# TRANSCRIPT OF PROCEEDINGS

IN THE MATTER OF: )
)
MSHA'S EMERGENCY TEMPORARY )
STANDARD FOR EMERGENCY MINE )
EVACUATIONS )

Pages: 1 through 109

Place: Washington, D.C.

Date: April 28, 2006

**HERITAGE REPORTING CORPORATION**

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

IN THE UNITED STATES DEPARTMENT OF LABOR

IN THE MATTER OF: )
)
MSHA'S EMERGENCY TEMPORARY )
STANDARD FOR EMERGENCY MINE )
EVACUATIONS )

MSHA Conference Room - 2500
1100 Wilson Boulevard
Arlington, Virginia 22209

Friday,
April 28, 2006

The parties met, pursuant to the notice at 9:03 a.m.

BEFORE: PATRICIA W. SILVEY
Moderator

PARTICIPANTS:

Bruce Watzman
Ken Sproul
Tim Baker
Robert Snashall
Ed Roscioli
Tom McLeod
Jeffrey Kravitz
Debra Janes
Ron Ford
Erick Sherer
David Beerbower
Allen Smith
Dale Byram

P R O C E E D I N G S

(9:03 a.m.)

MS. SILVEY: Good morning, my name is Patricia W. Silvey, Acting Director of the Office of Standards, Regulations, and Variances for the Mine Safety and Health Administration. I will be the moderator of this public hearing on MSHA's emergency temporary standard, or ETC, for emergency mine evacuations.

At this moment, I would like it if you would pause with me for a moment of silence, in honor of the miners, who lost their lives and who were injured at the Sago Mine explosion and the miners, who lost their lives and were injured in the Aracoma Alma No. 1 Mine accident and for all the miners, who have lost their lives and/or have been injured this year, and for all the miners, who have lost their lives and have been injured in this country's mines from the beginning. And I would just like to add to this, that it is particularly fitting that we pause for this moment in honor of miners on this workless Memorial Day, which is the day set aside to honor all workers, who have been injured or who even lost their lives in industrial accidents. So, if you would pause with me.

(Moment of silence.)

MS. SILVEY: Thank you. On behalf of Secretary of Labor Elaine Chow and Acting Assistant Secretary of Labor for MSHA David G. Dye, I want to welcome all of you here today.

Also, attending this hearing are several individuals from MSHA, who are on the committee drafting this emergency temporary standard, and they are, to my left, Eric Shere, who is the Coal Mine Safety and Health, the Division of Safety. Eric is the Chair of the rulemaking committee. To my right, Jeffery Kravitz, Chief of Mine Emergency Operations and Special Projects, and many of you, I know, in the mining community are familiar with Jeff and he is with the Pittsburgh Safety and Health Technology Center, Director of Tech Support. To Eric's left is Tom MacLeod. Tom MacLeod is with our Education and Policy Development Division and he is working on the training aspects of the rule. And to his left is Kenneth Sproul and Ken is with the Office of Technical Support. To Jeff's right is Robert Snashall and Bob is our lawyer on the committee -- or attorney. To his right is Ron Ford. Ron is the economist from my office and to Ron's right, Debra Janes, and Debra is the regulatory specialist.

This is the third of four hearings on the

emergency standard. As you well know, the first hearing was in Denver on Monday, the 24th of April; the second hearing in Lexington on the 26th of April; and the fourth hearing will be in Charleston on the 9th of May. In the room over here, we have copies of the emergency temporary standard. We, also, have copies of volumes 1 and 2 of the compliance guide that we have issued, addressing questions that have been raised thus far in the rulemaking. And I think questions continue to be raised.

The purpose of these hearings is to receive information from the public that will help us evaluate the requirement contained in the emergency standard and produce a final rule that promotes safe and effective evacuation for miners during mine emergencies. And I'm going to digress from my opening statement right at this moment to make another significant point and that is, we believe that this emergency temporary standard is significantly important, but we cannot underscore that the fundamental principal of mine safety is that in the event of a mine emergency, miners should be first trained to escape the mine, if at all possible; that be the last line of defense, as a final line of defense, then, to barricade in the mine. But, the

first line of defense is to escape the mine. And will continue to underscore that fundamental principal.

We, also, will use the data and information gained from these hearings to help us craft a rule that responds to the needs and concerns of the mining public, so that the provisions of the emergency standard can be implemented in the most effective and appropriate manner that provides the maximum safety and health for miners. We published the ETS in response to the grave danger to which miners are exposed during underground coal mine accidents. The ETS includes requirements in four areas. The first area: immediate accident notification is applicable to all underground and surface mine, both coal and metal, nonmetal. The three other areas covered by the rule, self-contained self-rescue storage and use, evacuation training, and installation and maintenance of lifelines, apply only to underground coal mines. During these four hearings, we will solicit public input on all of these issues. The hearings will give manufacturers, mine operators, miners and their representatives, and other interested parties an opportunity to present their views on the issue.

MSHA issued this emergency standard on March 9, in response to the tragic accidents at the Sago

Mine on January 2 and the Aracoma Alma No. 1 Mine on January 19th. MSHA determined that better notification, safety, and training standards are necessary to further protect miners when a mine accident takes place.

The ETS was issued in accordance with 101(b) of the Federal Mine Safety and Health Act of 1977. Under Section 101(b), the emergency standard is effective until superceded by a mandatory standard which, under the Mine Act, must be published within nine months after publication of the emergency standard. The emergency standard, also, serves as the proposed rule.

As stated earlier, we will use the information provided by you to help us decide how best to craft the rule. In addition to the provisions of the emergency standard, we are also considering the following issues and seek further information on these issues from you. As you address the issues, either in your comments to us today or those sent to us here in Arlington, please be as specific as possible with respect to impact on miner safety and health, mining conditions, and feasibility of implementation.

Additional issues: number one, should miners have the ability to tether themselves together

during escape through smoke-filled environments? If so, what length of tether between miners should be required? Should a miner's tether be capable of clipping easily to another's so that any number of miners could be attached together to work their way out of the mine? How should the tether be attached to the miners belt or should there be a place other than the miner's belt to attach the tether? Should the tether be constructed of durable and/or reflective material? Where should the tether be stored on the section or could it be a part of the miner's belt? Should it be stored with the additional self-contained self rescuers and are readily accessible and identifiable location, or in a separate location?

Number two: should a training record under 75.1502(c)(3) not only include a requirement that mine operators certify, by name, all miners, who participated in each emergency evacuation drill, but also additional information, such as a checklist? A checklist could be used to itemize the successful completion of each step of the training, as outlined in the approved program of instructions.

Number three: when should a miner don and SCSR when they believe they are in danger or when smoke is encountered? This may lead miners vulnerable

to irrespirable air, such as air that contains lethal carbon monoxide levels or low oxygen. MSHA is considering requiring that at least one miner in a group of miners and an individual miner when working alone have at least one multi-gas or air quality detector with them.

Number four: in the preamble to the ETS, we discussed a method to locate additional SCSRs, based on a joint MSHA-NIOSH heart-rate study. MSHA solicits comment on the heart-rate method, whether this is the most appropriate method to determine location, whether it is realistic, and any other comments you may have on the heart-rate method. What other reliable alternatives exist for determining where to position additional SCSRs in the mine.

Number five: MSHA is considering a requirement that additional SCSRs under 75.1714-4(c) be stored in all escape ways at intervals of 5,000 feet for mines where the escapeway height is above 48 inches and 2,500 feet for all other mines. Would such a specification standard be more appropriate than the performance-oriented heart-rate method provided in the ETS. Regarding such a specification-oriented standard, what would be more appropriate: 5,000 and 2,500 foot intervals for heights greater than 48

inches and heights 48 inches or less, respectively, or some other specific interval?

Number six: should all underground coal miners be required to use SCSRs exclusively. If so, is it appropriate to prohibit the use of filter self rescuers in all underground coal mines? In addition, MSHA is considering adding a new provision to 75-174-4 that would allow the use of new SCSR technology to meet the requirements of the standard, such as SCSRs that have the ability to provide up to two hours or more of oxygen per unit. Is such a provision appropriate?

Number seven: manufacturers sometimes lose track of which mines purchased their SCSR. When a mine shuts down, the SCSRs are often sold to another mine. In the past, problems have been discovered with all brands of SCSRs. MSHA is considering requiring the following information be reported for each SCSR at the mine: the total number of SCSRs, the manufacturer, the model, the date of manufacture and the serious number. Is it appropriate to require mine operators to report to the relevant MSHA district manager the total number of SCSRs in use at each underground coal mine. If so, should any additional information be reported?

Number eight, because in the past MSHA did not always learn of problems associated with SCSRs, MSHA is considering a requirement that mine operators promptly report to the MSHA district manager, in writing, all incidents where any SCSR required by Section 75.1714 is used for an accident or emergency, and all instances where such SCSR devices to not function properly. In addition, when any SCSR device does not function properly, the mine operators would be required to retain the device for at least 90 days for investigation by MSHA. These requirements would help assure that MSHA is notified of problems in a timely matter, so that MSHA can provide timely notification to both manufacturers and users and assure that the effective SCSR are available for testing and evaluation. Should MSHA include such requirement in the final rule?

Number nine: SCSR storage location and escapeway may not be readily accessible to all persons underground, such as poppers, outback crews, and examiners. Are there other ways to provide readily accessible SCSR coverage for these miners? Are there storage locations that would be readily accessible to such persons?

Number 10: MSHA sought comment on the

appropriateness of requiring that signs to help locate SCSR storage areas be made of a reflective material. MSHA, also, asks whether there are alternative methods available for making SCSR storage locations easy to locate when conditions in the mine might obscure the storage locations. What methods exist that would make SCSR storage locations readily visible?

Number 11: under new paragraph 75.1714-4(c), operators are required to have separate SCSR storage in each escapeway. Where a mine has parallel and adjacent escapeways, under what circumstance would it be appropriate to allow a hardened room or 'safe haven" to serve both escapeways with one set of SCSRs. A hardened room is a room constructed with permanent seal techniques, submarine-type doors opening to both escapeways, and positive ventilation from the surface to a borehole. Is a safe haven an acceptable alternative? If so, what should be the minimum criteria for MSHA to accept a hardened room or safe haven?

Number 12: currently, cone systems on lifelines vary, some with the cones pointing toward the face, others appointing away from the face. Miners may become confused in an emergency, as to the direction of escape. Should cones or other

directional indications on lifelines be standardized? Following a NIOSH recommendation and for ease of movement, should the pointing of the cone be toward the face?

Number 13: miners should be able to safely evacuate a mine without the use of mechanized transportation. There may be unique escapeway conditions, including ladders, man doors, air locks, and overcasts, where hands-on experience of these conditions is required, in order to quickly and safely escape the mine. It is reasonable to require that miners walk the escapeway at least under these unique escapeway conditions. Should all miners be required to walk the escapeway in its entirety, rather than use mechanized transportation during the drills required under new paragraph -- under paragraph c of 75.1502? We are considering including a requirement in the part 48 training program for new miners that new miners travel, at least in part, both escapeways. Would this training be appropriate and should the training include walking part or all of the escapeways?

Number 14: a more instructive emergency evacuation may be provided by using realistic drills. For example, conducting a drill in smoke or using a realistic mouthpiece that provides the user with a

sensation of actually breathing through an SCSR, commonly referring to as expectation training, are more realistic than simulation training. What other realistic emergency evacuation practices and scenarios would ensure that miners are better prepared to act quickly and safely in an emergency? We intend that scenarios required by the approved program of instruction under 75.1502(a) be used to initiate the drill and to conduct a mine emergency evacuation drill required by 75.1502(c). For example, to initiate the drill, the section foreman may choose one of the mine's approved explosion scenario. The foreman would gather the miners on the section and state where the explosion occurred, provide any special circumstances of the event, and conditions requiring immediate donning of SCSRs. The foreman and miners would then physically follow the best options for evacuation, as they evacuate the mine. When the miners travel to the place or into conditions that would require immediate SCSR donning, the need to don the SCSR must be made clear, so that it is understood by all.

Number 15: we expect that the scenarios developed as part of the mine emergency and firefighting program of instruction under new paragraph 75.1502(a) would be included as part of the

emergency evacuation drill under 75.1502(c), making the drills more realistic. Should we further clarify this in the final rule? Are there additional requirements that should be included in this training to make it more realistic, such as conducting SCSR donning in a smoke-filled environment?

