

Public Hearing

THE MINE SAFETY AND HEALTH  
ADMINISTRATION'S  
PROPOSED RULE TO ADDRESS  
THE RECOMMENDATION OF THE TECHNICAL STUDY  
PANEL  
ON FLAME RESISTANT CONVEYOR BELTS,  
FIRE PREVENTION AND DETECTION,  
AND THE USE OF AIR FROM THE BELT ENTRY

**Original**

---

AUGUST 26, 2008  
9:00 A. M.

---

EMBASSY SUITES  
SALON D  
CHARLESTON, WEST VIRGINIA

---

**GARRETT REPORTING SERVICE**  
"PROFESSIONAL STENOMASK FOR THE RECORD"

---

POST OFFICE BOX 20200. CHARLESTON WEST VIRGINIA 25362 • (304) 346-0460 FAX (304) 757-7425

---

*Dena A. Belisle*  
*Certified Court Reporter*

---

**GARRETT REPORTING SERVICE**  
"PROFESSIONAL STENOMASK FOR THE RECORD"

---

POST OFFICE BOX 20200. CHARLESTON WEST VIRGINIA 25362 • (304) 346-0460 FAX (304) 757-7425

**MODERATOR:**

**PATRICIA W. SILVEY, DIRECTOR  
MINE SAFETY AND HEALTH ADMINISTRATION  
OFFICE OF STANDARDS, REGULATIONS AND VARIANCES**

**PANEL MEMBERS**

**Michael Hockenberry  
Ronald Schell  
William Francart  
Mike Kalich  
Matthew Ward**

**GARRETT REPORTING SERVICE  
Post Office Box 20200  
Charleston, West Virginia 25362**

**(304) 346-0460**

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

1  
2 MS. SILVEY: Good morning. My name is  
3 Patricia W. Silvey. I am the Director of the Mine  
4 Safety and Health Administration's Office of  
5 Standards, Regulations and Variances. I will be the  
6 moderator of this public hearing on MSHA's proposed  
7 rule to address the recommendations of the Technical  
8 Study Panel or the "TSP" on flame-resistant conveyor  
9 belts, fire prevention and detection and the use of  
10 air from the belt entry.

11 On behalf of Acting Assistant Secretary  
12 Richard E. Stickler, I would like to welcome all of  
13 you here today. Before we start today's hearing, and  
14 as all of you know, we have just remembered the first  
15 anniversary of the remembrance of the tragic accident  
16 at Crandall Canyon where six miners lost their lives  
17 and three additional persons lost their lives trying  
18 to rescue them, including one of MSHA's own.

19 At this point, I would like it if I  
20 would ask if you would with me pause for a moment of  
21 silence in memory of the miners and the rescue and  
22 all of the miners who have lost their lives so far  
23 this year in America's mines and in the mines

1 throughout the world. So if you would, pause with  
2 me. Thank you.

3 I would like to introduce the members  
4 of the MSHA panel who are principally responsible for  
5 drafting the proposal that is the subject of today's  
6 hearing. To my right Ronald Schell and some of you  
7 know and remember Ron, who is now a retired MSHA  
8 employee, who agreed to come back and help us on this  
9 project and he is the team leader for the project.

10 To his right Michael Hockenberry and he  
11 is with MSHA's Office of Technical Support, the  
12 Approval and Certification Center. To my left  
13 William Francart. He is with MSHA's office of  
14 Technical Support. To his left Mike Kalich. Mike is  
15 with the MSHA Office of Coal Mine, Health and Safety.  
16 And to his left Matthew Ward, who is with the Office  
17 of the Solicitor, the Division of Mine, Safety and  
18 Health. And then the back of the room Carl Lundgren,  
19 who is the economist of the project and he is in my  
20 office.

21 This is the third of four public  
22 hearings on the proposed rule. We will hold the  
23 final hearing in Birmingham, Alabama on Thursday, the  
24 28<sup>th</sup> of August. The comment period for the proposal

1 ends on September 8<sup>th</sup>. MSHA must receive your  
2 comments by midnight, Eastern Daylight Savings Time  
3 on that date. You can view comments on the Agency's  
4 website at [www.msha.gov](http://www.msha.gov) and in the back of the room  
5 we have a few copies of the proposed rule.

6           At this point, I would like to note  
7 that we are publishing an extension of time for the  
8 request for information on smoke density and toxicity  
9 that with a companion document to this rule made and  
10 the time will be extended to comment on the request  
11 for information until September 8<sup>th</sup>, the same time as  
12 the deadline for the proposed rule.

13           Section 11 of the Mine Improvement and  
14 New Emergency Response or the Miner Act of 2006  
15 require that the Technical Study Panel be  
16 established. The TSP issued its report in December of  
17 2007. This proposal is consistent with the TSP's  
18 recommendations.

19           Let me summarize some of the more  
20 significant provisions and issues in the proposal.

21           The proposal would establish a new Part  
22 14 and require that conveyor belts in underground  
23 coal mines meet the Agency's Belt Evaluation  
24 Laboratory Test, also referred to as the "belt test".

1                   In addition, it would revise MSHA's  
2 quality assurance, audit and recordkeeping  
3 requirements. MSHA requests comments on the proposed  
4 five-year retention period for approval-holders to  
5 retain conveyor belt sales records.

6                   The proposal would allow applicants for  
7 approval, approval holders and those seeking  
8 extensions a one year period to gain approval of the  
9 new conveyor belt or to transition to approval of the  
10 new belt. During this period, approval holders could  
11 apply for an existing Part 18 acceptance or a new  
12 Part 14 approval. After one year, all approvals  
13 would be processed under Part 14. The Agency  
14 solicits comments on the impact of the one year  
15 transition period on manufacturers' inventories.

16                   Under the proposal, for a period of one  
17 year mine operators could purchase conveyor belts  
18 accepted under existing Part 18 or approved under new  
19 Part 14. After one year, the operator would be  
20 required to purchase belts meeting the requirements  
21 of proposed Part 14. Under the proposal, operators  
22 would be permitted to use existing inventory until  
23 replacement is necessary.

1           The proposal would require that miners  
2 are assigned tasks as Atmospheric Monitoring System  
3 or AMS operators be qualified before they perform  
4 these duties and that AMS operators demonstrate  
5 proficiency to MSHA inspectors. It would require  
6 existing AMS operators to become qualified. To  
7 assist operators with training programs, MSHA intends  
8 to develop a model training plan and make it  
9 available to the mining community.

10           The proposal would require that an AMS  
11 operator's duty be a primary responsibility. It  
12 would specify the contents of annual retraining and  
13 require AMS operators to travel underground every six  
14 months. The proposal would provide a two-month  
15 delayed effective date for operators to submit AMS  
16 training plans.

17           The proposal would apply to all  
18 underground coal mines and require an airlock where  
19 the air pressure differential between air courses  
20 creates a static force exceeding 125 pounds on closed  
21 personnel doors along escape ways.

22           MSHA solicits comments on other  
23 suitable pressures and on the number and cost of  
24 airlocks that would be required under this proposal.



1 Under the proposal, operators would have a three-  
2 month period to establish airlocks.

3           The proposal would require that the use  
4 of air from a belt entry to ventilate the working  
5 section be permitted only when evaluated and approved  
6 by the district manager in the mine ventilation plan.  
7 In the ventilation plan, the operator would have to  
8 provide information that the use of air from the belt  
9 entry affords at least the same measure of protection  
10 where belt haulage entries are not used to ventilate  
11 working sections.

12           MSHA proposes to allow mine operators  
13 currently using air from the belt entry to ventilate  
14 working sections three months to submit a revision of  
15 the ventilation plan to the district manager.

16           If the district manager does not  
17 approve the use of air from the belt entry to  
18 ventilate working sections, a citation would be  
19 issued for failure to have an approved plan. MSHA  
20 would not revoke the plan until completion of current  
21 mining. The Agency solicits comments on this proposed  
22 process.

23           The proposal would establish a minimum  
24 air velocity of 50 feet per minute in mines that do

1 not use air from the belt entry to ventilate the  
2 working section.

3           The proposal would establish a minimum  
4 of 100 feet per minute and a maximum of 1,000 feet  
5 per minute air velocity in mines that use air from  
6 the belt entry to ventilate working sections. These  
7 proposed velocities assure that the contaminants of a  
8 fire are carried downwind to carbon monoxide sensors.  
9 Under the proposal where the velocities cannot be  
10 maintained, adjustments may be approved in the mine  
11 ventilation plan. This proposal includes a 12-month  
12 delayed effective date.

13           The proposal would require that where  
14 miners on the working section are on a reduced  
15 respirable coal mine dust standard below 1.0  
16 milligram per cubic meter, the average concentration  
17 of respirable dust in the belt entry must be at or  
18 below the lowest applicable respirable dust standard  
19 on that section. The Agency solicits comments on  
20 this proposal.

21           The proposal would require that smoke  
22 sensors be installed in areas where air from the belt  
23 entry is used to ventilate working sections. It  
24 would become effective one year after the secretary

1 has determined that smoke sensors are available to  
2 detect fires in underground coal mines, these sensors  
3 would be in addition to carbon monoxide sensors.  
4 MSHA will provide notice when the sensors are  
5 available. MSHA solicits comments on this approach  
6 to requiring smoke sensors.

7           The proposal would establish new  
8 requirements for lifelines in underground bituminous  
9 and anthracite coal mines. It would require that  
10 lifelines in escape ways have tactile signals to  
11 identify impediments to travel, SCSR caches,  
12 personnel doors to adjacent escape ways and refuge  
13 alternatives. The proposal, which has a six-month  
14 delayed effective date, would also require  
15 standardization of all tactile signals in all  
16 underground coal mines.

17           Under the proposal each of the signals  
18 would be distinguishable from other markings. The  
19 Agency specifically solicits comments on alternative  
20 tactile signal markings and we have taken comments on  
21 the requirement for tactile signals in the escape  
22 ways and I will discuss that at the end of my  
23 opening. I will further discuss this at the end of  
24 the opening statement.

1           The proposal would require that the  
2 primary escape way have a higher ventilation pressure  
3 than the belt entry. Under the proposal, the  
4 operator can submit an alternative in the mine  
5 ventilation plan to protect the integrity of the  
6 primary escape way. The proposal would apply to all  
7 mines using belt haulage and would have a six-month  
8 delayed effective date.

9           The proposal would discontinue the use  
10 of point-type heat sensors and require the use of  
11 carbon monoxide sensors for fire detection along belt  
12 conveyors in all underground coal mines. The proposal  
13 requires that all point-type heat sensors, except  
14 those used to activate fire-suppression systems, be  
15 replaced with carbon monoxide sensors within 12  
16 months of the effective date of the final rule.

17           MSHA is proposing that the warning  
18 level for carbon monoxide sensors be ten parts per  
19 million above the ambient level. The Agency is  
20 soliciting comments on this proposed warning level.

21           The proposed 75.1731 would be a new  
22 requirement for belt entry and belt conveyor  
23 maintenance applicable to all underground coal mines  
24 using belt haulage. The proposed rule would require

1 damaged rollers and other malfunctioning belt  
2 components to be immediately repaired or replaced.  
3 It would require conveyor belts to be properly  
4 aligned. It would prohibit the accumulation of  
5 noncombustible materials in the belt entry and it  
6 would require that splicing of any approved conveyor  
7 belt maintain the flame resistant properties of the  
8 belt. This proposal would include a two-month  
9 delayed effective date.

10 MSHA has estimated the economic impact  
11 of the proposal and has included a discussion of the  
12 costs, benefits and paperwork requirements in the  
13 preamble to the proposal and in the Preliminary  
14 Regulatory Economic Analysis or the "PREA". The PREA  
15 contains estimated supporting data on costs and  
16 benefits.

17 The Agency is soliciting comments on  
18 the following: MSHA is considering including a  
19 specific requirement in the final rule that the  
20 operator make changes or adjustments to reduce the  
21 concentration of methane present in the belt entry as  
22 measured 200 feet out by the section loading point.  
23 At this point in the rulemaking, MSHA is considering  
24 requiring that operators take action when methane is

1 between a range of 0.5 and 1.0 percent. MSHA is  
2 soliciting comments on the appropriateness of such a  
3 standard and on the specific level at which changes  
4 or adjustments should be made.

5 MSHA has proposed a requirement that  
6 point-feed regulators must be equipped with a means  
7 to be remotely closed. However, the Agency has not  
8 included a requirement for providing a means for re-  
9 opening the regulator as recommended by the TSP.  
10 This is because MSHA believes that once evacuation is  
11 completed, the need for remote re-opening of the  
12 regulator will be rare. The Agency solicits comments  
13 on whether a requirement to remotely re-open the  
14 regulator should be included in the final rule, and  
15 if you believe so, the reasons why such a requirement  
16 should be included.

17 MSHA requests comments on all proposed  
18 delayed effective dates. MSHA also requests comments  
19 on all the estimates of costs and benefits in this  
20 preamble and in the PREA and on the data and  
21 assumptions the Agency used to develop the estimates.

22 As you address these provisions, and I  
23 always underscore this in all of the public hearings  
24 and many people have heard me say this, as you

1 address the provisions, either in your testimony to  
2 us today or in your written comments, please be as  
3 specific as possible and include in your comments the  
4 alternatives, your suggested rationale, the safety  
5 and health benefits to miners, any technological and  
6 economic feasibility concerns and data to support  
7 your comments. The Agency will use the specific  
8 information that you submit to help evaluate the  
9 requirements in the proposal and produce a final rule  
10 that will improve safety and health for underground  
11 coal miners in a manner that is responsive to the  
12 needs and concerns of the mining public.

