travel, my fellow workers  
3 and I are very concerned with the Emergency Temporary  
4 Standards. I don't feel there can be -- there can never be  
5 enough emphasis put on the need to maintain and mark our  
6 escapeways.

7           At our mine, we have very large diesel powered  
8 equipment operating in our intake escapeways throughout the  
9 mine, making the installation and maintenance of a  
10 continuous lifeline as described very difficult at best.  
11 But I feel with some provisions for areas where equipment  
12 must cross over the lifelines on a regular basis, it would  
13 be possible to install them and maintain them, as well as  
14 train the men in the location and use of them.

15           As stated in the Emergency Temporary Standards,  
16 it should be required that everyone travel these routes both  
17 primary and secondary escapeways from their work areas to  
18 the surface, regularly in order to become completely  
19 familiar with them. As for the storage and additional SCSRs  
20 should be standardized to the location beginning at the  
21 mouth of each section. The same crosscut number throughout  
22 the mine.

23           For example, for the storage area at the mouth of  
24 that first left section, and the next one at the crosscut  
25 40, the next one at a crosscut 80. This should also be

1 followed for the next section, the second left section,  
2 beginning at the mouth in the same intervals throughout the  
3 mine. With the standardizing of the locations, workers  
4 really need to remember a few crosscut numbers to know where  
5 the units are stored, and where they can be found.

6 As for the storage of these SCSRs, the storage  
7 areas should be well marked, well maintained and afforded  
8 accessibility. Isolating the storage areas with stoppings  
9 on both sides of them will, with self closing manors on each  
10 end, to make them accessible from either direction, I  
11 believe isolating them in this manner will give the SCSRs  
12 better protection, as well as giving the men trying to  
13 escape a chance to have an area with considerably less smoke  
14 within which to change to a fresh SCSR.

15 Although there is never any mention of them, in  
16 the Emergency Temporary Standard there should be a mine  
17 phone installation in these storage areas also. As for  
18 training in the donning and use of the SCSR units, this  
19 should be practiced as at near an emergency situations as  
20 possible, even if it has to be done on the surface to create  
21 that. That is okay. And as often as possible, so the men  
22 can become completely comfortable with the donning and use  
23 of them. Thank you.

24 MS. SILVEY: Thank you very much.

25 MR. SHERER: Mr. Gunter, as a pumper, you are

1 probably subject to covering large areas of the mine. Do  
2 you have any suggestions as far as providing additional  
3 SCSRs for people like you who are in remote locations?

4 That has been a question that we have had. We  
5 don't want to subject people to carrying additional units,  
6 because of the weight and the ergonomic considerations of  
7 such. But we certainly would welcome any comments that you  
8 might have.

9 MR. GUNTER: At our mine, I feel we fairly well  
10 cover that. We store the units in the bleeder entries at  
11 2,000 foot intervals, which is adequate. We are on a cache  
12 blend. We don't have to carry them with us.

13 And for say for me to talk around to the bleeder  
14 entry, that is a five mile entry. I can walk that in an  
15 hour and a half. So it puts me within 20 minutes of an SCSR  
16 at the furthest from one to the next probably.

17 MR. SHERER: And you are normally carrying a WD-  
18 65 helper unit?

19 MR. GUNTER: Yes. The mention of mine phones, I  
20 would like to see that completely throughout the bleeder  
21 system. We do have -- we carry lights that they can send us  
22 a message through our lights.

23 But in order for us to respond -- there is no  
24 mention of mine phones anywhere. No regulations putting  
25 mine phones anywhere, in bleeder or in, as I mentioned, in

1 the cache areas.

2 MS. SILVEY: Uh-huh.

3 MR. GUNTER: I would like to see that  
4 implemented.

5 MR. SHERER: Thank you.

6 MR. KRAVITZ: How many SCSRs are stored in the  
7 bleeders at each location?

8 MR. GUNTER: I believe there is just two. I  
9 could be wrong on that.

10 MR. KRAVITZ: Should be sufficient.

11 MS. SILVEY: Okay. Thank you very much, Mr.  
12 Gunter. We appreciate you. Okay. We now have Marion  
13 Loomis with the Wyoming Mining Association. Okay. That is  
14 all right. Yes, thank you.

