

TRANSCRIPT OF PROCEEDINGS

U. S. DEPARTMENT OF LABOR
OFFICE OF STANDARDS, REGULATIONS AND VARIANCES
MINE SAFETY AND HEALTH ADMINISTRATION

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BEFORE THE DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION

U. S. DEPARTMENT OF LABOR
OFFICE OF STANDARDS, REGULATIONS AND VARIANCES
MINE SAFETY AND HEALTH ADMINISTRATION

Country Inn & Suites
by Carlson
105 Alex Lane
Charleston, West Virginia

Friday,
May 8, 2003

8:01 a.m. The hearing convened, pursuant to the notice, at

BEFORE: MARVIN W. NICHOLS, JR.
Moderator

MEMBERS OF THE COMMITTEE:

GERRY FINFINGER
JON KUGUT
BOB THAXTON
LARRY REYNOLDS
GEORGE NIEWANDOMSKI

SPEAKERS:

CECIL ROBERTS
JOE MAIN
BOLTS WILLIS
DONNIE LOWE

P R O C E E D I N G S

(8:01 a.m.)

1
2
3 MR. NICHOLS: Good morning everybody. My name
4 is Marvin Nichols. I'm the director of the Standards
5 Office for MSHA and I want to welcome you all here today
6 at this public meeting and also, on behalf of Dave
7 Lauriski, Assistant Secretary for MSHA, and Dr. John
8 Howard, Director of NIOSH.

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

17 The two proposed rules are based upon the 1996
18 recommendations of the Secretary of Labor Advisory
19 Committee on the Elimination of Pneumoconiosis and the
20 comments received in response to the previous proposed
21 rule published in 2000. These rules are intended to
22 eliminate Black Lung and pneumoconiosis by eliminating
23 miners overexposure. They completely change the federal
24 program for controlling, detecting and sampling
25 respirable dust in coal mines. The emphasis of the new

1 program will be on verified engineering controls so that
2 miners are protected on every shift.

3 Let me now introduce my colleagues up here. To
4 my left is Bob Thaxton. Bob is the technical advisor
5 with Coal Mine Safety and Health. Next to Bob is Larry
6 Reynolds. Larry is with the Office of the Solicitor and
7 at the end is George Niewandomski. George is the health
8 specialist in Arlington. To my right is Gerry Finfinger.
9 Gerry is the senior physical scientist at the Office of
10 the Associate Director for Mining at NIOSH. He is with
11 us today because, as many of you know, the single-sample
12 rule is a joint effort between MSHA and NIOSH. Now
13 seated next to Gerry is Jon Kogut. John is the
14 statistician with the Office of Program Policy and
15 Evaluation for MSHA.

16 Since the single-sample proposed rule was
17 jointly promulgated by NIOSH and MSHA, we have several
18 NIOSH people here with us today. Let me first let you
19 know how the hearings will be conducted. As with all
20 MSHA hearings, the formal rules of evidence do not apply
21 at these hearings and the hearing will be conducted in an
22 informal manner.

23 Those of you have notified MSHA in advanced will
24 be allowed to make your presentations first. Following
25 these presentations, others who request an opportunity to

1 speak will be allowed to do so. I would ask that all
2 questions regarding these two rules be made on the public
3 record and that you refrain from asking the panel members
4 questions when we're not in session. The reason we do
5 this is we would like for all of the discussion of these
6 rules on the public record.

7 Following the completion of my opening
8 statement, Bob Thaxton will give an overview of the new
9 proposed plan verification rule. A verbatim transcript
10 of this hearing is being taken and it will be made
11 available as part of the official record. Please submit
12 any overheads, slides, tapes and copies of your
13 presentations to me so that these items may also be made
14 part of the record.

15 The hearing transcript, along with all the
16 comments that MSHA had received to date on the proposed
17 rule will be available for review. We intend to post a
18 copy of the transcript on the MSHA website at
19 www.msha.gov. If you wish to obtain a copy of the
20 hearing transcript before then, you should make your own
21 arrangements with the court reporter. We're also
22 accepting written comments and data from any interested
23 party, including those who do not speak here today. You
24 can give written comments to me during the hearing or
25 send them to the address listed in the hearing notice.

1 If you wish to present any written statements or
2 information for the record today, please clearly identify
3 it for us. All written comments and data submitted to
4 MSHA will be included in the written record and we also
5 have an attendance sheet outside that we would like for
6 you to sign if you're willing to do that.

7 Due to the request from the mining community,
8 the agency will extend the post-hearing comment period
9 for the plan verification proposal from June 4th to July
10 3rd. The notice announcing the extension will be
11 published in the Federal Register soon. We also
12 anticipate extending the comment period for the single-
13 sample rule for the same length of time, but we'll only
14 be able to do that after consultation with NIOSH and
15 we'll also publish that in the Federal Register.

16 As you know, we have four additional hearings
17 scheduled to address these rules. The next hearing will
18 be in Evansville, Indiana on May 13th, in Lexington,
19 Kentucky on May 15th, in Birmingham, Alabama on May 20th
20 and in Grand Junction, Colorado on May 22nd. The
21 hearings will begin at 8:00 a.m. each day and end after
22 the last scheduled speaker.

23 Let me give you some background on the two
24 proposed rules. First, the single-sample proposed rule,
25 which was originally published on July 7, 2000, would

1 allow MSHA to make compliance determinations on single-
2 sample results. The agency would no longer use the
3 averaging method to determine if miners are being
4 overexposed to respirable dust.

5 Averaging can mask individual overexposure by
6 diluting a high sample with a lower sample taken on
7 another shift. Using single-sample measurements rather
8 than averaging multiple samples for compliance purposes
9 will better protect miners health. Single samples can
10 identify and remedy excessive dust conditions more
11 quickly. Single samples measurements have been used for
12 many years by NIOSH and at metal and non-metal mines in
13 this country. In other words, it's been used in all
14 other mines except coal for probably 30 years.

15 MSHA and NIOSH are jointly reopening the
16 rulemaking record for this proposed rule to provide an
17 opportunity for you to comment on the new information in
18 the record concerning MSHA's current enforcement policy,
19 health affects, quantitative risk assessment,
20 technological and economic feasibility and compliance
21 cost, which has been added since July of 2000.

22 For example, we updated the preamble to include
23 the most recent information on the prevalence of Coal
24 Workers Pneumoconiosis, CWP, or Black Lung among coal
25 miners examined under the Miners Choice Program during

1 the period 2000 to 2002. These findings show that miners
2 continue to be at risk of developing CWP under the
3 current dust control program. The quantitative risk
4 assessment is based on additional and more recent data.
5 None of the new information changes the actual finding
6 published in the Federal Register on July 7, 2000. The
7 single-sample issue has been through a long public
8 process, which is outlined in the preamble of the
9 proposed rule.

10 The second regulatory action is the repropoed
11 plan verification rule. This proposed rule supersedes
12 the one published on July 7, 2000. MSHA held three
13 public hearings on the previous proposed rule during
14 August 2000. Many commenters urged the agency to
15 withdraw the earlier proposed rule and go back to the
16 drawing board.

17 Some commenters believes that MSHA had failed to
18 adequately address their concerns, the reforms in the
19 Federal Dust Program recommended by the Dust Advisory
20 Committee, by NIOSH in its criteria documents and reforms
21 urged by coal miners since the mid-1970s. After
22 carefully reviewing all the facts, issues and concerns
23 expressed by commenters, MSHA is proposing a new rule in
24 response to the comments made to the July 7, 2000
25 proposed rule.

1 Box Thaxton will give us a short overview of the
2 new plan verification rule. And I would ask that you
3 hold your questions for Bob until you come up to offer
4 your comments. We'll let Bob go through this
5 presentation and then we'll take questions as you come
6 up.

7 MR. THAXTON: Okay, what I'm going to try to do
8 is walk through a presentation that walks through both
9 the single sample and plan verification rules. I'll walk
10 through this, and like I said, it is something that we've
11 put together that we've used before.

12 The purpose of our rules and what we're trying
13 to accomplish is what we see here. We've shown Black
14 Lung incidents from 1970 through current 2002. We're
15 showing that there's been a decrease in Black Lung over
16 the years, but that decrease is slow. And you can see
17 from 1995 through 2000, basically, we've stayed about the
18 same, 2.9 and currently, 2.8 percent. That amount or
19 prevalence of disease is unacceptable. That's not what
20 the Act was designed to develop. We wanted to get Black
21 Lung down to where there is essentially no cases.

22 It also shows that the percent of samples that
23 we see that are exceeding the applicable standard of 2
24 milligrams, has basically bottomed out. We're seeking 12
25 to 8 percent, really not much change in that. So what

1 we're doing is we want to take a look at that and that
2 was part of the impetus for trying to get these rules
3 out. The rule package itself consist of two particular
4 rules, two separate rules. Those two rules are designed
5 to develop effective plans and control dust and provide
6 for monitoring the effectiveness of those controls.

7 Under single sample, single sample provides for
8 a new finding. That new finding states that the average
9 concentration accurately is measured over a single shift
10 as opposed to measuring the concentration over the
11 average of five shifts as you see currently. It rescinds
12 the 1972 finding that the accuracy of the single sample
13 could not be used. We've added also a new standard in
14 this particular publication that says that the Secretary
15 may use a single full shift measurement to determine the
16 average concentration over that shift.

17 The current verification rule provides that each
18 underground coal miner operator must have a verified
19 ventilation plan. They have to verify the dust control
20 portion of that plan. The plan will be verified under
21 actual mining conditions by mine operator samples. We're
22 going to collect samples at the time that the operator is
23 doing what we consider normal and that is at a higher
24 production level that represent normal conditions.

25 MSHA is going to resume the responsibility for

1 compliance and abatement samples in underground coal
2 mines. Surface mines does not change. And finally, MSHA
3 samples will be used to set all reduced standards due to
4 courts. As it stands right now, you see a combination of
5 MSHA and NIOSH were samples are being used for that
6 purpose. Under this proposal, only MSHA samples will be
7 used.

8 Under the verification of the plan, what we've
9 done is put together a little bit of a comparison of
10 what's currently required under what rules are in place
11 right now versus what this 2003 proposal will do. Under
12 the current rule, MSHA sampling is used to approve a
13 plan. It is based on the average of multiple samples.
14 It's taken with full shift, 8 hour or less portal-to-
15 portal samples and at 60 percent of average production.

16 The 2003 proposed rule -- we will use operator
17 samples to verify the effectiveness of plans in
18 underground mines. And it's only underground mines.
19 Plans at surface mines will still be done the way they
20 are now. Those samples will be collected with full shift
21 production time. That is, the samples will be turned on
22 when a miner reaches the MMU on the section and they will
23 not be turned off until you exit the section. They're
24 taken at higher than average production. And we'll get
25 into actually what that production level is in a minute.

1 They will have to meet separate court and coal mine dust
2 verification limits. These dust control limits and
3 court's limits are set in the rule to get us 95 percent
4 confidence that people are meeting the 2 milligram
5 standard when they're doing the verification sampling.

6 The proposed rule also allows the use of PAPRs
7 or administrative controls on any mining unit only as a
8 supplemental measure after exhausting feasible
9 engineering controls.

10 In relation to the plant, currently, as I said,
11 MSHA's sampling is conducted at 60 percent of average
12 production. There are no records of production required,
13 so basically that is determined either by just talking
14 with miners, talking with mine management or just making
15 a general assessment of what the inspector sees and then
16 they determine 60 percent of that and that determines a
17 valid sample for us.

18 Under the 2003 proposal, plans will be verified
19 using the 10th highest production level in the last 30
20 shifts. It requires the recording of production and
21 maintaining those records for a period of six months by
22 the mine operator. That is that they have to record
23 actual production on each MMU, that's raw tonnage, coal,
24 rock, whatever produced has to be recorded.

25 What is that 10th highest production? How does

1 it related and why do we think that's going get us better
2 evaluation of the plan? What you've seen in the past is
3 that we've said 60 percent is where MSHA collects
4 samples. What we've got here is an example of longer MMU
5 that's located in Northern West Virginia. Each circle
6 represents a shift of production. These are actual
7 numbers that were collected for 30 shifts. And you can
8 see, based on the 30-shift results, 60 percent of the
9 average brings us down here a little over 3500 tons. The
10 average production for that section was 6295 tons.

11 We were proposing at one time, back early on,
12 that we use 90 percent of average to collect our samples
13 to verify plans. If we use 90 percent of average, we'd
14 only be at about 6600 tons. What we've put in this
15 proposal is that we want the 10th highest production.
16 The 10th highest production puts us at the 67 percentile.

17 What that means is that we've got one third of
18 the shifts in that 30 or above this level and two thirds
19 are below it. So what we're getting as a production is
20 more representative of what we think normal production
21 for that section is. So we're getting samples that are
22 going to be collected at around 7500 tons. So you can
23 see a big difference between what is being proposed as
24 far as the 10th highest versus what we're doing
25 currently, which is the 60 percent level.

1 Use of PAPRs or powered air purifying
2 respirators -- under the current rule, when they're used
3 in conformance with a full respiratory protection
4 program, they can qualify an operator to get a non-S&S
5 designation on any respirable dust over exposure
6 citation. But that's the only thing that they're used at
7 this time. How they can impact the rule.

8 Under the 2003 proposal, they will be permitted
9 when all feasible engineering controls have been
10 exhausted. The key word here is when "all feasible
11 engineering controls have been exhausted." That's a
12 determination that's going to be made by the agency.
13 It's a determination that means that we're going to look
14 -- if there's any feasible controls that available still,
15 the mine operator will be expected to put those in. Only
16 loose-fitting powered respirators with MSHA and NIOSH
17 approval may be used. Currently, there is only one such
18 unit that meets that and that's the 3M airstream helmet.

19 Must provide respiratory protection program as
20 part of the approved ventilation plan -- contrary to
21 what's done right now, everything that controls how those
22 respirators are to be used must be spelled out in the
23 plan in writing and they're a part of the approved plan.

24 That means that they have to be complied with at that
25 mine at all times. Failure to do so can result in

1 citations.

2 Must maintain dust levels as low as possible
3 with feasible engineering controls -- this is in
4 conjunction with the top bullet. Mine operators are not
5 going to be allowed to take engineering controls or
6 environmental controls out of the mine or take them out
7 of circulation or use once they get approval to use a
8 PAPR program. The regulation specifically requires that
9 all controls that are found to be feasible for that MMU
10 have to be maintained and the operator will be expected
11 to maintain the concentrations as low as possible even
12 though they're using the respirators.

13 Protection factor of two to four, depending on
14 the ventilation air velocity assigned to the mining
15 section -- the protection factor of two to four are
16 impacted because the ventilating air current or the
17 velocity that the air moves along the longwall face or
18 around the continuous miner that velocity affects the
19 efficiency of the PAPR to do its job. So we've factored
20 that into the determination of the protection factors
21 that were generated. That protection factor of a maximum
22 of four is an indication that you can say whatever the
23 dust concentration is outside the PAPR it would be 1/4 of
24 that concentration inside the PAPR.

25 Sampling requirements -- under the current

1 requirements, operator bi-monthly compliance sampling at
2 underground mines, citations are issued for failure to
3 sample. Citations are issued for exceeding the dust
4 level. Operators collect abatement samples to determine
5 compliance after the issuance of a citation and MSHA's
6 quarterly sampling on MMUs, Section DAs and Part-90
7 miners are conducted at this time with citations issued
8 for exceeding the applicable standard.

9 Under the 2003 proposed rule, the operator will
10 collect plan verification samples for the initial
11 approval and then designated MMUs collect one sample each
12 quarter for confirmation of controls continued
13 effectiveness. There will be no citations issued for
14 exceeding applicable standards on those samples, but the
15 operator must take action to reduce concentrations when a
16 sample exceeds the standard. Failure to take action to
17 reduce the concentrations, if they have a sample that
18 exceeds the standard, can result in a citation for
19 failure to take that corrective action.

20 MSHA collects all samples to determine
21 compliance and abatement of citations. MSHA
22 determinations will be made on a single full shift
23 measurement and citations will be issued for exceeding
24 the applicable standard. Those are all based on single-
25 shift samples, though, not averages of multiple samples

1 collected during one shift or multiple samples collected
2 over five shifts.

3 Compliance and non-compliance determinations --
4 under the current rule, reviews the average of multiple
5 samples to make compliance, non-compliance at all coal
6 mines. We average five samples on five different shifts,
7 the average concentration exceeds the applicable standard
8 by 1/10 or more non-compliance is indicated.

9 Under the 2003 proposed rule, we will use
10 single-sample determinations at all coal mines, both
11 surface and underground. This is one area where we
12 applied this both to the surface and underground mines.
13 A non-compliance level, as an example, for a 2 milligram
14 standard would be 2.33. The 2.33 gets us to 95 percent
15 confidence that the 2 milligram standard has been
16 exceeded based on that one sample. We currently get to
17 that level of confidence by averaging multiple samples,
18 which is five samples on one occupation. The citation
19 levels for all standards, 2 milligrams and below, are
20 specified in the rule itself.

21 What's the effect of this? What we see here is
22 an example of an actual survey that was submitted by a
23 mine operator. And this is five samples collected on the
24 continuous mine operator. And we see that the first
25 sample was 3.2, the second sample 1.6, third 1.5, fourth

1 sample 0.8, fifth sample 3.1. We have an average
2 concentration for those five of 2.0. Under the current
3 regulations, that is considered in compliance -- no
4 enforcement action, no corrective action is necessary.

5 What we're doing under the proposed rule, from
6 what I just described to you, we would be looking at
7 those sections where we 3.2 and 3.1, those are times we
8 consider would be over exposures. The reason that we can
9 impact on reducing Black Lung is that we feel that we
10 need to control exposures on each and every shift, not
11 the average of multiple shifts.

12 The on-shift examination of controls -- the
13 current rule is we do have a requirement right now that
14 all operators have to do a on-shift examination of the
15 dust controls that are in place. That has to be done
16 prior to the shift starting production. If it's a hot-
17 seat type operation where they do not shut down, it has
18 to be done within the first hour. That means they have
19 to go through and check the parameters that were in the
20 plans to see that those are actually in place and working
21 at the beginning of each production shift.

22 Under the 2003 proposal, we maintain that
23 requirement, but it's going to become more important
24 because the verified plans are going to be more detailed,
25 have more true controls that are necessary to maintain

1 compliance. That, in conjunction with the on-shift
2 examination, should give people better assurance that
3 you've got an environment that's probably going to result
4 in compliance for that shift.

5 Miner participation in relation to what we're
6 doing -- the current rule, miners have the right to
7 accompany, with pay, MSHA personnel during MSHA sampling.

8 Under the for-plan submittal, operators notify miner's
9 rep of plan submissions and revisions and post on the
10 bulletin board. Miner's rep may submit comments during
11 the MSHA review.

12 The 2003 proposal -- miner participation during
13 operator sampling. The operator has to notify miners
14 prior to collection verification sampling and have to
15 allow them that previous notice so that people are aware
16 that sampling is going to be conducted at a specific
17 time. The miners must be provided an opportunity to
18 observe that sample, but there is no entitlement to
19 special pay.

20 Miner participation during MSHA sampling the
21 miners have the right to accompany, with pay, MSHA
22 personnel during all compliance and abatement sampling.
23 So any time MSHA comes in to do the compliance sampling
24 or abatement sampling, the miners' rep has the right to
25 travel with us with pay.

1 We still maintain the same participation in
2 relation to the plan that the operator still has to post
3 the plan, has to notify the miners' rep and the miners'
4 rep has the opportunity then to submit comments while
5 MSHA is making a review of that plan.

6 Use of personal continuous dust monitors or
7 what's been referred to as PCDMs -- under the current
8 rule, there is no consideration for PCDM use. The 2003
9 proposal stipulates that any unit that the Secretary of
10 Labor approves with a conversion factor is acceptable.
11 That conversion factor is to get whatever unit is used
12 and approved later on to where it produces the same type
13 of results as what we get currently with the gravimetric
14 sampling units.

