

# TRANSCRIPT OF PROCEEDINGS

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OFFICE OF STANDARDS, REGULATIONS AND VARIANCES )  
MINE SAFETY AND HEALTH ADMINISTRATION )  
  
PROPOSED PLAN VERIFICATION/SINGLE SAMPLE )  
PUBLIC HEARING )

Volume: 1  
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**HERITAGE REPORTING CORPORATION**  
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**AB14-HEAR-TRANSCRIPT-5**  
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Date: May 20, 2003

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BEFORE THE

U. S. DEPARTMENT OF LABOR

OFFICE OF STANDARDS, REGULATIONS AND VARIANCES )  
MINE SAFETY AND HEALTH ADMINISTRATION )  
  
PROPOSED PLAN VERIFICATION/SINGLE SAMPLE )  
PUBLIC HEARING )

Holiday Inn North  
5000 10th Avenue, N.  
Birmingham, Alabama

Tuesday,  
May 20, 2003

The above entitled matter came on for Public  
Hearing pursuant to Notice at 7:58 a.m.

PRESENT WERE:

On behalf of MSHA:

MARVIN NICHOLS, Director, MSHA Office of Standards,  
Regulations and Variances  
RONALD FORD  
JON KOGUT  
GERALD FINFINGER  
ROBERT THAXTON  
LARRY REYNOLDS  
GEORGE NIEWIADOMSKI

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1   P R O C E E D I N G S

2   (7:58 a.m)

3                         MODERATOR NICHOLS: Good morning. My name is  
4 Marvin Nichols and I'm the Director of the Office of  
5 Standards for MSHA and I'll be the moderator for today's  
6 public hearings. On behalf of Dave Lauriski, the Assistant  
7 Secretary for MSHA, and Dr. John Howard, Director of NIOSH,  
8 we want to welcome all of you here today.

9                         Today's public hearing is being held to receive  
10 your comments on two related MSHA regulatory actions.  
11 First, we have reopened the record for comment on the joint  
12 MSHA and NIOSH single sample proposed rule that was  
13 originally published on July the 7th, 2000. Second, we have  
14 repropoed the planned verification rule. It was published  
15 in the Federal Register on March the 6th, 2003. Your  
16 comments today will be included in the record for both  
17 proposed rules.

18                         The two proposed rules are based on the 1996  
19 recommendations of the Secretary of Labor's advisory  
20 committee on the elimination of pneumoconiosis and the  
21 comments received in response to the previous proposed rules  
22 published in 2000. These rules are intended to eliminate  
23 black lung and silicosis by eliminating miner overexposures  
24 They completely change the federal program for controlling,



1 detecting and sampling for respirable dust in coal mines.  
2 The emphasis of the new program will be on verified  
3 engineering controls so that miners are protected on every  
4 shift.

5           Let me now introduce our panel. To my left is Bob  
6 Thaxton with Coal Mine Safety and Health and MSHA. Next to  
7 Bob is Larry Reynolds with the DOL Solicitor's Office. At  
8 the end of the table is George Niewiadomski with Coal Mine  
9 Safety and Health. To my right is Gerry Finfinger with  
10 NIOSH. Next to Gerry is Jon Kogut with the MSHA Policy and  
11 Evaluation group. At the end of the table is Ron Ford with  
12 the Standards Office.

13           Let me mention how today's hearing will be  
14 conducted. The formal rules of evidence do not apply at  
15 these hearings and the hearing is conducted in an informal  
16 manner. Those of you who have notified MSHA in advance will  
17 be allowed to make your presentations first. Following  
18 these presentations other who request an opportunity to  
19 speak will be allowed to do so. I would ask that all the  
20 questions regarding these rules be made on the public record  
21 and that you refrain from asking the panel members questions  
22 when we're not in session. The reason we do this is that we  
23 want all of the discussion concerning these rules on the  
24 record.

1           Following the completion of my opening statement,  
2 Bob Thaxton will give you an overview of the new proposed  
3 plan verification rule.

4           Also, as with the previous hearings, we will work  
5 through lunch. We want to give every miner ample time to  
6 give us comments on these two rules.

7           A verbatim transcript of this hearing is being  
8 taken and it will be made part -- be made available as part  
9 of the official record. Please submit any overheads,  
10 slides, tapes and copies of your presentations to me so that  
11 these items may be made part of the record. The hearing  
12 transcript, along with all of the comments that MSHA has  
13 received to date on the proposed rules will be available for  
14 review. We intend to post a copy of the transcript on the  
15 MSHA web page at [www.msha.gov](http://www.msha.gov). If you wish to obtain a copy  
16 of the hearing transcript before then you should make your  
17 own arrangements with the court reporter.

18           We're also accepting written comments and data  
19 from any interested party including those who do not speak  
20 today. You can give written comments to me during the  
21 hearing or send them to the address listed in the hearing  
22 notice. If you wish to present any written statements or  
23 information for the record today, please clearly identify  
24 them. All written comments and data submitted to MSHA will

1 be included in the official record.

2           Due to requests from the mining community, the  
3 Agency will extend the post hearing comment period for both  
4 the planned verification proposal and the single sample  
5 reopening from June 4th to July the 3rd, 2003. The notice  
6 announcing the extension will be published in the Federal  
7 Register soon.

8           As you know, we have one additional hearing  
9 scheduled to address these rules. It will be in Grand  
10 Junction, Colorado on May the 22nd. The hearing will begin  
11 at 8:00 a.m. and end after the last scheduled speaker.

12           Let me give you some background on the two  
13 proposed rules. First, the single sample proposed rule was  
14 originally published on July the 7th, 2000. It would allow  
15 MSHA to make compliance determinations on single sample  
16 results. The agency would no longer use the averaging  
17 method to determine if miners were being overexposed to  
18 respirable dust. Averaging can mask individual  
19 overexposures by diluting a high sample with a lower  
20 concentration taken on another shift. Using simple-sample  
21 measurements rather than averaging multiple samples for  
22 compliance purposes will better protect miners' health.  
23 Single samples can identify and remedy excessive dust  
24 conditions more quickly. Single sample measurements have

1 been used for many years by OSHA and at metal and nonmetal  
2 mines in this country. MSHA and NIOSH are jointly reopening  
3 the rulemaking record for this proposed rule to provide an  
4 opportunity for you to comment on the new information in the  
5 record concerning MSHA's current enforcement policy, the  
6 health effects, quantitative risk assessment, technological  
7 and economic feasibility and compliance costs which has been  
8 added since July 2000. For example, we updated the preamble  
9 to include the most recent information on the prevalence of  
10 black lung among coal miners examined under the Miners  
11 Choice program during the 2000 through 2002 period.

12           These findings show that miners continue to be at  
13 risk of developing black lung under the current dust control  
14 program. The quantitative risk assessment is based on  
15 additional and more recent data. None of the new  
16 information changes the actual findings published in the  
17 Federal Register on July the 7th, 2000. The single-sample  
18 issue has been through a long public process which is  
19 outlined in the preamble of the proposed rule.

20           The second regulatory action is the repropoed  
21 plan verification rule. This proposed rule supersedes the  
22 one published on July 7th, 2000. MSHA held three public  
23 hearings on the previous proposed rule during August 2000.  
24 Many commenters urged the Agency to withdraw the earlier

1 proposed rule and go back to the drawing board. Some  
2 commenters believed that MSHA had failed to adequately  
3 address their concerns, the reforms in the federal dust  
4 program recommended by the Dust Advisory Committee, by NIOSH  
5 in its criteria document and reforms urged by coal miners  
6 since the mid 1970s. After carefully considering all the  
7 facts, issues and concerns expressed by the commenters, MSHA  
8 is proposing a new rule in response to the comments made to  
9 the July 7th, 2000 proposed rule.

10 Bob Thaxton will give us an overview of the new  
11 planned verification proposed rule and you can follow Bob's  
12 presentation on the screen. We're also posting Bob's  
13 presentation on MSHA's web page for future reference.

14 We ask that you hold any questions regarding the  
15 presentations until you come up to the table to give us your  
16 comments. At that time we will address any questions you  
17 have.

18 Bob.

19 MR. THAXTON: First thing, can everybody hear me  
20 without the microphone? No problem. I'll speak loud. I'll  
21 be walking back and forth and I'll be in front of some of  
22 you.

23 What I would like to do is walk through a summary  
24 of what the rules provide for. The first thing we want to

1 ask is why are we here. What's the purpose of what we're  
2 doing? Well if we look back to 1981 through 2002 we're  
3 seeing not much of a change in the prevalence of black lung  
4 among active coal miners. This is information that's  
5 provided through a combination of NIOSH and MSHA data. If  
6 you remember, for about three years, MSHA offered free chest  
7 x-rays under the Miners' Choice Program, and at the same  
8 time the current program that's offered -- that's been  
9 offered to underground miners for many years that you can  
10 get an x-ray through your mine operator at periodic  
11 intervals, that data is all being combined. And based on  
12 that, the 1981 prevalence rate was found to be 4.1 percent  
13 and under 2002 we're down to 2.8 percent. Not much of a  
14 change. What the Agency is interested in is getting this  
15 prevalence of black lung down to zero. We want to push that  
16 much lower. We do not want to see black lung being an issue  
17 that miners have to deal with.

18           At the same token, what you see in the black boxes  
19 under each bar, the percent is the percent of samples that  
20 exceed two milligrams for that period, and the number in the  
21 parenthesis is the average concentration of the DO samples.  
22 This is all based on the operator samples that are  
23 submitted to the agency. So you can see while there's been  
24 a slight change in the prevalence of black lung, we're only

1 seeing a moderate change in percent of samples that exceed  
2 two milligrams and the average concentration of the DO has  
3 stayed fairly level, 1.1 to a low of .9.

4           Like Marvin said, this package consists of two  
5 rules. One, the single-sample rule and number two, the  
6 planned verification. This package is designed so that we  
7 will develop effective plans and will have two components,  
8 control of dust and the monitoring of the effectiveness of  
9 those controls.

10           Under single sample we have a new finding that's  
11 being published that says the average concentration can be  
12 accurately measured over a single shift. That's contrary to  
13 what we currently do. It rescinds the 1972 finding on the  
14 accuracy of a single-shift sample, stating that we ended  
15 up having to use the averaging, and that's why you see us  
16 currently taking five samples from five different shifts and  
17 averaging the results of those samples to determine whether  
18 the concentration is in compliance or out of compliance.

19           Under single sample there is a new standard that's  
20 added into the rule. That standard says that the secretary  
21 may use a single full-shift measurement to determine the  
22 average concentration over that shift that the sample is  
23 collected. So when you see us coming in now, we have to  
24 come in and collect five samples on five different shifts

1 consecutively to determine what the average concentration  
2 the person is exposed to. Under the new proposal, MSHA  
3 would be able to come in and collect a sample on a single  
4 shift, and if that sample is high, noncompliance is  
5 indicated. That allows us then to take action to correct  
6 that situation with lower exposures much quicker.

7           Plan verification. Plan verification requires  
8 that each underground coal mine operator must have verified  
9 ventilation controls or ventilation plan. That becomes part  
10 of the approved plan for that particular mine. The plan  
11 will be verified under actual mining conditions by operator  
12 samples. Part of that under actual conditions. We want to  
13 try to increase the production level that the plan samples  
14 are collected at so that we get four representative samples  
15 of what the true actual mining conditions are.

16           Under the plan verification MSHA assumes the  
17 responsibility for compliance and abatement sampling at  
18 underground mines. Plan verification only affects  
19 underground mines, at the surface there is no change. Also,  
20 MSHA samples will be used to set the reduced standards  
21 through the courts. As you currently have it, MSHA and  
22 operator samples are averaged and combined to determine the  
23 percent of quartz so that we can set a reduced standard.  
24 This process takes a long period of time, anywhere from 60



1 to 90 days or more. Under this particular program, all  
2 sampling that will be used for establishing reduced  
3 standards will be MSHA samples. They will be the last three  
4 MSHA samples averaged on an ongoing basis. As we get a new  
5 sample, the oldest one is dropped off. So it will be a  
6 running average that constantly updates the reduced  
7 standard.

8           The breakdown of the different points of the  
9 rules. The verification of the plan. What I'm going to do  
10 is do a comparison of what you're seeing under the current  
11 rules, what's happened right now, versus what the proposed  
12 rule provides for. Under the current rule on the  
13 verification of the plan MSHA sampling is used to approve  
14 the plan. The plan is approved based on the average of  
15 multiple samples. The sampling is full shift, eight hours  
16 or less, portal to portal. We collect those samples and  
17 consider them valid at 60 percent of average production or  
18 greater. Now the 60 percent of average production we're  
19 going to get into and I'll show you an example of that to  
20 see where we're saying that that's not really what we want  
21 to do at this time.

22           Under the 2003 proposed rule we will be using  
23 operator samples to verify the effectiveness of the plan.  
24 Those samples will be full-shift samples production time.

1 That is, that the samplers will be turned on when the miners  
2 reach the section. They will not be turned off until the  
3 miners are leaving the section. So it's the full-production  
4 time that you're on the section will be sampled. It does  
5 not include travel time, though. The importance of that is  
6 that the plan is effective for controlling dust on the  
7 section not in the out-by areas. So because of that, we're  
8 trying to evaluate that plan, whether the parameters that  
9 they're specifying are adequate or not. So we want to  
10 collect the samples the full time people are exposed in the  
11 area where that plan is effective.

12           These samples will be collected at higher than  
13 average production. Like I said, there's a slide over here  
14 that I'll go into what we consider higher than average.  
15 We're looking for a -- what we call a DDL. It's a  
16 verification production level. And that level is going to  
17 be at a higher level than what we're currently doing.

18           There will be separate quartz and coal mine dust  
19 verification limits. Currently all you hear is that they  
20 meet the respirable dust standard, whatever it happens to  
21 be. These particular samples will have to meet two limits,  
22 respirable dust and quartz. Under respirable dust, if you  
23 take as little as one sample they would have to meet a 95  
24 percent confidence that they're meeting a two milligram

1 standard. To do that on one sample would require a  
2 respirable dust level of 1.71 milligrams per cubic meter,  
3 not two. The quartz level would have to be 87 micrograms or  
4 less, not 100. If they take up to five samples then those  
5 samples can exceed two milligrams per cubic feet of  
6 respirable dust and no more than 100 micrograms on quartz.

7 Under the proposed plan -- proposed rule rather,  
8 the use of PAPRs or administrative controls on any mining  
9 unit could be used as a supplemental measure after  
10 exhausting feasible engineering controls. The only time  
11 that these provisions are allowed to be utilized is once  
12 feasible controls have been exhausted. That determination  
13 of exhausting feasible controls is left up to MSHA only.  
14 That is at the highest level of the agency. It is assigned  
15 to the administrative Coal Mine Safety and Health.  
16 Information will be gathered, the operator will present his  
17 case to the agency, the agency will do evaluations  
18 determinations and that'll be reviewed by a panel in  
19 Arlington who will report to the administrator and the  
20 administrator will make the final decision.

21 Planned information. Under the current rules MSHA  
22 sampling is conducted at 60 percent of the average  
23 production. Anything that we determine as the average  
24 production, 60 percent of that level counts as a valid

1 sample for us. The way we determine average production  
2 right now is that generally we talk to the miners and we  
3 talk to the mine operators. We just ask people what you  
4 normally produce and then we take that amount, multiply it  
5 by 60 percent. As long as we have at least that kind of  
6 production or greater the sample is considered valid. So  
7 you can see that we can actually collect samples and say  
8 they had a very low production rate. The operator samples  
9 that are collected currently under the bimonthly program,  
10 the law only specifies that they have to meet 50 percent of  
11 the production -- average production of the last bimonthly  
12 period. Those samples also can represent a very low amount  
13 of production versus what is normal.

14           Currently there's no records of production  
15 required to be maintained. That's why we have to talk to  
16 people. We usually ask questions. Very few places do we  
17 actually have people presenting a record of what production  
18 is so that we can tell what is produced in terms of what  
19 these percentages should be.

20           I know the 2003 proposed rule, it requires that  
21 the operator collect those samples for verification at the  
22 10th highest production level. The 10th highest production  
23 level in the last 30 shifts. From that it equates to the  
24 fact that we end up with about the 67th percentile. That is

1 that two-thirds of the shifts during that 30 days -- or 30  
2 shifts will be less than the 10th highest production level  
3 and one-third will be higher. We're moving the bar up on  
4 where we want to collect samples as far as being  
5 representative of what's normal. I'll show you what that  
6 10th highest production level equates to in just a minute.

7           It also requires the recording of production and  
8 maintaining those records for six months. Each individual  
9 section, long wall, continuous mine or whatever, the  
10 operator will be required to record the production on each  
11 and every shift and it's not just clean coal. It's raw  
12 tonnage, rocks, coal. It makes no difference to us what's  
13 mined. The total production has to be recorded.

14           The 10th highest production. Where does that fall  
15 and what does it mean? We've put together a chart -- each  
16 oval on this bar represents a production shift on a long  
17 wall MMU in northern West Virginia. This is an actual  
18 situation of 30 production shifts. If we go through and  
19 average all of these readings for 30 shifts the average  
20 comes out to 6295. That's 6,295 tons average for that  
21 section. MSHA samples -- like I said, to collect a valid  
22 sample has to be at 60 percent. Well 60 percent of average  
23 brings us down here to about 3,700 tons. Anything at 3,700  
24 tons or above we consider it a valid sample. Now keep in

1 mind also the operator samples only have to meet 50 percent  
2 of average. So even lower than this.

3           We were asked at one time to look at raising the  
4 bar to 90 percent of average. Ninety percent of average  
5 gets us to about 55 or 5,600 tons. That's still below the  
6 average, though. What this rule does is go to the 10th  
7 highest production level in the last 30 shifts. Like I  
8 said, that brings us up to about the 67 percent or two-  
9 thirds level. The 10th highest brings us up here. We're  
10 getting samples collected at about 7,500 tons. That's  
11 greater than the average, so it's harder to get. What that  
12 does is, that gives us the production that indicates that  
13 normal things are going on, that the operators are running  
14 the way they should be, that it's representing what kind of  
15 actions that are taking place on the sections, that we need  
16 controls that actually protect people.

17           The use of PAPRS or powered air-purifying  
18 respirators. Under the current rule PAPRS or any other  
19 respiratory protection equipment are permitted to be used  
20 under 72.700. What happens is, if somebody uses it in  
21 accordance with the way 72.700 says, which is to have a  
22 respiratory protection program in place, then the operator,  
23 if he does get cited for over exposures and people are  
24 actually using the respirators, the citation can be classed

1 as non-S&S. Non-S&S ventilation on respirable dust versus  
2 an S&S violation is a grade reduction in penalty. The  
3 average penalty for a non-S&S violation is about \$75 or so.  
4 For an S&S violation on respirable dust it can be anywhere  
5 from 500 to \$1,000. So you can see there's a monetary gain  
6 doing that. That's the only allowance that's in the current  
7 rules.

8 Under the 2003 proposed rule. It permits the use  
9 of PAPRS when all feasible engineering controls have been  
10 exhausted. If an operation comes in and they've tried all  
11 controls that the agency sees as feasible and they still  
12 cannot maintain compliance at that high production levels  
13 then they would be allowed to put in the use of a PAPR  
14 program. The only ones that are excepted are loose fitting  
15 powered respirators with MSHA and NIOSH approval. Currently  
16 there is only one unit that meets a criteria and that's the  
17 3M RACAL helmet. The other helmets do not meet NIOSH  
18 approval so they are not qualified under this rule.

19 If they opt to use powered air purifying  
20 respirators they have to provide a respiratory protection  
21 program as part of the approved ventilation plan. The  
22 respiratory protection program has to be spelled out in its  
23 entirety. There's an example of what a respiratory  
24 protection program has to look like in the rule. It's

1 Appendix B under the package that's available. That  
2 respiratory protection program has to spell out who is  
3 required to be in charge of the program. One person at the  
4 mine. Who takes care of the units? Who cleans them, who  
5 maintains them? Filters have to be changed periodically,  
6 and it's spelled out in there who has to wear them, where  
7 they have to be worn. They have to be disinfected between  
8 different miners use. So if you're on a section and  
9 somebody wears an airstream helmet at the beginning and then  
10 you turn around and they say well let's swap out and you put  
11 this guy's helmet on, not under this particular program. It  
12 has to be cleaned and disinfected before the next person  
13 puts it on.

14 All of these things are spelled out in the  
15 Respiratory Program, and that protection program has to be  
16 incorporated as part of the approved plan. It becomes part  
17 of the approved plan for that mine so therefore it becomes  
18 part of the regulation for that mine, and any violation of a  
19 portion of that program can be a violation of the plan.

20 If the PAPR program is installed the operator must  
21 maintain dust levels as low as possible with feasible  
22 engineering controls. At the point that the agency comes in  
23 and says okay, you've used all of the controls that are  
24 available for this particular entity, there's nothing else



1 that can be done. You're able to get the dust  
2 concentrations down to 2.2, 2.4, but that's as good as they  
3 can get. They cannot change that. They have to maintain  
4 all of those controls in place from that point forward. So  
5 just because they put a PAPR program in doesn't mean that  
6 they take things off and make it easier. They have to  
7 maintain everything that the agency has determined is  
8 feasible from that point forward.

9           If a PAPR program is put in place a protection  
10 factor of between 2 and 4, depending on the ventilating air  
11 velocity, is assigned to the mining section. Now this is  
12 where it's a little different from what other industries  
13 see. We do not assign protection factors to the respirator  
14 itself. We assign protection factors to where the unit is  
15 being utilized. The reason for that is because we have  
16 found through testing that PAPRS are affected by the  
17 ventilation quantity that is going past them, the velocity.  
18 The velocity as it increases going past the airstream helmet  
19 and face shield changes the degree of protection that we can  
20 expect from that unit. So with higher velocities protection  
21 factors go down. At lower velocities they can get the  
22 highest one. Maximum protection factor is a 4, the lowest  
23 protection factor is a 2. It will fluctuate in between  
24 there based on the velocity on the section where it's being

1 used. For example, the protection factor, what does that  
2 mean? If you're assigned a protection factor of 4, that  
3 indicates that the air being breathed by the miner is one-  
4 fourth the concentration of the air outside PAPR. If you're  
5 in say a 2 milligram atmosphere, the environment in the mine  
6 is at 2 milligrams and you're wearing a PAPR, the affected  
7 environment inside the PAPR would be 0.5 if the velocity is  
8 less than 800 feet per minute. I'm sorry, less than 400.

9           Sampling requirements. Under the current  
10 requirements operators collect bimonthly compliance samples  
11 at underground mines. Those samples can result in a  
12 citation for failure to submit if they fail to submit the  
13 required number. Also it can result in citations issued for  
14 exceeding the applicable standard.

15           The operators' sample also collects abatement  
16 samples to determine compliance after a citation is issued.  
17 If we issue a citation, the operator collects those samples  
18 to show whether they're back in compliance or not.

19           MSHA quarterly will sample MMUs, Section DAs and  
20 Part 90 Miners. That's our current sampling program.  
21 Citations can be issued for exceeding the applicable  
22 standard as well. Now the citations that are issued for  
23 exceeding the applicable standard on both the operator and  
24 MSHA samples are based on the average of five samples right

1 now. We have to take five samples and the operators have to  
2 take five samples. So we get a situation where we're  
3 averaging those five samples instead of as we said in our  
4 current rule proposal that we want to do this on one sample.

5           The 2003 proposed rule, the operator will still be  
6 collecting samples but they will be collecting samples to  
7 verify the plan initially and then designated MMUs will  
8 collect one sample each quarter to confirm the continued  
9 effectiveness of the dust controls that are in place.

10           No citation will be issued for exceeding the  
11 applicable standard. These samples are determined for  
12 information purposes, to find out whether the controls are  
13 working. We're not interested in determining compliance and  
14 noncompliance at this point. So there's no citations for  
15 exceeding the standard based on those samples. However any  
16 sample that the operator receives, the operator must take  
17 action to reduce concentrations when samples exceed the  
18 standard. So even though we're not taking enforcement  
19 action by saying that you have to -- that'll you'll get a  
20 citation for overexposure, any samples that are collected  
21 under this program by the operator that indicates a level  
22 exceeding the applicable standards, the operator has to take  
23 action to reduce those concentrations and record that  
24 information. Failure to take that type of action can be a

1 citation, the same as we do right now for reading as we do  
2 for methane. An operator goes in and does their own testing  
3 and they find methane levels greater than two percent, they  
4 have to report it and they have to show what action they're  
5 taking to reduce those exposures. If they don't take action  
6 then they can be cited for failure to take action. We would  
7 do the same thing under the dust.

8 MSHA collects samples to determine compliance and  
9 abatement of citations under the proposed rule. Only MSHA  
10 samples will be used for that purpose. All of our  
11 determinations will be made on single full-shift  
12 measurements and citations will be issued for exceeding the  
13 applicable standard. We'll have some scenarios at the end  
14 where we walk through a couple of situations where this  
15 would be taking place. But all of the MSHA determinations  
16 will be based on single full-shift measurements.

17 Making compliance/noncompliance decisions. Under  
18 the current rule we average multiple samples to make  
19 compliance/noncompliance determinations at all coal mines,  
20 surface and underground. There's no change. That's what  
21 the current rule is. There's no difference between the two.  
22 The average of five samples on five different shifts is  
23 used. If the average concentration exceeds the applicable  
24 standard by one-tenth or more noncompliance is indicated.

1 Under the 2003 proposed rule single-sample  
2 determinations at all coal mines, surface and underground.  
3 This is the one area single-sample affects all coal mines,  
4 surface and underground. So single-sample determinations  
5 will be affected on surface as well as underground.

6 Noncompliance or citation levels will be 2.33 on a  
7 2 milligram standard. What that does is, it gets us to a 95  
8 percent confidence that the 2 milligram standard has been  
9 exceeded. Remember now, we're basing our determinations on  
10 one sample collected on a single shift. Based on that one  
11 sample, we have to have confidence that we're exceeding the  
12 2 milligram standard at 95 percent in order to be able to  
13 substantiate a citation in the court. That 2.33 gets us to  
14 that level.

15 Now that's the same thing as what you see on the  
16 current noise program. When people come in and take a  
17 survey for noise, we cited 1.32 for 132 percent. That, of  
18 course, is 100 percent. It's the error factor that's  
19 factored into the type of sample that's done. It's the same  
20 thing that's done in OSHA, metal and nonmetal mines. This  
21 is the norm of how citations for noncompliance is  
22 determined.

23 At the same token because of the single sample  
24 that we're using, we get to this high level of confidence

1 that's we're exceeding the 2 milligram standard currently  
2 because we're taking multiple samples and averaging them.  
3 We're going to show you why we have problems with that  
4 averaging. The citation levels are specified in the plan  
5 verification rule. We can actually go into the rule  
6 language itself, and if you're on a reduced standard, it  
7 tells you exactly what level if it's exceeded will be a  
8 citation level.

9           Like I said, we have problems with the averaging.  
10 What we currently do is, we take five samples from five  
11 different shifts. What this is, this is an example of an  
12 actual survey submitted under an operator sampling program.  
13 We have five samples collected on five different shifts.  
14 The first sample collected on the continuous miner operator  
15 was 3.2. The second sample, 1.6; the third sample, 1.5; the  
16 fourth sample, 0.8; the fifth sample, 3.1. If you average  
17 all five of those samples the average is 2.0. The section  
18 is in compliance and no action can be taken to correct for  
19 these two shifts that people have exceeded the standard.  
20 Those shifts of overexposure are what we think is driving  
21 the reason we still see black lung at the prevalence rates  
22 that we see it today, that we're not effectively reducing  
23 that prevalence rate to zero. We have people being exposed,  
24 even on sampling shifts, which are considered to be the best

1 times because if an operator is collecting samples, he knows  
2 he's going to be sampling his section. At the best times,  
3 he's still showing overexposures, but yet because the  
4 average of those five shows compliance there's nothing being  
5 done about it. Under the current program, when we take the  
6 samples and if we see a 3.2 or a 3.1, even though you may  
7 have a 0.8 in there, the 3.2s and 3.1s would result in  
8 action being taken. There has to be something done to  
9 reduce that exposure. Reducing exposures on each and every  
10 shift is how we think that we will end up reducing the  
11 prevalence of black lung.

12 On-shift examinations with controls. Under the  
13 current rule, we have a rule under Part 75 that says that  
14 you have to conduct an examination of the dust controls that  
15 are spelled out in the plan at the beginning of each shift.

16 Now if it's a situation where they cannot actually shut  
17 down, then you have to do it within the first hour of the  
18 next shift. Right now those two programs -- that  
19 examination is on the planned parameters that are in place.

20 The planned parameters right now are just minimum controls.

21 They're the minimum levels. A lot of places you'll go to  
22 you'll see that the plan may only call for 10,000 CFM of  
23 air, but when you go up on the section they may actually  
24 have 25,000. The plan may call for 50 PSI water pressure

1 and they may actually have 75 or 100. They may call for 25  
2 sprays on the miner and they may have 35 sprays on the  
3 miner. The plan is just minimum controls, and when this  
4 examination has to be conducted, they have to be meeting  
5 those minimum control parameters.

6           The 2003 proposed rule maintains that requirement  
7 to do that on shift check. However, the change here is that  
8 the plans are no longer the minimum that you see right now.  
9 If an operation takes samples to verify the plan and the  
10 plan shows that they need 25,000 CFM of air to meet the  
11 limits at the verification reduction limit, that 10th  
12 highest production level, if they show that they have to  
13 have 25,000 CFM to do that, that's what has to be on the  
14 plan. And when they go in to do any verification sampling,  
15 any quarterly sampling, the samples cannot -- the samples  
16 have to be collected at a time when they're meeting the EPO  
17 or a higher production level and the controls that are in  
18 use at the time the samples are collected cannot exceed 115  
19 percent of what's in the plan. So if their plan calls for  
20 100,000 CFM of air, they cannot have more than 115 on the  
21 section on the date that we take the samples. What we're  
22 doing is, we're pulling the planned parameters to where they  
23 -- when the samples are collected they are more  
24 representative of what's actually going on, so that when we



1 have a determination made that they're meeting the 2  
2 milligram standards we have good reason to believe that  
3 that's true.

4 Miner participation. Under the current rules  
5 miners have a right to accompany, with pay, MSHA personnel  
6 during MSHA sampling. There is no guarantee of MSHA  
7 participation under the operators' program or operator  
8 sampling.

9 For plan, operator notifies the miners' rep of  
10 planned submission or revisions and post them on a bulletin  
11 board. The miners' rep may submit comments during the MSHA  
12 review. That's under the current rules.

13 Under the 2003 proposed rule miner participation  
14 during operator sampling. This is the verification sampling  
15 and if there's a requirement for quarterly sampling. The  
16 operator has to notify mines of the date and time prior to  
17 verification of quarterly sampling. They have to post it  
18 somehow to get the notification to the miners to let them  
19 know in advance that sampling will be conducted on a certain  
20 date and time. And the miners must be provided an  
21 opportunity to observe the sampling, but there is no  
22 entitlement to special pay. So it's not like the walk-  
23 around rights with MSHA personnel. This is if you want to  
24 observe that sampling you have a right to do that, but there

1 is no guarantee of pay.

2           Miner participation during MSHA sampling. Miners  
3 would continue to have the right to accompany, with pay,  
4 MSHA personnel during compliance and abatement sampling. If  
5 MSHA is in there doing compliance sampling, routine  
6 sampling, you still get the walk-around rights. If we have  
7 to come back and do an abatement sampling for a citation,  
8 you have the same walk-around rights.

9           The operator. As far as the plan, the operator  
10 still notifies the miners rep of the plan  
11 submission/revision and post on the bulletin board. Miners  
12 rep may submit comments. It's no different from what we  
13 currently have. Even though we're getting better plans, it  
14 becomes more important though to hear from people as to what  
15 they think of it. If you comments or problems with the  
16 submission because it's available, you can submit those --  
17 that information to the district while the plan's being  
18 reviewed so they can be considered by the district.

19           Use of personal continuous dust monitors or PCDMs.  
20 The current rule, there is no consideration for use of  
21 personal continuous dust monitors. There's only one type of  
22 unit that's allowed under the current rules. It's a metric  
23 unit that's approved under Part 74 of our regs. It has both  
24 NIOSH and MSHA approval.

1           The 2003 proposed rule allows any unit that the  
2 secretary of labor approves for the conversion factor as  
3 being acceptable. What this does is, it allows the agency  
4 to say okay, if we have something like the PDM1 that's being  
5 shown and talked about lately, if that unit becomes  
6 available and they establish a conversion factor for that  
7 unit that converts the unit's measurements back to MRU  
8 equipment -- which is what the 2 milligram standard is based  
9 on -- then we can approve that through the secretary of  
10 labor and it will be allowed to be used.

11           People that would use the personal continuous dust  
12 monitor that's opted. Designated miners would have to wear  
13 the unit full shift, portal to portal. Personal continuous  
14 dust monitors are just that. They're monitoring an  
15 individual, so you monitor portal to portal.

16           Permits an operator to use administrative controls  
17 without first exhausting feasible engineering controls.  
18 Again, because you're going to personal continuous dust  
19 monitoring you're monitoring an individual. Because you're  
20 monitoring individuals, how people move within the mine  
21 affects the dust concentrations. So an operator that  
22 utilizes a PCDM, personal continuous dust monitors, would be  
23 allowed to utilize that administrative control.

24           Again, no citations for overexposure based on

1 those readings. Those readings would have to be reported,  
2 but there's no citations for overexposure. However, again,  
3 the operator is still under the requirement that any  
4 indication of an overexposure requires the operator to note  
5 it and take action to reduce that exposure. Failure to take  
6 the action to reduce the exposure from that point forward  
7 could be a violation.

8           Benefits from these two rules being together as a  
9 package. One is that we get plan parameters that reflect  
10 actual mining conditions that have been verified at high  
11 production levels. We're getting plan parameters that  
12 actually will have 95 percent confidence that they are going  
13 to control the dust at 2 milligrams and 100 micrograms  
14 respectfully for dust and quartz. We're also getting it  
15 collected at production levels that we consider are closer  
16 to normal, so that we have normal actions, normal duties  
17 being conducted on that section.

18           There will be no operator collected samples used  
19 to determine compliance. So you get samples being collected  
20 by the agency only.

21           It provides for protection for miners when  
22 feasible engineering controls have been exhausted. Like we  
23 showed you on the example of the averaging, we have  
24 situations right now under the current program when people

1 are saying they're in compliance with meeting the 2  
2 milligram standard, but yet you have individual shifts where  
3 people are being exposed to high concentrations. If that  
4 situation is representative of exhausted feasible controls,  
5 then we need to do something and recognize those shifts that  
6 people are overexposed and provide some other controls so  
7 that they can be protected. Protecting miners on each and  
8 every shift is how we're going to reduce the prevalence of  
9 black lung disease.

10           It provides for the use of personal continuous  
11 dust monitors. Under the current program, like I said,  
12 there is no provision for their use whatsoever. Under the  
13 proposed rule, operators would be allowed to elect to use  
14 PCDMs if they found it beneficial for their particular mine.

15           We say these rules are to reduce the prevalence of  
16 black lung, CWP. What we've done is, we've taken the data  
17 that's available to us and made a conservative estimate of  
18 what kind of reduction in black lung that we would see, and  
19 based on that we have broken this out under the DO,  
20 designated occupation; NDOs, non-designated occupation such  
21 as the shuttle car operators and roofbolters. Breaking out  
22 the current data with the conservative estimate that we've  
23 applied, we bring up the -- we reduce by 42 the number of  
24 cases of CWP through the application of these two rules.

1 For some people -- they've made the comment that that  
2 doesn't sound like a lot of cases. Well if you're one of  
3 these 42 cases that's important. We've said that this is a  
4 very conservative estimate. We have to work on the data  
5 that's available to us. Realize now, the data that we have  
6 available to us does not represent what we're looking for as  
7 far as the controls that are in place to get 95 percent  
8 confidence that we're meeting the 2 millimeter standard. It  
9 also doesn't have the effect of single sample because those  
10 things have not been applied yet. So this is based on data  
11 based on the current information that's available to us.

12           Like I said at the beginning, we've got three  
13 scenarios that I would like to walk through now. This is to  
14 give you an example of how the program would work.

15           Under the first scenario you've got an operator  
16 that submitted a plan for your particular MMU. It's  
17 continuous miner section. It takes verification samples.  
18 Now we have limits that are set up for a single shift. That  
19 single shift, though, the operator will collect multiple  
20 samples. On a continuous miner section we're sampling the  
21 miner operator and roofbolter. So we're getting two samples  
22 in one shift. The single-shift criteria for getting a plan  
23 verified is 1.71 milligrams of respirable dust and 87  
24 micrograms per cubic meter on quartz.

1           The operator takes his first verification sample.  
2    We give 1.60 on dust for the miner operator, 1.7 on the  
3    roofbolter. Both of those are below the 1.71 dust level, so  
4    it's okay.

5           Quartz, the miner operator gets 72 micrograms and  
6    the roofbolter gets 92. Ninety-two exceeds 87, so we have a  
7    problem. The controls are not showing us with 95 percent  
8    confidence that we can say is actually protecting people.

9           The operator is required to look at his plan and  
10   collect a second verification sample. The second shift of  
11   samples result in 1.63 on dust for miner operator, 1.69 on  
12   the roofbolter, 71 micrograms on the miner operator reports  
13   and 91 micrograms for the roofbolter.

14           The second day or second shift of samples we have  
15   different criteria now because now we have two samples to  
16   look at as opposed to one. The criteria for verifying the  
17   plan with 95 percent confidence based on two shifts of  
18   samples is 1.85 milligrams on respirable dust and 93  
19   micrograms on quartz.

20           If we look up here, all four samples of dust and  
21   quartz, none of them can exceed the limits that are  
22   stipulated for two samples and none of them do. The  
23   respirable dust, all the concentrations are below 1.85; all  
24   the quartz results are below 93 micrograms. Based on that,

1 two shifts of samples gives us 95 percent confidence that  
2 the planned parameters as proposed and sampled will provide  
3 protection for the miners. What we've done is, we're saying  
4 that the plan is verified.

5           After the plan is verified, MSHA then will call  
6 samples, and we come in for our first bimonthly sampling  
7 period. MSHA comes in and we collect five samples, miner  
8 operator, miner helper, shuttle car operator, roofbolter  
9 number 1, roofbolter number 2. We get respirable dust on  
10 the miner operator of 1.62 milligrams per cubic meter with  
11 78 micrograms quartz, miner helper 1.71 milligrams of dust,  
12 shuttle car operator is 1.41. That's in the wrong column.  
13 Roofbolter number 1 gets a 2.38 dust, 138 micrograms of  
14 quartz, roofbolter number 2 gets 2.42 milligrams of dust,  
15 141 micrograms of quartz.

16           Based on this survey, one shift, one sample day,  
17 MSHA determines the roofbolter occupations are exceeding the  
18 2 milligram standard. They both exceed the 2.33 citation  
19 threshold values that we talked about earlier. The 2  
20 milligram standard, 2.33 or greater, is considered  
21 noncompliance. So we have shown through our sampling on  
22 this one shift that the roofbolter is not protected. A  
23 citation is issued for the roofbolter occupations. We issue  
24 one citation. The roofbolters are both working on the same



1 machine. The one citation will affect the change for both  
2 operators. So we only issue one citation.

3           The operator must take corrective action and  
4 notify MSHA within 24 hours that that action has been taken.  
5 What that is for is so that the agency then will schedule  
6 to come back in to do abatement sampling if necessary. On  
7 this situation we are going to take abatement samples. We  
8 do not come in, though, at the end of the 24-hour period if  
9 the operator notifies us. The operator has to notify us of  
10 when that action is being completed. The agency then will  
11 come in unannounced to collect the abatement samples.  
12 Therefore, the operator, once he puts them in place, it's  
13 important that they make sure that they maintain everything  
14 until such time as the agency comes back in to do that  
15 follow-up sampling. So there's no requirement that we come  
16 in when the operator notifies us that he has the controls in  
17 place. So there still is no prior notification of the  
18 agency's impending inspection.

19           MSHA comes in and collects the abatement samples.  
20 Now at this point there's another consideration. We've  
21 shown that the miners on this section, some of them are  
22 being exposed to high quartz levels. They're on a 2-  
23 milligram standard. High quartz levels at a 2-milligram  
24 standard indicates to us that people are potentially being

1 overexposed because of quartz and we need to address that  
2 situation quickly. Like I said at the beginning, all quartz  
3 determinations for setting a reduced standard are based on  
4 MSHA samples only and it's based on the last three MSHA  
5 samples collected. Well this is the first sample -- set of  
6 samples that MSHA has collected and we sample bimonthly  
7 normally.

8           From the looks of it, you would think that we  
9 would go another four months before we get enough sample to  
10 determine what the quartz level truly is to get three  
11 samples to average together. We don't. In conjunction with  
12 these rules, the agency has put its inspection procedures  
13 that will go in place with this particular rule that went  
14 out the way it's proposed. They are on our website for  
15 people to look at so that you can see how we would address  
16 these situations. It'll give you a better idea of how to  
17 comment on the proposed rules.

18           Under our proposal, we have stipulated that when  
19 we come across a situation that somebody's on a 2-milligram  
20 standard, and we get an indication of high quartz levels, we  
21 are not going to sit back and wait until the next bimonthly  
22 period to collect those samples and make that determination.  
23 Instead the agency will schedule within the next 15 days to  
24 go in and get two additional shifts of samples so that we

1 can average those two shifts with the shift that we already  
2 have to get the three samples necessary to determine what  
3 the quartz percentage is and set an appropriate standard for  
4 that particular occupation so that we can address that  
5 sooner.

6           In addition, because of the concentrations that  
7 MSHA found during this particular survey the operator is  
8 going to be designated to collect quarterly samples to  
9 establish whether the planned parameters continue to be  
10 effective. Now when the operator collects quarterly samples  
11 they are under the same criteria as when they collected  
12 initial samples for verification. Samples have to be  
13 collected at or above the verification production level.  
14 That's the tenth highest level or higher that cannot exceed  
15 the control parameters by more than 115 percent as what  
16 they're specified in the plans. Those samples have to be  
17 collected full shift on production time. That is, they're  
18 turned on when they get to the MMU and they're turned off  
19 when they leave the MMU. Those samples are sent directly to  
20 the agency for a determination and they have to meet the  
21 standards as stipulated for that particular entity.

22           Under our inspection procedures the way the  
23 operator gets established as requiring quarterly sampling is  
24 if they exceed any of the applicable standards they will be

1 kicked in to quarterly sampling.

2           The second scenario. To keep from going through a  
3 lot of changes, the first part of this is the same. The  
4 operator submits a plan, it's collected. The verification  
5 sample is the exact same samples that we had on the previous  
6 example. The plan is verified after two samples just as we  
7 said before.

8           What changes here is taking the MSHA survey. That  
9 will change the results that we see on this MSHA survey.  
10 Miner operator gets 1.62 on dust, 78 micrograms on quartz,  
11 miner helper gets 1.61, shuttle car operator 1.21,  
12 roofbolter number 1 1.41, dust 55 micrograms on quartz, 1.48  
13 on roofbolter number 2 with 47 micrograms of quartz. We  
14 don't show a quartz problem on this section now. Nobody's  
15 over the limits on quartz. Also, all the respirable dust  
16 samples that we collected are under the single-sample limits  
17 as far as citation purposes. Nobody exceeds the 2 milligram  
18 standard, the 2.33.

19           So compliance is based -- is determined based on  
20 this single shift of samples. However, there's a second  
21 part of this for the agency. Under our inspection  
22 procedures, we've stated in there that any operation that is  
23 able to maintain compliance with 95 percent confidence on  
24 our single samples or any operator samples, that we will

1 skip every other bimonthly period of MSHA sampling. Now,  
2 we're not looking at just the sample results and walking  
3 away. As I've said, MSHA samples are coming in, we're  
4 collecting samples unannounced. The chance that the  
5 operator is going to be at or above the production level  
6 that is set for verification, that is the tenth highest or  
7 higher -- we have a 33 percent chance that we're going to be  
8 at that point. Two-thirds of the time we're less than that.  
9 Chances are they are going to be at lower production when  
10 we come in to take our samples.

11           Inn addition, MSHA samples are specified to be  
12 collected eight hours portal to portal, not full shift. So  
13 if you're working eight hours on the section and traveling  
14 half an hour each direction, your total shift is nine hours.  
15 The agency will still put the samples on you when you go  
16 underground and they will come off and be transported to the  
17 outside at the end of eight hours. So they will not be full  
18 shift.

19           In that situation MSHA samples are going to be  
20 looked at though to determine whether we will make a trip  
21 back to the mine the next bimonthly period to sample again.  
22 We're looking for mines, though, like I said that meet the  
23 levels for single sample, that's 1.71 milligrams on  
24 respirable dust and 87 micrograms on quartz. If all samples

1 meet that criteria, they've met the first step of skipping  
2 the next bimonthly period because we have a high degree of  
3 confidence that these samples are showing compliance and  
4 that the controls are working. However, because we are  
5 making that determination of a trip back to do another  
6 survey, we want to be sure that we're erring on the safe  
7 side. So, like I said, the production is probably less. In  
8 this example, I'm going to put the MSHA samples are  
9 reflected at 750 tons. The plan was verified, though, at  
10 800 tons. The 800 tons represents the tenth highest  
11 productions and we're slightly below that.

12           The ventilation during the MSHA sampling was  
13 10,000 cfm, the plan calls for 9,800. So I show an increase  
14 in ventilation. At the time the samples were collected I  
15 show a lessening of the production during the MSHA sampling.

16 Now the combination of those two things drives our sample  
17 results lower. So to compensate for that, we calculate a  
18 factor for production and for ventilating air quantity that  
19 we apply to the dust concentrations that we measured to  
20 determine whether we're going to make the decision to come  
21 back and sample the next bimonthly period or not.

22           Now this section looks like it's well in  
23 compliance. It's meeting well below the 1.71 milligrams per  
24 cubic meter on dust and it's well below the 87 micrograms on

1 quartz. However, if we take the factors that we're  
2 developing for production and ventilation, I'm taking the  
3 planned quantities and dividing it by quantity of air -- the  
4 velocity of air that we had -- I'm sorry, the production of  
5 800 tons that we had during the plan versus the production  
6 that we had during our sampling, it gives me a factor of  
7 1.06. You take the 10,000 cfm divided by 9,000, it gives us  
8 a factor for ventilation of 1.02. We take the highest dust  
9 concentration and the highest quartz concentrations that we  
10 found during our sampling, multiplied by those two factors  
11 and we come up with 1.62. Maximum dust concentration now  
12 becomes 1.75 and the quartz of 78 micrograms becomes 84  
13 micrograms. Remember, I said we want them to meet 1.71 and  
14 87 micrograms. Quartz is below the 87 micrograms. The  
15 respirable dust exceeds the 1.71. Because of that, this  
16 section will be sampled the next bimonthly period, because  
17 we don't have high confidence that the dust control measures  
18 are truly protective at all times.