15 MR. LOOMIS: Madam Chairman, my name is Marion  
16 Loomis. I am the Executive Director of the Wyoming Mining  
17 Association. We, like everybody else, want to thank you for  
18 the opportunity to comment today.

19 Wyoming Mining Association represents 25 mining  
20 companies in Wyoming producing bentonite, coal, trona and  
21 uranium. We have 17 surface coal mines and 1 underground  
22 mine. Those mines produce 35 percent of the nation's coal.  
23 So we obviously lead the nation and are its primary  
24 producer.

25 We have four underground trona mines. Trona is

1 processed into soda ash. And those four mines produce 90  
2 percent of the nation's soda ash. We have a number of  
3 bentonite operations, and also lead the nation in production  
4 of bentonite as well as uranium. Last year, Wyoming mines  
5 produced 405 million tons of coal, 17 million tons of trona,  
6 5 million tons of bentonite and 1.3 million pounds of  
7 uranium.

8           The emergency rule adopted by the Mine Safety and  
9 Health Administration is very important to all of us, all  
10 the miners in Wyoming. And it is important to note that  
11 while mining has inherent risk as we all know, and is shown  
12 by the tragic accidents in West Virginia and others, the  
13 accident rate and fatality rates have been coming down in  
14 the nation, and we haven't talked too much about that today.

15       But I think that the industry has made a major commitment  
16 to try to reduce those.

17           The safety record at Wyoming mines is remarkable  
18 over the past 20 years. For instance, Wyoming coal mine has  
19 won the sentinels of safety award for surface coal mines,  
20 twelve out of the last 24 years. And from a period from  
21 1998 to 2003, Wyoming coal mines won the award every year.

22           So safety is very important to us, in all aspects  
23 of the mining industry. In 2004, the last year of which I  
24 have complete data, 85 separate mining operations worked for  
25 a combined total of 6.7 million manhours without a lost time

1 accident. Working in a Wyoming mine is actually safer than  
2 working in state government, manufacturing or agriculture.

3 I have included a graph that shows the statistics  
4 for the Wyoming operations. Finance, by the way, is the  
5 only one that was safer than coal operations in Wyoming.

6 Stated in the emergency rules, the Emergency  
7 Temporary Standards includes requirements for immediate  
8 notification applicable to all underground and surface  
9 mines. And I won't dwell on this. Our major point is the  
10 notification.

11 And in the Federal Register, it confused an awful  
12 lot of the mining industry, because it wasn't referenced as  
13 15 minutes from the time the accident was determined to be  
14 an accident. It says, if an accident occurs, it is 15  
15 minutes. And that has been interpreted as it reads there.  
16 Not from the time that it is determined to be an accident.

17 And so I appreciate your comments, Madam  
18 Chairman, that you would further clarify that to make sure  
19 what you are actually talking about when to determine when  
20 an accident occurs. But we would encourage you to consider  
21 the 30-minute time notice for that. We think that is a more  
22 realistic time frame to try to address it.

23 As you can understand, when you are faced with a  
24 \$5,000 fine, the first reaction of some might be just to get  
25 out, and get the accident reported, rather than trying to do

1 everything in the mine to make sure that they are addressing  
2 the accident, or the issues that need to be addressed.  
3 There was one other comment that was brought to my attention  
4 here, and that was who to contact.

5 In the Federal Register, it is you contact the  
6 district office having jurisdiction over the mine. For  
7 those of us in Wyoming, that is probably the Denver office.

8 If you can't get the Denver office, then you go to  
9 Arlington. It completely bypasses the local office that  
10 would be available.

11 And maybe you should give some consideration to  
12 that being the first contact, if available. Madam Chairman,  
13 that concludes our comments, and I thank you for the  
14 opportunity to comment.

15 MS. SILVEY: Thank you. Does anybody have  
16 anything?

17 MR. SNASHELL: Why is working in Wyoming state  
18 government so lethal?

19 MR. LOOMIS: It is not. It is just working in  
20 the coal mines is so safe.

21 (Applause.)