15 Designated miners must wear the full shift
16 portal-to-portal PCDM or personal continuous dust
17 monitors. They start to make them usable and where you
18 have meaningful data, the miner would be required to wear
19 that unit from the time they go in the mine until the
20 time they come out, no exceptions. It permits the
21 operator to use the administrative controls without first
22 exhausting engineering controls. Hence, the words
23 "personal continuous dust monitors." These are personal
24 monitors. When you have personal monitoring, you're
25 monitoring somebody for the full shift, that means that

1 the mine operators then would be able to move people
2 around in order to maintain their exposure to less than
3 whatever the applicable standard is.

4 There will be no citations for over exposures
5 based on those readings. They would be recorded at the
6 end of each shift, but there is no citations based on
7 that. They would be cited, though, if a notation is made
8 of an over exposure and no corrective action was taken.
9 The operator is required to take corrective action any
10 time they get notification of an over exposure. Failure
11 to take that corrective action would result in a citation
12 from the agency.

13 What kind of benefits are derived from these two
14 rules? One, we think planned parameters would be gained
15 that reflect actual mining conditions that have been
16 verified at higher production levels; two, no
17 operator-collected samples used to determine compliance;
18 three, production for miners when feasible engineering
19 controls have been exhausted; and four, provisions for
20 the use of personal continuous dust monitors.

21 What are the benefits in implementing these two
22 particular rules? Our intent is to reduce Black Lung and
23 we have used a conservative estimate of what the results
24 would be based on the implementation of both the single-
25 sample and plan verification rules. And what we've

1 projected is conservatively a 42 reduction in the number
2 of people that would develop Black Lung. We've broken
3 that down to designated occupations, DO; NDOs, non-
4 designated occupations; RB or roof bolters and then, the
5 total.

6 That's a lot of information. And to help
7 explain that a little better, we've developed a couple of
8 scenarios that we'd like to go through that would maybe
9 bring home a little bit better how this program fits
10 together along with what's been put on our website as our
11 draft inspection procedures that would go along with
12 these two particular rules.

13 The agency has published on the website only a
14 draft of how we plan to go out and conduct our
15 inspections, how we make compliance, non-compliance
16 decisions so that people could see how this would all
17 work. Under the particular program, if both rules are in
18 place, an operator goes out and collects his first
19 verification sample. He's submitted a plan to the
20 agency. It looks like it has passed the initial in house
21 environment or engineering review so that we feel like
22 the controls are in place or reasonable for that
23 particular type of mining. That they're likely to result
24 in compliance.

25 We tell the operator then to collect the first

1 sample and they go out and collect a sample on a
2 continuous miner operator and a roof bolter. This on a
3 continuous miner section. The first sample results in a
4 1.6 milligram respirable dust on the miner operator, 1.7
5 on the roof bolter. We also get 72 micrograms of quartz
6 on the miner operator and 92 micrograms on the roof
7 bolter.

8 Remember, I said at the very beginning for a
9 verification of a plan the operator has to meet two
10 critical values for respirable dust and quartz. We look
11 at them separately. The critical value on one sample for
12 respirable dust is 1.71 milligram. The critical value
13 for quartz on one sample is 87 micrograms. So you can
14 see they met the respirable dust level, but the 92
15 micrograms on the roof bolters exceeds the 87 critical
16 value for one sample. Therefore, the operator cannot
17 verify their plan based on that one shift of samples.
18 They're required to go back and look at their stuff and
19 take another sample.

20 So the operator does take the second
21 verification sample. We get 1.63 milligrams on a miner
22 operator, 1.69 on the roof bolter; 71 micrograms on the
23 miner operator for quartz and 91 micrograms on the roof
24 bolter. When we come to two shifts of samples being
25 collected for the critical values. We now move up on the

1 respirable dust and quartz because now we have two
2 samples to look at. The critical value for two samples
3 is 1.85 milligrams for dust and 93 micrograms for quartz.

4 Now we see that all levels -- all four dust
5 concentrations, all four quartz concentrations that have
6 been determined each one is below that critical value for
7 that particular, either dust or quartz. That indicates
8 to us then that the plan can be verified with 95 percent
9 confidence that we're meeting both the 2 milligram
10 standard and the 100 microgram standard for quartz. So
11 the operator now has a verified plan.

12 MSHA comes in and collects our first set of
13 samples. Under our inspection procedures, we will
14 collect bi-monthly sampling. Under that, we come in and
15 we collect a sample on a continuous mine operator. We
16 get 1.62 milligrams on dust, 78 micrograms on quartz,
17 miner helper 1.71 milligrams, the shuttlecar operator is
18 1.41 milligrams. Roof bolter No. 1 is 2.38 with a 138
19 micrograms of quartz. Roof bolter No. 2 is at 2.42
20 milligrams of dust with 141 micrograms of quartz.

21 When MSHA looks at those results, one citation
22 for the roof bolter occupations would be issued for
23 exceeding the 2 milligram standard CTV, which is a
24 citation threshold value and that's the levels that we
25 write citations at, which is the 2.33 on 2 milligram

1 standard that I pointed to in the slide earlier. So any
2 sample exceeding 2.33 on respirable dust would be
3 considered in non-compliance.

4 The roof bolters, Nos. 1 and 2, and we call that
5 -- it's a twinhead roof bolter, you see the
6 concentrations on both exceed the 2.33. We do not write
7 two individual citations. There's one citation issued
8 for the roof bolter occupations because it's one dust-
9 generating source. What the operator does to address
10 that citation to reduce the dust will affect both.

11 The operator, because of that citation, has to
12 take corrective action. And once the corrective action
13 has been implemented, they have to notify the agency
14 within 24 hours so that they agency then can schedule
15 whether it's coming back to collect abatement samples.
16 In this case, we come in, collect the abatement samples.

17 At the same time, this is an entity that's on 2
18 milligram standards, not on a reduced standard. But we
19 have indications, through these quartz results, that we
20 have some people that are being over exposed to quartz.
21 Because we only have the one set of samples, though, to
22 determine quartz content to set a reduced standard, it
23 has to be based on the last three MSHA samples. We only
24 have one. So it looks like need to wait for two more
25 samples.

1 Normally, you would think that we would wait
2 until the next bi-monthly, get another set of samples and
3 the third bi-monthly we'd get another one before we would
4 be able to set a reduced standard. But because this
5 entity is exposed to greater quartz than what's allowed
6 and it's already on a 2 milligram standard, which does
7 not look like it's protective, the agency specifies in
8 our inspection procedures that we will go and collect two
9 additional shifts of samples within the next 15 days so
10 that we can go ahead and establish the appropriate
11 standard based on quartz. We think the exposure to
12 quartz is important and it needs to be addressed in a
13 short time frame.

14 Based on these results, the operator would be
15 required to sample the MMU quarterly to established the
16 continued effectiveness of the dust controls in the
17 approved ventilation plan. For an operator to qualify to
18 be required to do quarterly sampling, all they'd need is
19 a sample by us that exceeds the standard by any amount.
20 So if we find a sample that exceeds the 2 milligram
21 standard at 2.1, that operator would be required to
22 sample that MMU quarterly to show that their plan
23 continues to be effective and maintaining compliance.

24 Multiple samples collected by either NIOSH or
25 MSHA showing greater than 2 milligram on a 2 milligram

1 standard, but not exceeding the 2.33, so there's no
2 violation, those situations result in the operator being
3 told their plan is inadequate and they would have to go
4 through verification again.

5 A second scenario -- I'm going to use the same
6 sampling results that we'd used on the previous one. So
7 I'm not going to back through the numbers again, but it's
8 the exact same operator verification samples, the
9 operator verifies their plan. What has changed is the
10 samples collected by MSHA. MSHA's first bi-monthly
11 sampling comes in. We show all samples below 2
12 milligrams on the respirable dust. We show quartz at 78
13 micrograms and 55 micrograms and 47 micrograms. All of
14 them are less than 5 percent, so they're all below the
15 100 microgram limit.

16 We state that the compliance is based on single
17 sample for each occupation, so nobody is in non-
18 compliance. No citations would be issued. Now we still
19 need to determine, though, whether MSHA is going to come
20 back and sample each bi-monthly period based on this
21 information.

22 So what we do is we don't look at just the
23 sample concentrations as we get them. We apply
24 correction factors. When MSHA comes in to sample, we
25 understand that the operator probably is not going to be

1 at their maximum production, that 10th highest that we
2 said that they have to sample at to verify a plan.
3 Remember, two-thirds of the shifts we expect to be less
4 than that. So it's likely that we will get production
5 that's going to be less.

6 Typically, the plan parameters are things that
7 the operator puts in the plan. They're going to put more
8 air in their section than what the plan calls for just
9 because that way they get the buffer so they're not right
10 on the limit. So we're likely to find higher ventilation
11 quantities. Will those things affect the dust
12 concentrations? And what we want to determine is what
13 truly, engineering-wise, would we expect those dust
14 concentrations to be to make a determination whether we
15 come back to sample the next bi-monthly period.

16 So what we do is we take our setup for this one
17 that they had a plan that was verified at 800 tons.
18 We've have 750 tons this shift that we sampled. So we
19 had less tonnage. The ventilation during the MSHA sample
20 was 10,000 CFM. The plan calls for 9800. We had more
21 air than what was called for. How do we make a
22 determination as to what that actual concentration is to
23 determine whether we're going to come back to resample on
24 the next bi-monthly is that we take those ratios of the
25 tonnage and ventilation quantity and come up with factors

1 that we apply to the dust concentration.

2 We take the 800 tons that are in the plan,
3 divide it by the actual production that we gathered while
4 we were there, 800 divided by 750 gives us a factor of
5 1.06. The 10,000 CFM that we found while we were there
6 versus what the plan quantity is of 9800 gives us a
7 factor of 1.02. We multiply those factors by the dust
8 concentrations. You can see that what we're doing is as
9 they change the parameters that will reduce dust, we use
10 those factors then to multiply the concentration to raise
11 the dust higher so that we make a determination as to
12 whether they truly are meeting the standards necessary to
13 maintain compliance with their plan.

14 Based on those results, the dust concentration
15 that we would use to make our determination of going back
16 to the next bi-monthly comes to 1.71. We take the 1.62,
17 which is the highest dust concentration and apply the
18 factors to it. And we take the quartz that's highest and
19 apply the factors to it. We come out with 1.75
20 milligrams of dust and 84 micrograms per cubic meter for
21 quartz. The 1.75 exceeds the criteria of 1.71 for one
22 shift sample for plan verification. That also kicks in
23 that it triggers us to go back and sample each bi-monthly
24 period. The only time an operator can skip a bi-monthly
25 period of having MSHA come in to collect bi-monthly

1 samples is if they meet the 1.71 critical value for
2 respirable dust and the 87 microgram critical value for
3 quartz.

4 The third and last scenario is one that address
5 the use of a PAPR program. For demonstration purposes,
6 we're saying this is a longwall. It's a Mine A and we're
7 saying that they're only capable of installing such
8 things as the shearer clearer, which is a dust control
9 system, shield sprays, pan sprays. They have a maximum
10 air velocity of 500 feet per minute along the longwall
11 face and they produce, under their 10th highest
12 production level, is 16,000 tons per shift.

13 Based on verification samples, the operator
14 comes in with a 1.9 milligram concentration on the shear
15 operator. The 060 is a 2.0. They have 130 micrograms of
16 quartz on the shearer operator, 145 microgram on the 060.
17 The dust concentrations are below 1 milligrams, but the
18 quartz concentrations are higher than 100 micrograms. So
19 we have a problem with quartz on this particular
20 longwall, not necessarily respirable dust in general.
21 The operator submits that he has said that I've got all
22 feasible controls in place. I don't know of anything
23 else I can do. The agency makes the determination,
24 reviews the data and agrees there is nothing feasible for
25 that operator to do that will change that.

1 Based on that, the operator will submit to use a
2 PAPER program. Now that PAPER program has to be included
3 in the ventilation plan. That program spells out who has
4 to wear them, where they have to be worn, how they have
5 to be maintained, who is in charged of maintaining, who
6 cleans them, who is the one person that the mine that's
7 assigned the responsibility to assure that those PAPRs
8 are used in approved condition and meet all the
9 requirements of the plan.

10 All miners working in by the shearer in this
11 particular situation because of the levels that were
12 found at the shearer operator below, all miners working
13 in by that point must were a PAPER in accordance with the
14 approved plan. The plan will specify the locations that
15 PAPRs have to be worn. It doesn't mean they have to be
16 worn by everybody on the whole section. There are going
17 to be areas that are going to be identified that will
18 address that.

19 The average velocity across the longwall is 490
20 feet per minute. The protection factor assigned to that
21 MMU is going to be 3.2. That 3.2 is generated by the
22 formula of applying 2 times the velocity of 800 divided
23 by the actual velocity of air on that particular longwall
24 face so we have a velocity of 800 divided by 490. That
25 factor times 2 results in 3.2 as the protection factor on

1 that MMU for the use of PAPRs.

2 The plan must maintain all engineering controls
3 that were determined to be feasible by MSHA. All the
4 controls that were listed up here and the quantities that
5 were found at the time that were found to be feasible for
6 that particular MMU cannot be changed. They have to be
7 maintained at all times. Just because they're using a
8 PAPR that results in a protection factor of 3.2, they
9 come up here and do away with pan sprays. They can't do
10 away with shield sprays. They can't reduce their air
11 quantity -- that type of thing. What we've found as
12 feasible has to be maintained at all times.

13 The equivalent concentration, though, if you had
14 a sample that was 2.0 milligrams from wearing the PAPR,
15 the concentration inside the PAPR would be 1/4th that,
16 which is -- I'm sorry, not 1/4th, but the factor of 3.2
17 divided into the 2.0 standard, which gives you an
18 effective concentration inside of 0.62 milligrams per
19 cubic meter.

20 One other thing on the PAPR programs, any
21 operator that gets an approval to have an PAPR program
22 included in their plan, that plan is reviewed every six
23 months. The review includes determining again whether
24 all feasible engineering controls are in place. If
25 additional controls become available or the mining

1 situation changes so that they can do other things, then
2 the agency would insist that those controls be put in
3 place to drive the concentrations down as far as
4 possible. Nothing will be done to allow the operator to
5 remove the any of those controls. That completes the
6 overview.

7 MR. NICHOLS: Okay, Bob, thanks. Since NIOSH
8 has joined with us on single-sample, I want to give Gerry
9 a chance to make any comments he would like.

10 MR. NIEWANDOMSKI: Good morning, well, on behalf
11 of NIOSH and our director, John Howard and our associate
12 director for mining, Lew Wade, we wanted to welcome you
13 to the meeting and thank you for attending. We're here
14 today to collect your comments and your thoughts on
15 what's being proposed and we're looking forward to having
16 a productive day.

17 You've already heard the mention of a PDA or a
18 personal dust monitor. To give you an idea of where
19 we're at on developing the technology, and also, to let
20 you know what it looks like, we actually brought one with
21 us today. I have Ed Timmons from our research lab is
22 going to give you a brief update on the PDM now, assuming
23 Ed is here and can hear me. Ed?

24 We're also going to have it on the table in the
25 back for display for the remainder of the day, during a

1 break or a lunch period if you want to take a look at it.

2 We've been working on the PDM now for a couple of years.

3 It's kind of been a joint effort between industry,
4 Labor, NIOSH, MSHA, everybody we could get involved in
5 it. Ed's been personally involved in it for a long time.

6 MR. TIMMONS: Can everybody hear me? Okay, this
7 is the PDM. I'm Ed Timmons from NIOSH. I'm a branch
8 chief of the Health Branch. It's my people that's been
9 working on this in conjunction with contractor, RUP. I'm
10 going to sit this down so I can demonstrate to you. I'll
11 try to talk as loud as I can, though, so you can hear me.

12 This is a dust sampler built into a cap lamp.
13 Okay, inside here are two batteries. One battery
14 operates the cap lamp. One battery operates the sampler.
15 The sampling unit is built completely inside of this.
16 There is a tube that runs right along the cap lamp
17 battery cable to a opening at the top up here, which
18 sucks the sample in right at your cap lamp, a pump inside
19 this drives the sample through that tube right into the
20 unit here where it's sampled. The way it's sampled is
21 really a little technically complex, but it's not all
22 that bad.

23 Inside the unit is a small filter. You see that
24 white filter right there. That filter is mounted on top
25 of a sort of small metal column. That column is set to

1 oscillate. It has a frequency, okay. It oscillates that
2 frequency and as dust loads on that filter as the shift
3 goes on, that frequency changes. And it's that change in
4 frequency that tells you how much dust is loaded on that
5 filter, okay.

6 What the unit does for you is that when you come
7 to work in the morning, you put your cap lamp on, the
8 unit is started up. Somebody starts -- surface. It
9 starts sampling. You can't tamper with it. It runs all
10 day, okay. During the course of the day, you can hit a
11 button down here. You can see what your dust exposure
12 has been so far during the shift. It will also, if you
13 hit another button, project your dust exposure if you
14 continue at that level through the end of the shift. So
15 it will tell you what your dust exposure is at the end of
16 shift or will be at the end of the shift. At the end of
17 the shift, you can look at it and you'll know exactly
18 what your dust exposure is.

19 When you come out of the mine, as quickly and
20 plugged into a computer your dust exposure for that shift
21 is recorded. So you know right at the end of the shift
22 what your dust exposure is. We at NIOSH see three
23 potential advantages of this. One is it's ergonomically
24 simple for the miners because every day when come put
25 your cap lamp on, you're putting your dust sampling unit

1 on. You don't have to wear any other additional dust
2 sampling equipment.

3 Right now, this thing weighs about a pound more
4 than the conventional cap lamp does. So it's not adding
5 much weight to you, but you'll be sampling your dust
6 every day. What we at NIOSH are aiming for is to empower
7 you guys and to empower the mining company to know what's
8 happening to you during the shift so you can see what's
9 happening. You can do things to control your exposure.

10 We think you guys are pretty smart. You know
11 how to protect yourself. If we can let you know what
12 your exposure is, you're going to do something about it.

13 You might move a few feet over and in a couple of shifts
14 you're going to learn a little bit about where to best
15 position yourself to reduce your exposure. You're going
16 to know when your exposure suddenly jumps up one shift,
17 maybe some of the control parameters aren't working, so
18 you've got to check your sprays. You've got to check
19 your ventilation. You know, it's going to empower you.
20 It's going to empower the company to do something about
21 your exposure. It's going to allow you to get samples
22 every shift. So it isn't going to be once a month.
23 Every shift you go underground you see what's happening
24 to you. That's the whole idea of it, okay. And it's
25 going to allow you during that shift to see what's

1 happening to you.

2 Now what's the status? The status is that going
3 back about three months ago, we had four of these
4 delivered to us. We put them through a very intensive
5 laboratory test program where our finding was they met
6 all the criteria we'd established in terms of do they
7 accurately measure dust? They accurately measure your
8 dust. We're comfortable with that. We did want to make
9 a couple minor changes. They've gone back to the
10 contractor who is making those changes right now. We
11 hope to have six of these in our hands within about a
12 week.

13 At that point, we're going to go into a very
14 intensive four mine underground study and look at
15 different mining conditions -- longwalls, continuous
16 miners, high seams, low seams, different coal seams and
17 do a couple of these. Number one, see how well do they
18 work underground in measuring your dust? How well do
19 they hold up? Do they survive the mine environment and
20 what will they do in terms of your day-to-day use? How
21 direct are the day-to-day use? What will miners do with
22 them? How do miners like them? Are miners comfortable
23 with them? Do miners change their behavior using them?
24 Can we do something about your dust exposure using them?

25 So I would say probably in about three months

1 we're going to have results on these. At that point,
2 we'll put together a report on our findings, have that
3 report technically reviewed and then provide it to all
4 our customers -- the mine workers, the industry, MSHA and
5 let people decide how best to use them in terms of
6 protecting miners.

7 At this point, I will tell you NIOSH is quite
8 optimistic about them, but we do have to go through the
9 underground test program just to make sure we confirm how
10 well they hold up underground. I'll be happy to answer
11 any questions.

12 MR. NICHOLS: Thank you, Ed, I appreciate it.
13 We'll leave the unit on the back table back there if you
14 want to take a look at it during the day or at least as
15 long as Ed's here.