19           Now that's a calculation of everything that's only  
20 done by the MSHA inspection personnel. This has no bearing  
21 on determining compliance, it has no bearing on what you see  
22 as the dust concentrations on the sections. It is only a  
23 method for us to determine whether we need to come back in  
24 and do a subsequent sampling on the next bimonthly period.

1           The third scenario is the use of PAPRs. We've  
2 taken a situation as an example, Mine A. It's a long wall  
3 mine. They have installed the shearer clearer shield sprays  
4 and hand sprays. They have a maximum air velocity of 500  
5 feet per minute and their verification production level is  
6 16,000 tons.

7           For demonstration sake, we're going to say that  
8 this is representing all feasible controls for this long  
9 wall. The agency comes in and makes the determination that  
10 that is all feasible engineering controls for this section.  
11 The dust concentrations during the verification sampling  
12 produced a shearer operator highest concentration is 1.9  
13 with 130 micrograms of quartz. The 060 occupation, which is  
14 the occupation working furtherest downwind on the long wall  
15 section had 2.0 milligrams and 145 micrograms of quartz.  
16 From this, you can see that we're meeting 2 milligrams on  
17 respirable dust but the quartz level is exceeding 100  
18 micrograms. So we have to do something to address that.

19           We've exhausted all feasible controls. There's  
20 nothing else left that will address the situation. The  
21 agency has made that determination. The operator says I'm  
22 going to put in a PAPER program. Because he wants to put in  
23 a PAPER program, the full program must be included with the  
24 ventilation plan. Like I said, this is where he has to



1 specify. Who wears the units? Where are they going to be  
2 worn? Who's going to clean them? Who's responsible for the  
3 programs? All of this has to be spelled out. Training for  
4 the miners that are actually using the unit. All of this is  
5 spelled out in writing in the program and it has to be made  
6 part of the approved plan.

7           In this particular situation, we're saying all  
8 miners working in by the shearer must wear PAPR in  
9 accordance with the approved plan. If that's required in  
10 the plan, then miners working downwind of the shearer all  
11 have to wear PAPRs. Failure to do that will be a violation  
12 of the plan and will be cited as such.

13           The average velocity across the long wall is 490  
14 feet per minute. Like I said up here, the maximum is 500,  
15 but the average is 490 feet per minute.

16           The protection factor assigned to the MMU is going  
17 to be 3.2. Remember I said the protection factor is going  
18 to be between 2 and 4. The way we determine the protection  
19 factor is to take the quantity 2 times 800 divided by 490.  
20 The 800 is the velocity that you go to as the max and 490 is  
21 what we actually have on this section. Two times that  
22 quantity gives us the protection factor of 3.2. So on your  
23 particular long wall or section, if somebody is going to use  
24 PAPRs and you want to figure out what the protected factor

1 would be, it's simply taking the velocity on the long wall  
2 face, and if your velocity is 1,000 feet per minute, you  
3 would put 800 divided by 1,000. Now anything above 800 goes  
4 to 1 or greater. The maximum protection factor is 4. So  
5 you can see when you get above 800 there is no need for  
6 multiplying anything out -- I'm sorry, if you go to 800 or  
7 above it becomes 1. Your protection factor is 2 at that  
8 point. When you go down to 400 as your velocity, 800  
9 divided by 400 times 2 will get you to 4. So anything at  
10 400 or less is going to be at the maximum protection factor  
11 of 4.

12           The plan, though, will require that we maintain  
13 all engineering controls that were determined to be feasible  
14 by MSHA. So at the point before we actually say that you  
15 could use a PAPR, all the controls that were in place -- and  
16 we're saying the controls represented here are all the  
17 controls that were in at this time. All those controls have  
18 to be put into the plan and they have to be maintained at  
19 all times. They cannot remove them or reduce them.

20           In this situation, the equivalent concentration is  
21 a 2-milligram concentration. It would be .62 milligram per  
22 cubic meter. That's 2.0 divided by the protection factor of  
23 3.2. So effectively inside the air helmet a person would be  
24 breathing an atmosphere of .62 milligrams per cubic meter

1 versus the exterior which would be 2 milligrams per cubic  
2 meter.

3 That concludes the overview.

4 MODERATOR NICHOLS: Okay, thank you, Bob.

5 As I mentioned in my opening statement, for the  
6 single-sample rule, which is designed to eliminate the  
7 averaging of samples that Bob covered there, MSHA and NIOSH  
8 are partners on this. I would like to ask Gerry Finfinger  
9 to make some statement and also give us an update on the  
10 development of the personal dust monitor.

11 MR. FINFINGER: Thank you. Can you hear me in the  
12 back?

13 VOICE: Yes.

14 MR. FINFINGER: Good morning. On behalf of NIOSH  
15 and our Director, John Howard, and our Associate Director  
16 for Mining, Lou Wade, I would like to welcome you to today's  
17 meeting. We're here today to listen to your comments, and I  
18 think you for attending. I'm going to give you a brief  
19 update on the personal dust monitor which we refer to as the  
20 PDM1 that we have been developing under a research contract.

21 We completed the initial design sometime during  
22 the year and we have six prototypes that were manufactured.

23 We finished the lab testing with successful results and  
24 we're scheduled to start the in-mine testing in the next

1 couple of weeks. I have a picture of the unit, which I'm  
2 sure you can't see from there, but I'm going to pass it  
3 around when I'm done. The unit is combined with a cap lamp  
4 and a battery pack and provides data on respirable dust  
5 exposures during the shift. The unit gives current exposure  
6 data, as well as can be used to project the exposures to the  
7 end of the shift.

8 I thank you for being here and I'm looking forward  
9 to a productive meeting.

10 MODERATOR NICHOLS: Okay, we want to take about a  
11 15-minute break until 9:30. For those of you in the back,  
12 when you come back in, there are some seats up front here if  
13 you would like to come up and have a seat.

14 (Whereupon, a short recess was taken.)

15 MODERATOR NICHOLS: Our first speaker will be Joe  
16 Main. Joe is the Occupational Safety and Health Director  
17 for the United Mine Workers. Joe.

18 MR. MAIN: Thank you, Marvin.

19 My name is Joe Main, M-a-i-n, and I represent coal  
20 miners.

21 (Applause.)

22 VOICE: Tell them, Joe.

23 MR. MAIN: I would like to start off this morning  
24 -- and we've got a lot of people that wants to provide

1 comments on this rule today and I want to try to shorten my  
2 presentation up here a little bit. But I find myself in the  
3 same position I have at the first four hearings, and that is  
4 trying to give some kind of a clear picture about what this  
5 rule does. As you know, Marvin, I have been critical of the  
6 presentation that MSHA has given because I think it really  
7 fails to paint the true picture of what this rule actually  
8 does. There's a lot of miners in here this morning, and for  
9 some, it's the first opportunity they have to really learn  
10 about this rule. And we've used the rulemaking process to  
11 even learn more about the rule as we go through. Needless  
12 to say, we're finding out more things by sitting and  
13 listening to exchanges that's taken place over the last four  
14 hearings.

15           Before I get into that, I would like to make  
16 everybody aware of where we're at and the significance of  
17 this particular public hearing. A little over a year and a  
18 half ago we had the worst mine explosion that this country  
19 has seen in 17 years when an explosion ripped through the  
20 Jim Walter's Number 5 mine in Brookwood, Alabama. When the  
21 explosion ended 13 miners -- 13 of our brothers lost their  
22 jobs -- lost their lives in that explosion. As we all  
23 sought to figure out what went wrong and why we lost so many  
24 lives in that explosion, we found that one of the

1 significant factors as found by MSHA and the Mine Workers  
2 was float coal dust in that coal mine. Float coal dust that  
3 helped propagate an explosion with massive forces that were  
4 so destructive at the end. As I said, 13 miners lost their  
5 lives.

6           Now what is so troubling is, we reflect on that  
7 today and as we look at what we're about to talk about here  
8 in Alabama, we find that the government has issued a rule  
9 which will as a direct result increase the dust levels in  
10 the coal mines in this country. And I think, you know, when  
11 you put those two things in perspective for miners, that's a  
12 bit outrageous. We keep questioning how did we get here and  
13 what's this rulemaking really all about? You can't escape  
14 the fact that what this rule actually does is allow mine  
15 operators to legally increase the concentrations of dust in  
16 a mine's environment. Where you have little dust there's  
17 big dust. And, of course, this rule aims at addressing the  
18 amount of respirable dust that will be in the nation's coal  
19 mines. And we don't think there's a device yet that  
20 separates little dust from big dust as it -- you know, as  
21 it's poured into the atmosphere. If such a device exists we  
22 would surely like to know about it. We could surely use it.  
23 But it is said that we're here talking about a proposal that  
24 in essence increases the dust levels in the nation's coal

1 mines.

2           We've found fault with MSHA's presentation with  
3 respect to what this rule does or does not do, which  
4 excludes the information that miners should have about the  
5 impact of this rule. It is unquestionable that this rule by  
6 its application will end a standard practice created by  
7 Congress in 1969 that said very straightforwardly mine  
8 operators, you cannot have more than 2 milligrams of  
9 respirable dust in the mine atmosphere. What this rule  
10 does, it turns that standard on its head. And by the  
11 responses that we've gained from MSHA in pursuing the real  
12 impact of this rule, we have found that mine operators would  
13 be allowed to increase the dust levels legally in coal mines  
14 up to as much as eight milligrams. And that MSHA, when they  
15 find those legal eight milligram levels that would be  
16 approved by the agency -- could be approved by the agency,  
17 that the agency would not even cite the mine operator until  
18 the levels reached -- I believe it's 9.32, if I got it  
19 correct this time with what we were told by the panel.

20           Those are significant points. Those are  
21 significant pieces of this rule that I think is somewhat  
22 outrageous of the government not to explain those in detail  
23 and force the miners and the representatives to come forth  
24 and to have to extract that information from the panel. What

1 this rule does is, it allows mine operators to use a faulty  
2 respiratory that's been shown faulty by miners -- by those  
3 in the industry, that cannot be used in it's approved  
4 fashion and be worn comfortably by miners, which is laid out  
5 in testimony fairly clear -- as a tool to allow mine  
6 operators to increase the dust levels. Now we've had  
7 debates over the last number of hearings where the agency  
8 said well we're really not going to do that, but what gives  
9 us trouble is the fact that we now have a legal bar that  
10 don't let you do it, don't let you approve those, and we  
11 have to rely on a trust-me from the government, that as I've  
12 said before, you'll be stiffed back when mine operators come  
13 forward requesting plan to use the so called PAPRs, these  
14 leaky respirators, to allow them to increase the dust levels  
15 in the nation's coal mines. Whether it's up to three  
16 milligrams, four milligrams, five milligrams, six or eight,  
17 those proposals under this rule is coming your way. And for  
18 those that say, well, that's just not going to happen, you  
19 haven't studied the history of this industry. And for those  
20 to say well, we're really not going to do that, we're not  
21 going to approve those, have not studied the history of this  
22 industry.

23           As I set and watched the panel respond to this  
24 over the last four hearings, what you've asked miners to do



1 is trust us, we will not allow operators to increase those  
2 dust levels. Well the sad reality is, they've got the open  
3 door to do it. The panel sitting here today will not be in  
4 the decision making as to whether approve or deny those  
5 requests. Other people will be sitting there. And it could  
6 be like today's current environment where we have a lot of  
7 industry folks appointed to these positions that will be  
8 making these critical decisions. We have raised concerns  
9 about the current leadership coming from industry that's now  
10 running the agency, including the position currently held by  
11 the chief of safety in coal who rides herd over this dust  
12 sampling program. And for miners, you darned right, we're  
13 suspicious about that. When we see proposals coming down  
14 from the leadership of this agency who are in large part  
15 hired directly out of industry to these positions it makes  
16 us far more nervous.

17           Is this the right thing to do? Absolutely not.  
18 Who says that? Miners say it, NIOSH has said it, a federal  
19 advisory committee has said it, and most importantly,  
20 Congress said it loud and clear when they created the 1969  
21 Coal Mine Act. They said mine operators, you've got three  
22 years to get to two milligrams as far as the dust  
23 concentrations in the mine environment and the active  
24 workings, and you're going to do it by engineering controls.

1 And, by the way, it explicitly said you're not going to do  
2 that using respirators. What your rule does, as I said, is  
3 it turns that whole law on its head. It contradicts the  
4 clear direction that Congress gave this agency in developing  
5 rules and in carrying out the mandates of the miners.

6           Now I'm just beside myself to figure out how we  
7 actually arrived here. In 2000 MSHA proposed changes to  
8 overhaul the respirable dust sampling program in the  
9 nation's coal mines, and that was following many  
10 recommendations and mandates to do so. When MSHA issued a  
11 set of proposals, those proposals at the end of the day was  
12 soundly rejected by both labor and industry. The sad reality  
13 is that the proposal we have today is built off of that same  
14 frame, only worse.

15           With respect to sampling in the nation's coal  
16 mines. Miners have said for many, many years -- and you can  
17 go back and look at the historical record, back since the  
18 beginning of the Mine Act -- that there was a need to have  
19 constant sampling in these coal mines so that the dust  
20 levels could be maintained at a healthy level for miners  
21 through the course of their working careers. Miners don't  
22 want to get black lung. Miners don't want to have to spend  
23 their remaining days attached to an oxygen bottle while, you  
24 know, other normal people are out enjoying life. They don't

1 want that. But they've seen through their own eyes what's  
2 wrong with this system, and for decades they've been trying  
3 to convince the federal government what they need to do to  
4 fix it. They need to lower the dust levels so these miners  
5 will not get black lung and they need to be in those mines,  
6 or have systems in mine to constantly sample the coal mine  
7 dust to make sure that the mine operator is not exposing  
8 them to unhealthy levels of dust. It's a pretty clear  
9 message.

10           It seems like every time we get into a process of  
11 reforming these standards to get that done, we wind up with  
12 a completely different idea or proposal. As I said, in 2000  
13 miners laid out a pretty clear case about what they wanted.  
14 They wanted the dust standards lowered, they wanted  
15 frequent sampling, they wanted continuous dust monitors that  
16 they had been calling for for nearly three decades now, and  
17 promised time and time over that they would build those  
18 devices and get them in the mines to fix that problem. They  
19 want sampling for the full shift, not partial shifts.  
20 Samples for whole exposure. We want to know what dust we're  
21 actually in as we work in these mines.

22           They asked for full miner participation. Why did  
23 they ask for that? Real clear. There is a long record of  
24 corruption in the dust sampling program in handling and

1 monitoring dust in the nation's coal mines. And who could  
2 better help monitor that and make sure the system is run  
3 right than the coal miners and their advocate  
4 representatives? The miners asked for a federal takeover of  
5 the sampling programs for years, what they didn't ask for is  
6 a give-a-way of the compliance sampling program.

7           You know, as we look through the proposals, in  
8 each one of these cases the agency did the opposite of what  
9 miners have requested and demanded they do. But these  
10 wasn't just demands of miners to do these things, these was  
11 recommendations from NIOSH, recommendations from a federal  
12 advisory committee and a clear directive from Congress to  
13 achieve the goals that miners have laid out. That  
14 unfortunately continued to be ignored.

15           In terms of the rulemaking process, you know, I  
16 have to say that I was somewhat disturbed and confused about  
17 recent proclamations from the head of MSHA. Those people  
18 who crafted this rule -- or responsible for crafting, I  
19 should say, and who signed off on it and sent it out to --  
20 for the public hearings and public response. In an article  
21 last Thursday the head of MSHA said that he was both  
22 surprised and perplexed -- according to the paper, which was  
23 the Lexington Herald -- by the outcry from miners over the  
24 MSHA dust proposals. I'm surprised and perplexed why he

1 would say such a thing. The reason I say that is, the case  
2 I laid out to you, what miners have told the government  
3 years that they wanted, are not in these rules. To the  
4 contrary, what the government did when they crafted these  
5 rules is ignore those recommendations, those demands, those  
6 comments and a wealthy record pointing this agency in the  
7 right direction as the March 6th, 2003 proposal was issued.

8           Now if anybody doubts that we're upset about these  
9 rules, I think they need to come and listen in these hearing  
10 rooms. If anybody's surprised about the miners objections  
11 to these rules, I think they've been living on another  
12 planet and they surely did not read the 2000 rulemaking  
13 record which lays this out clear as a bell. And they surely  
14 aren't in tune with what miners really want and need. You  
15 know, that's said that we wind up in a situation like this  
16 with -- we have a mess on our hands, fellows. We have a  
17 rule that's been launched at the public expense to do  
18 something that is just totally wrong headed, ill advised and  
19 as we see it illegal.

20           Following the four public hearings that's been  
21 held -- and i've had an opportunity to attend all four of  
22 those and talk to our folks that was there. There's about  
23 120 people that have testified so far to this agency. Out  
24 of 120, which included miners, widows of miners, black lung

1 victims, doctors and even a coal operator at the first  
2 hearing. And out of that 120, I have saw not one person --  
3 not one person step forward supporting this rule. That  
4 should tell the government something about what's going on  
5 here. Now either the government is wrong or the public is  
6 wrong, one of the two. And when it comes to 120 to zero, I  
7 think it's pretty clear who's wrong in the approach to fix  
8 and overhaul the respirable dust program in this country to  
9 deal with the issues of cleaning up the respirable dust in a  
10 manner that working miners can go through their life and not  
11 get this black lung disease.

12           You know, we've had tens of thousands of miners  
13 die from this disease. I've had personal friends die hooked  
14 on an oxygen bottle and I know what they go through. It's  
15 one of the most horrific experiences of life to see somebody  
16 that you know and love and care about just pass away every  
17 day. They can't even make it up a set of steps without  
18 stopping to take a breath attached to an oxygen bottle.  
19 Tens of thousands have died with this disease. And as we  
20 look at the recent NIOSH report that was issued just barely  
21 a month ago showing that there is hundreds of miners working  
22 in the mines today that is afflicted with this disease.  
23 Hundreds of miners working today afflicted with this  
24 disease; the program does not work to protect them. The sad

1 reality is, it's those miners who get the disease, who've  
2 had the disease and will get this disease, who tell this  
3 government what they need to fix it. We unfortunately have  
4 a deaf ear, and that's got to change.

5           It's got to change in a way that this government  
6 starts listening to those victims and responding to the  
7 needs of the victims of this terrible disease. They said  
8 some things pretty clear. We want the dust levels lowered  
9 in these coal mines. We want frequent sampling of the dust  
10 to make sure that miners are in safe levels all the time,  
11 not just when the sampler is put on infrequently. We want  
12 these continuous dust monitors that the mine workers, that  
13 the industry, that NIOSH has worked hard for years to  
14 develop and we're on the verge of having those devices  
15 finalized. Which by NIOSH's estimates, by August, maybe  
16 September we'll have all the testing completed, the schedule  
17 on those devices, and it'll be ready, if everything works  
18 out, to head straight to the production lines. And to find  
19 us in a situation where we have such a remarkable device  
20 that can sample miners every day, every shift 365 days a  
21 year, that can be conveniently worn by the miner because it  
22 was developed to be as worker friendly as we could make it,  
23 built into the miners' cap light battery, it would provide  
24 invaluable information to the government from miners across

1 this country that is just unimaginable today about the dust  
2 levels they're in. It's designed to give the miners the  
3 ability to read that instrument and know what dust they're  
4 in as they proceed through the shift and push a button and  
5 tell them if they stay in the same dust levels what they  
6 dust levels will be at the end of the shift. It will  
7 provide at the end of the shift miners, mine operators and  
8 MSHA with a clear instant reading of what the dust levels  
9 was for that shift. That forces action, you betcha. It  
10 forces action to be taken so miners are kept out of the  
11 dust.

12           It's designed to be as tamper-proof as possible.  
13 The reason I know that, I have been on the development side  
14 of this device for the last several years and we asked for  
15 different things to be built into this device. At some of  
16 these mines where they take the current dust samplers out  
17 and hang them on the roofbolt or put them in a company  
18 office somewhere and shake up a bucket of coal, all those  
19 devious things that had been recorded as being done, it's  
20 more difficult for them to get away with that.

21           It has a motion sensor in it. If that thing sets  
22 around, it's going to detect the lack of motion. If  
23 somebody plugs up the end of it to keep the dust from going  
24 in, it's going to show that up in the data that comes out.



1 If it's setting in a constant air environment and don't show  
2 those peaks and valleys you go through in a shift, it's  
3 going to show up on the data. This is a remarkable device.  
4 It's so remarkable that I would think that everybody would  
5 be saying let's hold the fort here. Let's tell those  
6 researchers to get this testing done and let's get those in  
7 the coal mines for these miners. It takes care of a lot of  
8 problems.

9           We have a very complex plan verification system in  
10 this rule. It's so complex -- I've had discussions with the  
11 industry. They're as confused as we are. They think it's  
12 gong to go the other way. I mean, it'll be such an imposing  
13 monster that they can't live with it. We think, on the  
14 other hand, that operators who figure this out can figure  
15 out a way to get around this scheme and get away with  
16 basically murder in coal mines. Bad system as the  
17 alternative. We would support that system if there was not  
18 another solution to this problem.

19           There is a more simplistic solution to this  
20 problem however, and that simplistic solution is let's have  
21 planned verification every day, every shift, 365 days a  
22 year. Let's get those continuous dust monitors into the  
23 coal mines and let's determine what the actual dust levels  
24 are every day. And through the course of the shift if the

1 dust levels start rising they have an indicator there that's  
2 going to cause something to happen that we don't now have.  
3 They can make quick adjustments. They don't have to wait  
4 for samples to come back from the government days or weeks  
5 later and say, well what was I doing on Friday of last week  
6 that caused that dust level to be high? They can tell right  
7 now instantaneously with those devices as that dust level  
8 peaks up. A remarkable device.

9           The operators are calling for getting out of the  
10 dust sampling business. I just read an article today where  
11 the industry is getting ready to where the industry is  
12 getting ready to I think come out and publicly oppose these  
13 rules. At least what I read today, that's the gist of the  
14 direction they're going as well. You know, they claim they  
15 want to get out of the sampling business. They don't want  
16 to be called criminals. Well my first point is, if you're  
17 not -- if you don't act like a criminal, you won't be one,  
18 okay. That's one lesson we have to learn about this whole  
19 thing. Tens of thousands of people died from this disease  
20 caused from something, and some people did some dastardly  
21 things to put those people there. That's sinful.

22           But on the other hand, there is a solution to the  
23 operator's problem here when it comes to plan verification.  
24 Sample 365, 24/7 in these dusty occupations and have a

1 constant sampling system with verification attached to it.  
2 You know, as I look back -- and I've been in this business  
3 for 20-some years, and I've been working on reforming the  
4 dust program since 1976 when I was with the convention in  
5 Cincinnati, Ohio when a bunch of miners told this government  
6 -- or laid out the plan to tell this government and shortly  
7 did thereafter, what they needed to fix this problem. Get  
8 those continuous dust monitors in these coal mines, fellows.

9           1980, when the government finished rulemaking,  
10 when they last overhauled these rules, they promised the  
11 miners that they would work to build that device. And as we  
12 sit here in 2003, how many years later is that? Twenty-  
13 three years later we're sitting here. We've put men on the  
14 moon, we've put little robots on Mars to monitor the  
15 environment, to take pictures, and for some reason, we just  
16 can't get these continuous dust monitors built and put in  
17 the coal mines. I can tell you this, had it been the same  
18 approach over the years building these continuous dust  
19 monitors, if they had of been the same people that was  
20 preparing our military for war, there would have been no  
21 short war in Iraq. I mean that's the reality here.

22           We've all got to come to terms with the simple  
23 proposition that coal miners are getting sick from this  
24 disease. Coal miners are dying from this disease and

1 there's a way to fix this if we all focus our attention to  
2 get it done. Band-aids don't work, and this proposal is  
3 nothing more than a band-aid that legalizes high dust levels  
4 in coal mines and gets the samplers out of the mines.

5 Through these proposals -- I don't know and maybe I  
6 missed it -- the plan of MSHA is to A, eliminate the dust  
7 sampling requirements mandated by the regulations, at least  
8 the frequency and the numbers or those. And in its place,  
9 just do the compliance dust sampling by policy. By a policy  
10 that can change and has changed. As a matter of fact, I've  
11 complained about the agency after promising increasing dust  
12 inspections and more vigorous enforcement backing off to  
13 only four inspections last -- dust samples last year in a  
14 policy that was issued. And those are not even compliance,  
15 they're target or whatever we call them now.

16 That's what scares miners. That's what scares me  
17 here. Miners should not stand back and let this agency  
18 strip away protections they are legally entitled to with  
19 this trust-me replacement from the government. If they do,  
20 they're making a bad, bad mistake.

21 Now under this policy that the agency has launched  
22 here on their vision of dust sampling, we will have on some  
23 mining sections -- some mining sections sitting right behind  
24 me here -- as little as three compliance inspections by MSHA

1 a year. Now we asked for the data that shows how you guys  
2 came up with that, Bob -- or the specific mines of the data  
3 you used to determine which mines would be only getting  
4 three inspections and which would be getting six. I got a  
5 letter back from Dave Laurski about a week ago that says  
6 we're not getting that because you don't have it. We had  
7 data that come up with that conclusion, which you informed  
8 us about earlier. We still want the list of mines that you  
9 project based on the data you looked at that would only have  
10 three inspections a year because I think these miners out  
11 here deserve it.

12           Then you look at the policy and you find that MSHA  
13 plans to only sample one shift in the vast out-by areas of  
14 coal mines in this country. One shift a year. Now tell me,  
15 does anybody in this room honestly believe we can predict  
16 the exposure of unhealthy dust to miners by taking one  
17 sample in a coal mine a year? Outrageous. We oppose it.  
18 You can Dave Laurski or anybody else that listening, we will  
19 not support that kind of rule. It is not an MSHA takeover,  
20 it's an MSHA give-a-way and absolutely to our dying breath  
21 we will not support it. And you can tell Dave Laurski --

22           (Applause.)

23           MR. MAIN: -- that we are not supporting a rule  
24 that allows dust levels to be increased up to eight

1 milligrams in coal mines. We understand that was his  
2 proposal. We got the documents in a meeting with MSHA. We  
3 asked, where did this proposal come from, this outrageous  
4 action to increase dust levels up to eight milligrams and to  
5 put these faulty air stream helmets on these miners? The  
6 response we got was from four different areas. One there  
7 was a change of leadership at MSHA. And this is in a letter  
8 I documented and sent back to Lauruski about three weeks ago,  
9 which was not refuted by the way. The change of leadership  
10 is, we currently have the folks who is the assistant  
11 secretary, the deputy assistant secretary, the other deputy  
12 assistant secretary, the special assistant and the chief of  
13 health all just hired in from industry that's now running  
14 this agency. That's the leadership of the agency. We were  
15 also told that it's embedded in a proposal filed by David  
16 Lauruski himself as a mine manager of the Energy West Mine  
17 seeking to have rules implemented that would have air stream  
18 helmets used in lieu of engineering controls in allowing the  
19 dust levels to be jacked up in the nation's coal mines,  
20 which was rejected. That was when he was a mine manager it  
21 was rejected.

22           Then we were told -- the third one was a proposal  
23 from -- a study from the University of Utah that was done  
24 for Energy West Mining, Dave Lauruski's company, that

1 critiqued the air stream helmets. That was a little bit  
2 biased, I believe.

3           And the fourth was a 1979, I believe, study on air  
4 stream helmets that was issued and done, you know, some --  
5 many outdated years ago. But that's what we were told the  
6 basis of this eight milligram air stream helmet proposal  
7 came from. I can tell you this, miners across this country  
8 have said and will continue to say that is outrageous, we  
9 don't want it and we'll fight it until hell freezes over.

10           (Applause.)

11           MR. MAIN: You know, the frustrating part of being  
12 part of the public is that when you go to these public  
13 hearings and you lay out a case as to what needs done, you  
14 have -- you have to have some faith that the government will  
15 do the right thing. That the government will be, in this  
16 case, sympathetic to miners who are dying from a disease,  
17 and getting the disease, that they need -- they need the  
18 problem fixed so that they don't -- that don't happen to  
19 them. And the unfortunate situation that's we've evolved  
20 into is we find that the government has turned a deaf ear to  
21 miners, has turned a deaf ear to the public when it comes to  
22 the issue of cleaning up the respirable -- the unhealthy, I  
23 should say, coal dust in the nation's coal mines so these  
24 miners will not get sick.

1           Now as you crafted those proposals and you  
2 embedded them around that Laurski proposal, you made some  
3 changes in the rule that did -- as we've admitted and have  
4 supported -- some improvements in the rule. They're so  
5 modest, and in comparison to the adverse things they're  
6 unworkable. We agree -- as we've said, we agree with full-  
7 shift sampling, but not the proposal you have on the table.  
8 I hope you pass that back to Dave because I think Dave has  
9 some misunderstanding about where we're at on that. We  
10 support single-shift sampling, have for years and continue  
11 to do so. We do not support single-shift sampling done once  
12 in a lifetime in a coal mine or so infrequent that it makes  
13 no difference. We do not support single-shift sampling that  
14 increases the dust levels to satisfy a margin of error in  
15 favor of the mine operator, and the last I read NIOSH didn't  
16 support that either. Of course, I understand NIOSH is not  
17 part of that rulemaking.

18           Our aim is to do one simple thing, clean up the  
19 coal dust in coal mines. Get the dust levels down, not up.  
20 Get frequent sampling of the mine environment so miners can  
21 know what they're in and there'll be some forced action on  
22 the part of the operators to fix unhealthy and dusty  
23 conditions. Have full miner participation. This rule  
24 doesn't do that either and we've said that. Get these



1 continuous dust monitors in these mines yesterday. They  
2 should have been in yesterday. We've dilly-dallied around  
3 for years and complaints about gee, we can't wait anymore.  
4 I'm telling you, we've got to do two things. A, get that  
5 research done ASAP. Everybody should be out there hounding  
6 the poor NIOSH fellows that's working on this. Get that  
7 research done and get those in the coal mines. Let's fix  
8 this thing right for miners.

9 I hope that this message goes back to Mr. Laurski,  
10 who seems to be confused. I know -- and the reason I say  
11 that -- and I don't like to get into these press battles  
12 here, but he's the guy who's going to sign off on this rule.  
13 He's the guy that signed off on launching this rule and I  
14 think he has the right to know from this hearing room  
15 exactly what is being said here, and he has the  
16 responsibility to read the record, as he had the  
17 responsibility to read the record of 2000.

18 It's just not us saying that this rule is  
19 problematic. I just want to read a statement from the one  
20 operator who testified at the Washington, Pa. hearing. His  
21 name was --

22 MODERATOR NICHOLS: Joe, we've got 54 more people  
23 signed up and I want to hear from all the miners. Can we --

24 MR. MAIN: Marvin, I have that same deep

1 appreciation --

2 VOICES: Let him talk.

3 MR. MAIN: The problem these miners have is, they  
4 haven't had the luxury that a few of my crew has to sort  
5 through this whole rulemaking. It is so complicated that  
6 our miners can't understand it.

7 While you raised that, let me just let you know  
8 why, Marvin, then I'll go back to this in one second. I  
9 will finish up as quick as I can. I know you would like for  
10 me to leave.

11 (Laughter.)

12 MR. MAIN: This is the rule -- this is the rule  
13 that governs when a citation is to be issued under these  
14 regulations as crafted by MSHA and sent out to the public.  
15 And what it says under Section 70.218, on violation of  
16 respirable dust standard, issuance of citation, action  
17 required of operator and termination of citation. It says  
18 if a valid -- whatever valid is -- equivalent concentration  
19 measurement -- whatever an equivalent concentration  
20 measurement is -- for any occupation sampled by MSHA meets  
21 or exceeds the citation threshold value -- you've got to  
22 determine what citation threshold value is -- listed in  
23 Table 70-2 -- you need to go over to 70-2 and once you  
24 figure all that out, figure out what that means. That

1 corresponds to the applicable dust standard. You've got to  
2 figure out what the applicable dust standard is. In effect,  
3 the operator will be cited for violation of 70.100 and  
4 70.101.

5           Now, I think this takes about three Philadelphia  
6 lawyers to figure this out, because it is -- for the common  
7 person to understand this rule, it is more than complicated.  
8 And the consequence of this rule, once we did figure it out  
9 after -- and thank you guys for bearing with us and having a  
10 number of meetings so we could question you guys about what  
11 this rule did. I think three meetings and several hours  
12 worth to do that. We finally concluded that despite what  
13 this rule continues to say, a maximum of 2.0 milligrams, a  
14 maximum of 2.3 milligrams in the mine environment to be  
15 cited, that's not true. What miners behind me can expect  
16 under this rule is anywhere from less than 1 milligram to  
17 9.32 milligrams to be in their coal mines before it is  
18 actually cited under this rule when you walk through all of  
19 those tables and definitions.

20           Now the sad reality is that's not explained to the  
21 miners. It hasn't been in any hearing that I've been to.  
22 We've had to drag it out. It hasn't been explained to the  
23 public. But I can guarantee you, I'm totally confident with  
24 what you guys have told me -- it's on the record and I can

1 read it, Marvin, if you wish me to do that -- that this will  
2 allow those dust levels to hit between those ranges and coal  
3 mines. Nobody behind me has a clue what their standard will  
4 be as far as the mine environment as we measure it now under  
5 this rule, but it'll be less than 1 milligram up to 9.32  
6 milligrams. That's outrageous. That's part of the problem  
7 with this rule and part of the complexities. I've offered  
8 to give people two days to read this thing, give them a test  
9 if they passed. If they could score 20, I would pass them.  
10 That's how complicated it is.

11           Going back to Mr. Gallick, who was the safety  
12 manager for RAG Coal Company. John Gallick is his name. He  
13 testified at the Washington, Pa. hearing and here's what he  
14 said in his opening remarks. "First, let me say this rule  
15 appears to closely parallel the previous proposed rules that  
16 were soundly rejected by all stakeholders." Labor and  
17 management alike. I've added that to it. "I cannot  
18 understand why MSHA has not listened to the stakeholders and  
19 actually attempted to develop a rule that the stakeholders  
20 could support, both industry and labor, albeit for different  
21 specific concerns, said to MSHA at the last round of the  
22 public hearings, that MSHA needed to start this rule all  
23 over rather than attempt to modify it." That was just said  
24 what, two weeks ago in Washington, Pa if I've got my timing

1 right.

2           What Gallick said represents the viewpoint of the  
3 stakeholders that are affected by this rule, both labor and  
4 industry. They said very soundly in 2000 trash this rule.  
5 It doesn't do the job. Come back and build one that works.  
6 There was a clear message from both labor and management,  
7 build it around a continuous dust monitor and fix this  
8 problem. As we set here today you're hearing the same  
9 comments you did in 2000 and one should start asking why is  
10 this happening? Why are we here? Why are we wasting the  
11 taxpayers dollars going on a track that will not work  
12 because we believe you cannot fix this rule in its current  
13 form. It's just like throwing that big old Mack wheel on a  
14 broken down Volkswagen, it just won't fit. Go back to the  
15 drawing board and do this right. That's what we said in  
16 2000. Unfortunately people didn't listen to us. We laid  
17 out a reason why in 2000 and unfortunately people didn't  
18 listen to us and you're hearing the same thing again. I  
19 just hope that someone -- someone in this government really  
20 wakes up and understands what's going on, the travesty that  
21 is going on here. Raising dust levels and reducing the  
22 amount of sampling in coal mines will not end black lung.  
23 Lowering those standards, the dust levels, and increasing  
24 that sampling will help eradicate this disease.

1           In closing there's a lot of other things that I  
2 would like to get into today but I'm not going to do it. A  
3 lot of miners, as you pointed out, are here to talk to this  
4 agency. Many of them told me, Joe, why are we even going  
5 again? The same thing we told them in 2000. I said well,  
6 we've got to do it because it's the process. We've just got  
7 to hope that somewhere in government someone grabs hold of  
8 this and say wait a minute, we're going to start listening  
9 to those miners. We're going to start listening to the  
10 public and we're going to fix this. That hasn't happened  
11 yet, but I still have faith that somewhere, somehow, some  
12 way, someone is going to take control of this and take  
13 control away from those who crafted this proposal and do it  
14 right. And as the president of our union says, if we've got  
15 to go to the halls of Congress to get that done, we're  
16 willing to do that. If we've got to go to the streets to  
17 get it done, we're going to do that. And if we've got to go  
18 to the public and just patiently explain what this rule  
19 really does to get the public's attention so they  
20 understand, we're going to do that. Whatever it takes to  
21 get what miners deserve and what they need, cleaning up the  
22 dust in these coal mines and doing it right so we don't have  
23 black lung cases.

24           Thank you very much.

1 (Applause.)

2 MR. MAIN: I'll take any questions you have,  
3 Marvin.

4 MODERATOR NICHOLS: I don't think I have any  
5 questions. You know, I watched -- I watched the audience as  
6 Bob went through his presentation and I think -- I think a  
7 lot of people do understand what we're trying to do here. I  
8 think your testimony is reflective of why it's important to  
9 have these public hearings. If it's not clear in these  
10 rules that the intent of these rules is to lower the dust  
11 levels, not raise them, and if the first -- if it's not  
12 clear that the first line of defense is not engineering  
13 controls then we need to clarify that. Then if it's not  
14 clear that supplemental controls are only going to be  
15 allowed to be considered after all engineering controls are  
16 exhausted, we need to clarify that. And if we haven't made  
17 it clear by allowing the rules to accommodate new technology  
18 once it's developed, tested and commercialized, we need to  
19 clarify that because that's clearly the intent of these  
20 rules.

21 MR. MAIN: The intent, as you expressed, and what  
22 these rules do is two different things, Marvin.

23 MODERATOR NICHOLS: Well then you need to tell us  
24 how to clarify it.

1           MR. MAIN: I did. I've told you -- well not only  
2 me. I mean this is an issue of miners. I think there's  
3 been a well established case here that for 25 years they  
4 said get continuous dust monitors in the mines, sample every  
5 day. It's been an issue of miners for years. Why the  
6 government can't get that done amazes me. I have the  
7 highest respect for the NIOSH folks that have busted their  
8 buns and worked with both labor and industry to build a  
9 device that gets us there, Marvin. That is one of the  
10 solutions that miners have been telling you for 25 years.  
11 Nobody will listen.

12           MODERATOR NICHOLS: We don't disagree. We're  
13 looking for it. You mentioned the 2000 proposal. The last  
14 public hearing I conducted in Grand Junction, Colorado we  
15 were told that the personal dust monitor is just around the  
16 corner. In fact, the industry coined the phrase it's the  
17 bridge to the 21st century. Here we are in 2003 and we have  
18 a prototype. We have six prototypes going to be tested. We  
19 think -- we encourage that. I mean -- and we'll see where  
20 we are at the end of the day, late summer, on how this is  
21 playing out. We think there are also very important issues  
22 about improving dust control plans, eliminating this  
23 averaging and not let miners continue to breathe coal dust  
24 when everything else has been tried and exhausted.



1           MR. MAIN: Marvin, I think the failures of your  
2 argument is the following: There is a number of people that  
3 made a direct commitment to build a device that would work.  
4 There was a series of meetings that was held -- which I was  
5 a party to -- about every one of these that have taken  
6 place, where representatives from the BCOA, the National  
7 Mining Association, NIOSH and MSHA was present. We came to  
8 the conclusion that the best thing we could do as the  
9 primary focus of our attention was to build a continuous  
10 dust monitor that miners could comfortably wear. A decision  
11 was made to do that; however, after that meeting the  
12 government got together and changed that plan. Which is a  
13 matter of record, which was criticized by both industry and  
14 labor. Took the money we had allocated to build this  
15 worker-friendly device and built a larger bulky unit that  
16 would not satisfy the miners' needs. It clearly wouldn't.  
17 And what happened is a travesty over time. We were delayed  
18 probably a year. We wouldn't be -- if it wasn't for that  
19 one decision, we probably wouldn't be sitting here today  
20 saying they're going to be done in August.

21           But further, I can tell you this, that those that  
22 have been to the table -- and a noticeably absent partner  
23 here has been MSHA, for whatever reason -- that stayed with  
24 it, that has built this thing all the way through -- I know

1 where we're at. We've tested the technology, it works.  
2 It's been ran through a number of mills at the research  
3 center. It's build by a company that specializes in this  
4 technology. This is not a pipedream. We know that we build  
5 it to be tamperproof. I mean all these things we're laying  
6 out on the record -- you know, I've looked at some of the  
7 surprised faces on the MSHA crew and not on the NIOSH crew  
8 as we walked through this. I can tell you this, Marvin,  
9 that to be as close as we are to fix this thing -- and yes,  
10 we had delays here last winter and the delay was because the  
11 manufacturer didn't put the batter capacity in these darned  
12 units that we had asked him to do and they had to go back  
13 and readjust that and get it approved by you guys to get  
14 them in the mines. That cost us a few months. We were  
15 outraged over it. We sent a message. The industry was  
16 outraged over it. They sent a message. NIOSH was. I don't  
17 know if MSHA did or not. But we pressed to get this  
18 technology done. And being on the verge of having these  
19 tests completed by those of us who know what's really going  
20 to happen here, and to have the government, Marvin, move  
21 expeditiously out of the blue shocked both us and industry  
22 when you come out with this rules in a wrongheaded way,  
23 cutting off at the pass the real value of these units.

24 In your rule -- let's talk about that. What it

1 is, it's only an option to be exercised by a miner operator  
2 in lieu of a very few samples. Now the operator is going to  
3 say oh --

4 MODERATOR NICHOLS: Yeah, but what we've asked  
5 for, we have a whole list of questions about how this unit  
6 ought to be -- ought to be used and that's what we're  
7 expecting is comments on -- if this unit proves out and it's  
8 commercially available then we need your comments on how it  
9 ought to be used.

10 MR. MAIN: So the rulemaking is going to end on --  
11 industry asked for an extension, we asked for withdrawals so  
12 we could get this testing done. The comment period ends  
13 July 3rd. Testing on this unit is going to end in August.  
14 It sounds to me like you've cut us off at the pass again to  
15 even get the value of what these units will do. I mean -- I  
16 mean let's look at it straight. I mean it seems there's an  
17 attempt here to do everything that can be done to short-  
18 circuit the use of these units. We don't agree with that.  
19 We think that the rulemaking was wrongheaded. We think it  
20 was rushed through the process which avoided, whether  
21 intentionally or unintentionally, the ability to assess  
22 those units. I mean what was another few months, Marvin, if  
23 you knew what was going on here?

24 MODERATOR NICHOLS: Well I think -- I think we

1 understand your issues and concerns, Joe. We need to kind  
2 of move on.

3 MR. MAIN: And I wish you would pass them on to  
4 Mr. Laurski so he'll be at least clear minded when he says  
5 what our positions are. Thank you very much.

6 MODERATOR NICHOLS: We'll do that. Thank you.

7 (Applause.)

8 MODERATOR NICHOLS: Our next commenter is Daryl  
9 Dewberry, UMWA.

10 MR. DEWBERRY: Good morning.

11 MODERATOR NICHOLS: Good morning.

12 MR. DEWBERRY: My name is Daryl Dewberry. I am  
13 the International Executive Board member and Political  
14 Action Director here in District 20 for United Mine Works of  
15 America. Let me say that I wish I could say that I'm happy  
16 to be here today.

17 MODERATOR NICHOLS: Daryl, will you spell your  
18 name for the court reporter? And will everybody else that  
19 comes up please spell their name for the court reporter so  
20 we get the record correct.

21 MR. DEWBERRY: Daryl, D-a-r-y-l, Dewberry, D-e-w-  
22 b-e-r-r-y.

23 Let me say that I wish that I could say that I'm  
24 happy to be here today, but this is basically deja vu. I

1 testified before this hearing in 2000 in -- I think it was  
2 Prestonburg, Kentucky and Salt Lake City, Utah. After  
3 reviewing the regs in doing what I thought was an extensive  
4 job, the union and the operators both were in agreement that  
5 the proposals of 2000 were not acceptable. Basically what  
6 I've reviewed under these rules today, they parallel those  
7 2000 rules, maybe a little worse. I've come to the  
8 conclusion that maybe MSHA -- I understand that the  
9 legislators invoked -- or enacted the '69 Act and then it  
10 was amended by the '77 Act. I believe it's clear -- it's  
11 unambiguous in there that 2 milligrams is the standard and  
12 to deviate, or to go beyond that, is unacceptable.

13 I don't think that you have any authority to  
14 legislate. If you want to be a legislator, you need to run  
15 for office. That's what we're going to communicate to the  
16 legislators. I'll be on Capitol Hill tomorrow. I have a  
17 meeting with Congressman Bachus, a good friend of ours.  
18 We're going to meet with Senator Shelby, Senator Sessions.  
19 Let me say, as a result of the disaster that happened at Jim  
20 Walter Number 5 where 13 of our brothers were killed, a  
21 strong commitment was made by the legislators. These men  
22 have said that they would strengthen the regulations. What  
23 you're proposing today will be a slow death for miners.

24 Let me say that I have first-hand experience at

1 seeing your brothers slip away. At Jim Walter's 7, a  
2 gentleman by the name of Sammy Wilder, under the current 2  
3 percent -- I'm sorry, 2 milligrams of respirable dust --  
4 he's deceased now. He would be 52 and he deceased probably  
5 about seven years ago. Another good friend of mine who  
6 would be about 50 is Otis Earl Foust who contracted black  
7 lung and who is now deceased. Another gentleman, Don Hood,  
8 and I'm not -- there's too many to name. Y'all know this.  
9 I mean, you know that black lung kills. And to even  
10 entertain a notion that more is less -- you know, I'm not a  
11 rocket scientist, but I understand math. Two and two don't  
12 make six. And if you allow respirable dust levels and  
13 people to work in respirable dust levels at 9.3 before you  
14 cite them, you're just raising the benchmark for the  
15 operators.

16 As far as the operators sampling them, the  
17 operators don't want to be accused of being criminals. Not  
18 only that, there's too much variables there for them in the  
19 event there is tampering. Why not -- you know, it would be  
20 nice if I could get the state troopers to give me a citation  
21 book so I could write myself a ticket when I speed, because  
22 I sure wouldn't write very many tickets to myself.  
23 Basically if the sampling goes on by the operators, I think  
24 that -- that's what we've employed as taxpayers, MSHA.

1 That's your job. I mean, we think that that should be  
2 exclusively done by MSHA and continuous monitoring.

3           Let me say that I have a question as to what  
4 happened to the federal advisory committee prior to the 2000  
5 hearings. They made recommendations and they fell on deaf  
6 ears. That committee -- I don't know what happened to it,  
7 but certainly there was a lot of research and a lot of work  
8 that went into it but to no avail. We have the technology  
9 and ability. We've been able to produce coal from the late  
10 '70s, early '80s to \$54 a ton to get it down to \$29 a ton.  
11 We have the technology to monitor CO, all gases, what's  
12 coming out of the fan. Everything is a technological  
13 marvel. Why in the world -- I don't think that we really  
14 want to know what the dust levels are as far as continuous  
15 monitoring. That's my opinion. Because at that rate you'll  
16 know that you're basically killing more -- I'd say more per  
17 year than the 13 in the disaster at Jim Walter 5 at one  
18 time.