Number 16: we are considering putting all emergency evacuation drill requirements in 75.1502. Thus, for example, escapeway drill requirements under 75.383 pertaining to the frequency of drills, how far miners travel in drills, and the number of miners involved in each drill would be incorporated into 75.1502. Under 75.383(b)(1), each miner must participate in a practiced escapeway drill at least once every 90 days, but is only required to travel to the area where the split of air ventilating the working section intercepts a main air course, or 2,000 feet out by the section loading point, whichever distance is greater. Under new 75.1502, during the emergency evacuation drill, the miners must travel to the surface or to exit at the bottom of the shaft or slope. Section 75.383(b)(2) and (b)(3) require that practice escapeway drills occur at least once every six weeks, but they only involve two miners and a supervisor. Miners systematically rotate taking these

drills, so that eventually all miners participate. Under new 75.1502, emergency evacuation drills are required for all miners and at periods not to exceed 90 days. We will have to reconcile these differences. So, we are requesting comments on incorporating all evacuation drill requirements in 75.1502. We, also, are considering requiring section bosses to travel both escapeways in their entirety prior to acting as a boss on any working section or any location where mechanized mining equipment is being installed or removed.

Number 17: we are considering requiring that all mine fires be reported to MSHA, including fires shorter than 30 minutes duration. This would address all mine fire hazards, including situations where a number of short duration fires occur. Should the definition of accident in 50.2(h)(6) be revised to include all unplanned underground mine fires or fires of a particular type or duration or occurrences at particular locations in the mine? The comments that we have received on the emergency standard, you can view on our website at www.msha.gov, under the section entitled 'rules and regulations." And we have also answered several questions, as I mentioned earlier, in a compliance guide covering a range of issues and

these questions and answers are also posted on our webpage.

Finally, we've received questions as to whether the emergency evacuation training provision for metal, nonmetal mines are affected by the ETS. While the ETS amends part 48 by adding references to the requirement for emergency evacuation plans in existing 57.11053 for underground metal and nonmetal mines, these references do not affect the existing training requirements for metal and nonmetal mines. And it is our intent not to change the existing part 48 emergency evacuation training provision for metal and nonmetal mines. We will clarify this in the final rule.

And those of you, who participated in these hearings with us before, know, the format of this public hearing will be as follows. Formal rules of evidence will not apply and the hearing will be conducted in an informal manner. Those of you, who notified us in advance, will speak, as well, those, who signed up, will make their presentations first. And I have asked that if anybody wishes to speak, if you would, please, sign the speaker list. We, also, have an attendance list and ask that you make sure that you sign the attendance list before you leave, if

you haven't done so yet. If you wish to present written statements or information today, please clearly identify your material, as we will identify it in the record by the title as submitted. And as I mentioned earlier, you may also submit comments following this public hearing. To be considered, they must be submitted to us by 30 May, 2006, which is the close of the comment period.

Again, we have copies of the ETS and the compliance guide and we, also, have that posted on our website. For your information, we will post the transcripts of all the public hearings on our website. Each transcript should be posted there approximately one week after completion of the hearing. The transcript will include the full text of my opening statement and the specific issues for which the agency seeks additional comments.

We will now begin with the persons, who requested to speak. Please begin by clearly stating your name and organization for the reporter, so that we can have an accurate record. Our first speaker will be Bruce Watzman and Bruce represents the National Mining Association.

MR. WATZMAN: Good morning. I'm Bruce Watzman with the National Mining Association. We

appreciate this opportunity to comment on the emergency temporary standards on emergency mine evacuation. We recognize this most important regulatory initiative was prompted by the high-level concern chaired by the coal mining community arising from the tragic events earlier this year in West Virginia's coal fields. In reviewing the ETS, NMA focused on MSHA's objective to protect miners from the grave dangers they face when they must evacuate a mine after an emergency occurs. Our comments and recommendations are intended to strengthen the requirements for meeting this objective. As such, we offer our thoughts on actions that would safeguard against unintended consequences, unrealistic performance outcomes, or unrealized expectations that may result from the ETS as published.

In general, NMA supports the revised training requirements for miners contained within part 48. We believe, however, the application of these requirements to visitors would be better accommodated by providing more flexibility in the manner in which mine operators must comply with the requirements. For example, instead of requiring the actual donning of self-contained, self rescuers, we believe the necessary instruction can be accommodated by

alternative means.

While we have historically provided limited training on a designated unit to visitors, we're concerned that training on multiple units for those unfamiliar with the mining environment will be confusing and counterproductive. We would urge that the final standard be revised to reflect these concerns.

Similarly, we question the agency's decision to require that all independent contractor employees be provided with this level of training. As the agency is well award, independent contractor activities can vary widely. We believe those providing regular or continual services should receive SCSR training comparable to those provided miners, while those who services are on an infrequent basis can be accommodated through an alternative means similar to that employed to visitors.

The accident reporting revisions under part 50 are intended to facilitate rapid response by MSHA to serious mining accidents. According to the agency, the purpose of the new 15-minute requirement is so that coordination of appropriate mine rescue or other emergency response can begin as soon as possible. NMA strongly supports this objective. We agree with the

agency's assessment that promptly notifying MSHA of mining accidents that pose a threat of death or serious physical injury is vital to enable the agency to effectively respond in emergency or potentially life-threatening situations.

NMA suggests that the objectives of the ETS would be better served if the accident notification requirements distinguish between accidents that pose a threat of life, serious physical injury, or require an emergency response for trapped or injured miners, which would require the 15-minute notification, and those other reportable accidents, which would remain subject to the prior requirement. We would also add that prompt notification to MSHA is only one side of the equation for assuring a timely and effective response to emergencies. In connection with the changes made to the notification requirements, we recommend that MSHA reform the agency protocols for receiving notification and transmitting the information to appropriate officials in a position to act decisively and diligently in response to the operator's notification.

MSHA's regulations prior to the ETS required an operator to immediately contact the MSHA district office, in the event of an accident, which meant one

of the 12 conditions set forth in 50.2(h). Under the revisions made to the notification requirements, immediate contact now means without exception and regardless of circumstances within 15 minutes from determination that an accident has occurred. In short, the 15-minute requirement applies to all accidents regardless of their seriousness or need for emergency response.

The ETS explains the purpose of the 15-minute notification is to enable the coordination of appropriate mine rescue or other emergency response, as soon as possible. We strongly support that objective and believe this purpose would be better served if the notification requirement applied to accidents that pose a threat of life, a danger of serious physical injury, or requires a rescue or other emergency response for trapped or injured miners. For other accidents that do not pose such dangers or necessitate emergency response, the operator would still be required to contact the MSHA district office, which as the agency notes, has been applied on a case-by-case basis appropriate for the conditions and the circumstances of the accident.

The agency's statistics disclose the real possibility of being overwhelmed by the 15-minute

notification requirement for accidents where a real emergency does not exist. The profile of that notification to MSHA in 2005 illustrates this point. In 2005, MSHA was notified of approximately 2,400 immediate reportable accidents. Approximately 90 percent of the 2,400 did not involve an injury to a miner. They involved accidents in two categories: unplanned roof falls at or above the anchorage point, and damage to hoisting equipment, which interferes for its use for more than 30 minutes. Experience has shown that in these cases, it is not necessary to activate mine rescue personnel or local emergency response providers. Contacting MSHA within the required 15-minute time frame for these non-emergency events would be counterproductive and does not serve the purpose set forth in the ETS, which is to facilitate the rapid coordination of mine rescue or other emergency response.

As noted earlier, this proceeding evolved from the tragic events that transpired earlier at the Sago and Alma mines. The state of West Virginia responded rapidly, enacting new mine legislation, followed by the issuance of emergency rules. It's important to note that the circumstances requiring the reporting of accidents within 15 minutes is a topic of

discussion within the State, at this very moment. While it's premature to ascertain how the discussion will proceed, we believe MSHA should, at a minimum, be cognizant and take note of these discussions, as they may result in a limiting of the conditions that would trigger the 15-minute reporting requirement. The ETS solely focuses on the 15-minute notification requirement following the reportable accident. It does not address show MSHA will receive and respond to notification calls. We're concerned that this omission will result in a system that unnecessary delays an effective emergency response.

The MSHA notification protocol has built-in time delays. It requires mine operators to place multiple calls at a time when the focus should be on responding to the emergency event. In an emergency, each additional call a mine operator has to make consumes precious time. The current protocol requires a mine operator to call their MSHA district office when an accident occurs. If the call is placed outside of business hours, the call is forwarded to an answering service. The answering service provides the mine operator with other numbers to call -- to personally reach MSHA district officials. If the caller cannot reach an MSHA district official, the

caller is expected to contact MSHA headquarters. The toll-free answering service maintained by MSHA headquarters relies on individuals with no knowledge of the industry and, therefore, incapable of making informed decisions on how to respond to an event.

MSHA should streamline this process, so that the 15-minute notification is not based in each MSHA district. MSHA should establish a 1-800 number nationwide that will allow operators anywhere in the country to make one call, not only to satisfy the law, but to provide faster and more appropriate deployment of resources. That call center should make the additional notifications as necessary to the districts, to tech support, or to whomever they deem necessary. MSHA personnel should be required to provide this call center with all relevant numbers and persons in charge. Thus, the operator makes one call and then they go about addressing the situation at the mine.

If the establishment of a 1-800 number is not acceptable, we would recommend that each MSHA district provide mine operators with a list of emergency contact numbers. In addition, MSHA should assign staff to be on call to receive emergency calls. A mine operator should only be required to place one

call to a designated person when an emergency occurs. That individual should have the ability to determine the severity of the situation and the authority to direct an appropriate response. A notification system of this type would eliminate the build-in delays that are created by the current reporting protocol.

The proposed provisions to part 75, like the revisions to part 50, are intended to address what the agency deems as grave danger when an accident occurs. While the industry endorses the direction, technology, and procedures advocated in the standards, specific requirements regarding applications and practices may unfortunately introduce additional hazards. These specific requirements should be revised to address the concerns that I'll identify.

NMA supports the installation of lifelines in the primary escapeway, as a way to improve and facilitate emergency evacuations. However, the installation of lifelines in the travel ways makes lifelines a potential hazard. This is especially true when the mines use trolley wire to power the haulage equipment. We suggest that travel ways not be required to have lifelines. If an emergency requires evacuation, the miners will be riding in a man trip in the travel way. Under those circumstances, a lifeline

will not be used. If they encounter smoke, they're trained to don their SCSRs and immediately enter the intake escapeway. This escapeway has the lifeline and they can exit the mine. It should be noted that the State of West Virginia recognized the circumstances and in their regulations, require lifelines only in the primary escapeway.

NMA and its member companies want to reenforce the process, which addresses procedures for the rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of a mine emergency. To prevent full-blown emergencies, the mining industry directs the employees to fight fires, as the first line of defense. The industry commends MSHA for acknowledging this fact.

The industry, however, request that MSHA train its local inspectors and field supervisors to support and understand plans for firefighting. In our view, there have been too many occurrences where firefighting has been hindered by 103(k) orders and other orders of withdrawal from firefighting activities. We believe MSHA can help in this training by directing the local inspectors to become familiar with mine's firefighting practices.

The industry recognizes that the standard interval for fire drill training and subsequently mine emergency training has always been not more than 90 days. With the addition of more extensive training required in the ETS, we recommend that this time frame be modified to once each quarter. This change will enable the operator to train more efficiently without any negative effect on the actual training standard. Large mines will be training over 400 people on SCSR transfers, escapeway systems, firefighting, and evacuation drills. This can all be accomplished quarterly. By providing timing flexibility, crews can be pulled systematically for training. To alleviate any concern that a person would be trained at the end of one quarter and at the beginning of the next, MSHA could require the training be accomplished during a window of time. For example, the rule can require the training be accomplished in a month in each quarter; for example, January, April, July, and September. This schedule could be listed in the plans submitted by the operator.

NMA opposes requiring all miners to travel the entire escapeway every 90 days, as part of the training requirement. First, we do not believe that physically traveling the escapeway is training, as the

term is defined, nor do we believe that physically training traveling to an entry will train a person on escape. A more logical method for training miners on escapeways would include expectation training; for example, instructing miners on: (1) the location of escapeway entrances from their workstations; (2) the location of the lifeline system and storage SCSRs; (3) the physical issues in the escapeways -- for example, areas that are low or more difficult to travel through; and (4) the locations where important decisions must be made.