16 (QUESTION ASKED OFF MIKE.)

17 MR. TIMMONS: Yes, there is a power takeoff on
18 the prompt here. One of the problems we are working on
19 is that different units have different plug-in units, so
20 we may have to come up with some adapters, depending on
21 the mining company.

22 MR. NICHOLS: Okay, thanks, Ed.

23 (Applause.)

24 MR. NICHOLS: We'll start with our first
25 presenter, and our first presenter is Cecil Roberts,

1 President of the United Mine Workers of America.

2 (Applause.)

3 MR. ROBERTS: Can you hear me all right?

4 MR. NICHOLS: Yes, we hear you. Can the court
5 reporter hear?

6 MR. ROBERTS: I want to thank MSHA and NIOSH
7 both for the opportunity to be here this morning and
8 participate in the comment period on the proposed dust
9 rules. I want to welcome all of you to my home area of
10 Charleston, West Virginia. Actually, Cabin Creek, West
11 Virginia, which is about 20 miles southeast from here.

12 It's appropriate that we're here today because
13 in 1968 in the northern part of the state a terrible
14 disaster occurred that set the stage for the Mine Act.
15 The Farmington Disaster took the lives of 78 coal miners,
16 19 of whom are still entombed underground.

17 I remember the history of this well having just
18 gotten home from service in Viet Nam, watching this on
19 television. And immediately after the Farmington
20 Disaster, coal miners in West Virginia became heavily
21 involved in the political process and marched across the
22 river here to their capitol and demanded from the state
23 legislature that they pass, actually, the first
24 meaningful state Black Lung law.

25 That year was a landmark year also because the

1 Federal Government and Congress passed the Mine Act. So
2 34 years ago Congress a great deal of history was made
3 right here in this area. We know this law as the Mine
4 Act, all of us that worked in the coal mines or worked
5 daily with protecting miners' lives we just call it the
6 Act.

7 Thirty four years ago, Congress stated in
8 Section 201(b) "it is the purpose of this title to
9 provide, to the greatest extent possible, that the
10 working conditions in each underground coal mine are
11 sufficiently free of respirable dust concentrations of in
12 the mine atmosphere to permit each miner the opportunity
13 to work underground during the period of his adult
14 working life without incurring any disability from
15 pneumoconiosis or any other occupational-related disease
16 during or at the end of such period."

17 I just want to mention briefly, too, that while
18 most my testimony is directed towards pneumoconiosis and
19 Black Lung concentrations of dust, the Farmington
20 Disaster in 1968 was made obviously much worse by coal
21 dust in the atmosphere for how the explosive all the way
22 up to the Jim Walter's No. 5 explosion in 2001 that
23 claimed the lives of 13 miners there. Float coal dust in
24 the atmosphere contributed heavily to that explosion.

25 Section 202(h) of the Mine Act states in

1 pertinent part that "The use of respirators shall not be
2 substituted," and I want to emphasize that, "shall not be
3 substituted for environmental control measures in the
4 active workings." It seems to us that these proposed
5 rules do substitute for environmental controls in the
6 active working areas.

7 Section 303(b) of the Mine Act states in
8 pertinent part that "The Secretary shall prescribe the
9 minimum velocity and quantity of air reaching each
10 working face of each coal mine in order to render
11 harmless and carry away methane and other explosive gases
12 and to reduce the level of respirable dust to the lowest
13 attainable level." It seems that Section 303(b), to us,
14 of the Mine Act requires engineering controls to control
15 the dust in the atmosphere. And what these rules seem to
16 do, to us, is say, well, you can't do that. There are
17 instances where environmental controls or engineering
18 controls don't work.

19 So here we are 34 years after the passage of the
20 Act saying, well, what we've been lead to believe that
21 there's less dust in the atmosphere, that miners are not
22 breathing coal dust, we're now kind of indicating or
23 implying that, yes, they have been because the
24 environmental controls, engineering controls have not
25 been sufficient.

1 Given these mandates enacted by Congress 34
2 years ago, I stand here today in awe as to how insightful
3 and quite frankly, perceptive they were such a long time
4 ago. Let us not forget that everything Congress mandated
5 in 1969 was based on sampling miners based on their
6 working 8-hour shifts. One of the unfortunate things
7 about today's mining conditions is that miners don't work
8 8 hours. Coal miners are now working 10-hour shifts and
9 in some mines in this country, they're working 12-hour
10 shifts.

11 The fact is I'm not sure anyone really knows how
12 many miners have died from Black Lung prior to the
13 passage of 1969 Mine Act. I recall the miners used to
14 say when I was kid, he has miner's asthma. Well, miner's
15 asthma turned out to be pneumoconiosis and it turned out
16 to be something that killed many, many miners. We
17 estimate that the number is probably in the neighborhood
18 of 100,000 miners have died in the last 100 years due to
19 pneumoconiosis.

20 It's important to note that based on what
21 Congress thought would be adequate in 1969 resulted in,
22 and this is according to the Department of Labor, 106,519
23 recipients of Black Lung. These are people receiving
24 checks from our Federal Government. It does not count
25 6000 claims being paid by operators. So we're talking

1 about since the passage of the Act, 112,000 people out
2 there receiving a check, either from the Federal
3 Government or from a coal operator.

4 Now what's amazing about that is the approval
5 rating. Now these 112,000 people getting a check that
6 sounds like a large number and it is. But they approval
7 rating is only 7 percent. So for every 100 miners that
8 go to their Federal Government to say I've got
9 pneumoconiosis, you'll have 7 of them that eventually,
10 through a long and tedious legal, medical nightmare of
11 many, many years eventually receive benefits from the
12 Federal Government.

13 For many years we've said and suggested that not
14 probably, no question about it in our minds, there are
15 many, many more miners walking around with Black Lung
16 than those who are actually getting benefits. A recent
17 report by NIOSH prepared from data collected by MSHA of
18 miners still working reveals that miners continue to be
19 sickened by coal mine dust.

20 We've come here today, I believe, with an
21 agreement that the law that was passed in '69 has had
22 great benefits, but miners are still getting sick from
23 Black Lung. We might disagree on a lot of things today,
24 but I think it would be hard to debate that aspect of
25 conditions that exist today. Miners are still getting

1 Black Lung. There's no question about it. This evidence
2 dictates that dust levels in the nation's coal mines must
3 be decreased to protect miners from Black Lung disease.

4 What this tells us is that what we're doing now
5 is not adequately protecting miners. The protections in
6 place since 1969 have had marvelous results, but they are
7 not meeting the requirements of the miners to keep them
8 from getting sick. They are still contracting Black Lung
9 disease. You have 20-year old coal miners who have just
10 started their career and 20 years from today they're
11 going to have Black Lung. I don't know what the end
12 result will be with respect to entitlement of benefits.
13 There may not be a Black Lung Program 20 or 30 years from
14 now. It's a continuous fight to see that those benefits
15 continue to flow to miners who are crippled by this
16 disease.

17 So the thing we must concentrate on today is to
18 keep all coal miners, those that are coming to the end of
19 their careers and those 20-year old coal miners who are
20 beginning their careers, we must take action to prevent
21 them from contracting this disease. They should not
22 expect to be sick because they work in the coal mines. I
23 think we all, I would hope, agree with that.

24 Now that brings up to today. The government is
25 in the process of reforming the coal mine respirable dust

1 problem to deal with the unhealthy coal dust that can and
2 has destroyed miners' lungs. An overhaul of this program
3 is needed to protect miners from the disabling and deadly
4 diseases caused by breathing respirable coal mine dust.
5 We all agree that we need to do better.

6 As president of the UMWA, I and the miners I
7 represent have called for these reforms for many, many
8 years, but these reforms must be done properly. The
9 proposals released on March 6th, in our opinion, are
10 misguided and would be adverse to miners' health. There
11 are fundamental problems with the newly-proposed
12 respirable dust rules, putting miner operators on one
13 side of the debated and miners on the other. And you
14 say, well, why would I say that? It's clear to me by
15 some of the public comments that have already come out
16 that the industry believe these rules are okay, at least,
17 okay, maybe they like them.

18 Comments by coal miners have said we don't like
19 these rules. Why do operators like them and the miners
20 dislike them? Well, maybe we can figure that out as we
21 go forward, but I think one thing that was very telling
22 by one of the leaders in the industry yesterday or day
23 before, we want out of the sampling business. We want
24 out of the sampling business. If we sample and the
25 miners are in compliance, we are accused of fraud. If we

1 sample and the miners are out of compliance, we're fined.

2 Well, there's an easy answer is don't commit fraudulent
3 acts. That cures that problem and keep the miners in
4 compliance, and that curs the second problem. So the
5 industry's argument of, well, we want out of the sampling
6 business because of those two reasons I think are very
7 weak to say the least.

8 Now that brings us here today to talk about what
9 we need to do. The debate about the proposed rules
10 really boils down a few very simple, but critical,
11 issues. On one side you have mine operators wanting more
12 flexibility by permitting higher levels of unhealthy coal
13 mine dust in the mine environment, while also reducing
14 the frequency in sampling of mine atmosphere.

15 On the other side are the miners who demand a
16 reduction in the levels of respirable dust permitted in
17 the mine atmosphere. I just want to comment we're not
18 alone in that. There was an advisory committee of MSHA,
19 an advisory committee of NIOSH, both recommended that.
20 So the miners don't come here today suggesting something
21 that advisory committees established by MSHA and advisory
22 committees established by NIOSH also supported that. So
23 I assume that the operators are the ones who are on the
24 other side of this issue.

25 Now miners seek more frequent and more reliable

1 sampling of the mine environment to make sure respirable
2 dust remains at a safe level. I'm assuming that, that's
3 something that NIOSH and MSHA as well as the miners
4 support. I assume that's a correct assumption. Now the
5 real debate is what constitutes adequate sampling of
6 respirable dust? It's been a controversy for years.
7 Miners want more sampling. Mine operators want less.
8 And for years, mine operators have controlled this
9 program. Over the years, there's been evidence of
10 widespread manipulation in sampling by many operators.

11 Some mine operators do not want to spend the
12 time nor the money needed to consistently control dust.
13 For too many years miners have complained about all the
14 increased measures that are taken by coal operators on
15 sampling days versus what they are expected to work in a
16 daily basis. There's not a coal miner in this country,
17 union or non-union, young or old, if they honestly tell
18 you that on the days they're sampled, there are different
19 conditions in the mine than when they're not sampled. I
20 don't think there's anyone in this room that doesn't
21 understand that.

22 I believe everybody in this room, whether you're
23 up front or behind me or anywhere, knows that's the case.

24 The manipulation of ventilation -- water sprays, rock
25 dust and the speed and production of coal all play a

1 part. No matter what we do here, unfortunately, none of
2 us control the speed of production. No matter how we
3 deal with this. The validity of miners' complaints have
4 been confirmed. For example, during the '90s, 160
5 companies and/or individuals were criminally prosecuted
6 for fraudulent coal mine dust sampling practices -- 160
7 companies or individuals.

8 The union believes this represents only a
9 portion of the dust coal fraud that has been perpetrated
10 over the last 30 years. An honest system with regular
11 coal mine dust monitoring and sampling is needed to curb
12 these kinds of abuses. I don't think anybody disagrees
13 with that.

14 One should be be to expect that the government
15 agency charged with responsibility of protecting these
16 coal miners would learn from past history and create
17 reforms to ensure compliance with respirable dust
18 standards. However, in this case, the UMWA believes MSHA
19 has fallen short of its responsibility. The proposed
20 rules fail to respond to the miners' needs, and I might
21 add fails to respond to both the advisory committee
22 established by MSHA and advisory committee by NIOSH. I
23 believe one was in '95 and the other in '96, while
24 allowing higher levels of respirable dust and less
25 sampling. And I assume, based on the prior hearing there

1 was a lot of debate about that, but I think that's a
2 fact.

3 MSHA also ignored findings and recommendations
4 by NIOSH and MSHA's own advisory committee, which was
5 created to recommend our best to overhaul the respirable
6 dust programs to eliminate Black Lung disease. MSHA
7 disregarded recommendations from miners and other
8 compelling evidence. Most of all, it disregarded what
9 Congress mandated in the Act. The proposed rules are
10 complex. And if anyone doesn't believe that, try to read
11 it. The proposed rules are complex and mine safety
12 professionals are having a hard time even figuring them
13 out. They are filled with exceptions, complicated and
14 confusing formulas and language that's misleading.

15 Moreover, this rulemaking effort was released on
16 the heels of several serious mine accidents and while
17 other comprehensive rulemaking is taking place, making it
18 difficult for us to properly analyze and adequately
19 prepare comments.

20 One of the primary examples of the changes we
21 believe are misleading within the new rules concerns
22 maximum permissible respirable dust levels. I want to go
23 back to the beginning of what Congress said about this
24 about ventilation controls and engineering controls of
25 being the way you control respirable dust.

1 Under the proposed rules, MSHA would allow mine
2 operators to maintain increased levels of respirable dust
3 in the active workings of the mine far beyond the
4 permissible limits set in the Mine Act. Congress said 2
5 milligrams per cubic meter. There's no debate about
6 that. That's what the law says as the maximum amount of
7 dust that now maybe maintained in active workings. Yet,
8 under the proposed rules, MSHA would allow operators to
9 maintain four times that amount, up to 8 milligrams per
10 cubic meter with miners having to use respirators,
11 protective equipment to reduce their exposure -- these
12 airstream helmets.

13 It seems to me that we have made an exception to
14 what the law says. The law doesn't say that in most
15 instances the atmosphere will be 2 milligrams. It says
16 in all instances. And then, there is a strict
17 prohibition forbidding the use of air steam helmets. So
18 what we are at least are saying is there are instances
19 when the dust is higher than what the law suggests and
20 we're saying they can't be controlled by what the law
21 says and we're saying we're also going to use respirators
22 to correct that problem, which the law, in our opinion,
23 forbids.

24 Figuring this out is hard because nowhere in the
25 rules is it directly spelled out that levels of dust

1 could be as high as 8 milligrams per cubic meters without
2 MSHA citing the operator. It's my understanding that
3 this issue was thoroughly discussed at the May 6th
4 hearing in Washington, Pennsylvania and the panel
5 confirmed that under the proposed rules, respirable dust
6 levels could reach 8 milligrams per cubic meter in active
7 workings.

8 Now we could probably get into a big debate
9 about this and spend the rest of the day about that, but
10 according to quotes that I've read and widely
11 disseminated across the country now that, that was
12 confirmed, but that's not going to happen. If it's not
13 going to happen, why would we say it can happen in
14 certain instances. If it's not going to happen, we don't
15 need to have an exception. We don't need respirators if
16 it's not going to happen.

17 There are other proposed changes that further
18 reduce miners' protection. For example, MSHA proposes
19 giving the benefit of the doubt regarding the accuracy of
20 samples to the mine operator when it comes to citing the
21 violation for exceeding acceptable, respirable dust
22 levels. Well, I believe you should give the benefit for
23 the doubt to the coal miner because he's the one that's
24 going to contract Black Lung, not the operator. In other
25 words, whenever dust levels would be in excess of the

1 legal limit, levels would have to exceed the limit by an
2 additional margin of some type before MSHA will cite the
3 mine operator for non-compliance.

4 Congress intended that the mine environment
5 where miners work would never exceed 2 milligrams per
6 cubic meter of respirable dust. The proposed rules do
7 not heed to this mandate. And as I said before, miners
8 that work on shifts longer than 8 hours would only be
9 sampled for part of their shift, which means that they
10 will be exposed to much more dust than they are sampled
11 for and operators might never be cited.

12 Well, MSHA claims the new rules would include a
13 plan for the government to take over the troubled
14 operator-controlled dust sampling program. We've been
15 supporting this for years and advocating this for years.

16 This simply does not appear to be the truth. Indeed,
17 the agency has completely eliminated the number of
18 samples previously taken by the operator and MSHA will
19 not conduct such sampling as part of its responsibility.

20 Currently, if I do my Cabin Creek math
21 correctly, the operators are required to do about 30 of
22 these a years, samples. MSHA does about four samplings a
23 year. That's about 34 if you add those numbers together.

24 The mandate for the operators is gone, not that they
25 won't do some sampling, but the mandate to do sampling is

1 eliminated in these proposed rules. It's gone. So those
2 30 required samplings by the operators are no longer
3 there. So the position of the industry "we want out of
4 the sampling business" is gone.

5 Now we're down to how many times will MSHA be
6 sampling. It appears that there's a requirement for six
7 opportunities per year. We're trying to do the math on
8 this as we look at it. So we're down from 34. It looks
9 like MSHA is going to do six. However, there's an
10 exception there. It appears that it would give you the
11 right to go to three per year. That's what it appears to
12 be and many people poured over these rules and you can
13 tell them, well, we're not going to do that. Well, if
14 we're not going to do that, let's not. Let's just not do
15 it. Let us know what the miners have and what the miners
16 don't have here.

17 So it appears there's a drastic reduction in the
18 amount of samplings that's going to be done over the
19 course of any given year. The current sampling of 34
20 working shifts we believe is insufficient and most people
21 agree with that, and reducing it would dramatically
22 reduce miners' protection. We think there needs to be
23 more sampling, not less sampling.

24 Please understand that the proposed MSHA
25 sampling provides that significant discretion is left to

1 the agency. So even to something that is referred to in
2 the proposed rule is not absolutely, in our opinion,
3 required.

4 There's a number of serious flaws with the
5 proposed rules as well. They would allow mine operators
6 to replace engineering and environmental controls of
7 respirators, which I think is a violation -- we believe
8 it's a violation of the Act. Moreover, MSHA has been
9 advised that the specific respirators it wants the miners
10 to use in dusty conditions are not proven reliable and
11 maybe faulty. That's come out in previous testimony when
12 the 2000 rule was being discussed, debated and ultimately
13 withdrawn. Mine operators even testified to that.

14 Also, the plan verification system proposed by
15 MSHA has too many loopholes. First, it let's the fox
16 guard the hen house. With the mine operator instead of
17 MSHA controlling the initial verification. Second, the
18 process will take too long and it will be too easy for
19 operators to operate the system, which would defeat the
20 intended protection.

21 The answer to this is continuous monitoring.
22 Continuing monitoring should be the standard for ensuring
23 plan verification. But MSHA's new rule would not utilize
24 this technology. In 1980, that's 23 years ago, MSHA
25 promised miners that it would work to develop a

1 continuous dust sampling device that could be used to
2 constantly monitor respirable dust levels to help end
3 widespread abuse. With the support of the United Mine
4 Works, some coal operators and the hard NIOSH, a
5 continuous sampling device now exist and is going through
6 final testing. We just heard about that 20 minutes ago.

7 It can be built into the miner's cap lamp
8 battery container to be comfortably worn by miners on
9 each and every shift. It would provide instantaneous
10 readout of dust levels throughout the shift. We'd never
11 have to wonder what kind of atmosphere a coal miner was
12 working in, and even provide projections of how much dust
13 miners would be exposed to if exposure limits continued
14 at the same level over the course of that shift. This
15 would be the most adequate reading the miner would ever
16 had or has ever had in the history of coal mining in this
17 nation.

18 At the end of a shift, the sampling device would
19 provide immediate information showing the dust levels for
20 that shift. The same data could electronically
21 downloaded to MSHA. A benefit would be that by providing
22 instantaneous information, dust controls could be
23 immediately adjusted when necessary to lower dust levels.

24 It could provide information every shift, every day for
25 the miner, operator and MSHA to use to track miners'

1 exposure and operators' compliance. It would allow dust
2 sampling for the full work shift, whether that shift is 8
3 hours, 10 hours or 12 hours.

4 The proposed MSHA rules acknowledges the
5 continuous sampling device, but only offers it as an
6 option for the mine operator to use. This remarkable
7 continuous sampling device is now going through final
8 testing and NIOSH expects this to be completed by late
9 summer. It is our position that MSHA should require the
10 use of continuous dust monitors once the testing is
11 complete, not optional.