19           Our average age of our coal miners is from 48  
20 years to 58 years of age and usually -- or most of them have  
21 from 20 to 30 years in the industry. We've given -- we've  
22 given to this industry so that the lights would be on, so  
23 that you can make steel and we've chosen this profession.  
24 But we had a promise from Congress. That promise was that

1 they was going to make us a safe environment and it wouldn't  
2 exceed 2 milligrams of respirable dust.

3           Let me say that I'll be on Capitol Hill with the  
4 legislators tomorrow and we're going to hammer on this. We  
5 opposed it in 2000, we oppose it now, more dust does not  
6 mean less dust. I don't care how you do the math. It just  
7 doesn't -- it doesn't work, it doesn't calculate.

8           As far as the air stream helmets are concerned.  
9 Otis Earl Foust, who is deceased now, wore one when he  
10 worked on the long wall at Jim Walter's 7. I know that they  
11 are probably improved now, but one of the other problems  
12 that we've had, and we've had several hearing tests run on  
13 our miners. When you get this on it muffles or suppresses  
14 some hearing. When you're on a long wall -- and I don't  
15 know -- I would challenge this panel to put that -- and we  
16 did in Prestonburg, Kentucky. I don't know if you have or  
17 not, but I certainly would appreciate getting fist-hand  
18 information. Go down on one of these long walls and wear  
19 that airstream helmet all day. When you get coal dust on  
20 it, you scratch it. You get a glare on your lens. I know  
21 that you can replace it, but it'll impair your vision.  
22 You're subjecting yourself to undue hazards. You can't hear  
23 the top working because it's muffled your sound and you've  
24 got this pump running and you hear that. You're already



1 deafened as a result of being exposed to high level decibels  
2 in the coal industry around this loud machinery. That's  
3 part of it. We accept some of that. But to put us at risk  
4 and say that this is going to be a mandatory thing -- our  
5 people now, some of them wear dust masks and some of them  
6 don't. But if you've ever climbed up in one of this long  
7 wall shields to work on to swap a hose out, with it running,  
8 you'll know that you -- you'll have to take it off and  
9 you're going to subject yourself to it. There's plenty of  
10 first-hand knowledge of people that have worn these. I put  
11 them on and tried them. I wouldn't wear it. I'd hate to  
12 know I had to wear it all day.

13           I would respectfully request that y'all deviate  
14 from legislating the Act and follow the Act. Make us stay  
15 with two milligrams of respirable dust and go from there and  
16 you'll save lives. MSHA -- the Secretary of the Department  
17 of Labor is charged with protecting the most precious  
18 resource in this nation and that is the coal miner. Forget  
19 about the production, the coal or anything else. That's  
20 your charge in that 1977 act. I think we need to go back to  
21 that act and read it so that we'll know what our priorities  
22 are.

23           Thank you.

24           (Applause.)

1           MODERATOR NICHOLS: Do you think the rank and file  
2 miners understand the current program, the averaging of the  
3 samples where you can get -- you get two samples over, three  
4 samples under and we have to legally call that compliance?

5           MR. DEWBERRY: They don't understand how you can  
6 legally call it compliance when the majority of our people  
7 are still getting black lung. They don't --

8           MODERATOR NICHOLS: No, I asked about the  
9 sampling. I know we're still getting cases of black lung.  
10 That's what we're trying to identify here, how to get at  
11 that. But do they understand the sampling program? We  
12 sample five consecutive shifts, average those samples and if  
13 it's less than two then that's compliance?

14          MR. DEWBERRY: Yeah, I'd say that they understand  
15 that, but, you know, we haven't agreed to that. I don't  
16 believe that we were part of that negotiation process.

17          MODERATOR NICHOLS: Well I didn't say you agreed  
18 to it.

19          MR. DEWBERRY: I know, but we have to live with  
20 it. You're charged with enforcing the regs -- and I'm not  
21 so sure in my personal opinion that they comply with the  
22 intent of Congress when the legislation of the Act was  
23 implemented. Two milligrams, let's look at -- it's  
24 unambiguous. Two milligrams is the standard and that's what

1 MSHA should be striving for, not 9.3 before we cite them and  
2 then let's see. You're killing miners.

3 VOICE: I bet if they moved your desk down there  
4 for a day you would find --

5 MODERATOR NICHOLS: I heard something about  
6 putting my desk down somewhere.

7 MR. DEWBERRY: As you were out, I challenged the  
8 rest of the panel members go down and wear one of these  
9 airstream helmets. We did that in Prestonburg, Kentucky, I  
10 believe, and I don't think we had any takers on the thing.  
11 If you do this -- I mean some of these coal miners are  
12 already upset. Let me say this, that we agreed -- we  
13 brought a minuscule amount of people. Some more people will  
14 probably come. But if this is passed, we're going to be up  
15 in arms about the thing. I mean, we think that you're  
16 neglecting your responsibility to enforce the Act.

17 MODERATOR NICHOLS: Okay, thanks.

18 (Applause.)

19 MODERATOR NICHOLS: Larry Spencer, UMWA.

20 MR. SPENCER: Good morning.

21 MODERATOR NICHOLS: Good morning.

22 MR. SPENCER: My name is Lawrence Paul Spencer.  
23 That's L-a-w-r-e-n-c-e P-a-u-l S-p-e-n-c-e-r. I'm the  
24 President of the United Mine Works of America Local 2397. I

1 have been working in underground mines for approximately 23  
2 years. I have worked on continuous miner sections, long  
3 wall, outby, outby on the long walls and general outby and  
4 now I'm a fireboss pumper at Jim Walter's Number 7 mine.  
5 Also my father was a miner, too, and he's here today.

6 I wish I could say that it's a pleasure to speak  
7 here today but I'm saddened to see the changes made in our  
8 health and safety. I feel like they've failed.

9 THE REPORTER: Excuse me, Mr. Spencer. Could you  
10 pull the microphone a little closer, please, sir?

11 MR. SPENCER: I sure can. Do you want me to start  
12 over?

13 THE REPORTER: No, that's fine. I just need to  
14 hear you.

15 MR. SPENCER: Okay.

16 I'm angered that this is the second time within  
17 three years that we've had to come before the same hearing  
18 and go over the same stuff. It angers me that we're wasting  
19 -- it seems to me that we're wasting taxpayers' money, we're  
20 wasting the union's money and it keeps falling on deaf ears.  
21 We're not seeing the right results out of it. I can't  
22 understand why anyone would want to raise the dust levels  
23 that a person works in. I work down there and I know.  
24 There's no reason to even raise it one milligram, much less

1 up to eight or nine milligrams.

2           As president of this local I get to talk to  
3 working miners, retired miners and it saddens me to see the  
4 people with black lung. I've seen people with open-heart  
5 surgery that recovered. I've seen major medical problems  
6 and people recovered, but black lung, you just get sicker  
7 and sicker until you finally die a horrible death -- and  
8 I've seen it.

9           And MSHA's rule that talks about decreasing the  
10 amount of compliance dust sampling, if anything, we need to  
11 increase it. The average miner now days works 10 to 12  
12 hours. We don't have 8-hour work days. This starts at the  
13 portal, it doesn't start at the working face. The dust  
14 starts at the portal. Actually the dust starts when you get  
15 out of your car. I can't see starting a pump after I get to  
16 my working production place.

17           The new rules allow for the airstream helmets.  
18 I've wore an airstream helmet. At our mine site, within the  
19 last five months we've had four squeezes on our wall. One,  
20 I think, or two of the squeezes, they picked up sides on who  
21 worked in the squeeze area and who worked in the area above.  
22 The way they picked the sizes was, the small skinny guy  
23 works in the squeeze area. The big guys have to work above  
24 it. The small skinny guy had to take off his belt to get

1 through it. How can he wear an airstream helmet? There's  
2 no way.

3 I feel like Daryl, too. I feel like y'all should  
4 come down -- and I would be glad to go with you if you would  
5 come to Number 7 Mine. I'd like for you to come at a time  
6 when we are in a squeeze. Hopefully we don't have that, but  
7 I'd like for you to see a time when it's really where you  
8 have to crawl or you have to slither through the shields and  
9 let you wear airstream helmets. They just don't work. I'm  
10 telling you from experience. I've wore them. The people  
11 that Daryl talked about were my friends.

12 To close, I would like to say that I've tried to  
13 make an honest living working in the coal mines. I've got a  
14 wife, I've got three girls and now I've got three grandsons,  
15 and I'm asking you, don't give us a death sentence. Think  
16 about what you're doing. That's all I've got to say.

17 MODERATOR NICHOLS: Thank you very much.

18 (Applause.)

19 MODERATOR NICHOLS: Bob Wise.

20 MR. WISE: Bob Wise, B-o-b W-i-s-e.

21 Last week our President, George W. Bush, gave a  
22 speech in Indianapolis, Indiana.

23 MODERATOR NICHOLS: You may need to speak into  
24 that microphone a little bit there, Bob.

1 MR. WISE: Is that better?

2 MODERATOR NICHOLS: Yeah.

3 MR. WISE: Last week our President, George W.  
4 Bush, gave a speech in Indianapolis, Indiana. I believe it  
5 was last Wednesday. During his speech George stated we  
6 expect persons in authority to be responsible. He then  
7 criticized some corporate leaders that did not act  
8 responsibly. He did say they did not tell the truth to the  
9 workers and the shareholders and that this is bad for  
10 America. I firmly believe that top MSHA officials are not  
11 acting responsible and haven't for a long time. I don't  
12 believe they acted responsible following the Willow Creek  
13 explosions in that they took no actions toward emergency  
14 evacuation and response. I don't believe they acted  
15 responsible following the Martin County accident in that  
16 they consistently blocked the truth being told.

17 I know they didn't act responsible after the Jim  
18 Walter Number 5 disaster. This can be verified by MSHA's  
19 refusal to allow interviews of MSHA officials to be part of  
20 the public record. Their refusal to interview approximately  
21 50 miners as part of the public record and the very limited  
22 reporting and action by MSHA concerning the mine roof.

23 I know they didn't act responsible issuing the  
24 very narrow emergency standards toward emergency evacuation

1 and response. To verify this, a person would only have to  
2 review the record from the public hearing in Lexington,  
3 Kentucky, which I attended. And I do not believe they acted  
4 responsible when they issued these proposed rules. This,  
5 too, can be verified by comparing these proposed rules to  
6 the findings of the nonbiased dust committee and NIOSH's  
7 criteria for a recommended standard.

8           On the point of not telling the truth to the  
9 workers. I see no difference between the corporate leaders  
10 that George Bush was speaking of and the agency leaders I'm  
11 speaking of. This too can be verified by reviewing recent  
12 press articles, and I would briefly like to touch on a  
13 couple of them that kindly hit the nail on the head. One of  
14 them being out of the Post Gazette.

15           "During the hearing Joseph Main, the union's  
16 health and safety director spared with MSHA getting its  
17 representatives to admit it is possible that the new rules  
18 would allow permissible dust levels to quadruple to as high  
19 as eight milligrams per cubic meter."

20           There's another one in the Register Herald where -  
21 - "what's more Laurski said both the union and  
22 representative Nick Rahall, a democrat from West Virginia,  
23 are off base in claiming MSHA wants to allow a climb in dust  
24 levels from two milligrams per cubic meter to eight



1 milligrams. Absolutely not Laurski told the Register Herald  
2 Thursday a day after Rahall and the UMW demanded MSHA back  
3 down from two proposed rule changes. But they cannot be  
4 used in lieu of engineering controls he said. Laurski found  
5 it puzzling the UMW feels sampling would be dramatically  
6 rolled back. Ninety percent Roberts estimates from the  
7 current practice of joint testing by MSHA and operator. So  
8 we listened and we proposed a rule that now says we'll take  
9 over all sampling for compliance and only one sample to  
10 determine compliance on an individual or given occupation  
11 within a mine he said."

12 I wonder if George would support these  
13 persons in authority once we make him aware of their  
14 actions? I personally think good tax dollars are being  
15 wasted on these persons. I support continuous sampling  
16 devices being required for all miners. I support  
17 enforcement on all samples which show noncompliance. I  
18 support the single shift sample being portal to portal.

19 Now I would like to say a couple of things that's  
20 not prepared. I wish my memory was a lot better. Last  
21 night I was sitting there and I wished that I had had some  
22 recordings of this. The Secretary of Labor, Ms. Chao, on a  
23 football field in Brookwood, Alabama. In her speech, the  
24 things that was going to be done, I certainly don't remember

1 anything like this.

2 I would also like to touch on the disaster at Jim  
3 Walter Number 5. I lost a very dear friend in that. And  
4 nobody in their right mind could deny that excess dust  
5 played a big role in that. And going from two to allowing  
6 eight percent, gentlemen, that will not work. That's going  
7 to kill more people two different ways.

8 Thank you.

9 MODERATOR NICHOLS: Thank you.

10 (Applause.)

11 MODERATOR NICHOLS: Court reporter, if you need a  
12 break you let me know. We'll keep going.

13 Stewart Burkhalter.

14 MR. BAKER: We're going to skip him and bring him  
15 back later. We will go with Leroy Nicholson.

16 MODERATOR NICHOLS: Okay. And then you have some  
17 more people following him?

18 MR. BAKER: We'll just go right through the list  
19 after that.

20 MODERATOR NICHOLS: Okay, Leroy Nicholson.

21 MR. NICHOLSON: Good morning. My name is Leroy  
22 Nicholson. That's L-e-r-o-y N-i-c-h-o-l-s-o-n. I'm the  
23 Director of the Alabama AFL-CIO Labor Institute for  
24 Training. I also sit on the Alabama AFL-CIO Executive Board

1 and I hold a seat on the Pace Allied Industrial Chemical and  
2 Energy Workers Council here in Alabama. I represent voters  
3 from each of the seven congressional districts here.

4 I'm appalled at Assistant Secretary Dave Laurski  
5 and top MSHA officials aren't being responsible in the press  
6 by telling the truth to workers. Increasing dust levels and  
7 decreasing sampling and pretending a person can work in an  
8 airstream helmet will not result in cleaner lungs in this  
9 country. This is more than a pie-in-the-sky health rule.  
10 What is fair about prohibiting Americans from smoking in  
11 public places to protect Alabama from second-hand smoke  
12 while increasing contaminants for coal miners? If American  
13 lungs are important aren't American coal miners' lungs  
14 equally important?

15 Last week our governor spent millions of dollars  
16 to promote a 36-hour drill on a dirty bomb disaster. The  
17 spending of this money and by having this drill, the federal  
18 government demonstrated their understanding of the  
19 importance of simulated training. Why is it then that this  
20 is the third proposed rule that the secretary has issued  
21 which affects miners without any proposal to increase the  
22 annual health and safety training required for these miners?  
23 Why is it that simulated training which has been requested  
24 by the United Mine Workers and others still isn't being

1 required in the workplace?

2           It is not just to hold a worker responsible while  
3 refusing him training. You cannot train workers in the same  
4 manner that you raise mushrooms. You can't keep them in the  
5 dark and continue to feed them BS. I think we all  
6 understand what that is. Eight hours of annual health and  
7 safety training is simply inadequate to cover the many  
8 topics for which a miner is responsible. Miners have been  
9 saying this for years and today I join them in saying it.  
10 I submit to you that, number one, require immediate increase  
11 in annual pay and health and safety requirements for these  
12 miners. Two, require hands-on and simulated training, not  
13 just classroom training.

14           Thank you.

15           MR. THAXTON: Thank you.

16           (Applause.)

17           MR. THAXTON: Jim Brackner.

18           MR. BRACKNER: Good morning, I'm Jim Brackner, J-  
19 i-m B-r-a-c-k-n-e-r. I'm a safety committeeman, Local 2245,  
20 United Mine Works of America. I'm employed at Jim Walter's  
21 Number 4 Mine with 23 years underground mining experience.

22           First off, I'm going to state for the record that  
23 compliance and enforcement is a long way from where it needs  
24 to be in MSHA District 11. I'm not the best inspector in

1 the world, but I am certified by the state of Alabama to  
2 identify hazards. I have received training from the United  
3 Mine Workers of America, as well as the MSHA Mine Academy to  
4 identify both hazards and violations.

5 I have been tracking MSHA's compliance and  
6 enforcement for a long time and the most liberal statement  
7 that I can make is less than eight percent of violations are  
8 currently being detected and written by MSHA. I would like  
9 to tell you this morning that thousands of coal miners, not  
10 only in Alabama but all across the country, are madder than  
11 hell that you continue to try to shove pitiful, operator-  
12 friendly, inadequate dust proposals down our throat and  
13 we've about had all that we can swallow.

14 After the hearing in 2000 I thought that maybe  
15 MSHA recognized the needs of the miners but I was wrong.  
16 Once again, you've chosen to ignore not only the  
17 recommendations of the Dust Advisory Committee, you've also  
18 chosen to ignore the voice of the people who's health and  
19 safety depends on strict regulations, the coal miner. These  
20 are the people that MSHA is supposed to be protecting. Have  
21 you forgotten about the Mine Act?

22 On page 10786 of the preamble of the proposed rule  
23 the statement is made that this proposed rule would result  
24 in fewer shifts being sampled than under existing

1 requirements. Is this to accommodate MSHA's inspectors so  
2 that they can have four days off every week instead of  
3 three? We won't increase sampling. We want and we need  
4 personal dust monitors that monitor the respirable dust  
5 continuously for all miners.

6           Also on page 10786 of the preamble the statement  
7 is made that since all MSHA sampling is unannounced sampling  
8 will occur under conditions that are more typical of the  
9 actual mining environment. This statement is partially  
10 true. MSHA sampling is sometimes unannounced, but as far as  
11 taking place under conditions more typical of the actual  
12 mining environment, this is wrong.

13           After the MSHA inspectors issue the pumps it's  
14 sometimes two to three hours before the inspectors arrive in  
15 the area where sampling is taking place. I always thought  
16 that dust pumps were supposed to be checked within the  
17 second hour of operation. I say once again that we do want  
18 continuous monitoring. I think MSHA inspectors should  
19 accompany dust pumps from portal to portal whether it be  
20 eight hours or ten hours. If you want to get a true sample  
21 try portal to portal. You might be surprised.

22           The proposed verification sampling regulation is a  
23 joke. Verification sampling should be done by MSHA, not the  
24 operator. Allowing the operator to do verification sampling

1 could be asking for trouble. Operators have been found  
2 guilty of dust fraud before and allowing some operators to  
3 do verification sampling could be just opening the door for  
4 more dust fraud to occur.

5           An increase in dust levels is bull crap to me. I  
6 think the respirable dust standard should stay where it's at  
7 or even be dropped lower. I also feel that MSHA should  
8 issue citations for ever sample that exceeds two milligrams,  
9 whether it's a verification sample, a compliance or an  
10 abatement sample. But instead you want to decrease the  
11 amount of samplings, increase respirable dust levels and  
12 stick our heads in a bubble. If MSHA wants to implement new  
13 dust regs, then you should implement regs that will benefit  
14 coal miners and not kill them. MSHA's proposed regs are  
15 fatally flawed and not in the interest of the nation's  
16 miners.

17           It's my understanding that at the hearing on May  
18 6th MSHA representatives admitted on the record that under  
19 the proposed rules it would be possible for the permissible  
20 dust levels to be as high as eight milligrams per cubic  
21 meter. I'm highly concerned and ashamed that only three  
22 days latter Assistant Secretary Laurski attempted to  
23 manipulate the press and public perception by denying what  
24 was already part of the public rule. What I'm referring to

1 is a May 9th article published in the Register Herald.

2 By the way, I've been attending these hearings for  
3 years and I've noticed that every time my international  
4 safety rep Tom Wilson starts to speak you interrupt him.  
5 I'm asking you today to stop interrupting Tom Wilson and to  
6 start listening to what he has to say and accept his  
7 testimony.

8 Thank you.

9 MR. THAXTON: Thank you.

10 (Applause.)

11 MR. THAXTON: Herman Weber.

12 MR. WEBER: Good morning. My name is Herman  
13 Weber, H-e-r-m-a-n W-e-b-e-r. I have been associated with  
14 the mining industry since 1978. During this time, I've been  
15 able to assist my union in numerous matters. These include  
16 the Union Political Action Committee, chairman of the Health  
17 and Safety Committee. I conducted special electoral and  
18 permissibility inspections for the international union,  
19 financial secretary for 23 years, past president of the West  
20 Alabama Labor Council, current recording secretary of the  
21 Labor Council and current recording secretary of the United  
22 Mine Workers of America compact (ph).

23 I want to speak for my financial secretary's  
24 responsibilities and duties. In preparing to come here



1 today, I started reviewing an enormous document that alone  
2 was 293 pages called a preliminary regulatory economic  
3 analysis. I never even got finished with document and never  
4 got to read the proposed rule. The 1977 Mine Act recognized  
5 the importance of miner representatives involvement in the  
6 health and safety. This importance was again recognized in  
7 1996 by the secretary of labor's advisory committee on the  
8 elimination of black lung -- I don't know how to pronounce  
9 the other word -- among coal miner workers.

10 I would like to refer you to page 82 and 83 of the  
11 Dust Advisory Committee Report. I will read the material  
12 that I'm referring to. "Findings. The Mine Act contains  
13 various measures to protect the health of the nation's coal  
14 miners. Among this, it sets maximum mine respirable dust  
15 exposure levels to which miners can be exposed. The Mine  
16 Act also establishes a mechanism for monitoring the dust to  
17 ensure that the atmosphere is maintained at a healthy level.  
18 To be considered an effective program both the mine  
19 operator and the miner must have a high level of confidence  
20 in the dust monitoring process.

21 "The Committee heard testimony from miners who  
22 described a number of unfortunate examples where mine dust  
23 sampling programs appeared to have been operated improperly.  
24 In some mines it appears that the miners have lost

1 confidence in the dust sampling program.

2           "The committee also heard testimony regarding  
3 instance where there was concern with MSHA's sampling  
4 program as well. A concerted effort needs to be undertaken  
5 to ensure mine operators and miner confidence in the dust  
6 sampling process. As a part of the effort to ensure the  
7 appropriate procedures in operating doing dust sampling in  
8 mines. The committee believes that there is a need for  
9 increasing the miner's participation during dust sampling.

10           "Recommendation number 19A. Miners participation in  
11 the dust sampling program should be increased to provide  
12 assurance that a credible and effective dust sampling  
13 program is in place. To that end miners at each mine should  
14 select designated representatives who are employed at the  
15 mine for compliance sampling. Miners designated as a  
16 representative of the miners should be afforded the  
17 opportunity to participate in all aspects of respirable dust  
18 sampling for compliance at the mine. Participation would  
19 include protection against loss of pay as provided under  
20 Section 103(f) of the Federal Mine Act.

21           "Recommendation 19B. Miner representatives should  
22 have the right to participate in dust sampling activities  
23 that would be carried out by the employees for verification  
24 of dust control plans at no loss of pay. Miner

1 representatives should also have the right to participate in  
2 any activities involved in handling continuous dust  
3 monitoring devices of the extraction of data from continuous  
4 dust monitoring devices without a loss of pay.

5 "Recommendation Number 19C. Miners  
6 representatives should be -- should receive training and  
7 certifications to conduct respirable dust sampling paid by  
8 the employer. Miner representatives should be afforded the  
9 opportunity without loss of pay from the miner/operators to  
10 participate in the training of miners. A description of  
11 work activities and dust exposure on sampling days would be  
12 provided to the effected miner by those taking the dust  
13 samples." Excuse me, that was recommend number 19B.

14 "Recommendation Number 19C. Miners --

15 MR. THAXTON: Mr. Weber, excuse me. You realize  
16 this document is already in the record. This entire  
17 document in it's entirety.

18 MR. WEBER: Okay. But I just have one more.  
19 Okay, I'll go on.

20 "Even though Congress and the Dust Advisory  
21 Committee recognizes the importance of the rule, as MSHA  
22 surely failed to in their proposals concerning  
23 verifications, 70.201(f)."

24 Let me explain to you the duties -- the due

1 structures of the UMWA local unions. The monthly dues are  
2 taken in and the company sends them to the district office.  
3 A third of the dues goes to the internal union and a third  
4 of it goes to the local and the district keeps a third.  
5 Dues are used to pay for the lost wages that miners lose  
6 while doing official business from their local union. It  
7 pays FICA taxes, unemployment taxes, mileage, per diem, per  
8 capita to the AFL-CIO organization and utilities that go  
9 along with having a union hall. Hall insurance and salaries  
10 for some officers. On the hall insurance we used to could  
11 pay them by the year. Now we've lost so much membership  
12 that we have to pay it by installments. So that means the  
13 local is using about everything they take up every month.

14 Under this structure there would be no possible way for  
15 the miners to participate in the sampling process. All  
16 local unions would just be financially unable to  
17 participate. With this in mind, let me state that I am  
18 totally offended that our Secretary of Labor is proposing  
19 regulations that are structured in a manner that could no  
20 longer be monitored by the miners. Let me add that the  
21 frequency of proposed rules this year has also financially  
22 limited the local union's ability to participate in the  
23 rulemaking process.

24 In receiving the preliminary regulatory economic

1 analysis MSHA considered the economic impact of these rules  
2 on every sector of the industry except the local union  
3 and/or miner. This is outrageous and is a clear indication  
4 of how little this administration thinks of labor. MSHA's  
5 preliminary regulatory answer is incomplete and inaccurate  
6 in many areas. These proposed rules will create a bias by  
7 shifting benefits from manufacture of engineering controls  
8 to ones manufacture of approved airstream helmets. I  
9 project that these proposed rules would dramatically  
10 increase health care cost among the miners and place a  
11 financial burden on the miner and the local union. And it  
12 flies in the face of the intent of Congress and the finding  
13 of the Dust Advisory Committee.

14 Thank you very much.

15 MR. THAXTON: Thank you.

16 (Applause.)

17 MR. THAXTON: Pat Nakamura.

18 MR. NAKAMURA: I'm Pat Nakamura, last name spelled  
19 N-a-k-a-m-u-r-a. I'm an attorney for the Mine Workers here  
20 in Birmingham. I represent and have represented for years  
21 black lung claimants in and around the state of Birmingham  
22 (sic) and southeastern states and have done some labor and  
23 safety work for the UMWA.

24 I'll try to be brief. I think y'all need to hear

1 from coal miners more than lawyers but I was asked to give  
2 at least my perspective regarding the proposed regulations.

3           Let me say this, I do see firsthand -- I work with  
4 a lot of retirees in their claims for black lung. So I see  
5 the ravages that respirable dust does to coal miners and how  
6 it affects their lives, not just their health, but their  
7 economic well-being and relationships with families, family  
8 members, et cetera.

9           I don't think it's in dispute that miners are  
10 still getting black lung, despite the fact that we've had  
11 this two milligram standard for over 30 years. Although, I  
12 do on occasion, when I litigate some black lung cases, I  
13 have responsible operators who will dispute the fact that a  
14 miner has black lung if he has worked most of his time after  
15 the two milligram standard came into effect. And that's an  
16 argument that's thrown at us -- how could he get black lung  
17 if we've had all these controls for all these years. And so  
18 that -- you know, that mentality is out there, that over the  
19 years, these controls have worked. But despite these  
20 controls, I think it's clear that miners are still getting  
21 black lung.

22           You know, NIOSH has done some terrific studies in  
23 recent years concerning the ravages of what respirable dust  
24 and other kinds of dust in the coal mines can do,

1 recognizing officially in the black lung regulations things  
2 like chronic obstructive pulmonary disease can come from  
3 working in coal mines.

4           So, you know, there's an argument -- you know, we  
5 have the two milligram standard. I think if you go back to  
6 the legislative history, the argument is made to me that  
7 Congress, when they passed this Act, two milligrams was a  
8 standard to be clear, but that there should be some effort  
9 actually to get the dust levels down as low as they can. Be  
10 that as it may, certainly what we don't want are any  
11 regulations that would possibly increase the dust levels.

12           Now, you know, Joe Main said it would take three  
13 Philadelphia lawyers to go through these regulations and  
14 understand them. I'm only one Alabama lawyer and I -- you  
15 know, compared to the other regulations, they are more  
16 complicated, and I've only had a brief time to look at them.

17           There are just two things that I'd like to give  
18 you an example on that I find troubling and raised red  
19 flags, and they're just two words or perhaps the lack of  
20 words. And the one of them has to do with MSHA compliance  
21 sampling. You know, I think Joe and most of the mine  
22 workers will say that there is no definite requirement as to  
23 the number of times that MSHA is going to go into the mines  
24 and do the compliance sampling.

1           Now there's some words that I've heard used and  
2 read in the comments that MSHA will do routine sampling.  
3 There's also a footnote somewhere that says MSHA will do  
4 recurring sampling. And then this morning, I heard that  
5 MSHA will do bimonthly sampling normally.

6           You know, lawyers are sometimes called wordsmiths  
7 and that's one area where I think if what these regulations  
8 are supposed to do is to restore confidence in the program,  
9 I think you've heard already and will probably hear from  
10 witnesses behind me that they don't have confidence that  
11 there is going to be something anywhere near, or at least be  
12 assured that there will be something like bimonthly  
13 sampling, which is required now, you know, by the operators.  
14 That's clear in the regulations, it's going to be bimonthly  
15 sampling. There is no like requirement, I guess, for MSHA.  
16 And that's one word.

17           The other word that jumps out, I think, is the  
18 word feasibility, and that has to do with, of course,  
19 environmental and engineering controls -- when is something  
20 feasible. I know I heard -- and I'm not holding you to  
21 comments made, but I heard well, the supplemental control  
22 won't be used until the engineering controls are exhausted.  
23 And, you know, I said oh, he didn't use the word feasible  
24 when he said that.



1           But feasibility, I think it's clear from the  
2 regulations and from the comments, is not defined anywhere.  
3 I think the Commission, I guess, has defined it, but you  
4 know, feasibility is one of those words where the meaning  
5 changes depending on what you're talking about, including, I  
6 think, the backdrop of what the alternatives are, and I  
7 think the mine workers -- again, it's a question of  
8 confidence -- are concerned that if there is this reliance  
9 on airstream helmets and the ability of operators to use  
10 airstream helmets, that that will, over time, redefine the  
11 word feasibility. And I think that right now they don't  
12 have confidence that the agency will be a watchdog to make  
13 sure that all engineering controls are exhausted before  
14 airstream helmets will be allowed to be used.

15           So, you know, we have to assume that the operators  
16 have their own Philadelphia lawyers who are going to be  
17 taking those words and trying to define them. It's like the  
18 old joke, the lawyer joke, where the company manager asks  
19 the accountant how much is two plus two and the accountant  
20 says four; he then turns to the lawyer and says how much is  
21 two plus two and the lawyer's response is well, what do you  
22 want it to be. And that's our concern, that feasibility is  
23 a moving target and one that will eventually be eviscerated  
24 so that airstream helmets -- engineering controls will not

1 be the controlling type of -- well, the controls normally  
2 used for control of respirable dust.

3           And I've seen that as a lawyer where -- and I've  
4 heard laws or regulations being compared to a ham, where the  
5 person -- a little bit of that law is continually shaved off  
6 in thin slices and pretty soon the ham is not there. And  
7 our concern with, at least this portion, is that eventually  
8 the law will be eviscerated. And you've heard that the two  
9 milligram standard will actually be raised to higher levels.  
10 Again, because of the inability to have assured compliance  
11 with the standard, and secondly because of the argument that  
12 the operators will continually assault what's feasible.

13           Thank you.

14           (Applause.)

15           MODERATOR NICHOLS: Thank you.

16           Dwight Cagle.

17           MR. CAGLE: Morning.

18           MODERATOR NICHOLS: Morning.

19           MR. CAGLE: Dwight Cagle, D-w-i-g-h-t C-a-g-l-e.  
20 I'm the Mine Health and Safety Committee at the Local 2397,  
21 United Mine Workers, Jim Walters Number 7.

22           I'd like to touch on the proposal -- the new  
23 proposal for reducing MSHA compliance in dust sampling, dust  
24 sampling policy. The new proposal is taking away our rights

1 under the Act, it's going to touch on some of the Act,  
2 201(b), which the concentration of dust should be free in  
3 the mine atmosphere, you should be able to work without  
4 silicosis, black lung disease. This new proposal falls way  
5 short of this.

6 Taking away 202(a) of the sampling, taking away  
7 202(h) of the respirators, which I'm going to touch on that  
8 later.

9 Verified administrative control agent has offered  
10 their example of those controls, such as job rotation,  
11 alternate work assignments and providing periods away from  
12 our dust.

13 Just like Mr. Nakamura said, there's a big word  
14 they're using at our mines, attrition. Right now, we're  
15 about 45 union employees short. We've got two free jobs,  
16 there'll be no rotation on there, on work assignments. Our  
17 jobs are bidded off, you don't rotate your work around.

18 The main thing is to control the dust by  
19 engineering or environmental controls. This rule that the  
20 agency has crafted, this section, to allow the approval of  
21 such device to determine the equivalent concentration of  
22 respirable dust. This determination would then allow for an  
23 increase in the dust level in the mine atmosphere and the  
24 requirement of the use of powered air purifying respirators,

1 PAPRs, or other controls.

2           I've done a little research on these powered air  
3 purifying respirators and there's only been one approved,  
4 the 3M. How much air do we breathe in a minute? Probably  
5 around nine or ten liters, if you're standing still or doing  
6 nothing. If you're performing heavy work, you need much  
7 more. But let us say that we'll be breathing at rest, say  
8 10 liters a minute. It might seem that a power respirator  
9 would have no problem with supplying 10 liters of clean air  
10 per minute to the face. Indeed, even 100 liters per minute  
11 is something most PAPRs can handle. The problem is that  
12 it's not enough, not even nearly enough. Why? Basically  
13 because we don't inhale all the time. How much time do we  
14 spend in inhaling? Depending on what we're doing at the  
15 time. Right now, we're not doing nothing, anything, simply  
16 standing up, breathing in 10 liter per minute. So, do we  
17 spend half the time inhaling? If so, would we have 30  
18 seconds to inhale 10 liters?

19           Now it becomes important to distinguish between  
20 the amount of air we breathe and the speed at which we  
21 breathe it, because if we breathe 10 liters in half a  
22 minute, the air travels at a speed of 20 liters a minute.  
23 That's a simple calculation, but breathing is not that  
24 simple. In fact, we spend much less time inhaling than you

1 might think.

2           Ever since the first world war, occupational  
3 health professionals have believed that we spend about one-  
4 third of the time breathing in, one-third of the time  
5 breathing out and the remaining one-third turning at the top  
6 and bottom of each breath.

7           In our example, this would mean that we now only  
8 have 20 seconds to draw 10 liters of air. The air speed is  
9 thus 30 liters per minute, still no match for the PAPRs.  
10 Now we will still standing without moving, requiring 10  
11 liters of air per minute. Let's say that we started walking  
12 and suddenly our breath pattern changes dramatically, simply  
13 by talking. Many people cut their inhalation time  
14 dramatically compared with not speaking. This is quite a  
15 logistical conquest because we can't breathe in and talk at  
16 the same time. In other words, we take fewer but faster  
17 breaths when we talk. What does this mean? It means that  
18 our required 10 liters will have to inhale in say around 10  
19 seconds. Have you worked out the air speed yet? It's 60  
20 liters per minute, no less. If you then realize that each  
21 breath starts with still air and ends with still air, it  
22 will come as no surprise that many people notch up speak air  
23 below rates of 120 liters per minute just by talking at  
24 rest. The peak air flow rate is fastest during the entire

1 breathing cycle of a single breath and we haven't even  
2 started to walk or move or work yet. How will PAPRs  
3 function now?

4           Some of the world's best PAPRs can manage 120  
5 liters a minute, but only just. So what will happen when we  
6 stop simply standing and start working hard? It is not at  
7 all uncommon for a working person to breathe at the peak of  
8 over 300 liters per minute. The simple truth about a PAPR  
9 is, it is not the amount of air the device has to supply  
10 that is so critical, it is the peak flow rate of the air  
11 that must be matched. When the peak flow rises 200, 300,  
12 even 400 liters per minute, the conventional PAPRs simply  
13 cannot keep up. The results with the rapid breaths you're  
14 taking, you create a negative pressure in the respirator and  
15 outside air will leave. And the only one that's approved is  
16 a positive pressure powered air -- PAPR.

17           Features of some respirators have been reported to  
18 have potential for advance effect, particularly in  
19 decreasing of cardiac output. Most of our people, like the  
20 rest of them that testified, is 45-50 years old. They can't  
21 take this. They cannot wear this respirator, we need to  
22 keep the dust levels down below two milligrams and not allow  
23 this.

24           The Act totally speaks against this. NIOSH studies

1 totally against it.

2           Here's some of the requirements -- certified  
3 equipment list from NIOSH. And I don't even know if the 3M  
4 has been approved for this. Not evaluated ignition source,  
5 flammable on exposure to atmosphere, not for use in  
6 atmosphere containing less than 19.5 percent oxygen, not for  
7 use in atmosphere leading to dangers to life and health.  
8 Type 50 facepieces -- do not use if air flow is less than  
9 four cubic feet per minute. Loose fitting hoods and or  
10 helmets -- do not use if air flow is less than six cubic  
11 foot per minute. As you know, a lot of our people wear  
12 beards. If they put them in these, they're not going to get  
13 a tight fit. Filters -- I was in testimony in Salt Lake  
14 City in 2000 and I think Energy West was talking about face  
15 shields being scratched, leakage, they was changing the  
16 filters out and putting rags, socks for filters.

17           I have another -- this here is by the California  
18 OSHA report. Respirators, you must use them. You may be  
19 better off using methods other than respirators, and here's  
20 why. Ventilation works better. This is reported by the  
21 California OSHA. Respirators are not an effective  
22 ventilation in protecting workers in most situations.

23           Cost of equipment, training, fit tests,  
24 replacement costs to maintain consistency year after year.

1 The cost of ventilation systems is primarily for the  
2 installation, most systems only require maintaining once or  
3 twice a year.

4 Ventilation and sprays work a whole lot better  
5 than trying to force these airstream helmets on people.  
6 Respirator are hard to work in. It's like they touched on  
7 at our mines, we've been in a squeeze, you had to pull your  
8 belt and drag it through there, you could not wear an  
9 airstream helmet in those conditions.

10 Some of the others is they're hot, uncomfortable.  
11 With the Alabama humidity, there's no way you could wear  
12 them. They interfere with vision, speech and hearing,  
13 movement. They give a false sense of security. It is  
14 dangerous to use an ineffective respirator. Workers may go  
15 into dangerous situations believing that they are safe.

16 Don't do it yourself. Most firms will hire an  
17 industrial hygienist to consult on the testing of air.  
18 Selecting respirators right up in the program, fit tests,  
19 training the respirator user. The consultant also trains  
20 the manager who will be responsible for maintaining the  
21 program. Remember inefficient respirators' is use both  
22 dangerous and illegal.

23 We can't even keep the batteries charged up on our  
24 methane detectors and I don't know how we're going to keep



1 the airstream helmets in good condition, as far as  
2 cleanliness and batteries charged.

3 There's document after document on why we  
4 shouldn't use airstream helmets.

5 That's all I've got.

6 MODERATOR NICHOLS: Okay, thanks. I think we've  
7 got a question for you.

8 MR. THAXTON: Are you familiar with the documents  
9 that you've read from, that you can respond to questions on  
10 them?

11 MR. CAGLE: Some of them, yes.

12 MR. THAXTON: In relation to your determination as  
13 to the normal breathing rate for the air flow, are you  
14 familiar with what actual at rest normal breathing rate is  
15 for a human?

16 MR. CAGLE: No.

17 MR. THAXTON: You read 10 liters per minute, but  
18 it's actually two liters per minute. So that's why I'm  
19 asking. The information that you read from, are you willing  
20 to provide that, so we can see where that data came from?

21 MR. CAGLE: Yes, at a later date. It come from  
22 the Australian Safety News.

23 MR. THAXTON: If you could provide that  
24 information to us, so we could actually have a chance to

1 take a look at it, because it differs from what standard  
2 industrial hygiene practice and acceptance is.

3 MR. CAGLE: Okay.

4 MR. THAXTON: Number two, you were also reading  
5 some information concerning the criteria for the use of  
6 PAPRs, not being approved to use in a dangerous atmosphere.  
7 The only approved unit that we're looking at on this  
8 particular rule is a unit that has met MSHA approval as well  
9 as NIOSH approval. That MSHA approval is for 2(g), that is,  
10 that it's capable of being operated in the face areas in  
11 methane and air mixtures.

12 So what you were reading from, also we would like  
13 to see because that's not in conformance with the  
14 requirements that we have for this particular rule, but it  
15 would be interesting to see which units they're referencing.

16 And third thing was that you indicated some  
17 information concerning about maintaining the units and being  
18 able to use them, especially in your operation where you  
19 have a squeeze at this time.

20 MR. CAGLE: Yes.

21 MR. THAXTON: One thing that was pointed out in  
22 this particular rule is that we do require the use of PAPRs  
23 if they are to be part of the plan, that they would have to  
24 specify where they have to be used and the operator would

1 have to mandate that they are utilized in all those  
2 positions. So when you come to this squeeze and you say you  
3 have to take everything off, if that became the case and you  
4 were not able to comply with the PAPR program, the operator  
5 would not be allowed to continue, they would have to cease  
6 that kind of exposure and have to take other actions to  
7 address that exposure.

8           Just because they get an approved plan to utilize  
9 them doesn't mean that they get to drop everything. If  
10 situations change, those have to be addressed in the plan  
11 such that they can still protect people.

12           So I didn't know if you were familiar, there is a  
13 part of the rule that is referenced as Appendix B, it's an  
14 example of an approve respiratory protection program. That  
15 might be something that you want to look at in conjunction  
16 with the comments that you had on your particular operation,  
17 to see if that addresses it. If not, then to provide us  
18 with those comments so that we can look at that situation if  
19 it needs to be addressed differently.

20           MR. CAGLE: I'll just tell you what's going to  
21 happen, I know what's going to happen on that.

22           MR. THAXTON: Thank you.

23           MR. NIEWIADOMSKI: Marv, could I just ask one more  
24 question for Mr. Cagle?

1           Nothing to do with that, but just your experience.

2    You're at Jim Walters Number 7, right?

3           MR. CAGLE:   Yes, 29 years in the mines.

4           MR. NIEWIADOMSKI:  Are you continuous miner  
5 sections or long wall sections?

6           MR. CAGLE:  We have two continuous miner sections  
7 and a long wall.

8           MR. NIEWIADOMSKI:  Are you working at the long  
9 wall section?

10          MR. CAGLE:  Very few shifts, mostly miner  
11 sections, out by.

12          MR. NIEWIADOMSKI:  Are respirators being used at  
13 Jim Walters Number 7?

14          MR. CAGLE:  Yes, paper filters, paper type, some  
15 people.

16          MR. NIEWIADOMSKI:  Is that something that's issued  
17 by Jim Walters or is that something that the miners ask for?

18          MR. CAGLE:  They're out there, you can get them if  
19 you want them.

20          MR. REYNOLDS:  I have one.  Mr. Cagle, I was just  
21 going to say it doesn't have to be anything fancy that you  
22 submit to the record.  If there's a way you could just make  
23 a xerox copy of what you were reading from at the desk and  
24 we'll just mark on the top that this is in reference to your

1 testimony at the hearing, and give it to Marvin, it'll go  
2 into the record so we can have these guys read through it.  
3 It doesn't have to be a formal submission, just a copy of  
4 what you were reading would be fine.

5 VOICE: We'll be providing that.

6 MR. REYNOLDS: Okay.

7 MODERATOR NICHOLS: Okay, thank you.

8 Larry Bass.

9 MR. BASS: I'm Larry Bass, but I've got my cousin  
10 with me.

11 MODERATOR NICHOLS: Oh, you've got a spokesperson  
12 here.

13 MR. BASS: Yeah.

14 MODERATOR NICHOLS: Okay, that's good. Spell both  
15 your names.

16 MR. BLANKENSHIP: My name is James Blankenship, B-  
17 l-a-n-k-e-n-s-h-i-p and I'm going to be speaking for Mr.  
18 Larry Bass, B-a-s-s since he undoubtedly can't talk this  
19 morning.

20 It says my name is Larry Bass, I've worked in the  
21 mining industry for 32-1/2 years. I work in the bunker area  
22 of the mines on a belt line. It's about 150 feet below the  
23 main coal seam. All of the coal that is mined on my shift  
24 comes through the bunker and goes by me on a belt. I've

1 been on this job for seven years and I haven't been dust  
2 sampled during that time. There should be more out by  
3 sampling done in all mines in this nation.

4 I have never been more disgusted with anything  
5 than I am with your agency's manipulation of the intent of  
6 Congress. I have noticed district changes in MSHA during my  
7 career. For one, MSHA seems to have become a retirement  
8 club for ex-company officials. MSHA currently runs from  
9 enforcement and compliance responsibilities. All the  
10 changes MSHA has proposed in this administration are bad for  
11 miners. May God bless the coal miners, because we have no  
12 other hope under this administration.

13 I object to the following:

14 Any reduction in compliance sampling.

15 Sampling that is covered by policy rather than  
16 regulation.

17 Rules allowing dust levels to exceed two  
18 milligrams before being cited by MSHA.

19 Any reduction in sampling in in by air at the  
20 mines. As stated earlier, I am calling for an increase.

21 A requirement for sampling Part 90 miners being  
22 covered by policy instead of regulation.

23 Rules that recommend the use of airstream helmets  
24 which simply don't work in the humid Alabama climate.

1 MSHA reliance on airstream helmet studies that do  
2 not discuss dewpoint humidity, grindability of coal or mist  
3 of sprays.

4 MSHA's failure to address the role of miners as  
5 outlined by the report of the Dust Advisory Committee.

6 Not requiring sampling from portal to portal.

7 Proposed 70.207 not containing a complete list of  
8 dust control parameters, which includes the rate of  
9 production, drum size, depth of cuts and drum speeds.

10 And last, the use of feasibility to determine the  
11 use of engineering controls. This approach has failed with  
12 noise control and it will fail with dust control.

13 And proposal 70.210 through 70.214 completely.

14 MODERATOR NICHOLS: Okay, thank you very much.

15 Richard Jones, AFL-CIO.

16 MR. DAVIS: Richard could not be here today, I'm  
17 Terry Davis, T-e-r-r-y D-a-v-i-s.

18 MODERATOR NICHOLS: Okay.

19 MR. DAVIS: I'm the AFL-CIO Community Services  
20 Liaison with the Jefferson County AFL-CIO.

21 We represent about 15,000 union members in the  
22 Jefferson County area, voters in Congressional Districts 6  
23 and 7.

24 We also rise to object to the same points as

1 raised by Joe Main and the other coal miners in their  
2 presentations. I commend him for highlighting these  
3 deficiencies with these proposed rules and the manner in  
4 which they have been proposed.

5 In addition, I want the record to show that I  
6 support the Secretary of Labor's Advisory Committee's  
7 finding that MSHA should consider lowering the levels of  
8 allowable exposure to coal dust.

9 The continuous monitors for dust control  
10 parameters should be utilized to evaluate and assess the  
11 quality of dust control measures as part of the mine  
12 respirable dust control plans.