22 MS. SILVEY: We don't have -- we can't -- touche.  
23 Okay. Next we have Robert Butero with United Mine Workers  
24 of America.

25 MR. BUTERO: This doesn't mean I am going to be

1 long. It just means that I am thirsty.

2 MS. SILVEY: That is fine. I have got you.

3 MR. BUTERO: On behalf of President Cecil  
4 Roberts, Secretary-Treasurer Dan Kane, and all the members  
5 of United Mine Workers of America, and in fact, all miners  
6 across the nation, I would like thank the Mine Safety and  
7 Health Administration for the opportunity to comment on the  
8 Emergency Temporary Standard on mine evacuation.

9 My name is Robert Butero, and I am the organizing  
10 Director for the UMWA Region 4. The tragic events that  
11 bring us together today are far too familiar in the mining  
12 industry. I am sorry to say that despite decades of tragedy  
13 in this industry, and years of complaints by the union, this  
14 Agency and the industry are still stuck in a pre-1968  
15 mindset.

16 My testimony here today will not focus greatly on  
17 what could have been, however, I would remiss if I did not  
18 say that had you listened to the United Mine Workers over  
19 the past six years, had you paid attention to the  
20 recommendations contained in Jim Walters' Number Five report  
21 issued by the Union, and had you focused on enforcement  
22 rather than compliance assistant, we would not be here  
23 today. What I am saying may cause some of you discomfort,  
24 but this does not compare to the struggles and heartache of  
25 the wives and sons and daughters or other family members of



1 the 24 miners killed, actually 26 now, since January 2,  
2 2006.

3 Your discomfort is of little consequence unless  
4 it forces a new thinking within the Government. I must  
5 submit to you today that on January 6, 2006, the Government  
6 failed the miners at Sago. It also failed the miners at  
7 Alma Mine on January 19, 2006. And in fact, on at least ten  
8 other occasions this year, the Government failed this  
9 nation's coal miners.

10 It is obvious to everyone that these failures  
11 cause more than monetary pain and suffering. They cause  
12 more than loss of income and temporary hardships. These  
13 failures and lives tear apart families, and leave widows and  
14 children without the comfort and companionship of their  
15 loved ones.

16 MSHA's failures can no longer be tolerated. It  
17 is time for this Agency to return to the basis of its  
18 creation, to protect the health and safety of the nation's  
19 miners.

20 Finally, in my opening, I must state for the  
21 record that the sad truth regarding the hearing today is  
22 that we would not be, if not for the horrific death of those  
23 twelve miners at Sago on January 2, 2006, we would not be  
24 here. It would appear we have learned nothing since 1969.  
25 Meaningful regulations promulgated by this Agency are non-

1     existent until miners die in large enough numbers to capture  
2     public attention and cast a spotlight on the industry.

3             Again, a new rule will be promulgated. Again, it  
4     will be written in blood of miner sacrifice for corporate  
5     profits. When is enough sacrifice simply that; enough.  
6     When will this Agency act proactively to protect the life of  
7     every miner, every day, every shift.

8             The Sago miners account for half of the total  
9     fatal mining accidents this year. And I submit to you that  
10    if the number of total numbers had been the same, 24 day,  
11    but had they all died one at a time, we would not be here.  
12    That too, is a real tragedy.

13            Over the course of the next several weeks, United  
14    Mine Workers will be submitting comments at each of the  
15    scheduled hearings. We will also place substantial written  
16    comments in the record. However, it is my intention today  
17    to discuss some of the issues I see as problematic with the  
18    emergency rule, and offering some additional guidance to the  
19    Agency to remedy these problems.

20            The Union does agree that hands-on training and  
21    drills are the best way to ensure miners are adequately  
22    trained in donning their SCSR and escaping. However, we  
23    believe this rule as written is fatally flawed. SCSR and  
24    escape training must be completely separate from any of the  
25    current Part 48 training.

1           The Union has offered at almost every hearing in  
2 the past six years evidence that the training is already  
3 overburdened. There is not sufficient time to cover the  
4 required topics, let along all the add ons the Agency  
5 continues to put on the program.