12 Here is our view on this. If you make this an
13 optional situation for coal companies, they're not going
14 to spend the money, number one. And I believe there are
15 many in this nation who do not want continuous monitoring
16 of the coal miners working in their coal mines. And I
17 believe that there is evidence to that fact. The debate
18 over reforming the respirable dust program must be
19 resolved in favor of the miners' health.

20 So if we're going to have a debate about what to
21 do about dust, how should that be resolved? And I think
22 everyone in this room agrees that it should be resolved
23 in favor of the coal miners, not in the interest of the
24 coal industry. It should be resolved in favor of the
25 coal miner.

1 Sadly, too many instances the protection of coal
2 has been paramount, supersedes the protection of worker's
3 health and safety. As you know, on many occasions this
4 practice has met with disastrous results. We cannot
5 allow this to occur again. Any new rule must be
6 consistent with the intent of Congress. What Congress
7 declared in the Mine Act was true in 1969 and it's true
8 today. The first priority and concern of all the coal
9 mining industry must be the health and safety of its most
10 precious resource, the miner.

11 Respirable dust levels permitted in the nation's
12 mines must be decreased to protect miners from Black Lung
13 disease. Dust sampling must be increased to assure
14 miners are not over exposed to unhealthy coal mine dust.

15 The misguided and seriously flawed rules issued by MSHA
16 must be withdrawn and recrafted to reduce levels of
17 respirable dust in the mine atmosphere. By mandating
18 continuous monitoring, requiring more frequent compliance
19 samples, having MSHA take over the samples and sampling
20 regularly and also ensuring miners participation in all
21 levels of the respirable dust program. Thank you very
22 much for this opportunity.

23 (Applause.)

24 MR. NICHOLS: Thank you, Cecil.

25 MR. ROBERTS: You're welcome.

1 MR. NICHOLS: Let's take a break until 9:45.

2 (Whereupon, a short recess was taken.)

3 MR. NICHOLS: The next presenter will be Joe
4 Main. Is Joe here? Okay, while Joe's showing up, I did
5 not want to ask Cecil to spell his name for the court
6 reporter, but you guys that come up after Joe, Joe won't
7 need to do that, but the rest of you guys, would you
8 please spell your name for the court reporter when you
9 come up?

10 MR. MAIN: My name is Joe Main. I represent
11 coal miners and I'm the administrator of Health and
12 Safety for the United Mine Workers of America. I
13 apologize for my voice today, but I think MSHA has just
14 about wore me out. There isn't much steam left in this
15 body, Marvin, but I'm going to keep on trucking here.

16 I want to start off today with a point that I
17 raised yesterday, and it has to do with a very complex
18 set of rules that was issued on March 6th in a very short
19 period of time that people have not really had the
20 opportunity to read, review and comprehend. I know I met
21 with a group of miners last night. Some heard this for
22 the first time and are trying to plow through this very
23 complex, confusing proposal that, as President Roberts
24 pointed out, many of us safety professionals couldn't
25 even figure out. And if it wasn't for the opportunity to

1 have a number of meetings with the MSHA folks who worked
2 on this rule to explain it, I would be sitting here still
3 clueless about this rule today.

4 The one thing that bothers me, and I raised this
5 in the briefing meetings that MSHA gave us, is that there
6 is a need for a full explanation of what this rule does.

7 And as I pointed out in Washington, Pennsylvania on
8 Tuesday at the hearing, we don't believe that's happened
9 and I'm going to explain why. I think it's unfair to
10 miners not to have the full measure of understanding of
11 what this rule does.

12 The half hour Powerpoint, and this was raised in
13 the discussions we had during the staff that we felt
14 that, that would be inadequate to really go through what
15 miners need to go, given the fact that we went through
16 probably six plus hours of meetings just to get to the
17 level that we are. And we've worked hard to try to
18 transfer that information out to the mine community and
19 to our miners, but we're way behind schedule. So there's
20 a lot of miners in this room that wasn't even there last
21 night to get that briefing. And I've tried to absorb all
22 of the details of this rule on their own.

23 Now the problem of it is they haven't done all
24 they need. You've got this thick rule, which is both the
25 single-sample rule and the plan verification sampling

1 rule in a very fine print, two-sided document accompanied
2 with a preamble. You've got what's called a PREA, which
3 is a preliminary regulatory economic analysis. Here it
4 is, two-sided, a lot of stuff to read in a very short
5 period of time.

6 You've got the agency policy document, which is
7 about that thick which has pieces of this rule, or I
8 should say policy, pertaining to pieces of this rule
9 tucked in it. And you've got a couple of other documents
10 that, quite frankly, I just seen the other day. One is
11 about that thick. I haven't had a chance to even read it
12 yet, and didn't know what it's about but it's suppose to
13 be an accompanying document to the rule.

14 Just to understand what this rule does and how
15 it's going to be implemented. It is over the heads of
16 the miners. It's over the heads of safety professionals
17 and it's so confusing and complex that I think it's going
18 to be a bureaucratic nightmare and a regulatory nightmare
19 if this thing every hit the light of day. It's laced
20 with formulas, exceptions to the point that what you
21 think you've read is not what you've read.

22 And one of the troubling things I have with the
23 charts up there, it doesn't really explain what this rule
24 is going to do at a lot of different mines. The reality
25 is that a mine in this country, miners represented here

1 today I don't think have any clue what the new standard
2 is going to be when it comes what President Roberts was
3 talking about and that is the amount of respirable coal
4 dust that's going to be allowed to be in the mine
5 environment in a coal mine in this country under this
6 rule.

7 We were told in meetings we had with MSHA that
8 this formula for using airstream helmets would, in fact,
9 allow the dust levels to be up to 8 milligrams with the
10 factors that's used. It would allow that to happen.
11 Whether MSHA approves it or not, we understand that's the
12 difference there. We also understand that under the
13 current scheme you can't do that. It's not legal to do
14 what you're proposing to do here to allow the dust levels
15 to increase to this 8 milligrams.

16 We also found out during those meetings that on
17 this plan verification sampling process for a mine that
18 is on this 8 milligram standard, MSHA would have to find,
19 I think, 6.67 milligrams of dust, calculating in the
20 other factors of air flows and all that kind of stuff,
21 before the operator would be required to do a quarterly
22 dust sampling on their own of the quarterly sampling.

23 Now we were getting on to it yesterday at the
24 end of the day, and it was sort of like pulling a little
25 bit of teeth for us to get this out, but that under this

1 scheme the mine operators that would be approved should
2 MSHA approve that, they would not be cited for a
3 violation until the dust levels reached 9.33 milligrams
4 in the mine environment. It's totally illegal, totally
5 outrageous and it's far from where we need to be to
6 really clean up these coal mines and protect the miners.

7 Those kind of things are not getting out there
8 unless we put them out there, but that's a reality that
9 could happen under this rule. There's a difference of
10 opinion here. We recognized that yesterday. You say
11 we're not going to let that happen, Joe. We're going to
12 make them do this, this and this. And we say we've seen
13 enough experience that we don't trust that. And when you
14 look at some of the formulas in this standard, it deals
15 with things of capping off air flows, which we think
16 again is illegal.

17 I'm going to walk through -- I sat down after
18 the discussions yesterday to take a fresh look at this
19 and I have found that several provisions of both Title 30
20 and the Mine Act that you're proposal is directly in
21 violation of. With regard to the PAPRs that's being
22 talked about here, the plan is the operator can submit a
23 proposal to MSHA claiming that they have exhausted all
24 feasible engineering controls. MSHA then has to make a
25 determination, a policy determination about whether or

1 not that operator has exhausted their controls.

2 We've been in this situation before. Thank God
3 we had this law protecting us or we would have had
4 airstream helmets replacing coal dust environmental
5 controls in the past. And I've been personally in
6 situations where that experience has occurred. It comes
7 to the question of currently miners have a bar under the
8 law to prevent you guys from even considering that or
9 doing that.

10 Under this proposal, that bar is gone. You will
11 have that right to approve those dust levels up to 8
12 milligrams. And what we've got to do is say, okay, under
13 this new proposal, we've got to be willing to trust the
14 agency to do the right thing here to make those guys put
15 in those mines what they need. I can tell you this that
16 had this standard been in effect in the late 1980s before
17 we got shield sprays on longwalls, we would never had
18 shield sprays on longwalls in these coal mines. And I
19 would dare to see MSHA try to force them to be there.

20 As a matter of fact, with the law the way it
21 was, we had a difficult time forcing some mine operators
22 to install those kind of controls with the 2 milligram
23 standard and the legal responsibility that the operator
24 had to meet that standard. It has been a dog fight out
25 there. I mean, we've all experienced that.

1 With regard to air flows, I look at this
2 proposal and I see one simple thing. Your coal mine
3 operators have to put enough air in the coal mine to
4 reduce a bit of harmless methane for a good reason.
5 Congress made that clear. You're going to put it in
6 there. Whatever it takes to keep that methane down not
7 to exceed 1 percent at the face and they've got to do it.

8 Now the way this rule is geared, it sort of says
9 we're going to continue to do that methane control, but
10 when it comes to dust control we're not to apply that
11 standard that way. We're going to let mine operators
12 have less air in these coal mines and have higher dust
13 levels. And when you look at the formula setup, it's
14 like why should some mine operators be given the
15 opportunity to have their air flows at what, 400 foot per
16 minute? And have the opportunity to jack the dust up to
17 8 milligrams while other mine operators to satisfy -- if
18 you look at the truth of the matter, have to have higher
19 velocities to control the methane dust.

20 There's an encouragement here for operators to
21 reduce the number of mine openings for air that they put
22 in mines. There is a drive here for operators to not
23 develop, spend the money and time to develop the entries
24 needed carry air out if the agency is not going to make
25 them have the air at those working places. And when we

1 get into the duct sheer and say, gee, we haven't got the
2 air fellows. Now what are you going to do? It puts us
3 all in a real box here. It's a box that we've been put
4 in before where we've run into situations where mine
5 operators cut short their air capacities going into the
6 coal mines. This encourages that to happen when you get
7 to the dust dealer.

8 The law is very clear in many places. It
9 requires ventilation of mines to not only deal with
10 keeping the methane levels down, but keeping the dust
11 levels down through the lowest achievable levels.

12 Before I wrap up here, I've got about six or
13 seven standards I want to cite into the record we found
14 that just finds this proposal totally illegal. With
15 regard to the PAPR problem, I sat through testimony in
16 2000 and heard a number of miners and company individuals
17 lay out a case that those things are faulty. They are
18 not being used in the state that they are approved under
19 the NIOSH rule and there are number of reasons for that -
20 - the filter problem, the conditions of work that miners
21 are in if their head fogs up, the inability to breathe
22 well with those helmets on. They take the neck skirt off
23 that breaks the seal. The griminess of some of these
24 mining conditions that the miner wipes that shield off
25 with his dirty glove and dirty sleeve that winds up

1 flipping the shield up more than it needs to be, which
2 also breaks the approval.

3 I mean, this is not us laying out some
4 fictitious happening. This is stuff that's on the record
5 that has been known for some time. Clearly, since the
6 record was developed in 2000 during the rulemaking. And
7 the sad reality is that what is about to happen here,
8 MSHA wants to take that same faulty system that's in
9 place and put that in the mines for miners to use, to
10 wear to protect them against these increased dust levels.

11 Now had the agency sat back in 2000 and said
12 we're stopping this. We're going to make them have legal
13 respirators in coal mines. There may have been
14 credibility, I think, to the agency's argument here. But
15 given the fact that the agency has known this to be the
16 case for three years, continues to be the case, top
17 officials from industry testified to that at the PAPER
18 hearings we had April 10th in Washington, D.C., saying
19 that these things are not being used as they should. And
20 what he said in substance was they're not being used as
21 approved.

22 There's a standard under the regulation, I think
23 it's 70.300. I just want to read that because there's a
24 couple of problems here that I think, after reading some
25 press articles yesterday, I think is misleading people as

1 well. Section 70.300 of the current regulation says
2 "Respiratory equipment approved by NIOSH in Part 45, 42
3 C.F.R., Part 84 shall be made available to all persons
4 whenever exposed to concentrations of respirable dust in
5 excess of the levels required to be maintained under this
6 part. Use of respirators shall not be substituted for
7 environmental control measures in the active workings.
8 Each operator shall maintain a supply of respiratory
9 equipment adequate to deal with occurrences of
10 concentration of respirable dust in a mine atmosphere in
11 excess of the levels required to maintained under this
12 part."

13 Very simply, operator you have to employ the
14 engineering controls to keep your mine in compliance with
15 the standard. You have to provide respiratory protection
16 that meets the approval of NIOSH as a protection when you
17 go through those excursions to protect the miners. And
18 that protection has to be readily available to miners and
19 it has to be there to be used in an approved state.

20 What we have is a situation that, that's just
21 not being enforced in this country. For whatever reason,
22 we haven't been able to get the agency's attention to sit
23 down and look at this because the sad reality is that
24 there are miners out there that's using these respirators
25 that believe that they're protecting them when, in fact,

1 they're not being used as approved and they will not
2 provide the protections that was intended.

3 The second problem is that we've got evidence
4 coming out that the flow rates of these PAPRs are not
5 enough, even if use them in the approved state, to
6 provide the protection that miners need. With the
7 exertions, the work conditions that miners are in, the
8 overbreathing problems and you breath around those
9 shields. So we have a problem here that what is about
10 ready to used to satisfy a provision of this law that is
11 a tool that has been found flawed. I call them the leaky
12 respirators now because that's what they are. With
13 regard to the testimony on the record by industry alone
14 and supplement that with miners, you can only call them
15 nothing short of a leaky respirator that does not meet
16 the approval.

17 With regard to the current standards, I'd like
18 to clear the air here. There's some impression, gee,
19 we're going to require these respirators for the first
20 time for miners. That's just not true. The law has been
21 in effect since 1969 obligating mine operators to provide
22 approved respirators to miners and they darn well ought
23 to be doing that. And we darn well ought to be looking
24 at what is going with the respirator program that's in
25 effect that don't meet the current regulations as oppose

1 to legalize a flawed system.

2 With regard to a couple of issues that was
3 raised yesterday, and I'll start with the PDM-1. We
4 looked at this rule, and what's not being said here is,
5 will anybody really use this? Will anybody really use
6 these PDM-1s under this rule? Our evaluation is no. And
7 we heard from John Gallick, a representative of coal
8 operators, yesterday that told you the same thing. I
9 think his words were "I doubt if there's a hundred of
10 units sold regarding this rule." We questioned whether
11 there had even been 10 sold for the purposes of using it
12 under the rule or even one.

13 And our reason for that is really simple. When
14 you look at the way this law is going to be applied, and
15 you look at what would drive an operator to actually
16 change one system to voluntarily use these devices, it
17 becomes clear to even a kindergarten what's going on
18 here.

19 Under the rules, a mine operator, at best, would
20 decide I going to do maybe -- the maximum side of this as
21 far as the quarterly inspections and the MSHA dust
22 sampling inspections, what does it come out to, 10 a
23 year? Okay, that's at the top end of this whole range is
24 that we were told by agency folks when we had the
25 meetings. I'm going to throw that away and what I'm

1 going to do here is I'm going to buy these units and I'm
2 going to self-impose a shift-by-shift verification of the
3 dust levels in my coal mine. I'm going to do that. I'm
4 going to buy these units expected to be somewhere, I
5 heard, around seven grand apiece. I'm going to out on my
6 own buy all these expensive units and I'm going to impose
7 a new standard on myself as oppose to that. That's their
8 top end.

9 The expectations, according to the agency is, is
10 that we're not going to have no 10 shift samples a year
11 under this rule. Based on the estimations that was
12 provided to us during those briefings was that they
13 expect -- you guys expect about 85 percent of the mining
14 units in this country for operators not to be doing the
15 quarterly sampling. That's not my numbers. That is your
16 numbers and you claim it's in this PREA document here,
17 which we haven't had a chance to analyze yet and to
18 replace, in these cases, a sampling program that the
19 operator would use where they would only have down to one
20 sample, which is for plan verification, to sample 365,
21 24/7 is absolutely ludicrous to think that operators are
22 going to do that on their own.

23 Does anybody in this room believe that some of
24 the mines who have had these criminal prosecutions, who
25 have intentionally done things like take the dust

1 sampling to the mine office, take a coal bucket and shake
2 it up to make a sample to cheat the system is going to go
3 buy those to put those in those mines to protect those
4 miners? I think not.

5 And if you look at history, and just go back to
6 the findings that was in the Louisville Courier Journal
7 investigation, which I want to introduce as a document
8 into the record today, which found widespread cheating in
9 the dust sampling program. And it talked about how they
10 intentionally bypassed systems that's easily verified.
11 You know, mining section -- continuous mining sections
12 where we would all agree, I think, it's a lot easier to
13 verify one of those sections than it is a longwall.

14 But what they do is, when the feds aren't there
15 with the dust samplers on, according to the information
16 here, you know, verify every plan you won't, it ain't
17 going to be in place and those miners in some of those
18 mines are too scared to death because of fear of losing
19 their jobs to speak up about it. That's the reality of
20 this industry. Not that we think that an operator at
21 those mines is going to use those PDM-1s to check those
22 miners that are probably the most vulnerable in this
23 country to protect them? You know, bring them to me. I
24 want to meet this invisible person because they don't
25 exist. They're not going to be there. As John Gallick

1 said, operators are not going to exercise this option and
2 buy those units.

3 The other sad reality is, when we get into the
4 dust inspections, in looking at the Louisville Courier
5 Journal findings where the widespread cheating was going
6 on because of lack of sampling going on in those coal
7 mines that when the cat's away the mice will play. They
8 fix things up to get you guys in and out of that mine.
9 And when you leave, they put those miners in that dust.
10 They don't stop to bring their line curtains up, don't
11 fix their water sprays and things that it takes to keep
12 the dust under control in those mines. They run free-
13 wheeling and it exposes a lot of miners to unhealthy
14 dust.

15 There's two answer to that problem we've found,
16 and we've searched through this for years. One, either
17 park a federal inspector on that shift every day, 24/7,
18 365 or park a unit on there that will document what the
19 heck is going on. The beauty about this thing is that
20 some the fraudulent practices that we've heard over the
21 years where they the dust sampler out and hang it in the
22 intake airways. It's hard to hang that monitor off that
23 roof bolt, okay. It's tough to do. And if the miner
24 takes it off and hangs it out there, it's darn hard to
25 see in a coal mine without a cap light on.

1 And if you hang it out there, some of the things
2 that wasn't talked about here yet this morning -- we
3 spent a lot of time looking at the tamper-proofing of
4 that system. If that thing is sitting still, it'll show
5 that there's no motion. If somebody puts something over
6 the inlet to plug up like we've heard has happened
7 before, that system is designed with the computer
8 technology that's in it to detect that and record that.
9 All these things are being recorded as part of the
10 process. You know, designing a way to take the tampering
11 out as much as we can. Some of these operators will
12 figure out some way to get around the system, but you
13 know, to the extent where we're at today and what's going
14 on that is the only thing, if you really want to clean up
15 the dust in the coal mines where we know the fraud and
16 cheating is going on when the cat's away, it's the only
17 solution that's there.

18 Now the proposal by MSHA to do a spot check of
19 those mines, one shift spot check six times a year at max
20 is not the answer to that problem. It will not fix it.
21 And we've got to stop fooling ourselves about these, you
22 know, band aid approaches to life here. You will not
23 cure that problem with the plan verification scheme. You
24 will not cure that problem with regard to the infrequent
25 samplings. And those that figure out a way to beat you

1 while you're there to get that dust down, and then to go
2 to three a year? I mean, six is outrageous. Three is
3 absolutely nothing. It doesn't do what we need to do to
4 fix the dust problem in those mines. That is a reality.

5 We've got to come up with a system that provides
6 continuous monitoring of the mines if we're going to fix
7 this problems. Coal miners that work at union mines that
8 are represented here, you ain't going to see a whole of
9 miners, I guess, unless the company decides to drag them
10 in here and pay them or not pay them and tell them to get
11 in here that they can't speak for themselves. That's one
12 of the limits of this whole process. All this external
13 documentation is sometimes the best evidence we've got to
14 what's really going on.