13 MSHA should make no upward adjustments to the  
14 panels to account for measurement uncertainty and miners  
15 representatives should have the right to participate in dust  
16 sampling activities that will be carried out by the  
17 employees for verification of dust control plans, at no loss  
18 of pay.

19 I personally do not believe that MSHA correctly  
20 followed these and other advisory committee recommendations.

21 Thank you very much.

22 MODERATOR NICHOLS: Thank you.

23 Al Henley, AFL-CIO.

24 MR. HENLEY: My name is Al Henley, A-l H-e-n-l-e-



1 y. I'm on the Board of Directors for the Alabama AFL-CIO  
2 and past Assistant Commissioner for the Alabama Department  
3 of Labor.

4 I want the record to show that I share the  
5 positions stated by Terry Davis as well as the positions  
6 stated by my brothers in the United Mine Workers that have  
7 gone before me here today.

8 The record should also indicate that it's my  
9 belief that these proposed rules manipulates the intent of  
10 Congress and the rule of law.

11 I support the United Mine Workers in asking MSHA  
12 to withdraw these terribly flawed proposals. I also would  
13 urge MSHA to solely advance engineering controls and  
14 personal continuous readout dust monitors instead.

15 Thank you.

16 MODERATOR NICHOLS: Thank you.

17 I'm not sure I'll get this next name right, Jason  
18 Yearcut.

19 MR. YEAROUT: My name is Jason Yearout, it's Y-e-  
20 a-r-o-u-t. I'm here representing the law firm of Yearout &  
21 Trailer, who for many years has sought to protect the rights  
22 and safety of working men and women, including members of  
23 the Unite Mine Workers of America.

24 We have many older, respected attorneys.

1 Obviously I'm not one of the older ones, but we all work  
2 diligently and put forth effort to ensure the protections  
3 that should be afforded to these workers, men and women,  
4 including the mine workers.

5           It's my pleasure to be here, and first I would  
6 like to read a statement from Senator E.B. McClain, a  
7 Democrat from Brighton, a member of the Alabama State  
8 Senate, who offers his support to the United Mine Workers of  
9 America.

10           "As a citizen of this great state for many years  
11 and now having the opportunity to represent our citizens in  
12 the Alabama State Senate, I have seen us come a long way in  
13 providing working men and women with a safe place to work.  
14 We have made progress, but we have not finished the job. We  
15 must continue to look ahead and not go back to unacceptable  
16 practices or ineffective regulations with inadequate  
17 protection for workers. I support the UMWA's efforts to  
18 improve on a daily basis the safe working environment of its  
19 workers as well as others.

20           "President Bush's administration should abandon  
21 its regulatory efforts to compromise safety and look ahead  
22 to supporting legislation or regulations that strengthen an  
23 environment for safety in the workplace. Very truly yours,  
24 E.B. McClain."

1           In 1969, the United States government finally  
2 recognized black lung as an occupational disease.  
3 Unfortunately, it was more than 50 years after the mining  
4 industry, its consultants and its doctors became aware of  
5 the dangers and debilitating effects of inhaling coal dust.

6       During and prior to that time, workers were exposed to  
7 unacceptable levels of coal dust and over that period of  
8 time and through the course of a period of between five and  
9 25 years, many workers became disabled and died as a result  
10 of contracting and developing black lung disease.

11           In 1969, there was no such thing as a xerox  
12 machine, a fax machine or a cellular telephone, and a  
13 computer was really nothing more than a big calculator. But  
14 through technology, we have seen rapid and mind-boggling  
15 advancement in the type of innovative mechanisms that we can  
16 develop if we apply the type of hard work and spirit to the  
17 endeavor that the United Mine Workers apply on a daily basis  
18 to the jobs that they do.

19           Through continued progress, scientific  
20 development, innovation and hard work, we can continue to  
21 develop better tools, better tools for measuring coal dust  
22 and implementing regulations which minimize the exposure of  
23 the working men and women to this deadly hazard.

24           And now, as we sit here today, after the adoption

1 of minimum regulations to protect the working men and women,  
2 we find the government once again ignoring the reality of  
3 the danger and ignoring the obvious prospect of the  
4 continuing development of better and more efficient ways of  
5 measuring and minimizing the exposure to these hazardous  
6 inhalable dusts.

7           We can't wait another 50 years, 25 years or five  
8 years or three years for the government to get up to speed  
9 on how to best protect these workers. After President  
10 Bush's pre-election promises and guarantees not to ignore  
11 the needs and the safety of the working men and women in  
12 America, we find ourselves in this administration taking  
13 steps backwards instead of forward. We have seen too often  
14 and most recently in Alabama and across the country the  
15 inability of government to monitor, implement and enforce  
16 the present safety conditions and responsibilities of the  
17 mining industry. Should we relax those standards by  
18 allowing the mining industry to dictate to the government  
19 and the government to dictate to us how those standards  
20 should be implemented? Of course not. We must, for the  
21 health and safety of the miners, not allow a relaxation of  
22 the standards, but enhance the obligations and enhance the  
23 standards, including a continuation of research and  
24 development in this area as well as develop an

1 implementation of standards that eliminate the risk to  
2 miners who will become disabled and die unless we all step  
3 forward and take a stand.

4 I thank you for your time and I urge you to give  
5 due consideration to the safety and welfare of these coal  
6 miners. Thank you.

7 MODERATOR NICHOLS: Thank you.

8 (Applause.)

9 MODERATOR NICHOLS: Keith Plylar -- oh, you want  
10 to go with somebody else?

11 VOICE: Stewart Burkhalter is back.

12 MODERATOR NICHOLS: Okay. Stewart Burkhalter,  
13 AFL-CIO.

14 MR. BURKHALTER: Good morning, Mr. Chairman,  
15 members of the Committee, I thank you for allowing me to  
16 speak on behalf of the coal miners today.

17 My name is Stewart Burkhalter, S-t-e-w-a-r-t B-u-  
18 r-k-h-a-l-t-e-r. I'm President of the Alabama AFL-CIO, I  
19 represent 65,000 members in the State of Alabama in all  
20 seven Congressional Districts.

21 First, I want the record to show that my members  
22 and myself object strongly to the Secretary of Labor's  
23 releasing three proposed rules this year that would affect  
24 coal miners without any proposal to increase the annual

1 health and safety training required for these miners.

2           We object to the very short time frame in which  
3 all of these rules have been released. This places an  
4 unfair burden on the workers' ability to review the proposed  
5 rules and make comments. It also places an unfair burden on  
6 the local union's ability to participate in the comment  
7 process. I believe these unfair burdens are known to the  
8 agency officials and that these same agency officials are  
9 using this process to limit workers' comments and  
10 participation.

11           We object to the manner in which Assistant  
12 Secretary Dave Lauriski utilized the press to misrepresent  
13 the proposed dust rules as well as the position of the  
14 United Mine Workers of America. See the Register Herald,  
15 5903.

16           Now concerning the rule itself, let it be clear, I  
17 rise in opposition to these rules for many reasons,  
18 including:

19           1) The many different matters in which the end  
20 results would be higher dust levels in the mine atmosphere;

21           2) The fact that this proposed rule will result  
22 in less sampling days for the miners;

23           3) That the agency's sampling requirements will  
24 be governed by policy alone, not regulations, meaning

1 sampling will not be guaranteed;

2           4) That this proposes to limit sampling for out  
3 by areas to just one shift per year;

4           5) That it could result in workers being required  
5 to wear airstream helmets instead of maintaining  
6 environmental control measures as required by Congress in  
7 the Mine Act.

8           There are four more changes contained in these  
9 proposed rules that my members and myself object to but they  
10 are too complex for me to try to explain. I am sure that  
11 UMWA miners, however, will discuss them throughout this  
12 process.

13           Thank you very much.

14           MODERATOR NICHOLS: Thank you.

15           (Applause.)

16           MODERATOR NICHOLS: Let's take ten minutes and be  
17 back at noon.

18           (A short recess was taken.)

19           MODERATOR NICHOLS: Back on the record.

20           John Wathen.

21           MR. WATHEN: My name is John Wathen. J-o-h-n W-a-  
22 t-h-e-n. I'm here from the Friends of Hurricane Creek in  
23 Tuscaloosa, Alabama. I also represent the Citizens Coal  
24 Council with offices in Washington, D.C. and Denver,

1 Colorado.

2 I'm here today to speak out on behalf of my  
3 friends and neighbors throughout the coal region of the  
4 United States. I represent the Friends of Hurricane Creek  
5 as well as the Citizens Coal Council in Washington. The  
6 Friends are a grassroots organization that focuses on the  
7 Hurricane Creek Watershed protection and preservation. that  
8 includes all of its tributaries and people living on or  
9 having an interest in the creek. The CCC is a federation of  
10 44 grassroots, like the Friends of Hurricane Creek, across  
11 the nation. Our focus is in coal field citizen rights and  
12 environmental impacts from the coal industry.

13 As an environmentalist, we stand on the opposite  
14 side of a lot of high extraction mining techniques such as  
15 mountaintop removal, long wall mining in certain sensitive  
16 areas; but let me say here and now that neither organization  
17 -- Friends of Hurricane Creek, nor the Citizens Coal Council  
18 -- has ever condemned a single miner for doing his or her  
19 job. we do, however, stand in direct opposition to money-  
20 grabbing fat cats and enforcement agencies that consistently  
21 try to undermine the laws and rules and make it less safe  
22 for our neighbors working underground, for a bigger profit  
23 margin.

24 These changes will not only affect the miners, but



1 will have an environmental effect on people on the surface  
2 as well. There will be more dust allowed to settle in the  
3 water within the mine that will have to be pumped out into  
4 our streams. Since current slurry ponds are at or reaching  
5 full capacity, this presents a real challenge to deal with  
6 for the receiving streams. There will be more dust exhaust  
7 at the vent fans, causing more air pollution in the  
8 surrounding areas. This dust will settle onto the surface.  
9 With rain, that dust will become water-borne pollution in  
10 our streams.

11           The third comment I'd like to make -- I need to  
12 make some separation here. This comment is made on behalf  
13 of the Friends of Hurricane Creek only, it does not reflect  
14 the Board consensus of the Citizens Coal Council, we don't  
15 deal in safety issues, we don't feel we have the expertise.

16           But the strongest reason we feel from the Friends'  
17 standpoint to block this rule change has nothing to do with  
18 the environment at all. It concerns our neighbors who are  
19 forced to work in less safe areas. These men place their  
20 lives on the line daily. In my opinion, their job is second  
21 only in danger to our nation's police force who know every  
22 day when they go out that their lives are on the line, to  
23 give us all these extra lightbulbs that we've got to have in  
24 here today.

1           Don't make it more dangerous for these men. If  
2 anything, MSHA should be trying to decrease the amount of  
3 dust in the air, instead of allowing it to be increased.

4           I hope that the memory of the 13 miners killed at  
5 Jim Walter not long ago will trigger an alert within MSHA.  
6 It was excessive airborne volatiles ignited by a spark. The  
7 airborne explosives were dust and methane. As it appears  
8 obvious that the dust and methane could not be controlled at  
9 the mine, it now also appears that MSHA and the National  
10 Mining Association are trying once again to facilitate the  
11 killing of our miners, either by slow death brought on by  
12 black lung, or simply blowing them to bits to increase the  
13 bottom line for the fat-cats. These fat-cats never receive  
14 the results of their higher profit margin.

15           (Applause.)

16           MR. WATHEN: Our neighbors' lives are worth a lot  
17 more than a few bucks at the bottom line of somebody's  
18 profit margin.

19           As an environmentalist today, I feel very much  
20 like a duck out of water sitting in front of all these  
21 miners speaking, but these miners are my neighbors and  
22 because of that fact, it's time to speak out on human  
23 rights.

24           John Wathen, Director, Friends of Hurricane Creek;

1 Chairman, Board of Directors, Citizens Coal Council,  
2 Washington and Denver.

3           On a personal note, I would like to add something.  
4 I noticed that most of you gentlemen sitting on this panel  
5 are wearing glasses today, as I. What happens when you go  
6 out of a building and step into the war moist Alabama air?  
7 These glasses fog up. What happens -- I don't know how many  
8 of you actually do physical labor, but when you labor in our  
9 atmosphere, what happens to your glasses? What's going to  
10 happen to these miners underground when you suck this warm  
11 moist air down in on top of them with these plastic shields  
12 over their faces?

13           Protect our miners, gentlemen. Don't take away  
14 their rights to safety.

15           (Applause.)

16           MODERATOR NICHOLS: Keith Plylar.

17           MR. PLYLAR: Let me get these glasses on, I'm like  
18 y'all, I can't see anything without them.

19           Good evening.

20           MODERATOR NICHOLS: Evening.

21           MR. PLYLAR: My name is Keith Plylar, K-e-i-t-h P-  
22 l-y-l-a-r. I am currently Chairman of the Health and Safety  
23 Committee for Local 2397, United Mine Workers of America.

24           I've had the opportunity, unfortunately, to be at

1 several of these hearings this year concerning different  
2 regulations that MSHA has been proposing. I usually say,  
3 like other speakers, that I appreciate the opportunity to be  
4 here today. Let me tell you that I'm outraged to have to be  
5 here in front of you again commenting on a regulation that  
6 is going to cause more miners to have more black lung, is  
7 going to devastate their families throughout.

8           This new regulation will also allow mine operators  
9 to manipulate the dust sampling process. I am tired of MSHA  
10 trying to cram regulations down the throats -- down our  
11 miners' throats. We can't even get the material in a timely  
12 manner that y'all are submitting as proposed rules to review  
13 and adequately make comments on.

14           I was in a meeting a couple of months ago at MSHA  
15 District 11 right here in Birmingham with several other  
16 safety committees and an international safety  
17 representative. We asked the district manager -- at that  
18 time, acting district manager -- for a copy of these  
19 regulations. To this day, he has not provided us a copy of  
20 these regulations. Yes, I have went out and got copies of  
21 them, had to take time and money that our local does not  
22 have, to make copies of these regulations, to try to get out  
23 to our membership so that they can better understand what  
24 MSHA is trying to cram down our throats.

1 I'd also like to inform you that since January of  
2 2003, as I stated before, in a five month period, I have  
3 been in hearings from Kentucky to Birmingham, commenting on  
4 three different regulations that's proposed by MSHA. One  
5 concerning evacuation procedures; secondly, concerning belt  
6 air; and thirdly, these dust regulations that y'all claim is  
7 going to help miners. This put a very tight financial  
8 burden on our local. This process takes time away from our  
9 jobs while we're reviewing and writing comments and I assure  
10 you -- assure you -- that we do not have the finances at the  
11 local level to take time away from the work to review such  
12 ridiculous regulations as you have proposed.

13 Every time I go to a hearing, I hear MSHA, or  
14 every time they propose regulations, say that they have to  
15 consider the expense that this new regulation is going to  
16 put on operators. And I think as I testified to Marvin, or  
17 talked to Marvin last hearing, seems like y'all never  
18 consider -- MSHA never considers the expense and the burden  
19 that it puts on the United Mine Workers, especially at the  
20 local level. Once again, I am appalled that MSHA is trying  
21 to push this new regulations on us.

22 I'm here today requesting that these proposed  
23 rules be withdrawn immediately and some more time put into  
24 drafting new regulations. It is very evident that the new

1 rules cater to the mine operators, does not do anything to  
2 guarantee miner's a healthy environment in which to work.

3           As Mr. Lauriski, this great company personnel  
4 manager, that's in charge of health and safety now for the  
5 miners, has stated, the UMWA has proposed in the past that  
6 MSHA take over the dust sampling process. He's correct on  
7 that issue. But at no time -- no time -- and I challenge  
8 you to go back to the 2000 hearing and any and all other  
9 comments submitted from miners -- at no time have we  
10 requested that MSHA sample less than what the operator is  
11 already required to sample. We have recommended that MSHA  
12 do more sampling than the operator is required to do.

13           This rule does not replace the operator sampling,  
14 but MSHA's own compliance sampling would be reduced up to 50  
15 percent, and sampling is only by policy, not regulation,  
16 which brings me to another point.

17           If we're going to set out new regulations, why not  
18 it be mandated in the regulations how we're going to sample,  
19 how often we're going to sample. Everything that I've read  
20 in this new regulation states that the sampling that MSHA  
21 does will be strictly by policy and I assure you, I've been  
22 on the health and safety committee for United Mine Workers  
23 for going on 17 years and I have seen policies change  
24 constantly. I've seen us go from doing a bimonthly sample

1 to sampling once a quarter. I've seen policy changed on the  
2 way they inspect the underground mines. It's a constant  
3 changing thing any time you leave any type of regulation up  
4 to MSHA or a district manager, under them to be in charge of  
5 it under policy.

6 Not only should MSHA sample more frequently, but  
7 it should be mandated by the regulations that MSHA be  
8 sampling at least once each month -- at least.

9 The proposed rule addresses a single sample. And  
10 on the surface, this seems good. You heard Mr. Thaxton's  
11 report up there talking about that they come out and just  
12 sample one person, you do not have to figure all the samples  
13 that you take before you can come out of compliance and  
14 average them all together. But if you read on into this,  
15 this single sample is not as good as it reads. The best I  
16 understand it is that you would go down there and run a  
17 sample on a single shift for eight hours. I think there's a  
18 part in the regulation that talks about you go down there  
19 and you turn the pump on once the miner gets in by the  
20 loading point. You run this sample for eight hours, then  
21 you cut it off.

22 Our miners have numerous times at numerous  
23 hearings testified that we want to wear the pump the entire  
24 shift, portal to portal, whether it be 10 hours, 16 hours a

1 day.

2           So Mr. Lauriski states that he is catering to the  
3 mine workers, that he is going on -- this regulation is  
4 going on behalf of what we've asked for. That is simply a  
5 lie and I can't say it any better, it's strictly a lie.

6           The new rule proposes that the sample start, as I  
7 talked about, when the miner enters the section, turn it off  
8 eight hours later. This is ridiculous. This rule would not  
9 measure the miner's true exposure. The mines that I  
10 presently work in has high velocity of air on the track  
11 entries, which with a high velocity air and track equipment  
12 going up and down this, creates more airborne dust. The  
13 only way to get a true sample of what the miner is in, is  
14 the sample him from portal to portal.

15           We heard that, well, you want to sample him on the  
16 working section so you'll know whether the plan works, where  
17 he can stay in compliance with what the operator submitted  
18 in their plan. I'm here to tell you today that dust is  
19 going to kill that miner regardless of where it's at.  
20 Whether it's on that working section, that working long wall  
21 or in that out by area. Therefore, that miner should be  
22 sampled from the time he enters that coal mines to the time  
23 he comes out.

24           The new rule proposes to take samples on several



1 miners on a shift, but if more than one miner is exposed  
2 over the standard, then MSHA would issue only one citation.

3 The only way the miner can be assured that the operator  
4 stays in compliance with any regulations is if the operator  
5 is worried about getting citations, unfortunately.

6 MSHA should be required by the regulations to  
7 issue a citation for every miner that is out of compliance,  
8 not only one citation. We have seen in the past -- I've  
9 been involved with this long enough to know that the only  
10 time that the operators seem to worry about staying in  
11 compliance with any regulations is if they're worried about  
12 getting a heavier fine. I've been in many court cases with  
13 ALJs where the operator was arguing over violations because  
14 of the monetary value of it, strictly, trying to get the  
15 monetary value reduced.

16 Unfortunately, I'd like to say that all operators  
17 would like to comply with regulations just to protect the  
18 miners. But today, I'm not speaking only of just the  
19 operator that I work for, I'm speaking of operators  
20 throughout the nation. The record shows that the only time  
21 that they try to come in compliance is if the violation  
22 increases the amount of money that they have to pay for that  
23 violation.

24 If the operator could mine thousands of tons on a

1 shift and only get one citation for over-exposure, then you  
2 do the math. It's a lot cheaper to pay that one fine than  
3 it is to cut down on production. All you have to do is to  
4 look at the operator's history of noncompliance with federal  
5 regulations, and the only time they attempt to stay in  
6 compliance.

7           The new rule states that the only way a citation  
8 can be written is if the sample results is over 2.3  
9 milligrams. But the standard is 2.0 milligrams. I think  
10 the committee has heard today the feeling of the miners on  
11 this. MSHA explains this by saying that the dust sampler  
12 does not always give precise results, but MSHA does not  
13 consider that a sample that reads 1.8 milligrams or 1.9  
14 milligrams could actually be 2.1. You know, y'all's theory  
15 is you always go above the two milligrams to allow for any  
16 malfunction of the sampler. Well, who's to say that that  
17 sampling device is not malfunctioning at 1.6 and you're  
18 actually exposing the miner to 2.3, 2.5?

19           The regulation is 2.0 milligrams and any samples  
20 that go over 2.0 should be cited. MSHA should remember that  
21 the Mine Act was adopted to protect the miner, not to  
22 protect the operator. With these new regulations, the  
23 operator will continue to get rich at the expense of miners'  
24 health.

1           The citation threshold value is not contained in  
2 this regulation, it seems that MSHA has created the term CVT  
3 to represent dust levels that must be exceeded before a  
4 citation can be issued. MSHA claims the value is determined  
5 by the current 2.0 milligram standard; however, they are  
6 building in a 95 percent confidence factor, a factor that  
7 would err on the side of the operators and miners have to be  
8 exposed to at least 2.3 milligrams before a citation could  
9 be issued.

10           Clearly, Section 101(a)-(9) of the Mine Act states  
11 that no mandatory health and safety standard promulgated  
12 under this title shall reduce the protection afforded to  
13 miners by an existing mandatory health and safety standard.

14           Section 202(b)-(2) of the Mine Act states that  
15 effective three years after the date of the enactment of the  
16 Act, each operator shall continuously maintain respirable  
17 dust in the mine atmosphere at or below 2.0 milligrams. The  
18 Act does not say 2.3, gentlemen. I do not understand why  
19 that you are trying to be in direct conflict with the Mine  
20 Act that was put in place in 1969 to protect the miners.

21           This rule must be withdrawn and rewritten and MSHA  
22 should use the guidelines that the 1996 Federal Advisory  
23 Committee recommended to help eliminate black lung. MSHA  
24 has totally ignored and turned a deaf ear to miners'

1 comments in the 2000 proposed regulation hearings.

2 I am sure that the committee is aware that in  
3 1995, the Secretary of Labor appointed a Federal Advisory  
4 Committee which was made up of two representatives each of  
5 miners and mine management and five neutral representatives  
6 who had no interest in the mining industry.

7 The new regulations totally contradict the  
8 advisory committee's recommendations. The committee called  
9 for lowering dust levels, MSHA has proposed increasing dust  
10 levels. The committee called for increased compliance  
11 sampling. MSHA has decreased sampling. The committee  
12 called for MSHA takeover of mine operators' sampling  
13 program. MSHA has eliminated the operator compliance  
14 sampling with no regulations replacing it, only policy. The  
15 committee called for use of continuous dust monitors so  
16 miners would know what they are being exposed to. But MSHA  
17 proposed regulations containing no rules requiring them.  
18 The committee called for a single full shift compliance  
19 sampling and the new rule excluded that from our compliance  
20 sampling.

21 This is only some of the recommendations that the  
22 Advisory Committee made, but it appears, as you can see,  
23 that MSHA has totally ignored their recommendations.

24 MSHA should be writing regulations that would

1 assure miners a healthier place to work, instead of drafting  
2 regulations to help operators stay in compliance.

3           Also, in September of 1995, NIOSH -- National  
4 Institute for Occupational Safety and Health -- issued its  
5 report, Occupational Exposure to Respirable Coal Mine Dust  
6 document. That report makes critical recommendations for  
7 protecting miners' health. NIOSH recommended that  
8 respirable coal mine dust be limited to one milligram, as a  
9 time/weight average concentration for up to 10 hours per day  
10 during a 40-hour work week, but MSHA has disregarded any  
11 sampling beyond the eight hours.

12           The Dust Advisory Committee recommended that  
13 miners be given the right to participate in sampling  
14 activities that would be done by the employer verification  
15 of dust controls at no loss of pay and that miners'  
16 representatives receive training to conduct respirable dust  
17 sampling paid by the employer. By including this into the  
18 rule, you would have addressed two major issues that miners  
19 have raised for years -- more sampling and greater  
20 participation by miners. The agency did not put either into  
21 the proposed rules and NIOSH has urged a greater role in the  
22 sampling program for miners.

23           Requiring the operator to notify the miner or  
24 representatives of their plan to conduct sampling is of

1 little significance unless they suffer no loss of pay as  
2 prescribed in Section 103(f) of the Mine Act. The financial  
3 loss alone represents a hurdle too large for miners to  
4 become involved in a meaningful way. The full participation  
5 miners have demanded in the dust sampling process at  
6 countless hearings is not achieved by this proposed  
7 regulations.

8           Let me tell you today, I've talked about financial  
9 burden on the local level. There's no way that we can  
10 afford to go down there shift after shift and day after day  
11 and monitor this sampling if we're not paid by the operator.

12           Section 7204 of the proposed regulation states  
13 that the operator will do the dust sampling for plan  
14 verification. This represents a complete change from MSHA's  
15 2000 proposals, which require MSHA to conduct the sampling  
16 to verify the dust control parameters with paid miners'  
17 representatives traveling during the verification.

18           This is totally ridiculous to think that operators  
19 will not manipulate the sampling process. Miners have been  
20 testifying at hearings for years that operators can and will  
21 manipulate the process. The only way to truly know what the  
22 miners are having to work in down there, and the only way to  
23 truly know if a plan works, is for MSHA to be on site doing  
24 sampling themselves.

1           Mr. Thaxton talked before about if a plan, say on  
2 the long wall, you're required to have a 100 cfm, they go  
3 down there and do it and the operator -- excuse me -- you're  
4 required to have 50 cfm and you go down there and the  
5 operator, during his sampling for compliance has 100 cfm.  
6 You say that then he's got to put that into his plan. Let  
7 me ask you, what operator is going to go down there and  
8 govern theirselves and going to write in if they have 100,  
9 they're going to write in that 100 cfm? Well, you say MSHA  
10 can come back and see if they're in compliance with their  
11 own plan. They're staying in there, if they have more than  
12 what's required by their plan.

13           I'm here today to tell you that currently and for  
14 years in the past, we have sampled with twice the amount of  
15 air on the long wall face and we've never had that in there.  
16 On the surface, this new part of the regulation sounds  
17 good, that the operator has got to put in the plan exactly  
18 what he's got when he samples, but how do you know what he's  
19 got, because you're not going to be there. No one from MSHA  
20 is going to be there when he does this. If he can get in  
21 compliance with 60 cfm, then that's what he's going to put  
22 in, 60, but yet when he's not doing his plan verification,  
23 he's going to run it up to 100 or he's going to cut it back  
24 down to 30 or 40 minimum. The only way to actually know

1 what the company has on that working section, that MMU, is  
2 for MSHA to be there during that sampling plan verification.

3           Once again, I've used this term many a time, by  
4 allowing the operators to do plan verification sampling  
5 would be the same thing as me or you stopping a state  
6 trooper and telling him to write us a ticket because we've  
7 been speeding, or either wait right down the road, we're  
8 going to be speeding in a minute and then you can write us a  
9 ticket. It's no different. It's time for the company to  
10 quit being responsible for monitoring their dust. It's time  
11 for MSHA to complete take it over -- completely, all sample  
12 processes.

13           Once again, I think that you've heard already, but  
14 I want to remind the committee, that several operators have  
15 been convicted for fraudulent dust sampling in the past.  
16 Despite this fact, the agency has entrusted a key component  
17 of the dust sampling control program to the same cast of  
18 operators. The ability to manipulate the controls, to alter  
19 the results of the samples still exists today as it did in  
20 the 1980s. MSHA has built a flaw in the proposed  
21 regulations. These regulations could allow the operator up  
22 to 12 months -- 12 months -- to verify their plan, and  
23 that's going on my calculation, the way I understand these  
24 new regulations.



1           If MSHA would require the use of a personal  
2 continuous dust monitor, it could speed up this process and  
3 that would help eliminate major dust problems in the  
4 nation's mines. You think about it, folks, committee, y'all  
5 go down there and work for 12 months out of compliance on  
6 dust. Think how it increases the chances of you getting  
7 black lung. You've built into this plan right here to give  
8 an operator, the best of my calculations, 12 months to get  
9 below a 2.3 standard that you're raising this respirable  
10 dust to. There's no way that you should give an operator up  
11 to 12 months to get in compliance.

12           The personal dust monitor technology, to my  
13 understanding, is in the final test phase, and they should  
14 be permitted to be completed so that an adequate respirable  
15 dust rule can be built around that device. Plan  
16 verification and compliance could be built into the system.  
17 I've heard people testify this morning, even one of the  
18 committee, that this device is into the final stages of  
19 testing. Why in the world MSHA wants to push a regulation  
20 down our throat right now knowing that a device is going to  
21 be available hopefully in a few months that you can go down  
22 there and sample continuously what a miner is exposed to.  
23 Why all of a sudden in a rush, MSHA decides we're going to  
24 go forward with these regulations?

1           For years, miners have been complaining. For  
2 years we have been testifying that yes, we need new  
3 regulations, we need an MSHA takeover, we need MSHA down  
4 there sampling more often. But yet, y'all have drug your  
5 feet on any new regulations over the years and now about the  
6 time the device is going to be approved, all of a sudden  
7 you're going to throw it at us. I have to sit here and say  
8 today that the only perception that I come to on this is  
9 that the administration that's over MSHA right now is trying  
10 to cater to the operators and trying to shove something down  
11 the miners' throats. You're not listening. Either the  
12 committee is not listening or either your bosses are not  
13 listening.

14           Section 70-209 of the proposed rule contains  
15 provisions that allows mine operators to replace  
16 environmental and engineering controls with respirators  
17 which miners call airstream helmets. Section 70-209 states  
18 that if the verification limit is exceeded and the operator  
19 believes that the MMU is using all feasible engineering or  
20 environmental controls during the operator sampling under  
21 70-206, they can request supplemental controls in the form  
22 of airstream helmets, PAPR.

23           Depending on the circumstances, that will allow  
24 the operator to increase dust levels above the two milligram

1 in active workings. Miners' representatives would be  
2 notified of the operator's plan and be allowed to send  
3 comments to MSHA, but would have no legal right to stop the  
4 plan. Once again, let me say to you that over the years, in  
5 the late '80s and the early '90s, at the mine that I  
6 currently work at now, Jim Walter Resources Number 7, we  
7 have had continuous problems with respirable dust on the  
8 long wall. We've had several occasions where the operator  
9 has said we've done all we can do, we can't do any more, we  
10 can't get in compliance. We went to different sampling  
11 plans, had what we call the Haney factor that we used, some  
12 of you might remember that. Very confusing. But let me say  
13 today that every time we said we had used all engineering  
14 controls, we found something else to do to get the  
15 respirable dust down.

16 I've worked on long walls, been a representative  
17 at that mine where we have long walls, that have went a  
18 complete panel of out of compliance until the pressure was  
19 put on to get more engineering controls. And the operator  
20 came up with engineering controls and we came back down in  
21 compliance.

22 I'm telling you today if you put this type of  
23 regulation in effect, the first thing the operator is going  
24 to do -- and probably I would do it or you would do it if

1 you was an operator, is going to say we've used all the  
2 engineering controls that's available for us. Because at  
3 the end of the day, it's going to be cheaper for that  
4 operator to get an airstream helmet and throw on a miner and  
5 go down there and allow that miner to work anywhere from two  
6 milligrams to eight milligrams of respirable dust. You  
7 think about it, instead of getting out there fighting for  
8 the technology, putting more equipment in that mines or  
9 whatever it takes to reduce that dust, they're going to  
10 throw an airstream helmet on you. And I think, if you  
11 haven't already, you'll hear a lot of testimony why a miner  
12 shouldn't have to be wearing that airstream helmet.

13 I'm telling you today that you're going the wrong  
14 direction. You're building something into this regulation  
15 that is going to allow the operator -- by y'all's own  
16 admission, allow the operator to work miners in more  
17 respirable dust, and also the make it cheaper for that  
18 operator. It's time to stop that, it's time to force the  
19 operators to come up with engineering controls, not throw a  
20 respirator on him and get him down there to where he can't  
21 see, because I can tell you today, if you go down and work  
22 on that long wall, you will not wear one of them airstream  
23 helmets for eight hours if you're on that long wall face.  
24 It's impossible -- very impossible to do.

1           Section 202(h) of the Mine Act states in part that  
2 respirators shall be made available to all persons exposed  
3 to concentrations of respirable dust in excess of the levels  
4 required to be maintained under the Act. The Mine Act also  
5 states that respirators shall be -- shall not be, excuse me  
6 -- make that clear -- respirators shall not be used or  
7 substituted for environmental controls in active workings.

8           So by allowing operators to require miners to wear  
9 respirators, they can be in compliance and be allowed to  
10 increase the dust levels above two milligrams. Folks, this  
11 is a direct violation of the Mine Act. All you've got to do  
12 is get a copy of it and read it. It plainly states that the  
13 operator should not use airstream helmets, respirators,  
14 PAPRs, whatever you want to call them, to come in  
15 compliance.

16           These MSHA proposals are not only in conflict with  
17 the Mine Act, Title 30 of the CFR and numerous studies and  
18 findings, they would also diminish miners' protections.  
19 Instead of throwing miners in unhealthy dust levels that  
20 have not been permitted since prior to the 1969 Mine Act,  
21 the dust standards need to be lowered and miners need to be  
22 equipped with continuous dust monitors to keep them out of  
23 unhealthy dust.

24           Section 70-213 of the new regulations under the

1 title Administrative Controls, Requirement for Approval,  
2 states that the operator is required to submit a revision to  
3 the ventilation plan in order to use supplemental controls.

4 The revision must state the controls, environmental and  
5 administrative, that are being employed at and how the  
6 operator intends to assure that they are complied with. The  
7 revised plan must then be verified by the operator within 30  
8 days of submission.

9           Once again, operators have stated historically  
10 when they come out of compliance that they have exhausted  
11 all engineering controls and there's nothing to think that  
12 they wouldn't do that again.

13           Section 70-215(c) of the new regulations states  
14 that if any valid sample exceeds the citation threshold  
15 value formerly listed in Table 72, the district manager may  
16 or may not require the operator to revise the dust control  
17 plan and verify its adequacy.

18           There again, we should not be putting anything in  
19 the district manager's hands. It should be mandated by  
20 regulations. There's too many plans already that are  
21 submitted on a daily basis to the district manager over  
22 there and the manager takes time to write comments and it  
23 seems like we get a deaf ear turned to it. The next thing  
24 we know, we've got the plan approved as is, regardless of

1 whether it works. We don't even have MSHA personnel 90  
2 percent of the time to come down and verify if the plan  
3 works. They submit a plan, put it in place, and that's the  
4 end of it. The regular inspector during his quarterly  
5 inspection might look at it or might not look at it. You  
6 should take all this out of the district manager's hands.

7           We're constantly in Birmingham, seems like,  
8 changing district managers. So we don't know what one  
9 policy is from the next.

10           Section 70-209 and 70-212 of the new proposed  
11 rules states that MSHA will consider all comments from the  
12 representatives of the miners and provide copies of these  
13 comments to the operator upon request. Think about it just  
14 a minute. What's wrong with that? It's telling me and it's  
15 telling all miners that yeah, any time a plan is submitted,  
16 they can write comments and send them MSHA district manager,  
17 but in turn, he's going to turn right around and send them  
18 comments to the operator. I think that's in direct conflict  
19 of what the Mine Act's intention was and the intention of  
20 the Mine Act was to protect the miner and the only way to  
21 protect the miner is to give him the ability to comment or  
22 complain to MSHA about a situation going on down at that  
23 mine site. If you turn around and send back to the operator  
24 any comment that a miner sends them, and MSHA takes it back

1 to the operator, what is that going to do? It's going to  
2 intimidate that miner from writing any comments to any plan  
3 or reporting any hazard.

4           We've already took this out in the ventilation  
5 requirements that came out. You put that inactive in there,  
6 in part 75, where any time you submit comments to MSHA on  
7 the operator's plan, they have to send the comments -- if  
8 the operator requests, let me say, you send the comments  
9 that the miner has sent to that operator. It's an  
10 intimidation factor. I assure you probably here in  
11 Birmingham we don't have a lot of problem with intimidation  
12 factor because of the union, we have the United Mine Workers  
13 to protect us in law. But there's a lot of miners that  
14 doesn't understand that protection that they're provided  
15 under the Mine Act, whereas they would not submit something,  
16 afraid that the operator is going to retaliate against them.

17           You know, there's miners all across this nation  
18 today that will not speak up about conditions already in the  
19 mines because they're worried about retaliation. For you to  
20 put anything in this new regulation that is going to require  
21 MSHA to send the operator any comments that a miner sends  
22 them is strictly a violation of the intent, I feel, of the  
23 Mine Act. This language should not be in there. There's no  
24 problem with sending an operator the comments that you've



1 gotten from a miner or a miners' representative as long as  
2 you sanitize it first. Make sure that you take the miner's  
3 name away from it, make sure that you protect that miner and  
4 that miner's right.

5 I can tell you right here in Alabama, we've had  
6 several 105(c) cases filed against operators where they've  
7 discriminated against miners and miners' representatives for  
8 reporting unsafe acts. Are we going to continue to build  
9 something in the regulation that can allow that again?  
10 That's what you're doing, folks. There's no purpose for that  
11 language to be in this regulation at all.

12 But to me, it is evident from these hearings that  
13 I've been involved in in the last five months, that MSHA  
14 undoubtedly is trying to also intimidate the miner and the  
15 miners' representatives from commenting, because any time we  
16 comment, they've got to take time to review our comments.  
17 And I'm sure that the less comments MSHA gets, the better  
18 off they are with the plan.

19 The proposed rule in Part 90 would revise the  
20 current standard. The proposed rule not only fails to  
21 adequately increase protections for these miners who are  
22 afflicted with black lung disease already, such as increased  
23 sampling; it reduces protections they currently have.  
24 Mandatory bimonthly respirable dust sampling of the Part 90

1 miners were eliminated and will be controlled by ever-  
2 changing MSHA policy. And I underline ever-changing,  
3 because the policy changes on a regular basis. We have seen  
4 how MSHA is constantly changing their policy on how they  
5 current sample in other safety inspections at the mines.

6           Continuous dust monitors are needed to adequately  
7 protect these miners on each shift each day, but they are  
8 not required by this proposed rule.

9           Let me say, I think I heard Marvin or someone else  
10 say at the start that it's built into this process to where  
11 an operator can use these automatic continuous dust  
12 monitors. That's all they did is to make a recommendation  
13 that the operator could use them, nothing mandated that they  
14 should use them. It should be required in here, in this  
15 regulation, that an operator be mandated to use the  
16 continuous monitor sampling.

17           We've been fighting for it for years, MSHA has  
18 been promising us for years that we would have this device.  
19 Why not mandate it by regulation when it's approved or when  
20 it's ready, that it will have to be used, so a miner knows  
21 what he's exposed to on an hourly basis underground. If he  
22 knows what he's exposed to, he might can move himself to a  
23 safer place, a healthier place to work.

24           Once again, let me say that these new rules are

1 very complicated, they're very confusing, to say the least.  
2 and they will, no doubt, lead to more cases of black lung.  
3 I sat down and started reading over these regulations over  
4 two weeks ago and I'm just as confused today as I was then,  
5 there's a lot of stuff I don't understand. A lot of things  
6 that was said well, it's better, I don't know that it's  
7 better. I've had to get interpretations of it. Did not  
8 have nobody come around explaining the regulation before  
9 these hearings, you know. If you're so concerned, or Mr.  
10 Lauriski is so concerned about stakeholders -- and that's  
11 what I think he calls the miners and operators today -- why  
12 didn't you have meetings to discuss these new proposed  
13 changes before you had actual hearings. Our time is running  
14 out. We have prepared comments but I'm here today  
15 explaining to you, I have written comments that I will  
16 present to you, to the best of our ability that we've  
17 figured out what is going to cause an increase in dust in  
18 our mines. But once again, it doesn't seem like MSHA cares,  
19 they want to run through the process, they just want to  
20 throw it on us, cram it down our throat.

21 I think at the start of the meeting, Mr. Thaxton  
22 gave an overview of the new proposed regulations and I have  
23 to give him credit, he made it sound very good. If you just  
24 listened to what he was saying up there, it sounded pretty

1 good. But if you read the regulations thoroughly, you'll  
2 see that it is very complicated, especially the formulas  
3 that are used. And it would take an attorney to really get  
4 down and understand exactly all these regulations.

5           A couple of other things and I'll close. I want  
6 to read something out of the comment period talking about  
7 these airstream helmets, I think this was back in Utah in  
8 2000, August 16 of 2000. And it was a question from Mr.  
9 Huett with NIOSH and it says "What is your opinion regarding  
10 the height limited situations and the use of the airstream  
11 or PAPRs, airstream helmets and other types of similar  
12 respirators?" Mr. Tatum answered, this is Randy Tatum, a  
13 top safety official of Energy West Mining, and his answer  
14 was "Certainly as height decreases and spaces become more  
15 confined, it becomes more difficult to wear that apparatus."

16           There was another question by Mr. Grayson from  
17 NIOSH, "I've got a question, Randy, with respect to the use  
18 of PAPRs in your mine, in what conditions are they being  
19 used and what position are they being used, in an approved  
20 condition or in a modified condition, even if the miners may  
21 modify them at times?" Randy's answer is, "I would have to  
22 answer honestly and say that they'll be used in a modified  
23 condition. Miners, some, you know, have typically removed  
24 the shroud and I don't know the term for it, but we call it

1 the shroud. Of course, when you say they're properly used,  
2 I think NIOSH would say do they keep the face piece down at  
3 all times. No, they don't, they raise the face piece to  
4 communicate and so on."

5           Here's a question from Mr. Nichols, "Well,  
6 generally, we've had a lot of testimony that they're too  
7 heavy, they don't work, they clog up. Miners use rags and  
8 whatever for filters. Are you aware of any major problems  
9 with airstream helmets currently in use?" Another company  
10 official, Mr. Watson, his answer, "I know that there was a  
11 problem. We've had discussions with NIOSH regarding the new  
12 filters, using them, the HEPA filter as opposed to the  
13 filter that was used previously. I know that there are some  
14 problems that have resulted from these filters, but I also  
15 know that there are efforts underway to try to come up with  
16 resolution."

17           I can sit here today and tell you that we're  
18 dealing with the same airstream helmets, same type that we  
19 had back in 2000, that miners testified to over and over and  
20 over that they cannot use these airstream helmets. If you  
21 work on a long wall face, anywhere from a 50 to 65 inch seam  
22 of coal, there's no way to wear that airstream helmet. You  
23 go down there and you work in a shield or you work on a  
24 shield, you do mechanical work and you're down there behind

1 that shearer and you try to wear this airstream helmet.  
2 There's no way that you can do it. There's no way miners  
3 will do it. You're building a system into this regulation  
4 that is flawed, that miners will not use and cannot use (1)  
5 because it adds greater risk to them, adds greater risk from  
6 a rock falling out on them, from them falling into the pan  
7 line, fogging up, not being able to see.

8 I'm telling you folks, there's no way that a  
9 respirator will be able to be used to come into compliance.

10 I assure you at the threat of a long wall or a threat of a  
11 miner section being shut down because they're not in  
12 compliance, the operators will get in compliance with  
13 engineering controls.

14 In closing, let me say if you look behind me, we  
15 have several miners here today. These miners are over here  
16 today without pay, they're not getting paid. They're taking  
17 their time because they're concerned and they don't  
18 understand everything that's in these regulations because  
19 it's complicated, but they've been explained and read enough  
20 to know that they needed to be here. We are concerned.  
21 This regulation should be withdrawn and should be rewritten  
22 to incorporate the continuous dust monitor.

23 Once again in closing, let me reaffirm, withdraw  
24 these regulations, whatever it takes -- withdraw these

1 regulations.

2 Thank you.

3 MODERATOR NICHOLS: Thank you.

4 (Applause.)

5 MODERATOR NICHOLS: James Blankenship.

6 MR. BLANKENSHIP: Mr. Chairman, Ms. Ann Skelton is  
7 President of West Alabama Labor Council.

8 MODERATOR NICHOLS: Yes.

9 MR. BLANKENSHIP: She has an appointment later on,  
10 would it be possible if she went --

11 MODERATOR NICHOLS: Yeah, that's fine.

12 MS. SKELTON: Thank you, Mr. Chairman.

13 My name is Ann Skelton, A-n-n S-k-e-l-t-o-n, I'm  
14 President of the West Alabama Central Labor Council, AFL-  
15 CIO; Vice Chairman, Region 8 CAP Council. CAP is an acronym  
16 for Community Action Program, which is the political wing of  
17 the United Auto Workers International Union; Vice Chairman,  
18 Alabama CAP Council; State Vice President and State Chapter  
19 President for CLUW, which is the Coalition of Labor Union  
20 Women; Financial Secretary, UAW, Local 2083, Tuscaloosa,  
21 Alabama.

22 As Vice Chairman of Region 8 CAP Council, I  
23 represent 60,000 active UAW members and approximately 18,000  
24 retirees covering 11 states and four counties in

1 Pennsylvania. Our membership includes voters in 98  
2 Congressional districts.

3 As President of the West Alabama Labor Council, I  
4 represent approximately 13,000 members in four counties with  
5 two Congressional districts, primarily in the 6th and 7th  
6 districts.

7 As Vice Chair of Alabama CAP Council, I represent  
8 15,000 active and retired UAW members in the State of  
9 Alabama, which covers all seven Congressional districts.

10 As State Vice President for CLUW, I sit on the  
11 International Executive Board for CLUW which represents  
12 union women in the labor movement all over the United  
13 States.

14 I ask the record to show that I support the  
15 positions previously stated by officials from the Alabama  
16 AFL-CIO and my brothers from UMWA, many of whom are  
17 represented by the West Alabama Central Labor Council.

18 I was very disappointed in a newspaper article  
19 that was published on Friday, May 16, quoting the head of  
20 U.S. Mine Safety and Health Administration, saying that he  
21 would reject the request by UMWA to withdraw the  
22 government's proposal to take over the coal dust testing. I  
23 am very perplexed by an agency that proposes to change  
24 regulations so that mines can generate more dust without



1 federal penalties. The UMWA says, and I support their  
2 position, that the proposed changes will roll back more than  
3 three decades of progress in combatting black lung, which  
4 kills approximately 1000 people a year.

5           The new rules will allow miners to operate a  
6 margin of error in samples that is not permitted under the  
7 existing program. This program would allow, in some  
8 instances, for a handful of dust samples as opposed to the  
9 34 samples now being made, making these coal fields more  
10 dangerous.

11           These new rules not only fail to make necessary  
12 improvements, but also strip away important protections  
13 mandated by Congress in the 1969 Miners Act. David  
14 Lauriski, Assistant Secretary for Health and Mine Safety has  
15 been quoted as saying that he is surprised by the outcry of  
16 the miners. He quotes the law in saying that the miners  
17 should only be exposed to two milligrams of coal dust.