6           Therefore, the rules should require all annual  
7 training that deals with any aspect of self-contained self-  
8 rescuer training and evacuation or escape be uncoupled from  
9 any other training. Specific times should be set aside  
10 during the miner's regular shift, and no loss in  
11 compensation for this training.

12           The Union also believes that walking the  
13 escapeway to familiarize miners with their escape route  
14 every 90 days may have some benefit, at least in theory. We  
15 will broaden our comments on this matter over the course of  
16 the next few months.

17           Outlining the pros and cons of this practice, but  
18 on the surface, if this is to be another paper compliance  
19 aspect of the regulation, MSHA should remove it from the  
20 current rule. I think everyone here knows exactly what I  
21 mean by this comment. But if there are those that I have  
22 confused, I will elaborate. Without outside independent  
23 verification that this section of the rules complied, and  
24 with some operators who will simply fill out the paperwork  
25 that their drill is completed, send it to the Agency, and we

1 will be no further ahead in training miners in SCSR usage  
2 and mine evacuation than we are right now.

3           It becomes apparent that MSHA must accept a more  
4 meaningful role in assuring compliance. The Union believes  
5 that the Agency intends to enforce a 90 day training  
6 interval as we believe they should.

7           These drills should coincide with the day an  
8 authorized representative of the Secretary is present in the  
9 mine. This representative should accompany any miners  
10 participating in the drill. The Union sees no additional  
11 cost to the Agency for implementing such a practice. The  
12 Federal Inspector is required to walk the mines, escapeways  
13 every quarter, and would be readily available to perform  
14 this task. This would not only ensure compliance but  
15 reinforce the importance of the drill.

16           The Union is in agreement with the spirit and the  
17 language of requiring immediate notification, but not longer  
18 than 15 minutes, in the event of an accident. We believe  
19 this is adequate time for the mine operators to determine  
20 what is occurring at the operation.

21           There are two aspects the Union believes need  
22 clarification and stricter enforcement. First, the caveat  
23 that allows the mine operators to delay notice beyond 15  
24 minutes in the event communications is interrupted should be  
25 stricken. In the event an accident occurs, another system

1 shuts as fan charts or AMS indicate the problem, the Union  
2 understands a need to communicate with the underground area  
3 of a mine that may be affected.

4           However, in the event that communication does not  
5 occur within 15 minutes of the onset of the problem, a call  
6 should be made to MSHA, notifying the Agency of a potential  
7 problem. It should be up to MSHA to determine what steps  
8 should be taken from the point forward to protect the health  
9 and safety of affected miners.

10           Secondly, regarding the accident notification,  
11 the current practice of permitting mine fires that last less  
12 than 30 minutes go unreported should be eliminated. The  
13 Union believes that any fire at any mining operation should  
14 be an immediately reportable incident.

15           Far too often, such events occur again and again  
16 because once a fire is extinguished, the operator is not  
17 compelled to eliminate the source of the problem. This  
18 notification requirement would eliminate many of these  
19 hazards in the industry.

20           The Union does support the use of directional  
21 lifelines in mine escapeways. Having stated that, this is  
22 important to note here that the Union has argued on numerous  
23 occasions that the installation of lifelines should be  
24 required in all mines. Unfortunately, these requests that  
25 were made in both public forums and private meetings with

1 MSHA were completely ignored until the recent disasters.  
2 Again, it is a shame that it took the death of miners to  
3 motivate this Agency.

4           Finally, in writing of this emergency standard,  
5 the Agency has ignored, perhaps by design the very  
6 individuals who are the most impacted by your actions. MSHA  
7 requires mine operators submit plans for SCSR storage for  
8 evacuation, for training, and to meet other requirements of  
9 the rule. However, there is no seat at the table for miners  
10 or their representatives to directly participate in the  
11 process.

12           These individuals have earned the right to offer  
13 input and expect expert comment on such important plans.  
14 They should be given that right in this regulation. Thank  
15 you for your time.