13           As many of you know, this hearing will  
14 be conducted in an informal manner. Formal rules of  
15 evidence will not apply. The panel may ask questions  
16 of the witnesses and the witnesses may ask questions  
17 of the panel. MSHA will make a transcript of the  
18 hearing available on the Agency's website within one  
19 week of the hearing, and as most of you know, time is  
20 of the essence in developing the final rule, which  
21 must be finalized by December 31, 2008.

22           If you wish to present written  
23 statements or information today, please clearly  
24 identify your material and give it to the court

1 reporter. We ask that everyone in attendance if you  
2 would please sign the attendance sheet.

3                   We will now begin today's hearing and  
4 please begin by clearly stating your name and  
5 organization and spelling your name for the court  
6 reporter to ensure that we have an accurate record.  
7 Before we get to our first speaker, I said during the  
8 opening statement that I was going to comment some  
9 further about the requirement for the signals and the  
10 lifeline, and as you know, the original requirement  
11 was included in the Emergency Mining Evacuation Rule  
12 that was published December of '06, and in that rule  
13 for all the lifelines, we asked that there be  
14 directional indicators. I'm trying to remember the  
15 wording. At that time, we did not specifically  
16 indicate what the directional indicators had to be,  
17 but we said if cones were used, the tapered end had  
18 to point in-by, if cones are used. So therefore, if  
19 you are in the lifeline, you're going out this way.

20                   So here comes the Technical Study  
21 Panel's recommendation and the Technical Study Panel  
22 recommended that the signals be standardized. So  
23 this proposed rule requires that cones be the  
24 directional indicators, that they be standardized in



1 all mines, the tapered end would point in-by and the  
2 standardization would be for SCSR there would be six  
3 cones, for personnel doors four cones, for escape  
4 ways two cones and the direction to the refuge  
5 alternative or refuge chamber would be this spiral --  
6 I don't know exactly what we called it. We might  
7 have called it spiral something. Anyway, everybody  
8 sees it. And we said that the six, four and the two  
9 respectively would be back to back. So the two would  
10 be like so and then four and then six.

11                   So we've gotten comments. I bring this  
12 up and you probably say, well, why does she bring  
13 that up. I bring this up because at our very first  
14 hearing in Salt Lake City, we got comments on this,  
15 and I will say to you from an agency's standpoint  
16 that one of the things that we believed in the  
17 Emergency Mining Evacuation Rule and we continue to  
18 believe that training is a very important element to  
19 miners' understanding emergency escape and evacuation  
20 and training will be an important part of this rule,  
21 but, you know, some of the comments -- and obviously  
22 everybody can go to the website and see the  
23 transcript, but some of the comments we got said,  
24 just make sure -- not that people were very much in

1 support of the directional indicators and even the  
2 standardization, but said make sure whatever we do,  
3 try to make it as simple as possible and that in an  
4 environment where the emergenciers might think the  
5 escape way and things might be smoke filled, that,  
6 you know, people could be panicking and everything.  
7 So whatever we try in the final rule, try to put on  
8 eye on simplicity.

Comment [J1]: miners?

9           And that made think about another thing  
10 that I wanted to say before we started here and that  
11 is, and I'm going to try to remember to state it at  
12 every hearing that as an agency philosophy and I  
13 think as a mining philosophy of emergency escape and  
14 evacuation that we all continue to believe that in  
15 the events of an emergency underground, the first  
16 line of defense is for the miner to try to escape.  
17 So I wanted to underscore that that that's the  
18 Agency's philosophy and I think that's a longstanding  
19 principle that the entire mining community ascribes  
20 to. I wanted to underscore that, but obviously  
21 sometimes if escape is not possible, then that's  
22 where other things come into play. But I wanted to  
23 say that also before we started.

1                   So at this point then, now we will  
2 start today's hearing and our first speaker is Geoff  
3 Normanton with Fenner Dunlop. Mr. Normanton.

4                   MR. NORMANTON: The spelling of my  
5 name is G-e-o-f-f-r-e-y Normanton, N-o-r-m-a-n-t-o-n.  
6 I'm Vice President of Technology of Fenner Dunlop  
7 Americans.

8                   Good Morning. Based on my previous  
9 presentations to the panel, Fenner Dunlop continues  
10 to support the move to the BELT standard. We have  
11 invested in a new test facility in our Ohio facility  
12 with testing to the BELT and friction and preparing  
13 ourselves for the move. So as far as product  
14 integrity is concerned, we're happy with the life  
15 tests on the new products. We can recognize new and  
16 old products together and do not see any detriment to  
17 product life by the changes.

18                   Comments on smoke production toxicity,  
19 we are not carrying out quantitative measures of that  
20 yet, but from a product that has increased resistance  
21 to ignition and increased resistance to propagation,  
22 you can visually see enormous differences in the  
23 amount of smoke produced when testing to the BELT

1 standard. So we see that as positive secondary  
2 effect of this change.

3 One of the questions that was mentioned  
4 in the proposal was is one year adequate for the  
5 change out of product specification to BELT and we  
6 certainly see no difficulty meeting that one year  
7 change providing that the approval process is also of  
8 a quick duration.

9 Clarification on the utilization of  
10 belt stocks already at mines was at fault, but I  
11 think it has been covered in previously hearings, so  
12 we don't need to have any clarification and that is  
13 our comments for today.

14 MS. SILVEY: This is probably just a  
15 point of clarification. When you say in your new  
16 BELT laboratory you visually see the difference, I  
17 assume do you mean when you say visually see the  
18 difference with respect to the smoke, you mean less  
19 smoke?

20 MR. NORMANTON: Yes.

21 MS. SILVEY: With respect to when you  
22 see this going on in the mines when you all go into  
23 full production, do you all have splice kits that you  
24 will be making available with yours?

1 MR. NORMANTON: Yes, we do.

2 MS. SILVEY: And you will be making  
3 the splice kits available?

4 MR. NORMANTON: Yes, we will at the  
5 same time.

6 MS. SILVEY: Okay. And the  
7 instructions for how to use them and everything?

8 MR. NORMANTON: Yes, technical manuals  
9 and splice kits are provided currently to all our end  
10 users and so there will just an additional portion of  
11 that kit for BELT compliance.

12 MS. SILVEY: We say in that provision,  
13 I think, in the part talking about belt maintenance,  
14 I think we said something about something to maintain  
15 the fire resistant properties of the belt. I think  
16 that's way the wording goes.

17 MR. NORMANTON: It does. We read that  
18 as being if a splice was tested to the BELT standard,  
19 it would also be in compliance.

20 MS. SILVEY: That's right. Thank you.

21 MR. NORMANTON: Thank you.

22 MS. SILVEY: Our next speaker is Allen  
23 Dupree with Alpha Natural Resources. Mr. Dupree.

1                   MR. DUPREE:    Is it okay if Dave comes  
2 up with me?

3                   MS. SILVEY:    Yes.

4                   MR. DUPREE:    Good morning.  My name is  
5 Allen Dupree, and that's spelled A-l-l-e-n D-u-p-r-e-  
6 e and I'm vice president for Alpha Natural Resources  
7 and with me today is Dave Decker, D-a-v-e D-e-c-k-e-  
8 r, and he is the general manager for Brooks Run, a  
9 subsidiary of Alpha, and on behalf of both Dave and  
10 I, I would just like to thank you all for the  
11 opportunity to come in today here in Charleston and  
12 give comment on the proposed rule for utilization of  
13 belting.

14                               We have comments this morning on a  
15 couple of sections that we would appreciate if you  
16 all would take into consideration.  One of those  
17 sections is in preamble under Section 74.323  
18 regarding methane concentrations in the belt entry.

19                               In regard to the statement under 75.323  
20 in the preamble, there are numerous layers of  
21 protection already afforded to miners through the  
22 current regulations working in both developed entries  
23 and the working sections.  The current regulations  
24 recognize that methane is inherent in coal mines and

1 provide protection from mixtures that could  
2 potentially jeopardize miners' safety. Further  
3 lowering of these standards does not improve safety  
4 for miners.

5                   Under current regulations, miners on  
6 the working section have been successfully protected  
7 from excessive methane through duplicative and  
8 layered requirements. Section 75.323(b)(1) currently  
9 limits methane to below one percent in the intake air  
10 courses.

11                   Current Section 75.342(a)(1) requires  
12 that methane monitors be installed on mining  
13 equipment used to extract coal to give a warning at  
14 one percent methane. 75.360 requires that prior to  
15 anyone working in an area, a pre-shift exam will be  
16 done, including tests for methane will be conducted  
17 on roadways, travel ways, working sections, working  
18 places, approaches to worked out areas, and  
19 ventilation controls, high spots along intake air  
20 courses where methane is likely to accumulate and  
21 underground electrical installations.

22                   362(a)(1) requires that an on-shift  
23 examination, including tests for methane, be  
24 conducted once during each shift on working sections.

1 75.362(b) requires an examination for hazardous  
2 conditions be conducted along the entire length of  
3 each belt conveyor entry during each shift that coal  
4 is produced.

5           75.362(d) contains stringent  
6 requirements to test for methane at the face at the  
7 start of each shift in each working place before  
8 equipment is energized; immediately before equipment  
9 is energized, taken into or operated in a working  
10 place; at 20-minute intervals during the operation of  
11 equipment and a certified person has to test for  
12 methane in the return split of air from each working  
13 section. So the numerous and duplicative  
14 requirements to test for methane provided a proven  
15 and successful method of protection for the safety of  
16 miners looking at the one percent requirement in  
17 intake air courses, in addition to all the safeguards  
18 that are in place on the working section.

19           We feel that the belt air course should  
20 be considered an additional supply of intake air to  
21 the working section. This requirement has  
22 successfully provided protection to miners on working  
23 sections for years. Reducing the limits of methane  
24 in the belt conveyor entries to 0.5 percent provides



1 no measurable increase in protection than what is  
2 already presented. In light of the numerous safety  
3 requirements regarding methane, the perceived  
4 benefits of this proposal do not equate to a  
5 measurable increase in safety. Additional attempts  
6 to maintain methane concentrations in the belt entry  
7 below concentrations in the primary escapeway will  
8 often create undesired pressure differentials from  
9 the belt entry to the intake air course. To  
10 maintain the difference in methane concentrations  
11 will create a juggling act on trying to balance your  
12 methane with your ventilation system and your air  
13 velocity requirements at a belt entry. The more air  
14 you put in a belt entry to dilute the methane down to  
15 .05 percent, the increase in potential hazards for  
16 dust. So it's a give and take situation.

17           Our position is that the requirements  
18 of the maximum allowable limits of methane for intake  
19 air courses be applied to belt air courses. This  
20 current regulation, combined with the strict methane  
21 limits and tests already in place for the working  
22 section provides a successful history and adequate  
23 protection for our nation's miners.

Deleted:

1 I'm going to move on to 75.351. We  
2 have a comment relative to required annual training  
3 outlined in (q)(1) for AMS operators. This section  
4 under 75.351(q)(2) states that at least once every  
5 six months all AMS operators must travel to all  
6 working sections to retain familiarity with  
7 underground mining systems, including haulage,  
8 ventilation, communication and escape ways.

9 We feel that based upon the  
10 responsibilities of the AMS operator that this  
11 requirement is unnecessary for a few reasons and  
12 would eliminate some qualified and experienced  
13 persons from operating atmospheric monitoring  
14 systems. Many mines use former underground miners  
15 who are no longer physically able to travel  
16 underground to operate the atmospheric monitoring  
17 system. A requirement to go underground once every  
18 six months would eliminate these type employees from  
19 consideration for this duty, even though that they  
20 bring years of knowledge and experience to the  
21 position. The assumed benefit from this requirement  
22 weighed against the loss of experienced miners  
23 operating atmospheric monitoring systems we feel does

Deleted:

1 not adequately justify the proposed requirement  
2 under (q)(2).

3           Additionally, the responsible person is  
4 already in place as outlined in the current  
5 regulations is available to take charge and make  
6 critical decisions in addition to the AMS operator.

7           We also have a comment on 351(q)(3)  
8 that it just requires that the training records be  
9 maintained for two years and we just respectfully  
10 make the statement that other records are required to  
11 be maintained for one year and the one year retention  
12 would permit any authorized representative from MSHA  
13 to inspect those training requirements and training  
14 records at any time. So we were really unclear on  
15 the change from the normal one year requirement to  
16 the two year requirement.

17           We also have a comment on 75.1103-8(a).  
18 The proposed rule requires sensor and warning device  
19 systems shall be examined at least once each shift  
20 when belts are operated as part of a production  
21 shift. A functional test shall be made every seven  
22 days. Inspection and maintenance of such systems  
23 shall be by a qualified person. We just respectfully  
24 ask that this be clarified to define "examined" and

1 "inspected" because those terms are used  
2 interchangeably and depending on who you are  
3 discussing the issue with could mean different  
4 things.

5           And we have a question also for the  
6 panel. Does a functional test every seven days mean  
7 that each individual sensor, CO or thermal, must have  
8 CO gas or heat applied as part of the testing  
9 procedure? Presently CO systems are on a monthly  
10 schedule for testing and calibration and a weekly  
11 schedule would add a great burden as far as testing,  
12 especially at larger mines.

13           Part B requires that a record of the  
14 functional test be maintained by the operator for a  
15 period of one year. The current regulation requires  
16 that the records of weekly inspections be maintained  
17 at the belt drive location and it is not real clear  
18 where the records of the proposed functional tests  
19 are to be located and maintained.