18           I contend that Mr. Lauriski is the one confused  
19 since he is currently supporting new rules which will  
20 increase the amount of coal dust that some miners are  
21 exposed to from the two milligrams that are allowed by law  
22 to up to eight.

23           There has been widespread cheating on the sampling  
24 in the past. The government needs to be working for a dust

1 control program that works.

2           As I understand it, there will soon be available  
3 personal continuous dust monitors which the miners support,  
4 which could be, with enough support by the government, in  
5 the mines by August. These would be light, not additional  
6 weight, only a pound, no additional equipment, and could  
7 monitor results from a computer at any location.

8           This is the type of modern equipment we should be  
9 looking forward to seeing our miners using to ensure that a  
10 miner is not exposed to harmful levels of dust while  
11 working, and also to help ensure genuine operator  
12 compliance. We cannot and should not ask miners to go back  
13 to the high risks of death from black lung.

14           We as representatives of union workers and  
15 nonrepresented workers should not have to take a step  
16 backwards in working conditions that are knowing detrimental  
17 to our health.

18           In a time of soaring health costs, diminishing job  
19 opportunities, we need to be persistently seeking ways to  
20 keep down health costs, protect the jobs that we have, but  
21 primarily to protect our work force. These miners should  
22 not have to take additional risk with these new rules that  
23 would impose harm to them and their families.

24           Gentlemen, we are living in the 21st century and

1 should be committed to advancing the controls, not  
2 diminishing them.

3 And I thank you for your time.

4 MODERATOR NICHOLS: Thank you.

5 (Applause.)

6 MR. BLANKENSHIP: Good evening. Before I make my  
7 comments as a compact member of Local 2245, I'd like to read  
8 into the record, a letter from my Congressman Artur Davis,  
9 please.

10 My name is James A. Blankenship, B-l-a-n-k-e-n-s-  
11 h-i-p, member Local 2245, United Mine Workers, District 20.

12 It says, "Congress of the United States, House of  
13 Representatives, an open letter to coal miners of Alabama,  
14 May 20, 2003.

15 "Dear Coal Miners of Alabama: Although the voting  
16 schedule and my committee schedule in Washington have kept  
17 me from meeting with you personally, I write this letter  
18 commending you for your service in a profession that, while  
19 possessing many inherent dangers, continues to fuel the  
20 nation. You should know that in the fight for fair labor  
21 standards, and for decent working conditions, and in the  
22 battle against black lung, your Congressman stands with you.

23 "On March 6, Secretary of Labor, Elaine Chao,  
24 proposed two new regulations for monitoring and control of

1 coal dust. The first rule calls for complete federal  
2 oversight of all coal dust sampling in every mine in  
3 America, a change long sought and long fought for by the  
4 United Mine Workers, and a great step forward in protecting  
5 our miners from the dreadful black lung disease.

6 "Unfortunately, the second rule takes two equally  
7 great steps backward by dramatically reducing the number of  
8 sampling required to determine if the coal dust in the air  
9 is at two milligram level required by federal law. Some  
10 have estimated the reduction in sampling to be near 90  
11 percent, leading to a four-fold increase in the amount of  
12 coal dust in the mines. It is simply unacceptable for our  
13 government to make it 90 percent harder to protect our  
14 miners while exposing them to four times the risk they  
15 currently face.

16 "Today, I forward correspondence to Secretary Chao  
17 calling on her to reverse these dangerous proposals and to  
18 protect our nation's miners. While I agree that federal  
19 regulations should allow complete monitoring of the sampling  
20 process in every mines throughout the country, I also feel  
21 that number of samples should be maintained at current  
22 levels rather than reduced, as she has recommended. Black  
23 lung has already claimed too many lives, it must not be  
24 allowed to claim any further.

1            "I stand with you against these unremitting  
2 attacks on the Coal Mine Safety Act and the continuing  
3 assaults on the Fair Labor Standards Act. I will continue  
4 to be an outspoken advocate in the struggle for fair and  
5 safe workplaces for America's workers, and together we will  
6 achieve the commonsense resolve of our forefathers.

7            "Know that I stand with you and that you can call  
8 on my office whenever needed. Thank you for your continued  
9 service and God bless America. Sincerely, Artur Davis,  
10 Congressman."

11            Thank you.

12            Again, my name is James Blankenship, B-l-a-n-k-e-  
13 n-s-h-i-p. I'm a Mine Committeeman for Local 2245, United  
14 Mine Workers, District 20, Brookwood, Alabama, employed at  
15 Jim Walter Resources Number 4 Mines, underground  
16 electrician.

17            There was a fairly decent crowd here this morning.  
18 That crowd would have been a lot larger of our brothers and  
19 sisters but management stonewalled us about allowing people  
20 to come and express their feelings today. I bring to you  
21 from the miners at the mine site mining coal today that they  
22 are opposed to these regulations and they ask you to  
23 withdraw them and sit down and relook your hand over.

24            I ask MSHA to withdraw these flawed proposals.

1 Our attempt is to solely advance engineering controls and  
2 personal continuous readout dust monitors instead.

3 I object to proposed Section 70.204 to 70.214 in  
4 their entirety, for more reasons than I can probably cover  
5 in this limited time today. I will touch on as many reasons  
6 as I possibly can.

7 First let me say that it is absolutely already  
8 proven that applying feasibility to engineering controls  
9 absolutely does not work. This panel knows that this same  
10 approach has completely failed in the application of noise  
11 control in this country. In the preparation plant at the  
12 mines where I work, the noise is so bad that workers can no  
13 longer carry on a conversation inside the plant. You cannot  
14 even warn a fellow worker of danger without writing him a  
15 note.

16 Everybody has to wear protection against noise.  
17 The plant has steadily gotten worse since the regulations  
18 were put in place. Noise control has gotten ridiculous.

19 If these proposed rules go forward, I have no  
20 reason to believe we will see a new MSHA that will conduct  
21 themselves differently. In my opinion, MSHA has a proven  
22 record of not caring about the workers and these proposals  
23 are but yet another example.

24 It's under this section that operators can

1 progressively work toward getting airstream helmets. I wish  
2 to talk about airstream helmets in great detail.

3           The proposed rules would allow operators to use  
4 airstream helmets as replacement to environmental controls  
5 to control coal mine dust, which is prohibited by the Mine  
6 Act. The present language of the Mine Act is ambiguous.  
7 Section 202(h) clearly states the use of respirators shall  
8 not be suitable for environmental control measures in active  
9 workings.

10           On page 6, the MSHA proposed dust rules ignore and  
11 contrary to the 1969, 1977 Mine Act. Here's what it says,  
12 "Agency rule will allow mine operators to use respirators as  
13 replacements to environmental controls to control coal mine  
14 dust, which is prohibited by the Mine Act." The language,  
15 what I said earlier, is ambiguous, it says that you will not  
16 be allowed to use those.

17           It says this section of the Mine act requires  
18 operators to make respirators available to miners where dust  
19 levels exceed the mandatory levels as an additional  
20 protection, not a substitute, for dust control, dust  
21 measures to meet the compliance standards of the Act. This  
22 wrong headed proposal is not only a violation of the Act, it  
23 will destroy the gains made over three decades to clean up  
24 the dust in our coal mines and also encourage mine operators

1 to ignore development of dust control technologies, as they  
2 build faster producing mine equipment. It goes back to the  
3 noise. Put ear muffs on us, stick cotton in our ears, put a  
4 sign -- forget technology. That's what we're going to be  
5 looking at with dust. Put our head in a bubble, put a sign  
6 up -- forget technology. That's all we need.

7           The proposed rules completely disregard the  
8 Advisory Committee report on the elimination of  
9 pneumoconiosis among coal miners. Page 59 of the report  
10 reads, "Environmental controls should be the primary means  
11 of preventing or minimizing miners' exposure to respirable  
12 coal mine dust. The reliance on environmental control  
13 measures as the primary means of protecting miners over the  
14 past 25 years has recently been significantly lowering the  
15 levels of respirable dust in active mine workings and in  
16 decreasing the incident of occupational lung disease in coal  
17 mines. Environmental controls include measures that control  
18 the amount of respirable mine dust in the mine air that  
19 miners breathe, by either reducing dust generation by  
20 suppressing, diluting or capturing the dust. The Committee  
21 encourages the development and use of improvements of  
22 technology to control miners' exposure to respirable coal  
23 mine dust.

24           "While the Mine Act and implementing regulations



1 require respirators to be made available to all coal miners  
2 underground when concentrations of respirable dust is in  
3 excess of applicable standards are known to exist, the Mine  
4 Act specifically prohibits the substitution of the use of  
5 respirators for environmental control measures in active  
6 workings."

7           These rules totally do away with that language.

8           The proposed rules would dramatically increase  
9 health care costs among the workers who will be losing the  
10 engineering efforts currently enjoyed. I'm not just talking  
11 about black lung. By allowing operators to put the miners  
12 in airstream helmets, you are exposing people to a lot of  
13 other dangers. Like myself, I wear glasses, I work in Jim  
14 Walter Number 4 Mines, humid conditions. I use the cleaner  
15 they give us to clean our glasses and the defogger, but I'm  
16 taking my glasses off continuously to clean them for the fog  
17 and the dust. You're going to put me in a bubble, put my  
18 head in a bubble, another lens on my face, two ways that my  
19 vision is going to be blocked, the humidity on my glasses  
20 and the humidity on that lens. You're putting me in danger  
21 of getting hurt other than black lung.

22           It's hard to communicate -- if I'm on a pan line  
23 of the long wall, I can't communicate -- if I could see it,  
24 I couldn't communicate with my fellow worker that there was

1 a rib roll or a face roll or a rock on the pan line. We  
2 don't need that.

3           There's a report by the SEA Group out of Los  
4 Angeles and Sidney, Australia that deals with airstream  
5 helmets. I want to talk to you a little bit about it. It  
6 says results of this test emphasize that we at present do  
7 not test respiratory protective devices adequately to ensure  
8 that the user can use the device without undue physical  
9 burden -- that's breathing resistance.

10           I have sinus trouble, I've had my nose broken nine  
11 times. Sinus this time of year kills me. You're going to  
12 stick me in a bubble, I'm going to have breathing resistance  
13 due to that airstream helmet, I'm at the hospital getting  
14 treatment instead of being at work.

15           A lot of our miners get migraines and I'm one of  
16 them. You're going to put all that weight on our head and  
17 shoulders and that restriction; again, we're going to have  
18 increased headaches, increased medical problems, we're at  
19 the hospital, the doctor's office getting treatment instead  
20 of being at work.

21           You're putting extra cost on the operator. I hate  
22 to take up for them, but the medical costs are killing us.  
23 All you're going to be doing is adding extra cost to that,  
24 and a lot of lost time.

1           It goes on to talk about -- this report, back to  
2 it -- it says, "Nor can we confidently ascertain that the  
3 respirator will actually offer the protection the user  
4 expects or should be entitled to get from a product which is  
5 certified and/or deemed to comply with NIOSH SE or  
6 Australian/New Zealand standards."

7           It also went on to say that the work was best  
8 represented -- they were trying to do the work of what a  
9 first responder would have to do, basically the same  
10 activity. And they say the work which Bass represents, a  
11 first responder's typical work, 150 watt external work,  
12 generates high PIAF, which is peak inhalation air flow,  
13 rates, all in excess of the typical test flows, raising the  
14 question how well will the first responder be protected if  
15 we don't test at a typical flow rate for the type of work.  
16 They tested these individuals dressed in gym clothes,  
17 shorts, tee shirts and sneakers. Let's add a mining belt, a  
18 mining hat, steel toed boots, self-contained self-rescuer,  
19 hard hat, cap lamp, tools, whatever, to that dress attire,  
20 stick them in 110 degree humidity in Alabama, put a bubble  
21 on their head and see what happens to them. Before long,  
22 you're going to be bringing them out of there with heat  
23 exhaustion or that thing is coming off, is what's going to  
24 happen because they can't wear it, they physically can't do

1 it or you'll find them laying down there.

2           The vision part of it, fogging up, I'm an  
3 underground electrician, I'm a pretty good sized fellow.  
4 There's places I can't get into with my hard hat on and  
5 shields on the long wall, there's some places on the miner,  
6 on the man buses and motors where the transmissions and the  
7 torque converters are, I have to physically remove my hard  
8 hat to get my head up in there to see what's broken and what  
9 I have to do to fix it. There's no way I can wear that  
10 airstream helmet in that area, there's no way I can get my  
11 head back in those shields to fix that busted hose or change  
12 that jack, because I can't do it now with a hard hat.  
13 There's no way to do it. If I don't do my job, I'll be out  
14 on the street looking for work.

15           So what's going to happen is I'm going to pull it  
16 off to get my job done. You're not down there to see me not  
17 wear it, I'll put it back on when I get through, but I went  
18 how long without it in eight milligrams of dust. You need  
19 to really look your hand over on those airstream helmets,  
20 they're not what you want. There's leakage around them,  
21 they don't seal good according to your own report on page  
22 10.801. It talks about high humidity and temperature,  
23 physical diversity. You're not even sure, according to your  
24 own report, the way I read it, what's going to happen with

1 those things.

2           10.802 talks about actual fit and seal of the  
3 respirator helmet to the wearer, repeated work task motions  
4 in confined work spaces, raising of the visor, the high air  
5 velocity along the long wall face, all may specifically  
6 reduce the actual degree of respirable dust protection  
7 provided. Even in your own report, you know that there's  
8 problems.

9           We're close to a personal monitor. Let's withdraw  
10 these things, set them aside, wait a few months and sit down  
11 and work together forming some rules we can all live with --  
12 MSHA, the union, the miners, the company, everybody.

13           Let's talk about the protection factor for a few  
14 minutes. Like I said in your report, I'm really not clear  
15 what it is and really not sure that anybody else is clear.

16           On page 10.809 of the report, it actually asks for  
17 comments on the protection method establishing the  
18 acceptable PF, so that tells me that y'all got a formula out  
19 there, someone come up with this formula, but they're really  
20 not sure whether that formula is going to work or not,  
21 they're really not sure if that's the right formula to use  
22 or not, because if it was, you wouldn't be asking for  
23 another formula. If this was my formula and I knew it was  
24 going to work, I'd put in here that it works and I know it

1 works, so that I wouldn't be sitting here questioning  
2 whether it worked or not.

3           The gentleman talked earlier and the report talked  
4 about the maintenance program on the airstream helmets,  
5 where they'd have to have a maintenance program in their  
6 plan to take care of them. At Jim Walter 4, we can't keep  
7 our lamps burning eight hours a day and our methane detector  
8 batteries go dead before the shift is out. Those are  
9 devices that we have to have, for me to see to do my job so  
10 the company can make money, and the lights go out. If we  
11 double over and get a spare light, you're lucky if it burns  
12 an hour or two. Some of them goes out in 15 minutes.

13           So we're going to have a -- it'll be in the plan,  
14 but will it get done is the question, will it actually get  
15 taken care of, will it actually get the maintenance they  
16 need. I don't think so.

17           Training, he talked about hearing. This is the  
18 third hearing I've sat before you gentlemen since the first  
19 of the year, and training has been a part of every one of  
20 them. Nowhere does it say time to do this except eight  
21 hours annual retraining. There's so much packed in eight  
22 hours annual retraining, you're lucky if you're going to get  
23 ten minutes a topic, if they cover every topic they're  
24 supposed to cover.

1           If you're going to put these rules in -- this one  
2 I hope goes bye bye down the toilet -- we need to put some  
3 time in there for the miners to be trained on these things.  
4 You're talking about putting a miner in an atmosphere where  
5 he can catch black lung. You're going to do that by putting  
6 a bubble on his head. Well, you need to train him on that  
7 bubble, you need to tell him exactly the do's and don'ts of  
8 that machine. It's not in here. We need to do that. It  
9 don't need to be at anybody's discretion, it needs to be  
10 mandated what it does. None of that is in here.

11           I had an uncle that died of black lung. That man  
12 sucked air from an oxygen bottle. He couldn't chew his food  
13 without having to stop and try to get air. That's a  
14 horrible sight to see a man fight to get a breath of air.  
15 It just really bothers me to think that my government don't  
16 care enough about an individual to not want to see that  
17 happen to them. I just can't see these rules protecting me.

18 I watched that man that couldn't walk five feet to the  
19 bathroom without having to stop, lean up against the wall  
20 and suck a bottle. He had it with him 24/7. He'd chew a  
21 bite of food about three times and stop and just breathe as  
22 hard as he could breathe through that oxygen, trying to get  
23 enough oxygen in his lungs to chew that bite of food three  
24 more times before he swallowed it. I watched that man die,

1 I watched him lay in the bed and gasp for every breath he  
2 could because his lungs didn't work because he worked in the  
3 mines before 1969. He didn't have the protection that we're  
4 supposed to have.

5           So I'm asking you, don't do this, don't set us  
6 back before '69. Please don't.

7           I apologize for getting emotional, but sometimes I  
8 can't help it.

9           We talked about special circumstances in the  
10 proposals, about how management could use special  
11 circumstances to put in their plan to be able to use the  
12 airstream helmets. Let me explain to you a little bit about  
13 management and what they think special circumstances are.

14           Prior to 1998, our contract -- well, in 1998, our  
15 contract called for special local circumstances, which what  
16 it does is give my management and local officers an  
17 opportunity to work out problems, mine-related, mine-  
18 specific, to help keep us competitive, help save jobs,  
19 whatever. Prior to '98, you never heard of local  
20 circumstances. After '98, you hear of them every day.  
21 Every day is a special local circumstance, every problem is  
22 a special local circumstance. I can see that very thing  
23 happening here. I can see mine management using that term  
24 to beat miners over the head with it to get the airstream



1 helmets, to get dust where they want to.

2           And I know you're going to tell me that well,  
3 that's got to be approved by the district manager. Most  
4 district managers that I know of are ex-company people. Most  
5 MSHA people are ex-company people. A lot of inspectors that  
6 come to our mine actually worked for Jim Walter prior to  
7 going to MSHA. Assistant Secretary of Labor, if I'm not  
8 mistaken, was the head safety officer at Energy West Mining,  
9 which if you look through this proposal, you'll see Energy  
10 West Mining a lot. They proposed this, and asked for that,  
11 and whatever. If you -- I did a little bit of research, if  
12 you turn back to 2000 and look at their comments, it mirrors  
13 a lot of this, so that tells me what I'm going to be looking  
14 at, it tells me that the miners are going to have special  
15 local circumstances show right up to airstream helmets,  
16 point blank. That's all there is to it. I can see full  
17 scale abuse of that. And I hope that that doesn't come to  
18 that.

19           These proposed rules are flawed and they set us  
20 back 30 years and I ask you to withdraw them and let's sit  
21 down again, look your hand over and come up with a better  
22 set of rules. They show total lack of concern for miners'  
23 health and safety and I not only ask this for myself, but I  
24 ask it for every spouse, child, grandchild of every miner

1 across this country, that you withdraw these rules.

2           If you do anything, put personal continuous dust  
3 monitors on us. Let us know every single day from portal to  
4 portal what we're in, and take care of it that way.

5           You know, I've read some press releases, and  
6 again, you know, I'm a local officer and I'm an underground  
7 electrician, I have to do this in my spare time. Thankfully  
8 our local president let us off a couple of days to try to  
9 research this so we could come up here and hopefully put our  
10 points across the table where you can understand where we're  
11 coming from.

12           But I was reading a lot of press releases and I'm  
13 not even sure, when you look at -- okay, the district  
14 manager is going to approve them, but I look at comments on  
15 May 7 that was in the newspaper and it said, and I quote,  
16 "During the hearings, Joe Main, the union's health and  
17 safety director, sparred MSHA getting its representatives to  
18 admit that it's possible that the new rules will allow  
19 permissible dust levels to quadruple to as high as eight  
20 milligrams."

21           Then two days later, on the 9th, Assistant  
22 Secretary of Labor Lauriski said that both the union and  
23 Representative Nick Rahall, Democrat of West Virginia, were  
24 off base in claiming MSHA wants to allow a decline in dust

1 levels from two milligrams to eight milligrams. Absolutely  
2 not. The rule is the rule; the proposal is the proposal."

3           What he's saying two days after somebody that Mr.  
4 Main was talking to from MSHA said yeah it can happen, and  
5 two days later, Secretary of Labor in charge of MSHA says it  
6 doesn't happen. So that tells me that there's not even --  
7 MSHA is not together on what these proposals are going to  
8 do. I mean that don't make sense.

9           So if y'all are that -- not together, I guess, for  
10 lack of a better word, then what are we really going to face  
11 with a district manager here in Alabama? He's going to make  
12 up his own mind? Yeah, most likely. Is he ex-company man?  
13 Yeah, most likely. So who suffers? The workers.

14           I ask you to please withdraw these proposals.  
15 There's better things on the horizon, better ways to take  
16 care of black lung than what's here before us today.

17           I appreciate the time.

18           MODERATOR NICHOLS: Thank you.

19           (Applause.)

20           MODERATOR NICHOLS: Do we have the report that  
21 James talked about with the airstream helmets? You talked  
22 about a report.

23           MR. BLANKENSHIP: You're talking about the SEA  
24 Group?

1 MODERATOR NICHOLS: Yes.

2 MR. BLANKENSHIP: The gentleman is --

3 MODERATOR NICHOLS: Do we have it in the record  
4 already? We think we've got it already, thanks.

5 How's the court reporter doing?

6 THE REPORTER: Fine.

7 MODERATOR NICHOLS: William Sawyer, UMWA.

8 VOICE; He's not here.

9 MODERATOR NICHOLS: Is he coming back?

10 VOICE: No.

11 MODERATOR NICHOLS: Glenn Loggins. I know Glenn  
12 is here, he's been hanging in there.

13 MR. LOGGINS: I've probably got a lot here you  
14 don't want to hear, you've done heard it before.

15 My name is Glenn Loggins, G-l-e-n-n L-o-g-g-i-n-s.

16 I work at Jim Walter Resources Number 4 Mine, been there 25  
17 years.

18 I want to start off just raising a few of the  
19 advisory recommendations. I can't find them in there where  
20 they were put in, so I don't know whether y'all read them or  
21 not, so --

22 Recommendation Number 1 on page 50, MSHA should  
23 consider lowering the level of allowable exposure to coal  
24 mine dust. Any reduction in the level should include a

1 phase-in period to allow allocations of special resources to  
2 compliance efforts. In the interim, the operator, MSHA and  
3 miners should develop a comprehensive program to assure  
4 compliance with the current permissible exposure levels.

5 This compliance effort, sharing of documents,  
6 exposure reduction approaches, increased water spray,  
7 scrubbers on continuous miners, dust control plans and  
8 increased good faith efforts to consider actions and  
9 enforcement actions.

10 That's recommendation number 1. I can't find  
11 where that's in there. It seems like it went south from  
12 there.

13 Recommendation Number 3 on page 58, committee  
14 suggests that MSHA cause the lowering of silica exposure of  
15 miners. In this effort, MSHA should seek input from NIOSH  
16 and collaborate with OSHA; however, the committee recommends  
17 that MSHA move forward with these efforts, not await  
18 possible action by OSHA. MSHA efforts to lower silica  
19 exposure below the current level, might include rulemaking,  
20 targeted compliance efforts, encouragement of operators'  
21 efforts to lower silica exposure below the current level and  
22 more extensive silica hazard surveillance.

23 Additionally, MSHA must confirm the accuracy of  
24 the procedures to assure that actual exposures are

1 recognized and documented.

2 I don't know if you want me to go on. I've got  
3 several recommendations.

4 MODERATOR NICHOLS: That's up to you. We've got  
5 that entire report. Wait a minute, Bob wants to make a  
6 comment.

7 MR. THAXTON: The entire advisory committee report  
8 is a document that's referenced in the rule and if you go to  
9 page 10.790 in the preamble, there is a section that says  
10 exactly how we addressed each and every thing that was in  
11 the advisory committee report.

12 MR. LOGGINS: Yeah, and when you read -- the  
13 further you read, you might find one word used out of it.  
14 It seems like very little was used out of it.

15 MODERATOR NICHOLS: Maybe I can help you, Glenn.  
16 The agency is not under any obligation to adopt every  
17 recommendation in an advisory report. We'll stipulate that  
18 up front.

19 MR. LOGGINS: I realize that, so I'll just go on,  
20 I won't read every one of them because I know you've got  
21 them.

22 Recommendation Number 4 on page 59 and 60, can't  
23 find it.

24 Recommendation Number 5 on page 61 and 65.

1 Recommendation Number 6 on page 65.

2 This is something right here, during plan  
3 verification visits, miners and their representatives should  
4 have the same pay, 103(f) walk around rights they do under  
5 MSHA's inspections. You know, if you give the operator and  
6 MSHA time to come out and work on plans, developing plans,  
7 and you take away the miner, the miner normally is the one  
8 that does the work. He knows what will work and what won't  
9 work. You take their rights away to be there, because you  
10 say you're going to give them that right, but you ain't  
11 going to pay them. How many locals can afford it? Very few  
12 could afford to put people out there. So actually you're  
13 taking the coal miner, the one that does the work and know  
14 what will and what won't work, taking him out of the  
15 picture, and then you're going to develop a plan.

16 Good luck to you on that.

17 Recommendation Number 7 on page 67, it was left  
18 out.

19 It just goes on and on, I have some more.

20 Recommendation on page 79 and 81, (a) through (j).

21 You know, I believe the new proposed dust rule is  
22 extremely dangerous. More dust, and if MSHA increases from  
23 two milligrams to eight milligrams, but it seems MSHA  
24 believes miners will be able to breathe easy in this new

1 dusty environment. If they wear cumbersome respirators  
2 known as airstream helmets, at Jim Walter, we have tried --  
3 people have tried to wear these helmets. They thought it  
4 would help them and they went to the company and asked them  
5 to buy them. The problem of seeing comes in. They went to  
6 the wall, they fog up, you get water on them, you can't see.  
7 You put a helmet over your head, just like a motorcycle  
8 helmet, you've got certain restrictions on your view if you  
9 put a bubble on a motorcycle helmet. But you put them in a  
10 coal mine and you put water, dust on top of it, you restrict  
11 it even more. Then you send them to the long wall, you put  
12 them where they can't hear what's coming. We have rocks  
13 roll out of our face, we've had people seriously -- nearly  
14 killed, had to stop on the way and bring them back around  
15 where they're about dead from rocks hitting them. And then  
16 you put this helmet on them and ask them to work down there.  
17 It's just a matter of time until MSHA gets somebody killed  
18 wearing one of these helmets.

19 I think you need to look at what you're proposing  
20 and take into consideration the testimony you will hear here  
21 today and rethink what it will take to reduce dust exposure  
22 in coal mines across the country. We want MSHA to force the  
23 operator to install engineering controls and don't just give  
24 us another flawed health rule. The noise rule is bad



1 enough. MSHA has already eliminated our hearing. Please  
2 change your course so that we can keep our breathing.

3 Appreciate it.

4 MODERATOR NICHOLS: Thanks.

5 (Applause.)

6 MODERATOR NICHOLS: Leslie Golden. I have just  
7 law office here.

8 MS. GOLDEN: Good afternoon, gentlemen. My name  
9 is Leslie Golden, L-e-s-l-i-e G-o-l-d-e-n. I'm a paralegal  
10 and I've been asked to speak to you today because for the  
11 last nine years, I have worked with miners, retired miners  
12 and their families in their efforts to obtain black lung  
13 benefits.

14 When I started doing that in 1994, I was looking  
15 at black lung regulations and I met people quite unlike the  
16 folks you've seen back here today. These guys are  
17 boisterous, they're fun, they're applauding and the  
18 gentlemen who come to my door aren't in any shape like that.

19 A lot of times I meet them in the conference room because  
20 they can't walk back as far as my office. I've seen these  
21 guys die by inches and suffocate by degrees, and their  
22 families, and I sit by helpless to do anything to improve  
23 their quality of life.

24 One of the few things I drew comfort out of when I

1 started doing this job, because it is a tough job to watch  
2 that, is I thought well, it really is a temporary job,  
3 because thank God, in 1969, the government put safety  
4 measures into effect so this isn't going to happen any more.

5 I've never been gladder in my life to think I was working a  
6 temp job.

7           But it isn't working out that way. The gentlemen  
8 I see now -- and it is, by and large, gentlemen, though I do  
9 have quite a few ladies -- the folks that I am seeing now  
10 are approximately my age, they haven't been retired that  
11 long and all of their careers, virtually all of their  
12 careers, if not all of them, have been in the mines since  
13 these safety measures have been enacted, and they still have  
14 pneumoconiosis.

15           Obviously some reform of the dust control measures  
16 is needed. But despite this obvious need, I have got some  
17 problems with the proposed rules MSHA is having about  
18 monitoring the dust. Any reform of dust control monitoring  
19 that MSHA proposes should follow the physician's axiom,  
20 "First, do no harm." I don't believe these proposals are  
21 following that axiom.

22           In the proposed rules, it says that MSHA will  
23 routinely collect compliance samples, but it doesn't state  
24 how often routine means. Folks, Christmas routinely comes

1 every year, but as long as miners are still getting  
2 pneumoconiosis, and this is during their time in the mines,  
3 we all know it's a progressive disease. If some of them are  
4 getting it now, more of these same guys in the group are  
5 going to have this in 5, 10 and 25 years down the road. As  
6 long as this is still happening, frequent, stringent,  
7 compliance testing of air should remain in place.

8           The miners deserve more from the guardians of  
9 their safety than an ambiguous assurance that air will be  
10 checked regularly to see if coal dust control plans are in  
11 effect.

12           A lot of people have already testified about how  
13 these proposals can relax inspection requirements, increase  
14 the level of dust in ambient air and the limitations of the  
15 respirators that the proposals do mention.

16           I'd like to remind you that besides themselves and  
17 their unions, miners have only to rely on MSHA for safety in  
18 the mines. We all know that mining is the most dangerous  
19 occupation in the best of times. Subjecting mine employees  
20 to any greater risk of coal dust exposure is not only  
21 counter to MSHA's basic purpose, it is an unconscionable  
22 indifference to the human beings that are in MSHA's charge.

23           My husband says that health professionals have a  
24 saying, "If you aren't breathing, you're not playing the

1 game." That means that if every other system in your body  
2 is functioning well, you're still not going to live if you  
3 can't take a breath.

4           Because of the dust in the mines, miners are still  
5 losing their breath. Please don't take away what air they  
6 have left.

7           Thank you.

8           MODERATOR NICHOLS: Thank you.

9           (Applause.)

10          MODERATOR NICHOLS: Marshal Hutchins, UMWA.

11          (Applause.)

12          MR. HUTCHINS: Gentlemen, my name is Marshall  
13 Hutchins, M-a-r-s-h-a-l H-u-t-c-h-i-n-s.

14                 I'd just like to read some things here for you and  
15 I believe this is the reason we're here, I believe that it's  
16 actually your intent, is to provide and maintain a work  
17 environment free of excessive levels of respirable dust is  
18 essential for long-term health protection for miners all  
19 across the nation. The Advisory Committee and NIOSH  
20 recognize the importance of engineering and environmental  
21 controls as the primary means of protecting coal miners to  
22 reduce concentrations of respirable dust to a level at or  
23 below the applicable level.

24                 Respirator protection. Although respirators may

1 achieve satisfactory air quality in a miner's breathing  
2 zone, their use will not achieve the intent of the Act,  
3 which was to control the level of respirable dust in the  
4 atmosphere.

5           While powered air purifying respirators may or may  
6 not decrease miners' exposure to respirable coal dust, it  
7 create problems. One -- we've already heard this -- a  
8 visual problem; a communication problem; a maneuverability  
9 problem. And in our coal mines, it's been stated over and  
10 over again, this creates a safety hazard in itself.

11           Even in this, it doesn't address the dust in the  
12 atmosphere. I ask that these units not be used as a  
13 protection factor to determine levels of coal dust that a  
14 miner is allowed to work in. The protection factor  
15 expresses PAPRs' performance as a ratio of respirable dust  
16 concentration outside the respirator's facepiece to the  
17 concentration inside the respirator's facepiece. We're not  
18 dealing with ratios and factors and percentages. We're  
19 concerned about the health and the well-being of miners in  
20 their workplace and the effect these changes would have on  
21 the miners and their families.

22           The Advisory Committee, on the elimination of  
23 pneumoconiosis among coal miner workers, concluded that the  
24 dust control plan is critical for the protection of miners

1 from lung disease. The Committee also concluded that the  
2 restoration of miners and mine operators' confidence in the  
3 respirable coal mine dust sampling program should be one of  
4 MSHA's highest priorities. I believe that the changes --  
5 and you've heard today -- the changes in this proposal will  
6 not increase the confidence in a new sampling program. But  
7 it raises concerns about the increase of respirable coal  
8 dust levels in the mine that a miner may be forced to work  
9 in.

10           Sampling. Although fewer shifts will be sampled  
11 under the new proposal rule, MSHA believes that the revised  
12 sampling methodology will provide a more accurate  
13 representation of dust concentration and that all phases in  
14 the mining cycle are likely to be sampled eventually.

15           We do not need fewer shift samples. We need more  
16 sampling, we need more shifts, we need more areas. Sample  
17 on a regular basis, not likely to, not eventually and not  
18 once a year.

19           We must not jeopardize the health and safety of  
20 coal miners by the use of citation threshold levels,  
21 formulas, confidence level percentage, powered air purifying  
22 respirators and allow the levels of respirable dust to  
23 increase in our workplace.

24           In a newsletter by the Centers for Disease

1 Control, NIOSH analyzed recent radiographic information from  
2 the United States National Coal Workers X-Ray surveillance  
3 Program. After analyzing these chest x-rays, NIOSH  
4 recommended that MSHA lower the permissible exposure limit  
5 for respirable mine coal dust from two milligrams to one  
6 milligram.

7           Also in this report was listed a prevalence of  
8 coal workers' pneumoconiosis, CWP, and progressive massive  
9 fibrosis, PMF, among examined miners that participated in  
10 this examination from 1996 to 2002. In coal miners from the  
11 age of 30 to 60, there was 31,179 coal miners that  
12 participated; 862 of those had CWP, 62 of those were  
13 diagnosed with PMF.

14           We further feel this proposal is being rushed  
15 through the process and would completely change the dust  
16 sampling program in the wrong way. This proposal is filled  
17 with formulas and exemptions, loopholes and cushions. We  
18 also feel the changes would dramatically alter the amount of  
19 respirable dust permitted in the mines.

20           MSHA, M-S-H-A, Mine Safety and Health  
21 Administration. We must consider the safety and the health  
22 of the nation's coal miners. Safety and health must be  
23 first and foremost and at the top of every list whether it's  
24 policy, program, ruling or law.

1 Thank you, sir.

2 (Applause.)

3 MODERATOR NICHOLS: Thank you. Bobby Jones, UMWA.

4 MR. JONES: How y'all doing today?

5 MODERATOR NICHOLS: Okay, how're you doing?

6 MR. JONES: Pretty good. I'm Bobby Jones, Local  
7 2245, UMWA, Jim Walter Resources Number 4 Mine.

8 On page 74 of the DAC Report, the second paragraph  
9 under findings says, "The committee believes that one of  
10 MSHA's highest priorities must be to restore the confidence  
11 of miners and mine operators in the respirable coal dust  
12 sampling program." MSHA has failed at this through the  
13 proposed rules.

14 I have 25 years mining experience and was never  
15 involved in MSHA's public hearings before this year. MSHA's  
16 refusal to enforce the laws, the manner in which MSHA has  
17 walked away from various tools of enforcement and the way  
18 this agency manipulates the rules and laws and the intent of  
19 Congress has changed this. The first 24 years of my career,  
20 I attended no hearings. This year alone, I have attended  
21 three. I believe that MSHA has completely lost touch with  
22 the industry that they are charged to enforce.

23 MSHA officials are demonstrating a complete  
24 disregard for the intent of Congress, rule of law, the Dust



1 Task Force, the Dust Advisory Committee and most important  
2 of all, the health and safety of coal miners.

3 In our mines, when MSHA comes in to do a dust  
4 study, they never do the full study. They'll shut the  
5 machines, they'll do anything to keep it to a minimum, never  
6 once do they do the whole shift while they're down there.

7 Your proposal allows the dust levels to quadruple,  
8 going from two to eight. We catch black lung at two. I've  
9 sat down there and watched them on dust samples sitting  
10 behind shields so fresh air comes behind the shields and  
11 that's what they dust sample. They don't dust sample out in  
12 front where we're breathing. They sit back there and spray  
13 a durned water hose to knock the dust off the durned dust  
14 samples. That ain't very good in my book. I know I'm not  
15 the smartest person in the world and I'm not well educated,  
16 but I know that.

17 The 2000 proposal was thrown out; three years  
18 later, the same thing is back, but it's only worse.

19 Companies do sampling their own way, like I was  
20 saying about way they sample. They don't stay out there  
21 with the men and catch the full brunt of the dust, they hide  
22 it, so they'll pass the regs, believe it or not. They don't  
23 show the full sampling of what a coal miner's lungs get  
24 every day. If they did, they'd never pass.

1           We need more dust samples and less dust, not more  
2 dust and less samples. Single samples, if it's one miner,  
3 they has one citation or if it's 10 miners, they have one  
4 citation. The only thing that's going to keep the company  
5 honest is a citation for each dust sample.

6           Twice before this has happened. The Dust Task  
7 Force and the Advisory Committee said MSHA should make no  
8 upward movement in the dust milligrams, and no dust mask  
9 should be worn in dust sampling standards, fairness is  
10 thrown out and bias is put in for the operators, not the  
11 people that's in the dust.

12           I don't know if y'all have ever been in the dust  
13 before. By looking at you, I'd say no. But we're down  
14 there in dust so thick, you wear your miner's lamp,  
15 sometimes you can't see the fellow standing three foot from  
16 you, can't even see his light.

17           You're going to go up on dust regs, man, hell,  
18 it'll kill us all.

19           MSHA's actions and their refusal to act has sadly  
20 left me suspicious of all government agencies and the manner  
21 in which our tax dollars are being wasted. MSHA is  
22 infringing on the powers of Congress and other agencies by  
23 proposing these new rules. Never has MSHA demonstrated the  
24 knowledge to identify the many dust control parameters which

1 the operators use to affect the outcome of dust sample  
2 results.

3 I don't know -- I know a bunch of coal miners, I  
4 reckon because I am one, but our lives ain't worth a lump of  
5 coal, guys, it's worth a heck of a lot more to us. We've  
6 got wives, kids, we just live normal lives like y'all. So  
7 we'd appreciate it y'all would keep in example of what we're  
8 saying today and listen to us, because our kids love us  
9 whether y'all do or not.

10 (Applause.)

11 MODERATOR NICHOLS: Randy Sandlin, UMWA.

12 MR. SANDLIN: My name is Randy Sandlin, R-a-n-d-y  
13 S-a-n-d-l-i-n.

14 I haven't got much to say because anything I do  
15 say will be repetitive, but as far as the airstream  
16 handlers, I'm here to tell you that they are unsafe. I've  
17 worn them, you can't work in them -- first-hand experience,  
18 you can't work in them.

19 I'll keep this short. Basically anything I say  
20 would be repetitive, but that's all I wanted to state in my  
21 statement to the panel.

22 Thank you.

23 MODERATOR NICHOLS: Thank you.

24 (Applause.)

1           MODERATOR NICHOLS: John Martinez, UMWA.  
2           VOICE: Not here.  
3           MODERATOR NICHOLS: Not here. Is he coming back?  
4           VOICE: No, sir.  
5           MODERATOR NICHOLS: Ricky Parker, UMWA.  
6           VOICE: He's not here right now.  
7           MODERATOR NICHOLS: Is he coming back?  
8           VOICE: Yeah, he'll be here.  
9           MODERATOR NICHOLS: Tim Burchfield, UMWA.  
10          MR. BURCHFIELD: Tim Burchfield, President of  
11 Construction Local 1867, UMWA, T-i-m B-u-r-c-h-f-i-e-l-d.  
12 I've been Construction Local President for about 10-11 years  
13 now and I've been coming to these meetings for the last six  
14 I know.  
15           Y'all promised my local -- we're in construction,  
16 we don't have no plans for dust. Back in '98 in Lexington,  
17 Kentucky, we had a real good conversation there, but nothing  
18 happened. I mean we got promised a lot of stuff and now  
19 y'all wanting to cut out more.  
20           I know these fellows, I work from Pennsylvania to  
21 the four corners of New Mexico, been in mines all across  
22 this country, in construction I work in about all of them.  
23 Dust is bad and y'all wanting to make it worse. I've went  
24 through dust where you can't see your hand in front of you

1 just going to where I work in them shafts, rock piles. You  
2 can't even water it down, it's so dusty.

3           We don't need to drop down from 36 to three,  
4 that's a slap in coal miners' faces. Three dust samples a  
5 year is ridiculous, it's a joke.

6           I've asked for help for the construction industry  
7 of the mining division and I ain't getting it. We're going  
8 through the procedures. I told Tom Wilson back there, it's  
9 just -- this is a procedure to get to the point. I mean  
10 nothing is going to take place, but I'm hoping y'all listen  
11 to the miners and the ones of us that has to work in the  
12 conditions.

13           Your helmets you're talking about, they won't  
14 work. You've got oil dust, you've got everything air  
15 operated, you've got the oil to make it run, that helmet  
16 will not work, it will fog up, you'll have oil and grease  
17 all over it. Ain't no way to wipe it off in the working  
18 period, to keep it clean where you can see to work.

19           Like I say, I've been in non-union mines, I've  
20 worked all across this country. Dust is bad and this ain't  
21 going to get it, boys.

22           I mean I hate to tell you, but this is a broke  
23 record, I'm tired of having to come ask for y'all to look at  
24 the seriousness of this problem, and this is worse than what

1 come up in '98, 2000 in Kentucky, we went up. You're  
2 wanting to just do away with it. We can't do it. Companies  
3 won't take a dust sample. I've had them took off my side  
4 and put in a plastic bag so they can't get no dust. Bosses  
5 take them off and put them in a plastic bag and hang them up  
6 and tell us not to wear them, they'll take care of them.

7 MODERATOR NICHOLS: Where was that?

8 MR. BURCHFIELD: That was at a mines here in  
9 Alabama in the shaft. And we've had extra water hoses put  
10 in the days they do monitoring. Most of the time, we don't  
11 never have no monitoring. That's in the shaft in  
12 construction work. I mean that's truth. I mean be told by  
13 a superintendent to turn over your monitors, he'll put them  
14 in a bag and hang them up. So you're wanting to put that in  
15 the companies' hands of taking care of the dust? It ain't  
16 going to happen.

17 I'm going to get ready to go to some more funerals  
18 we have to go to here in Alabama because you're fixing to  
19 kill some more people.

20 I didn't bring no written statement up here or  
21 nothing, I'm just telling you like it is. I'm tired of  
22 having to come to these meetings and not get nothing out of  
23 it. Some of y'all was on the committee in '98 and 2000 and,  
24 you know, we was promised a lot of stuff in '98 in

1 Lexington, I thought we was going somewhere, but never heard  
2 nothing else on it.

3 I'd appreciate it if y'all would put off this new  
4 ruling, look at it, go back to the table and meet with the  
5 people you should be meeting with and get something took  
6 care of that will help us, not hurt us.

7 That's all I've got to say, guys.

8 MODERATOR NICHOLS: Thank you.

9 (Applause.)

10 MODERATOR NICHOLS: Randy Clements, UMWA. Is  
11 Randy here?

12 MR. CLEMENTS: My name is Randy Clements, R-a-n-d-  
13 y C-l-e-m-e-n-t-s. I work at Jim Walter Resources Number 5  
14 Mines, I've worked there for 22 and a half years. I've been  
15 a safety representative for 17 years at that mines.

16 I, too, like some brothers that have spoke before  
17 me, I was up in Prestonburg, Kentucky in 2000, saying the  
18 same thing we're saying here today. Don't seem like it does  
19 a bit of good.

20 I, too, was reading the newsletter, and to be  
21 honest with you, it's kind of funny, where they're out of  
22 Louisville, Kentucky. It says the head of the U.S. Mine  
23 Safety and Health Administration said yesterday that he  
24 rejects a request by the United Mine Workers Union to

1 withdraw the government proposed rules.

2           Mr. Lauriski, Assistant Secretary of Labor for  
3 Mine Safety and Health Administration also said he is very  
4 surprised and perplexed by the outcry of the miners.

5           Well, it seems to be very obvious that the miners  
6 know what's right. Send this message back to Lauriski, Mr.  
7 Lauriski -- the mine workers will not lay down, roll over or  
8 stand idly by while rules are put in place that are going to  
9 put miners' lives in jeopardy. If he cannot see this, then  
10 his goal is different than ours. Our goal is simple -- a  
11 safe place to work.

12           The UMWA believes that MSHA's new proposed rules  
13 presents a very dangerous step backwards in the ongoing  
14 fight to eliminate the crippling black lung disease from  
15 coal miners.

16           The Centers for Disease Control had a report out  
17 on the federal Chest X-Ray Surveillance Program and the  
18 findings showed that during October 1, 1995 to September 30,  
19 2002, 31,179 miners participated in the coal workers x-ray  
20 surveillance program. Out of the 31,179 miners, there was  
21 862 new case of black lung and 62 new cases of progressive  
22 massive fibrosis.

23           Break that down a little bit by age group. If  
24 you're 30 years and younger, there was 3440 that was



1 examined. Out of those 3000, eight showed up new cases of  
2 black lung, with zero on the progressive massive fibrosis.

3           If you're at the age of 30 to 39, there was 4955  
4 was examined, 85 was new cases of black lung, four of them  
5 showed up as massive fibrosis.

6           From the ages of 40 to 49, 121,975 miners was  
7 examined, 392 showed up new cases of black lung, 24 of them  
8 was progressive massive fibrosis.

9           Ages 50 to 59, 8632 miners was examined, 317  
10 showed up new cases of black lung, 25 of them was  
11 progressive massive fibrosis.

12           Sixty and above, there was 1177 with 60 new cases  
13 of black lung, nine of them was progressive massive  
14 fibrosis.

15           And I cannot understand with this type of stuff  
16 that's out, why we are wanting to increase the exposure  
17 levels underground instead of decreasing. I just can't  
18 understand it.

19           The results of the report raises concerns about  
20 the possible exposure to miners. Black lung continues to  
21 occur among working coal miners, even among those first  
22 employed after the current exposure limits became effective.

23           To reduce the occurrence of coal miners having  
24 black lung, the Coal Act of 1969 established a limit of

1 permissible dust exposure in underground coal mines. NIOSH  
2 has recommended that MSHA lower the permissible exposure  
3 limit from respirable coal mine dust from two milligrams to  
4 one milligram. These new rules are going to increase it.

5           The new proposed rules substantially undercuts the  
6 dust standards proposed in 2000. The new proposed rules  
7 eliminate the mine operator regulatory compliance sampling  
8 with no takeover sampling by MSHA. This leaves no  
9 regulatory dust compliance sampling in place.

10           Instead of increasing the number of shifts on  
11 which compliance samplings will take place, the new proposed  
12 rules substantially reduces compliance sampling by as much  
13 as 90 percent. Based on MSHA's own projections, the 34  
14 shifts currently sampled, on mining section could drop to as  
15 few as three, and those are not even guaranteed under the  
16 new rules.