15 But I can tell you in the union mines we seen
16 manipulation of the dust sampling. If you ask any miner,
17 he'll tell you that the conditions are its best in the
18 mines the day that sampler goes on because we're in there
19 and they ticker around to make sure everything is up to
20 speed. The waters are dusted for calcium in the water.
21 All kinds of different things are going on beyond the
22 plan parameters we're talking about here that takes
23 place.

24 I've heard that the monitor that goes on with
25 the monitor, so to speak. When that dust pump goes up on

1 that section that -- goes in there the boss in up there
2 making darn sure everything is working okay. You think
3 that boss is there everyday? No, he's not, not for that
4 purpose.

5 These continuous dust monitors are critical to
6 fix the problems in the union mines and the non-union
7 mines alike if you're going to clean up the dust and get
8 these guys out of the dust. I noticed the reluctance to
9 get this unit up here today. It's frustrating because I
10 want to talk a bit about the continuous dust monitor and
11 the problem we ran into.

12 And yesterday there was some frustration about,
13 gee, we're not going to wait another two years. Well,
14 the truth of the matter is, when we finished up the last
15 rulemaking in 2000, there was a number of us in Labor and
16 industry and NIOSH that got together and said we're going
17 to fix this problem. We sought financial help and
18 assistance every place we could. We sought support every
19 place we could to build this device that's in the back
20 room.

21 There was a number of reasons for the delay that
22 we don't have that today. And I can tell you, and I
23 along with some of the industry, was highly upset when we
24 found out as we agreed in the meeting with all the
25 principals to put all that money that we had available on

1 developing the PDM-1 to get it built, there was a
2 decision made to pull the money off the PDM-1 and let's
3 build this PDM-2 device that's totally separated from
4 this unit that miners can't wear as a secondary unit. I
5 was furious when I heard that.

6 Now there's this, well, we had to build the PDM-
7 1 to get the PDM-2. No, we didn't. People thought that
8 and wanted to do that. That delayed this whole process.

9 It's very frustrating. The technical glitches that
10 slowed things down -- this thing was suppose to be ready
11 in January in terms of getting them into the mines. The
12 reason it's not there today had nothing to do with the
13 sampling technology. It had everything to do with when
14 the manufacturer put together the device, he didn't put
15 enough battery capacity in the darn thing to do what we'd
16 asked and instructed them to do. So they had to take the
17 thing back and put more battery capability in it. We've
18 redesigned using battery technology to get us where we're
19 at, but that was an error on the part of the
20 manufacturer. We're frustrated over that. It should
21 have been there, but we're stuck.

22 There's been glitches along the road that have
23 been the mistakes of man, not the failure of the system
24 to do what it was designed to do. And it's just totally
25 frustrating to find ourselves here today not having that

1 device finished, which we should have. And I think
2 people need to recognize that and I think we need to
3 examine what went wrong here and why this thing was
4 delayed. The frustrating part as well was we were having
5 all these meetings, briefing -- the industry knew what
6 was going on. NIOSH knew what was going on and the mine
7 workers knew what was going on about the closeness and
8 the accuracy of this unit and it's a little bit troubling
9 the kind of vibes that I see coming back from MSHA with
10 regard to the reluctance to embrace this as a tool to fix
11 this and jump on board with us to get it done. Whether
12 it's real or not, that's the impression you guys are
13 leaving and I need to let you know that.

14 And the simple thing like leaving the thing in
15 the back room today, no, we needed to get it up here
16 where miners could see it. There's a lot of miners that
17 never saw that. Don't understand what the capability of
18 it is. Not only what NIOSH said, but at the end of the
19 day we can electronically download that data straight off
20 that continuous monitoring to you Marvin, to MSHA.

21 I mean, think of that, instant information that
22 miners never had before, the capability of providing MSHA
23 with all this information, but most important, it
24 empowers miners and I think that's what scares everybody.
25 We can't let those miners get that in their hands and

1 know what dust they're in. I'm appalled by anybody who
2 thinks like that. I'm hopeful that, that's not the
3 thinking there. I'm not saying it is, but I know they're
4 some in the industry that think that way. Those mines
5 that were charged with criminal conduct that cheated the
6 system intentionally don't want to see those on those
7 coal miners. We've got to put them there. We've got to
8 fix system.

9 With regard to yesterday, I noticed that there
10 was some dismay from the reaction of the miners that was
11 at the hearing over our response to the proposal. And I
12 want to clear the air on that in terms of why miners are
13 angry about what you're doing. I want you to understand
14 it clearly.

15 You know, there's a historical record that was
16 built over years. And as I pointed out, in 1976 miners
17 came up with this idea of continuously monitoring their
18 shift days, weeks, all the way through with continuous
19 dust monitors because they knew back then that's the way
20 we fix this thing. We're going to document what's really
21 going on in here.

22 In 1980, the government promised miners in the
23 closing days of the dust reforms that they would build
24 that system, work to get it built. We're going to do the
25 research to get these continuous dust monitors in the

1 mines. Miners believed that. I believe it. I was back
2 in those days. What's happened since is, in a way, a
3 history of frustration. But during the years, miners
4 have made that one of their front claims undeniably what
5 they've wanted to fix this problem is a primary way to
6 fix the plan verification system, to fix this system of
7 over exposure between sampling days. And in this case,
8 we built this thing to last 12 hours, so we can do full
9 shift sampling up to 12 hours and fix problems like that.

10 We had the NIOSH criteria document that was
11 issued in 1995. It made a number of recommendations.
12 Those recommendations were consistent with what miners
13 were saying, lowering the dust levels in coal mines and
14 NIOSH's recommendations was down to 1 milligram for cubic
15 meter over taking into consideration the extended shifts
16 and the extended work weeks. There's a number of other
17 recommendations, too, to beef up the sampling program.

18 In 1996 the Secretary of Labor appointed an
19 advisory committee charged with the specific job of set
20 down, come up with a regulatory game plan to fix this
21 problem. I was fortunate to serve on that committee.
22 You had industry on it. You had Labor on it and all
23 these independents. In 1996 they gave a report to your
24 agency, saying here's the road map for reform. That road
25 map for reform said MSHA you take over the program. That

1 you increase both the numbers and frequency of that
2 sampling.

3 They said MSHA you come up with standards to
4 lower the dust levels in the coal mines. They said MSHA
5 get this research done on these continuous monitors and
6 let's get it in there so we can look at a few plan
7 verifications and even compliance sampling. They said
8 increase the miners' participation. They're they ones
9 that's getting harmed from what's going on out here.
10 Give them a big role in this whole process to make sure
11 this is done honest because we have a history of
12 dishonesty in the sampling program in this country.

13 So we have this and a lot of other information
14 and the miners testified at those public hearings on the
15 dust advisory committee. We had this proposal launched
16 in 2000. And this proposal was as wrongheaded as what
17 this proposal is for a number of reasons. It reduced
18 sampling. It failed to take into consideration a
19 meaningful compliance sampling. It allowed the increase
20 of dust levels in coal mines. It failed to address the
21 full shift sampling. And like NIOSH and MSHA have both
22 said in their findings, don't increase the dust levels.
23 Don't adjust them upwards in favor of the mine operator.
24 When it comes to making that determination of
25 compliance, don't make it in their favor. Put it in the

1 favor of the miners at least. It should be adjusted
2 downward, I think, was the findings of NIOSH, which is
3 something we support.

4 There's a number of things that was in the
5 record that was laid out by coal miners in 2000. They
6 came from all over the country, give us continuous
7 monitors, lower the dust levels, increase the sampling,
8 sample the full shift, have the standard, don't let them
9 exceed this 2 milligram by goofy formulas and stuff and
10 let's get this program fixed.

11 When we read the March 6th proposal, I can tell
12 you this, if you guys didn't think there would be total
13 disappointment in our eyes, I don't know what your
14 expectations were because it decreased sampling, in our
15 opinion, even more clearly from what the law was. It
16 increased the dust levels in coal mines substantially
17 more. And I just want to stop there and just lay out
18 what was in the 2003 rule. There was a goofy proposal to
19 allow mine operators of longwalls to put these faulty
20 airstream helmets on these miners, inject the dust levels
21 up -- I think it was 4 milligrams on longwalls. Miners
22 railed against that. You know, that's illegal. We don't
23 want it.

24 The proposal we came back out says, well, here's
25 what we're going to do for you miners in response to what

1 all our concerns were. We're not going to just put this
2 on longwalls. We're going to let operators use this all
3 over the mines. And oh, by the way, yeah, that 4
4 milligram that was wrong. We're going to jack it up to
5 double to eight. You don't think miners was upset about
6 that? Four shift sampling -- we don't have four shift
7 sampling in this rule.

8 No upward adjustment of the dust levels during
9 compliance in favor of the operator. Don't do that. The
10 rule does that. Miner participation -- if miners want to
11 take money out of their own pocket and lose work and go
12 sit on a plan verification sample, it's done. That's
13 outrageous. I mean, does anybody here -- do you take off
14 work if there's a conference some where, tell the
15 government keep my money. I'm going to go do this on my
16 own. You shouldn't expect miners to do that. And we
17 have a provision under the law that this agency was stiff
18 enough to get that standard in place to make these
19 operators pay for these miners participation. They
20 deserve it.

21 You know, we're looking at an industry that has
22 killed tens of thousands of miners from choking on Black
23 Lung or from coal dust that gives them Black Lung and
24 other diseases. That's outrageous. And what we say to
25 those miners is, here's what we're going to do for you

1 fellows, and you did make some modest improvements in
2 that rule, which we agree. We agree with single sample.

3 We don't agree with adjusting that upwards. That's
4 wrong for the miners.

5 We agree with getting rid of this averaging. It
6 should have been done a long time ago, but you don't
7 place these little tiny, tiny, meek proposals that
8 doesn't give you the full measure to protect the miners
9 that they need. Infrequent sampling, some mines down to
10 three compliance samples on a section a year. And under
11 this rule, I should point out, you've got at the outline
12 sampling, because under the current rules, miners have a
13 guarantee of -- what is it, six times a year they're
14 going to get sampling. Under this rule, those outline
15 miners got one sample for the whole year. We're going to
16 base the exposure of miners on one sample a year in these
17 coal mines. I just didn't like that. They said do more,
18 you did less.

19 You look across the board, and there's a lot of
20 other proposals in there that miners have demanded for
21 years that is just not, as President Roberts, their
22 findings has been the findings of NIOSH. It's been the
23 findings of the advisory committee I sat on that this
24 agency, for whatever reason, refuses to accept and stays
25 wedded in this failed system we just can't get out of.

1 But this continuous dust monitor, how did we
2 wind up here getting into a quick rule, rushed in the
3 middle of all these actions, all the other rulemaking,
4 how did we get here and say we don't care about this
5 final date -- finalization on this PDM-1 that NIOSH, a
6 good government agency, has worked hard to get, supported
7 by the operators, supported by the union labor. It's
8 sad.

9 So if you can't understand why we're frustrated.
10 Why we're upset and we're angry about what's come out
11 here, I think you fail to understand the reality of life.

12 I don't we could have laid out a clearer record in 2000
13 and I don't think there could have been a clearer
14 decision made with the rules we say that we have not
15 listened to you coal miners and we're not going to listen
16 to you.

17 Now getting back to the PDM-1, with this
18 optional plan. I mean, does anybody in their right mind
19 really thought that they operators were going to jump on
20 this and put this in the coal mines? I mean, if you do,
21 I worry. They said it. I had a meeting with the BCUA
22 shortly after the rules came out, and I got into a
23 discussion with their top safety guy from Peabody Coal
24 Company. And he says to me something to the effect, Joe,
25 who in their right mind would ever put one of these

1 things in a coal mine under these rules, nobody. That
2 was our estimation, too.

3 Compared with what the operator had to say
4 yesterday, John Gallick. That's the problem we have. I
5 mean, it's sort of like a little bit of a fraud here that
6 gives the public the impression that we're going to have
7 these continuous dust monitors in these coal mines by
8 this rule and we're not. I mean, that's the difficulty
9 we're having here.

10 I could go on for the rest of the day. I've got
11 to get off of here, but I'm just frustrated that what's
12 happening here is that miners are not getting the truth
13 about this rule. They're not getting the full measure of
14 what could happen to them. There are miners sitting in
15 this room that may well see one of these days a plan
16 approved at their mine that has the dust levels at 8
17 milligrams with some kind of a PAPR on, and if the
18 government treats it the same way they have over the last
19 three years of letting it be not approved, not in an
20 approved stage, they're in big trouble. It violates the
21 law and it violates the rights that these miners have.

22 We're going to be putting in the record a large
23 number of documents over the course of this hearing.
24 We're learning as we hear what you guys are saying about
25 this rule, and we're finding a lot of these complex that

1 give us great problems and we plan to fully make sure, at
2 least the record, because I see this thing at the
3 courthouse.

4 It is without question, if the thinking doesn't
5 change here and this rule is not withdrawn and recrafted
6 to do what a lot of people have said, beyond coal miners,
7 the practice around continuous monitoring, full shift
8 sampling, getting those dust levels in the mine
9 environment down, not legalizing what some operators want
10 to do to jack them up, we're in trouble. The coal miners
11 are in trouble. It's heading straight to the courthouse.

12 But these kind of things you have to understand.

13 I mean, this lack of trust in this agency. When those
14 same fellows who were at those hearing in 2000, knew what
15 was on there and what the expectations were of you guys
16 coming back, saw what they saw, I can tell you your
17 credibility went down big time. There's no other way to
18 explain it and for those reasons. They laid a clear case
19 of what needed to be done. You either didn't do it or
20 you did the opposite. That's wrong. That's wrong for
21 the nation's coal miners.

22 And I'm again urging that you go back to the
23 leadership of this agency and pass a message on from the
24 mine workers, pass the message on that Cecil Roberts gave
25 today, this rule needs to be withdrawn and recrafted to

1 really help the nation's coal miners and it should not be
2 done to make all these favor changes to take care of
3 operator interest because that's exactly what it does.
4 You chose a side. You need to rethink that really quick
5 and decide which side you're on here. Increasing the
6 dust levels for mine operators to legitimize them and
7 reduce sampling to take care of all of the pain they've
8 raised about getting you guys out of the mines or do
9 what's right for the miners, get that dust in those mines
10 lowered, get constant monitoring in these coal mines and
11 help these coal miners out because they're the ones that
12 are getting sick. It's not the corporate guy sitting in
13 the 18 Massey office down here that's getting sick with
14 Black Lung. It's not the folks up there working on that
15 rule that's getting sick with Black Lung. It's these
16 guys behind me that's getting sick with Black Lung and
17 it's high time this government understands that and does
18 something on their behalf. Thank you very much.

19 (Applause.)

20 MR. NICHOLS: Thank you, Joe. You want to pass
21 me that Courier Journal article?

22 MR. MAIN: Yes, we're going to have a number of
23 other documents. Oh, one other document introduced on
24 Tuesday, the April 17th letter that went to Dave
25 Lauriski. I sent that officially. I understand it was

1 on the website. It was posted on the website with
2 comments. I've had a number of calls asking where it
3 went. I understand that you guys pulled that off the
4 website.

5 MR. NICHOLS: We did. It went up prematurely.
6 We put it in the record, but it accidentally got on the
7 website.

8 MR. MAIN: Accidentally? I thought comments that
9 goes in on the record went on the website. Is it
10 selective? I know the agency was not happy with what was
11 said in that letter.

12 MR. NICHOLS: No, that's not right, Joe. No, I
13 mean, there was some consideration in response to your
14 letter. And we thought we put it up too quick before
15 that decision was made.

16 MR. MAIN: Well, the points raised in the letter
17 was comments, whether you agreed or disagreed with them
18 and you want to send the letter back. But I'm asking you
19 officially today.

20 MR. NICHOLS: It's in the record.

21 MR. MAIN: I ask you to put that back as a
22 separate posting as it was.

23 MR. NICHOLS: Okay.

24 MR. MAIN: And we'll be checking the website to
25 see if it was because I think people have a right to

1 know. The problem we have, Marvin, is, as I've said,
2 these miners back here, many of them, ain't got a clue
3 about what train about ready to hit them here. We're
4 trying to educate them and you can say whatever you want,
5 too, about what you think it is or don't think it is
6 about what our positions are. But the clear fact is I've
7 used a lot stuff that I've got from your own people. And
8 you know, I want to throw one other thing out here, too,
9 because we've got this discussion. I asked during this
10 meeting what operators is going to get these PAPRs to let
11 this dust go up to 8 milligrams. And I believe the
12 answer was, well, gee, it's going to be the mines in the
13 West probably most likely to be there.

14 And I asked specifically about one mine, which
15 is the Deer Creek mine, which I think the answer was,
16 yeah, that's close to about 400 cfm of air and that's one
17 of the mines that maybe on that list. You know, this is
18 stuff that's troubling. We had this advantage and I'm
19 really bothered about the defensiveness of this rule and
20 the lack of explanation that this is something that's
21 really going to happen out there and can happen.

22 You've eliminated the bars. It's going to be
23 your decisionmaking now. It's whether we trust you guys
24 to make the right decisions under this rule. That's what
25 it boils down to. You're saying you're not going to do

1 it. And you know, Marvin, you're not going to be there
2 to make those decisions. Nobody on this panel is going
3 to be there to make those decisions and they way that
4 this happens in this government policy shifts like a leaf
5 in wind storm and we know that. And there is no comfort
6 at all that we can expect that there would be a 2
7 milligram standard in effect in coal mines in a mine
8 environment after this rule is passed. You guys know it
9 and we know it, just be a little bit more forthcoming
10 about it.

11 MR. NICHOLS: Okay, thank you, Joe. Here's what
12 the rest of the day looks like. We have still, by my
13 best count 42 people signed up to give comments. And we
14 want to hear from everybody we can, so the lunch plans
15 are, you know, if you want to grab something for lunch,
16 you can do it. But the panel will work straight through
17 lunch and we'll keep going on the commenters.

18 Our next presenter is Bolts Willis with the MWA.

19 MR. WILLIS: Thank you, Mr. Chairman. My name
20 is William Bolts Willis, W-I-L-L-I-I-A-M B-O-L-T-S
21 W-I-L-L-I-S, Box 126, Pratt, West Virginia 25162. I'm
22 president and chairman of the Mine Health and Safety
23 Committee for Local Union 8843 located in Carrolton, West
24 Virginia, the largest local union of the United Mine
25 Workers.

1 We have a couple of distinctions that our
2 Carrolton operations. We have been there for over 100
3 years in continuous operations. We had the first
4 longwall mine section in the United States of America.
5 We had the first mountaintop removal mine in the State of
6 West Virginia. And we're still operating today and
7 producing more coal with less people than every, I think,
8 or anyone else could have imagined 10 to 15 years ago.

9 Some of you on the panel know me and have known
10 me for many years, either as I was working for the UMW
11 International Safety Division and also for the State of
12 West Virginia as an assistant commissioner of the
13 Department of Energy. At our local union, we have two
14 underground mines. One four section mine, one tunnel
15 mine, one strip mine and a large preparation plant
16 complex.

17 As I've stated earlier, some of you know me
18 personally. So I will address you as my contemporaries
19 as so you are. In 1969 I started working underground at
20 the No. 8 mine in Carrolton and worked at several of her
21 other mines at the same general location since we have
22 the common seniority system where I work. I worked in
23 low coal, 28 inches, medium coal 40 inches and high coal
24 up to 12 feet as well as working on the surface. I've
25 worked on conventional sections, Wilcox sections, Dennis

1 Myer (phonetic) miners sections and longwall sections.

2 In all these areas a common factor is present,
3 coal dust and rock dust. We're hear today to respond to
4 these proposed rules to protect miners from excessive
5 coal mine dust. I must say from reading this proposed
6 rule, it has been difficult to understand what is really
7 being proposed. All 100 pages written, not to what I
8 learned at the mine academy over 20 years ago from many
9 of who you know as an instructor at the mine academy
10 named Wayne Meiswell, who taught creative writing. He
11 taught me to keep it clear and concise. This rule is not
12 clear to me, and I'm sure it's not clear to the rank and
13 file miners. It's muddy to say the least in many
14 instances.