20           We also have a couple of remaining  
21 comments on 75.1731(a), which is a proposed rule and  
22 requires that damaged rollers and other  
23 malfunctioning belt conveyor components must be  
24 immediately repaired or replaced. The difficult

Deleted: -

1 thing in reading this requirement is that it is  
2 excessively open to interpretation and the definition  
3 of the words "damaged" and "malfunctioning" could be  
4 interpreted many different ways by both industry and  
5 the enforcement personnel. It does not allude to any  
6 indication that the components are creating an unsafe  
7 condition. It also states that the subject  
8 components be immediately repaired or replaced. If  
9 one roller is damaged but not in an unsafe condition,  
10 the proposed rule still requires it to be replaced  
11 immediately even though it may be safer to do it at a  
12 later time with a two-man crew.

13 Our question would be to the panel, why  
14 is the term "immediately replaced" associated with a  
15 requirement that does not mention any unsafe  
16 condition and any condition that would create a  
17 potential hazard?

18 What concerns us, I guess, with the  
19 wording of the rule is that it would open a  
20 possibility of numerous inconsistent enforcement  
21 actions concerning examinations even though the  
22 examiner's primary duties are to detect hazardous  
23 conditions. That's what he's looking for, but it  
24 doesn't really go into the fact that a malfunctioning

1 component creates a hazard. So is the examiner  
2 required to detect this as part of his examination  
3 when he's looking for hazardous conditions? If he  
4 made an examination of the belt and one of us came by  
5 after him and detected a roller that was  
6 malfunctioned, would he be required to document that  
7 in his exam even though it may not be a hazard, I  
8 guess would be the question, since his primary duties  
9 are to look for hazardous conditions?

10           We feel that the current 1725(a) which  
11 covers equipment in an unsafe operating condition  
12 covers this proposal and this proposed regulation is  
13 unnecessary as written. In any event, we would  
14 request that the wording be clarified to define the  
15 intent, which in its present form is not clearly  
16 defined or understood. This proposal has the  
17 distinct potential of becoming a compliance and  
18 enforcement catastrophe and currently 75.1403-5  
19 provides safeguards to minimize hazards in belt  
20 conveyor entries. It already listed under the  
21 section under safeguards. So we would just ask that  
22 the panel consider clearly defining the term  
23 "malfunctioning". I know there are standard  
24 definitions out there in the dictionary and the

1 internet, but if we leave them open to interpretation  
2 and turn a lot of examiners loose and a lot of  
3 industry personnel loose and a lot of inspectors  
4 loose, they're all going to have different  
5 definitions of what malfunctioning may mean.

6           One last comment on 75.1731(c) requires  
7 that noncombustible materials shall not be allowed to  
8 accumulate in the belt conveyor entry. This  
9 requirement as it is written is maybe a little  
10 confusing as to the origin and intent of the  
11 requirement. It's completely open to interpretation  
12 as far as the words "accumulation" and  
13 "noncombustible", and if you read the regulation  
14 literally, compliance is virtually impossible as the  
15 way it's written. Noncombustible material could  
16 include rock, belt structure and the whole intent of  
17 the wording as written is not really clear and we  
18 would just respectfully ask why the regulation was  
19 included in the proposal.

20           If you look under, I believe it's  
21 75.1403-5(g), I know one of the statements in the  
22 preamble talked about stumbling and tripping hazards  
23 as a reason for not allowing accumulations of non-  
24 combustible material, but currently Section (g) under

1 1403-5 says a clear travel way at least 24 inches  
2 wide should be provided on both sides of the belt  
3 conveyors and we take that to mean a clear travel way  
4 clear of stumbling hazards for the safety of the  
5 examiner and anybody else walking down the belt entry  
6 way. Our fear is the way the reg is written and if  
7 we have a difficult time enough coming to grips with  
8 what accumulations of combustible materials are and  
9 we all agree that's a hazard and we want to prevent  
10 that. What is accumulation? Is it five feet by five  
11 feet by six inches? Is it two feet by two? Everyone  
12 has got a different definition and we're working  
13 through that. The scary thing on accumulation is the  
14 non-combustible materials. Is that two rollers that  
15 are laying over there in the crosscut, because  
16 according the regulation the way it's written that  
17 could be interpreted that way and enforced as an  
18 accumulation of non-combustible materials and that's  
19 a difficult thing to comply with. So we would just  
20 ask that your consideration on those regulations be  
21 taken. That's all I have and I appreciate your time.

22 MR. DECKER: I have one comment.

23 MS. SILVEY: Okay.



1 MR. DECKER: In addition to the  
2 safeguards that Allen has alluded to relative to .5  
3 percent methane at the entry, of course, we'll have  
4 the AMS systems as an additional safeguard. I mean  
5 that's the sole purpose in trying to comply with the  
6 .5. Our intent, of course, is to use the belt air in  
7 the face which the methane in the belt entry happened  
8 to be .51 and you had a primary intake against the  
9 solid rim, and one way to dilute the methane is to  
10 increase more air into the belt entry. If your  
11 primary intake is .55, you're not helping yourself  
12 any. It's virtually impossible to dilute that air  
13 down. I just wanted to state that comment. Thank  
14 you.

15 MS. SILVEY: Thank you. Thank you  
16 both. One of the things I wanted to say, the  
17 functional test, I think you asked about the  
18 functional test and what exactly did we mean by what  
19 would constitute a functional test. I will let one  
20 of my colleagues speak of that and on some of the  
21 other definitional terms particularly on the new  
22 proposal on belt maintenance. We have gotten  
23 comments at earlier hearings on that and some of the  
24 terms we included in there, for example, damage, what

Deleted: ea

1 do you mean, and as you said, what's an indication of  
2 damage, how much damage are we talking about.

3           As a matter of fact, I don't know  
4 whether you saw the transcript or what, but your  
5 testimony was predicative of some of what I was going  
6 to say on that. For some of terms and you alluded to  
7 it, we generally meant the dictionary definition of  
8 certain terms that we used when things were damaged,  
9 rollers I think, and certain other things in terms of  
10 when maintenance was required, but as with the  
11 comments we got earlier, we appreciate everybody's  
12 comments and as we draft the final rule, we will try  
13 to be as clarifying as we can in terms of what type  
14 of putting people on notice -- everybody on notice as  
15 to what type of actions would be required.

16           In terms of what you asked about the  
17 functional test, do you want to talk to him about  
18 what we expect?

19           MR. FRANCAERT: The functional test,  
20 Allen, would be application of carbon monoxide to an  
21 adequate number of sensors to activate all alarms  
22 signals. Now, if you could do that with one CO  
23 sensor and come out to the belt and going into the  
24 mine, that would be adequate. If you wanted to do it

1 during the calibrations and do maybe three sensors to  
2 activate three alarm signals, that would be adequate,  
3 too. It really would be up to the operator as long  
4 as the alarm signals are all activated.

5 MS. SILVEY: Was that clarifying for  
6 you?

7 MR. DUPREE: We did have a question on  
8 the inspected and examined interchange of words as  
9 well.

10 MS. SILVEY: Okay. We got comments on  
11 that, too, so we will be looking --

12 MR. DUPREE: Thank you.

13 MS. SILVEY: When I gave my general  
14 statement about that, we would be looking at all the  
15 comments and testimony that we had gotten relative to  
16 a word that we used. I think I still go back to the  
17 comment I made. I don't know what hearing it was.  
18 It may have been one in Lexington where I said that  
19 we were looking at sometimes the general dictionary  
20 and common sense meaning of the term, but, you know,  
21 everybody's comments are well taken and in terms of  
22 trying to be as clarifying as possible so everybody  
23 is on notice as to what action is expected, being we

1 will look at all of the wording that we used and try  
2 to respond to it.

3 MR. DUPREE: I would just say we  
4 appreciate your time. I'm sure that writing a  
5 proposed rule is really difficult and challenging and  
6 we appreciate those efforts. 75.400 has probably  
7 been the toughest rule to enforce and also to comply  
8 with because when we talk about the single word  
9 "accumulation", that is the toughest word to define  
10 and get consistency on and that's been worked out  
11 through litigation over and over again and we would  
12 just ask that, you know, whether it's an accumulation  
13 on combustible materials, what kind of are we looking  
14 at and the more we can specify things, the better,  
15 and if we have malfunctioning or damaged components,  
16 if they would create an unsafe condition, then we  
17 could understand how the examiner would detect those  
18 and document them and get it fixed, but if it doesn't  
19 create an unsafe condition, as he required to record  
20 those as hazards and if a roller is making a little  
21 bit of noise, is that a damaged roller, because you  
22 can't walk a belt line without one roller making  
23 noise. So the thing that scares us the most is the  
24 interpretation. But we do thank you for your time.

1 MS. SILVEY: Okay. Thank you all.  
2 Our next speaker is Jim Weeks with United Mine  
3 Workers of America.

4 MR. WEEKS: Good morning. My name is  
5 Jim Weeks. I'm an industrial hygienist consultant to  
6 the United Mine Workers of America. I was also a  
7 member of the Technical Study Panel that developed a  
8 long list of recommendations and I must say the  
9 Agency is moving at lightning speed considering that  
10 the panel report was made less than a year ago under  
11 the proposed rule, but then there was a congressional  
12 deadline, also. So anyway, we welcome the change.

13 I would like to focus on two sets of  
14 recommendations made by the study panel and then make  
15 some comments about some specific events.

16 The first set of recommendations is  
17 that MSHA adopt the B.E.L.T. test, and second, the  
18 recommendation that and I'm quoting here "use of belt  
19 air for face ventilation be held to a higher  
20 standard." I'm trying to flush that out. I'm trying  
21 to describe exactly what that means.

22 In my opinion, the existing MSHA rule  
23 on the belt air did not meet the requirements of the  
24 Mine Act because use of the belt entry for face

1 ventilation is inherently less safe than not using it  
2 for that purpose. Since fires occur more often in  
3 the belt entries than in other entries, using a belt  
4 entry for face ventilation allows the products of  
5 combustion to go directly to the face and it also  
6 contaminates the entry itself.

7                   The introduction of the atmospheric  
8 monitoring system helps to detect fires and it's  
9 dependent on miner operators to take appropriate  
10 steps to control fires, but it is safer to actually  
11 prevent fires and to prevent products from combustion  
12 from contaminating working places than it is to rely  
13 upon detection and control.

14                   The existing MSHA rule uses neither of  
15 these strategies, that is the strategy of either  
16 preventing products of combustion from going to the  
17 face or preventing products from occurring in the  
18 first place and it's in light of these deficiencies  
19 that the panel made -- well, we made some 20  
20 recommendations and I wanted to focus on those, on at  
21 least three of them.

22                   First, let me talk about the B.E.L.T.  
23 test and I think it's important to give some  
24 historical background to this recommendation.

1 Conveyor belts are a relatively common source of  
2 fires. Fifteen to 20 percent of all reported fires  
3 are belt fires. It's important here to keep in mind  
4 that a reported fire under the Part 50 rules is one  
5 that lasts at least 30 minutes, and because of that  
6 particular requirement, the number of unreported  
7 fires that last less than 30 minutes is essentially  
8 unknown. At least it's not in the data system and  
9 it's most likely much larger than the number of  
10 actually reported fires. So the problem actually is  
11 pretty much larger than is apparent from existing  
12 data.

13                   Now, following numerous petitions for  
14 modifications from mine operators who sought  
15 permission to use belt air, MSHA promulgated its  
16 ruling and MSHA's response to the problem was to  
17 require operators to use the atmospheric monitoring  
18 system. This is based on the assumption that once  
19 detected the mine operator would take the necessary  
20 steps to control the fire.

21                   Now, as we learned from the Aracoma  
22 fire, this assumption that mine operators would do  
23 the right thing is not always a valid assumption. I  
24 think the delay in taking action after the Aracoma

1 fire was detected that lead to the tragedies at that  
2 particular situation. So in this respect, the MSHA  
3 rule is not as protective as the outlying prohibition  
4 on the using of belt air as required by the Mine Act.

5 MSHA could have taken steps to prevent  
6 fires in addition to the rule to detect and control  
7 them. Now, from 1970 to 1999 there were about 140  
8 fires. Every one of those fires occurred with  
9 conveyor belt material that had been approved by MSHA  
10 at that point as flame resistant by using the so-  
11 called 2G test. The one thing we expect from testing  
12 materials for flammability is that it not burn and by  
13 this measure the 2G test was a failure and is clearly  
14 a failure. It was actually developed by the Bureau  
15 of Mines in 1955. Its shortcomings were recognized  
16 in 1967 or so and consequently the Bureau of Mines  
17 and later NIOSH, often with MSHA's participation,  
18 developed this new test protocol, the so-called belt  
19 evaluation laboratory test, the B.E.L.T. test. This  
20 test is more rigorous, it is more in line with  
21 international standards and it more closely  
22 replicated actual in-mine conditions. It was clearly  
23 a better test.

24 A detailed description was published



1 in, I think, 1987, MSHA proposed to adopt it in '92,  
2 determined it was feasible in '99 and withdrew the  
3 proposal in 2002. So we've been down this road  
4 before on this particular test. MSHA gave us its  
5 rationale for removing the proposal when the  
6 frequency of belt fires had decreased and it's true  
7 that the number of belt fires have decreased, but so  
8 also have the number of the mines, and that the  
9 number of belt fires per 1,000 mines actually had not  
10 decreased at all, so that the need for the test  
11 protocol remains.

12           The panel that I was on endorsed this  
13 test. We were not the first to endorse it. The belt  
14 entry ventilation review of the internal committee,  
15 MSHA endorsed this test. The belt advisory committee  
16 recommended that MSHA adopt this test and so the  
17 Technical Study Panel was hardly breaking new ground  
18 in recommending that you adopt this test, also, and  
19 what this test adds is it fixes one of the  
20 deficiencies in the existing rule and that is it  
21 takes steps to actually prevent fires rather than  
22 merely detecting it and that is one of its greatest  
23 strengths. So we welcome your adoption of the test  
24 and you've got the support of the three committees

1 and dozens of others and so I anticipate that it will  
2 move in fairly quickly.