17           The new proposed rules will allow substantial  
18 increase in respirable dust concentration in the coal mines  
19 by as much as four times the current level of two  
20 milligrams.

21           In the past two years, MSHA has made a number of  
22 major policy changes affecting the respirable dust program  
23 that were not in the best interest of the miners. In  
24 December 2001, MSHA announced that they had withdrawn action

1 on two important rules. One standard was on continued dust  
2 monitoring to be used in underground coal mines. The second  
3 was a standard requiring respirable dust levels to be  
4 lowered in the coal mines.

5           The agency promised to beef up MSHA's dust  
6 sampling inspection, but in 2002, MSHA made changes in the  
7 sampling policy by cutting MSHA's compliance sampling from  
8 six shifts per year to four.

9           In 1995, the Secretary of Labor appointed a  
10 federal advisory committee to provide recommendations to  
11 improve the respirable dust program. MSHA's new proposed  
12 rules are outright contradictory to the advisory committee's  
13 recommendations. For example, the advisory committee called  
14 for beefing up respirable dust samples. MSHA's proposal  
15 cuts the frequency of compliance dust sampling by up to 90  
16 percent.

17           The advisory committee called for lowering dust  
18 exposure levels. The MSHA proposal increases them.

19           The advisory committee called for personal  
20 exposure levels to account for the extended work day. MSHA  
21 proposal has no ruling on that.

22           The advisory committee called for environmental  
23 controls to continue to be the method to control coal mine  
24 dust, and not to replace them with respiratory devices.

1 MSHA proposal allows for respiratory devices to replace  
2 environmental controls while dramatically increasing dust  
3 levels in the mines.

4           If MSHA insists that the new proposed rules would  
5 help prevent black lung and not put miners in danger, then  
6 I'd have to tell the Committee that the new proposed rules  
7 will put miners' lives in danger by putting more float coal  
8 dust in the atmosphere and exposing the miners to more float  
9 coal dust that will cause black lung.

10           I'll tell you this, as I told you when I started,  
11 I work at Jim Walter's Number 5 Mines. If these new rules  
12 would have been in place September 23, 2001, out of 13  
13 miners that went in to work -- 32 miners that went in to  
14 work that day, 13 of them lost their lives. If these rules  
15 would have been in place, we would have been bringing 32  
16 lives out -- 32 bodies I mean -- excuse me.

17           I know it's been over two years. It's still an  
18 emotional time for us at that mines. To go up and stand up  
19 in front of a group of people, which I had to that Monday  
20 morning, and try to explain to family members, loved ones  
21 and friends what had happened, and then go back in there the  
22 next day, the next morning and tell the we're having to  
23 flood the mines. I'm afraid if these rules go into place,  
24 there's going to be a lot more of that type of meeting going

1 on because you're going to have mines that are going to be  
2 blowing up all throughout this country.

3 That's all I have.

4 MODERATOR NICHOLS: Thank you.

5 (Applause.)

6 MODERATOR NICHOLS: Does the court reporter need a  
7 break?

8 THE REPORTER: Let's go one more and then take  
9 five minutes.

10 MODERATOR NICHOLS: Okay. Tom Wilson, UMWA.

11 Tom, how much time will you need, so we'll know.

12 MR. WILSON: I've not timed it.

13 MODERATOR NICHOLS: Have you got a guess?

14 MR. WILSON: I've got a lot of material to cover.

15 MODERATOR NICHOLS: I know you do have. If you  
16 really need a break, you'd better go. Let's be back at  
17 2:00.

18 (A short recess was taken.)

19 MODERATOR NICHOLS: Okay, we've had a little  
20 change here. Tom has agreed to let La Marse Moore go next,  
21 so come on up, La Marse. That's pretty good, you worked  
22 your way up from 55 to 28 -- that's pretty good negotiating.

23 MS. MOORE: First, I want to say good evening to  
24 you gentlemen and good evening to my brothers and sisters.

1 My name is La Marse Moore, L-a-M-a-r-s-e Moore. Margie in  
2 parenthesis, that's what everybody knows me by, Margie, not  
3 La Marse.

4 I'm here today to tell you about my life as a  
5 black lung victim and a pneumoconiosis victim.

6 I started in Jim Walters Number 3 Mines August 13,  
7 1979. I came out January 21, 1986. I wasn't there seven  
8 years, I wasn't there eight years, I wasn't there 10 years,  
9 but I have the disease. This is the respirator that I wore.  
10 Sometimes shoveling the bulkhead, there's so much dust,  
11 with this respirator, I would tie a rag around my mouth, a  
12 rag around my head, a skull cap plus the hard hat. In doing  
13 all that, I still got pneumoconiosis.

14 My life -- I want to tell you, you're looking at a  
15 miracle here -- you are looking at a miracle. On getting  
16 sick, when I first went into the mine, I was sick. I  
17 couldn't measure up to the men but I could do what I was  
18 told to do or what I was asked to do. Yes, I could carry 5  
19 pound bags of rock dust like this or like this. I could  
20 help mix the mortar, I could help hang curtains, I could  
21 help set timber. Sometimes I would have to stand up on a  
22 bucket because I'm so short, but I could do it then.

23 Then my health started declining, I started going  
24 downhill, downhill, downhill. I started with a cough, just

1 a cough. Cough, cough, cough. I started going to the  
2 doctor. It didn't get better, it got worse. I'm here to  
3 tell you that on an average of every three months, I was in  
4 the hospital, not two days, not five days -- 10, 12, 15  
5 days. Sometimes I would come home and have to go right back  
6 that same day or that same night.

7           It got to the point the ambulance drivers knew me,  
8 the fire department knew me. My family would just watch me  
9 suffer and cry because with pneumoconiosis, you can't comb  
10 your hair sometimes.

11           Just like the gentleman was saying about his uncle  
12 eating. I know, I didn't eat anything today, all I had was  
13 pills and milk this morning, because I knew what I had to do  
14 here, I knew I can't do it on even a half full stomach.  
15 Going out eating, I have to sit there and watch you eat,  
16 watch you eat. I take little dribbles of food because I  
17 can't eat all that food that I would desire to eat.

18           Laying down. No. You don't lay down any more or  
19 lie down. You have to lay on four and five pillows. I  
20 cannot -- the reason why -- I'm sitting low now, but I'm  
21 sitting high, I can't go anywhere and sit low, I have to  
22 always sit high because when I sit low, it seems like my  
23 stomach and my chest is meeting and it's cutting my breath  
24 off. Sometimes, it feels like the world is on my chest,

1 like someone has their hand down my throat and someone else  
2 has their hand around my neck.

3           The reason why I'm breathing so good now is  
4 because on Friday morning, I left Thursday -- I left Friday  
5 morning early going to Beckley, West Virginia. Before I  
6 left, I had to go to my doctor. Sometimes I have to get two  
7 shots and sit there. Sometimes I have to get four shots and  
8 sit there. Sometimes I have to get six shots in one  
9 sitting. Before I leave, I'm shaking. The medicine comes  
10 up -- the taste of the medicine comes up in my mouth.  
11 Sometimes he has to give me shots to stop shaking.

12           The nebulizer machine? Yes, I have that. I have  
13 one in Chicago at my mother's house, I have one in Hampton,  
14 Virginia at my daughter's house, I have one in Texas at my  
15 grandbaby's house and I travel with one when I travel.

16           You name it -- AsthmaCort, Proventil, Arventulum,  
17 Bromide for the machine, Theophylline -- I have been on as  
18 high as 80 milligrams of Prednisone a day. I have been out  
19 loaded like this.

20           I know what it is to have your arms and your hands  
21 -- needles stuck in your feet also because they can't find a  
22 vein. They can't find veins no more, they have to go down  
23 in my feet.

24           I know what it is to be swollen and bruised. I



1 know what it is for your legs are like this, swollen, from  
2 being in the hospital. I know what it is to live with it.  
3 I know what it is to want to talk on the telephone and you  
4 can't talk because your breath is leaving. Sometimes you  
5 start talking, you say I've got to hang up, I've got to get  
6 on my machine.

7 I know what it is to come from outside and have to  
8 stop up front to get on the machine before I get back to my  
9 bedroom. If I make it back to my bedroom and get on my  
10 machine there, water is coming down my legs, I'm just  
11 urinating all over myself. I know what it is. I know what  
12 it is to have your bowels loose. I know what it is to have  
13 your system poisoned from too much Theophylline in your  
14 system. I know what it is.

15 You know how I got these pretty nails? I had to  
16 put my mask -- not the nebulizer, the heavy mask, on my face  
17 with a fan blowing in my face in order to paint my nails.  
18 Once, I could not wear this jewelry, I could not stand the  
19 metal in my ear. Once I couldn't do this. This was in the  
20 nineties, gentlemen, in the nineties.

21 If you did your math correct, you saw how long I  
22 stayed in the coal mine.

23 On yesterday, I was 57 years old, May 19, I was 57  
24 years old. I went in, like I said, August 13 and I came out

1 January 21. I know what it is, gentlemen.

2 Please let's not -- you heard about the  
3 milligrams, the amendments and all of this. Please do not  
4 let any more of my sisters and brothers die from  
5 pneumoconiosis from coal dust.

6 As sure as we're born, we're going to die. But  
7 let them die from old age, natural causes or whatever the  
8 case may be, not from black lung.

9 It's costly to have this disease. It's costly.  
10 Before I got my benefits -- oh, yes, I am some say the first  
11 lady to get benefits, some say one of the first ladies to  
12 get benefits. It didn't take me long, some say I was lucky,  
13 but I say I was blessed, I was blessed. It didn't take me  
14 long.

15 I went before the Judge in Chicago, Illinois one  
16 time for my disability, he gave it to me right away. The  
17 day I went before the Judge, gentlemen, I had just gotten  
18 out of the hospital that day. The next time I went before  
19 the Judge a year later, I had just gotten out of the  
20 hospital that day.

21 Someone went out into the hallway and lit up a  
22 cigarette and I thought I was just going to die right there.

23 No, I never smoked, I've been in smoke -- the party side of  
24 my life. Yes, I was out there in it, but I never smoked. I

1 never liked to smoke, so you can't say I got it from smoking  
2 unless I got it from inhaling smoke.

3           But I'm here to tell you, as I just told you and I  
4 might be repeating myself, I'm blessed. With the help of my  
5 doctor in Chicago, Illinois and the help of my doctor in  
6 Birmingham, Alabama, with them criss-crossing with this  
7 medication and that medication and me going. Now when the  
8 breathing problems start up, I go to my doctor, I don't sit  
9 and wait, I just go.

10           Gentlemen, I know what it is to have fits of  
11 coughing, I know what it is to get in the bathtub, you might  
12 wash your face and ears, but you won't wash your neck,  
13 because you're going to have to wait because you don't have  
14 that breath.

15           I know what it is to go to my daughter's house and  
16 can't go upstairs to the upper part of her house, because i  
17 couldn't climb the stairs. I know what it is.

18           It's costly. Before I got my benefits, I had to  
19 go to the county hospital. You've got to get a way there, I  
20 didn't have a car, I had lost my job -- not lost my job, I  
21 had lost it because of illness, so that means I didn't have  
22 a car, I wasn't getting benefits. So I want to tell you, it  
23 is costly. I had a doctor in Chicago, lawyer in Chicago, I  
24 was going back and forth, it is costly. I was in the

1 hospital up there, I was in the hospital back here. I had  
2 to stop driving because just like I'm raising my voice now,  
3 I couldn't talk to you, raise my voice or cough or laugh,  
4 I'm on the floor.

5           So the doctor said the oxygen level wasn't coming  
6 up. I went to my doctor before I left, I got a chest x-ray  
7 about two months ago and he put it up and I said what is  
8 that cloud, what is it. I got scared, you know. I said  
9 what is that cloud I see on my chest x-ray. He said oh,  
10 it's just that old coal dust -- just that old coal dust.

11           Gentlemen, I repeat and I repeat again, you are  
12 looking at a miracle. I'm one of those that could walk five  
13 steps, '86, '87, '88, '89, '90. I'm one of those. But I  
14 can walk now. I get out of breath, but you get out of  
15 breath and you keep on going. I'm one of those.

16           Please don't kill any more of my brothers and my  
17 sisters. Let them live and die, as I say, of natural  
18 causes, old age or whatever the case may be.

19           Thank you for listening at me.

20           MODERATOR NICHOLS: Thank you.

21           (Applause.)

22           MODERATOR NICHOLS: Tom Wilson.

23           MR. WILSON: I'm going to let Ricky Parker go now.

24           MODERATOR NICHOLS: Okay.

1           MR. PARKER: My name is Ricky Parker, P-a-r-k-e-r.  
2 I'm a member of United Mine Workers, Local 2368, Safety  
3 Committeeman, Chairman of the Safety Committee.

4           On March 6, 2003, MSHA issued proposed rules  
5 completely overhauling respirable dust standards. These  
6 proposed rules are 30 CFR Parts 70, 75 and 90, Verification  
7 of Underground Coal Mine Operators' Dust Control Plans and  
8 Compliance Sampling for Respirable Dust, which contains dust  
9 standards, dust sampling, plan verification and Part 90  
10 standards and 30 CFR Part 72, Determination of Concentration  
11 of Respirable Coal Mine Dust which contains the single shift  
12 sample rule.

13           These proposals which are being rushed through to  
14 process would completely change the dust sampling program in  
15 the wrong way. They're extremely complex, filled with  
16 formulas, exemptions, loopholes and would be subject to  
17 unlimited interpretation.

18           This is something we deal with daily and the  
19 regulations that are enforced at this time is different  
20 interpretations from different parties.

21           It is extremely difficult to determine the number  
22 of compliance and plan verification samples to be made at  
23 any operation and it is almost impossible to determine the  
24 level of quartz and coal mine dust that would have to be

1 maintained.

2           The changes that dramatically alter the amount of  
3 respirable dust permitted in the mines are hidden in the  
4 rules. For example, the MSHA proposal allows mine operators  
5 to increase respirable dust levels in the mine atmosphere to  
6 four times the 2. milligram standard set by Congress in  
7 1969, increasing such levels to eight milligrams. That is  
8 not stated in the rule and it can only be determined by  
9 interpreting formulas, which is hard, I might say.

10           Qualifiers and exemptions are also not easily  
11 understood. These are all but impossible for miners and  
12 health and safety professionals to figure out, gentlemen.

13           The rules not only fail to bring about needed  
14 improvements, but they would reverse many improvements  
15 currently in place on controlling respirable coal mine dust.

16           On January 13, 2003, the UMWA filed a lawsuit on  
17 behalf of the nation's miners to compel MSHA to issue rules  
18 overhauling the respirable dust sampling program. That  
19 legal action called for four major requirements long  
20 demanded by the miners of this country. Those included,  
21 MSHA to assume full responsibility for all compliance  
22 sampling, while increasing -- not reducing -- the compliance  
23 sampling. To require continuous dust monitoring for  
24 respirable dust to protect miners each day, every day. And

1 to ensure that dust sampling contemplates miners' full shift  
2 exposure. Let me remind you that this day and time, miners  
3 are working 10 hours a day, not the traditional eight. And  
4 also to ensure that miners have full rights to participate  
5 in respirable dust sampling program. And I might add, with  
6 miners' representatives being paid during that process as  
7 outlined in Section 103 of the Mine Act, in place at this  
8 time.

9           Given the fraud, the manipulation of the dust  
10 sampling program over these years, these reforms were  
11 essential to effectively overhaul the respirable dust sample  
12 program. They are necessary to protect miners from lung  
13 diseases that has claimed thousands of lives.

14           The reforms sought by miners are supported by the  
15 Federal Mine Advisory Committee and NIOSH findings and  
16 recommendations and must be put in place if the flawed dust  
17 sampling program is to be fixed to protect miners. The  
18 proposed rules, however, ignore those needs, instead would  
19 drastically increase respirable dust levels in the active  
20 workings of some mines and drastically reduce sampling of  
21 mine atmosphere where miners are required to work and travel  
22 shiftly.

23           These are changes exactly the opposite of those  
24 sought and needed to protect the miners that was asked for

1 in 1998, the year 2000 at Prestonburg, Kentucky and as of  
2 today, we're still fighting for the same needs.

3           The proposed rules were found to eliminate a  
4 number of protections and standards contained in the Federal  
5 Mine Safety and Health Act and Title 30 CFR of the  
6 regulations. They ignore, outright ignore, and are contrary  
7 to years of work effectively to reform the respirable dust  
8 program, the Mine Act, the 1996 Secretary of Labor Advisory  
9 Committee report on recommendations for elimination of  
10 pneumoconiosis among coal mine workers; the 1995 NIOSH  
11 criteria for recommended standard for occupational exposure  
12 to respirable coal mine dust; and the extensive record of  
13 public hearings which include numerous miners from across  
14 the country on the 2000 proposed respirable dust rules; and  
15 the clear needs of the miners.

16           There is clear reason to reform the dust sampling  
17 program and get it right. Miners' exposure to unhealthy  
18 respirable coal mine dust have led to deaths of tens of  
19 thousands of miners and cost billions of dollars for those  
20 stricken by that black lung disease. And to this day,  
21 miners continue to die from exposure to unhealthy coal mine  
22 dust.

23           A NIOSH study just released in April 2003, which  
24 has been mentioned many times today, but I want to mention



1 it again, reveals that working miners continue to get the  
2 black lung disease. A special chest x-ray program ran  
3 between October '99 and September 2002 and found that of  
4 31,179 working miners, the presence of pneumoconiosis was  
5 found in 862 cases. The study did not include high  
6 participation of miners in some states such as Kentucky  
7 where the numbers of miners afflicted with the disease is  
8 suspected to be among the highest. During the 1990s, over  
9 160 companies and/or individuals were criminally prosecuted  
10 for fraudulent dust sampling practices aimed at hiding the  
11 unhealthy respirable dust levels they were exposing miners  
12 to.

13           A program must be put in place that gives miners  
14 control over the dusty conditions that destroy their health  
15 and lives.

16           Part 72, which is determination of concentration  
17 of respirable coal mine dust and the single sample policy,  
18 MSHA, from what I gather by reading the rule, proposes two  
19 changes in the single sample policy. The first is that  
20 citations will be based on MSHA samples rather than the  
21 operator samples. The second is that the citation will be  
22 based on a single sample rather than an average of five.

23           On the surface, these appear to be improvements  
24 but there are many, many problems that are buried in the

1 details. Compared to operator samples, MSHA samples are  
2 more likely to be accurate. I've been with MSHA personnel  
3 that take them myself and I think they do a good job.

4           But in addition, the citations are based on an  
5 average. Dust samples can easily go over the standard on  
6 single shifts and the average still be below the standard.  
7 If citations are based on single samples, if the coal dust  
8 is high on that sample, MSHA could issue a citation based on  
9 a single sample. This policy is more in keeping with the  
10 Mine Act because it requires that concentration of  
11 respirable dust to be at or below the standard for each  
12 miner and expresses a clear preference for taking samples on  
13 a single shift rather than several shifts.

14           But what I've noticed is that MSHA makes several  
15 adjustments that weakens these improvements. These  
16 adjustments come from (a) the way they defined a shift; (b)  
17 the way they defined a single sample; (c) what they mean by  
18 over the standard.

19           First, in spite of miners regularly working 10 and  
20 12 hour shifts, as I mentioned earlier, MSHA considers a  
21 shift to be eight hours or less, which is contrary. They  
22 propose to start the sampler when the miner enters the  
23 section and to turn it off eight hours later regardless of  
24 how long the shift is. The Mine Act refers to a shift

1 without defining how long it is. Thus, MSHA's proposal  
2 would not measure miners' true exposure if it is longer than  
3 eight hours.

4           Second, MSHA proposes to take samples for several  
5 miners on a shift, but even if more than one miner is  
6 exposed over that standard, MSHA will issue only one  
7 citation. I can't understand that, gentlemen -- I can't  
8 understand it to this day, and that has been an issue among  
9 many --

10           MR. THAXTON: I think you're misinterpreting  
11 what's been said. You're the second person that's brought  
12 this up. MSHA has said that we will issue one violation  
13 like on the roof bolters because that's one dust generating  
14 source, but if say on the example that we showed, if the  
15 roof bolter was in noncompliance and the continuous miner  
16 operator showed noncompliance, because those are two dust  
17 generating sources, that's two separate citations. If you  
18 had a shuttle car that was exposed in a different manner,  
19 that also could result in a citation.

20           What we've said is that we will issue potentially  
21 multiple violations on any survey. The only time it's one  
22 citation issued is if it's one dust generating source  
23 because if you're taking action to address that dust  
24 generating source, you're addressing multiple people.

1 That's the only thing that came up that there would be only  
2 one violation issued.

3           Truly under the MSHA sampling program with single  
4 sample, the operator is subjected to potential for multiple  
5 violations on each individual survey that MSHA collects.

6           Also, just while we're doing this, you also  
7 indicated that this sampling that would be done by MSHA  
8 would be -- go into the mine, go up on the section, run it  
9 for eight hours and then turn it off at the end of eight  
10 hours. No. MSHA sampling would be done portal to portal  
11 eight hours or less, it's turned on when you enter the mine,  
12 as it is right now, it's turned off to be brought outside  
13 then at the end of eight hours. What you're talking about  
14 is going up on the section to collect samples or the  
15 operator samples collected for verification of a plan.  
16 Those samples are run for the full production shift. If you  
17 are producing on the section for nine hour, the samples  
18 would be run for nine hours for verification of the plan.

19           It's the MSHA samples only for compliance  
20 determinations that would be run portal to portal eight  
21 hours or less.

22           MR. PARKER: I understand that and that's my  
23 question, is the people are exposed to this dust for up to  
24 10, maybe 12 hours. Why would the MSHA sample be only

1 eight? I feel and concur that the MSHA sampling device  
2 should stay with the miner the complete length of time that  
3 he is exposed to these dust levels. You understand where  
4 I'm coming from, I hope?

5 MR. THAXTON: Yes, that's a valid comment that we  
6 will consider.

7 MR. PARKER: Thank you.

8 Third, what MSHA means by over the standard, which  
9 is what I interpret, over 2.33 milligrams per cubic meter of  
10 air for a two milligram per cubic meter standard is  
11 complicated. And to complicate things more, what I  
12 understand is proposed is small adjustments are made that if  
13 they average samples or if there is a reduced standard  
14 because of quartz. At or below -- my interpretation or what  
15 I would understand, would be two milligrams or less, not  
16 2.33.

17 I understand that this adjustment would be because  
18 the dust sampler does not always give a precise result. But  
19 for example, even though the true dust concentration might  
20 be two milligrams per cubic meter or it might read 1.9 or  
21 2.1, depending on many small variations in how the filter is  
22 weighed and whether the battery is fully charged or whether  
23 it pumps at the right rate and so on.

24 In other words, there is some doubt about whether

1 any sample gives a true concentration and the closer you  
2 would get to a two milligram per cubic meter, the greater  
3 the doubt, if you see all the different formulas there.

4           And what I understand is MSHA gives nearly all the  
5 benefit of this doubt, 95 percent or so I would say, to be  
6 precise, to the mine operator.

7           MR. KOGUT: Let me just address that last two  
8 comments you made, if I may interrupt you.

9           If you look at that margin of error as a  
10 percentage of the standard, then the percentages are  
11 actually greater at the lower standards. So expressed as a  
12 percentage of the standard, the margin of error is actually  
13 greater at the lower standards, not at the two milligram  
14 standard.

15           MR. PARKER: Uh-huh.

16           MR. KOGUT: That's number one. And secondly, you  
17 said that we give -- or under the proposal, that all the  
18 benefit of the doubt is given to the mine operator. If you  
19 look at Table 70.1 on page 10.876, you'll see that when the  
20 mine operator verifies the dust control plan, the benefit of  
21 the doubt goes in the opposite direction, so that if an  
22 operator tries to verify the plan based on one sample, the  
23 critical value for respirable dust is 1.71, which is, of  
24 course, less than two, and the measurement would have to be

1 less than 1.71 for a single sample. And similarly for  
2 quartz, it has to be 87 micrograms per cubic meter, which is  
3 less than the 100 microgram standard.

4 So there in the plan verification phase, the  
5 benefit of the doubt goes the other direction.

6 MR. PARKER: I appreciate your comments.

7 Of course, you could look at the other side of  
8 this problem and that is mine represents is trying to  
9 understand the formulas that you have in the proposed rules.  
10 If MSHA were giving the benefit of the doubt to the miners,  
11 they could require that citations be issued if a single  
12 measurement were above 1.67 with the .33 that I mentioned  
13 earlier. That is a level when you could be 95 percent sure  
14 that exposure was below the standard and that is -- you  
15 know, if you subtract .33 from 2.0, you get 1.67.

16 Incidentally, I believe with MSHA's policy on plan  
17 verification, they require that the dust level be below 1.67  
18 for this reason, but to take the usual two steps backward  
19 for every step forward, this measurement, a single  
20 measurement, is taken by a mine operator, not MSHA  
21 personnel.

22 By giving the benefit of the doubt to the  
23 operator, the MSHA policy -- I mention policy, not  
24 regulation -- it's very, very hard for an MSHA inspector to

1 enforce policy -- not regulation. And even harder for a  
2 miners' representative to protect miners' health and safety  
3 in these coal mines across the nation with a policy.

4           If there must be new dust regulations, it needs to  
5 be a regulation, not a policy, gentlemen.

6           Like I started to say, by giving the benefit of  
7 the doubt to the operators, the MSHA policy sacrifices  
8 miners' health and safety to operators' rights. It is a  
9 clear demonstration that they do not think, in our  
10 interpretation, miners' health is as important as mine  
11 operators' legal rights.

12           But the purpose of the Act, the Mine Act, I'll say  
13 and recall, is to protect miners' rights and their health.  
14 The MSHA policy is a step in the wrong direction. When we  
15 consider that NIOSH has recommended that the standard of 2.0  
16 milligrams per cubic meter be lower to a one milligram per  
17 cubic meter, this adjustment for sampling variability is  
18 another step in the wrong direction. And I remind you that  
19 also NIOSH does consider and talk about respirators but not  
20 in lieu of the environmental controls on the ground in the  
21 coal mine.

22           We, as far as a miners' representative, feel that  
23 MSHA should enforce the Mine Act as it is written and, for  
24 example, if the two milligrams is in the exposure level,



1 MSHA should issue citations and if the exposure is above the  
2 two milligram per cubic meter for each miner on each shift,  
3 not a piece of equipment.

4 I heard what you said awhile ago and I understand  
5 where you're going with it, but we have different feelings.

6 There's two miners on a roof bolter, two miners on a mining  
7 machine and each one of those that are out of compliance,  
8 there needs to be a citation issued.

9 Thank you for your time, I appreciate it.

10 MODERATOR NICHOLS: Thank you.

11 (Applause.)

12 MODERATOR NICHOLS: Tom Wilson.

13 MR. WILSON: My name is Tom Wilson, that's W-i-l-  
14 s-o-n. I work for the UMWA Health and Safety Department.

15 The miners have faced many hurdles to arrive here  
16 today. Miners have faced hurdles from the coal operators,  
17 unnecessary complications were placed on getting miners off  
18 for today's hearing. Some miners testifying here today face  
19 job-related penalties as a result of being here today.

20 Other that are on the witness list, which we had full  
21 expectations of testifying today, have called in stating  
22 that management would not allow them to come without  
23 receiving discipline for being absent from work.

24 Sadly, the miners have faced many hurdles from the

1 government to arrive here today -- voluminous material,  
2 failure of the agency to provide the material to the miners,  
3 misrepresentation of the rules at the hearings and in the  
4 media.

5           I call for the resignation of all agency officials  
6 who are attempting to manipulate the public's understanding  
7 of these proposed rules. These top agency officials are  
8 failing to carry out the mandate of Congress. These top  
9 agency officials are anxious to declare that all engineering  
10 controls have been exhausted. Read today's transcript,  
11 those very words came out of the chairperson's mouth here  
12 today.

13           Proposed 70-204, 70-207 and 70-215, all refer to  
14 dust control parameters. We cannot fault the mine  
15 operators for not listing all dust control parameters. We  
16 fault MSHA for again not performing their job in identifying  
17 the many parameters used during sampling to achieve  
18 compliance. It is the agency that allows these loopholes to  
19 exist by not identifying all parameters. It is this same  
20 agency that fails repeatedly to require engineering controls  
21 that are truly available to all types of application.

22           Mine operators have long argued that they could  
23 not develop engineering controls and have sought for years  
24 to replace those with respiratory protection. Mine

1 operators have developed an array of engineering controls to  
2 contain the respirable dust when they had to. Had the  
3 provisions proposed in the rule been in place years ago,  
4 miners would not have had many of the dust controls that are  
5 in mines today. If the final rule allows use of respiratory  
6 protection in lieu of engineering controls to contain coal  
7 dust, it will halt future development of respirable mine  
8 dust control technology similar to that which occurred with  
9 noise control.

10           It should be pointed out that the U.S. mining  
11 industry is the most productive in the world and has made  
12 tremendous gains in increasing productivity with dust  
13 controls applied. Alabama mines have the most grindability  
14 coal in the United States. Alabama mines have the highest  
15 air requirements of any mines in the country. Both of these  
16 facts create higher dust levels. This is not conjecture, it  
17 is fact. I believe everybody in this panel is well aware of  
18 these facts and that these facts are not disputed.

19           In the late eighties, JWR Number 4 Mine was surely  
20 out of compliance and management at that time was declaring  
21 all feasible engineering controls had already been applied.  
22 And they needed permission to utilize airstream helmets  
23 instead of engineering controls. During this time, a more  
24 caring MSHA than what exists today conducted a survey of the

1 dust in the mines' long walls. During 1989 various  
2 discussions were held between United Mine Workers of America  
3 representatives and representatives of the Mine Safety and  
4 Health Administration and also with representatives of the  
5 Pittsburgh Health Technology Center concerning respirable  
6 dust problems on long wall mining sections in underground  
7 coal mines.

8           On May 2, 1989, Joe Main, Administrator of the  
9 UMWA's Department of Occupational Health and Safety; Bob  
10 Scarmazino, Deputy Administrator of the UMWA's Department of  
11 Health and Safety; Thomas Wilson, UMWA International Health  
12 and Safety representative and several UMWA local union mine  
13 health and safety committees met with Joseph J. Garcia,  
14 District Manager, Coal Mine Safety and Health, MSHA District  
15 7. During this meeting, the UMWA discussed several  
16 concerns, including concerns on respirable dust problems on  
17 long wall mining sections.

18           In response to the concerns raised by the UMWA,  
19 Mr. Garcia requested that ventilation and dust divisions of  
20 the Pittsburgh Health Technology Center conduct long wall  
21 ventilation and environmental dust control investigations.

22           September 1989 to March 1990, a three-phase long  
23 wall ventilation and environmental dust control  
24 investigation was conducted by personnel from the

1 ventilation and dust divisions of the Pittsburgh Health  
2 Technology Center at the Blue Creek Number 4 Mine, Jim  
3 Walter Resources, Inc., Brookwood, Alabama. The  
4 investigation was conducted as follows:

5           Phase 1, September 18 through 20, 1989

6           Phase 2, December 6 through 12, 1989

7           And Phase 3, March 12 through 14, 1989 (sic)

8           During Phase 1, management put special emphasis on  
9 items addressed in their approved ventilation methane and  
10 dust control plan; i.e., water sprays working, et cetera.  
11 And extra pain was taken with washing the shields and  
12 shearer body. Also when asked about normal production on  
13 the long wall, number 2 section, management reported that  
14 three to four cutting passes of the shearer per shift was  
15 normal. Management claimed less production so that they  
16 could mine less during the survey and samples would still be  
17 valid.

18           The reports show that while the Phase 1 survey was  
19 being conducted, two cutting passes of the shearer per shift  
20 was averaged. This is far less than normal. However, even  
21 with this reduced production, the long wall proved not to be  
22 in compliance. Following are the results:

23           These are personal samples. Head drum operator -  
24 2.9 milligrams.

1 Tail drum operator - 3.5

2 Number 1 shield setter - 0.2

3 Number 2 shield setter - 1.7

4 Number 3 shield setter - 4.2

5 Number 4 shield setter - 2.2

6 Four of the six samples taken were out of  
7 compliance with two of the six samples being almost double  
8 the allowable limits.

9 One can only imagine what the results would be if  
10 samples were ran under actual conditions and practices.

11 Phase 2. during Phase 2, every possible thing  
12 imaginable was done by management to affect the outcome of  
13 the survey. In one instance, over a three day period,  
14 production was reduced to 1.3 cutting passes of the shearer  
15 per shift. In addition to the reduced production, several  
16 other things were done to affect the results of the survey.

17 Environmental dust survey report number PHTC-DD-  
18 90-407C discusses some of the more obvious things that were  
19 being done. For example, the shearer was operated one-third  
20 to one-half the normal speed. The slower the shearer moves,  
21 the less coal is cut and less dust generated. The face  
22 conveyor motors were observed drawing approximately 70 to 75  
23 amps each when normally they would draw 125 amps each, thus  
24 revealing that the conveyor was not being loaded down. The

1 same was observed with the shearer tram motor.

2           Additional supervisors were used downwind of the  
3 shearer to constantly wet down the coal face and the long  
4 wall shields. The environmental dust control investigation  
5 was totally sabotaged throughout Phase 2 and practices  
6 observed during this phase reflected no resemblance to  
7 actual operation and/or practices.

8           Phase 3. Phase 3 was a mirror image of Phase 2.  
9 After Phase 3 was completed, investigative report number  
10 P338-B242 and Dd-414S were published setting down the  
11 findings, conclusions and recommendations.

12           At the time of this writing, since these reports  
13 were published, the language in the approved dust control  
14 plan was not adjusted to encompass the recommendations from  
15 the report. MSHA personnel stated they have reviewed the  
16 reports and since the long wall recently went into  
17 noncompliance status May 6, 1991, they will be requesting  
18 that management revise the dust control plan. It should be  
19 noted that this was not the first time that the long walls  
20 had gone into noncompliance status since the report was  
21 published.

22           We've heard throughout the day -- first let me  
23 read some from the report itself -- on the number one long  
24 wall unit, supervisory personnel was used to assist on this

1 face. One supervisor remained with the shearer at a  
2 location between the two shearer operators. At this  
3 location, he controlled the speed at which the shearer  
4 moved. During this survey, the shearer was reportedly  
5 operated at less than normal speed, one-third to one-half  
6 normal speed, according to face workers. The head and the  
7 tail face conveyor motors were observed to draw  
8 approximately 70 to 75 amps each. Face workers reported  
9 they would normally draw approximate 125 amps each.  
10 Likewise, the shearer tram motor was observed to draw  
11 approximately 20 to 50 amps. Normally this motor would draw  
12 approximately 100 amps, according to face workers.

13           Two supervisors followed behind the shearer as it  
14 cut from tail to head, to hose down the shields and the face  
15 using water hoses located approximately every 20 shields  
16 along the face. They did an excellent job of keeping the  
17 face wet, but at the risk of exposing themselves  
18 unnecessarily to dust generated by the shearer.

19           I also want to talk briefly about a report --

20           MR. KOGUT: Excuse me, Mr. Wilson, before you go  
21 on to talking about another report, I didn't quite  
22 understand I think what you were getting at in talking about  
23 that report.

24           MR. WILSON: Mainly because I haven't gotten to



1 the summary of what -- the point I was making on --

2 MR. KOGUT: Oh, okay.

3 MR. WILSON: -- both of these reports.

4 MR. KOGUT: Okay, I'll wait.

5 MR. WILSON: In this report, on a section called  
6 Dust Control -- by the way, Health and Safety Issues Related  
7 to Extended Long Walls, written by Edward D. Thimmons,  
8 Robert A. Jankowski, Gerald L. Finfinger, U.S. Bureau of  
9 Mines, Pittsburgh Research Center, Pittsburgh, Pennsylvania.

10 Extended face long walls may introduce dust levels  
11 higher than those on convention size long walls. Additional  
12 dust may result from the cutting process itself and from  
13 other long wall face sources. Although gains in dust  
14 control technology have been made for long walls during the  
15 past few years, they have been far overshadowed by the large  
16 increases in coal extraction rates.

17 As more coal is mined from dust, more dust is  
18 generated, thus increased tendency on extended face long  
19 wall technology will likely mean that more dust will be  
20 produced. Any additional increase in long wall coal  
21 production without new dust control technology will result  
22 in increased levels of dust exposure.

23 Because of the operational considerations,  
24 extended face long walls will favor the use of the

1 bidirectional cutting sequence. Productive mining time of  
2 bidirectional versus unidirectional cutting faces improve  
3 significantly with wider faces. However, bidirectional  
4 cutting increases the face workers' exposure to respirable  
5 dust since the machine is cutting a larger portion of the  
6 time. Combatting dust from extended face long walls will  
7 require control technologies that both suppress dust at the  
8 source and capture dust in the air. Dust avoidance  
9 procedures commonly employed to reduce dust exposures on  
10 unidirectional faces may well have limited access, since the  
11 bidirectional cutting sequence will place face workers  
12 downwind of the dust sources during all phases of the mining  
13 cycle. During the downwind cutting pass, the shearer  
14 operators will be downwind of support advance. During the  
15 upwind cutting pass, the support movers will be downwind of  
16 the shearer.

17           Throughout the day, we have heard testimony --  
18 hold on one second. Throughout the day, we've heard  
19 testimony on MSHA's failure or unwillingness to properly  
20 identify parameters that affect the outcome of dust samples.  
21 Back in the late eighties in the government's own report,  
22 it was reported that parameters were being utilized by mine  
23 operators to affect the outcome of dust surveys and even  
24 after that was reported in official government documents,

1 MSHA failed to take action by requiring those parameters to  
2 be incorporated in the approved dust control plans.

3           You can also check the record concerning the  
4 second document because it was the agency that rushed to  
5 approve the extended faces, even though the documentation  
6 was already present that showed increased production was  
7 going to increase dust levels.

8           The UMWA actually filed suit and tried to raise  
9 that very issue. The agency objected and prevailed that  
10 there was no relationship between long wall face size and  
11 dust generation. These are definite factors that the agency  
12 has failed to address, parameters that the agency fails to  
13 address and we've basically got a tail wagging the dog  
14 situation.

15           There are engineering controls available for any  
16 application but the agency will not require those  
17 engineering controls to be implemented to control the dust.  
18 They walk away from them.

19           The State of Alabama has a high speed race course  
20 and for years, that high speed race course caused accidents.  
21 NASCAR, unlike MSHA, took aggressive measures and required  
22 engineering controls to be placed on all NASCAR cars that  
23 race at that race track. It's called a restrictor plate.  
24 Now successful races are held because it limits the speed at

1 which those race cars can travel around that high speed race  
2 track. The technology is there. MSHA won't touch it.

3 MR. KOGUT: Can you provide us with the specific  
4 engineering controls that you're talking about that you  
5 think we should explicitly list?

6 MR. WILSON: A number of them are listed right  
7 here in these reports that's been available to you since the  
8 late eighties. If you gain compliance at a certain tram  
9 speed or with certain water application or certain RPMs,  
10 then those are the parameters that you should mine at. You  
11 should demonstrate your ability to achieve compliance. The  
12 people monitoring that should properly evaluate it. This is  
13 the only time I know of -- this report that I'm referring  
14 to, and by the way I'm going to submit into the record --  
15 that a government official actually recognized those type of  
16 parameters and methodologies being utilized to control dust.

17 You mentioned tram speeds, you mentioned the  
18 number of workers and what the workers were doing. For  
19 example, additional workers applying additional water far  
20 above what was required in the dust control plan, the number  
21 of passes, the amount of tonnage.

22 MR. NIEWIADOMSKI: Tom, can I ask you a question?  
23 As I remember the outcome of that study, what happened was  
24 we went into this sampling scheme where I believe the

1 operator sampled once a month to establish how long a miner  
2 could work downwind. And that is the first time that I  
3 believe the UMWA had agreed to that where you were using  
4 administrative controls rather than relying solely on  
5 engineering controls; is that correct? Remember the case  
6 sampling?

7 MR. WILSON: The result of this study was -- I  
8 remember case sampling, but the result of this study was  
9 several times the operators went into noncompliance and MSHA  
10 failed to adjust the dust control plans to incorporate the  
11 measures that had been detected, that the operators was  
12 using to achieve compliance. And I submit to you the same  
13 thing goes on today.

14 For the record, I'd like to enter into the record,  
15 first is a letter hand delivered to Ed Hugler, Deputy  
16 Administrator for Safety, Mine Health and Safety  
17 Administration, dated June 8, 1989, which lays out the --  
18 from Joseph A. Main, Administrator and that's followed by a  
19 response back to Joe Main and followed by an attachment  
20 entitled United States Department of Labor, Mine Safety and  
21 Health Administration, Environmental Dust Survey, PHTC-DD-  
22 90-2C, Blue Creek Number 4 Mine, Jim Walter Resources, Inc.,  
23 telefax, Attention: Joe Main from Thomas F. Wilson, number  
24 of pages, including cover was three. Also contained in it

1 is a ventilation system methane and dust control plan for  
2 the above mine, which was Jim Walters Number 4. Also  
3 contains memorandum for Joseph A. Garcia through Robert G.  
4 Lusso from Tom, subject respirable dust survey conducted at  
5 Jim Walter Resources, Inc. Blue Creek Number 4 Mine. And  
6 environmental dust survey PHTC-DD-90-407C. Also one with a  
7 cover letter, Pittsburgh Health Technology Center  
8 Ventilation Division dated November 30, 1989, with  
9 attachments, attaching the final report of the Mine  
10 Ventilation Pressure Air Quantity, Face Ventilation  
11 Investigation, conducted at the Blue Creek Number 4 Mine,  
12 Brookwood, Alabama September 18 through 20, 1989. One  
13 entitled United States Department of Labor, Mine Safety and  
14 Health Administration Technical Support, Phase 2, Mine  
15 Ventilation Pressure Air Quantity and Face Ventilation  
16 Investigation, investigative report number P323-B227. And  
17 one titled Health and Safety Issues Related to Extended Long  
18 Walls that I earlier mentioned, authored by Edward Thimmons,  
19 Robert A. Jankowski and Gerald L. Finfinger.

20 I would also like to make the point that, as I  
21 mentioned earlier, proposed 70-204, 70-207 and 70-215 all  
22 refer to dust control parameters and should these rules go  
23 forward, the same agency that's turned their back on  
24 requiring these items in the past is the agency we're now

1 being asked to trust to require them in the future. There's  
2 absolutely no indication or track record from this agency,  
3 as I just mentioned about dust, and as many before me today  
4 have mentioned, about noise that this agency is willing to  
5 identify the parameters and require those parameters to be  
6 utilized continuously.

7           MODERATOR NICHOLS: If you've got other stuff,  
8 Tom, you can bring it all up at once. Is that all you're  
9 going to enter into the record?

10           MR. WILSON: I do have some more.

11           My opening comments about the hurdles that miners  
12 have faced to arrive here today, and particular emphasis on  
13 the hurdles that miners face that was from the federal  
14 government. I'm referring to requested material for review  
15 not being distributed, the voluminous amount of material and  
16 expense it would cost to download or copy.

17           To prevent those type of future hurdles, we've got  
18 a petition that we've like to present to Marvin W. Nichols,  
19 U.S. Department of Labor, Mine Safety and Health  
20 Administration, Director, Office of Standards, Regulations  
21 and Variances.

22           We, the undersigned, formally request your office  
23 provide us hard copy material of all future preliminary  
24 regulatory economic analysis for proposed rules, preambles

1 of any future proposed rules as well as future proposed  
2 rules.

3 We, the undersigned, do not have access to the  
4 internet and/or cannot afford to download this volume of  
5 material from the internet.

6 Your prompt and continued action on this will be  
7 greatly appreciated. As miners, miners' representatives  
8 and/or stakeholders, we do wish to participate in all future  
9 public comment periods.

10 That's the cover letter with a page 2 and a page 3  
11 attached, all pages contain names, addresses, allegedly  
12 printed, of miners who wish this consideration be granted.

13 Also, I am confused as to actually what testimony  
14 is considered part of this official record and what  
15 testimony is not. And part of that confusion comes from the  
16 preamble and how it states MSHA arrived at publishing this  
17 new rule. Therefore, I want to submit Disk 1, Volume 1,  
18 2/21/96 Arlington, Virginia; Volume 2 is 2/22/96, Arlington,  
19 Virginia. Volume 1, 4/11/96, Pittsburgh, Pennsylvania and  
20 Volume 2 is 4/12/96, Pittsburgh, Pennsylvania. Disk 2,  
21 Volume 1, 5/29/96, Charleston, West Virginia; Volume  
22 5/30/96, Charleston, West Virginia; Volume 1, 6/20/96, Salt  
23 Lake City, Utah; Volume 2, 6/21/96, Salt Lake City, Utah.  
24 Disk 3, Volume 1, 7/22/96, Lexington, Kentucky; Volume 2,



1 7/23/96, Lexington, Kentucky; Volume 3, 7/24/96, Lexington,  
2 Kentucky; Volume 4, 7/25/96, Lexington, Kentucky. And ask  
3 that this testimony be made part of today's official record.

4 MODERATOR NICHOLS: I'm told it's already in the  
5 record, but we'll check it.

6 MR. WILSON: I'd also like to make comments, page  
7 number 10.879, Part 75, amended, under 75-370, Mine  
8 Ventilation Plan Submission and Approval, which reads, (h)  
9 The operator must record the amount of material produced as  
10 defined in 70.2 of this title, by each MMU during each  
11 production shift, retain the records for six months and make  
12 the records available to authorized representatives of the  
13 Secretary and the miners' representatives.

14 I would state that six months time for retaining  
15 the records is totally inadequate. We have heard today  
16 about miners who suffer long-term illnesses and effects from  
17 this dust, and retaining these records for a six month  
18 period, in my opinion, amounts to nothing more than dumping  
19 the material from future reference.

20 Also, 75-371, Mine Ventilation Plan Content. (f)  
21 Section and Face Ventilation Systems used including  
22 drawings, illustration how each system is used and a  
23 description of each different dust suppression system used  
24 on equipment on working sections, including any specific

1 work practices used to minimize the dust exposure of  
2 individual miners, along with information on the location of  
3 the roof bolters during the mining cycle for each continuous  
4 miner section and the cut sequence for each long wall mining  
5 section, for plans required to be verified pursuant to 70-  
6 204 of this title, the length of each normal production  
7 shift and verification production levels, VPL, as determined  
8 in accordance with 70.2 of this title must be included for  
9 each working section.

10           Again, in line with my earlier testimony, by no  
11 means do I believe that's a wide enough list of parameters  
12 and information that should be contained in the ventilation  
13 plan.

14           I thank you.

15           MODERATOR NICHOLS: Thank you.

16           (Applause.)

17           MODERATOR NICHOLS: Terry Hunter, UMWA.

18           No, we've got him here. They're trying to get rid  
19 of you, man.

20           MR. HUNTER: A lot of people tries that.

21           MODERATOR NICHOLS: I knew that was coming.

22           MR. HUNTER: My name is Terry Hunter, T-e-r-r-y  
23 H-u-n-t-e-r, Chairman of the Safety Committee, Local 1926.  
24 Evening, gentlemen.