15 I also must say as an adjunct instructor at West
16 Virginia University of Technology, my students would
17 probably have problems understanding what these rules say
18 and how they are written and at what level they're
19 written for comprehension. Many in this room doesn't
20 have a college education and that's not down any coal
21 miners because coal miners are the smartest people in the
22 world. It's complicated to understand and I think
23 probably most everyone here would agree with that.

24 I will just give a few examples. If I were to
25 enhance dust control measures the first place I would

1 look at would be sampling intensely since the sampling
2 devices to monitor coal dust are available and have been
3 for the last 20 years. I'm one of the original people
4 that commented on this on the mini-ram and the ram 20
5 years ago at the mine academy. I commented on this two
6 years ago at another hearing. This type of sampling
7 could shut off the machinery immediately when high
8 concentrations of dust are detected. Stop, period right
9 then until corrective actions have been taken.

10 We wouldn't have to worry about hiring hundreds
11 of inspectors. We wouldn't have to worry coal companies
12 going through the frustrations of trying to figure out
13 where and when to control the dust. It would be apparent
14 where it was happening at real time, and I'm sure Bob
15 Thaxton would appreciate that. And probably you could
16 really see it as I have seen in testing some of these
17 devices for several years ago.

18 Also, I would take over the program fully.
19 That's not to take away the responsibility, of course, of
20 the operators. As some has stated already in this
21 proposal, it seems to be saying they will be only
22 sampling a few times a year. We need to be sampled more
23 times a year. A couple of fellows just left this room
24 that are younger than me, they're both Part-90 miners.
25 One graduated from high school with me. They went over

1 to the rally that we're having at the Capitol a little
2 later in the day.

3 If I were the operator, I could come up with a
4 system six times a year to where I wouldn't have any coal
5 dust. I don't know of any time at our operation when an
6 MSHA inspector has been on the section taking a sample
7 that we've ever been out of compliance, not one time.
8 There's things done differently when MSHA inspectors are
9 on the section and we appreciate MSHA for being our
10 protector. But when rules come out like this, it's hard
11 to understand, and from my personal opinion, we're going
12 to be exposed to more coal dust.

13 I'm just going to say a few words about some of
14 the problems that I've seen in the reading of the
15 regulations. I think you should hold up the regulations
16 immediately until the PDM-1 is -- my understanding from
17 NIOSH earlier in the meeting, it will be ready in
18 September. I think it should it be held up. I think
19 that's what we need and I think it's the route we need to
20 go. We don't need to go to where it's putting a burden
21 on the operators, putting a burden on the miners of how
22 everything that's done. It's a system that's workable.
23 And I've closely looked at full shift sampling is the
24 answer.

25 As President Roberts and Joe stated earlier, at

1 our mines we're working 9-hour shifts, not 8-hour shifts.

2 And it needs to be sampled for the full shift.

3 Sometimes we also have people come in early now and are
4 working 10-hour shifts on production. I asked several
5 MSHA inspectors in the past two weeks when I heard about
6 this hearing coming up, had they read these rules. Not
7 one of those MSHA inspectors had seen the rules. They
8 had read something about it in the papers. If it's held
9 up and is waiting for the Dennis mining place to look at
10 it, I'll pass it down to the field and let some of your
11 experts, and I know everyone on this on this panel is an
12 expert in your field. Let them look at it and see what
13 they think about it.

14 Most of the inspectors in the field are former
15 coal miners, like most people in this room. The problem
16 with dust, from the way I read this rule, there is going
17 to be a lot most dust in the mine, float coal dust. And
18 I'm fearful that there are going to be mine explosions.
19 I think this rule also is in conflict with the Mine Act
20 that protects me or protects coal miners. And don't
21 think Congress meant it to be that way. I'm sure that
22 wasn't the intention from MSHA, but my understanding that
23 there were some surveys done by Dave Lauriski and I've
24 known Dave for over 20 years and the surveys were done
25 out west when he was working for Utah Power and Light, or

1 one of the other companies he was for, and that was some
2 of the basis of where these rule comes from. I'm suspect
3 of that when it comes from the operators instead of from
4 the agencies.

5 Of course, I understand that Dave is the head of
6 the agency now, but to use surveys that just the
7 operators did to come up with these conclusions in this
8 rule I think it's wrong and suspect. Technology will
9 stop the very moment that the PAPRs are used or the
10 helmets. Technology will stop at that time. Joe alluded
11 to that just a minute ago. When you put someone in a
12 helmet that's cumbersome, the filtering system is suspect
13 -- everybody says, well, that's secure. They're not
14 being exposed to dust then. I think most of us know here
15 that they will be.

16 I'm not concerned about citations that MSHA
17 writes on dust. My concern is to stop the dust. And
18 we're know on a real time basis where it is, we can do
19 something immediately about it. That's where it needs to
20 be. I've thought over it for over 20 years, and I gave
21 testimony 20 years ago about that. Some of you are
22 familiar with the ram and the mini-ram. I know Bob is.
23 I've sat in Bob's office. We've had the mini-ram there
24 talking and I took it in to coal miners. We can see it
25 right then, but it didn't have all the protective devices

1 that the new one does and it's even more protection to
2 the miners.

3 So with that, that's basically all I have to
4 say. I'm still kind of baffled by this long rule and I
5 believe it's in conflict with the Act.

6 MR. NICHOLS: Thanks, Bolt.

7 MR. WILLIS: Thank you.

8 (Applause.)

9 MR. NICHOLS: The next presenter will be Donnie
10 Lowe of the UMWA.

11 MR. LOWE: Thank you, Marvin. My name is Donnie
12 Lowe. It's D-O-N-N-I-E L-O-W-E. I'm a coal miner from
13 Virginia. I started out representing coal miners in 1975
14 up to 1987 as president of the local and safety
15 committee. From 1987 to 1999, I served as a field rep
16 and district president in Virginia, part of Kentucky and
17 Tennessee representing miners. Since 1999, I'm back at
18 the mines representing miners as local unit safety
19 committee and I walk around with MSHA inspectors when
20 they come to the mines to do their inspections and also,
21 do their dust sampling.

22 Basically, I feel like that MSHA new respirable
23 dust sample rules are against the Act, the same as Cecil
24 Roberts, Joe Main and other that spoke before me. I feel
25 like the advisory committee and NIOSH dust sample reform

1 that they come up with is for continuous monitoring.
2 MSHA's control on sampling, take them away from the coal
3 companies where we have seen fraud. When I was, like I
4 said, at the time district president, you know, the fraud
5 wasn't limited to non-union companies. This fraud was
6 going on at union companies and companies that
7 represented in Virginia and Kentucky.

8 We feel like, you know, the advisory committee I
9 feel like a lot of their recommendations was to maintain
10 or lower the dust level below 2 milligrams of respirable
11 dust. You know, as we've heard other people talk about
12 the extended shifts in the coal industry right now.
13 That's true. We've heard of 10-, 12-hour shifts, but I'm
14 here to tell you that the shifts is even longer at the
15 Island Creek mines that I work at.

16 It's nothing unusual for a coal miner to work
17 two shifts, and I'm talking 8-hour shifts. They only
18 employ enough coal miners under the perfect circumstances
19 to perform the jobs that needs to be performed in the
20 coal mines. But sometimes people get sick. Sometimes
21 people get injured and sometimes people are off for
22 personal reasons. When this happens, then either the job
23 is not done or people work overtime to get the jobs done
24 in the coal mines. That's the reality in the coal mines
25 today.

1 Let's look at this. Coal miners have been
2 samples and samples have come in less than 2 milligram of
3 dust. At times the coal float dust is so heavy that it
4 has basically impaired the vision in certain areas. In
5 other words, we have been taught by NIOSH, MSHA that we
6 basically can't go and look at an area and tell you
7 whether it's in compliance or not. That, that area has
8 to be sampled to see if it will go out. If we're going
9 to raise the level above 2.0, to possible and thought
10 maybe four times up to 8.0, but after listening to Joe
11 Main testify here today, that level could be even as high
12 as -- I believe the figure was 9.33?

13 If we look at that, in my opinion as a coal
14 miner, I think that we probably have developed maybe an
15 atomic bomb that could remove basically mountain tops in
16 Buchanan County, the county that I work in, in Virginia.
17 I work in one of the gaseous mines in the United States,
18 the VP No. 8 mines, two Island Creek mines that's cut
19 together that has an extended area that has to be
20 maintained.

21 You know, we the situation that's going on in
22 Iraq today, you know, whether we went over there and we
23 basically said that we're going to go against any country
24 or anybody that develops bombs for mass destruction. But
25 yet, we want to go into our coal mines and develop an

1 area that will increase the float dust, and we know what
2 float dust that is suspended to the mine air when you
3 have an explosion or a mine form what it can cost.

4 You know, at the VP No. 8 mines, we seen a mine
5 fire here recently. A mine fire that happened on a belt
6 line. It started at a takeout. It started after the
7 belts was empty of coal. It started when the people that
8 were in that location had left to go to the surface and
9 the CO monitoring had picked up high CO readings. From
10 one side of the mine, people could not even get to that
11 location. From the other side of the mine, people could
12 get to it but had no communication back to the surface.
13 We seen a situation that we had fire resistant belt that
14 we had, I believe, something like about 18 breaks a belt
15 that was burnt out. Every timber that was there was
16 burnt to a crisp. I mean, actually ashes on the floor.
17 Every crib was burned up, high voltage installation was
18 burnt off the high voltage cable, nothing but copper left
19 there and not a piece of belt from the takeup all the way
20 to the tail piece, caught another belt drive and turn and
21 burn out.

22 You know, what would we have done in that
23 situation, and you know, the mine rescue teams and the
24 foreman at the VP 8 mine was able to extinguish the fire
25 and basically, save the miners. But what -- could we

1 even imagine what may have happened if we were allowed at
2 that point in time to have had 9.33 milligrams of
3 respirable dust in this area? How much more dust could
4 have been in the atmosphere and what extent this fire
5 could have been in this mine? I'm only using that as an
6 example.

7 You know, if we ignore the Act, ignore Congress,
8 ignore safety and lives of coal miners, we're probably no
9 better than Hussien who ignored or thought nothing of
10 lives of the people in Iraq. You know, using the
11 mechanical main and airstream helmets, basically, could
12 cause other health problems. We might overlook them a
13 little bit, too.

14 The coal companies want miners to share these
15 helmets with co-workers. And this went on. You don't see
16 any mines that each individual has brought a separate
17 helmet. And what experience that I've had with these
18 helmets, maintaining these helmets is almost non-
19 existent. But even looking at the health problems, even
20 somebody just like Joe Main a while ago with a cold, how
21 many people do you think may have had to wear a helmet
22 after Joe Main got up here with his cold. It could cause
23 some health problems. You know, there's health problems
24 with AIDS, SARS and who know what else. We could be
25 causing some more health problems with this in wearing

1 helmets.

2 Basically, at times the helmets, it is hard to
3 breathe. At times, your visibility is impaired. You
4 know, working on a longwall there is a lot of dust, a lot
5 of water, a lot of sprays, a lot of things like that,
6 that the miner basically encounters each and every trip
7 across the longwall. And any type of mechanical device
8 will malfunction and to allow the standards to go above 2
9 milligrams, knowing that something may malfunction -- and
10 you know, there are certain people, and let's be honest,
11 no matter what controls you may put in place, they may
12 not comply with those controls, the helmets.

13 How many people is going to comply with that
14 helmet to a certain extent? If it blocks their vision,
15 if it cracks, if it malfunctions, the filter stops or
16 whatever, are they going to shut that longwall down in
17 time enough for that shear operator to go and get another
18 helmet or whatever or are they going to keep running it?

19 My experience in the coal mines is they will keep
20 running it. You know, it's just like we hear people talk
21 about Black Lung and we've seen your little chart on how
22 Black Lung is basically decreased over the years.

23 You know, I don't where the figures or what the
24 figures that you're using to determine that level. I
25 don't know if you're getting the people that's actually

1 receiving the monetary benefits or the people that's
2 receiving the health benefits from Black Lung. If that's
3 what you're using, then I think that you're, again,
4 misrepresenting the people that actually have problems
5 with respirable dust in the coal mines. It's my
6 understanding that to receive benefits now, you've to be
7 what, totally disabled from Black Lung?

8 You know, if you've got a heart problem or a bad
9 back, even though you've got bad lungs, you might not get
10 those benefits. But you still got that problem with
11 breathing. You know, we can try a little experiment
12 right here and probably some of us may not have Black
13 Lung, but we can probably put our hands around our neck
14 and we could squeeze hard enough to cut off any air from
15 men in their lungs to the point we could turn blue in the
16 face, could even pass out. But you know, once we pass
17 out, you know those hands are going to stop putting
18 enough pressure on and we're going to breath. That's not
19 the fact with the people that's got Black Lung. When
20 they've got problems with breathing, they can't release
21 their hands and start breathing again.

22 You know, these people, they've got a disease.
23 My understanding there's no cure for, no cure for Black
24 Lung. I've heard about lung transplants and they have
25 been coal miners with Black Lung that have qualified for

1 a lung transplant, but you know Black Lung causes other
2 problems not (inaudible) coal miners can qualify for a
3 lung transplant because either they've got a bad heart
4 and other things, you know, that will not qualify them.
5 So basically, the only way that we can help protect the
6 coal miners is to stop respirable dust. And with that,
7 and that alone, would stop Black Lung.

8 The Act set a goal in '69 and I believe that the
9 advice from the advisory committee and NIOSH, we should
10 lower the 2.0 level, and we should have continuous
11 monitoring, 24 hours a day, 7 days a week. Coal miners
12 that work today, even in union mines, it's mandatory that
13 they work six days a week. And almost forced to work the
14 seventh day. They're basically told that if you don't or
15 if don't get the work done, they're going to shut the
16 mines down. Come on out and work Sunday or you're going
17 to be without a job. And you know how hard it is to find
18 a job nowadays, so we've got miners working seven days a
19 week. We've got miners working 12 hours a day. We've
20 got miners that is exposed to above the 2.0 level now
21 with the number of samples that's done.

22 And again, I think it was a good point made by
23 the speaker, the person that testified just before me,
24 that continuous monitoring, let's wait on it. I think
25 this would be the answer to the situation, and I'm going

1 to shut up. I know I'll ramble on a long time, but it's
2 just a couple more points that I want to make. You know,
3 the simple sample rule is good. I think that if you're
4 out of compliance, you should do something. I think that
5 MSHA should be more in control of establishing and
6 writing the dust control plan for the operator instead of
7 saying you're out of compliance, you come up with a plan.

8 I think that with the experience that MSHA has
9 inspecting all the coal mines with the ability to seek
10 advice from the studies that NIOSH has done that we
11 should have mandated plans for dust control to take care
12 of these problems to keep the dust level below 2.0 and
13 even below it.

14 You know, feasible engineering controls, you
15 know, we been hearing that for years. Just like I'm
16 wearing a hearing ear right now and things roar and stuff
17 like that, but the mines that I worked out, Island Creek
18 Coal Company or Consul or whatever you want to call it,
19 you know, we come up with hearing protection, you know,
20 and the mandated provisions of what the hearing
21 protection, which is good, don't get me wrong. But they
22 were suppose to exhaust any feasible control that they
23 could do with coal mines to eliminate the noise.

24 Before the program ever went into effect, the
25 coal companies said we've already exhausted all feasible

1 engineering controls. If they did that on hearing, don't
2 you that they won't do the same thing on dust? Don't you
3 think that when we put a plan out there that gives a
4 loophole or a way out and we put a plan out that contains
5 as many pages that they've got that there is not a lot of
6 few lawyers out there that can go through that and
7 manipulate a plan to where they're going to go to the
8 furthest extent that is possible for them to go to -- the
9 furthest extent.

10 Then you take a poor old coal miner like myself.

11 I'm not going to understand that much of the rule. We
12 need something simple. I represent coal miners at the
13 mine level and when they come and ask me a question, I
14 don't have two weeks to stand there and try to explain
15 something to them.

MR. GLOVER:

16 Marvin, there's approximately 20 pages of testimony
17 there. A lot of it is the history of myself and some of
18 the experiences I've had as a child, that children today
19 are experiencing the same thing that I experienced 40
20 years ago. And I was 10 years old. And there was a lady
21 run off the hill to my dad that her husband had passed
22 away. And naturally, as a child I thought of my dad up
23 that hill. I seen the man laying in the bed with a
24 blanket pulled up to about his waste.

25 The first person, I guess you'd say the first

1 dead person I'd ever seen in my life, so it stuck with
2 me. I seen my dad pull the cover up over his head.
3 Forty years ago the word "black lung" didn't exist. My
4 dad told me he died from silicosis. But it stuck in
5 mind. And naturally, it somewhat scarred me. So I
6 started worrying about my dad, because my dad was
7 becoming very ill.

8 After that my dad filed for black lung in later
9 years. He was denied by the Labor Department. He
10 couldn't understand it, because he followed all the
11 procedures and all the rules. It was denied. Took all
12 the x-rays and all the blood gases. You don't have black
13 lung. The thing my dad asked me right before he died,
14 because he was pretty frustrated, knowing he was dying
15 from black lung, but also a combination of some other
16 illnesses, that he was passing away, my mother had passed
17 away, there was no dependents, he wasn't greedy looking
18 for the money but he wanted, for some reason, a biopsy of
19 his lungs to see whether he had black lung.

20 I can set here and tell you today that I did
21 what my dad requested. And that was to get a biopsy of
22 his lungs. Yes, and it came back that he had severe
23 black lung. So when we talk about the charts, and we
24 talk about how we've dropped black lung, and how the
25 exposure of miners has come down, those charts are not

1 telling you the truth. That's the point I want to make
2 about your charts.

3 Now, if you don't care -- I said also that day -
4 - and you'll find it on the first page -- that that was
5 one of the most complex rules that I had ever tried to
6 figure out. Well, I take that back, because this right
7 here is more complex, and today I want to go on record
8 saying that. I didn't think it could get much more
9 complex. I couldn't believe that we would have MSHA --
10 and I thank God for the 1969 Act -- and overlooking
11 someone, encourage him to set a standard of 2 point
12 milligrams, to try to protect the miners of Southern West
13 Virginia.

14 And I set here 33 years later, and I see an
15 agency wanting to increase not just to 4 milligrams, but
16 to 8 milligrams under circumstances. I look at an agency
17 that I honestly believe has lost track of reality. I
18 don't know when the last time anyone was in the
19 coalmines. Things has improved. I hear people in the
20 field -- and I'm talking about within your agency, Marvin
21 -- that can't believe what's going on within your agency.

22 And I don't know who's steering that ship, other than
23 Dave Lauriski. He would get the credit for anything, so
24 he sure will get from me the things that's not very
25 popular. And I'll put it right back on Dave Lauriski.

1 And there's no doubt we'll probably end up in court, and
2 I hope that we do, because this is a terrible reg. It
3 does not address the issues of the miners. It doesn't
4 address the issues that the miners has talked about.

5 But I want to get on, because as you said,
6 Marvin, we got a long day, and I want to say that I was
7 involved with -- and I'm turning to page 103 -- I was
8 involved whenever -- and I'm talking about the Commission
9 that traveled through the coal fields, and I was in
10 underground mines, I was on the tipples, I was on the
11 surface jobs. They was very surprised at what the miners
12 has been exposed to.

13 When the report came out, I was very encouraged
14 that we was gonna get something out of that. And then
15 whenever we arrived in Prestonsburg, I wouldn't even
16 think that anyone thought too much of the Federal
17 Commission report, or didn't look like it. So that was a
18 little frustrating when I was in Prestonsburg. I also
19 talked about, when I was in Prestonsburg -- and this may
20 help you about the helmets, of why people wears them,
21 some people feels secure with them, that for creating a
22 false sense of security we're doing those individuals
23 wrong, and if the record is accurate, that in human
24 conditions, and with some of these filters, and they're
25 not providing protection that they're supposed to, then

1 we shouldn't be using them.