Second, requiring all miners to physically escapeways fails to recognize the physical condition of the mining workforce. The coal industry has an aging workforce, whose average age is in the early to mid-50s, The ETS acknowledges that miners may have to travel through long and difficult underground travelways. This statement confirms that walking escapeways is laborious and can cause illness or injury. NMA recommends that MSHA revise its proposed evacuation drill requirements, to allow miners to travel by personnel carriers or to walk short distances to the ventilation split where expectation could be administered. This modification would achieve the enhanced training and education, while

still allowing for training on the conditions of escapeways, the location of lifelines and stored SCSRs, where applicable. Overall, we recommend that this section be changed to require the operator to provide quarterly training to all employees on escape routes, emergency escape scenarios, SCSR storage locations, and areas in the escape system where decisions for escape need to be made.

The industry does not object to the hands-on training requirement and the transferring and donning of SCSRs. We recommend, however, that this requirement be modified, so that operators that have multiple-type SCSRs are permitted to train for varied transfers in each quarter.

NMA and its member companies support the agency's efforts to enhance the resources available to our employees and others for the safe evacuation from the nation's underground coal mines, in the event of an emergency. We are committed to preventing a repetition of the tragic loss of life at Sego and Alma. In an emergency situation, however, it is critical that the additional storage of SCSRs contemplated by the ETS be used for prompt evacuation from the mine. Barricading remains our last resort.

While the good faith desire to improve the

existing standards is apparent throughout the ETS, in many instances, the regulatory language is restrictive to the core, where we're concerned, that it would be counterproductive. For example, the term 'SCSR" is an industry-wide accepted term of art that is used throughout the ETS. Yet, the ETS, itself, requires the word 'self-rescuer" or 'self-rescuers" to be used on storage location signs. Requiring mines with existing SCSR storage location signs, to now install signs saying self-rescuers is counterproductive, given the years of training and acceptance of the term 'SCSR."

Section 1714.4(c) requires additional SCSR storage in the primary and alternative escapeways, to augment other SCSR requirements, when these requirements did not provide enough oxygen for all persons to safely evacuate the mine. Where the operator determines additional SCSRs are required, the operator must submit a plan setting forth the location, quantity, and type of these additional SCSRs and may be required by the district manager to demonstrate the plan's adequacy. Based on the plain language of this provision and the preamble, a number of operators propose, as an alternative, the use of air locks located between adjacent escapeways for

storage of SCSRs, along with other important emergency supplies. The use of an airlock has the additional benefit of providing employees with an area isolated from the main air courses for the transfer of SCSR units. Another alternative proposal is to build an SCSR storage unit into the stoppings to permit storage units to be access from either escapeway. Both of these proposals are simple, functional, and prove mine worthy.

In its recent guidance documents, the agency has rejected these proposals, taking the prescripted position that equal numbers of stored SCSRs are required in both escapeways. The stated basis for the rejection is speculative and encroaches on the operator's clearly defined obligations under this requirement and should be withdrawn. 1714.4(c) does not require that identical quantities of additional units be stored in both the primary and alternate escapeway. Instead, this section requires 'additional units" in the primary and alternative escapeways. Furthermore, the operator's alternatives described above would place SCSRs in locations that satisfy both primary and alternate escapeway storage. We believe this position needs to be revisited by the agency.

Madam Chairman, the preamble to the ETS and

your opening statement contains a series of questions for which we will provide responses by the end of the comment period. In closing, let me, again, thank you for providing us this opportunity and I would be pleased to respond to any questions you or members of the panel may have.

MS. SILVEY: Thank you, Mr. Watzman. First of all, with respect to your comment on the donning of SCSRs and you would recommend alternative means in particular instances, specifically with respect to visitors and with respect to independent contractors, who are not at the mine on a regular or extended basis, do you have precisely what alternative means that the training would -- that you would recommend on the training, that training take a specific format of that training?

MR. WATZMAN: Well, recognize first, again, that our concern now results from the fact that the individuals may have to be trained on multiple units. Experience has shown that --

MS. SILVEY: Excuse me, just to make sure I am no the same wave, when you say 'multiple units," you mean different manufacturing units?

MR. WATZMAN: Correct.

MS. SILVEY: Okay.

MR. SHERER: And this would be a mine where they have different units stored?

MR. WATZMAN: Sure, right. That potential clearly exists. We know today that miners, who are familiar with the mine environment, have experienced difficulty donning SCSRs. That fact is known. MSHA knows that as does NIOSH. Our concern, as it relates to visitors and those independent contractors, who enter the mine infrequently, is that we're going to be adding an additional level of potential confusion to that. Alternative means may mean things such as giving -- letting them see the SCSR, then accommodating the training through video means or computer means. Clearly, where you have one SCSR and only one stored, the process we use to date have served us well. But, our concern really relates to where you're dealing with different types of units that are stored underground and the possibility that those individuals, who are unfamiliar with the mining environment, are going to, within a very short period of time, be inundated with information on two devices or maybe more in the future, we don't know, that they have never seen, may never see again; yet, they're going to have to grasp all of that hands-on training within a short period of time. That's a concern to us

and we ask out loud and pose the question whether we can provide those individuals with more effective training, rather than them actually having to go through the physical process of donning those different types of units.

MS. SILVEY: Well, sir, I understand your point and if you would -- and you gave certain suggestions, but if you have any more specifics for the format that that training should take, in addition to what you said now, if you would submit that to us before the comment period closes.

MR. WATZMAN: Yes, the alternative ideas.

MS. SILVEY: The next -- well, you, also, commented on the only MSHA reporting system and that MSHA should streamline that reporting system. And for the benefit of everybody, not just you, everybody else here, I would like to state that we are looking into our current reporting system and we are looking into so that we can provide a mechanism that results in both timely notification to all involved and that would allow an appropriate response on our part. So, we will -- we are definitely looking into our reporting system.

MR. WATZMAN: I appreciate that and I'm glad to hear that. Do you feel that the agency will be far

along -- enough along in that process to share with the mining community what your thoughts are prior to the close of this comment period?

MS. SILVEY: Quite honestly, I can't say that right now. But, at the earliest possible time that we can share with the mining community, we will, and, you know, hopefully, because that is an important part of the whole emergency response process.

With respect to -- we've got a comment, and this is for the benefit of everybody here, also, in our hearings in Denver, at our hearing in Lexington, and now today, we've gotten comments from the mining public on traveling the escapeway. And we heard actually quite, frankly, some similar comments from all members of the mining companies on traveling the escapeways, so that everybody understands. And as you know, I mentioned that in my opening statement and asked the question whether miners should travel the escapeways in their entireties. But, I still -- we still feel, as an agency, that in a unique escapeway condition, miners should be very familiar with physically, the physical conditions and unique escapeway conditions. So, for the benefit of everybody here, we have gotten somewhat consistent comments on traveling the escapeway.

As to your comments on SCSR storage between adjacent -- parallel and adjacent escapeways, I refer to that -- you referred to our compliance guide, which you have out there, because I referred to it, also. But, I, also, referred to my -- in my opening statement, I referred to certain things that the agency was considering at this point. And for everybody here, I would like, if you have any specific comment, in response to the agency's -- what I included in my opening statement as an alternative, what we call right now a hard rule on safe haven. And I know Mr. Watzman, in your comments, you talked about certain things that the industry was doing with respect to adjacent escapeways.

Does anyone else have any questions?

MR. KRAVITZ: I just wanted to clarify what you're recommending for the transferring of SCSRs and for evasives for the mines that had multiple types of SCSRs. Were you recommending that you transfer from one to the other in the first place? Could you clarify that?

MR. WATZMAN: Within the same family of units each quarter, rather than across families of manufacturers each quarter.

MR. KRAVITZ: You said it's being evolved

already.

MR. WATZMAN: Correct.

MR. KRAVITZ: Thank you.

MR. SPROUL: I am going to just ask a question to clarify what the witness said about lifelines installed in the primary intake escapeways. Did I understand you to say that if the primary intake escapeway, the designated primary intake escapeway, if part of it is in a main travelway, then you're suggesting that a lifeline not be installed in that portion of the escapeway?

MR. WATZMAN: Our concern is this. The maintenance of lifelines, you know, where mobile equipment is being used and the difficulty in maintaining that and the possibility that in the event of an emergency, the lifeline -- the integrity of the lifeline might not be what one anticipates it to be. And in those travelways, the miners have been trained to use mobile equipment. So the necessity for having the lifeline at that point is not as important, if you will.

MR. SHERER: What about in a situation where you have a primary escapeway, how do you get out of that, assuming you had this mobile equipment in both the primary and all of the escapeways?

MR. WATZMAN: How many scenarios do we want to think here? You know, we can, I think, sit here until the end of the hearing at 5:00 and say what if and what if and what if. You know, we're trying to come up with scenarios or recommendations that are realistic, that provide the coverage that we all want to provide to the miners. You know, what you present could occur. I'm not going to deny it.

MR. SHERER: That did occur at Sago, where the primary escapeway was compromised. And we don't know why the miner did not choose to use an alternative escapeway. We think that a lifeline in that alternative escapeway would have been beneficial. Now, we re looking -- when we say that we are looking at possible technology and ways to deploy lifelines around the quality of wires and mobile equipment to protect those lines and steel, give the miners an original chance of getting out, and that's something that is of great interest to us going down the road. So, we are also soliciting comments along those lines that you might have.

MR. WATZMAN: Well, it's of great interest to the mining companies, as well, given that the requirements, as it exists today, says that they must be installed in both of those escapeways.

MS. SILVEY: Going back to the earlier comment about the multiple models that SCSR requires, do you have any idea -- you may not have any idea now, but any manufacturers, how many -- what percentage about approximately of the underground mines use multiple SCSR models, multiple units, even different?

MR. WATZMAN: No, that is something I am not familiar with, at this point.

MS. SILVEY: Okay. If any SCSR manufacturers might have an idea as to what percentage, and that might be asking something that you would need to take a precise survey on to get the answer. But, if anybody has any idea, that would be useful information.

Then, I just have one final --

MR. SHERER: I have one follow-up question.

MS. SILVEY: Okay.

MR. SHERER: As a corollary of Ms. Silvey's question, would we be better served to only require a single type of SCSR in the mines? That seems to eliminate some of these concerns that you have, Mr. Watzman.

MR. WATZMAN: Well, it eliminates the concerns that also raises additional concerns, quite honestly. Today, by and large, as you know, the

industry is served by two SCSR manufacturers. We have had unfortunately in the past instances where problems have arisen that necessitate recalls. I think we're getting ourselves -- we would get ourselves into a dangerous situation era, if we mandated that there only be one unit in a given mine. If a recall occurred, I'm concerned about ability to have sufficient units to replace those by the same manufacturer. And I think we need to think long and hard before we got to the point where we would mandate that there be one and only one type of SCSR within a mine. I think there are a lot of questions that we need to think through before we got to that point.

MR. SHERER: Thank you.

MS. SILVEY: And I just have one final comment and I don't know if you can answer now or you want to provide a public record. But going back earlier when we were talking about -- you mentioned at some point, we need to train our inspectors, that sometimes they -- the firefighting in a mine has been hindered by 103(k) orders. Do you have specific incidents of this?

MR. WATZMAN: We will provide those for you.

MS. SILVEY: Okay.

MR. SNASHALL: Do you have a position on the

usefulness of requiring smoke training?

MR. WATZMAN: There are many mines and mine operators in this country, who currently do that. They utilize the facilities at Lakeland, the academy. They conduct smoke training on their own. I think you, the agency, has used the term skewer vision training. You know, and I think we need to think about that, as a mining community. It may not always necessity being in a smoke-filled environment. There may be other ways to accommodate that, besides actually having people in smoke. But, that's something that we, as an industry, do. But, I think that, also, we, as a coal mining community, need to think about expanding the role and how you go about that.

MS. SILVEY: Okay. Thank you, Mr. Watzman. The next person will be David Beerbower and Mr. Beerbower is with Peabody Energy.

MR. BEERBOWER: Thank you, Ms. Silvey. I appreciate the opportunity to speak before you this morning. As a member of NMA, we have participated in the preparation of their comments and agree with them in whole. So, I won't reiterate the positions there, although I would like to expand on some of the points and then to respond to some of the questions, which

have been asked by Ms. Silvey.