1           I've been here before, it don't get no happier  
2 each time. I've got a few comments, I'll make them brief,  
3 everybody's been here a long time and most stuff has been  
4 gone over.

5           I would like to thank MSHA for taking over the  
6 sampling program. I just think it needs to be done more  
7 often than what y'all recommend in your program -- not to be  
8 no less than what it is now, if not more.

9           One of the comments I'd like to make on it, y'all  
10 recommend one sampling out by your working faces. If you  
11 take in the notice, all your people done got black lung, got  
12 moved out by to get on less dusty areas. You need to make  
13 sure they stay in less dusty air. If everyone got the car  
14 done used it to get out by the face where it's supposed to  
15 be less dusty, we want to keep them with us long as we can,  
16 don't want to make it no harder on them.

17           We need two milligram lower standards. If you  
18 want to take in, allow for machine errors and everything, go  
19 lower, not higher. MSHA is going to let the company control  
20 their own -- check their own dust samples on there, make  
21 sure they're right. I'd rather MSHA done the checking  
22 theirsself.

23           On using your airstream helmet, in the Act it says  
24 you're not using. I believe anybody goes against that is

1 breaking the law. If you go against that, you're putting  
2 more people in harm's way. Somebody should answer for it.  
3 We've had enough people injured now and killed.

4           On your PDM, personal dust monitor, I'd like to  
5 see it in effect, monitored from the time you go underground  
6 until you get out from portal. Everybody is talking about  
7 eight hours, ten hours. We also work six days a week, you  
8 don't have no more five days a week. I'd like to see more  
9 sampling on the weekend. You hardly ever see dust samples  
10 run on the weekend when they're running. Most all your dust  
11 samples run during the week, you need to take a look at the  
12 way you do your sampling, the times. It would help to get a  
13 more equal and fair judgment on the dust samples.

14           On determining advantage of the dust control  
15 parameters, specifies in the mine ventilation plan that Tom  
16 talked about awhile ago, you've got a bunch of ways you can  
17 adjust that, the depth of the cut you take, the speed of  
18 your shear, the speed of your chain, the travel speed, all  
19 has an effect on your parameters. The faster you cut, the  
20 faster you travel, more dust you create; like the air, the  
21 more air you put on the place, the more dust you create.  
22 You put more speed, more dust, you get two advantages there  
23 working against you. It ought to be more sampling, more  
24 studies on that.

1 I've got one more comment, or two. In the Act, it  
2 says the first priority of concern on the mining industry  
3 must be the health and safety of its most precious resource,  
4 the miner. That's what we're all here for, to look out  
5 after the miners.

6 That's about all I've got to say.

7 MODERATOR NICHOLS: Thanks.

8 MR. KOGUT: Excuse me. Were you suggesting that  
9 the speed and the depth of the cut be explicitly included as  
10 dust control parameters?

11 MR. HUNTER: Yes, sir.

12 MR. KOGUT: Thank you.

13 MODERATOR NICHOLS: Okay, thanks.

14 (Applause.)

15 MODERATOR NICHOLS: Jimmy Starns, UMWA.

16 MR. STARNs: Good afternoon, gentlemen, ladies,  
17 I'm Jim Starns, that's J-i-m S-t-a-r-n-s, I'm from the local  
18 safety committee of Local 1926, P&M Coal.

19 Gentlemen, everybody has went over about  
20 everything more than once. I have about five things I'd  
21 like to say.

22 First of all, in about the year 2000, 1999, MSHA  
23 put out a sticker that says "Dust is not Just Dust, it's  
24 Silica." There was a big push, you know, with brochures and

1 pamphlets to stay out of the dust. Y'all really was pushing  
2 that hard and it went good for about six months and just  
3 sort of faded away, seems like. I don't know what the  
4 intentions of it really was except to jar people's memory  
5 about dust, silica, but it had a short-term effect at our  
6 mines. People got back in our old routine and, you know,  
7 went about their daily work.

8           Another thing, in a way MSHA should be commended  
9 on seeing that something was wrong with dust sampling. And  
10 the simple thing to me is what they done was try and take it  
11 over completely. But I believe they soon realized that the  
12 size of dust sampling all unionized mines in this country  
13 proved to be too costly and it was too big of a burden. So  
14 they had to back up and try and redirect theirselves and, you  
15 know, try and change it another way. You just couldn't be -  
16 - economically, MSHA couldn't do it.

17           Case in point, under the current regulations, if  
18 the occupation is out of compliance, you resample that  
19 occupation that not the person that had the sample that was  
20 out of compliance, you just redirect the occupation again.  
21 You've still got four or five different people doing the  
22 resampling, you know. This guy, number two guy, could have  
23 black lung then but the number four guy is the one that's  
24 out of compliance.

1           Same thing with 060 on long wall. You sample the  
2 most downwind area and then you use that sample to add to  
3 the other four samples, other five samples that you take,  
4 head gate, you know, shearer operator, stage loader, intake  
5 air, so forth. Then you add them all together and average  
6 them out. There's usually nobody downwind at the furthestest  
7 point downwind, which is 060. That gives you a false  
8 reading and plus it adds people out of compliance.

9           Same way when you use your estimations under this  
10 new -- from the 2.0 to the 2.33 standard, you're throwing an  
11 error factor there that like everybody says can go either  
12 way, the access two milligrams. Let's use the two milligram  
13 standard and not give a playing field that's too big so you  
14 can't watch all the players at one time.

15           Another thing, our mines in the 1980s that I  
16 worked at had a total output of about two million tons.  
17 Today it's going to run anywhere from 3.5 to 3.7 million  
18 tons. Is less sampling the right thing to do? If you do  
19 less sampling, you know, where is the extra dust going to  
20 that you don't realize where it's at. You put, like Mr.  
21 Parker and Mr. Plylar said, you put the factors or formulas  
22 and different ways to figure stuff in this that makes it  
23 complicated for the lay person to understand. Tests would  
24 be involved that are done from y'all's people -- NIOSH, MSHA

1 does, tech support does. If it's all in a laboratory or a  
2 preset building, you've not got actual conditions. You  
3 automatically -- or I think you would automatically hurt the  
4 outcome because you staged the event, it's not an actual  
5 account.

6           Our company had a NIOSH study done awhile back and  
7 it directly shows that the more volume you put in an area,  
8 the more dust concentration is made. Our company goes out  
9 of compliance, first thing we hear is you've got to add to  
10 the plan. Is more better? I think not. It's just the old  
11 standard saying, if this much is good, we ought to have this  
12 much, that'll make it better or make it go away. That's --  
13 you can't use that ideology, in my opinion.

14           I ask for an even playing field for all parties,  
15 we're all in this together. My people, the local union  
16 people, are down there eight, ten, twelve hours a day.  
17 Company personnel are not down there eight, ten, twelve  
18 hours a day. The front line foremen are, the rest of them  
19 are not, you know -- but an even playing field.

20           A union mines is a captive mines for MSHA because  
21 they're easy to go to. I don't see or haven't seen a non-  
22 union mine in record of having as many visitations from MSHA  
23 as my mines does or Jim Walter's mines does. They get the  
24 blanket four times a year, you know, one trip every quarter,



1 and that's it.

2 Case in point, I think in March we had 87  
3 citations and it was something -- I would think it was over  
4 100 visits from inspectors, you know. A monthly average, we  
5 have 35, 45 visits, inspections, but it's because it's a  
6 unionized mine. The unionized mine bears the brunt of an  
7 MSHA policy, whether it's right or wrong is for somebody  
8 else other than me to decide, but I feel that it's wrong.

9 I don't know -- I hope the panel backs off these  
10 things you're trying to implement today, because I think  
11 you've got way off base in trying to solve a problem that I  
12 think is simple if you follow the Act as it was initially  
13 intended to be followed.

14 And that's all I've got.

15 MODERATOR NICHOLS: Thank you.

16 (Applause.)

17 MODERATOR NICHOLS: Rick Jones.

18 MR. JONES: My name is Rick Jones, R-i-c-k J-o-n-  
19 e-s. I'm a member of the Mine Safety Committee at P&M's  
20 North River Mines, Local Union 1926.

21 I got hired in the mines April 24, 1978 in Raton,  
22 New Mexico. At that time, I worked for Kaiser Steel. I've  
23 pretty much been an underground miner all my life. Probably  
24 after about six years in the mines, I got on the safety

1 committee and at that time, I felt really inadequate because  
2 I didn't know as much as the other fellows did, but I  
3 learned a little bit. And since my transfer here to P&M  
4 Mines, thanks to Mr. Tim Baker and Tom Wilson, I got to go  
5 to Beckley, West Virginia and really get my feet wet.

6 I work close with Ms. McCormick, her staff,  
7 they're from Birmingham and Hueytown. I put a lot of trust  
8 in MSHA because I've fought the companies ever since I came  
9 in, one way or another and God gave you this position, he  
10 gave you the ability to understand all this technical stuff  
11 where I don't. You've been blessed with what you're doing  
12 there.

13 My only question is if y'all back up -- I can  
14 watch the company run scared when they hear the federals are  
15 coming. Oh, boy, their tails light up and they're running  
16 ever which way. They don't know when they're coming,  
17 because y'all won't tell them, but we're going to be there  
18 today. They won't tell you where they're going.

19 Now if you back off, who do I put my trust in?  
20 That's the only question, the only comment I've got. Who do  
21 I depend on now if you're not going to help me? Because we  
22 can't do it by ourselves, we depend on MSHA daily, daily,  
23 daily, everything from electrical to ventilation to  
24 admissibilities, everything. You're the ones in charge,

1 you're the watchdogs. If y'all back off, what do we do?  
2 Answer me that question and I'll shut up. That's all I want  
3 to know. If you quit, what do we do then?

4 I went to Beckley, West Virginia, NIOSH people put  
5 on a real good program, I was really impressed. That big  
6 blue bus you guys got, isn't that what it's called? The big  
7 blue bus?

8 MR. FINFINGER: I'm not sure what you mean by  
9 that.

10 MR. JONES: Ask around, you'll know what it is.

11 (Laughter.)

12 MR. JONES: They take it to every mine disaster,  
13 every explosion.

14 MR. FINFINGER: That's MSHA.

15 MR. JONES: Is that your big blue bus?

16 MR. THAXTON: It's the blue goose.

17 MR. JONES: The blue goose, okay, excuse me, I'm  
18 sorry.

19 Now if you back off and you take that away from  
20 us, what have we got? Answer me that. You're going to make  
21 us breathe more dust, you ain't going to be there for us?  
22 Who do we depend on? Think about it.

23 Go ahead, raise the dust standards up, we don't  
24 have nobody then, period. You've heard a lot of testimony

1 today, a whole bunch. I can't even remember half of what I  
2 heard. But you're writing it all down, that's good. But if  
3 we can't trust you, who can we trust? You make it happen,  
4 believe it or not.

5 That's all I've got. Thank you.

6 MR. THAXTON: Thank you.

7 (Applause.)

8 MR. THAXTON: Eric Barnes.

9 MR. BARNES: Good evening, or maybe it's good  
10 night now. I'll make this short and sweet. My name is Eric  
11 Barnes, E-r-i-c B-a-r-n-e-s. I'm a safety committeeman,  
12 Local 2368, I work at Number 5 Jim Walter Mine.

13 On September 2001 at Jim Walter Number 5 Mine,  
14 there was an explosion that took the lives of 13 coal miners  
15 and 13 of my friends. There were 32 miners underground at  
16 the time of the explosion. If this proposed rule had been  
17 in place, there may have been 32 fatalities due to more  
18 float coal dust in the atmosphere.

19 Here we are again fighting to live. Coal miners  
20 are dying each day in dust readings of two milligrams,  
21 according to a NIOSH study. We are being asked to gear up  
22 in helmet and hit eight milligrams of dust. We didn't even  
23 double the number, we just tripled it.

24 The proposal would allow operators to require

1 miners to wear respirators and airstream helmets and  
2 increase dust levels. I personally had to wear one of these  
3 dust helmets at the Prestonburg, Kentucky hearing in 2000.  
4 It was in sort of a setting just like this in front of you  
5 people and I wore it for eight hours and I almost died. I  
6 cannot imagine trying to wear this thing underground on a  
7 long wall for 10 hours or 12 hours -- just it would be  
8 impossible.

9 I think the helmet would place workers in more --  
10 in a more dangerous condition due to visibility and due to  
11 just the bulk of it itself trying to get around, trying to  
12 get away from something. You would probably be killed  
13 trying to get out of the way of a rock.

14 I am for you to further review these dangerous and  
15 unhealthy conditions. The airstream helmet and respirators  
16 are not the fair answer to dust control. More environmental  
17 and engineering controls are a better solution for dust  
18 control. It is time that MSHA sides with the coal miners  
19 and not the operators.

20 We're asking that MSHA make it mandatory to use a  
21 continuous personal monitoring device to set a more accurate  
22 measurement of dust that miners are being exposed to.

23 The proposed rule also limits out by area samples  
24 to just one time per year. We feel this needs more samples.

1 The mines that I work at and other mines across the nation  
2 use belt air to ventilate working sections. This also  
3 liberates large amounts of coal dust. We feel that there  
4 needs to be more engineering controls used in these areas  
5 and regulations on the amount of air used on these belt  
6 lines. The proposed plan cuts sampling time per mining  
7 section from 34 shifts a year to about three shifts per  
8 year. The sampling will be done by policy and not  
9 regulation.

10 We disagree with this proposal. If this proposed  
11 plan passes, then you've got a fight on your hands.

12 Thank you.

13 (Applause.)

14 MR. THAXTON: Thank you.

15 Bradley Berryhill.

16 MR. BERRYHILL: My name is Bradley Berryhill, B-r-  
17 a-d-l-e-y B-e-r-r-y-h-i-l-l. I work at Jim Walter Number 7  
18 Mines, I'm on the safety committee now but I've worked on  
19 that long wall for about 12 years and I'm here to tell you  
20 that that dust down there is bad.

21 You have to clean your regular safety glasses off  
22 three or four times each trip and I'm a little fellow. Our  
23 mines has been in a squeeze four times in the last three  
24 months. I have to take my belt off to get in them shields

1 to work. These airstream helmets, they ain't going to get  
2 it.

3 I think MSHA ought to keep the regulations we've  
4 got, maybe even lower the standard of the 2.0 because there  
5 ain't no way that you can breathe no 8.0 air and survive.  
6 Just like the lady said, she had black lung, she hadn't  
7 worked in the mines less than 10 years. Everybody down here  
8 is going to have black lung if MSHA don't step back and look  
9 at this deal and get it better.

10 I've got a paper right here I'd like to submit for  
11 the record.

12 MODERATOR NICHOLS: Thank you.

13 (Applause.)

14 MODERATOR NICHOLS: William Chambliss, UMWA.

15 MR. CHAMBLISS: Good evening. My name is William  
16 Chambliss, I'm Chairman of the Compact Committee at Jim  
17 Walter Number 7 Mine, Local Union 2397 and my name is  
18 spelled W-i-l-l-i-a-m C-h-a-m-b-l-i-s-s.

19 Maybe I'm more fortunate than a lot of people  
20 that's testified here today, I work on the surface, but I  
21 cannot understand -- I tried to read these proposed rules  
22 and regulations and I cannot understand how we can raise the  
23 dust and cut out our black lung. I can't comprehend that.

24 I know on the surface that we've got areas that we

1 can't water. I know most of the time when they take a dust  
2 sample on us, it's rained the day before or it's overcast.  
3 Like I said, I'm fortunate, I've never worked underground,  
4 I've always been on the surface.

5           But like I said, I don't understand these rules  
6 but I worked in a lamp house when -- like Mr. Berryhill just  
7 testified when they had airstream helmets. I had to clean  
8 them things and maintain them. I don't see how the people  
9 wore them. They come off them long walls, you couldn't even  
10 see through the facepiece on them. The filters would be so  
11 clogged up, you know, there ain't no way they could get  
12 clean air through them. A lot of times the batteries would  
13 be run down on them, they wouldn't be getting -- the fans  
14 wouldn't be turning the proper RPM to supply these people  
15 with air. These airstream helmets are not the answer, we  
16 need to control the dust.

17           We need to save our miners' lives, it'll be too  
18 late when the lights go out and the air conditioners go off.  
19 These young people are not coming in the mines like we did  
20 and working. So when we kill what we got in there, it might  
21 be hard to find somebody to keep our country going. I just  
22 ask you to look at these rules. Put yourself in our place,  
23 where we have to work every day in it. Don't pass these  
24 rules. Don't try to shove them down our throat. It's just



1 -- you know, we're all in it for a living, we've got  
2 families to support, we've got grandchildren we'd like to  
3 play with. I've got a motorcycle I'd like to ride, it's  
4 kind of hard to ride one with an oxygen tank. I just ask  
5 you to redo these rules, rewrite them to where they'll be  
6 user friendly to the coal miners, not just the operators.  
7 We've got a right in this too.

8 Thank you for your time.

9 MODERATOR NICHOLS: Thank you.

10 (Applause.)

11 MODERATOR NICHOLS: William Englebert, UMWA.

12 MR. ENGLEBERT: William Englebert, W-i-l-l-i-a-m  
13 Englebert, E-n-g-l-e-b-e-r-t. I'm a member of Local 2245 at  
14 JWR Number 4 Mine, employed at Number 4 Mine.

15 I'm a ram car operator. Being a ram operator,  
16 they load onto us, the cutting machine does. When they do  
17 that dust is coming off the conveyor. Well, when we go to  
18 the feeder with it, we're getting dust from the roadway and  
19 when we dump on the feeder -- it used to be when you took  
20 your mine foreman's test, that the intake air was neutral,  
21 on the belt entry, it was neutral but now they got it intake  
22 air. So you're getting a double dose of that dust coming  
23 over that feeder when you're shoving that coal out on that  
24 feeder before it get water sprays. You're getting a lot of

1 dust. In fact, when you get off at night, a lot of people  
2 come up to you and say you work on the wall last night? I  
3 say no, I'm a ram operator. You get more dust than really  
4 the miner, the guy operating the miner. We wear safety  
5 glasses and when you try to wear your dust mask, your  
6 glasses fog up bad, you know.

7           And another thing is the miners on the long wall,  
8 they got a DGAS department down there that drills -- that  
9 follows these sections up. You was talking awhile ago about  
10 how can they cut down on the dust. They can do that with  
11 two, they don't have to go to eight. If they'll just put  
12 the people on the job to do it where they can inject water  
13 on those holes that those DGAS people drill going, following  
14 the sections up. I've seen it done, I've seen it walk down  
15 the long wall pan line and you could see better than you  
16 could on the section but yet they put everybody on one  
17 shift. We had three shifts, they put everybody on one  
18 shift, and now they don't have three shifts like they used  
19 to. But that's what we done when we used to drill those DGAS  
20 holes following those sections up, we used to come back when  
21 the long wall would come in there and set up, we'd dismantle  
22 from those welds and inject water on those holes to saturate  
23 it where when they start cutting that coal on that long  
24 wall, they didn't have no problem with dust.

1           The big deal was cutting the people back, taking  
2 people off their jobs. They don't want to put the people  
3 back on the jobs. They used to have three foremans, three  
4 shifts, they done away with two foremans, got one foreman on  
5 a shift but all of them on the same shift.

6           It seems like every time they run into trouble,  
7 they run to MSHA wanting to submit a new plan. They had a  
8 plan that worked, they just don't want to keep people on the  
9 job. You know, they don't want to do the job.

10           I think going to that high percent of dust is bad  
11 enough. I've got one foot in the grave now, I don't want to  
12 put the other one in. My granddaddy was a coal miner, he  
13 had one lung removed, I used to have to give him shots, I  
14 moved in with him when I was in high school, I had to give  
15 him shots of Tolwin, he was hooked on it, he was hooked on  
16 it because he couldn't breathe, he'd walk from the bed to  
17 the front porch and sit out on the porch, I'd have to give  
18 him a shot to calm him back down. So I know what a miner is  
19 when he's got black lung.

20           Came through a mining town, West Blocton, my  
21 grandmother's daddy was a coal miner in a wagon mine. I  
22 know about the mines, black lung.

23           So these companies can abide by what they've got  
24 now if they'll just put people on the job and do it. Keep

1 their sprays up, keep the roadways wet, they can do it.

2 They've done it before, why can't they do it now.

3 Don't fall in their hands, that's what they want.

4 We miners, we're down there every day, ten hours a day  
5 mining coal on the face. We work, we don't go down there to  
6 play. We're doing a good job running coal for them and now  
7 they want to raise the dust limits on us? No way, we don't  
8 need that.

9 We appreciate y'all backing us and sticking to the  
10 way it is now, because we don't need what they want. Thank  
11 you.

12 MODERATOR NICHOLS: Thank you.

13 (Applause.)

14 MODERATOR NICHOLS: Rickey Kornegay, UMWA.

15 MR. KORNEGAY: How y'all doing today?

16 MODERATOR NICHOLS: Good, how you doing? Just  
17 talking about how cold it is up here.

18 MR. KORNEGAY: Feels good to me.

19 Gentlemen, my name is Rickey Kornegay, R-i-c-k-e-y  
20 K-o-r-n-e-g-a-y. Let me put my glasses on here so I can  
21 read. I' a member of Local 2245 UMWA, Jim Walter Number 4  
22 Mine.

23 I'm almost 51 years old, 50 and a half years,  
24 working on my 32nd year in and around the coal mines. Most

1 of my 32 years have been spent working outside of Jim Walter  
2 Number 4 Mines. Approximately 21 years outside, six and a  
3 half years I worked in the strip mines, four and a half  
4 years I worked for the UMWA. I only worked approximately  
5 six months underground at the Jim Walter Number 4 Mine  
6 before I got outside. So I guess you're wondering what a  
7 person who has worked outside most of his working career is  
8 doing here today.

9           A couple of years ago, I was tested for black lung  
10 and two doctors said that I did have signs of black lung.  
11 If two doctors say you may have black lung, you're probably  
12 dying of it. This with me working outside all of my time  
13 except for approximately six months.

14           Also just recently at the mine I work, Jim Walter  
15 Number 4, we had an explosion at the mine outside. You say  
16 how can you have an explosion outside. Well, it was in the  
17 loadout tunnel where we load out coal to be shipped either  
18 on trains or trucks, we had an explosion in the tunnel.

19           Now MSHA is proposing to change the way dust  
20 sampling is done. On March 16, 2003, MSHA issued the  
21 proposed dust rules which both increased dust levels and  
22 decreases compliance sampling to pre-1969 levels. They cast  
23 important regulations into their trust-me policies and again  
24 failed to address the needs of miners. As for the 1980

1 promise to give miners a continuous monitoring device, they  
2 left any decision to do that entirely up to the mine  
3 operators. It is clear who is running the agency, and can  
4 you trust them?

5           Listening to the agency's explanation, it appears  
6 that these proposals will be for the better, but  
7 explanations can be deceiving.

8           MSHA proposes a change in their single sample  
9 policy; first, that citations will be based on MSHA's  
10 samples rather than on operator samples. The second is that  
11 citations will be based on a single sample rather than the  
12 average of five.

13           As I said, on the surface, these appear to be  
14 improvements, but there are many problems that are buried in  
15 the details. MSHA made several adjustments that weaken what  
16 might have been improvements. These adjustments come from  
17 the way they define a shift, the way they define a single  
18 sample and what they mean by over the standard.

19           First, in spite of miners working 10 and 12 hour  
20 shifts, MSHA considers a shift to be eight hours or less.  
21 well, if MSHA is going to do the sampling, it would have to  
22 be less because I have never seen an inspector at the mines  
23 for eight hours, much less be underground for eight hours.

24           Our long wall crews at my mine work nine to ten

1 hours every day. Me myself, last week I worked two 16 hour  
2 shifts. The week before I worked three 16 hour shifts.

3           Second, MSHA proposes to take samples for several  
4 miners on a shift, but even if more than one miner is  
5 exposed over the standard, MSHA will issue only one  
6 citation. In other words, not every single sample over the  
7 standard will result in a single citation.

8           Third, what MSHA means by over the standard is  
9 over 2.33 milligrams per cubic meter of air for a 2.0  
10 milligram per cubic meter of air standard. To complicate  
11 things, they propose smaller adjustments if they average  
12 samples or if there is a reduced standard because of quartz.  
13 In other words, there is some doubt about whether any  
14 sample gives the true concentration. And the closer you get  
15 to 2.0 milligrams per cubic meter, the greater the doubt.  
16 And then, MSHA gives nearly all the benefit of this doubt,  
17 95 percent to be precise, to the operator. I'm not really  
18 smart, but I believe this is one-sided.

19           By giving the benefit of the doubt to the  
20 operator, the MSHA policy sacrifices miner's health to  
21 operators' rights.

22           These proposals, which are being rushed through  
23 the process, will completely change the dust sampling  
24 program in the wrong way. The changes that will

1 dramatically alter the amount of respirable dust permitted  
2 in the mines are hidden in the rules. The rules not only  
3 fail to bring about needed improvements, they would reverse  
4 many improvements currently in place on controlling  
5 respirable coal mine dust.

6           Unfortunately, there are mine operators who do not  
7 want these dust levels to be identified, do not want to have  
8 to install dust control measures that are needed to control  
9 the dust.

10           The proposed rules, however, ignore these needs --  
11           (Pause for an alarm.)

12           MR. KORNEGAY: I didn't mean to take so long.

13           The proposed rules, however, ignore these needs  
14 and instead would drastically increase respirable dust  
15 levels in the active workings of some mines and drastically  
16 reduce sampling of the mine atmosphere where miners are  
17 required to work and travel. These are changes exactly  
18 opposite of those sought and needed to protect the nation's  
19 miners.

20           Numerous proposed rules would violate Section  
21 101(a)(9) of the Mine Act by reducing protections afforded  
22 miners under the Act. MSHA plainly ignored the well  
23 documented record on reforms needed as they crafted the new  
24 rules.



1           I would like to state some of the adverse  
2 proposals in MSHA's dust rules:

3           1) While MSHA portrays the proposed dust rules as  
4 a government takeover of the respirable dust compliance  
5 sampling program, it is not. The proposal simply eliminates  
6 mine operator compliance sampling. MSHA's own compliance  
7 sampling will be reduced by up to 50 percent from the 2000  
8 proposal and that sampling is only by policy, not  
9 regulation. This could be further reduced at any time, as  
10 it has in the past.

11           2) Compliance dust sampling on mining sections  
12 will be cut up to 90 percent under the MSHA proposal.  
13 Instead of the 34 shifts currently being sampled a year,  
14 mining sections have as little as three shift samples a year  
15 for compliance with the dust standards. As noted, those are  
16 only by policy. The standards for recurring compliance  
17 sampling are eliminated.

18           3) The MSHA proposal would allow dust levels to  
19 exceed the standards before being cited and in cases over  
20 four times the limit set by Congress in 1969.

21           4) The MSHA proposal would eliminate regulations  
22 that require six bimonthly sampling to be taken of a  
23 designated out by areas and would have only one shift sample  
24 a year. This represents an 83 percent reduction in sampling

1 of those areas. Further, that one sample is not guaranteed  
2 by the rule, only an agency policy.

3           5) The proposal eliminates the mandatory  
4 requirements for bimonthly sampling of Part 90 miners, those  
5 diagnosed with black lung, leaving this vital sampling to  
6 the ever-changing agency policy.

7           6) Instead of decreasing dust levels in mines,  
8 the new proposals allow dust average --

9           (Pause for alarm.)

10           MODERATOR NICHOLS: Somebody don't want you up  
11 here, Bud.

12           (Laughter.)

13           MR. KORNEGAY: Sounds like it. Y'all want to go  
14 ahead? I lack about five minutes.

15           MODERATOR NICHOLS: Okay, go ahead.

16           MR. KORNEGAY: Instead of decreasing dust levels  
17 in mines, the new proposals allow average dust  
18 concentrations in the mine atmosphere to be increased up to  
19 four times the current 2.0 milligrams permitted by law,  
20 allowing dust levels up to eight milligrams in the active  
21 workings of the mine. That provision is in direct conflict  
22 with the Mine Act.

23           7) The MSHA proposals would allow mine operators  
24 to require miners to wear respirators, airstream helmets

1 called PAPRs and increased dust level if MSHA agrees  
2 environmental controls have been exhausted. This was  
3 specifically prohibited by the Mine Act and the specific  
4 PAPRs MSHS would allow have been found to be faulty.

5           Gentlemen, I run heavy equipment outside with cabs  
6 that's heated in the winter and air conditioned in the  
7 summer most of the time. It wasn't always that way. The  
8 helmets that I've seen, I wouldn't want to wear them running  
9 heavy equipment much less in a restricted area like the long  
10 wall or on the section. I mean, because of the weight,  
11 visibility and et cetera. I mean I wouldn't want to wear it  
12 myself, much less underground.

13           The mine operator, not MSHA, would verify the dust  
14 control plan. This is contrary to the 2000 proposal and  
15 other findings. MSHA also estimates that 85 percent of the  
16 mine sections would be exempt from follow up quarterly plan  
17 verification sampling contained in the rules.

18           Gentlemen, these rules must be withdrawn and  
19 rewritten. Unfortunately, like failed reforms of the past,  
20 the new proposed rules cannot seem to break from the  
21 tradition of operator and agency interest. What is most  
22 appalling is the fact that this government will not even  
23 listen to the miners who are the victims of the wrong-headed  
24 policies.

1           Any reforms of the respirable dust program must  
2 include the use of continuous dust monitors as the center of  
3 the requirements, not a limited operator option. These  
4 personal continuous dust sampling devices need to be  
5 required at each coal mine each shift each day for all  
6 miners that would be exposed to unhealthy dust, whether  
7 inside, outside of the mine or wherever they may be working.  
8 This would place a wealth of data in the hands of miners,  
9 MSHA and mine operators affording them the ability to  
10 constantly evaluate compliance with mine dust standards.

11           Gentlemen, before I close, I've heard it brought  
12 up today about the explosion at Jim Walter Number 5 Mine  
13 that killed 13 fellow coal miners. At the time of this  
14 accident, I was working for the UMWA and received a call  
15 that afternoon and went to the mine. Sometime that night or  
16 in the early morning, I was standing outside the bath house  
17 and one of the miners that was killed daughter and her small  
18 child were sitting on a bench near the service shack. This  
19 child asked the mother if that was where her granddaddy went  
20 underground. The mother answered yes. Then she asked is  
21 that where my granddaddy's coming out from underground?  
22 Gentlemen, until the day I die, I will never forget those  
23 words or that image.

24           I ask you to go back and rewrite these rules and

1 listen to the miners who have to work under them. Thank you  
2 very much for your time.

3 MODERATOR NICHOLS: Thank you.

4 (Applause.)

5 MODERATOR NICHOLS: Let's take a ten minute break.

6 I have 4:10, let's come back at 4:20.

7 (A short recess was taken.)

8 MODERATOR NICHOLS: Back on the record. Tim  
9 Baker.

10 MR. BAKER: My name is Tim Baker, I am with United  
11 Mine Workers of America.

12 Initially, what I would like to do is read a  
13 statement into the record and then I would like to go back  
14 through some of the preamble that we had discussed at the  
15 last meeting. And what I'd like to do first is read into  
16 the record a problem we have at this point with data quality  
17 and data access requirements.

18 MODERATOR NICHOLS: Tim, we've got -- I mean it  
19 doesn't matter to me when you go, we've got about 15 other  
20 people. Would you want to go last again and let the other -  
21 - it's up to you.

22 MR. BAKER: Let me do this, let me read the data  
23 access into the regulation, just so that I can have that in  
24 there -- into the record, I'm sorry. And then I'll let

1 those people go ahead and then I'll come back with questions  
2 on the preamble.

3 MODERATOR NICHOLS: Okay, good enough.

4 MR. BAKER: The reason we want to make sure we get  
5 this on the record is we believe that in the writing of the  
6 rule that MSHA has in fact violated the data access and data  
7 quality requirements of the law and not based the  
8 information on powered air respirators on sound science and  
9 so we can set in motion at least, through our mechanism, the  
10 -- or at least get underway that we're going to present this  
11 to you and we will be going through legal channels to make  
12 sure that you meet those requirements, and you can look to  
13 where the data requirements and data access law come into  
14 play, and I believe that was just a couple of years ago and  
15 basically deals specifically with regulatory action by any  
16 agency and I'll just read you our objections to what we  
17 believe are --

18 MR. REYNOLDS: Tim, I just want to clarify before  
19 you get started, are you talking about information quality  
20 guidelines, is that what you mean?

21 MR. BAKER: No, I'm talking about data quality  
22 requirements on the law. And I'll be honest with you, it's  
23 a very obscure piece of legislation that has been used  
24 successfully by employers and manufacturers to thwart

1 attempts by agencies to require regulatory improvements, and  
2 they have said it's not based on sound science, you need to  
3 have peer reviews, you need to have this and that.  
4 Therefore, you can't implement this regulation, and they  
5 have successfully done that.

6           Having seen that in action, it becomes clear to us  
7 that if we look at a situation and say you didn't base it on  
8 sound science, then of course our argument is going to be  
9 that if it's not sound science, you can't create a  
10 regulation out of it. And we will be moving that process  
11 forward after we of course get this entered into the record  
12 and start those legal maneuvers.

13           MSHA staff has indicated that the agency's  
14 proposal to allow the use of airstream helmets in lieu of  
15 environmental controls is supported by scientific evidence  
16 contained in several documents.

17           MODERATOR NICHOLS: It's not in lieu of.

18           MR. BAKER: Depends on how you weigh it out.

19           MODERATOR NICHOLS: Well, I'm telling you, that's  
20 not the intention of these regs and if you read it that way,  
21 you need to tell us how to clarify it.

22           MR. BAKER: Let's leave two milligrams at two  
23 milligrams, let's not make any adjustments for protection  
24 factors. Let's not bring respirators into this mix when

1 they were never intended to be brought into this mix and we  
2 can solve the problem from there by doing that and bringing  
3 on the PDM. I mean I think it's pretty basic.

4           The proposed rule notes MSHA had reviewed each of  
5 more than a dozen protection factor studies submitted in  
6 Energy West's 1990 petition for rulemaking. The agency also  
7 reviewed additional relevant studies submitted by commenters  
8 in response to the previous proposed rule as well as studies  
9 MSHA identified. These dozen studies include three papers  
10 by Greenhaw, G.K., who is describe in Energy West's petition  
11 as the primary developer of the device, the airstream  
12 helmet. Someone who invents an instrument is certainly not  
13 disqualified from evaluating it; however, they usually take  
14 steps in their study designed methodically to overcome  
15 concerns about bias. Greenhaw, however, makes no such  
16 effort. In fact, his paper is loaded with prejudicial  
17 statements that overshadow the credibility of his findings.  
18 In his introduction, for example, he states there is also a  
19 view that reliance on personal protection would diminish  
20 efforts to improve the environment. Happily, such extreme  
21 views are now heard less frequently and opinion is  
22 strengthening that dust controls alone can not eliminate  
23 pneumoconiosis in the foreseeable future and that dust  
24 controls should be supplemented where necessary by personal



1 protection.

2           Greenhaw provides no empirical evidence to  
3 substantiate his statement -- such extreme views are now  
4 heard less frequently and opinion is strengthening that dust  
5 controls alone cannot eliminate pneumoconiosis. An astute  
6 reader quickly discerns his statements as self-promotion of  
7 the device that he designed.

8           Moreover, his conclusion that the dust helmets  
9 were favorably received by miners is not supported with any  
10 data or measurable results, it is merely reported as  
11 collected comments. As far as we can tell, there was no  
12 methodology or protocol that researchers followed to conduct  
13 this evaluation. There were no pretests, survey  
14 instruments, the subjects were not blinded or allowed to  
15 provide anonymous comments. There was no reference group in  
16 which to draw comparison.

17           The scientific strength of the three papers  
18 authored by Mr. Greenhaw and used to support MSHA's proposal  
19 are questionable. Two of the papers were presented at  
20 meetings more than 20 years ago and the other was published  
21 in a trade magazine. None of these venues meet the criteria  
22 normally required of scientifically scrutinized or peer  
23 reviewed research.

24           In addition to Mr. Greenhaw's three papers, the

1 other documents referenced by the Energy West petition  
2 include a 1978 manual for using and servicing the dust  
3 helmet prototype that was then in progress. The Energy West  
4 petition also refers to other information and studies to  
5 support their claims that the airstream helmet is a highly  
6 productive method of minimizing exposure of miners to  
7 respirable dust. One of those documents describes in only  
8 four sentences the study which involved a mannequin dressed  
9 in an airstream helmet and propped up next to the tail gate  
10 drive. Notably, the brief data table provided describes  
11 dust levels at the tail gate in the range of 6.47 to 10.90.  
12 We have to assume that they are talking about milligrams  
13 per cubic meter although the table fails to indicate any  
14 data percentage or any data labels and claims the overall  
15 efficiency of the airstream helmet at 94.45. We again must  
16 assume this is percentage, based on the information, there  
17 is no data label.

18           Is the Assistant Secretary of Labor trying to pawn  
19 this information off as scientific evidence? Incomplete  
20 data in analysis of this sort would not be admitted in a  
21 grade school science fair. It certainly does not meet the  
22 criteria for data quality outlined in the U.S. Department of  
23 Labor's Data Quality Guidelines and should not be included  
24 in evidence used to demonstrate the effectiveness of

1 airstream helmets.

2           Basically what we're saying is the studies that we  
3 have had the opportunity to review, which are three of the  
4 Greenhaw studies and a couple of the other ones, do not meet  
5 the criteria that you could base sound science on, and the  
6 law requires, as we understand it, that to be done before it  
7 can be used as a basis for any rule. Therefore, we object  
8 to the use of those studies cited by MSHA as not being  
9 grounded in sound science.

10           MR. REYNOLDS: Tim, I just want to insert here, in  
11 addition to those, I'm told that Cecala, Boquon, Timmons,  
12 were the primary ones was a Bureau of Mines study from 1981,  
13 10867, protection factors of the airstream helmet. And the  
14 second one was by Bhaskar, development of effective  
15 protection factors, and that was done in 1994.

16           The Greenhaw study I think we referenced in the  
17 letter we sent to Joe and he had a request that we responded  
18 to.

19           MR. BAKER: Yes.

20           MR. REYNOLDS: But the primary one, I am told from  
21 the people who were involved in drafting the rule, was the  
22 one that came from the Bureau of Mines in 1981 and that was  
23 the basis of the protection factors.

24           MR. BAKER: And --

1 MR. REYNOLDS: I also want to clarify it is the  
2 information quality guidelines that you're referring to.

3 MR. BAKER: Well, okay, --

4 MR. REYNOLDS: I just wanted to say that so  
5 anybody reading the record will understand.

6 MR. BAKER: Thanks, Larry.

7 And what I will say, and I had some comments, and  
8 I don't want to take up too much time because I'll let these  
9 folks go, but I have had some limited reading of the '81  
10 NIOSH study -- '91 NIOSH study, Larry -- '81 or '91?  
11 Anyway, the NIOSH study.

12 MR. REYNOLDS: '81.

13 MR. BAKER: Okay, clearly describes when they were  
14 doing the protection factors what would affect the degree of  
15 protection or however you want to weigh that out. Most of  
16 those studies, they explicitly say you must be facing in the  
17 direction of air flow, air flows must be at a certain  
18 velocity -- and we know those things don't occur -- in order  
19 to retain a protection factor, whatever it may be, for the  
20 entire shift he's there, or in fact for 10 or 15 seconds at  
21 a time.

22 So I think that those studies, while they may be -  
23 - and I'm not going to say anything based on their sound  
24 science because I won't make that decision, we'll have other

1 individuals do that. But looking at those studies in that  
2 light, if they're saying you've got to face in the direction  
3 of air flow, velocities can't be over this amount and there  
4 were some questions that they raised on where the samplers  
5 were put, based on inside the helmet, outside the helmet, on  
6 the back side of the helmet and was that sufficient enough  
7 to get an accurate reading and NIOSH had some real concerns  
8 about how some of the monitoring was being done.

9           So what I guess we're looking at is if you put all  
10 this paperwork in a pile that we're saying we based the  
11 science of this rule on, can we be afforded any comfort  
12 level that it is sound science or are we just saying this is  
13 the latest thing we've got and it looks really good, despite  
14 the fact that miner's don't want it and we don't believe  
15 it's proven, but we've got like a mound of paperwork that  
16 says it's a nice thing, let's use it. We're saying that may  
17 well be the case.

18           MR. REYNOLDS: Just for somebody reviewing the  
19 record, this is all discussed on 10.802 and the description  
20 of the ones that we relied on, which was primarily Cecala,  
21 is on 10.803 in the middle column.

22           MR. BAKER: Well, if you remember, Larry, during  
23 the give and take that we had before the hearing started,  
24 the major information that we got was the Energy West

1 studies and the Utah study for Energy West, and I believe it  
2 was the '79 study that Greenhaw did. Now that's what we  
3 were -- and the change in the agency leadership. We were  
4 given four instances of where this rule was based.

5 Now it's our understanding that Greenhaw did three  
6 studies, not just one. And we believe it all to be self-  
7 promoting. But we will review, I'm sure, the Bhaskar study.

8 But at this point in time, let me leave it at this and we  
9 can come back to that if we need to, let these other people  
10 get off.

11 We're basically saying you have not met the test  
12 of sound science and, you know, regulations are required to  
13 be based -- if you're going to base it on science, it's got  
14 to be sound and we don't believe it is.

15 So we'll leave it there and I'll let these guys go  
16 and we can revisit that after --

17 MR. FINFINGER: The '81 study, that's the Bureau  
18 of Mines study.

19 MODERATOR NICHOLS: Gene Jones.

20 VOICE: He's not here.

21 MODERATOR NICHOLS: Will he be back?

22 Randy Mullins.

23 MR. MULLINS: My name is Richard Mullins, that's

24 R-i-c-h-a-r-d M-u-l-l-i-n-s, Safety Committee for Local

1 Union 2133, U.S. Steel Mining Company, Oakgrove Mine.

2 I would just like to say, sir, that we the members  
3 of UMWA 2133, along with the brothers and sisters of the  
4 great union, oppose the new respirable dust rule proposal  
5 issued March 6, '03.

6 Second of all, sir, we call for reduced dust  
7 levels and continuous dust monitoring.

8 Thirdly, MSHA currently is failing to recognize  
9 and document all dust control parameters that affect the  
10 outcome of the sample.

11 And fourth, sir, I also urge MSHA to increase  
12 enforcement action in MSHA's D11s.

13 And I thank you, sir.

14 MODERATOR NICHOLS: Thank you.

15 MR. NIEWIADOMSKI: Could I ask a question?

16 MODERATOR NICHOLS: Yes, go ahead.

17 MR. NIEWIADOMSKI: Is Oakgrove using PAPRs right  
18 now at long walls?

19 MR. MULLINS: Yes, sir.

20 MR. NIEWIADOMSKI: Do you work at the long wall?

21 MR. MULLINS: No, sir, I'm just a safety walk  
22 around.

23 MR. NIEWIADOMSKI: Oh, I see, okay.

24 Do you know -- is there a reason why -- is that

1 something miners are asking for, are they being forced to  
2 wear them, what? Do you have any idea?

3 MR. MULLINS: Well --

4 MR. NIEWIADOMSKI: I know it's being used at the  
5 long wall, I was just curious --

6 MR. MULLINS: They're mostly being used because  
7 of the dust that is so bad even when they're upwind of the  
8 long wall.

9 MR. NIEWIADOMSKI: Okay, thank you.

10 MR. MULLINS: Yes, sir.

11 MODERATOR NICHOLS: Clay Potter.

12 VOICE: Gone.

13 MODERATOR NICHOLS: Gone? Brian Kelly.

14 VOICE: Gone.

15 MODERATOR NICHOLS: Cory Smith. Gone?

16 VOICE: Gone.

17 MODERATOR NICHOLS: Gary Trammell.

18 MR. TRAMELL: Here.

19 MODERATOR NICHOLS: Okay.

20 MR. TRAMELL: Good morning, gentlemen -- evening.

21 My name is Gary Trammell, T-r-a-m-e-l-l, I work at  
22 Jim Walters --

23 THE REPORTER: Excuse me, can you spell your first  
24 name?



1 MR. TRAMELL: G-a-r-y.

2 I'm President of Local Union 2368, Jim Walters  
3 Number 5 Mine.

4 I'm here today, I'm very seriously coming before  
5 you today to oppose this new regulation that MSHA has  
6 proposed. I feel that our long walls and the airstream  
7 helmet is not the way to go. I've worked the long wall for  
8 four years, I've worked in the airstream helmet and that was  
9 one of our members at Prestonburg that wore that airstream  
10 helmet for eight hours. As you guys that were there knew,  
11 that was intentionally done because we wanted to send a  
12 message to all of MSHA that if they would have to wear that  
13 airstream helmet, that they would reconsider what hardships  
14 you're putting on a coal miner that already has one of the  
15 hardest jobs in the nation. Not only do we have a hard job,  
16 we already are bundlesome on the job with our respirators,  
17 SCSRs, with our battery -- if you're a maintenance man, you  
18 usually carry about 40 pounds of tools with you and you've  
19 got to walk -- and I'm a maintenance person -- and you've  
20 usually got to walk down that face with about 40 pounds of  
21 tools on you all the time. So the airstream helmet only  
22 puts another bundlesome and strenuous -- makes it harder on  
23 the coal miner itself.

24 We're tough and I don't know how much you can

1 overload that mule. We've been mules for a long time and  
2 we've been overloaded and it just seems like every time  
3 there's another regulation comes out, there's something  
4 that's got to go on us again. I've got problems now with my  
5 feet, so I don't know if overloading them -- and walking in  
6 the coal mine also is not like walking outside on the  
7 sidewalk, you've got rocks, you've got tripping hazards. I  
8 think I've talked to some of you guys in Prestonburg and a  
9 lot of you guys have worked in the coal mine and you've been  
10 around the coal mines and I'm pretty sure that y'all are  
11 very informed on what conditions a coal miner goes through.

12           But I would like for you to know, and I'm pretty  
13 sure you've heard it all day, about number 5 mine and number  
14 5 mine's explosion. And in the whole State of Alabama, we  
15 have one coal mine that we're now introducing new employees,  
16 new trainee coal miners, and that's number 5. We have 50 of  
17 them and I had about 20 of them here today earlier and  
18 they're real concerned. They come to me at the union hall  
19 and they say we're real concerned. I looked in their face  
20 and they said I've got 20 to 30 more years to work in this  
21 coal mine. I've been in the coal mines for 25 years and  
22 it's not long I'm going to be getting out but those guys are  
23 real concerned about what's going on today because it's  
24 going to stay with them for 20 years. They were here today.

1           Some of them are so concerned because their father  
2 or their grandfather -- I know three of them -- their  
3 fathers' have died because of black lung and their  
4 grandfather is now are carrying a bottle of oxygen with him.  
5 So they're really concerned, these younger coal miners.