2 Now, also we got companies that aren't as
3 fortunate to miners as some of the UMWA mines, but the
4 company says, wear them, this'll protect you, you gotta
5 wear em or go find you another job. Now, we have union
6 mines that's wearing them, because they feel at least
7 that's better than nothing. That's not what these miners
8 want. They want to know exactly what they're breathing.

9 And I think that's fair. I think everybody in
10 this room -- I mean, we're sitting here, like I was
11 sitting in Prestonsburg, breathing good air. We've got a
12 nice working condition. But just because you're a
13 coalminer don't mean you're a second-class citizen in
14 this country. They deserve the same air that we're
15 breathing, and not by just putting a Airstream helmet on.

16 And it's amazing to me.

17 Here we talk about the continuous miner
18 sections, and I know in my heart that we can meet a 1-
19 milligram standard. And to have any type of exceptions
20 to that, and it not be in black and white, we are not
21 doing justice to the miners. I honestly believe that.
22 Because it's proven. I've traveled through Southern West
23 Virginia, and I see what's on the continuous miners.
24 I'll tell you about the scrubbers.

25 And one guy mentioned about the noise. This

1 might surprise you, but it shouldn't. When we leave
2 engineering controls, what you have is the only thing
3 you'll ever get. I worked in the mines in nineteen and
4 seventy eight, if I'm not mistaken. They disconnected
5 the scrubber. I didn't know why, but later on I found
6 out because it was out of noise compliance, and it was
7 taking a lot of the dust away from us. But management
8 chose to disconnect that scrubber, to come into
9 compliance with the noise.

10 Now, the way we got scrubbers is because we went
11 to extended cuts. It wasn't because somebody came up and
12 said, scrubbers will protect miners' lungs, it was
13 because of the extended cuts. And I think the record, if
14 you go back, will prove that. Now, I don't know whether
15 it would surprise anybody on that panel. I'll say 80
16 percent of our mines are out of compliance over noise
17 with these scrubbers in Southern West Virginia. Nothing
18 is being done, other than hearing protection.

19 And the point is, once you make that final
20 decision that we're going to do with what we did with the
21 hearing protection -- I'm not saying that's entirely
22 wrong, because you will go deaf anyway, but the point I'm
23 making is, once you accept that, that's all you're ever
24 going to have. There is no incentive, not any
25 whatsoever, for anyone to reduce those noise levels. And

1 that's wrong.

2 And that's the trouble with Airstream helmets.
3 Along with the inconvenience and the bulkiness, some of
4 the conditions the miners has to work in, the lower
5 seams, the middle seams, and someone talked about the
6 high seams. If you wear in perfect locations, are great.

7 If you're the type of guy, like I do, that sweats a lot,
8 safety glasses is a very handicap to try to wear. And
9 you try to use good judgment when to wear those.

10 But the point is, once we accept this, it's
11 over. And I think it's wrong. Especially when we're on
12 the horizon of having something that will monitor the
13 dust, the atmosphere of what the miners are breathing,
14 and it's right on the verge of being here. I think we've
15 jumped the gun. I'm not so sure that gun wasn't jumped
16 intentionally, and the reason I say that is because it's
17 kind of strange is we're on the verge, and we're setting
18 here, and we're ramming all these regulations that Joe
19 talked about. We're trying to move them.

20 You know, we talked about dust, and currently,
21 right today that there's miners dying, there's children
22 seeing what I seen 40 years ago, and I think that we can
23 prevent that. And I hope when you go back and create the
24 regulation again, that we have the belt-wearable personal
25 protection that we deserve on the continuous dust

1 monitors.

2 Now, if you'll look on page 110 -- and I just
3 want to read -- that I didn't think was too much to ask,
4 and this was in, as I say, Prestonsburg. I was looking
5 at your overview here this morning, and as you go back, I
6 hope you come back with a better proposed rule. And I
7 will really appreciate when you do that, it's not 700
8 pages, it's pretty well simplified. But go through the
9 coal fields and do some briefing and educate us, and let
10 us make some comments.

11 I want you to keep that in mind. Because we're
12 doing the same thing we're doing today as we did in
13 Prestonsburg. As I mentioned, if we start accepting
14 Airstream helmets, and we increase it, that's all we're
15 ever going to have. And it's wrong. I said in
16 Prestonsburg -- and I'm on page 119 -- "if we start here
17 with this and open the door, it'll come to the miners
18 section. It will come to the outby areas. And it will
19 come everywhere else in the coalmines. You might as well
20 put them in a spacesuit and let them walk around."
21 That's why I said in Prestonburg.

22 Marvin, this is kind of where you come in. Your
23 response was, "It won't happen. I mean it." I said, "It
24 will, Marvin." You said, "No. It's already been tried."
25 When I go to Alabama, out West, I see a lot of miners

1 wearing Airstream helmets that they chose to wear on
2 their own. We have been asked over and over by mine
3 operators to consider those as engineering controls,
4 which we have never done. We will never accept for one
5 of these small areas we're talking about, working
6 downwind of a shearer operator, because we think that
7 most of the people's say that they continue it.

8 And the point is, it was the people downwind of
9 the shearer that would be wearing Airstream helmets. As
10 we sit here today, after we had that discussion, we're
11 talking about some outby areas, we're talking about if
12 you have tried everything, then we'll go put Airstream
13 helmets on. The sad part is, we've even doubled the 4-
14 milligram standard that was in Prestonsburg.

15 Marvin, you said that you had been with the
16 Agency almost 30 years. And that's been the position
17 from day one, and when you was referring to MSHA. Now
18 something's happened over a two-year period. And that's
19 not for the good in the miners. I'll say it again. It's
20 long past due to eradicate black lung in the coal mines.

21 We have continuous monitoring that's available, or on
22 the verge of being one of the best things that's ever
23 happened.

24 I encourage you to go back once again, review
25 the advisory report, and look into why they felt -- they

1 went out and they touched the miner. They traveled to
2 about every condition that you can expect to see in the
3 coal industry. They seen the faces. They talked to the
4 miners. They seen the field. They understood it. You
5 guys may be in the mines pretty regular. I don't know
6 whether you've been in mines like in Southern West
7 Virginia or not. And I speak primarily to that.

8 I've been throughout this country, on different
9 occasions representing miners, primarily the miners of
10 Southern West Virginia. I remember Davitt Mcateer saying
11 that the only way we'd ever eradicate black lung is to
12 get it down to 1 milligram. I honestly believe that you
13 can do that. We can talk about the 100 CFMs.

14 There's one thing about it we do know. If you
15 put enough water, you put enough air, and you put
16 ventilation controls in and the scrubbers, and with the
17 other technology that's came about on the long walls, we
18 can do a whole lot better job. But whenever we do what
19 MSHA's requesting today, then those controls are over.

20 Marvin, I'd just like to quote you, on the last
21 page, because you thanked me for my comments, doing
22 something up front briefing on those future rules is a
23 good one. That we go out and try to do some education.
24 Maybe me and you didn't understand what I was talking
25 about, and it wasn't what we seen here this morning. I

1 don't know where that fell through the cracks, but it
2 did. And I know some of this is out of your control.
3 You're the chairperson.

4 But I know on the record here of what you shared
5 with me, and I know when I set here today, it's no
6 different than what it was in Prestonsburg, with the
7 exception of using these Airstream helmets, possibly on
8 the continuous miner section, the outby areas, on special
9 things as overcast and so forth. And with that, I hope I
10 haven't offended you, because I believe in saying what I
11 believe, and I've got big shoulders, and I can handle any
12 remarks that you all want to share with me.

13 And with that, I do hope that you take it back
14 and share it with Dave Lauriski that our miners are
15 unhappy with this. And there's a lot we don't know about
16 this, but there's a lot that Rick Glover don't know about
17 this. And I'm here to tell you, from what little bit
18 I've seen, it's not going to take care of black lung and
19 respirable dust in Southern West Virginia. And with
20 that, I thank you.

21 MR. NICHOLS: Thank you, Rick.

22 (Applause.)

23 MR. NICHOLS: Wayne Conway. Is Wayne here? Jack
24 Goff?

25 MR. GOFF: Good morning. My name is Jack D.

1 Goff. That's J-A-C-K D as in Darryl, Goff, G-O-F-F as in
2 Frank. I have been a coalminer for 34 years. I started
3 work in 1969. I have watched this agency turn the health
4 and safety of the mining industry around. When I first
5 entered the mines, there was very little dust control. I
6 bolted top on a 1-CM miner that was so dusty that my
7 visibility was only several feet, at best. When the Act
8 came into being, the same year that I started, everything
9 improved by leaps and bounds. It is at this point that
10 when everything -- check curtains, line curtains, and
11 stoppings, et cetera -- are in place, the air quality in
12 the mine is livable, and I wish to thank MSHA for this.

13 But at the same time, I am appalled by the
14 thought that this same agency who has saved countless
15 lives would propose this backward step in dust
16 regulations. This, in my opinion, is a violation of the
17 Act. An increase of this magnitude from 2 milligram to 8
18 milligrams is not acceptable to any miner, and should not
19 even be considered. You should be reducing the amount of
20 dust, not increasing. We should be increasing the amount
21 of dust samples, not reducing them. If a man works 12
22 hours, the sample should be taken for 12 hours. I hope
23 and pray that the powers that be do not pass this
24 regulation, for the sake of the miners' health and
25 safety.

1 As a safety committeeman, it is tough enough to
2 get companies to comply with the dust control plan. I
3 can only imagine what it will be like when MSHA will only
4 be checking the dust three times a year. I thank you for
5 giving me this time to voice my opinion on this matter,
6 and I hope the leadership of MSHA will reconsider this
7 action.

8 There are three things that I see that we need
9 in this in depth. We want lower dust levels, we want
10 more sampling, we want the entire shift sampled. And I
11 thank you.

12 (Applause.)

13 MR. THAXTON: Thanks, Jack. Okay. Next is J.R.
14 Patsey.

15 MR. PATSEY: I'm J.R. Patsey, P-A-T-S-E-Y. I'm
16 with the Mine Workers and I work for U.S. Steel Mining
17 Company. I've worked there for approximately 27 years. I
18 like myself. I don't think we was heard when we was in
19 Prestonsburg. And recolate to it a little bit, and I'm
20 going to relate to it a little bit more. We was down
21 there in Prestonsburg, for two days we met down there.
22 And from the rule then that was handed down was
23 complicated, and new proposal that's handed down is a
24 whole lot more complicated than that one there.

25 And Lew was down there. You had -- in 2000 you

1 was wanting to go to a .3 variance. It was going to be a
2 2.3. That was the way you was going to come into
3 compliance. And looking back through some of my
4 testimony, when I testified down through there, I
5 recommended going back to a 1.7. And then Lew would have
6 with variance. That .3 variance would come in at 2.0.
7 We was ignored then.

8 I related a little bit about the one-time
9 sampling this stuff down there. We got several people on
10 the surface. I laid it to that fact there that there are
11 people outside that's more or less bee ignored. Some of
12 these huge stockpiles that we have on the surface today,
13 250 to 350,000 tons, just depends. And at times when the
14 wind comes up the holler, it's unbearable. It carries
15 the dust for miles. And I went and listened to -- you
16 know, evidently you didn't take nothing into what was
17 related to back to the head man in Arlington then.

18 Looking at this new proposal, Joe went over it a
19 little bit with us, I'm confused as can be about it.
20 It'd take I don't know how long. I mean, it was that
21 thick. We've had a very short time to look at this. Not
22 have time to study it. Just what Joe has briefed us on.

23 But talking to some of you all's people through MSHA.
24 And then we get to this, now we're wanting to raise the
25 dust levels in the mines.

1 And though we've had a lot of explosions here
2 recently, we've had explosions, you're wanting to
3 jeopardize the safety and the well-being of our fellow
4 workers in the mines but raising the dust levels. You're
5 just putting more respirable dust and explosive dust,
6 mixing with some methane. In that atmosphere it's going
7 to kill our miners, without a doubt.

8 When Joe talked last night about the PD monitor
9 we have there, you know, we've been working on that and
10 some other BCO coal companies, with NIOSH, and Joe Mains,
11 and we've just about got that thing ready. And now you
12 want to bring this proposal down. I mean, it's thick. I
13 think we asked for that when we was down there in
14 Prestonsburg. We want to know at all times what amount
15 of dust we're working in. And I don't think that's too
16 much to ask. The technology's there, and we want it.

17 I mean, we're no better than anybody else, but
18 you're sitting up there, you're breathing good air, you
19 know what kind of air you're sitting up there in across
20 this table, and I'm breathing it good today. When I go
21 underground tomorrow, I want to breathe good air. And I
22 want to know what I'm in. If I'm out of compliance, I
23 want to know.

24 But you come in doing these dust samples, and
25 cutting them outside sampling's what we're doing every

1 year on the coalminers underground, there's no way for us
2 to know. And sampling is different. I mean, they do
3 things different when you all come run dust pumps. It's
4 not going to be the same as it is every day that we're in
5 there working.

6 And I don't think you know, the Mine Act has
7 mandated the 2.0 regulations. And I think you're
8 strictly -- you know, you're violating the law when you
9 try to change that without Congress approval. That's my
10 personal belief on it. That was something that was set
11 in there to protect us years ago. And here we are in the
12 year of 2003, and we're going backwards.

13 I mean, if anything, we ought to be lowering the
14 dust rates. And we ought to go to 1.0. No more than
15 2.0. I think we deserve it, and I'm just like Rick, I
16 don't know who's behind this, whether it's Lauriski or
17 who's behind it, but somebody's behind this by shoving
18 this thing down our throat awful quick. You know,
19 briefly, all I know is what Joe's -- he's tried to brief
20 us, talking to you all about this new regs, and it's very
21 complicated. I tried to look at it a little bit, and
22 it's -- you go back to the formulas that you come up with
23 how you gonna get you a 8.0 and your 4.0 and all that.
24 It's confusing to me. And Joe said it's confusing to
25 him.

1 I think we deserve better than this. And I
2 appreciate your time for letting me get up here and
3 speak, but I think you forgot the coalminer, and I think
4 that is your job to protect the coalminer, and not the
5 mine operators. And by putting this new rule into
6 effect, if it would go in effect, that's what you're
7 doing. You're looking out for the coal operators, you're
8 not looking out for the coalminer.

9 We didn't want it in 2000 when we was in
10 Prestonsburg, and we don't want it today. We want the
11 dust levels lowered. We want to be monitored permanently
12 so we know what we're working in. Like Joe related to,
13 that can be plugged into a cap, when you plug your cap
14 like that. It could be downloaded. You'll know what
15 we're working in. And that's all we want. I thank you.

16 MR. THAXTON: Thank you. Tim Miller?

17 MR. MILLER: I'm Tim Miller. I'm with the MWA.
18 I've got 28 years coming next month experience. And
19 everything but strip, as far as mining related. And I
20 have one year experience in nonmetal mining. Yesterday,
21 before I left to come over here, I had to help a miner
22 that was robbed by dust. I had to put extra oxygen in a
23 car incase my father had to leave. I had to make sure
24 that there was a bottle of oxygen setting in his bedroom,
25 because he's limited now as to what he can do. This was

1 my last -- my son's last year in school. He was robbed
2 by dust this year because his grandfather was unable to
3 attend any ballgames, any school functions, anything, due
4 to dust, which has come down since I've been in mining.
5 But we're throwing progress aside. We're going to step
6 backwards.

7 And we can't keep saying that, well, we've got
8 it down, there's no -- hardly any black lung out there.
9 No, it's still there, it's just not getting recognition.

10 The operators, whether they want this or not, they're
11 going to -- it's going to cost them in health care for me
12 and my coworkers, because if dust levels increase, we're
13 going to be absent from work, we're going to be using
14 contract days, we're going to using their insurance cards
15 more and more.

16 I've lived in the coal fields all my life. As a
17 child, you could set your clock at 5 o'clock by seeing
18 slurry hit the creek and going down the holler. There
19 was dust from the prep plants that landed on the houses
20 in the coal camps. We come so far since '75 when I
21 started in the mines. It's not a real good time now to
22 step backward, and forget about the penalties that's been
23 paid, and the health that's been given up by our retired
24 miners, and by our deceased miners, and by men that's
25 still working now. don't need to step back in time. We

1 need to continue to progress. If we continue with
2 cutting back on dust, eventually we can stamp out black
3 lung. Maybe not in my son's generation, but his
4 children's generation may not never even -- you know,
5 black lung may be something that was back in the olden
6 times to them.

7 But if we do that, these young miners, these
8 miners that are working nonunion and scab jobs, that
9 can't voice for themselves, but the ones that I've talked
10 to in nonunion mines hope that this is resolved before it
11 ever gets into effect, because they can't come here and
12 speak. But I really don't understand why we're throwing
13 progress out the window and stepping back, especially in
14 this day and time.

15 Look how far that you've come with compacting
16 down a dust collector in a cap light. In 10 years time,
17 if you put that into effect, that unit probably won't be
18 no bigger than that cup, because we continue to get
19 better in technology, and we can take that right along
20 with that. As far as the helmets go, the next time you
21 all have a meeting, wear your Airstream helmets, get
22 under that table, and conduct your whole meeting, but let
23 somebody wet that down and let gentlemen run across the
24 top of the table frequently, so that you're trying to
25 listen, and see, and pay attention. But you can't do

1 that with all this apparatus. And that's about all I've
2 got.

3 MR. NICHOLS: Okay, Tim. Thanks.

4 (Applause.)

5 MR. NICHOLS: Has Wayne Conway shown up yet?
6 Court reporter, if you need to take a break, just let me
7 know.

8 MR. YOUNG: Gentlemen, my name is Gary Young.
9 I'm the senior district 17 executive board member here.
10 I've been in that occupation for about the past 15 years.
11 In that time I've had to review numerous complicating
12 documents in my time, dealing with negotiations, or
13 whatever it may be. I have to tell you gentlemen, this
14 is the most complicated thing that I've ever tried to
15 figure out in my life. Certain things bother me. As I
16 see us try to rush through this, the back of my neck gets
17 worn. I worry about my hair standing up, because when
18 you're trying to rush through something, in my opinion,
19 there's something there. There's a hidden agenda,
20 gentlemen, where it's not in the best interest of the
21 workers.

22 I've experienced that with the coal companies,
23 and I feel I'm experiencing it with you gentlemen today.

24 I don't mean to disrespect you, and I don't, but I'm
25 like one of the other brothers said, I have to say what's

1 on my mind. Now, I've never seen one written like this.

2 I've been a safety committeeman at the mines also. This
3 one was so complicated with your formulas and all that, I
4 don't believe Albert Einstein can figure it out, to be
5 honest with you.

6 I don't know how your inspectors are going to
7 figure it out totally. And I think everybody's confused
8 on it. You know, gentlemen, quite honestly, it needs to
9 go away. You need to withdraw, to be honest with you. I
10 know I've read the advisory reports. In your lead-off
11 statement here, gentlemen, you're asking us to trust you
12 here, I guess, today. Well, here in your packet, the
13 first paragraph says that you used the recommendations of
14 the advisory committee. Well, I cannot find, gentlemen,
15 anywheres in these regulations or proposals that you have
16 where you've done that. None of them have been complied
17 with.

18 You've increased the level of dust, which, it
19 boggles my mind how we can sit here today in this
20 hearing, and not consider -- have we not considered our
21 brothers in Alabama here recently? What you're talking
22 about in your proposal here, gentlemen, is to increase
23 the level of dust from 2 percent to 8 percent, and rely
24 on an Airstream helmet that's already been proven not to
25 work.

1 Now, you've heard NIOSH here today with their
2 device. To me, that's probably the greatest thing since
3 sliced bread that we've had for years for our coalminers.

4 That is ultimate protection. Gentlemen, that should not
5 be a secondary device. That should be the prominent and
6 the main device. That should be put on a man every day,
7 so that we can control the dust.

8 I'm like Rick Glover. I've seen my father pass
9 away with black lung. I saw my father-in-law quit
10 breathing. He smothered to death because of black lung.

11 Recent reports, gentlemen, have told you that there is
12 still black lung being contracted in our mines today.
13 You need to take care, gentlemen. I don't want think
14 that you don't care. Somebody's not hearing us. You
15 need to hear us.