First of all, one of the things that we have found to be primary in the avoidance of disasters is the use of fire brigades; and, yet, we are disappointed to see that there is nowhere in this emergency standard that talks about the use of fire brigades at a mine. There has been considerable discussion nationwide about requiring mine rescue teams at every mine, regardless of the size. We think that's an unwise choice to make. We want, under mine rescue circumstances, to leave that work to dedicated professionals, who have the desire to do that kind of work, rather than going through the motions and making it mandatory and having people located at mines, who are on a rescue team, but are not dedicated to making that happen. We have seen, in many locations, where we call them the rental teams, if you will, are there because they are required by law and, yet, are not really trained properly nor do they have the desire to go into hazardous circumstances to aid in the recovery and rescue of miners.

So, we would recommend that the mine rescue system stay as it is. It is functioning and there have been a lot of comments about it that I think are unfair to mine rescue teams and to those members.

There has never been an instance where we have had a lack of available team members. And, quite honest, with the Sago situation, I would say that I know that for ourselves, we were on call. We were mobilized and ready to respond, if we were required. We were not asked to come. At the Alma situation, we were called and we were two of the 22 teams that responded to Alma. And there could have been more, if they were needed. They could have responded. And so, we are not in a situation where a mine emergency could not be handled, where there are miners involved with the mine rescue situation as it is in this country.

Secondly, regardless of when a team got to, for instance, Sago, there was a period of time for roughly eight hours where the mine atmosphere was not in a situation, in which the agency nor the companies would allow their rescue teams to be exposed to the hazards in that mine. And so, it makes it sound like the teams were not available for eight hours to get into that mine. That is untrue. And it's unfortunate that the media has picked up on that and think that they know something that is absolutely undeniably what should not have been, when, in fact, the truth is those teams were available. They were at the mine and as soon as they were able to go into the mine, they

did do that. And, again, there were many, many teams that were mobilized. I know from other companies, they were ready to respond to that emergency, if they had been asked to come.

With the use of fire brigades, there is some rudimentary firefighting training that is required by MSHA law currently and that is good for when a fire initially occurs. And miners are trained in those processes on a regularly basis. What we have done at Peabody is establish fire brigades at each of our mine. They may include multiple miners on every shift that we have operating at the mine. They have additional equipment that has been provided that would not be necessarily used by first responders, but would be used by this group of miners should they be called, if a mine fire is appearing to get out of control. They are equipped with turnout gear. They have additional water nozzles that are more advanced than the initial ones. They have manifold systems that can be used to employ multiple fire hoses. And they have additional training that is provided by us, to make sure that if the initial response to a fire does not knock the fire down and put it out, then we are in a position to engage our own fire brigades to take those fires and really start to work on them before a rescue

team would even be available to show up on our property.

If you have to wait the two or sometimes more to get a rescue team underground and your fire is continuing to grow, you have pretty much lost control of that situation. We would rather see requirements for mines to have advanced firefighting training and brigades that would be able to respond within 20 to 30 minutes, when you really have a better opportunity to get control of the fire.

Having said that, I think I will start, then, to respond to some of the questions that Ms. Silvey posed in her opening comments. Question number one, you asked about the ability to tether themselves together, miners, in an emergency response. We actually agree with that. I would rather not see it be as prescriptive as within the question that you have asked, on how far the hooks would be apart, how they would hook up. I would rather leave that to the operator. What we at Peabody has done is made the material out of the nylon, much like the lifelines are made out of. And we have tethers that are, for our circumstances, three-and-a-half feet apart with a hook on the end. And where our thinking is, that with the three-and-a-half foot spacing, if we put one to the

right and one to the left, that leaves seven feet between you and the person in front of you, and that would account for walking and/or crawling, if you had to do that. We have also placed a hook on each end of that tether line, so that they could be daisy chained, in the event that you had multiple crews.

The size or the numbers of those hooks on each of these tethers is really based and is mine specific on the size of the crews and the size of the expected number of miners that would be tethered together, but recognizing that you can daisy chain these. And so, if you have, say, 14 miners on a section, you would have, for instance, two daisy chains of eight. That's what we have to handle that. They are placed in a bag that is used for storage and we are going to store those in all of our SCSR caches.

In question number five, you asked about requiring SCSRs and the storage of those and the spaces between those. Quite honestly, the way that MSHA approves SCSRs recognizes only one hour's worth of oxygen; when, in fact, the two types that are primarily in use within the industry vary widely. There is one unit that is belt wearable and provides roughly 80 to 85 liters of oxygen to the miner and has met the standard to be applicable for one hour in an

escape. There is a second unit that is not belt wearable and it is the one that we primarily use in our storage locations and it provides 135 liters of oxygen. And, again, it passed the same standard of being worthy of an hour's worth of rescue, when, in fact, the test that were done were actually shut off after an hour. It met that one hour. There was no concern that it would be longer than that. The concern was that it would meet the minimal requirements.

Now, the spacing of these caches in the mines is based on that one hour or how far someone could walk in an hour; when, in fact, the larger units that are not belt wearable, but are used in our mines and stored, can considerably extend the life of that unit when being used by miners. And, yet, there is no recognition of those differences in this ETS. So, I would suggest that in those mines, which they use this larger extended life unit, that that be taken into consideration when talking about the distance between these caches. We think it's prudent to use these longer life units and we have mandated it for all of our mines. All of our underground mines will be using the longer life unit in storage, in these caches.

Recognizing that there is only, in our

estimation, one available belt wearable, we will have to use that belt wearable, because we want our miners to have oxygen on the belt, and then we would use the longer life units in storage. So, we will, in all of our mines, have two separate models for use at our mines, and we think that's the prudent thing to do.

In question number seven, you asked -- there was considerable questioning about requirements to put model numbers and manufacture dates. I would just ask that the agency not add any more to the paperwork burden that is already out there. What is important is that the mine does have SCSRs available to miners. We will be checking and always do on when these units have to be refurbished. We will be examining them on a regular basis, to make sure that they are ready to use. But, just for purposes of paperwork and making sure that somebody knows exactly where the unit is and where it was manufactured, who manufactured it, and what the serial number is, I think that's an unnecessary and burdensome requirement on the agency.

We then refer to question number 11, which refers to 75.1714-4. Again, there's been considerable discussion about that. MSHA's interpretation of that rule is really providing a lot of consternation within the industry. We firmly believe and we have suggested

that operators be allowed to have either stoppings on either end of a cross cut with doors from both directions and storage of the units in between. I do not believe, as has been suggested here in this question, that it needs to be seals and have submarine doors. I really -- in the situation that we currently have, if I have a stopping and have a cache of SCSRs on either side, if an explosion did come through there, it's going to knock that stopping out, in all likelihood. And, yet, if I want to have a safe room, now to be required to do something different than just having stoppings is, to me, unnecessary. If there is an explosion, that area is going to be damaged enough that you're probably going to have to go onto to the next cache anyway.

And so, to me, if I have, as has been suggested, to have a storage of SCSRs within the stopping and are accessible from both sides of the stopping, or if I would have two stoppings on either end of a cross cut and have a cache inside of that confined area, that, to me, makes perfect sense. But to have a stopping and then have the same number of SCSRs on either side is, to me, wasteful and it's unnecessary. I think, as has been stated by Mr. Watzman, the interpretation of MSHA is burdening

companies to where we are now having to place extensive orders for SCSRs. And, quite honestly, some of the delivery dates of those SCSRs are now coming close to 12 months, based on the numbers of SCSRs that miners -- or that companies have to be ordering, in order to accommodate themselves with this rule.

In question number 13, there's discussion there about the extent of the training and I agree with Mr. Watzman's comments. Again, once a person is on a lifeline, it should not make any difference whether they have to walk up a five-degree slope. This is not an exercise on how far you can walk. It is an exercise on what to do in an emergency. And once you're on a lifeline, you don't get off the lifeline until you're at the escape chamber or outside. And so, that's what we train our miners to do, that they stay on the lifeline. You don't get off the lifeline, unless you have to divert. And we do train in those diversion exercises, where if you have to get off and go somewhere else, what do you do. You don't have to walk the whole length of the escapeway to do that.

My concern with that, and that has already been mentioned about the age of our workforce, there are many of our miners, who, in the event of an

emergency, could walk out if they had to. But, if forced to do that on a regular basis, because of arthritis and other illnesses that they may have, would put them and compromise their health, as they go through that. Now, again, what you do in an emergency is something much different than what you would have to do on an everyday basis.

If we are forced to take that kind of an approach, we would then have to be requiring all of our miners, as a condition of employment, that they would be able to walk the entire length of the escapeway on this 90-day basis. In those cases, we will lose many of our experienced miners that we are having difficult getting now, simply because they would not be able to, on a regular basis, walk these escapeways.

I think that's the conclusion of my remarks. I would be very willing to take any questions that you have.

MS. SILVEY: Okay. Thank you, Mr. Beerbower. Your first comment on the tethering, and you gave us some specifics on how you all use it at Peabody, and how long have you all had -- how much experience do you have or are you just getting it?

MR. BEERBOWER: We have had -- many of our

mines have the tethers.

MS. SILVEY: Have the tethers?

MR. BEERBOWER: We have never used them --

MS. SILVEY: Okay.

MR. BEERBOWER: -- in this circumstance, but we have had them over time. Not all of our mines did, but we do now.

MS. SILVEY: Okay. And so, with respect to the mines that have had them, have you trained them in the use of them?

MR. BEERBOWER: We have.

MS. SILVEY: Oh, you have trained them?

MR. BEERBOWER: Yes.

MS. SILVEY: Okay. On the --

MR. BEERBOWER: But, again, I would say --

MR. SNASHALL: -- under the --

MR. BEERBOWER: I would say, Pat, I would not want, just because that Peabody does it on a three-and-a-half width standard, I would not make --

MS. SILVEY: No.

MR. BEERBOWER: -- that the standard for every company. That should be determined by each specific mine, based on how many miners they have working in certain areas. But, we believe that proper spacing in the company.

MS. SILVEY: On the SCSR information, you are right, we asked a lot of -- in my opening statement, I included a lot of information about what we were considering on SCSRs. If you have, either here today or in your comments before the comment period closes, if you have any suggestions or specific suggestions of alternative streamline methods for keeping track of SCSRs. I think the agency's approach is just keeping important and necessary information on SCSRs, in the event that something goes wrong, so that we can give timely notification to both users of certain SCSR units and also to the manufacturers of the units. So, if you have alternative, anybody, I'm asking this to anybody, alternative suggestions for a streamline method at which the agency could be notified of such information, then I would ask you to provide that to us.

MR. BEERBOWER: Be glad to do that.

MS. SILVEY: And as I mentioned earlier to everybody, I will just reiterate, we have gotten comments from all segments of the mining community on walking the escapeways and the comments have been generally consistent.

MR. SHERER: I have a couple of questions, Mr. Beerbower. You talked quite a bit about fire

brigades. And just so we understand exactly what you're talking about, can you better define that for the record?

MR. BEERBOWER: At our mines, we have varying numbers, anywhere from 14 to 18 persons spaced out across all three shifts that we operate. They have received additional training. We have three to four additional training sessions a year for those folks. And we have -- we provide them training in the use of foam generators. We have a higher quality fire hose for them to use. We have manifolds and show them how to use those, if they have to use multiple fire hoses on a fire. We teach them how to use the turnout gear that they would be required to wear. And we, also, have SCBAs, spacers strategically throughout the mine that they could use, in the event of a fire.

These folks are volunteer and, as we said, we have them spaced out across the shifts, so that we have at least one person on every shift, under any circumstance, so that there could actually be that firefighting. And this is only for use if the initial response is unable to get the fire under control. We think that makes more sense than requiring a rescue team operation.

MR. SHERER: SCBA, just again for the

record, these are compressed air units like the firefighters use, rather than the apparatus type?

MR. BEERBOWER: That's correct. They're one-hour units.

MR. SHERER: A second question, you talk about storing SCSRs in a stopping. Are you aware of any tests on such a device containing SCSRs?

MR. BEERBOWER: I'm not, Eric, but I believe that they can be engineered to be at least as substantial as the stopping, itself.

MR. SHERER: Our concern is not substantiality, so much as we think SCSRs, themselves, provide an hazard in that permanent ventilation control. SCSRs require temperatures of 140 degrees to as low as 100 degree Fahrenheit. And we understand several hundred degrees, these SCSRs will either become incendiary devices or even explosive devices.