16           MS. SILVEY: Thank you.

17           (Discussion was held off the record.)

18           MS. SILVEY: Okay. Thank you for your comment on  
19 the training issue.

20           MR. BUTERO: You are welcome.

21           MR. SHERER: Mr. Butero, you were talking about  
22 mine fires, all of them should be reported. One of the  
23 concerns that we have is in many mines there is hot work  
24 going on; welding, cutting, things like that on a fairly  
25 regular basis. Do you have any suggestions as far as how to

1 handle that.

2 We know that is a planned event. But still, it  
3 seems like people get too complacent. They smell smoke.  
4 They smell coal burning. It becomes no big deal until a  
5 disaster happens. Do you have any comments on that?

6 MR. BUTERO: You know, as far as the reporting to  
7 MSHA of a mine fire, we believe that should occur. And then  
8 it is up to MSHA to decide the investigation of that, as it  
9 is now.

10 As far as incidents like that, where you have  
11 welding or cutting or that in a mine, if you are going to  
12 have an event like that occur, everybody that is affected in  
13 by that area should be notified, and should be made aware of  
14 that situation. That you have a situation like that occur.

15 And then of course with people's requirements of rock dust  
16 and fire extinguishers at the site and that, hopefully that  
17 contains that. But that person should also be able to  
18 communicate immediately with anybody in by if that situation  
19 gets out of control.

20 MR. SHERER: Okay. Thank you.

21 MR. MACLEOD: I wanted to, excuse me, ask a  
22 question concerning you suggested that we add additional  
23 training requirements to -- I am assuming you are referring  
24 to an annual refresher training, but you didn't specifically  
25 say that. I was just curious if you could go a little bit

1 further in that.

2 Because actually, we removed all the SCSR  
3 training from annual refresher training, and put it into the  
4 drill. So I wanted to make sure I understood what your  
5 concern was on that fact, because in fact, we did remove  
6 stuff out of that. So if you could explain that, maybe.

7 MR. BUTERO: Okay. You know, I have seen one of  
8 the women that testified earlier from the State of New  
9 Mexico, you know, she offered the testimony to the fact that  
10 the more the better. And we are not against that.

11 But we want to emphasize that the training of the  
12 self-rescuers and evacuation because of the problems that we  
13 had, to put more emphasis on that, and not just be a part of  
14 the Part 48 training. That it all be separated, and put  
15 that out there itself. So that it is what it is deemed for,  
16 and that is what is going to occur at that time.

17 MR. MACLEOD: Okay. Thanks.

18 MS. SILVEY: Yes. Okay, Mr. Butero. Thank you,  
19 Mr. Butero. We next have David Arnolds with P & M. Is that  
20 Pittsburgh and Midway? Yes, it has been awhile.

21 MR. ARNOLDS: Good afternoon, Madam Chairman. My  
22 name is Dave Arnolds, and I am an attorney with the  
23 Pittsburgh and Midway Coal Mining Company. We thank you for  
24 the opportunity to make comments on the Emergency Temporary  
25 Standards. And we will submit written comments by May 30.



1           However, I wanted to address just one point that  
2 several other or many other commenters have addressed. But  
3 I do so because of the importance. And that is the absolute  
4 requirement to notify MSHA of an accident within 15 minutes  
5 after determining that it has occurred.

6           There is no exception in the ETS to doing this,  
7 other than a failure of the communications system,  
8 basically, physical impossibility. Therefore, it puts an  
9 individual in a dilemma of either perhaps attempting an  
10 immediate rescue effort to save someone's life, to provide  
11 immediate medical attention to someone, or to leave the  
12 scene of the accident and go to a phone to inform MSHA of  
13 the accident. And a person who makes a choice of trying to  
14 save someone's life or deal with an emergency is faced with  
15 a wilful and knowing violation of a mandatory standard in  
16 making that decision.

17           I submit that there should be an exception that  
18 is similar to those in Part 50 for preserving the scene of  
19 an accident, where you are required to preserve the scene of  
20 an accident, except for three exceptions. One of which of  
21 course is to rescue someone and another is to deal with  
22 eliminating an imminent danger.