3           In addition to the belt test, we also  
4 supported what was called the drum friction test.  
5 Frankly, the recommendation of the committee, if you  
6 look at it, if you read it carefully, it's a classic  
7 example of how committees can mangle the English  
8 language. So it's a bit obscure. I think that what  
9 you propose is to basically study the development of  
10 a drum friction test is an appropriate response to  
11 this.

12           What the drum friction test does is it  
13 corrects another deficiency of the existing rule and  
14 the belt test only examines -- only looks at the  
15 question of flame propagation. It assumes the belt  
16 is already ignited. It doesn't address the question  
17 of whether or not the belt can be ignited, and one of  
18 the most common sources of the ignition is friction,  
19 either rubbing against a structure, a broken roller  
20 or a variety of other ways in which that friction can  
21 occur. So it's entirely appropriate to test the belt  
22 against that particular source of ignition and that  
23 is a unique feature of this test. It addresses the  
24 question of whether or not the belt can ignite, let

1 alone whether the flame can propagate. So I think  
2 it's an appropriate test and an important test for  
3 you all to develop and adopt. It's used in a variety  
4 of other countries around the world and that we can  
5 obviously learn from the experience of those other  
6 countries.

7           Now, the other recommendation of the  
8 committee, again somewhat vague unfortunately, is  
9 that the mines that use belt air be held to a higher  
10 standard. What exactly does this mean? And just  
11 some language from the report that's appropriate.  
12 The report says that belt air is sound in some  
13 situations. That implies that there is some  
14 situations in which it is not sound and I think it's  
15 incumbent upon the Agency in approving the request of  
16 use of belt air that the Agency identify what those  
17 situations are.

18           We received a number of petitions for  
19 modification on the committee and typically what  
20 these petitions were was essentially boilerplate. It  
21 said we want to use belt air. We're going to do the  
22 following things. We'll install an AMS system and so  
23 on, period. That was it. It never -- they rarely  
24 took the position of saying this is a problem that we

1 have. This is why belt air is the solution.

2           What we identified in the committee and  
3 in the study panel was that there are some  
4 circumstances in which belt air is appropriate and we  
5 visited mines in Utah and we visited mines in Alabama  
6 and the two situations we've identified, one had to  
7 do with ground control where in very deep mines such  
8 as in the west there are significant ground control  
9 problems because of the deep cover and that one way  
10 of alleviating -- as I understand, one way of  
11 alleviating some of those ground control problems is  
12 to reduce the number of entries, and if you have an  
13 entry that's a belt entry, you use that belt entry  
14 for additional ventilation and you don't have to go  
15 to another entry so that having a belt entry is  
16 essentially running two entry systems and is done in  
17 the west is one of many procedures that operators use  
18 to improve their ground control problems, and in that  
19 situation using belt air seems to us made sense.

20           Now, you referred to Crandall Canyon  
21 earlier. Clearly, ground control in deep mines is a  
22 complex problem and this is hardly the solution to  
23 ground control, but it is something that would help  
24 to alleviate ground control problems, at least as we

1 understood it in those mines, and in that situation,  
2 it seemed to be appropriate that the trade-off  
3 between allowing combustion materials to go to the  
4 face on the one hand with ground control on the other  
5 so there wasn't methane.

6           The second situation had to do with  
7 very gassy mines which we visited in Alabama and  
8 there the operators need to get as much air into the  
9 face as possible to dilute the gas and carry it away  
10 and that the belt entry was a useful means of getting  
11 additional air on the face and removing gas.

12           Again, like ground control, gas control  
13 this is not the means of controlling gas, but it's  
14 something that helps to alleviate the problem. And  
15 in both those situations, both those kinds of  
16 situations belt air was an appropriate -- it seemed  
17 to us to be an appropriate way to deal with those  
18 particular problems, but what we saw was mine  
19 operators coming along saying we want to use belt air  
20 period. It did not identify any problems, it didn't  
21 say what issues they were going to solve and it  
22 didn't say why they wanted to use belt air. There  
23 was no explanation at all as to why that was the  
24 case. In holding operators to a higher standard

1 means that the trade-off has to be explained. It's  
2 not just an automatic approval that's given.

3           Let me read to you a paragraph from the  
4 report. It is not the recommendation, but the  
5 discussion of the recommendation and, of course, it's  
6 a fairly lengthy paragraph. The mines outside of  
7 these two categories, that is, mines with ground  
8 control problems and gas control problems -- the  
9 mines outside of these two categories is not always  
10 obvious that belt air should be used. The reason for  
11 this conclusion is very simple. The use of belt air  
12 in the working section allows combustion products,  
13 fires or explosions in the belt area to reach the  
14 working section. If using belt air in the working  
15 section does not reduce or eliminate other conditions  
16 deemed to be more hazardous, there is no  
17 justification for using belt air in the working  
18 section. The Technical Study Panel therefore  
19 suggests that the process for granting permission to  
20 use belt air in the working section become part of  
21 the ventilation plan or the overall mining plan as  
22 part of the ventilation plan review. In addition,  
23 the panel recommends that the MSHA district manager  
24 be charged with the responsibility of carefully

1 scrutinizing each plan for using belt air in the  
2 working section and denying those that do not have  
3 evidence of a safer mining environment than not using  
4 belt air on the face. In addition, the panel  
5 recommends that the district manager be charged with  
6 delivering a decision within six months.

7           So that's what it means to hold mines  
8 to a higher standard. There has to be this -- it's  
9 not a routine way of doing business. It solves  
10 problems and it can solve -- and particularly it can  
11 solve a couple of problems.

12           In this respect, the panel did not give  
13 a blanket endorsement for using belt air. That is  
14 important that you recognize that. And I described,  
15 we looked at these petitions for modifications and  
16 discovered what was missing and I didn't see any  
17 provision for that in your proposal. I don't know  
18 how -- frankly, I don't quite know how it could work  
19 itself in there other than through some kind of a  
20 policy statement, but with that kind of a trade-off,  
21 I think is quite important. Otherwise, it's using an  
22 inferior practice and an unsafe practice for  
23 ventilating the mines.

24           Now, I'd like to go on and make a few

1 comments about some of the specifics of this  
2 proposal. First on the question of the AMS operator  
3 and what that person's responsibility is, one of the  
4 things that we encountered was that people that  
5 operated the AMS system were doing lots of other  
6 things. Some of them were related to safety and  
7 health and many of them were not. I think one of the  
8 most bizarre examples that some AMS operators were  
9 asked to call out for pizza, which is not a terribly  
10 good use of their time, and we went back and forth  
11 frankly among the committee saying "Well, the AMS  
12 operator should only operate the AMS system and  
13 nothing else." I'm not sure that's practical. It's  
14 rather like the task as described an anesthesiologist  
15 in surgery, you have, you know, 99 percent boredom  
16 and one percent sheer terror as to what's going on  
17 with the patient and that's the same thing with the  
18 mine. Most of the time the mine is operating  
19 properly and then there's a time when you have to pay  
20 attention and respond immediately. So I'm not sure  
21 that it's realistic to expect the AMS operator to  
22 only operate the AMS system, but what we did say is  
23 that whatever that person does in addition to the AMS  
24 operator operating the AMS system, it should be



1 related to health and safety. It shouldn't be  
2 related to something else that's unrelated, overtime,  
3 pizza, whatever, and the way that the proposed rule  
4 is written, it allows for that to occur. You say  
5 that the primary responsibility of the AMS operator  
6 should be operating the system and I think that that  
7 should be clarified to say that it should be  
8 operating the system and other health and safety  
9 tasks and not whatever happens to come along down the  
10 road.

11                   Another matter about the training for  
12 the AMS operator, again, the committee went back and  
13 forth on would it be better to have someone that's  
14 familiar with the mine trained to operate this  
15 computer display system or would it be better to have  
16 someone who is familiar with computer displays become  
17 familiar with the mine and there were different  
18 schools of thought on that one way or the other. We  
19 finally decided it really didn't make a whole lot of  
20 difference one way or the other. What was important  
21 was that the person that operated the system know  
22 what's going on underground. It can be a blip on the  
23 screen and it means nothing and you could read a 30  
24 as an 80 easily and it's very useful to have that

1 person familiar with, you know, what does this  
2 situation look like underground, go down to talk to  
3 people, to visit people, see what's there and so on  
4 so that what comes up on the screen is connected to  
5 reality and that's why we recommended that that  
6 person go underground every six months or something  
7 like that.

8 All but one of the AMS operators that  
9 we met were not miners and really had never been  
10 underground and didn't know what was down there and  
11 we thought that was improper that they ought to have  
12 some connection with what's going on underground.  
13 That's the aim so that what comes up on the screen  
14 can be connected to some kind of reality.

15 Another issue, in the preamble MSHA  
16 stated that if a mine operator reduces the air  
17 velocity from a belt entry, the concentration of dust  
18 in the belt entry could be decreased because of  
19 reduced scouring which is technically true, but  
20 scouring is not the principal of source of dust in  
21 the belt entries, at least as we learned. The  
22 principal source of dust in belt entries comes from  
23 things like transfer points or dump points or things  
24 of that sort, and if you reduce air velocity in a

1 belt entry and the dust comes from the transfer  
2 point, actually the concentration would go up. In  
3 addition, what's important is what's the dust  
4 concentration in the working section and if you  
5 reduce the air in a belt entry and the dust  
6 concentration in the belt entry is less than what it  
7 is from other sources, then the air concentration in  
8 the face will actually go up also. So I don't think  
9 you should leave that in the preamble. Somebody  
10 might come along and say, well, if we reduce the air  
11 velocity in the belt entry, the dust concentration  
12 would be decreased, but I don't think that's always  
13 the case. I could go through a tedious explanation  
14 as to why that's the case, but I don't want to bother  
15 you with that right now.

16                   The other matter concerning dust in the  
17 belt entry, there are two issues here; one is the  
18 dust in that entry should be -- the language that  
19 would be better would be the dust concentration  
20 should be as low as feasible and in no sense greater  
21 than one milligram. Frankly, I don't think one  
22 milligram is adequate. I think half a milligram  
23 would be better and I think it's totally feasible to  
24 reduce dust in the belt entry to below half a

1 milligram.

2                   The point is we want to get any air  
3 that's used on the face to reduce dust and should be  
4 as dust free as possible and if it was a one  
5 milligram limit it's not something that allows  
6 operators to operate up to that limit with that. The  
7 dust level should be as low as feasible.

8                   The other matter is that the dust  
9 measurement on the belt entry is indicated as an  
10 eight-hour time weighted average. That's the same  
11 way it's done elsewhere in the mine. This is an  
12 inadequate protection for miners' health because  
13 people work longer shifts these days and sooner or  
14 later you're going to have to start -- we're going to  
15 have to take and regulate dust exposure levels for  
16 these longer shifts so that the better language would  
17 be to say an eight-hour time weighted average or its  
18 equivalent for longer shifts such as ten or 12 hour  
19 shifts or something of that sort. This is the larger  
20 issue I understand than just dust control in belt  
21 entries, but it's an issue that MSHA's going to have  
22 to deal with sooner or later.

23                   Another issue I welcome your discussion  
24 on the directional cones. I think they're needed.

1 In my opinion -- I disagree with members of the  
2 committee on this issue. In my opinion having one  
3 cone or six or two or whatever is too complicated and  
4 especially if you're in a -- if an entry is filled  
5 with smoke and people are quite concerned about  
6 getting out and so on and so forth, there could be  
7 damage to anything, so that, you know, two cones  
8 indicating that there was an entry over there, but  
9 that entry could be damaged, you don't know until you  
10 get over there, I think it should be simpler than  
11 what you have described. But the key here is coming  
12 up with an adequate system that works. I really  
13 think you need to talk to working miners. They're  
14 the ones that are going to use it, their lives could  
15 depend on it and I think their instincts and their  
16 input in this is critical.

17                   One other matter: On splice kits, I  
18 don't know whether your proposed rule proposes to  
19 test splice kits using the belt test. It should. I  
20 don't think it's automatic that splice kits would be  
21 flame resistant and they should be tested using a  
22 belt test and subject to the testing approval along  
23 with the belt themselves.

24                   And finally on the issue of damage to

1 rollers, to malfunctioning rollers, I think the issue  
2 that we were concerned with on the committee is that  
3 a damaged roller is one that either has already or  
4 could seize or freeze up and cause a point of  
5 friction of heating. That's the issue. And whether  
6 they're making noise is an indicator that it might  
7 seize, I don't know. You'd have to talk to some  
8 experienced miners about that whether noise is an  
9 indicator that it might seize up or not. I think  
10 that's the issue there with damaged rollers is our  
11 concern.

12                   Now, I'll be submitting some -- I'll be  
13 going through in some more detail in written comments  
14 that are due on the 8<sup>th</sup> and if you have any  
15 questions, I'd be glad to try and respond.

16                   MS. SILVEY: Thank you. Before I get  
17 into one of them and we appreciate your comments, one  
18 of the things I will start with I guess was next to  
19 the last one on your comment about, as you noted at  
20 the end of my opening statement, I talked about the  
21 indicators, the directional indicators and the cones  
22 and we, at some earlier hearing, one of the things I  
23 did was I asked particularly if we could get before  
24 the record closes input from miners on, you know,

1 their feelings about the proposal and how they felt  
2 they would react to the proposal even being given  
3 good and constant training, because the way we  
4 proposed it, we said that the training could be  
5 integrated, if the mine operator wanted to do that,  
6 into the emergency mine evacuation training. Well,  
7 it would be a part of that, it would be. So even  
8 with the most excellent training, we did want input  
9 as to whether people thought that the way we had the  
10 proposal structured would -- because you want it at a  
11 certain point where in the case of an emergency and  
12 your response comes, you just know what you're going  
13 to do sort of and you don't have to think too much  
14 about it. So we did ask and I would reiterate that  
15 again today if we could get input from miners if at  
16 all possible on that provision.