MR. BEERBOWER: I would say whether they're stored in a stopping or not, that's one of the indications.

MR. SHERER: Yes, but our concern is if they're in the stopping, then you lose your permanent ventilation control.

MR. BEERBOWER: If there is a condition that's going to cause those things to get involved in

a fire like that, you're going to lose your control anyway.

MR. SHERER: Well, they do have requirements for the fire worthiness of our ventilation -- permanent ventilation controls and we do not believe, at this time, that a mere box in a stopping will prevent those SCSRs --

MR. BEERBOWER: Again, I believe that can be engineered to apply the same protection vacuum.

MR. SHERER: Are you aware of any designs or tests?

MR. BEERBOWER: The reason that there aren't any of those out there yet is because MSHA has made it clear they would not accept that. And so, nobody has perceived that. We would be interested in doing that, quite honestly. But without any -- what we think holds so far by the agency, there's no reason to do that, because we have been told it's not going to be accepted. But, I would really like to do that. I think it involves some engineering and there is a company out there, who has designed one of these, and we would like to pursue whether that, in fact, does provide equal coverage. Quite honestly, any of these SCSRs that are in a storage cache are going to be in some kind of a storage box anyway. They're not going

to be laying around loosely. And so to provide them in that -- just making that storage box actually be in the stopping, to me, does not present any additional hazards in the mine.

MR. SHERER: Well, we disagree with that.

MR. BEERBOWER: I understand.

MR. KRAVITZ: Thanks for coming today. I just want to clarify a couple of things. First, you mentioned there's only two SCSR manufacturers. There's actually -- I believe you meant to say three.

MR. BEERBOWER: Well, actually, what I meant to say, there are two that are predominantly used within the industry.

MR. KRAVITZ: I just wanted to clear that for the record. The other one is with respect to shutting a -- stop and approval after 60 minutes. Now, I think you probably wouldn't have -- for determining the length of time. A manufacturer actually submits an SCSR for a certain length of time. And if, in this case, a manufacturer submitted it for 60 minutes, so that's why after 60 minutes, that would stop. If a manufacturer were to say 90 minutes, then the test could be conducted for 90 minutes, to see if it actually goes the whole distance during that 90 minutes. Then, we could have considered your actions

every 90 minutes. But, in this case, I can't imagine how we could allow caches to be stored any greater distance than the approved SCSR time length.

MR. BEERBOWER: And I'm not sure whether the manufacturer were aware of that, at the time, Jeff. I know and I have data and am aware of some tests that they have run on their simulators that show that the longer life units will go upwards of 115 minutes. I'm sure that they would be willing to submit that information for your review.

MR. KRAVITZ: Well, the manufacturer simply has to apply for approval for a 90-minute unit.

MR. FORD: Mr. Beerbower, you made a comment that I did not quite understood. If you simply could explain it. You said that there's only one available belt unit for SCSRs. Are you talking about like one type of unit made by three different manufacturers or one unit made only by one specific manufacturer?

MR. BEERBOWER: I would go back to the question that Jeff asked me. There is one predominant unit within the industry that is belt wearable that is rated for 60 minutes. And of those, there are two other predominant -- there are two predominant units within the use of the industry. One is belt wearable, one is not. And that's why we have the hybrid systems

at our mines, because we believe that the longer life unit does a better job in storage.

MR. FORD: But, there may have been -- potentially made by different manufacturers?

MR. BEERBOWER: Yes, that's correct.

MR. FORD: Can you, also, tell me what's the average price for an SCSR that you pay now, currently, for the SCSR that goes one hour and then what is the price you pay for that excess, that goes more than one hour?

MR. BEERBOWER: The prices are very similar. They're in the $550 to $600 range.

MR. FORD: Thank you.

MR. SNASHALL: Do you have a position on whether the cone direction on lifelines should be standardized?

MR. BEERBOWER: Well, in our mines, it's always been that as you're coming out the lifeline, you know you're going in the right direction, if you can smoothly go over that cone; and if you're going the wrong direction, you run into the butt end of that cone and you stop. That's the way we've done it. Although, I am aware that other mines may have a differing opinion on that, to me, it really doesn't matter. It should matter on what the miners have been

trained to do. If they have those turned around a different way and they've been trained that that is, in fact, an arrow, then as long as you're following out and that arrow was pointing the way out, if that's what you've been trained to do, then I think there's no problem with that.

MS. SILVEY: Thank you, Mr. Beerbower. At this time, we have Ed Roscioli with Chembio Shelter.

MR. ROSCIOLI: Good morning. My name is Ed Roscioli. I'm the CEO of Chembio Shelter, Incorporation. I'm a nuclear engineer with over 30 years of experience at the various nuclear powerplants in the United States. For the past three-and-a-half years, I've been working on a unique system to protect the U.S. military and civilians from a chemical or biological terrorist attack. And although this product was designed for a different application, it's absolutely perfect for mine safety. That's because of the way we process the air inside the shelter.

We completely isolate the people in a rugged, hermetically-sealed shelter that is totally impermeable to atmospheric gases. Then, to keep them from suffocating, we have them operate a few simple chemical reactions. One generates oxygen from a solid chemical and another scrubs carbon dioxide from the

atmosphere inside the shelter and, yet, a third one converts carbon monoxide into carbon dioxide, which is then scrubbed by the other chemical. In essence, the people are re-breathing the same air over and over, after it has been rejuvenated by the chemical. It keeps the oxygen levels about 19-1/2 percent, it keeps the carbon dioxide levels below one-half of a percent, and it keeps the carbon monoxide levels below 50 parts per million. Also, we include activated carbon filters to remove smoke and other contaminants.

With this patent-pending system, the air supply can be maintained for any pre-determined amount of time -- four days, seven days, 10 days, or longer -- using a proven process and it does this without any external power. The only powered components are small lithium batteries in the monitors used to continuously monitor the level of oxygen, carbon dioxide, and carbon monoxide. And those are all intrinsically safe.

This system is designed to meet tough military standards. It is compactly stored and uses air beam construction for rapid deployment in an emergency, when time is critical. The shelter is folded up and housed in a skid-mounted storage cart that can be strategically positioned in the mine; for

example, near the active workings. Then, in case of an emergency, mine workers can deploy the system in less than two minutes with three simple steps.

Once inside, they start the air processing to maintain a breathable air supply by generating oxygen and scrubbing carbon dioxide and carbon monoxide, as needed. Our standard shelter footprint is 13 feet, 10 inches by 20 feet and is engineered to shelter up to 18 workers. It comes in two self-adjusting heights: one from 20 inches to 36 inches, and one from 36 inches to 60 inches, and one fixed height at 84 inches.

This Chembio Shelter is the most reliable, economical, and technologically advanced way of providing a rescue chamber in a mine. If we had anticipated the usefulness of this shelter for providing a safe haven for miners prior to January 2nd, we're confident that we could have prevented these tragedies.

We have been selected by the Department of Defense to take part in an eight million dollar testing and assessment program to find viable methods for protecting our troops from the disastrous impact of chemical, biological, and radiological warfare agents. This testing was conducted by the Joint

Program Executive Office for Chemical and Biological Defense. During an extensive five-day test, our shelter successful withstood a simulated chemical agent attack and maintained a life-sustaining environment within the shelter for the duration of the test.

On February 8th of this year, we had the opportunity to demonstrate our mine rescue shelter to a group of regulators and mining executives at the NIOSH experimental coal mine in Brucetown, Pennsylvania. We received insightful comments on our shelter. We took these comments seriously and we have made a number of design changes that have made this system even more suited to the mining environment. Today, we feel confident that we have the best solution for giving trapped miners a rescue chamber where they can survive until help arrives.

A mine rescue chamber meets a critical need. It provides a safe haven for miners that cannot escape. It ensures that they have a safe place with a life-sustaining supply of air when, where, and for how long they need it. Obviously, the first line of defense is to exit the mine. The last thing we want or need is to have miners staying in the mine that could have safely escaped. But, we, also, do not want

miners making panic attempts to escape that lead to disastrous results when it is not safe or impossible to exit the mine, attempts that are prompted by the belief that barricading means they're climbing into their own tomb.

The availability of a viable safe haven, a rescue shelter, gives them another reasonable option. It removes the sense of panic and helps give them the presence of mind to make the right decision. It can do a couple of other things, too. It can give them a place to rest, collect their thoughts, treat their injuries, and then move to evacuate or wait for help. Also, it puts them in a known location, a place where rescue teams can focus their efforts.

As trapped miners reach the shelter, they are likely to be tired, scared, and running short of air in their self contained self rescuers. It is also possible that they may be injured. So, the rescue shelter needs to be deployed easily and quickly. The Chembio Shelter satisfies this need. To deploy the unit, you simply open the control panel, pull a release door, open the first valve to deploy and fill the shelter with fresh air, open a second valve, which lifts the shelter to the available height of the mine.

Unlike some rescue chambers, the Chembio

Shelter is commercially available now and we have a production capacity to meet demand quickly. When miners lives are at stake, it is not the time to be experimenting with conceptualized units that have not been tested. We know that we have a working system, one that's been tested, one against which standards can be established. Before a specific mine emergency arises, it is impossible to determine the exact length of time that would be required to shelter trapped miners until a rescue team arrives. The recent events in West Virginia show us that 24 hours would not be long enough. About 40 hours were required in each of these disasters. What we do know, that for some predetermined length of time, the shelter system must be reliable, produce and maintain a life-sustaining supply of air.

Shelf life is another key issue. Hopefully, the shelter will never be needed; but if it is needed, the shelter has to work immediately and reliably. We recommend a two-year recertification of all of our shelters. The current emergency temporary standard calls for an additional SCSR for each person underground. Two hours is not enough, especially if some of the SCSRs fail. Twenty-four hours is not enough. I suggest you consider 96 hours at a minimum.

In summary, Chembio Shelter provides a lifesaving solution for trapped miners. It's an alternative to 16 SCSRs per person, barricading, or catastrophic panic attempts to escape when it is not possible. The key features are, it has a long-term supply of breathable air. It is mobile, skid mounted, and self-contained. It is rapidly deployed. It operates without electrical power. It is tough, both the shelter material and the storage cart, and it is sized for any mining environment. And it is available now. We're ready to safe the lives of trapped miners. Are you?

MS. SILVEY: Thank you; thank you.

MR. ROSCIOLI: Do you have any questions?

MS. SILVEY: Excuse me. We've got to go off the record a minute.

(Whereupon, a brief recess was taken.)

MS. SILVEY: Thank you, sir. At this time, I think we will take a break, a 10-minute break. If we can come back in 10 minutes, I would appreciate it, 10 minutes.

(Whereupon, a brief recess was taken.)

MS. SILVEY: Okay. Can we get started, please?

(Pause.)

MS. SILVEY: Okay. We will now reconvene the Mine Safety and Health Administration's public hearing on emergency mine evacuation. At this time, we will hear from Dale Byram with Jim Walter Resources, Inc. Mr. Byram.

MR. BYRAM: Good morning. I had the privilege of speaking to you on Monday, when I started by telling you that employees at Jim Walter Resources recognize the effect a disaster can have on a mine, on the families, and everyone involved. And I just feel it's necessary to say that again and that because of the events, our hearts and our thoughts and prayers with everybody affected. And, again, because of what we lived through with our number five mine disaster, we feel that this emergency temporary standard has things that we would like to comment on. Now, we had the opportunity to comment Monday and Wednesday. And so what I would like to do today, since our comments are already on record, I would like to address the 17 questions that were posed in the introduction.

I don't have the questions in front of me, but what I did, I just wrote kind of a key word for each one. Number one related to tethers. And we believe that tethers should be provided and miners trained to make an informed decision as to how and if

they should be used. Since evacuation can be affected by conditions of the emergency, the use of tethers should not be mandatory.

We currently store tethers on all of our active workings. Our tethers are about 60 feet long. They have 12 loops per tether. Reflective material is affixed on either end of the tethers. And we selected a distance for our loops that would allow the traveling miners to either walk or crawl without coming in contact or interfering with the miner on either side of them. They should be made of durable material with reflective material affixed to enhance recognition of the location of the tether, if it's dropped in low light levels or in smoke. We do not believe that the tethers should be part of the miner's belt system. A tag line stored or extended from a miner's belt increases the potential for injury, if it becomes entangled during normal mining work. We support additional tethers at SCSR storage locations.