23           And I suggest while these may not be the exact  
24 sort of exceptions that should be included, that certainly  
25 exceptions along that same mentality should be included in

1 the immediate notification standard. And we will submit  
2 written comments on the other points.

3 MS. SILVEY: Okay. Thank you. We will look  
4 forward to your written comment.

5 MR. SNASHELL: I am going to ask him one.

6 MR. ARNOLDS: Yes, sir.

7 MR. SNASHELL: In situations where there is more  
8 than one individual who can respond, can't a company  
9 basically say that you are to call MSHA in case there is a  
10 problem, and other people administer the life support?

11 MR. ARNOLDS: Absolutely. If there are enough  
12 people, then it is not essential that they all work on the  
13 emergency. But I think in the situation where people are  
14 faced with either making the call or dealing with the  
15 emergency, there should be a legal exception for dealing  
16 with the emergency.

17 MR. SNASHELL: Thank you.

18 MR. ARNOLDS: Thank you.

19 MS. SILVEY: Thank you. And the final person who  
20 signed up is Al Quist.

21 MR. QUIST: Quist.

22 MS. SILVEY: Quist. Thank you. With Aggregate  
23 Industries.

24 MR. QUIST: I want to thank the Committee for  
25 allowing me to speak on behalf of Aggregate Industries. We

1 are a sand and gravel quarry producer in about eight states.  
2 And I am the Safety Manager. I work for Richard Holmes,  
3 who is the Safety Department Manager, who would have been  
4 sitting here in my place, had he not had other things happen  
5 today.

6 So I have taken some notes on a recent event.  
7 Unfortunately, we lost one of our employees three weeks ago  
8 in the Central region.

9 MS. SILVEY: Yes. Michigan.

10 MR. QUIST: Michigan, yes.

11 MS. SILVEY: Sorry.

12 MR. QUIST: Richard was called out to  
13 investigate. And I am going to kind of not make any  
14 editorial comments on this, but I am going to go through a  
15 time line. And these are approximate.

16 Only the actual number or the actual time that we  
17 have is when the 911 call was made. We operate a small sand  
18 and gravel operation in a real rural area. It is farmland.

19 I don't even know what the nearest town would be.

20 But on April 4, 2006, at 3:53 p.m., one of the  
21 employees discovered a new employee had become entangled,  
22 his clothing had become entangled in a tail pulley of a jaw  
23 crusher. And the first thing that was done is 911 was  
24 called. In the preceding minutes afterwards, an employee  
25 was told to stay with the victim.

1           Two employees went -- oh, I don't know. I  
2 haven't even been there, so I don't know. But a ways to a  
3 tool shop to get tools to extricate the person. They came  
4 back. They worked frantically to get him out. Fifteen  
5 minutes had gone by before the EMTs, and these are  
6 approximate, because I am going off of what I was told. And  
7 I don't know that we will ever know when they arrived on the  
8 scene.

9           But approximately 15 minutes passed before the  
10 EMTs, the fire department and the sheriffs arrived. At that  
11 point, we were in violation of the law for failure to  
12 notify. It went on to about 4:35 when there was enough  
13 sanity to call the safety manager.

14           The safety manager was notified about 4:35. He  
15 was in the hospital with his wife. They were having a  
16 child. He returned the call. He made some phone calls to  
17 get the number to call MSHA. He didn't have it with him.  
18 He made the phone call around 5:00.

19           If you follow through the time line, there was  
20 about one hour and seven minutes expired from the first  
21 discovery of the employee to the time MSHA was called. We  
22 have been notified that we have received a citation for  
23 failure to call within that 15-minute time limit. It is my  
24 understanding that it is quite an onerous fine. It is  
25 \$100,000, if I am not mistaken.

1 MS. SILVEY: No. That's not right.

2 MR. QUIST: Okay. Well, be that -- it is an  
3 onerous fine. It is more than a \$60 fine. My reason to  
4 bring this up is that everybody's effort at the mine site  
5 was put towards trying to save a life at the very beginning.  
6 It was determined after 15 minutes there was no life to be  
7 saved.