17                   On one of the things, and this is just  
18 a point of clarification to everybody, when you  
19 started out talking about fires underground and I  
20 know you recall this in the emergency mine evacuation  
21 rule, we changed the time period for reporting of  
22 fires underground, not on the surface 30 minutes, but  
23 underground it was changed to ten minutes.

24                   MR. WEEKS: I'm aware of that and I

1 think it should have been zero.

2 MS. SILVEY: Well, I mean, but you said  
3 --

4 MR. WEEKS: No, I understand. What I  
5 was talking about was the data from the 1972. All of  
6 that data is for 30 minutes.

7 MS. SILVEY: Right. That's right, but  
8 we changed that to ten minutes for reporting fires  
9 underground. We appreciate the comment you made on  
10 the damaged rolls in terms of the intent. I just  
11 have really just one more comment and I guess the  
12 only comment that I would say is that on your comment  
13 with respect to the use of air in the belt entry, one  
14 of the things we tried to do in the proposal was to  
15 look not just at the recommendation itself, but also  
16 to look at the discussion of the Technical Study  
17 Panel and like you said and I don't disagree with you  
18 that oftentimes when you get a committee, you know, I  
19 mean everybody in this room sort of knows what it is  
20 when a committee is working together and you have to  
21 -- and the goal is to come up with something  
22 together. So what we try to do is look at the  
23 recommendation of the Technical Study Panel and also  
24 look at the discussion and try to put the two



1 together as best we could in terms of the committee's  
2 intent and as best we could in terms of reflecting  
3 that in the preamble in terms of what the Agency's  
4 proposed requirement would therefore be. So we try  
5 to do that, and as we go forward, you know, we'll  
6 just take into consideration comments from people and  
7 try to do the best we can in the final rule.

8 MR. WEEKS: Well, when I was referring  
9 to the recommendation that the operators that used  
10 belt air be "held to a higher standard", I thought  
11 this is hopeless language here, you know, so I think  
12 you should do that, you should love your mother, et  
13 cetera, and so what exactly you meant by that and  
14 when I looked at it and I thought it was in the  
15 discussion and it was, it was there very clearly in  
16 the discussion, and one of the things the committee  
17 explicitly did not do was try to ask the question is  
18 the use of belt air to ventilate a working face is  
19 that a safe practice. We took that question and just  
20 put it off the table and said, you know, unless you  
21 talk about the context, then how that's going to be  
22 applied, it's a meaningless question to ask and we  
23 ended up saying "hold it to a higher standard" and  
24 specifically that when the district manager approves

1 it or not a mine plan, mine ventilation plan, there  
2 has to be some -- what we were recommending is that  
3 there be an evaluation of is the mine better off and  
4 safer after the use of belt air than not and it was  
5 frank recognition that using belt air was inherently  
6 not a safe practice because it allows combustion  
7 product to go to the face and the AMS system does  
8 absolutely nothing to stop that from happening. In  
9 fact, it depends on smoke going to the face in order  
10 for the AMS system to operate and it also depends on  
11 the operator to do the right thing if that occurs and  
12 we saw in the Aracoma fire that frankly that just did  
13 not happen. That's not what the operator did.

14           So that being the case, that if you're  
15 going to use this kind of way to ventilate the mine,  
16 it has to be a solution to some other problem that's  
17 there and that's tangible and that the operator has  
18 to talk about in their plan. That's what I think  
19 that means and that when the district manager  
20 evaluates ventilation plans, he's got to have some  
21 criteria and those criteria can't be simply stated,  
22 you know. They are not met by simply saying, well,  
23 it's safer or it's safe to do it this way. I mean  
24 these systems went up before the court said, sure,

1 the MSHA rule is safe, and that being the case, they  
2 could say, well, it's safe to do it this way and I  
3 think we as a committee we're saying that's simply  
4 not adequate that the operator has to make the case  
5 as to why it's safer and what problem using belt air  
6 solves in order to go ahead and use it, in order for  
7 the MSHA or the Agency to approve it. It's not, you  
8 know, boilerplate,

9           You know, looking at the petitions for  
10 modification was an in lightning procedure because  
11 miners didn't do that. They just said this is what  
12 we're going to do. We going to use belt air and  
13 we're going to put in an AMS system and MSHA said,  
14 okay, go ahead and do it, and what the committee  
15 ended up saying is that that's not an adequate  
16 procedure, that doesn't result in a safe environment.

17           Let me ask the panel this. Are you  
18 going to develop some criteria to give district  
19 managers when they approve these plans, the  
20 ventilation plans to use belt air?

21           MS. SILVEY: We most likely will.

22           MR. WEEKS: You know, I think the gist  
23 of my testimony is that maybe give them some  
24 instruction as to what to evaluate, what to look for

1 in a mine operator's plan in order to approve or not  
2 approve their request.

3 MS. SILVEY: Yeah, I'm not saying here  
4 today what we're going do. I mean that's internal  
5 MSHA. So I don't want somebody to run out and write  
6 it and say that Silvey said that they will develop.  
7 What I will say to you from my many years of working  
8 at MSHA that we most likely will. I still will stick  
9 by my first statement that we most likely will  
10 develop criteria.

11 MR. WEEKS: Well, the gist of the  
12 committee report is that you include that kind of  
13 consideration that they be "held to a higher  
14 standard" and when somebody says what are you talking  
15 about, you can answer that question.

16 MS. SILVEY: Okay. Thank you.

17 MR. WEEKS: Well, thanks for allowing  
18 me too much time. I should also recognize that there  
19 are members of this panel that were very helpful in  
20 the committees and we appreciate their work.

21 MS. SILVEY: We thank you. We do, we  
22 appreciate it, too. Thank you. Our next speaker is  
23 Dennis O'Dell, United Mine Workers. Mr. O'Dell.

24 MR. O'DELL: My name is Dennis O'Dell,

1 D-e-n-n-i-s O-D-e-l-l. I'm the administrator of  
2 Occupational Health and Safety for the United Mine  
3 Workers. I have 31 years experience in the mining  
4 industry and 20 years as an underground coal miner.  
5 The rest of it is as a safety rep for the United Mine  
6 Workers, the last three being the administrator.

7 I'd like to offer a few comments this  
8 morning. We're still looking at the rule and we're  
9 still putting together a lot of our thoughts as to  
10 how we're going to approach to offer comments on the  
11 rule, but I'd like to address some of them this  
12 morning and then before the rule ends, we'll offer  
13 written comments.

14 I'll start out with the proposed  
15 Section 14.1. I'm sorry, 14.3, and it addresses the  
16 testing and evaluation of belts. The union would  
17 like to point out that it's the miners that have the  
18 most at risk since they will be exposed to these  
19 belts on a day-to-day basis, and historically it's  
20 been miners, not MSHA or not the representative of  
21 companies or not the manufacturers who die as a  
22 result of belt problems or who become injured as a  
23 result of problems that occur on these belts. The  
24 rule suggests that because of proprietary protection

1 that the miners cannot participate during the time of  
2 the testing and I think that there's ways to get  
3 around that. I think that miners should be given the  
4 opportunity to be there while testing takes place. I  
5 think it would be beneficial to everybody. I think  
6 the manufacturers of the belt themselves can talk to  
7 the miners who work on belts to get some ideas on how  
8 to improve their products. I think that they could  
9 suggest things on how the testing takes place. It's  
10 not always a scientist or the academia person that  
11 does the testing that's the smartest when these kinds  
12 of tests are conducted. It's usually the guy that's  
13 underground that's around it that has the most  
14 practical approach that can offer some help that  
15 would be beneficial to everybody and I can't  
16 understand why we would cut that portion of the  
17 process out. So I would suggest that miners be  
18 allowed to present during this time.

19                   On 14.4(b)(4), the union would like for  
20 MSHA to explain how the practice would be acceptable.  
21 I think I understand the scenario that you said on  
22 having tested a low number of ply belts and a high  
23 number of ply belts from the same manufacturer with  
24 everything being the same. As an example that was

1 given that you may approve a belt with a number of  
2 plies somewhere in between and that somewhat makes  
3 sense, but it doesn't always -- it's not always true  
4 and accurate. You should keep in mind that the  
5 number of plies is a huge determining factor on how a  
6 particular belt will function in a coal mine. For  
7 example, if a belt gets hung up in belt drive with  
8 the drive roller spinning, the belt would become hot,  
9 it would smoke and they melt and they burn and the  
10 thickness of the belt and the number of plies is  
11 going to determine how quick the belt will melt, burn  
12 or separate. Because of this, rather than just take  
13 the easy way out and pass and rubber stamp something  
14 that may in between the high and low number, why not  
15 take the time to take the safe approach and test all  
16 belt products regardless. That way there's no  
17 question. There's nothing left unturned.

18 Under proposed 14.7(d), maintain the  
19 sales records for five years, the union would insist  
20 that the sales records be kept as long as the belt is  
21 in use whether it be at the operation it was  
22 originally purchased or at other locations. I think  
23 most of us know that a belt may sit at a belt  
24 operation in a shop or a warehouse or supply yard for

1 a period longer than five years sometimes before  
2 installing them and so to keep the record straight,  
3 the union will insist that MSHA should mandate and  
4 enforce that all sales records follow the belt from  
5 the time of purchase to its grave. In the event that  
6 one operator will transfer the used belt to another  
7 operator and that goes on a lot of times -- large  
8 operators will take a belt out of a coal mine, a used  
9 belt and they will sell it to a smaller operator. I  
10 think that sales record should follow that belt  
11 regardless of where it goes. The original purchase  
12 or sales record should be transferred with that belt  
13 and made a part of MSHA's recordkeeping provisions.

14           Under proposed 14.10, the union would  
15 like to add that these reports be provided to the  
16 representative of the miners and that the operator be  
17 required to post a copy on the mine bulletin board to  
18 be made available for all interested parties.

19           Under proposed 14.10(b), the union  
20 would insist that the representative of the miners be  
21 given the same opportunity to be present during the  
22 testing and audit that is given by the Agency.

23           Proposed 14.10(c), because of the fact  
24 that defects can place miners at risk, the union



1 would insist that a proper notice of the findings of  
2 these audits be made available to all interested  
3 parties, including the miners' representative and  
4 that wasn't addressed in the proposed rules.

5           Proposed 14.11(d), the union would  
6 agree with the statement knowing that from time to  
7 time tested products may eventually fail or need to  
8 be recalled. We've seen that story, you know, in the  
9 industry. Because there are numerous members of the  
10 mining community who still do not have access to the  
11 web, the union would insist that as well as the web,  
12 other means be utilized for the purposes of sending  
13 those notifications out to the public. You know,  
14 it's a nice benefit and most people have access to  
15 the computers and webs, but still, you know, some of  
16 the older miners don't use the web. They stay away  
17 from them for whatever reasons and they should be  
18 notified as well as to what's going on. So I don't  
19 think we should totally rely on all communications  
20 from this point be posted on the MSHA website. We  
21 should send out written notification to the  
22 community.

23           Under proposed 75.11.08, this allows  
24 for a period of one year a miner operator has the

1 option of using conveyor belts which have been  
2 accepted under existing Part 18 or have been approved  
3 under new Part 14.

4           First of all, from a personal  
5 experience of my own, it's our hopes that -- I'm not  
6 even sure that these belts are still being used in  
7 the mines or not, but to mention about PVC belts and  
8 other plastic belts that have been previously  
9 approved under the existing Part 18, we believe those  
10 should be banned from use and removed as an  
11 acceptable conveyor belt under this process. Many  
12 miners have been taken to the hospital as a result of  
13 poisonous smoke fumes produced from these types of  
14 belts. When these types of belts get overheated and  
15 smoke, they produce some poisonous gases. Some  
16 operators have already discontinued them and I know  
17 from personal experience. We used a plastic belt  
18 when I was in the mine. We had a problem when it got  
19 hot and smoked, we had miners go down. I worked on a  
20 belt pretty close to ten years. I personally have  
21 been exposed to these fumes, so I hope that we look  
22 at what has already been approved and re-evaluate  
23 those as well and decide whether some of those should  
24 be re-entered into the mining industry simply because

1 of the health hazards that exist. The union would  
 2 ask for clarification on the one-year option period.  
 3 During this one year, there's nothing written in the  
 4 proposal to prohibit mine operators from purchasing  
 5 and stockpiling enough belt from a manufacturer to  
 6 last them for a number of years to follow.  
 7 Therefore, not having to supply our tech miners  
 8 indefinitely with much safer improved belts, the  
 9 union would like to see and insist that upon  
 10 effective date of the rule if this rule moves forward  
 11 and is adopted that any purchases made from that day  
 12 forward would have to be approved and comply with the  
 13 new Part 14. The operator should only be permitted  
 14 to use existing belts that they have already that's  
 15 been approved, that we find is safe, that they've  
 16 already purchased that's in stock until the necessary  
 17 replacements -- until it's necessary to replace those  
 18 belts.

Comment [J2]: ???