Next, number two, is records and checklists. The addition of four scenarios incorporated into the firefighting and evacuation drills ensures miner's exposure to all aspects of an emergency drill. Required recordkeeping associated with these drills suffices for the need of a checklist. Yet, we

recognize their potential as a training adjunct. As operators develop new and changing scenarios for their drills, so would the checklist have to change. We believe that the energy required to maintain these checklists could be better spent on training our miners, rather than dealing with additional recordkeeping requirements.

Number three is related to donning SCSRs. Multiple gas detectors can be invaluable to miners during an emergency evacuation. For years, miners have been taught to don an SCSR at the first signs of a fire or an explosion. Immediate donning eliminates the chance for a miner to enter an irrespirable atmosphere. However, understanding the atmosphere during escape allows miners to make an informed decision as to when they should don the SCSR and, also, importantly, when it would be safe to remove the SCSR. This would enhance survival and we support this.

One thing to keep in mind, if the agency goes in this direction, we'll probably experience much the same as we are with the SCSRs at this time, to where supply and demand may find additional multi-gas detectors in short supply. But, that's something that we can think about and plan ahead on. Another thing,

the agency would have to prepare, to help qualify more people at the mine on how to use these detectors.

Number four and number five deal with determining storage locations. Each mine is different in its own makeup and its walking conditions vary. Yet, timed walks provide the necessary information to make a proper decision on the location of your SCSRs. I find it difficult to believe that a standard could be set that would work for every mine. As far as filtered-type self rescuers and SCSRs, I can only state to SCSRs, we don't use filter-type at Jim Walter Resources. We support the new technology designed to enhance any survivability of our miners. Two of our units reduce the number of times that our miners would have to transfer from one SCSR to another, as well as reduce the potential number of SCSRs that would have to be stored in cache.

Tracking and SCSRs. Jim Walter already collects the information that's solicited in this question and MSHA and our District 11 observes our SCSR examinations. We support making a number of SCSRs, the manufacturer, date of manufacture, and serial number of each unit available to the agency and representatives of the miners, but do not agree with having to report this information. I hope you

understand what I'm saying, we're not opposed to this, other than we should not have to make it another mandatory reporting issue.

Each 90-day exam result in a replacement of some number of SCSRs. This is due to damage, not in failure. Because of continuous swap-out and intermittent receipt of purchase or back ordered SCSRs, reporting criteria would require constant flow of changing numbers. Requiring an operator to maintain records to make the information available should suffice for the intent of the regulation.

Communicating problems associated with SCSRs. Several years ago, we experienced an event at one of our locations resulting in a failed SCSR. Due to the significant of the failure and the potential to affect not only the safety of our miners, but any miner in the country carrying this particular type unit, JWR contacted both the manufacturer and the agency. In less than 24 hours, the manufacturer, with his assistance, the help of our UMWA employees, and with the agency observing, Jim Walter Resources began an immediate investigation into this problem. Through the investigation, we were able to determine a breakdown in a vital part of this particular unit. The manufacturer's date related to all units

associated with this problem and other specific information related to the failure. The information gained through this cooperative effort resulted in a recall and corrective actions. For the record, once notified, the manufacturer made a diligent effort to ensure that the problem was identified and corrected. Because of this, we support tracking any failures of SCSRs.

From this experience, we recommend the following: that operators maintain records on all units in service at the mine; that immediate notification of actual SCSR usage where the unit failed or did not function properly. This excludes SCSRs that failed the standard 90-day exam. It's only in emergency use. This notification would include a detailed description of the problem, the manufacturer, manufacturer's date, model, and serial number of the SCSR involved. In addition, the agency would have the responsibility in developing methodology for sharing this vital information with all miners in a timely manner.

The thing that's a little bit confusing about your request, too, was that the operator maintain this unit, if it fails for 90 days. We're not accustomed to seeing such a long time period. If

you have a vital piece of equipment that's involved in an accident, you need to respond quickly. If the unit fails, then I think a much shorter time frame should be involved in taking the unit in for research.

We support notifications of accidents or injury that result from SCSR usage. Notification of accidents or emergency situations requiring the use of an SCSR, in contrast of a non-emergency or accidental usage of an SCSR, should not require special reporting. We support our miners in erring on the side of caution and recognize that there are times when a miner might think an SCSR is needed and don the unit only to learn that it was not necessary. In those cases, we use that as a training event. I don't see that as a reportable event.

Availability of SCSRs for special situations, such as pumpers, fire boxes, et cetera, these are variables that have to be considered when providing additional SCSRs for certain mining occupations. We believe that each mine should be permitted to work with their miners to determine the best methodology and locations to meet this need. However, storage locations, whether it be one or two units, must be within one-hour travel distance. In addition, we recommend that the agency develop a list

of best practices and suggestions to help facilitate discussions on this particular problem.

Identifying SCSR storage locations, we recommend the following: ample reflective signs at each cache; each life, when it is within 50 feet of an SCSR storage cache, would require additional direction cones or some other accepted device, fixed every five feet, leading to and from the cache. This additional application of these directional crises or some other approved device would be readily noticeable by miners traveling, because of the increase in the short distance between them. Additional reflective material would also be required during the 50-feet span of this lifeline.

SCSR storage accessible from either side. Relating to the question, first and foremost, we request that in the future, we all refrain from using terms safe anything. Escape, as Ms. Silvey stated earlier today, is the primary goal during an evacuation. We owe it to our miners to avoid terminology that misrepresents or misleads the intent of emergency evacuation. Barricade chambers or something similar should be considered. We believe access to cached SCSRS, from either the primary or secondary escapeway, where possible, is safe and

reasonable. Miners and operators benefit from permitting such a design from having one known location, rather than multiple or separate locations. Manufacturers may not agree, and I appreciate it being discussed earlier today, yet storing large numbers of SCSRs do present a potential fire hazard.

Manufacturers of SCSRs are overwhelmed with orders and are projecting one-year wait times on these back orders. Allowing a cache to be accessed from either the primary or second escapeway would more accurately represent the number of additional self rescuers needed in storage without reducing the number of SCSRs needed for escape. This reduction in SCSRs required to supply duplicate cache would reduce the total number previously needed by an operator and facilitate compliance in a more timely manner.

Directional devices, question 12. We agree with NIOSH, the recommendation that tips of the cones to point towards the face, yet we could support an operator, who has their own directional devices in whatever configuration, as long as they properly train their miners.

Escapeway drills. Under this ETS, we recommend that 75.1502 be changed from a 90-day training requirement to a quarterly requirement.

Quarterly training provides an operator the flexibility to maximize the training of miners in an emergency evacuation, as well as to train miners in a more timely manner, if they miss their scheduled drill. The new paragraph 17.1502(c)(2) is added to enhance mine evacuation. And, again, I know that this is something that we've been talking about. But, we disagree with the agency's position that all people must travel the entire escapeway every 90 days as part of the training requirement. Physically traveling an entry does not train a person on escape. Under the new temporary standard, operators must establish continuous lifelines throughout both primary and secondary escapeways. It would be more logical to train them on escape to the entrances from their workstations, physically locating their lifeline, SCSR locations, and physical issues of the escapeway. Furthermore, the six-week escapeway walk is still mandated, requiring two miners and a supervisor to walk the escapeway in its entirety.

Additional concerns with travel of escapeways by all employees or the physical conditions of the miners traveling the escapeways. In Denver, we talked about Jim Walter's workforce being 51 to 52 years old, the average age or the mean age. And we

appreciate the additional comments by the panel for your reconsidering this requirement of the reg. I would further say that in Denver, we talked about the agency, MSHA and NIOSH did not recommend, where I thought they had prohibited the use of an SCSR to determine the distance for storage. And, Jeff, I went back and looked at that and you were right, they did not recommend that it be used. But along those same lines, at the Q&A stage, that a bare-faced test would put stress on a miner, especially if the miner is physically challenged. A point that I hadn't made before that I would like to make is that walking everybody on the escapeway would involve physically challenged miners that are in practically every mine in the country already. Having a miner travel the entire escapeway for training purposes four times a year would subject them to this same undue physical stress. The ETS states, in the same section, that miners may have to travel through long and difficult underground travelways, affirming the dangers associated with this task.

Moving to number 14, expectations training. We agree with expectations training when it's conducted in a safe and controlled environment. In support of expectations training, we believe that

underground mine firefighting can be better enhanced if the ETS would give credit for at least one firefighting drill per year to be conducted on the surface of a coal mine, where miners can actually fight fire with firefighting equipment. The requirement of conducting underground fire drills eliminates this possibility.

Fifteen, additional requirements associated with emergency firefighting program of instruction. Again, we agree with expectations training when it's conducted in a safe and controllable manner. We do not agree in conducting SCSR training underground.

Emergency evacuation drills, 16. We support incorporating 30 CFR 75.383 into the new 30 CFR 75.1502 rule. These drills should be eliminated. We support having foreman travel escapeways in their entirety prior to acting as a boss on a particular section, especially if there is some unique condition associated with that particular escapeway. It's the right thing to do. Credit, however, should be given to those bosses that have worked on that section prior to the ETS, because during that time, they would have been conducting the six-weeks exam and literally developing the mine, as it extends in the area they would be familiar with.

Revision related to mine fire notification. MSHA has asked for comments on whether a revision should be made to cover all unplanned underground mine fires or unplanned underground mine fires of a particular type. We do not support this position and believe that the definition of accident is related to 50.2(h)(6) is adequate to ensure the safety of the miners. A mine may deal with potential fire situations, such as smoldering material or hot rollers that are extinguished within a matter of moments after being discovered, and these present no hazard to our miners. Fires of significant size or with the potential of requiring mine rescue response would already have been recognized as such and would have had appropriate notification.

We appreciate this opportunity and I am available to answer any questions related to our comments.

MS. SILVEY: Thank you, Mr. Byram. I do have a few comments, maybe comments and/or questions. With respect to your -- and I appreciate the fact that you addressed all 17 of the provisions in my opening statement. With respect to your comments on tethering, and you said, in your mind, you all do have tethering.

MR. BYRAM: Yes, ma'am.

MS. SILVEY: You think that the tether should be -- and I believe you commented to this point earlier -- you think that the tethering should be provided, but not mandatory. And in your mind, you have tethering and your miners are trained in that. So, would you explain to us why you think -- and they are being provided and they are trained on them. But, why do you think that they should not be mandatory?

MR. BYRAM: Okay. Maybe, I do need to clarify that --

MS. SILVEY: Yes.

MR. BYRAM: -- because I think I heard something that -- I would be in favor for mandating tethers to be available. I'm not in favor in mandating that tethers be used in the escape. Do you understand the difference of that? Experience in dealing with mine rescue situations, where teams are literally tied together underground, it's extremely -- there are times when it's extremely cumbersome and it's detrimental to what you're trying to accomplish. I think that the tethers should be there and that the miners trained in their use; but depending on the circumstance that face them, they may choose not to use the tether. And if so, then we support that.

MS. SILVEY: I'm happy that you verified that.

MR. BYRAM: Yes.

MS. SILVEY: And I take it, then, just to follow-on to that from what you said, that the requirements for tethering, do you have a position on the requirements for tethering, whether they be standardized or not?

MR. BYRAM: I'd like to give that more thought and --

MS. SILVEY: Okay.

MR. BYRAM: -- address that in our written comments.

MS. SILVEY: Okay.

MR. BYRAM: I've heard differing opinions, so for fairness of everybody.

MS. SILVEY: That's fine. With respect to the storage location, I take it, we asked, in terms of performance -- we provided performance already and we asked comments on a specification standard. But, I take it that your comment is in support of a performance-oriented standard.

MR. BYRAM: Yes, ma'am.

MS. SILVEY: I don't want to put words in your mouth.

MR. BYRAM: No, I understand completely.

MS. SILVEY: I'm trying to pick up from your comment.

MR. BYRAM: Yes, ma'am. I don't think that a 5,000-foot standard is appropriate, if, in a mine, they can safely walk 7,000 feet, 10,000 feet within this time frame. And on the other hand, 5,000 is not appropriate, if someone has conditions that they can't travel the 3,000 in the time frame. I think it has to be specific to the environment that the miners are in.