8 So at this point, we were in violation of this  
9 emergency temporary standard. And I just want to say that  
10 when you direct all your efforts into saving or getting  
11 somebody into an area where there is less harm, 15 minutes  
12 can tick by awful fast.

13 And you can be in violation of a standard that I  
14 feel is, if the price tag is priced high enough there might  
15 be some efforts being set towards making a phone call to  
16 MSHA versus choosing to save a victim's life or save a  
17 person's life. And so I think that 15 minutes is an awful  
18 short time period.

19 And it ought to be either turned back to where it  
20 was, and a little bit of discretion used as to the chain of  
21 events and that they did the best they could, or raise it to  
22 30 minutes. I think that in 30 minutes this thing could  
23 have possibly been taken care of. But with all the things  
24 that happened in this event, it took an hour and seven  
25 minutes.

1           And I am not here to say whether that was right  
2           or whether that was wrong. That is just what happened.  
3           And I don't have anything else.

4           MS. SILVEY: Thank you. And although those of  
5           you who were here this morning, you know we had a moment of  
6           silence this morning. But we do express our sympathies to  
7           your company.

8           MR. QUIST: Thank you.

9           MS. SILVEY: I happened to know about that  
10          particular event before he even said it, because things  
11          change so fast, but I was in metal non-metal at the time, at  
12          MSHA. And metal non-metal has jurisdiction over aggregates  
13          industry.

14          So I knew exactly what you were going to say. So  
15          thank you. We will take that into consideration. Thank  
16          you. Does anybody else wish to speak at this time?

17          (No response.)

18          MS. SILVEY: If nobody wishes to speak, I think  
19          what I am going to do is I am going to tentatively close the  
20          hearing. But we will be here, because the public hearing  
21          notice said that we would be here until, we would have this  
22          hearing until, I think the hours were 9:00 to 5:00.

23          So I am going to tentatively conclude the hearing  
24          at this time. But if anybody comes up, then we will be  
25          around to reconvene it. But even with that in mind, I am

1 going to say to all of you that we appreciate all of you who  
2 came today.

3 All of you who participated, and all of you who  
4 provided us with the real specific comments from your real  
5 life situations. Your comment and testimony at today's  
6 hearing, and this is the first of four hearings, will help  
7 us develop a final rule which provides the most appropriate  
8 and effective protection for miners, and reflects the needs  
9 and the concerns of the mining community.

10 And would like to reiterate, and now I can say  
11 reiterate, that as we heard from everybody today and as we  
12 listened and as people spoke, I think we all emphasized that  
13 when we talk about a mine emergency, an underground mine  
14 emergency situation, we want to probably, and maybe we can't  
15 overemphasize the point that the first thing we want to  
16 stress is that escape, escape.

17 But if we are not able to do that, then  
18 barricading as a last resort. And I do think that we all  
19 sort of agree with that fundamental safety principal. So if  
20 nobody wishes to speak at this point, I am going to  
21 tentatively close the hearing. If nobody else comes, then  
22 it will just close by operation of law. But we all  
23 appreciate you participating today. Thank you again.

24 (Off the record.)

25 MS. SILVEY: Even though the public hearing

1 notice says 5:00, it does say until the last scheduled  
2 speaker has spoken. So I think I will just officially close  
3 the hearing at this time. Everybody knows they can submit  
4 comments.

5 (Whereupon, at 1:05 p.m., the hearing was  
6 concluded.)

7 //  
8 //  
9 //  
10 //  
11 //  
12 //  
13 //  
14 //  
15 //  
16 //  
17 //  
18 //  
19 //  
20 //  
21 //  
22 //  
23 //  
24 //  
25 //



REPORTER'S CERTIFICATE

IN RE:                   Public Hearing on Emergency Temporary  
                              Standard

DATE:                    April 24, 2006

LOCATION:                 Lakewood, Colorado

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the U.S. Department of Labor Mine Safety & Health Administration.

Date: April 27, 2006

Marcene Ness  
Official Reporter  
Heritage Reporting Corporation  
1220 L Street, N.W.  
Washington, D.C. 20005