19 Under proposed 75.160(a), the union  
 20 insists that these training classes should not be  
 21 included in the already Part 48 annual retraining  
 22 classes and I don't think that's your intent. I  
 23 think the training is going to be separate, but I  
 24 don't know that it's clarified. We believe that that

Comment [J3]: 156

Deleted: Grant Park

1 training should be separate and a distinct training  
2 class for the purposes of training the AMS operators  
3 on his or her duties. The operator should also be  
4 required to furnish to the representative of the  
5 miners a copy of the training plan 14 days prior to  
6 the submission to the district manager. That way our  
7 guys will be able to offer written comments from the  
8 miners' reps directly to the district manager for  
9 consideration prior to approving the plan. A copy of  
10 the approved plan should also be required to be  
11 posted on the mine board for access to all parties.

12 Proposed 75.333(c)(4) on the  
13 ventilation control proposal, the union agrees with  
14 the panel's recommendation on this item. The airlock  
15 should not exceed 1,000 feet distances between each  
16 one. These airlocks should also be placed so that  
17 miners have access to them along the entire fresh air  
18 escape way until they can safely reach the outside.

19 Proposed 75.350(a)(2), the union would  
20 insist that prior to an approval being granted for  
21 such a request, an underground investigation is to be  
22 conducted to validate the need. MSHA will need to  
23 ensure that there is -- that there will be full  
24 participation during an investigation by all

Deleted: 330

1 interested parties, including the representative of  
2 the miners. The information should be sent to the  
3 assistant secretary for review before approval is  
4 granted. The UMWA has often argued that the safest  
5 method for controlling hazards associated with the  
6 belt entry is to have it isolated from all other  
7 entries. Our position has not changed on that.  
8 However, the Agency has approved mining plans that  
9 allow for multiple entries in common with the  
10 conveyor belt entry and because of that, the union  
11 believes carbon monoxide monitors and smoke detectors  
12 should be required in each of these entries at  
13 intervals no greater than those in the conveyor belt  
14 entry. Entries in common with the conveyor belt  
15 entry should be deemed as part of the coal hauling  
16 system and protections should be applied as if they  
17 were.

18 Under the proposed 75.350, again the  
19 union has always gone on record saying that the use  
20 of belt air to ventilate the working section should  
21 be banned. That's always been our position and it  
22 hasn't changed, but since it's apparent that that's  
23 probably not going to happen, the union offers a  
24 comment as to the approval process. These plans

1 should require approval from MSHA headquarters in  
2 Arlington, Virginia by the assistant secretary. Upon  
3 implementation, all existing plans currently in use  
4 should be immediately re-evaluated by the assistant  
5 secretary to determine if it is necessary to continue  
6 the use of belt air as prescribed under the new  
7 criteria. The union would request that MSHA's  
8 comments on revocation would not be effective until  
9 completion of the current mining. We believe that  
10 this process should be immediate. If the operator  
11 still refuses to comply, we would go on record to say  
12 that the Agency should pull the operator's mining  
13 permits and place the mine under a closure order.  
14 The union would like for the Agency to explain the  
15 section under that proposal where MSHA would allow a  
16 three-month length of time for the mine operators to  
17 submit a revision of the ventilation plans to the  
18 district manager. I'm not sure how the agency came  
19 up with this time period and why you feel it's  
20 necessary to give them a quarter of a year for an  
21 operator to comply.

22 Under proposal 75.350(b)(3), the union  
23 agrees with the panel's recommendations made on the  
24 reduced levels of the coal dust standard to be put in

1 place on current exposures on beltlines and working  
2 sections where belt air is to be utilized. The union  
3 would also like to encourage and insist that MSHA be  
4 aggressive in using their authority to revoke  
5 operator plans where compliance is not met. The  
6 union further goes on record to put MSHA on notice  
7 that this tool must be applied to all mines large and  
8 small. Too often in the past MSHA has only gone  
9 after the larger operations and turned a blind eye to  
10 some of the smaller operations. This must be applied  
11 fair and equal across the board. Before the district  
12 manager approves any plans, the assistant secretary  
13 in Arlington, Virginia and the miners' rep should  
14 have ample time to review and make comments or  
15 changes before the approval is made.

16 Proposed 75.350(b)(7) and (b)(8), the  
17 union for the most part agrees with the panel's  
18 recommendations on this section. The union would  
19 discourage MSHA from allowing the district managers  
20 the discretion to approve exceptions to the minimum  
21 and maximum velocities without first having an in  
22 depth review by MSHA's headquarters in Arlington,  
23 Virginia. Because of the inconsistencies of the  
24 manner in which policies have been applied by MSHA

1 district managers in the past, these plans should  
2 require final approval from MSHA headquarters in  
3 Arlington by the assistant secretary. This is the  
4 only way the plans would have the same level of  
5 protection and be consistent in all MSHA districts.  
6 Again, miners' reps should be included in this  
7 process and all information made available prior to  
8 the final approval allowing miners the proper time to  
9 allow them to provide input.

10           On proposed 350(d)(1) and (d)(7), the  
11 union has historically again opposed the use of point  
12 feeding and continuously takes the position that this  
13 practice should not be allowed. We would like to  
14 point out that MSHA also had suggested the use of  
15 point feeding air in the primary escape way to the  
16 belt entry designated as an alternative escape way  
17 can present significant problems for miners who must  
18 evacuate the mine due to a fire in a primary escape  
19 way. The union would like further clarification on  
20 MSHA's suggestion to allow a requirement that would  
21 allow a means to remotely open the regulator from a  
22 designated surface location and closing and reopening  
23 a regulator during a fire on the primary escape way.  
24 Closure of a regulator can reduce the intake air



1 quality on a working section and may cause sudden and  
2 rapid increases in methane concentrations and could  
3 lead to an ignition, an explosion or spread the fire  
4 and smoke into areas where miners may not have been  
5 fully evacuated.

6           Sadly during the Sago investigation we  
7 witnessed this. Air changes were made. Air was put  
8 up on the miners that shouldn't have been put up on  
9 there. This was done without any thinking that it  
10 would work, but it backfired. This type of air  
11 change should be left only up to a qualified mine  
12 rescue personnel and the representatives and only  
13 after MSHA and only after a full evacuation of the  
14 mine has taken place and under close evaluation and  
15 approval by the Agency. We will be offering further  
16 comments on this portion in writing as well.

17           Section 75.351(b), the union strongly  
18 disagrees with the provision of allowing the AMS  
19 operator to perform any other duties during the time  
20 that an actual emergency situation may be taking  
21 place. During a Jim Walter's Resource Mine Number 5  
22 accident investigation that took place in 2001, we  
23 witnessed a catastrophic chain of events of mishaps  
24 and failures that took place when a communication

1 person who was also assigned to monitor the AMS  
2 system, a complete failure and breakdown occurred.  
3 During this period of time when this individual was  
4 required to make and receive phone calls from  
5 underground and outside personnel, he became  
6 distracted to the point that he silenced the system  
7 warnings of the AMS system and the whole thing just  
8 became a complete cluster and it's something that we  
9 need to improve and something we do need to fix.  
10 Hopefully with the additional training that we talk  
11 about in the proposal, these issues could be  
12 addressed.

13                               We would agree that during the normal  
14 day-to-day operations, an individual such as a  
15 dispatcher or a communication person can monitor the  
16 AMS system while performing his or her regular  
17 assigned duties, but once an actual situation occurs,  
18 it could cause this individual to perform the tasks  
19 associated with a mine disaster and there should be  
20 another responsible person assigned and readily  
21 available that can step in to help share the workload  
22 necessary to safely evacuate the miners and to help  
23 notify and to help secure the mine.

24                               Under proposed 75.351(e) and 1(iii),

1 the union would support this if this can be proven at  
2 the mine site with miners' representatives present.  
3 This would be to show that the data MSHA as supplied  
4 is accurate and works consistently with the mine's  
5 ventilation system at that mine. A ventilation  
6 survey should be conducted with a miner  
7 representative present to ensure that this will offer  
8 the added protection as suggested under this  
9 proposal.

10 Under 75.351(e)(1)(iv), the union  
11 supports this proposal. These sensors should also be  
12 included in the pre-shift exam as a requirement of a  
13 visual examination that they are in place as required  
14 by the plan. A normal functional exam that is  
15 currently required by the regulation should also  
16 apply.

17 Proposal 75.351(e)(2), the union  
18 supports this proposal. It's been our experience  
19 that CO sensors do not always detect smoke and that  
20 this added protection of smoke sensors would help  
21 detect a fire in the earlier stages thus allowing a  
22 quicker response to extinguish a fire, if necessary.

23 Proposed 75.351(e)(2)(i), the union  
24 supports this proposal.

Deleted: 4

1 Proposed 75.351(e)(2)(ii), the union  
2 supports this proposal.

3 Proposed 75.351(e)(2)(iv), the union  
4 believes that this is just another attempt to further  
5 delay protections that could save miners' lives.  
6 Testing of smoke detectors have been taking place in  
7 the mines since the 90's. When I was a miner, we  
8 looked at smoke detectors and I can't believe that  
9 that we didn't learn anything from 1990 to currently  
10 today. There has to be information out there that  
11 approves that smoke detectors can work. As a matter  
12 of fact, we use them in some mines today. I just  
13 don't think it's -- if we need to reinvent the wheel  
14 on something that's been taking place for a number of  
15 years prior to this rule, rather than MSHA waiting  
16 for a year to determine whether additional rulemaking  
17 is required, we would think that it would make sense  
18 that smoke detectors be mandated under this rule and  
19 placed throughout the mines and immediately effective  
20 upon approval of such systems.

21 Section 75.351(q), the union supports  
22 this proposal. The training again needs to be  
23 separate from the already overburdened annual  
24 training that takes places. These training records

Deleted: 4

1 should also be made available to all interested  
2 parties.

3 Proposed 75.351(q)(t), we support this  
4 proposal.

5 Proposed 75.351(q)(3), we support this  
6 proposal and we're still looking at other portions of  
7 the rules to make comments.

8 I'd like to have a frank discussion at  
9 this point, if I may. I worked as a member of the  
10 belt crew for a number of years as a miner. Probably  
11 close to ten years I worked on a belt crew and  
12 probably another three or four years as a belt  
13 cleaner, so I don't know if it was because of my  
14 union activities that they put me on a beltline to  
15 just get rid of me and forget about me, but for  
16 whatever reason I spent a lot of time on the belt.

17 These beltlines, and I worked for a  
18 reputable company who tried to do the right thing and  
19 tried to keep the line as clean as possible, but  
20 beltlines are probably the most problematic areas of  
21 the coal mines. You know, coal dust, lack of  
22 ventilation, you have spillage along the beltlines,  
23 the belts are running out of alignment, rollers are  
24 missing, you have poor and bad splices, you have oil

Comment [J4]: 2 ??

1 and grease around the belt drives, around the  
2 transfer points, lack of rock dust. I mean the list  
3 just goes on and on and on. Skilled monitoring  
4 systems that are placed on the beltlines today have  
5 got to the point where people just ignore them. We  
6 go through our everyday duties of we know they're  
7 there and we have somebody that comes around and does  
8 the test on the CO monitoring system, but I can tell  
9 you when a person outside gets an alert or alarm  
10 level, I have personally have been involved when  
11 there's a lot of discussion, is it a false reading,  
12 is it a malfunction of the system, is it something  
13 that's really a problem and this discussion goes back  
14 and forth and back and forth before they even decide  
15 to go to the area to look to see if there really is a  
16 problem, and then I've seen it come up at times where  
17 they've had to stand outside for somebody to get a CO  
18 detector to even examine the area to find out if they  
19 have a high amount of CO. So I think there are a lot  
20 of problems on these beltlines that need to be looked  
21 at. I hope with this proposal, we can address those  
22 and when you come to making the decision as to  
23 whether somebody should be given the opportunity to  
24 use belt air to ventilate their coal mines, all this

1 has to be taken into consideration and it has to be  
2 looked at.

3                   When I first started in the mines, we  
4 did use belt air. Then we used belt air in the  
5 petition of modification process and we opposed that.  
6 We went to numerous hearings and miners testified one  
7 after another that we didn't think we should have to  
8 be knocked down to two entries or three entries and  
9 have to use belt air to ventilate the faces and so  
10 they came up with a scheme that, well, we need to put  
11 in larger blocks. We have to reduce the number of  
12 headings because we have trouble with the top. So  
13 that's going to force to use the belt entries for an  
14 escape and for an area to ventilate the faces, so  
15 miners were forced with something that we believed  
16 and I still believe this with my heart and I'll tell  
17 you why, I think that this whole thing transpired as  
18 a result of poor planning on the operators for their  
19 mines to set up.

20                   I can tell you I was called in as a  
21 chairman of the safety committee and sat down with  
22 the mine manager and said we're going to go to three  
23 entry systems and we're going to apply for a belt air  
24 petition, and by the time the discussion ended up,

1 the truth came out. The only reason we were going  
2 for that was not to support the top, but it was  
3 because longwall mining got us to the point that the  
4 longwalls could out mine and we didn't have enough  
5 thought to look ahead to set up our mining plans, the  
6 operators and the miners, so we were forced into  
7 doing something that we probably shouldn't be doing  
8 today all because of a poor mine plan, but we're  
9 stuck with something now that's an animal larger than  
10 what we would like to see it and we believe that this  
11 is something that we need to -- I mean 30 years we've  
12 been talking about belt air petitions and we  
13 eliminated the belt air petition process and we went  
14 to a system that goes across the board and it was a  
15 big disappointment to us because finally after we  
16 digested the fact that we had to go with belt air, we  
17 were able to sit down with operators and come up with  
18 portions of their plans that gave extra added  
19 protections to those mines, specifically that the  
20 operations of each miner's rep was at and that was  
21 included in the petition of modification process and  
22 those were adopted on approval. Well, then they  
23 eliminated the petition process and then we got  
24 everything -- what was handed back was allowed to use

Deleted:



1 belt air, but all those things that were negotiated  
2 between the miners' reps and operators were  
3 eliminated, so we lost those extra protections, and  
4 here we are today, we're back talking -- we're  
5 talking again about the concept of looking pretty  
6 much at the petition for modification process.