MS. SILVEY: Okay. In your comment, you were in agreement with -- in case an SCSR had been used in an accident or emergency situation, you were in agreement with keeping that SCSR for investigation.

MR. BYRAM: Yes, ma'am.

MS. SILVEY: You said, you all investigate it.

MR. BYRAM: Yes, ma'am.

MS. SILVEY: But, you were not in agreement with our requirement that it be kept for 90 days.

MR. BYRAM: I think it should be responded to --

MS. SILVEY: You said --

MR. BYRAM: -- much faster.

MS. SILVEY: And what -- do you have a

recommendation for an alternative period of time?

MR. BYRAM: Why don't you use your term, immediate.

MR. SHERER: Fifteen minutes?

(Laughter.)

MR. BYRAM: I think that -- we'll address that in our written comment.

MS. SILVEY: Yes, okay.

MR. BYRAM: We'll be specific. I just don't want to see --

MS. SILVEY: You understand?

MR. BYRAM: Yes, ma'am.

MS. SILVEY: Okay.

MR. BYRAM: We can't go 90 days waiting for a unit to be investigated if it failed.

MS. SILVEY: And I think we said up to 90 days. If we --

MR. BYRAM: Yes, ma'am.

MS. SILVEY: -- investigate it in advance, quicker, sooner than that, then --

MR. BYRAM: And, you know, maybe write it that way.

MR. KRAVITZ: And this is the 90-day requirements for preservation, rather than -- you're really responding to your other types of mining

disasters. But, in all likelihood, we respond immediately to any type of a comment like that --

MR. BYRAM: Right.

MR. KRAVITZ: -- in the past. We just want to make sure that the evidence is preserved and their defect. We wouldn't be responding in 90 days.

MR. BYRAM: Okay.

MR. KRAVITZ: That wasn't what we expected.

MS. SILVEY: But, I think we did say up to 90 days. And if we respond sooner than 90 days, then that's all the time you will have to keep it.

MR. BYRAM: Yes, I understand that.

MS. SILVEY: Then the final thing I have is with respect to your comment on the lifeline and we've asked a lot of comment on the cones on lifelines, should they be standardized. And you said that you agree with NIOSH, that the cones should be, in terms of the direction of the cones. And I believe, then, that the NIOSH provision is that the cones be standardized, the direction of the cones. But, you agree with NIOSH, but you said that -- I guess your position is that they not be standardized, so long that the miners are trained in the particulars.

MR. BYRAM: Let me go back and clarify.

MS. SILVEY: Yes, would you?

MR. BYRAM: I agree with the NIOSH study that you establish the lifelines at the point towards the face, so it's easy to facilitate and travel on the lifelines. Yet, understanding how mine sites have their own individual cultures and personalities, if a mine has had lifelines established for years and their miners are completely understanding of how their directional cones are established, that's not a problem for me. Whatever is best for the miner.

MS. SILVEY: And then the only final thing I have is on the SCSR training underground, you said you do not agree with SCSR training underground.

MR. BYRAM: Yes, ma'am. Let me clarify that.

MS. SILVEY: Okay.

MR. BYRAM: I agree with in-depth discussion, physical checking, talking about when you would actually don the SCSR. The discussion would involve transferring the SCSR. But the actual physical donning of the SCSR can be better learned on the surface in a controlled learning environment. First, you have to learn how to do it before you can actually use this in an environment such as a mine fire.

One of the persons involved in our explosion

in 2001 was literally blown down an entry. His light was gone and he said that he was having difficulty breathing. He felt for his SCSR and though he had no light, he said, we had gone over this so many times, it was like I was looking at every step, and he successfully donned his SCSR. All this miner's training had been done on the surface. I think it's the quality of the training and the methodology used that's going to help our miners retain this in the long run.

One other comment about underground training. We all know that tests, who gets dusts and grit and grime and everything is very possible. When you start putting nose clips on people, who have been working, and the next guy puts a nose clip on and things like that, it just creates additional problems with hygiene, okay.

MR. KRAVITZ: The escape with the SCSR, what type of SCSR were there?

MR. BYRAM: A CSA.

MR. SNASHALL: I have a clarifying -- perhaps you can help me out in clarifying something. You said something to the effectthat led to certain procedures that a surface fire fighting drill would be precluded by the ETS?

MR. BYRAM: Yes -- well, it would be better for an operator, if he could get credit for a surface fire fighting drill for his underground miners. We talked about expectations training. One of the things that we do is that we literally set fires on the surface with different types of material. It may be a diesel fire. It may be a large tied to the wood. And we give one location. We recently did three separate scenarios with three groups of miners from underground and it gives them three opportunity to fight a different type fire. This is physical and zone. We - I'm stepping out a little bit on this, Robert, I heard a gentleman speak earlier that supported the use of fire brigades. We had considered fire brigades, but we believe and have chosen all of our miners to fight fires. We don't have the time to get additional people. And so, we feel we lose an opportunity by not getting credit to bring our miners outside, at least one time a year, for actual hands-on fire fighting and to get credit for it.

MR. SNASHALL: The ETS doesn't preclude you from doing that. What you're saying is that there should be acknowledgment of a credit.

MR. BYRAM: For one of the fire drills, that's right, because the fire drills, as covered in

the ETS now, will probably take between four to six hours to conduct the walkout and everything.

MR. FORD: Mr. Byram, you talked about the question about what SCSR is available and the manufacturer, having the mine operator to report that. And I think you said, you don't have problem with making that information available at time, but you have a problem with reporting to MSHA. My question is, is the reason it's no problem making it available is because that's information that you already keep as part of the normal business practices, to invoices or --

MR. BYRAM: Yes. We keep a record of every SCSR in an individual mine site, the day it was tested, the manufacturer, the manufacturer's date and serial number. It's the part that I guess that we do not agree with is another reporting requirement. The material is there. It's always available.

MR. FORD: So, have a requirement to maintain this type of information at the mine. That probably doesn't burden the mine operators.

MR. BYRAM: It's no burden at all for us. I can't speak for other operators.

MS. SILVEY: Thank you, Mr. Byram. Our next speaker is Allen Smith with CAB.

MR. SMITH: Good morning.

MS. SILVEY: Good morning.

MR. SMITH: I'm Allen Smith with CAB, which stands for the Cambry County Association for the Blind and Handicap. And I thought it would be useful just to shed some information about what we are making and also make a couple of recommendations.

We started making a directional lifeline in 1985 and probably were the sole manufacture of the lifeline for 15 years, until recently where a couple of competitors started making copies of our lifeline. At the present time, we manufacture two types of lifelines, from a quarter-inch polypropylene rope and an aircraft cable. We've been making for many years the quarter-inch rope polyprophelene with a flame retardant rope. And for the small cost of rental, the 10 to 15 percent, we just thought it was the right thing to do. And we would recommend that any rope lifeline be made from flame retardant materials that comes in the ropes, for that added margin of safety.

One thing that had us somewhat concern was about the spacing under the emergency standard. It says that reflective materials be placed every 25 feet and comes no further apart than 100 feet. When we make lifeline, we sell them in a variety of packages.

We sell at 1,000 foot spool with 10 cones, which average every 100 feet. We make three coat principles with cones every 25 feet, 50, 75, depending on what the individual mine would like. But, I think somewhere in the terminology in the standard -- the permanent standard, they ought to address the issue of variances, because with rope -- and I know it was addressed in a question on the website. With rope, you have a variance in construction, of course, stretch, and also the metering devices are not precise. You're not using blades. You're using standard metering devices for rope. So, I would recommend some type of intolerance in the range to 15 percent to the location of your 25-foot reflectors and the 100-foot cone spacing.

For instance, we sell 1,000 foot spool. You'll have 10 cones and they will be, on average, every 100 feet. But, it's just not precise with rope. So, that would be one recommendation. And I think they address that on the website.

I think this variance would save mine operators, the manufacturers, and the inspectors a lot of wasted time in checking it, because mines have expressed to us that they're concerned, if that reflector is 25 feet, five inches, you know, will they

get cited. So, we really think that ought to be taken into consideration. And we don't feel -- we really don't feel at all that a couple of feet, either way, is going to affect the performance or the intent of the safety features of the lifeline.

As far as the directional cones, the NIOSH recommendation is what we've been doing since 1985. We put instructions in every box of product that we sell, indicating that the cones should be used with the smooth papered section of the cone, that the miner will know that he is moving out of the mine. Conversely, if his hand hits the blunt or a wide section of the cone, it will indicate that he is traveling into the mine and that he should turn around and go the other way. So, we've been advising customers to use that system since the 1980s.

We think the majority of mines -- as a matter of fact, we don't know of any mines that are not using that system. However, we can't say that for certain. We prior have supplied the majority of the mines, but we can't say for a certain fact that mines aren't using it the other way. But, we don't know of any mines that are using it contrary to what NIOSH is recognizing.

And if you have one percent of the mines

that are using it the other way, it may be worth standardizing it, just for the degree of safety, so that as miners move between mines within the same company or between mines of different companies, it will be a standard that is used across the board. So, I think that's something that really ought to be evaluated certainly, especially if not many mines are using it in the opposite direction from what NIOSH recommends.

Finally, on the question number one, I can just tell you that on what we call rescue tag lines, we have been making those for a number of major coal companies. They vary. We make -- and I'll be glad to leave a flier with you with the different versions we've been making. But, we make them in a high visibility reflective bag. The rescue tag lines come on a plastic carrier. The main concept that we have is that when that rescue tag line is put into action, that it just comes off smoothly and not get tangled. So, we use an entire spliced method of construction, where there's no extra hardware. So, all the tethers are sliced to the main line, the only hardware that clips on the end of the tethers. On average, I would say that tethers average about three-foot long between the mines. Three foot is the average. The spacing

between tethers ranges from three- to seven-feet, probably five foot is the average of what most mines want. We've been making it in a variety of construction, depending on the size of the mine crews. We've been making the six tethers, eight tethers. I think one has 13 tethers, and that says that in the information here. So, we are using a 7-16th inch hollow brave, polypropylene rope currently on the construction of that. We feel it's certainly enough to withstand pulling and movement.

So, those are just some comments and I would be glad to answer any questions that you might have.

MS. SILVEY: Thank you, very much, and, I mean, your comments will be very useful to us. One of the things you talked about, you have two, the rope and the cable.

MR. SMITH: Right, that's standard.

MS. SILVEY: And you make the rope, you said, flame retardant?

MR. SMITH: Correct.

MS. SILVEY: Okay. And I'm going to go down here, in terms of the majority of the mines, you think, use your product, what do they use? Do they use the rope or the cable?

MR. SMITH: The majority has been the rope.

MS. SILVEY: Has been the rope. And --
MR. SMITH: Recently, it's only recent that we've started selling the plastic jacket aircraft cable.
MS. SILVEY: Okay. And percentage-wise, and this may be an unfair question to ask you, but with respect to the mine, what would you say percentage-wise that your product has?
MR. SMITH: Of the total market?
MS. SILVEY: Yes.
MR. SMITH: I think I might defer that question.
MS. SILVEY: Okay. Yes, I said that was an unfair -- I shouldn't have asked that.
MR. SMITH: I probably have an idea, but --
MS. SILVEY: I mean, I caught -- you have an idea; obviously, you have an idea.
MR. SMITH: Commercially available, up to about four years ago, 500 percent.
MS. SILVEY: Okay, all right. That was an unfair --
MR. SMITH: Also, four or five years ago -- and I'll --
MS. SILVEY: I'll withdraw the question.
MR. SMITH: And that's only from what I

know, you know, from our information.

MS. SILVEY: Okay, all right. On the -- you know, I appreciate, very much, your comment with respect to tolerances, us taking recognition of tolerance and your comment that a little variance does not affect the safety features. On the tethering, would you venture to provide a comment there, with respect to any kind of standard size requirement or not for tethering?

MR. SMITH: I'll be frank about that. We have really made that to the mine specifications.

MS. SILVEY: Okay, all right.

MR. SMITH: I am probably not the expert in that.

MS. SILVEY: Okay, that's fine.

MR. SMITH: We work closely with mines. Mines have been very helpful in helping us develop it.

MS. SILVEY: Okay.

MR. SMITH: I can tell you just the range of what we've been making for a variety of mines.

MS. SILVEY: Right, that's fair. That's fine. Okay, thank you. That's all I have.

MR. SHERER: I have a few question. Well, go ahead.