6           The State of Alabama, I would say 40 to 50 years  
7 old, 40 to 54 years old, is the average age and I believe  
8 you heard that earlier today. It's not long and we'll be  
9 out of the workforce, but I'll guarantee you that there's  
10 going to be a lot of young coal miners in the State of  
11 Alabama that's going to have to work with these regulations  
12 for 30 years. And we want to get it right for them and I  
13 hope they'll be black lung free. That's what I hope.

14           I attended the hearing in Prestonburg and I  
15 thought those hearings went real well and I thought that the  
16 panel listened real well and I think that you heard us. You  
17 heard us then and if you don't hear us now, it'll be wrong  
18 for the nation's coal miners. After all, this is about us,  
19 we work in the coal mines. If this is about us, let us have  
20 some input on these regulations. Don't just hear us and  
21 what we have to say, listen to us and try to do the right  
22 thing, because there's a lot of coal miners that's going to  
23 be coming into the industry and it's their lungs and I'm  
24 pretty sure that we all care about each other. And I

1 believe y'all can look over the nation and tell that when a  
2 coal miner gets in trouble, people's going to help. We've  
3 had 13 coal miners die at Jim Walter's Number 5, because  
4 those people went to help. And the reason I'm here today is  
5 to help the people in the coal industry and those people  
6 coming into it for the future.

7 And I appreciate it. Thank y'all.

8 MODERATOR NICHOLS: Thank you.

9 (Applause.)

10 MODERATOR NICHOLS: Dave McCarty.

11 VOICE: He's gone.

12 MODERATOR NICHOLS: Shirley Hychell.

13 VOICE: Gone.

14 MODERATOR NICHOLS: Eddie Blake.

15 VOICE: Gone.

16 MODERATOR NICHOLS: Tim signed up somebody that  
17 wasn't here.

18 Roosevelt Harris.

19 VOICE: He's gone.

20 MODERATOR NICHOLS: Ray Lee.

21 VOICE: He's gone.

22 MODERATOR NICHOLS: Lewis Gibson.

23 VOICE: I think Richard wants to clarify  
24 something.

1           MODERATOR NICHOLS: Okay.

2           MR. MULLINS: Again, I'll state my name, Richard  
3 Mullins, R-i-c-h-a-r-d M-u-l-l-i-n-s, Safety Committee,  
4 Oakgrove Mine.

5           In reference to the question which I was asked,  
6 after consideration, I realized the question was biased. I  
7 believe it was you, sir, that asked me about the PAPRs.

8           MR. NIEWIADOMSKI: Yeah, I asked you about the use  
9 of PAPRs on the long wall at Oakgrove, whether you were  
10 familiar as to whether or not the operator is providing  
11 these or whether or not they're being used voluntarily or  
12 what -- the conditions under which they're being used.  
13 That's what I was trying to find out.

14          MR. MULLINS: In answering your question, sir,  
15 Oakgrove miners do wear airstream helmets, but they do not  
16 use them in a manner that is recommended by the  
17 manufacturer. Some miners wear them just to keep dust out  
18 of their eyes.

19          MR. NIEWIADOMSKI: Thank you for the  
20 clarification.

21          MR. MULLINS: Thank you.

22          MODERATOR NICHOLS: Thank you. Lewis Gibson.

23          VOICE: Gone.

24          MODERATOR NICHOLS: I think it's Herbert Carroll

1 or Correll.

2 MR. CORDELL: Cordell.

3 MODERATOR NICHOLS: Cordell.

4 MR. CORDELL: My name is Herbert Cordell, UMWA  
5 Local 2133 Safety Committeeman.

6 I've been in the underground coal mines for 35  
7 years, third generation coal miner, so I'm no stranger to  
8 coal dust or its effects.

9 My father died with black lung and it's just hard  
10 for me to understand, after all this time and as close as  
11 they say they are to perfecting this personal monitor  
12 device, why we're in such a hurry to push this thing  
13 through. To me, that would take the place of a lot of one  
14 day sampling versus five days. You would have a true and  
15 accurate sampling of each coal miner, no questions asked.

16 I'd just like to state my opposition to these  
17 proposed rules because in my opinion, the end result would  
18 be higher dust levels in the mine atmosphere.

19 The fact that these proposed rules would result in  
20 less sampling days for the miners, that it would result in  
21 workers being required to wear airstream helmets instead of  
22 maintaining environmental control measures as required by  
23 Congress in the Mine Act.

24 I would like to see personal monitoring devices

1 used and as I just stated, I believe they would represent a  
2 true sampling on a daily and individual basis.

3 That's about all I have. Thank you.

4 MODERATOR NICHOLS: Thank you.

5 John Wallace.

6 (Applause.)

7 VOICE: He's gone.

8 MODERATOR NICHOLS: Wyman Owens.

9 (No response.)

10 MODERATOR NICHOLS: R.D. McRoy.

11 (No response.)

12 MODERATOR NICHOLS: Okay, other than Tim coming  
13 back up, that's all the people we have on the list. Have I  
14 missed anyone?

15 MR. MAIN: Joe Main.

16 MODERATOR NICHOLS: Joe, you've already had an  
17 hour.

18 MR. MAIN: Five minutes.

19 MODERATOR NICHOLS: All right. You want to go  
20 after Tim or before Tim?

21 MR. MAIN: After will be fine.

22 MODERATOR NICHOLS: Okay, go ahead.

23 MR. BAKER: All right.

24 What I'd like to address now, and I'll be honest

1 with you, it'll probably be more questions than answers at  
2 this point, but I'm going to go through this because I have  
3 once again gone through the preamble and like I say, it  
4 really has, in my mind, raised more questions than it  
5 answers. I'm going to try to do this in a way that doesn't  
6 take the rest of the afternoon.

7           But it's important, I think, for us to establish  
8 on the record and in our own minds what exactly some of  
9 these changes do affect, and since this actually came about  
10 whenever I was discussing the recommendations by the Dust  
11 Advisory Committee and the task group and the NIOSH criteria  
12 document, and I was told that all those answers are in the  
13 preamble, I decided that that should make it fairly simple.

14           Unfortunately, I think it makes it worse and I  
15 guess if I can start off with looking at the preamble --  
16 darned close to the beginning I guess -- on page 10.786, and  
17 I want to go to the bottom of the page here, because as I  
18 talked about what NIOSH had recommended or what the DAC had  
19 recommended, I was referred here. And if you look at the  
20 last paragraph, it says the recommendations regarding  
21 exposure limits for respirable coal mine dust and silica  
22 were beyond the scope of either the single sample plan  
23 verification rules.

24           Here's where I'm getting confused, because I've



1 read in this document several times in the preamble, it's  
2 beyond the scope of these rules, where it is noted in the  
3 preamble that NIOSH and the DAC recommended a reduction from  
4 two milligrams to one milligram, the response I get there is  
5 also it is beyond the scope of these rules.

6           Now we're creating a dust rule here, guys. I'm  
7 assuming that if we're talking reductions or increases, if  
8 we're talking silica or if we're talking respirable dust,  
9 we're making a dust rule. And I'll be honest with you, I'm  
10 confused. In my mind, I'm thinking to myself that the way  
11 to get out of talking about this is just say it's not within  
12 the scope, we're not going to deal with it, so it's not in  
13 the scope. What do you mean by not in the scope?

14           MODERATOR NICHOLS: Can you give us an example?

15           MR. BAKER: Well, I did here, at the bottom of the  
16 first column of 10.786.

17           MR. REYNOLDS: I think probably the ones they're  
18 talking about are lowering level to one was beyond the scope  
19 of this rule, creating a separate standard for silica was  
20 beyond the scope of this rule. Those are the two mentioned  
21 here, but also some of the other ones that we didn't  
22 approach in this were dust control plans for service mines.

23           What we meant by beyond the scope is our focus  
24 here was to zero in on the recommendations regarding

1 verification of dust control plans and single sample and  
2 compliance sampling. Those are the three major areas.

3 MR. NIEWIADOMSKI: Tim, the -- what the Advisory  
4 Committee had mentioned is they said there was sufficient --  
5 there was significant evidence to suggest that the two  
6 milligram standard is not protective enough, but there is  
7 also considerable evidence to suggest that people are being  
8 overexposed. So what the agency should be doing is they  
9 should think about, you know, the reduction, but in the  
10 interim, through regulation, policy changes, the agency  
11 should focus on trying to achieve consistent compliance with  
12 the applicable standard. This is where the key focus is, is  
13 trying to eliminate those overexposures above the applicable  
14 standard.

15 MR. BAKER: And, you know, that being the case, I  
16 don't think this rule gets you there and I guess I can  
17 explain why. First of all, to simply state that it's beyond  
18 the scope of the rule is not an explanation, in my  
19 estimation. That doesn't tell me anything except in my mind  
20 it tells me you didn't want to deal with it. And I've got  
21 to believe that that's the case.

22 The recommendation -- and I understand, George,  
23 that as part of this, you want to make sure that nobody is  
24 overexposed, and I can believe that and believe that that

1 would be a direction the agency would very much want to go.

2           On the other hand, it wasn't a recommendation to  
3 lower the standard, but we really need to eliminate  
4 overexposures. It was that there were overexposures, yes,  
5 and those need to be eliminated, but also that according to  
6 MSHA studies, and one that just come out in April of this  
7 year, at two milligrams, people are at risk for  
8 pneumoconiosis. So therefore, the recommendation was to  
9 reduce, just as it was also in there to eliminate  
10 overexposures. To say we looked at it, it's not within the  
11 scope is not a clarifying response in my estimation -- it  
12 just isn't. In my estimation, it defies logic. You've got  
13 to come up with something better than it's beyond what we  
14 were looking at.

15           MR. NIEWIADOMSKI: That's the assumption you're  
16 making -- I mean you're talking about the report that was  
17 issued by NIOSH about people continue to get the disease and  
18 we don't disagree. I mean, that's why the primary focus is  
19 to try to eliminate overexposures. The assumption that  
20 you're making is because we have a two milligram standard,  
21 people continue to get the disease, and the reason being is  
22 because the standard of two milligrams is not adequate.

23           But the problem is that what the evidence is  
24 showing is that we have thousands of overexposures during

1 sampling periods, okay? Which is the best -- supposedly the  
2 best conditions would occur during sampling. Which means if  
3 it's occurring during sampling, then we're getting  
4 overexposures during non-sampling periods. And it may in  
5 fact be as a result of those overexposures, that's why  
6 people continue to get the disease.

7 MR. BAKER: I would agree --

8 MR. NIEWIADOMSKI: And the DAC certainly had a  
9 difficult time, although they made that recommendation, but  
10 they were really torn because they realize you've got  
11 thousands and thousands of shifts, of sampling shifts,  
12 showing people being overexposed. So it's difficult for  
13 them to really conclude -- you know, for everybody to agree,  
14 yes, there's complete compliance and people are still  
15 getting the disease, and when you look at -- when you have a  
16 situation like that, when you have evidence that shows that  
17 everybody is in compliance, you can easily conclude -- and  
18 people are getting the disease -- then that would suggest  
19 that the standard then is inadequate.

20 MR. BAKER: And I'll agree with you to this point,  
21 that if you're showing overexposure whenever MSHA samples,  
22 then my belief is that you're overexposed every other time  
23 you're not there. And you know, in most of those instances,  
24 it may be the nature of the beast, if the cop is not there,

1 then they're going to do what they want to do. If we want  
2 to go down that road, simply by saying within the text of  
3 this preamble or in some places in the rule saying that  
4 you'll verify parameters and you can verify them and then  
5 we're going to come in a check them for compliance three  
6 times a year or six times a year, and understanding that 85  
7 percent of these people aren't going to do quarterly  
8 sampling, I would suggest to you that if you look at the  
9 system that's in place now that allows for overexposures to  
10 occur as they do, the system that you'll be creating based  
11 on the very limited sampling you're proposing -- the  
12 situation will be worse for overexposures when you're not  
13 there.

14           You can say to people here's the parameters, you  
15 give them to us, you give us the parameters, you tell us  
16 what works best to control the dust, and you verify it and  
17 we're going to come in and check on you once in awhile, but  
18 if you're not there to check on it routinely, those  
19 parameters aren't going to be maintained. They're going to  
20 be maintained when you show up at the gate, I guarantee you  
21 that. That's when they're going to be maintained. I think  
22 that's the experience we have, George. I think that's the  
23 experience when you deal with overexposures at the mine  
24 right now, is that you do not require 24/7.

1           So when you talk about the difference in the  
2 sampling between then and now, you're not going to have any  
3 less overexposures, I just don't see that. I just don't see  
4 that this rule builds any incentive to keep those parameters  
5 in when you're not there.

6           But -- and as I go through this, I guess the  
7 easiest thing to do is just -- do I need to list for you  
8 each time it says it's not in the scope, because that's the  
9 response I have to every one of the questions I had whenever  
10 I was reading the DAC and the task force last night. That's  
11 the response I get for don't raise the respirable dust for  
12 errors in the sampler. That wasn't within the scope of this  
13 rule either.

14           I mean, do you see where my confusion is? They  
15 say lower, you don't do it. They say don't --

16           MR. REYNOLDS: I was just going to say, we did  
17 address that in the rule and we said no, we weren't going to  
18 do it that way.

19           MR. BAKER: If I'm not mistaken, it's not within  
20 the scope of the rule.

21           MR. KOGUT: No, the response to that  
22 recommendation is contained on page 10.825 and it cites a  
23 couple of references in the notice that was published on  
24 February 3, 1998, technical appendices to that notice, in

1 which MSHA's rationale for rejecting that recommendation is  
2 explained.

3 MR. BAKER: Where are we?

4 MR. KOGUT: Page 10.825, middle column, there's a  
5 reference there to Appendix D of that Federal Register  
6 notice. It's the second to last paragraph of the middle  
7 column on page 10.825.

8 MR. BAKER: So what you're saying basically is  
9 you're telling me that you rejected it because it wouldn't  
10 hold up in court, is that --

11 MR. KOGUT: There's more to it than that, but it's  
12 explained in that previous notice.

13 MR. BAKER: Let me ask you this, and maybe I'll  
14 just wonder out loud for a second. If you've got to reach a  
15 2.33 to say you're 95 percent confident that it'll hold up  
16 in court, if you're creating a rule, why wouldn't you go the  
17 other direction and say the rule is now 1.67. Why wouldn't  
18 that be just as feasible as going 2.33?

19 MR. KOGUT: Well, you could do that if you reduced  
20 the standard to a lower level, yes. In other words, if you  
21 reduced the standard to a level below two, then you could  
22 reduce it to a level such that you would attain 95 percent  
23 confidence when a measurement was two or above.

24 MR. BAKER: So we've erred on the side of the

1 operator for --

2 MR. KOGUT: No, it's not -- I thought what you  
3 were saying is why couldn't we reduce the standard to a  
4 level --

5 MR. BAKER: In the rule.

6 MR. KOGUT: Yeah. Well, in this rule, we're not  
7 proposing to change the existing dust standard.

8 MR. BAKER: I would argue that point, but --

9 MR. KOGUT: I know you would, but our position is  
10 that we're not changing -- we're not proposing to change the  
11 existing dust standard and in order to warrant a citation at  
12 two with 95 percent confidence, you would have to reduce the  
13 dust standard to a level below two.

14 And then if that dust standard was below two, then  
15 you could cite at 95 percent confidence at two or above.

16 MR. BAKER: And it doesn't create any conflict in  
17 your mind to raise that dust standard to 2.33? I mean,  
18 because the exposure is going to be greater.

19 MR. KOGUT: Our position is that we're not raising  
20 the dust standard to 2.33, that's why we verify the plans at  
21 levels below two. That's why we're proposing to verify the  
22 plans at levels below two.

23 Furthermore, as described in both the rule and the  
24 preamble, there are -- if we see a -- if during a sample,



1 either an MSHA sample or an operator sample, quarterly  
2 operator sample, if the result of that sample is above two,  
3 then steps have to be taken to either reverify that the plan  
4 is effective at two or below or at the applicable standard,  
5 or changes in the -- some steps have to be taken.

6 MR. BAKER: But there's no citation issued, right?

7 MR. KOGUT: There's no citation issued, but steps  
8 have to be taken to ensure that the dust level is actually  
9 being maintained below the applicable standard, and that  
10 applicable standard is two, not 2.33.

11 MR. BAKER: But you're not going to take  
12 enforcement action until 2.33. I've got to believe -- and  
13 having been around the industry for 28 years, I've got to  
14 look at a situation and say if you don't -- if there's no  
15 citation coming, there's no action on the other end from the  
16 operator to do anything about it and I think that's history.  
17 That is the history of the industry. We can all say we'd  
18 like it not to be that way, but in fact that is the history  
19 of the industry and if you're suggesting to me that you're  
20 not going to issue a citation and it's 2.2 --

21 MR. KOGUT: If it's reverification of the plan  
22 that would come about if a sample is above two but below  
23 2.33, reverification of the plan, for example, that wouldn't  
24 be something that would be voluntary on the part of the

1 operator, that would be something that the regulation would  
2 authorize MSHA to require.

3 MR. BAKER: To require --

4 MR. KOGUT: I'll read you the section.

5 MR. BAKER: To require what?

6 MODERATOR NICHOLS: Jon, you've given it your best  
7 shot. Tim, how about giving us your comments and let's keep  
8 moving.

9 MR. BAKER: No, Marvin, you told me last time --  
10 you obviously decided last time that whenever I was reading  
11 these documents that I hadn't read enough into this. I'm  
12 telling you that what's in this doesn't answer the questions  
13 raised in this. Now I had assumed I was going to get an  
14 explanation based on the questions that I have, because  
15 certain documents say MSHA should do X, you've done Y, and  
16 the explanation is not, in my estimation, sufficient, and I  
17 don't think it's sufficient for most of the people that were  
18 here today. To say it's not within the scope is not  
19 sufficient.

20 MODERATOR NICHOLS: I mean, the agency has the  
21 prerogative of the scope of the rule.

22 MR. BAKER: Yeah. So ignoring certain bits and  
23 pieces is based on how far you want the scope to go, because  
24 that's in essence what has occurred here. You've ignored

1 those pieces.

2 I want to real quickly jump, because I do have a  
3 question on -- and I believe it --

4 MR. THAXTON: Excuse me, Tim. I mean you're  
5 bringing up the recommendations that have not been  
6 addressed, in your view, adequately, is that correct?

7 MR. BAKER: Yes.

8 MR. THAXTON: Your comments to us can be that you  
9 think that these recommendations need to be addressed.  
10 Those recommendations are already part of the record and we  
11 will take your comments that those need to be addressed, but  
12 to sit here and ask us to explain each and every one of  
13 them, that's --

14 MR. BAKER: Well, apparently -- and I have made  
15 those suggestions, if you'll recall, in Washington, PA and  
16 in Charleston, West Virginia and I think miners made those  
17 requests in 2000 and previously.

18 We've still never gotten an answer for the 2000 or  
19 the rest of them, so I mean when do we get an answer?

20 MR. THAXTON: This is not the forum though for you  
21 to ask us to respond on each one of those recommendations.

22 We've told you in the rule, in the preamble, how we've  
23 looked at each of them and which ones are applicable and  
24 which ones aren't.

1           You're free to make comments though as far as  
2 whether you think it's appropriate or not.

3           MODERATOR NICHOLS: Yeah, either you agree or  
4 disagree with them.

5           MR. BAKER: Well, you know, there's always the  
6 possibility I could agree if I get an explanation, but I  
7 just don't see it.

8           If we can jump quickly to 10.811, and if somebody  
9 can just -- as an honest observation, I'm confused by what  
10 exactly the control filter -- how does this control filter  
11 thing work? I mean you can carry it in your pocket or --

12           MR. THAXTON: The control filter that's referenced  
13 in here is already part of the current MSHA program, has  
14 been since we attempted to put a single sample in place  
15 before and was told by the courts that we couldn't do it.  
16 At that time, MSHA started utilizing control filters. We  
17 have continued to do so. That control filter would be  
18 utilized the exact same way as it was in that attempt to  
19 implement single sample, and moving forward. It is simply a  
20 way of controlling for the filter either losing or gaining  
21 weight.

22           MR. BAKER: And I don't mean --

23           MR. KOGUT: And I might add, not only losing or  
24 gaining weight, but also differences in laboratory

1 conditions on the date of the pre-weight as compared to the  
2 post-weight, post-exposure weight.

3 MR. THAXTON: It's the same thing that's done in  
4 general industrial hygiene and anybody else that does  
5 sampling. You take a control filter or a control sample  
6 that you're going to treat in the same manner, it's carried  
7 in the guy's shirt pocket, the plugs are not taken out so  
8 it's exposed to the environment that you're carrying the  
9 other filters in, but it's not used to collect a sample. So  
10 it's carried around with the person wherever you're going to  
11 collect the samples, but it is not exposed to the  
12 environment that you're sampling. It's kept capped.

13 MR. BAKER: And the reason I asked that -- and  
14 I'll be honest with you, I'm not sure who's carrying them  
15 around, because as I went through this and I talked to guys  
16 today, they've never carried around a -- I'm not sure who's  
17 carrying it around.

18 MR. THAXTON: It's our MSHA inspection people.

19 MR. BAKER: Okay, so it's your guys.

20 MR. THAXTON: We're the ones that collect them  
21 right now, so it's our people that carry the control  
22 filters.

23 MR. BAKER: I'm just ignorant of the process.

24 MR. THAXTON: Under the proposed rule, operators

1 would be required to use control filters as well, during the  
2 verification sampling.

3 MR. BAKER: And that is for any weight gain or  
4 loss based on just the handling or --

5 MR. THAXTON: For the exact same reason that we  
6 use them now in the MSHA sampling.

7 MR. BAKER: On page 10.809 -- and as I go through  
8 this, there's -- obviously we've expressed a lot of concerns  
9 about protection factors and how those protection factors  
10 are determined and I had expressed before that a study done  
11 by NIOSH weighed those protection factors based on wind  
12 direction hitting the shield, the velocity of the air and  
13 those kind of things.

14 My concern is even in the preamble, I'm a little  
15 confused. Are we saying these things are better than a PF  
16 of four, are we saying that they are always that, if they're  
17 worn as approved? Because, you know, I had heard the number  
18 25 and now -- are we saying we can guarantee these things  
19 are going to be good at four? Because I don't even see that  
20 in the preamble. It says expected degree.

21 MR. THAXTON: Based on the use in mining, we've  
22 said that the expected degree of protection is a maximum of  
23 four. Other industries that utilize the exact same unit  
24 apply a protection factor of 25 based on the NIOSH criteria.

1           MR. BAKER: Okay, and the reason I asked that is  
2 because from some of the preamble and a lot of the NIOSH  
3 information that I have, is these things have never been  
4 tested in mining conditions on a routine basis for these  
5 protection factors. My understanding, those were laboratory  
6 tests, there was a -- if I'm not mistaken, there was a lead  
7 operation where they used it, there was a foundry operation  
8 where they used it. But I saw no studies unless I don't  
9 know about the studies -- I saw no in mine studies on these  
10 helmets that said this is your protection factor and we can  
11 come to that with some certainty.

12           So that's a concern. I think, you know, when  
13 you're working in a foundry or when you're working in a  
14 plant, you're dealing with a whole lot of different  
15 variables. I'm not worried that much about velocity and  
16 which direction the wind is coming because I'm probably not  
17 going to have 400 feet a minute coming at me, in most  
18 instances.

19           As we assign protection factors, that creates a  
20 problem for us. And I have not seen any in mine studies  
21 that say this is it. And if I don't have it or if I'm  
22 missing it, I'd appreciate getting it, but I don't believe  
23 it to be out there.

24           MR. NIEWIADOMSKI: Tim, the data that we used,

1 which is discussed in the preamble, primarily is from the  
2 Cecala, which is -- you know, we've utilized all the mine  
3 studies that were conducted. And the other one is the one  
4 that was done by Bhaskar, which basically sort of confirmed  
5 the protection factors that would be achieved under  
6 conditions of use, which is the Bhaskar one. Remember  
7 that's the one where the way they monitored it is exactly  
8 how it's being used. The helmets -- the face shield being  
9 raised and whatever, and they calculated what the protection  
10 factor was as a result of the way it's being applied or the  
11 way it's being used by miners.

12           And so the protection factors that we are  
13 referencing here are based primarily on the Cecala, which  
14 was the mine studies.

15           MR. BAKER: Pardon me, the --

16           MR. NIEWIADOMSKI: In mine studies.

17           MR. BAKER: And I'll be honest with you, George,  
18 the in mine study that I got -- and I've gotten as much  
19 documentation as I thought I could -- the one I was familiar  
20 with and the one that I saw was the one where -- and I  
21 believe it was in the Energy West request for rulemaking.  
22 That is the only one I saw, and whether it came earlier or  
23 later, it might have been the Utah study, they had the  
24 sampler on the outside, they had a sampler with a tube on



1 the inside. They did it for I believe 64 shifts or 64  
2 sampling series and the question was raised by NIOSH whether  
3 these things -- whether these tests were done in a  
4 scientific manner that would give them appropriate readings.  
5 That's the only one I'm familiar with and that's the only  
6 one I have documentation on.

7 MR. THAXTON: I know when y'all wrote in your  
8 request those documents were sent to the UMWA.

9 MR. BAKER: Okay. If that's the -- if that's the  
10 entirety of the document that's the only study -- in-mine  
11 study that's in there and it was questioned -- the validity  
12 was questioned by NIOSH. So I've got to question where  
13 we're at there.

14 MR. NIEWIADOMSKI: Tim, when you say it was  
15 questioned by NIOSH, was that some formal comments that they  
16 made?

17 MR. BAKER: I believe it's in the same documents  
18 that I got, George, from the agency whenever we made the  
19 request. That NIOSH had some concerns about where the  
20 measurements were being taken from. I can get you a copy of  
21 the documents that I got, but I don't have them with me.

22 MR. NIEWIADOMSKI: I'll tell you this. Bhaskar,  
23 really he ran it in accordance to the same procedures that  
24 Cecala ran it, okay, which was also having a sampler inside

1 the face shield, okay. So they basically followed the  
2 procedures that were followed previously. Now I don't know  
3 whether or not we're talking about the current NIOSH, but I  
4 know that report because that was presented in Salt Lake to  
5 the -- to the Dust Advisory Committee, okay. It went  
6 through the whole procedure and so forth. So it was part of  
7 the DAC record also.

8 MR. BAKER: Okay. Well -- and that may well be.  
9 If that being the case, I would suggest it probably bolsters  
10 the position where I'm at because they recommended -- they  
11 never recommended that power air purifying respirators be  
12 mandatory at any rate. And if they had the information --  
13 if DAC had the information they never went as far as this  
14 rule goes to make any sort of recommendation like this rule  
15 does. But if -- you know, I will -- I will -- I will  
16 venture to look again. But as I say, the only study that I  
17 got, as we requested the documents from the agency, was the  
18 one study, the one in-mine study. I felt it kind of ironic  
19 that I got one study that was questionable and we're basing,  
20 you know, these -- these protection factors on that -- on  
21 that study.

22 As I also read -- and I would like to make a  
23 clarification about what is in the preamble on page 10805  
24 where it talks about the PDM2. There is an assertion in

1 here that the PDM2 was requested by MSHA -- by MSHA, labor  
2 and industry. I want to make it clear that -- unless it was  
3 somebody outside of the Mine Workers, we never made that  
4 request. That request never came from the Mine Workers, and  
5 to my recollection that request never came from the  
6 partnership group that we worked with with the BCLA unless  
7 it came from somewhere else. But that assertion is in here  
8 and that assertion is incorrect. We had had a lot of  
9 meetings on the PDM1, and I won't kill this thing, but  
10 that's where we were headed. So anything else that we would  
11 have recommended on the PDM2 is incorrect. There was some  
12 discussions on the machine mounted continuous dust monitors,  
13 but never the PDM2s.

14           When we go to -- when we go to plan verification -  
15 - when we discuss how plan verification will be put into  
16 effect there's a concern we had that we can move -- and you  
17 correct me if I'm wrong, but we can move immediately from  
18 plan verification to PAPRs. If in fact -- let me do a  
19 theoretical and you can correct me if I'm wrong. If I'm  
20 running a long wall where I have dust concentrations at 2.6  
21 and I'm exhausting engineering controls in your opinion.  
22 Say I can't keep them down past there. Do we move directly  
23 into PAPRs at that point if that's the determination? So we  
24 could have long walls? In effect, what I'm asking you is,

1 do we have long walls out there that we could in effect go  
2 right into PAPRs with right now?

3 MR. THAXTON: No. This is a determination that  
4 the Agency will make as to whether they've exhausted  
5 feasible engineering controls, not the operator. The  
6 operator can say I think I have.

7 MR. BAKER: Okay.

8 MR. THAXTON: The Agency will be -- is responsible  
9 then for coming in and determining whether they indeed have  
10 exhausted all feasible controls -- feasible engineering  
11 controls. And once we've done that, that information would  
12 be reviewed by a panel of experts in headquarters that will  
13 report to the administrator. The administrator is the only  
14 one that will decide whether all feasible engineering  
15 controls have been exhausted for any operation. Based upon  
16 that, then the operator has the option of either using  
17 powered air purifying respirators or administrative  
18 controls. There is nothing in it that says they  
19 automatically have to go to PAPRs.

20 MR. NIEWIADOMSKI: Tim, we're not -- if I may add  
21 to that, okay? As discussed in the preamble, I think we're  
22 -- well somebody else may disagree with what I'm about to  
23 say. I don't think we've actually had a long wall where  
24 every conceivable -- what MSHA would consider to be feasible

1 engineering controls were in fact implemented to see how low  
2 we get dust levels. We never -- remember that we've asked  
3 the former Bureau of Mines -- at least MSHA had asked the  
4 formal Bureau of Mines for many, many years in the past to  
5 try to identify a long wall, or at least to go to a long  
6 wall and really apply all -- A through Z or whatever is  
7 feasible and see how low we can get it down. We certainly  
8 found no volunteers.

9           MODERATOR NICHOLS: But Bob laid out how the  
10 enforcement --

11           MR. NIEWIADOMSKI: That's right.

12           MODERATOR NICHOLS: -- system will work.

13           MR. NIEWIADOMSKI: But we don't have a long wall  
14 right now where we would go to and automatically conclude  
15 that they've exhausted all feasible engineering controls  
16 because we know we're not there yet.

17           MR. BAKER: Well -- and I would suggest then that  
18 -- you know, maybe I say this too much, but I would suggest  
19 then there would be more concern on our part of having a  
20 plan -- or having a rule that deals with PAPRs, when ever we  
21 can honestly sit here and look at each other and say we  
22 haven't used -- and we know we haven't used all the  
23 engineering controls. If we have not done that and we're  
24 saying people are being overexposed, as was said before, why

1 aren't we going to those places where the overexposure is  
2 occurring right now and saying you're going to do this and  
3 you're going to do that and you're going to plan this and  
4 you're going to work it this way? I mean, it would seem to  
5 me that that is a reasonable methodology. That is  
6 reasonable. If I have a long wall or a mining section right  
7 now and I'm saying I can't get in compliance, why are we not  
8 going and saying this is what you do and that's what you do.  
9 We should at least know by now that all A to Z has been  
10 tried somewhere and we don't.

11 MR. THAXTON: Tim, gathering from your comment,  
12 your comment to the panel is that we should make sure that  
13 we exhaust all feasible engineering controls before we go to  
14 PAPRs. And that is your comment?

15 MR. BAKER: No. I'm saying that you've jumped  
16 into PAPRs and you're now telling me you haven't --

17 MODERATOR NICHOLS: Tim, Bob has correctly stated  
18 the enforcement decision making process. Now let's move on  
19 to something else.

20 MR. BAKER: Wait a minute, Marvin. You know,  
21 being things as they may, I didn't evolve the conversation  
22 to where it is now. I asked the question did the  
23 conversation evolve because of responses from that side of  
24 the panel? Now if we're not going to explore that just let

1 me know. But that's exactly how it evolved to where it got.

2 MODERATOR NICHOLS: Ever how it evolved to where  
3 it got, we have correctly -- we have stated the enforcement  
4 decision making model that the Agency will use.

5 MR. BAKER: Okay. But, now that I'm going to read  
6 -- I'm going to go into the next issue. I mean -- and to  
7 address your -- and don't put words in my mouth, Bob. You  
8 know, I'll do that myself. But to address what you just  
9 said, we are not saying that -- that it's okay with us to  
10 use PAPRs in anyway, shape or form or require those people  
11 to use them on long walls. But if I heard correctly, you're  
12 telling me on one hand you haven't eliminated the  
13 engineering controls, but we've got a rule that says you'll  
14 be required to wear PAPRs and we can let this go to eight  
15 milligrams. That's what the rule does. There's a  
16 possibility it could go to eight. There's a possibility you  
17 could be required to wear PAPRs. That's what rule does.  
18 And we have not eliminated engineering controls. I don't  
19 know how we jumped from over there at two milligrams to over  
20 here with PAPRs at eight. That's the concern we have,  
21 because it becomes clearer and clearer that that's the  
22 direction we're headed.

23 There's a determination -- and we agree with the  
24 single sample. We agree with the single sample method of

1 sampling. We don't agree with the 95 percent confidence  
2 rate but we do agree with single sample. So it brings to  
3 rise a question. If you do a single sample on respirable  
4 dust and find somebody out of compliance and that's citable,  
5 why are we averaging quartz? Is there a rationale -- are  
6 you going to do three samples of quartz before you do a  
7 reduced standard? If you've got quartz, you've got quartz.  
8 If you have overexposure from respirable dust, you have  
9 overexposure from respirable dust. If you want to respond,  
10 fine. I'm just making the comment that we should do -- if  
11 we're doing a single sample, we should do a single sample.

12 MODERATOR NICHOLS: Okay, we've got your comment.

13 MR. BAKER: Good move on your part, Marvin.

14 MODERATOR NICHOLS: I'm getting smarter as we go  
15 along here.

16 MR. BAKER: There are -- without getting into each  
17 specific example -- and I think an attorney said it earlier  
18 today, when we talk about sampling and we talk about  
19 frequency, it will be frequent, it will be routine. We need  
20 -- we need a broader clarification of what routine -- we  
21 need a broader clarification of what normal is. You know,  
22 we're asking that the recommendation that we would make or  
23 the request that we would make is that sampling be done at  
24 no less frequent -- no less frequently than currently done



1 by the operator and the agency -- by the agency, and that  
2 those samples occur at least at that level and more  
3 frequently if necessary. I know that I have heard on  
4 several occasions that we want to spend our resources at  
5 places that need the attention the most. I would suggest  
6 that what we need to do is look to another recommendation of  
7 the DAC that said listen, do a surcharge to the operators.  
8 You tell them we're going -- we're going to take over  
9 sampling. It's, you know, each operator based on mine size,  
10 tonnage and employees. Here's your surcharge and we're  
11 going to do all the sampling. I think that was the  
12 recommendation of the DAC and I think it was prudent on  
13 their part because I think the feasibility, the economic  
14 feasibility argument is always going to be there that we  
15 have the resources to do all this sampling. I think that  
16 they come up with a fairly simple and broad-based solution  
17 that would handle that.

18 MR. KOGUT: Tim, I would just like to go back to  
19 your previous point about quartz and just for clarification  
20 just point out that after we set a reduced standard based on  
21 the average of quartz levels and we set a reduced standard,  
22 then anytime we cite on a reduced standard based on a single  
23 sample, if it's a reduced standard, then we are citing on  
24 quartz based on a single sample.

1 MR. BAKER: On that single sample you take after  
2 that.

3 MR. KOGUT: That's right.

4 MR. BAKER: Okay.

5 MR. KOGUT: So we are citing for quartz on a  
6 single -- we're proposing to cite on quartz based on a  
7 single sample whenever it's a reduced standard.

8 MR. BAKER: Once you get the three averaged.

9 MR. KOGUT: Yeah. But then what -- if it's a  
10 reduced standard and then you cite on it -- like let's say  
11 the reduced standard is 1.1 and we get a level of 1.4 or 1.5  
12 or whatever the CTV is, and then cite based on that  
13 standard, what we're doing -- since we're citing on the 1.1  
14 reduced standard and not on the 2, effectively what we're  
15 doing is really citing on the quartz level based on a single  
16 sample.

17 MR. BAKER: Just so I have this clear in my mind.  
18 If you averaged 3 and it comes to 1.1 and then you take  
19 another sample and the quartz is 1.4, you're going to cite.  
20 Do you then average that sample in with the previous two?  
21 Do you understand what I mean?

22 MR. KOGUT: ((No response.))

23 MR. BAKER: If you've taken three samples and the  
24 average comes back 1 -- or you do a reduced standard of 1.1

1 --

2 MR. THAXTON: Tim, just to be clear; we will  
3 establish the reduced standard based on the last three MSHA  
4 samples. It's a running average. We get the initial three.  
5 As we get additional samples the oldest is dropped off and  
6 the newest one is added in. It's still the average of the  
7 last three to establish the standard. What he's telling you  
8 is, that based on the single sample, whatever that  
9 applicable standard is will be cited on that one sample. We  
10 will not take an individual quartz sample though and set the  
11 standard based on that. It's always the average of three.

12 MR. BAKER: Always the running three.

13 MR. THAXTON: If you think that it should be one,  
14 or less than three, then that's a valid comment.

15 MR. BAKER: Yeah. And I think I've stated that,  
16 you know, we need to go -- if we're single sampling, we're  
17 single sampling is the position. I appreciate that.

18 I think I can wind up, believe it or not, with a  
19 concern that we have and a viewpoint that -- reading through  
20 the preamble, the concern that we have whenever we're  
21 dealing with the use of PAPRs and the way the rule is  
22 written -- I think that the rule substantially follows some  
23 of the thinking -- or a lot of the thinking of the Energy  
24 West request and without basically saying it. You know,

1 Energy West had requested that PAPRs be determined to be  
2 engineering or environmental controls. That was their --  
3 that was their request. It seems to me, and it seems to the  
4 people that I've talked with on this matter from my side of  
5 the table, that that's the direction we're headed. Our  
6 concern is that we're creating a road map here to reduce air  
7 velocities and some of those don't need to be reduced. I  
8 think West is a prime example that has already been cited.  
9 But we're creating an atmosphere that would reduce air  
10 velocities, make it easier on mine operators to maintain  
11 just basic minimums in many instances and go directly to  
12 PAPRs. I do believe that there are going to be those  
13 operations -- and the Union believes that there are going to  
14 be those operations, based on the writing of the rule, that  
15 will go from verification to PAPRs.

16 I know you're going to say they've got to  
17 eliminate all of the engineering controls. I submit to you  
18 that if you have an operator out there who is out of  
19 compliance now and isn't going to verify at a higher than  
20 2.0, that that is going to continue and we're going to do  
21 one of two things. We're either going to go through a long  
22 drawn out process that allows people to continue to be  
23 overexposed without taking any action while we evaluate the  
24 situation, or we're going to move them quickly into PAPRs.

1 I think it's probably going to be the latter rather than the  
2 former. That is a definite concern that we have.

3           Once again in closing, I would request that the  
4 rule be withdrawn. I think that after today's hearing --  
5 and we've had five. I don't think we've come across anybody  
6 who has had a chance to look at this thing and say gee,  
7 yeah, that's what we want. Obviously from the articles that  
8 are coming out in the newspaper today, I don't think that  
9 that assistance is going to come from the industry in  
10 Colorado either. So I don't see anybody that's pleased with  
11 the rule.

12           Finally, what I'd like to do is, on page 10785 --  
13 it's in the first -- I'm sorry, it's in the first column.  
14 What we have is, about two-thirds of the way down the page,  
15 next to the last paragraph, it says many commenters on the  
16 proposed rule urged MSHA to withdraw the proposed rule and  
17 publish another one. In their opinion, the Agency failed to  
18 adequately address the concerns of the mine operators and  
19 ignored other reforms in the Dust Sampling Program urged by  
20 coal miners since the mid 1970s or that were recommended by  
21 the Secretary of Labor's Advisory Committee on the  
22 elimination of pneumoconiosis among coal workers. That's  
23 the Advisory Committee. And the NIOSH criteria document  
24 addressing respirable dust.

1           The next -- the first sentence of the next  
2 paragraph I think is important because I think that that's  
3 the consideration you ought to give again. It basically  
4 says after careful consideration -- after carefully  
5 considering all the facts, issues and concerns raised by the  
6 commenters during this rulemaking MSHA concluded that to  
7 proceed with a final rule would not be in the best interest  
8 of miners' health or the mining community. I believe that  
9 we're in the same position today as we were in 2000. You  
10 need to take that consideration that you had then and apply  
11 it to this rule. We can do 24/7 monitoring in a very short  
12 period of time. That's what we're advocating. I believe  
13 you'll find that that's what the industry will advocate  
14 that's what we need to do.

15           Thank you.

16           MODERATOR NICHOLS: Thank you.

17           (Applause.)

18           MR. MAIN: I appreciate the opportunity to speak  
19 again today. I know it's been a long day and everybody's  
20 tired. For those of us who has been eating and breathing  
21 this for the last few weeks it's been really tiresome. My  
22 name is Joe Main and I'm the Administrator of Health and  
23 Safety with the United Mine Workers of America. Just bear  
24 with me, this is going to be really short.

1           With regard to one of the centerpieces of this  
2 rule which is the -- once engineering controls are exhausted  
3 and PAPRs would be used. There are some questions that I  
4 want to clear up -- Bob, what question you asked of Tim, so  
5 there is no misunderstanding of what our position is with  
6 regard to the engineering controls.

7           First, the long walls that you guys have expressed  
8 concern over, how many of those long walls are currently  
9 using water infusion to control the coal dust?

10           MR. NIEWIADOMSKI: We know of no long wall  
11 currently that's using water infusion.

12           MR. MAIN: One of the things we learned as we  
13 cleaning up the respirable dust problem in the '90s was that  
14 that was one of the most valuable techniques to actually  
15 control coal dust. Basically what you do is, you saturate  
16 the coal block with water. There's are wetting agents that  
17 are used. It's widely known to MSHA, it's widely known to  
18 the industry and it's widely known to miners. I'm just  
19 curious, because I think the concern that Tim raised, which  
20 is one that we all have here, is that -- I think the  
21 government is in the position, if you know of problems that  
22 exist out there with these long walls, there is techniques  
23 that are available to fix these problems. We believe that  
24 water infusion should be a requirement of the law unless

1 it's shown it's not necessary. I mean it's just a straight  
2 forward if you're going to mine a coal block, you water  
3 infuse it unless you can prove that you have other  
4 techniques. We should be working from that end as opposed  
5 to the other end.

6 MR. THAXTON: In regards to the water infusion,  
7 Joe. It is a viable technique but it's not necessarily  
8 applicable to all mining.

9 MR. MAIN: Well --

10 MR. THAXTON: Just a minute. The -- I mean I've  
11 worked on water infusion at a long wall. We installed it at  
12 U.S. Steel. That was the only reason the mine got to run  
13 the way it did on their long wall. But generally speaking,  
14 what we're looking for with water infusion is an inherent  
15 moisture content of the coal itself and the immediate  
16 strata. Based on the inherent moisture some mines will  
17 benefit from the use of water infusion and others would not.  
18 Those are situations where it would have to be looked at on  
19 a mine-by-mine basis the same as everything else. I would  
20 think it would be -- you know, it's something -- if you  
21 think it should be included as a means of control, we agree  
22 that it is something that should be considered. But to make  
23 it a requirement for everybody, I'm not sure we could  
24 justify that. If you have evidence otherwise, you know, we



1 would be interested in seeing that.

2           MR. MAIN: We have evidence otherwise. I just sit  
3 back -- what you learn about it, if you sit down with a lot  
4 of coal miners that actually mine coal, they're smarter than  
5 all of us sitting here at this upper end of the table  
6 because those guys have been through this experience. I can  
7 tell you this, in the 1990s one of the features that we used  
8 in the Jim Walter mines to bring those dust levels down was  
9 to water infuse those blocks. We did it and it worked for  
10 quite some time. They water infused it in a variety of  
11 ways. Some just straight water, some they put wetting  
12 agents in it that saturated the coal. But as the Agency  
13 backs off of pressuring these operators to employ the  
14 techniques, we lose those, Bob. And the reason I asked the  
15 question is, I think that water infusion does work to  
16 saturate coal blocks in a way that does moisturize the coal  
17 and could be a beneficial tool. If we hadn't been using  
18 that -- I mean, I think that's a problem.

19           I think as the Agency lays out their concerns for  
20 these coal -- these long walls that are not in compliance,  
21 they have an obligation to really go out and do something  
22 about it. As a matter of fact, Section 202(g) of the Mine  
23 Act says the secretary shall cause to be made such frequent  
24 spot inspections as he deems appropriate of the active

1 workings of coal mines for the purpose of obtaining  
2 compliance with the provisions of his title. So if you're  
3 suspicious of that, you should be out there checking them.  
4 There is a variety of things that we can make operators do  
5 to come into compliance.

6           I'll say this. With regard to the way that you  
7 answered the question for Tim as he was trying to express  
8 our own position. Our position is very clear on this.  
9 Require them to use the engineering controls. That is the  
10 means of which we approach this whole issue. Put the  
11 pressure on them. They've got to have pressure sometimes to  
12 make them do what they just are unwilling to do. And  
13 implement things such as water infusion, having enough air,  
14 wethead miners, if they have to use that to mine with.  
15 There's a variety of things out there. The rule should be  
16 constructed -- when you hopefully take this off the decks  
17 and go back and rewrite it -- in a way that is more specific  
18 and mandating about the engineering controls that operators  
19 should have out there as opposed to have to try to make them  
20 do that. I mean we need to be gearing this in the direction  
21 Congress laid out for you fellows.

22           In closing, I'll just tell you this. We agree  
23 with you, no way have we exhausted engineering controls in  
24 the coal industry. We don't require them to do what they

1 should now. We need to require them to do what they should,  
2 whether it be water infusion, whether it be more air on the  
3 sections, whether it be redesigning their cutting heads,  
4 whether it be controlling the speed of their shears. We do  
5 not need a rule that allows them an escape hatch to get us  
6 all in a box here where we're in an argument over -- with  
7 you guys being on the defense to prove otherwise. That's  
8 the wrong way to do it and we oppose that.

9           Hopefully that clears up the answer to the  
10 question, Bob. We're not saying yeah, use those things up  
11 until we end them and then go to PAPRs. We're saying don't  
12 go the PAPER approach. Do the engineering approach as  
13 directed by Congress.

14           In closing, I will say that after about -- by  
15 count, about 170 witnesses from the public, I haven't seen  
16 anyone step forward supporting this rule. I think that  
17 sends a clear message. We're in the same situation, as Tim  
18 pointed out, we was at in the year 2000. We hope someone,  
19 somewhere understands what's going on in these public  
20 hearings and takes control of this whole issue and rejects  
21 this proposal and has a new proposal crafted that really  
22 meets the needs of the nation's miners. We would urge that  
23 you send that message back to the leadership of the Agency.

24           Thank you very much.

1                   MODERATOR NICHOLS: Thank you.  
2                   (Applause.)  
3                   MODERATOR NICHOLS: That concludes our public  
4 hearing. Thanks for your participation and thanks for  
5 showing up.  
6                   (Whereupon, the hearing was concluded at 5:42  
7           p.m.)  
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