7           Our hope is that if this rule is moved  
8 forward that if this is something that we're going to  
9 have to face again that miners will have a strong  
10 voice on these plans at their operations as to  
11 whether they should or should not be approved and if  
12 they are approved, then miners should be able to have  
13 a voice into what extra precautions should be put in  
14 place about what was -- as well as what was mentioned  
15 in the proposal.

16           Far too many times we don't listen to  
17 the miners and those are the guys that know what goes  
18 on and those are the guys that can help prevent a  
19 fire, an explosion, help on numerous things and we  
20 need to listen what the miners say.

21           I'd like to offer a few comments made  
22 by a previous speaker, if I may. He spoke about the  
23 section on methane 323 and he talked about an over  
24 numerous duplicated requirement that's in the

1 regulations today. I can't understand taking that  
2 position when you look at helping reduce or eliminate  
3 things that may harm mines or the mine environment.  
4 Anytime we can reduce the amount of methane that's in  
5 the mine, I think that's what we should strive to do  
6 because methane is the enemy and so we should reduce  
7 the methane to the limits that we can, which is not  
8 only necessary, but bring it down to the lowest  
9 levels that we possibly can.

10 He had commented that AMS operators he  
11 had disagreed that they should travel underground.  
12 This is something else that just baffles me. I can't  
13 imagine how anyone would oppose this proposal of  
14 making your AMS operator or your dispatcher or  
15 whoever is going to be in charge of this system, not  
16 give them the opportunity to actually see what's  
17 going on.

18 When I worked at the mine, the  
19 dispatchers for years had not been underground. Once  
20 a dispatcher bids on a job, it's like a life job they  
21 stay on until they retire and so as the mine develops  
22 those areas of the coal mine that they've never seen  
23 because they haven't been there since that started,  
24 so we personally started a program where we started

1 taking the dispatchers underground as the mine  
2 advanced and we went into different areas and I can  
3 tell you that the input from the dispatchers was well  
4 taken. They were glad that they went underground.  
5 They were able to apply from the outside whenever  
6 they were going to dispatch somebody from one place  
7 to another. They had it in their mind now because  
8 they actually saw the mine underground. They saw the  
9 AMS systems and they saw where these sensors were and  
10 looked at the sensors. They saw where they were  
11 placed and if they got an alert or alarm, they knew  
12 where they were located now because they physically  
13 were there and able to look at it and it just makes  
14 more sense to be able to add that extra bonus to  
15 somebody that's going to be employed. You would  
16 think you would want that.

17                   There was a question on damaged rollers  
18 as to whether they should be replaced. It's open to  
19 interpretation. Now, this should be a no-brainer to  
20 anybody. I can't imagine an operator who would not  
21 want to upkeep their beltline and if you have damaged  
22 rollers to get them replaced immediately. I was a  
23 fire boss in the mine. I've walked beltlines. I was  
24 a belt man. I worked on beltlines. I put belt in.

1 I replaced belts. I replaced splices. I replaced  
2 belt rollers on line belts, installed transfer points  
3 and I can tell you, we were sent in numerous times to  
4 replace rollers.

5           There's no such thing, and I'd like to  
6 reemphasize this, there's no such thing as a safe  
7 broken roller. It could be stuck, frozen, broken.  
8 The bearings may be shot. There may be one, there  
9 may be 100, but anytime there's a roller that's not  
10 functioning on a beltline, it's going to eventually  
11 cause damage to that belt whether it causes the  
12 rubber on the belt to start ripping and tearing,  
13 whether it starts making the splices start to tear or  
14 whether it causes misalignment of the belt causing  
15 coal spillage to occur, whether it causes the heat  
16 friction itself under spillage and smoldering at that  
17 point. There is no such thing as -- I'd just like to  
18 say that the stuck, broken rollers, misalignments of  
19 belts, destroyed splice, all this stuff needs to be  
20 addressed immediately.

21           Noncombustible materials, I'd also  
22 would like to tell you from personal experience that  
23 these beltlines have got to the point that they don't  
24 get the attention that they need and they're grossly

1 overlooked for general housecleaning, so I think  
2 anything that can be done to clean these beltlines up  
3 to keep them clean needs to take place.

4 I want to talk about what happened at  
5 Aracoma and there's been some discussions back and  
6 forth and you can say what you want, people can try  
7 to play it out the way they want to play it out, but  
8 the reality of it is that those miners died as a  
9 result of the same situation that will occur if belt  
10 air is being used to ventilate that section.

11 Now, we argued during the time the  
12 investigation took place that belt air was being  
13 utilized and we got a story back that it wasn't being  
14 utilized and the petition wasn't actually active and  
15 put in place, but the bottom line is the same thing  
16 occurred as if belt air was being used to ventilate  
17 that section and those miners were overcome with  
18 smoke and they died and that's a shame that men had  
19 to die. If some of the precautions had been put in  
20 place as suggested by this proposal, possibly those  
21 men would be alive today. People have gotten too lax  
22 on the so-called over rumors and duplicate  
23 requirements of what we've heard and spoke about. I  
24 mean what we maybe should do is just to eliminate any

1 belt air plans or take a positive approach and add  
2 these requirements under the proposal until we stop  
3 burning up coal mines and killing miners.

4 I think rather than continue to  
5 challenge and fight for what the intent of  
6 accumulation is, why don't we spend more time on  
7 these beltlines and put more manpower to clean up  
8 these belts and then there wouldn't be an issue as to  
9 what the interpretation is because nobody would have  
10 to cite it.

11 Again, I thank you for your time.  
12 We're going to offer additional written comments at a  
13 later point. We have miners here today from various  
14 locations that you guys can stand up, please, you  
15 UMWA guys. They're here today to let you know as  
16 well that they're watching what's going on, they're  
17 concerned what's going on and we hope that everybody  
18 moves in the right direction. These guys are in the  
19 pits every day underground.

20 MS. SILVEY: Before you leave, let's  
21 talk about the smoke sensors because we included the  
22 smoke sensor requirement in the proposal, but we did  
23 comment that we had to take further action for it to  
24 become a reality because at this time there are no

1 smoke sensors approved for use underground, and as  
2 you said something about we should require them and  
3 the operative thing is what you said, upon approval  
4 of the system and that's the operative thing "upon  
5 approval" and you're right, we have been reviewing  
6 these for the last -- a while, I know a while, a  
7 number of years, but they are not approved for use in  
8 underground coal mines right now. So we put a good  
9 bit information in the preamble and I don't have to  
10 reread it. People can read it in terms of what is  
11 state of the art right now with respect to smoke  
12 sensors and we will just -- I don't think we have a  
13 prognosis for when might become approved, but we will  
14 just, you know, continue to push forward on the  
15 things that have to be done to get them approved for  
16 use underground.

17 MR. O' DELL: If I may?

18 MS. SILVEY: Yeah.

19 MR. O' DELL: What I read was that I  
20 think you were going to go back and re-look at this  
21 to see if we needed to have another proposed rule to  
22 address smoke detectors and that's the way I read it  
23 and I hope that's not the case. I hope that what we  
24 are going to do is because there's a lot of data out

1 there on smoke detectors and there's mines that use  
2 smoke detectors. Like I said, when I was working in  
3 the mines we put smoke detectors in to see how they  
4 would function, how they would work and some mines  
5 still have use of those today.

6           Rather than saying, okay, we're going  
7 to stop and restart the whole process over again, why  
8 not collect the information that we already have.  
9 Let's not reinvent the wheel.

10           MS. SILVEY: No, and that's what we  
11 meant by that, you know. Still the requirement is in  
12 this proposal, but the terms of the testing of the  
13 smoke sensors, whatever comes out of the testing, the  
14 parameters, whatever those types of things may have  
15 to be -- there may have to be another notice put in  
16 the federal register just telling people how they  
17 would be used, so that type of thing, or spacing for  
18 them or things like that, but the requirement is here  
19 in this proposed rule. So it was nothing relative to  
20 the requirement, but in terms of the parameters on  
21 which they would have to be -- that might have to be  
22 further -- some further information on that.

23           I guess there's no further need in  
24 discussing Point B, the regulator issue, because I



1 asked about that in the opening statement and you  
2 said that you were going to provide further comment  
3 on that, didn't you?

4 MR. O' DELL: We've always been opposed  
5 to that and we've submitted comments in prior  
6 hearings about how we're opposed to Point B. So  
7 Point B, we'll give in-depth written comments to that  
8 portion of it.

9 MS. SILVEY: Okay.

10 MR. O' DELL: We'll probably reread some  
11 of the comments that we've already submitted in the  
12 past. What we'll do is -- we're in the process of  
13 actually going back, pulling out some of our prior  
14 testimonies from some of our miners and some of the  
15 testimonies that was put together by the  
16 international and we'll provide all of that as well.

17 MS. SILVEY: You've commented on the  
18 three-month delay effective date, I believe, for the  
19 ventilation for, let me think, the use of belt air, I  
20 think, requirement and I think that that three-month  
21 delay effective date was included in the proposal  
22 just to allow the operator time to allow operators to  
23 submit a revised plan.

24 MR. O' DELL: It seems like a long

1 period of time regarding a year. If somebody would  
2 get their act together and when we've got miners'  
3 lives at risk, I think we can do a whole lot better  
4 than that length of a time period.

5 MS. SILVEY: I don't think I have  
6 anymore comments. We look forward to your comments  
7 before the record closes on September the 8<sup>th</sup> and I  
8 would like to say in particular I remind you of the  
9 fact that there are so many miners here today that if  
10 the miners have comments on the part that we talked  
11 about earlier, the training with the cones and the  
12 indicators and the lifelines, indicators on the  
13 lifelines and escape ways, if we could get comments  
14 on that, that would be helpful.

15 MR. O'DELL: I guess one of the points,  
16 and we'll do that, but one of the points I'd like to  
17 make is we're not talking about something today  
18 that's totally new to the industry. We're talking  
19 about something that has been tried and retried and  
20 done and redone. I mean, you know, it's something  
21 that's been going on for a number of years, so for  
22 people to say that they need more time to look at  
23 this, I think that the information, a lot of the  
24 information, you already have and we just need to

1 make smart applications to how we move forward on  
2 this.

3           Like I said, it would be our position  
4 that belt air should be banned and we should go back  
5 to more headings and offer miners a safer means to  
6 escape, a completely isolated escape way to where  
7 they don't have to worry about holding onto cones to  
8 get out of the smoke environment. That's where we  
9 should be going, but it doesn't look like we're going  
10 to do that. If we're going to be forced with  
11 something that's going to be crammed down our  
12 throats, then I think the safest approach needs to be  
13 put on the industry and we can move forward in that  
14 manner.

15           MS. SILVEY: Thank you.

16           MR. O' DELL: Thank you.

17           MS. SILVEY: At this point, is there  
18 anybody else in the audience who wishes to testify?

19           MR. HALL: Yes. My name is George  
20 Hill. I'm the chairman of the safety committee,  
21 Local 6426, United Mine Workers. In the past, many  
22 of your regulations have been written in blood. MSHA  
23 wouldn't even be here today if miners hadn't lost  
24 their lives and so many people wanted to change that.

1 I just can't believe that we're sitting here today  
2 discussing putting belt air in the first place of the  
3 coal mines. If you've ever been backed in a corner  
4 with nowhere to go, that's kind of what it's like.  
5 If you permit belt air to be used in coal mines for  
6 ventilation purposes, that's what you're doing.  
7 You're taking a coal miner three miles underground,  
8 putting him in the face of the coal mines, you're  
9 taking that air and when the belt catches on fire and  
10 you're pushing that air on top of him and he's stuck  
11 in a corner.

12 I, along with the representatives of  
13 the United Mine Workers, object to this and I hope  
14 that you all will see this through because it's  
15 serious. I've been a firefight for a number of  
16 years, 19 years as a volunteer firefighter, and I  
17 don't see any reasoning in doing this putting air on  
18 a beltline, pushing it in the faces of coal miners  
19 that's trying to work. When it catches on fire, it  
20 has nowhere else to go but to them, and if you've  
21 ever been -- like I said, if you've ever been balled  
22 up in a corner with nowhere to go, that's what it's  
23 going to be like. So you can put all the sensors and  
24 early warning devices on that belt you want, but the

1 truth of the matter is when the fire breaks out, the  
2 same results are going to occur time and time again,  
3 coal miners are going to lose their lives because you  
4 put air on the beltline that they was depending on.  
5 They was depending on fresh air in the face and  
6 instead they got carbon monoxide enriched air from  
7 the beltline.

8                   So I'm asking you to take into  
9 consideration my comments today when you review this  
10 again and make the mines safer for all workers. I  
11 represent the United Mine Workers, but I also  
12 represent every coal miner in the United States, so  
13 please take that into consideration. Thank you.

14                   MS. SILVEY: Thank you. You said you  
15 were a volunteer firefighter. Thank you for your  
16 services as a volunteer firefighter. At this point,  
17 can I take a break, a ten-minute break and we'll come  
18 back in ten minutes, please.

19   (WHEREUPON, a brief recess  
20 was taken, after which the  
21 following proceedings were  
22 had.)

23                   MS. SILVEY: At this time we will  
24 reconvene the Mine Safety and Health Administration's

Deleted: i

1 public hearing on the Agency's proposed rule on the  
2 recommendations of the Technical Study Panel to  
3 include fire resistance conveyor belts, fire  
4 protection and detection and the use of air in the  
5 belt entry.