MR. SPROUL: Well, I was just going to say,

I know we've spoken about this, we wanted to make it clear and we have done so in our compliance guide, that we appreciate the fact that the specified spacing of cones and/or reflectors is not meaning to be a precision measurement. And we have clarified that and I'm sure we will address that in the final rule, as well. So, I just wanted to clarify that.

MR. SMITH: Yes, I don't think anybody wants to waste time. I mean, it would be a waste of time to measuring inches.

MS. SILVEY: Right.

MR. SHERER: Mr. Smith, we really appreciate your telling us the information. And we've gotten a lot of comments about lifelines around mobile equipment. Are you aware of any specific products or methods to help protect those lifelines from the mobile equipment, keep them up out of the way, maybe?

MR. SMITH: We are trying to work on some hangars that would keep lifelines up higher. We make a whole variety of hangars for hanging it, from five inches to, in some instance, 10 feet, in the high roof mines that are out west. So, we make a variety of hangars for hanging it, in a variety of places. We've been asked to look at ways where they can be held up and then if it's pulled, it would drop down. And we

are starting doing some work on that. I don't have a readily available product.

MR. SHERER: Thank you.

MS. JANES: I just have one question for clarification. Do you have a particular test that you attest to for miners?

MR. SMITH: Yes. We have a lab test done on our rope. I don't have the name of the test. It's an ASDM test. It's a burn test. Once the rope is burned, then you pull away the source of the flame and it will allow it.

MS. JANES: Would you submit that for the record?

MR. SPROUL: He has actually provided that to me already.

MS. JANES: He has?

MR. SPROUL: Yes.

MS. SILVEY: Thank you, very much, we appreciate it.

MR. SMITH: Do you want this?

MS. SILVEY: Yes, thank you.

(Pause.)

MS. SILVEY: Okay. At this point, then, these are all the speakers that I have signed on either list that I have in front of me. So, is there

anybody else here, who wishes to speak?

MR. BAKER: Of course, I couldn't miss the opportunity. You wish I would, but I'm not going to.

MS. SILVEY: I said, I wouldn't let you.

MR. BAKER: And I will actually be fairly brief today. And to comment on the tolerance, and I think that it's a good idea when you talk about these --

MR. SPROUL: Do you want to identify yourself?

MR. BAKER: Yes, I'm sorry.

MS. SILVEY: Yes, thank you.

MR. BAKER: Jim Baker, B-A-K-E-R.

MS. SILVEY: Thank you.

MR. BAKER: I am Deputy Administrator for Occupational Health and Safety for the Buy Markets. Now, back on tolerance on a rope, so, let's make it an 85-foot requirement and then we can have a 15-foot tolerance up to 100 feet, okay. We have a tendency to create the tolerance, whether it's dust or whatever, in favor of the operator, rather than the miner.

The hearing today and the hearings that have occurred in Denver and Lexington, I think, have been very beneficial. And I would say that mine operators, many operators have testified. And while I may agree

with some of their comments and disagree with other of their comments, I do appreciate a lot of the things they have to say. But to my knowledge, we have had two hourly employees of a coal company speak on this issue. I think the record will be replete with the desires of operators, those wishes that they see, the changes that they would like to see made. And my concern is that for someone, who is not familiar with the situation, if they just read the record, they'd say, well, with the exception of one or two people, everybody pretty much spoke along the same lines and had the same ideas. That's a concern.

But, I would make a formal request to do is to have additional hearings held. I request that those hearings be held in coal field communities, where coal miners live, where coal miners work, and where coal miners will not have to travel excessive distances to have their views heard. Now, that can be in Morgantown, West Virginia -- and I would request one in northern West Virginia or western Pennsylvania, ideal locations, Morgantown, Washington, PA. I would request that. I would also request one in Alabama for those people. These are large, large pockets of very large underground mines. These individuals need to be heard, also. And I would make that request.

There has been a lot of discussion again today about what should be required, what shouldn't be required, and I'll just reiterate one thing that I did say in Lexington. Flexibility, like respect, is earned in this industry and I don't think, as a whole, this industry has earned any flexibility. I think it becomes clear that if you do not mandate, it will not happen. If you leave operators to their own devices, safety will not be paramount. I think that we can honestly say that. There are those, who are good actors, and I deal with some of those good actors. That is not the vast majority. And, unfortunately, good actors develop into bad actors. That's just the way it is. That's just my opinion to that. But, things happen when you mandate.

And the mandating begins with the distances that SCSRs need to be. But, I think that given their own devices, given 500 underground mines and 500 different plans, it's going to be too complicated for this agency to keep track of what's right and what's wrong and each district is going to set their own standard. I think you've mandated additional SCSRs and I need to repeat that, because we heard that again today. You need to require that. There should not be flexibility in this area.

I'm a little concerned also with the use of safe rooms or safe havens or those kind of things. It would be the opinion of the union that -- and I think the individual, who spoke for JWR is right, we should use escapeways with any of those instances. But, if you're going to have a place where you would consider more safe than the mine atmosphere, to change an SCSR or get your next SCSR, unless those are bulk head seals with submarine doors, with positive ventilation, then we are really fooling the miner. We're actually giving that individual the impression that if you go into this area where we have a door on either side of the -- on the stalking, on either side of the cross cut, this is a safe place for you to be and you can change your SCSR, you can don your SCSR, you can get your next one, or do whatever. I think we're creating, in that individual's mind, an area that if they go in -- 10 of them go in and the doors open for 15 minutes or however long that door has to be open, they're safe in there. That's not a reality. We have hazardous conditions. We have irrespirable atmosphere. If that door is open for any length of time, that atmosphere in that area is contaminated, also. So, we're giving a false impression here.

If you're really going to discuss safe

areas, then you've got to have sealed areas with positive pressure that will withstand at least the forces of some explosion, if that does occur. And I gave the example at the Pin Oak Mine, where the explosion occurred behind the bulk head and those seals held. So, that's -- if we're going to deal with that, that's what we need to look at.

The other thing that I would like to reiterate, I guess, because I guess at every one of these hearings, I can hear the same thing over and over, and sometimes, I feel compelled to readdress the issue. But the 15-minute reporting should be for all accidents. Fifteen-minute reporting should be the accidents, as defined in the regulation now, whether that's a roof fall, whenever that happens to be, and it should be reporting of any mine fire of any duration. We can sit here and say, and I could agree, to a certain extent, that, you know, you get a hot roller, it should be reported. That's not my concern. My concern is, we have a mine fire ranging for two hours, while the company tries to put it out, they don't even have to report it. We know that those things do occur. We need to err on the side of, say, look, if it's burning, you report it. We'll decide what we need to do. As MSHA, you can decide what you

need to do, at that point. But, every fire needs to be reported. And I think that, as I said before, then we get inspectors that go into the mine and get rid of the problem or the hazard that created the fire in the first place, because I don't think that once the fire is put out, they necessarily worry about getting rid of the hazard. You need to have those things occur.

I will say, again, lifelines, we believe, need to be a national standard. The cones should point to the face. I think that's pretty basic. Most mines do that. Those, who don't, I don't think about it a lot. You know, I think it's almost more natural, as you're walking away, to have your hands slide over the cones. So, I think you do need to do that.

Traveling the escapeway has been a broad topic of conversation. We are not opposed to having the escapeway traveled. We're not opposed to having everyone travel that escapeway. But, we don't necessary need to have them travel the entire escapeway every 90 days and we agree with the 90-day determination. That may be done in segments. And we firmly believe that, in order to get beyond paper compliance, a federal inspector must accompany those individuals as they walk out. He's going to be there doing anyhow. That way, I'll know -- or the federal

government will know that it's done. A checklist, a list of names, simply put on paper does nothing for anyone. So, we need to go beyond that.

There was some discussion today about mine rescue teams. And I don't think that, at least from our position, I think we've been very supportive among the mine rescue teams that are out there. I think, for the most part, they have done an excellent job and gone beyond the call of duty. However, there are not enough. Beyond what anybody wants to say, there are not enough. There needs to be an enhancement of mine rescue teams and the number of mine rescue teams and we need to return to the act in the regulation. You're in business, you run a mine, you have a mine rescue team. And if you can't follow the provisions of the regulation, and we need to get rid of the policy, then you don't need to be mining coal. It's as simple as that. If you are a small operator, as defined in the regulation, I believe it's 36 or 38, you can contract. We believe that that contract should not be open-ended. You should be required to deal with the mine rescue team at the nearest facility to you, so that if I am in Fairmont, I can't contract with the team out of Pittsburgh. There are a lot of mines around here that have to eat. The closest mine

to you is going to be your team and you make the arrangements to get that done. It's got to be close. We believe that eliminates a lot of the problems that exist out there.

The other thing, I'm a little confused, I've heard twice now about the regulation would eliminate our ability to do an outside fire training drill. I'm unaware of any volunteer training that stands in any instance. I don't think you deserve credit for the extra one. If you are a company that wants and should want to give extra training, God bless you, but you don't get credit for extras. I think a conscientious company will do that and I applaud that, but you don't deserve credit on the backside.

We still have not dealt with two issues that I think need to be dealt with in this rule and we would very much request that there be some consideration on belt flammability. We're talking to state. We're talking about all these other issues. Belt flammability is part of this mix. It's not going to be one of the -- I shouldn't say, it's not been raised. It shouldn't be one of those things that I get a notice back, saying this is not germane to the subject. It is germane to the subject. That's a hazardous area. Belt fires is looked to be a

condition that will require escape in many instances. We need to deal with those issues. We need to deal with belt error. That was all of them. They weren't set up to use. That's what was there.

I would be happy to take any questions. That's pretty much where I'm at. I appreciate the opportunity to speak and I would appreciate if any of you have the ability to influence those, who run the operation, we need to have at least two meetings in the coal fields. We need to have rank and file and hourly miners express their opinion. That's only fair. We heard from all the operations and I appreciate their coming. We need to hear from a lot of miners. Thank you.

MS. SILVEY: Thank you, Mr. Baker. I have just one comment, actually, and you're right, you did testify in Lexington. With respect to the distances for SCSRs and your comment is that this should be specification-oriented.

MR. BAKER: Yes.

MS. SILVEY: And so -- and I know you've testified in Lexington. But just for the record, I mentioned certain things in my opening statement. Would you care to clarify, in terms of the specifications?

MR. BAKER: And I think what --

MS. SILVEY: Or did you agree with what I said in the opening statement?

MR. BAKER: And here's -- we're not in favor of the performance-oriented, where every mine gets the walkaround mine to make that determination. We believe there should be set distances. And what we will do is we will provide that, in detail --

MS. SILVEY: Okay.

MR. BAKER: -- in our written comments, to be fair to everybody.

MS. SILVEY: Yes.

MR. BAKER: We will do that.

MS. SILVEY: That will be fine. Okay. That's all I have.

MR. SHERER: I have one question. Mr. Baker, you talked about all mine fires should be reportable. What about planned events associated with burning and welding, do you think there should be an exception for that, for notification?

MR. BAKER: Well, I mean, burning is part of the routine maintenance prevention or however you want to frame that up. So, I don't see those as fires, in the same sense we're talking, you know, a belt fire or fire in a -- and those are planned events. So, I

don't see that. Thank you, very much.

MS. SILVEY: Thank you. Is there anybody else, who wishes to speak? If nobody else wishes to speak, then, on behalf of the Secretary and the Acting Assistant Secretary, we want -- we appreciate, very mich, all of you, who participated in this public hearing. As I said in my opening statement, your comment and testimony will help us develop a final rule, which will provide the most effective and appropriate protection for miners in the event of emergency mine evacuations.

Our next meeting will be on 9 March in Charleston, West Virginia -- excuse me, on 9 May in Charleston, West Virginia. We invite any and al of you to joint us at that hearing and submit any additional comment you may have to us, and on the web or any other method mentioned in the ETS, prior to the close of the record, on 30 May. At this time, the hearing is concluded..

(Whereupon, at this time, the hearing was concluded.)

//

//

//

//

REPORTER'S CERTIFICATE

DOCKET NO.: n/a

CASE TITLE: MSHA's Standard for Emergency Mine Evacuations

HEARING DATE: April 28, 2006

LOCATION: Washington, D.C.

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 United States Department of Labor.

Date: April 28, 2006

Paul Intravia
Official Reporter
Heritage Reporting Corporation
Suite 600
1220 L Street, N.W.
Washington, D.C. 20005-4018