6                   At this time, I would like to ask,  
7 please, if Mr. Allen Dupree would come back, and when  
8 he was providing his testimony for Alpha Natural  
9 Resources, he mentioned something and there was one  
10 clarifying thing I wanted to ask him and I'm sorry I  
11 inadvertently did not ask him.

12                   Mr. Dupree, you were mentioning on the  
13 provisions for the AMS operator training and the  
14 provision that we proposed that required the AMS  
15 operators to travel to the working sections, I think,  
16 every six months and you said that would result in  
17 the elimination of a number of qualified persons and  
18 I'd like to get just a little bit more information  
19 from you on that.

20                   The ones I think you said, as I recall,  
21 who were no longer physically able to travel  
22 underground, and you can add, if you would, please,  
23 whatever you would like to, but taking from what you  
24 said it's my understanding -- are you talking about

1 persons who are now AMS operators, but who have  
2 worked underground in the past and who are familiar  
3 with underground --

4 MR. DUPREE: Yeah, thanks, Pat. I  
5 guess just looking through the regulations and trying  
6 to digest the information, in your mind you kind of  
7 walk through what different scenarios might be faced  
8 and I do agree that it's important for an AMS  
9 operator to have knowledge of the underground  
10 environment to assist in making decisions and making  
11 spur of the moment decisions, I think it is critical.

12 One thing that came to my mind was if  
13 we had a miner that had worked underground five  
14 years, ten years, 20 years, a dedicated employee and  
15 extremely knowledgeable about the underground  
16 environment and for whatever reason he became  
17 disabled, whether it's a back injury, anything, that  
18 he, for instance, now became your AMS operator, that  
19 would eliminate him from that job. So I don't  
20 disagree that experience is good at deposition. I  
21 just had in my mind that you may have personnel out  
22 in the industry that were experienced, good employees  
23 that are no longer physically able to travel  
24 underground and why should we eliminate folks like

1 that from being an AMS operator.

2 MS. SILVEY: Okay. Well, now, if in  
3 your mind you have examples of people who fit in that  
4 category, who may be disabled now but have worked  
5 underground in the past and are now AMS operators,  
6 I'd like it if you could provide us with what number  
7 of estimates or numbers of people you have who fit in  
8 that category before the record closes on September  
9 the 8<sup>th</sup>, and if anybody else in the room who hears  
10 this question or if there's people that are reading  
11 the transcript if you could do the same thing, we  
12 would appreciate it.

13 MR. DUPREE: I would be glad to do  
14 that. I appreciate the work that the committee has  
15 done on this. I would like to say that several  
16 gentleman who followed me and gave their experience,  
17 I would like to make for the record it known that I  
18 worked in enforcement a long time and I've dealt with  
19 compliance on both sides, both on the Mine Safety and  
20 Health Administration side, both on the industry  
21 side. I've supervised the largest enforcement group  
22 in the nation in District 6 and I know from firsthand  
23 experience when the intent of the law is not clear  
24 what the result is. I can speak with firsthand



1 experience, no matter how much you talk about it,  
2 discuss it, if the intent is not clear, it's a  
3 disaster and it results in a lot of litigation  
4 whether the efforts to comply are there or not and it  
5 makes it difficult.

6 I can speak for Alpha Natural  
7 Resources. We do our best to comply with the law.  
8 Our NFDL rates are well below the national average,  
9 so that's critical to us. I believe in enforcement.  
10 When I was with MSHA, I believe in enforcement and  
11 compliance today. And I've been a member of MSHA's  
12 rescue team for ten years. I've been involved in  
13 underground fires and explosions, so I know firsthand  
14 the how it affects the families, the mine rescue  
15 teams and the miners and I think that's the most  
16 important thing we can look at here today, but I  
17 would like to get that on the record. Thank you.

18 MS. SILVEY: Thank you. Thank you.  
19 Thank you very much.

20 MR. DUPREE: Thank you.

21 MS. SILVEY: Yes? Please.

22 MR. O'DELL: I'm sorry, but that  
23 question that you raised with Mr. Dupree, I think  
24 it's that we need to comment further on that. I hope

1 we don't eliminate a portion of this rule. I mean I  
2 understand there's a federal disabilities act and  
3 people who are disabled. For the most cases, at  
4 least in union operations, miners who are on  
5 disability are home with their disability benefits.  
6 I don't know about non-union operations how they  
7 function, but I can tell you in our operations in  
8 most cases, you know, they're taking care of their  
9 health. They've paid their dues, they're getting  
10 their disability checks and they're doing what they  
11 need to do. I hope we don't eliminate this portion  
12 of the rule because we may have a small percentage of  
13 folks out there who are disabled and can't make that  
14 trip underground to fit this portion of the rule. I  
15 mean we may have to make some special provisions to  
16 take these -- just like you have wheelchair ramps at  
17 hotels and places like that, maybe we need to make  
18 special transportation provisions for these disabled  
19 folks that are in these positions so that we can  
20 still take them underground and let them see. I  
21 think it's beneficial. I think we have to do  
22 whatever we need to do to go above and beyond, not  
23 just forget about it and eliminate that portion of  
24 the rule. I just wanted to go on the record and say

1 that. Thank you.

2 MS. SILVEY: All right. Is there  
3 anybody else who wishes to make further comment?  
4 Anybody else? I'm looking in the back of the room to  
5 see if -- you know, somebody said they felt like they  
6 were coerced into making testimony, so I hope that  
7 that person --

8 MR. HAMILTON: It took me a few  
9 moments, but I took the cue when you were staring at  
10 me for the third time. I'm Chris Hamilton with the  
11 West Virginia Coal Association and I would also like  
12 to thank you for bringing this hearing to Charleston,  
13 you know, right smack in the midst of one of the  
14 major coal producing regions of the nation. We  
15 represent the majority of the coal that's produced  
16 here in West Virginia and the majority of that coal  
17 comes from underground mines.

18 We're still in the process of analyzing  
19 this proposed rule, but we do support the comments  
20 that were made by Mr. Bill Kaylor last week in  
21 Lexington on behalf of the Kentucky Coal Association.  
22 We have a lot of joint members who cross the state  
23 lines and between the two states we probably  
24 represent I would guess 75, 80 percent of the

1 nation's underground mines. We're very proud of the  
2 success we've had in mining. We're very proud of the  
3 improvements that have been made in overall mine  
4 safety here in the past couple of decades despite the  
5 widely publicized accidents that occurred in '06.

6 We also support and embrace the  
7 comments made by Mr. Allen Dupree here today on  
8 behalf of Alpha Natural Resources. In totality, we  
9 support those comments. I think Mr. O'Dell made a  
10 lot of good comments except for that last one. I  
11 would hope that we don't try to make some  
12 accommodations for individuals who already have  
13 physical impairments so that they can be transported  
14 underground to simply view or examine some condition  
15 or some location.

16 Again, we've made great strides here in  
17 the past couple of years to do everything humanly  
18 possible to make egress from the mine and escape from  
19 the mine more efficient, more effective in the event  
20 there is some undesirable event that occurs  
21 underground and I think that would complicate that  
22 goal and aspect and component of mine safety trying  
23 to, you know, accommodate somebody so that they can  
24 enter the mine and perhaps have a cursory visit, but

1 at the same time in the event we have to remove that  
2 individual expeditiously from the mine, I'm not just  
3 sure it would be worth the additional accommodation.

4 I'm troubled a little bit by some of  
5 the comments Mr. Weeks made. I'm not sure if he was  
6 representing the technical panel. I'm not sure if he  
7 was representing himself. I'm not sure if he was  
8 representing yet perhaps a third-party of special  
9 interest. I think the report speaks for itself.  
10 Again, I was a little troubled with a little bit of  
11 the spin, some of the bias that was invoked by Mr.  
12 Weeks as he was attempting to explain that report.  
13 So if we were in a court of law, I'd probably ask  
14 that that be struck from the record because I think  
15 the report in and of itself speaks for itself and  
16 doesn't need necessarily an explanation or an unique  
17 spin placed on certain select aspects of it.

18 The manufacturer who spoke initially  
19 here, not to be critical of him, but so often we see  
20 rules predicated on what manufacturers tell you they  
21 can or cannot do and it's seldom that they say, I'm  
22 not sure -- I'm not sure I've heard any manufacturer  
23 say we can't meet that deadline or we cannot do, but  
24 yet every so often the regulatory agency incorporates

1 what's said by the manufacturing community as the  
2 gospel and you have no way of holding the  
3 manufacturers accountable, but you do hold operators  
4 accountable for deliveries of those manufactured  
5 goods.

6 I would suggest that MSHA somehow  
7 devise a means to hold manufacturers accountable for  
8 what they say they can manufacturer within the time  
9 line they say they can do it and if failure occurs  
10 that they somehow be issued that NOP, not the mine  
11 operator that you're holding responsible today for  
12 the acceptance and implementations for those  
13 technologies. And we've run into some issues with  
14 SCSR's, with safety chambers, with communication  
15 devices that have been proposed through regulation.  
16 We've had some real issues with those and most of  
17 those initial timelines and schedules were based on  
18 what manufacturers said they could do. So again,  
19 just a suggestion that MSHA somehow look into that.  
20 But we will by the end of the comment period, early  
21 September, we will provide detailed written comments  
22 on each and every section proposing that rule. So  
23 thank you for your time and indulgence and I'd be  
24 glad to answer any questions you may have.

Deleted: D

1 MS. SILVEY: Thank you. I don't have  
2 any, but I would suggest and you said it and I would  
3 just underscore it, the need for people in here to  
4 get your written comments in by September 8<sup>th</sup>, the  
5 deadline, midnight September the 8<sup>th</sup>, eastern  
6 daylight savings time.

7 MR. WEEKS: Can we talk about safety  
8 chambers a little bit? Just kidding.

9 MS. SILVEY: I know you were. Okay.  
10 Anybody else?

11 MR. WEEKS: Since it was recommended  
12 that my remarks be stricken from the report, I mean,  
13 you know, that's not going to happen. It's not his  
14 place to make that recommendation. This is not a  
15 court of law, et cetera, et cetera, but let me  
16 clarify in case Mr. Hamilton wasn't paying attention.  
17 I came here representing the United Mine Workers, the  
18 international union. I was on the technical panel  
19 and it is me saying that. It's not somebody else.  
20 So that's just one comment.

21 The second comment is that the comments  
22 that I made about holding operators to a higher  
23 standard that use belt air were taken directly from  
24 the report verbatim from the committee report and

1 there is a recommendation to that effect and it's  
2 discussed and I suggest that you and others read it.  
3 I wasn't distorting what was there. I just read  
4 verbatim what was in that section of the report and I  
5 support it. Do I have anything else to say? No, I  
6 think that does it.

7 MS. SILVEY: Thank you. I appreciate  
8 your comments. I think we've read all the  
9 recommendations in the report. Thank you. Thank  
10 you.

11 MR. MCCOY: My name is Danny McCoy.  
12 I'm chairman of the safety committee for now Clayton  
13 Cliff coal mine in Wyoming County, I represent 500  
14 coal miners and I didn't come up here to talk, but I  
15 heard this gentleman just left from over hear talk  
16 about putting that guy outside and now they say he  
17 can't go underground. I work every day and I  
18 represent and I'm with these 500 men. We need  
19 somebody outside that can come in, see our  
20 conditions, work with us and know what's going on.  
21 If this man is disabled, they've got disabled people  
22 all over the country that they get their check and  
23 they go home. This man and these coal companies, 34  
24 years of underground mining, when they use you up,



1 they don't care about you. They don't care about  
2 that man. They're just trying to get somebody out  
3 there that don't have to go underground. I speak for  
4 500 people. We want somebody outside that can come  
5 in and see what we've got and our conditions and  
6 ready to help us. That's all I ask.

7 MS. SILVEY: Thank you. Anybody else?  
8 If there's nobody else who wishes to make additional  
9 comments or provide testimony, then I would like to  
10 say that on behalf of the Mine Safety and Health  
11 Administration, we appreciate very much your comments  
12 and your testimony at today's public hearing, but  
13 those of you who came and did not provide comment or  
14 testimony, we appreciate your attendance here because  
15 the mere fact that you attended the hearing shows us  
16 that you have an interest in this important  
17 rulemaking. For those of you who have promised that  
18 you will provide additional comments and testimony  
19 before -- or comments before the record closes on  
20 September the 8<sup>th</sup>, then we look forward to receiving  
21 your additional comments. As you heard me say  
22 earlier, if you would please be as specific as you  
23 can and provide your specific rationale or if you  
24 have suggested alternatives, provide the suggested

1 safety benefits to miners or address any other issues  
2 that you feel relevant and pertinent with respect to  
3 any of the proposals that we have on the table today.

4           Again, we appreciate your participation  
5 in this hearing. Our final hearing is going to be  
6 Thursday, August 28<sup>th</sup> in Birmingham, Alabama and then  
7 as I said earlier, the record will close on September  
8 the 8<sup>th</sup> and as we all know we have to develop this  
9 final rule which must be finalized by December 31  
10 2008. So again, thanks and this hearing is  
11 concluded.

12  
13  
14  
15           \* \* \* \* \*

16           *Concluded at 1:30 p. m.*

17           \* \* \* \* \*

## REPORTER' S CERTIFICATE

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to wit:

I, Dena A. Belisle, Certified Court Reporter,  
hereby certify that the foregoing is, to the best of my skill  
and ability, a correct verbatim transcription of the August  
26, 2008 public hearing.

My commission expires June 8, 2018.

---

Dena A. Belisle, CCR  
Notary Public

**GARRETT REPORTING SERVICE**  
Post Office Box 20200  
Charleston, West Virginia 25362

**(304) 346-0460**