16 Now, you've destroyed the Mine Act, in my
17 opinion. You've basically eliminated the sampling. You
18 go from 34 to 3, basically here. You go in the outby
19 from 6 to 1. Gentlemen, the dust is going somewheres.
20 If you raise the level of dust, it's not going to
21 disappear. It's going to be somewheres in the coal
22 mines. And anywheres in that coal mines is a potential
23 hazard.

24 For example, somewheres in here I read that you
25 want the ventilation -- you want to pull up the belt

1 line. Well, gentlemen, that's crazy, to be honest with
2 you. You're looking at a guy who in his last eight years
3 in the mines was a beltman. Have you ever been in the
4 mines and seen belt head gob out, or timber get in the
5 beltline and it catch on fire, or the smoke that comes
6 out of that if it just gobs out.

7 Gentlemen, it's so bad and so thick and so
8 choking, you can't do nothing. You can't see. How in
9 the world can we even think about putting that into the
10 face? That's not acceptable. You have turned -- in the
11 advisory report that I read, there were several things
12 that they recommended, once again. One of them was for
13 you gentlemen to take hold and take control of the dust
14 sampling, okay?

15 You've turned it over, in my opinion, to the
16 coal companies. Have we forgotten the some 160
17 fraudulent cases where these gentlemen have been
18 prosecuted? We seem to have. If you think that that
19 fraud has gone away today, I'd like to sell you some
20 land, gentlemen, because it has not gone away. As I
21 said, I don't mean to be disrespectful, but things like
22 this just bother me. I don't know how in the world you
23 could once again go from 2 to 8 percent, and have someone
24 put on a helmet. And gentlemen, those helmets don't
25 work. They fog up. I've been in the mines where they're

1 at. You just can't see. Not only it's killing them by
2 not working, but also it's just a huge safety factor when
3 they're in there trying to work to perform their jobs.

4 You want to get people injured. That's not
5 acceptable either. That is not why you were placed where
6 you're at. And once again -- just let me, if I may,
7 dealing with the advisory committee, gentlemen.
8 Recommendation, once again, of the allowable dust. They
9 want it reduced. You guys want to increase it. They
10 recommend you guys -- once again, I hate to repeat
11 myself, but they recommend that you guys take control.
12 You're not doing that. You're giving it to the coal
13 companies, which will violate it every day.

14 I've been doing a lot of work over the years
15 now. Somewheres in here, and don't even begin to ask me
16 where, because I can't tell you, but once again, there's
17 little word changes in here. And we talk about currently
18 and "approved ventilation plan." We go to the language
19 of this, it says, "a ventilation plan." Now, guys, one
20 little word makes a big difference. To me, that tells me
21 once again, the company could do what they want to. That
22 needs not to happen.

23 We, gentlemen, are asking you, quite simply, to
24 go to continuous sampling, use the PD, forget about the
25 helmets, lower the dust level, and protect our people.

1 Because in my opinion, gentlemen, and I shoot straight
2 from the hip, what is in front of us today is no more
3 than attempted murder of our people in the nation's
4 coalmines. You're either going to blow them up, or
5 you're going to kill them with black lung. They're dying
6 every day. We don't need to kill no more. That needs to
7 be stopped.

8 I've heard comments as I've been traveling
9 around, that this is a mineworkers issue, this is a Joe
10 Main issue, this is a Cecil Roberts issue. Gentlemen,
11 it's not. All of us sitting in this room, probably back
12 behind me, have relatives or friends working in nonunion
13 mines. This is a people issue. It's about saving lives,
14 gentlemen. Don't try to turn it into something it's not,
15 and don't think for one minute that's what we're trying
16 to do.

17 We're interested in saving lives, and we're
18 asking you once again to rescind this policy, and deal
19 with something that works. Listen to the advisory
20 committee. Take it and use it, gentlemen. And that's
21 all I have to say. I do appreciate your time. Thank
22 you.

23 MR. NICHOLS: Thank you, Gary.

24 (Applause.)

25 MR. NICHOLS: Gary Trout?

1 MALE VOICE: We're going to let Ernie Woods go
2 next.

3 MR. WOODS: Good afternoon. My name is Ernie
4 Woods. I'm president of local 5958 in Logan County, West
5 Virginia. W-O-O-D-S. I was asked to come here today to
6 speak to you all by my local union. The reason why we
7 wanted to come here today is, MSHA has always -- we've
8 considered MSHA a good friend of ours. We've always
9 worked hand in hand together. Even as far as mine walk-
10 arounds, tours. Spend a lot of time in the conference
11 hearings, backing the inspectors. Had an inspector tell
12 me one time that they spend almost half of their budget
13 on court cases and fighting the companies. And the
14 working miner is the one that's on MSHA's side, not the
15 companies.

16 And for what we consider MSHA leaning, or
17 leniency toward the companies on this dust issue, it's
18 just beyond me. We've left them in charge. We've seen
19 what they do. We've seen the fraudulent dust samples.
20 There's only one way we can cure this problem, and I
21 think that this new system that NIOSH has come up with,
22 this personal dust sampler, it's the only way to go. The
23 only way you can accurately get a reading of somebody's
24 sample is for it to be on them eight hours, ten hours.
25 Every what they're in there.

1 It also gives this miner a right to look down
2 and see what kind of dust he's in. And for anybody to
3 even consider taking that away from is unbelievable.
4 It's beyond me. We need more sampling, especially with
5 this new personal dust sampler. You'll have to make the
6 company conform. They're not going to do it on their
7 own. We've seen that. We've seen that too many times.
8 We need laws that's going to put teeth into this. We
9 need something that ain't gonna kill the Coalmine Act.

10 This is a hurried rule. I went back to the
11 mines. Guys asked me, what's it about? And I said,
12 well, I really can't tell you. I don't know. I went
13 through it, and I've looked through it, I've read through
14 it. Went through two days of instructions, trying to go
15 through it. The figures are so complicated, the formulas
16 are so complicated. No one can make sense out of that.
17 At least not the people I work with.

18 And we're going to ask that you guys remember
19 who's on you all's side. Listen, the companies are on
20 theirselves side, you know, and if MSHA don't help us, and
21 if we don't get involved this -- we didn't choose to
22 fight. MSHA's our friend. We get enough fights. We
23 don't have to go looking for them. We get enough the way
24 it is. But I want to ask you all to go back to ever
25 who's in charge or ever who's made this rule, and this is

1 a hasty rule, a hasty decision.

2 It's something that's complicated that nobody
3 really understands. Us on the verge of securing this
4 personal dust sampler, I think that we owe it to every
5 miner in the world, union and nonunion, to wait until we
6 at least get this personal dust sampler ready. Thank
7 you.

8 MR. NICHOLS: Thank you.

9 (Applause.)

10 MR. NICHOLS: Gary Trout?

11 MALE VOICE : How about Carl Morris?

12 MR. NICHOLS: Okay. You just keep moving them
13 up here, we'll arrange them any way you want to.

14 MR. MORRIS: Gentlemen, my name is Carl Morris.

15 I work as a longwall shield operator for Consol energy
16 in North Central West Virginia. I'm here today to
17 protest the enactment of the proposed dust rules in their
18 present form.

19 These rules are a step back from the comments
20 and recommendations voiced by the miners during the
21 public hearings on the 2000 proposed dust rules, and are
22 contrary to the recommendations of the 1996 Federal Dust
23 Advisory Committee, and the 1995 NIOSH criteria document
24 on respirable dust. They are also, in my opinion, in
25 violation of the Federal Mine Safety and Health Act.

1 Reducing compliance sampling and raising the
2 allowable dust limits will result in an encourage in the
3 number of miners who will suffer and die from black lung.

4 We need continuous dust monitoring or, at the very
5 least, full shift dust monitoring. The coal operators
6 can now manipulate the dust sampling with the eight-hour
7 shut-off of the sampling. I'm required to work a ten-
8 hour shift. I begin my shift at 8:00 a.m., usually reach
9 the surface around 6 o'clock p.m.

10 On the shifts that the dust samples are taken, a
11 company safety supervisor supervises the cleaning and
12 replacement of the water sprays on the shear, and takes
13 pressure readings to make sure that the water spray
14 system is in perfect condition. This usually takes an
15 hour to an hour and a half, and is not done on every
16 other shift when dust samples are not being taken.

17 Management also, coincidentally, always seems to
18 have to work on the conveyor belts or take the slack out
19 of the face conveyor chain on these days. We seldom
20 start mining on a sampling day but 11 o'clock a.m., as
21 opposed to our normal start of 9:00 a.m. The dust pumps
22 are removed from the miners at 3:00 p.m. for trip
23 outside. We, the miners, stay and continue to mine coal
24 until we are relieved by the afternoon shift, shortly
25 after 5:00 p.m. We often mine as much coal, or more,

1 after the dust pumps are removed than while we're wearing
2 the dust pumps.

3 There is no need to raise the allowable amount
4 of dust or to substitute respiratory devices for
5 engineering controls. The technology exists now to not
6 only meet the 2-milligram standard, but to lower it. The
7 movement of the shields against the mine roof generates a
8 substantial portion of the respirable dust on the
9 longwall that I work on. The shields that I operate have
10 a watery spray system to control this dust, but when a
11 hose busts, or a fitting leaks on the water spray system,
12 the water is turned off on that shield instead of
13 repairing the leak.

14 Approximately a fourth of the shields on the
15 face have the water turned off on the spray system. This
16 longwall is also equipped with a shear initiation system
17 that would have the shields advance automatically when
18 the shear passes. This system what was your
19 understanding allow the shield operators like myself to
20 remain on the outby side of the shield and out of the
21 dust generated by the shields. This system is not in
22 use.

23 The company will only do the minimum to comply
24 with the dust standards. If the dust standards are more,
25 then the companies will do more. But if the dust

1 standards are raised, as they would be in the new
2 proposed rules, they will do less to control the dust.

3 My father suffered and died from black lung. I
4 hope that you will take the recommendations that you hear
5 today from the miners and the representatives of the
6 miners, and incorporate them in revised dust control
7 rules, so that I and other miners working today will not
8 have to suffer the same fate as my father and the other
9 miners of his generation. Thank you.

10 MR. NICHOLS: Thank you.

11 (Applause.)

12 MR. NICHOLS: Okay, Gary Trout?

13 MR. BAKER: Hell, my name is Tommy Baker, T-O-M-
14 M-Y B-A-K-E-R. I have worked on the longwall. I have
15 used the Airstream helmet that you're talking about. I
16 worked as an electrician on the longwall. It is all but
17 impossible to use them behind the shields when you've got
18 work to do behind the shields, replacing pins, anything
19 like that. It's all but impossible to use them. But I
20 do agree they do help to some extent if you're at the
21 head gate or if you're running a head gate shear. I'm
22 not saying it's all bad.

23 And to answer your question a while ago, George,
24 you said, did the company want you to wear them? Yes,
25 they did. It was company policy at the mines where I

1 worked at. And it was company policy, if they seen it
2 wasn't working for the electrician, so they're going to
3 have to come up with something else, so they go, well,
4 we'll let you have one of these muzzles, one of them
5 small muzzles that you stick on. So you can imagine what
6 you'll lack. You done tail gate in. They pull shear up.
7 All the shields is pulling up, and that's what you got
8 coming back up. You can't even see.

9 And as for weight of the things, I think
10 everybody should have to wear on for 12 hours, because
11 the shift we worked. And that's all I have to say.

12 MR. NICHOLS: Okay, thanks.

13 (Applause.)

14 MR. NICHOLS: They don't want you up here. I've
15 been trying to get you up here for a while.

16 MR. TROUT: My name is Gary Trout. G-A-R-Y T-R-
17 O-U-T. I'm a coalminer. I've been a coalminer for 30
18 years, and currently I'm a health and safety
19 representative for the United Mine Workers of America.
20 I'd like to begin by saying I appreciate the opportunity
21 to talk to the panel here today, and to echo my concerns
22 about the new proposed rule.

23 The task before this panel is one of great
24 importance, because this proposed rule, if implemented,
25 will affect the life of every coalminer in the United

1 States. As I understand it, the proposed rule has
2 eliminated a number of requirements contained in part 7
3 and part 90. Those include the standards on bimonthly
4 compliance of sampling MMUs, and designated areas
5 contained in C.F.R. 7207 and C.F.R. 7208.

6 These changes could allow substantial increases
7 in the dust levels. We have been told that dust
8 concentrations in the mine atmosphere could increase from
9 2 milligrams up to 8 milligram. This increase is in
10 direct conflict of the Mine Act under section 202(b),
11 which states, in pertinent part, "Each operator shall
12 continuously maintain the average concentration of
13 respirable dust in the mine atmosphere during each shift,
14 to which each miner in the active workings of such mine
15 is exposed, at or below 2 milligrams of respirable dust
16 per cubic meter of air."

17 Increasing the respirable dust levels in the
18 mine atmosphere by utilizing any means contained in the
19 proposed rule is a violation of the Mine Act. The Act
20 clearly requires dust levels to be maintained at the
21 lowest possible level, and at no time are they to exceed
22 2 milligrams. In my opinion, MSHA has overstepped its
23 authority by proposing this rule. The latest statistics
24 show that in this country, every six hours a person dies
25 from pneumoconiosis, or as we know it, black lung. If

1 dust levels increase, this number will also increase.

2 In my opinion, the proposed rule fails to
3 address the dust problems in our coalmines today.
4 Personal continuous dust monitors can address many of
5 these problems. These devices would allow for continuous
6 monitoring for all designated areas of the mine. They
7 would provide data on the dust concentrations miners are
8 exposed to 24 hours a day, 365 days a year. The
9 technology is in the final testing phases, as we have
10 heard here today, and should be permitted to be completed
11 so that an adequate rule can be built around this device.

12 It amazes me that in this great country of ours,
13 we can demand clean air to breathe on the surface, but
14 forgets those individuals who just happen to be working
15 underground in the coalmines. The coalminers of this
16 nation are not second-rate citizens. We also demand
17 clean air to breathe. This can be accomplished by the
18 use of personal continuous dust monitors.

19 In closing, I would ask the panel members to
20 remember this quote from the Mine Act. "Congress
21 declares that the first priority and concern of all in
22 the coal or other mining industry must be the health and
23 safety of its most precious resource, the miner." Thank
24 you.

25 MR. NICHOLS: Thank you.

1 (Applause.)

2 MR. NICHOLS: Martin Lane?

3 MR. LANE: My name is Mart Lane. You spell that
4 M-A-R-T Lane, L-A-N-E. I had an opportunity to work in
5 the mines prior to the Act for three or four years, and
6 I've worked in the mines prior to the Act, when you could
7 hold up your head up just like that right there, and you
8 could not see it.

9 And I've seen it progress through the years, to
10 where there is some quality in there today. And you can
11 see that over the years. I don't need to take a sample.

12 I can drive down the road I go to work to get to the
13 mines I work at, and I drive by about 10 small punch mine
14 operators, whose people will not be here today because
15 they don't have a voice. And you can see those people
16 with the little packheads are coming out in their
17 automobiles to their faces and their hands. They still
18 look like 1965.

19 That's because of the sampling. They're not
20 complying with it. I saw that cycle go through. Even in
21 the mines that I work today, and before the mines that
22 even I work at today. Before you left the pump in the
23 mine office, you hung it up in the slope as you went in,
24 or you took it on the section and left it at the intake.

25 It's not a good system. They can just basically

1 manipulate it any way they want to. It's hard for a
2 coalminer right here to understand today how we could
3 raise these samples -- or raise the dust level, when no
4 doubt, myself, I'm going to lose part of my life from
5 breathing this dust. And there's lots of Part 90 miners
6 that I've met here today that has Part 90 miners caught
7 today from dust.

8 And to say that it's actually went down, I don't
9 think there's no statistics out there that really prove
10 that. I know there was an x-ray given out there, that
11 you could go to the company and take an x-ray, which was
12 supposed to be private, that was supposed to do something
13 with this analyzing, I guess, how much black lung was
14 still out there over the past few years.

15 But just to go out there -- to me, it's just
16 blatant. We're just blatantly violating the Act to go
17 out there and put this rule in. I mean, it's just as if
18 we have no respect for human life. When you went halfway
19 around the world to free people who are depressed (sic)
20 and to have a quality of life, and we sent people to go
21 out there and free them, and get them killed. But yet,
22 they want to put coalminers in this situation today.
23 This is just terrible. And I don't know of any other way
24 to say it. It's terrible. And that's all I'm going to
25 say about it. But I would appreciate it if you have any

1 influence on this, to be able to get it out of there and
2 get sampling to where it's honest sampling, then I would
3 appreciate it, and I'm sure everyone else will. And
4 those miners that I see driving down that road every day
5 would appreciate not having to blow breathe that air.

6 Another thing, too. If you think the industry
7 will police themselves, the mining industry today
8 probably dumps hundreds of thousands of gallons of oil
9 out in the water tank a day. Just that alone. That
10 right there shows you lack of respect for the environment
11 and the people. They're not going to place themselves
12 to improve it. An I thank you.

13 MR. NICHOLS: Thank you.

14 (Applause.)

15 MR. NICHOLS: Jimmy Jarrell.

16 MR. JARRELL: My name is James Jarrell. That's
17 J-A-M-E-S J-A-R-R-E-L-L. I've got working on 25 years as
18 a coalminer. I worked a little over 11 years
19 underground, and I'm currently at a prep plant. I don't
20 think that the rules that you're proposing here are for
21 prep plants. I think this is just for underground mines,
22 but I'm --

23 MR. NICHOLS: Well, sampling is. The single
24 sample is for surface.

25 MR. JARRELL: Okay. Well, I represent some

1 underground miners also. I'm vice president of our local
2 union. I think we need more samples done instead of
3 less. I think you're dropping the number of samples that
4 are going to be done. I don't want to see this. I think
5 if you listen to the people that have been up here before
6 me, and the people that have been here this morning, are
7 all of the same mind, I believe. There's like, I
8 figured, a little over 2,000 years experience that was in
9 this room, and all of them are saying the same thing,
10 that we need more, we don't need less.

11 I remember I was at the hearings down in
12 Kentucky in Prestonburg in 2000, and we were saying down
13 there, everyone was telling you that the operators, if
14 they had the opportunity to use the helmets instead of
15 using adequate controls on the dust, that they would go
16 that route. And I really don't think you believed us
17 down there, but there was one operator that testified
18 down there, and one of the things that he brought up was
19 that he would like to see every underground coalminer
20 wear that helmet. He validated what every one of us had
21 said, that one guy. He told you what we had been telling
22 you, that they want to see us wear those helmets. And we
23 don't want to.

24 There was also a nonunion miner that testified
25 down there how things that are done, in his mind, and he

1 told you he was putting his job on the line. Now, he
2 probably didn't have a job when he want back to work. I
3 thought that took a lot of brass there.

4 I would like to see full production samples. I
5 know I work a 12-hour shift, and I think your samples
6 should be set up, if I work a 12-hour shift, to sample
7 that 12-hour shift. I think your proposals are in
8 violation of the Coal Act. I think it will allow
9 operators to operate in excess of 2 milligrams. I don't
10 want to see that.

11 I think the rules that you're proposing are very
12 hard to understand, and I think they'll be very hard to
13 enforce, because I know some of the operators that I've
14 had to deal with, if there was any kind of ambiguous
15 language in it, they could do whatever they wanted to,
16 basically. If it's not plain and simple and black and
17 white, I don't have it. And if you can't make it like
18 that, you're not doing something for me. That's all I've
19 got.

20 MR. NICHOLS: Okay. Thank you.

21 (Applause.)

22 MR. NICHOLS: Jim Lamont. Is Jim here? Oh,
23 here he is.

24 MR. LAMONT: Good afternoon. After speaking on
25 Tuesday in Washington, PA, I have just a few things I

1 would like to add to my testimony there. The proposed
2 rules have eliminated a number of requirements contained
3 in parts 70 and 90. Those include the standards on
4 bimonthly compliance sampling of MMUs, and designated
5 areas contained in 70207 and 70208, and bimonthly
6 sampling of part 90 miners contained in 9208.

7 That sampling will be conducted through Agency
8 policy, which is subject to change without regulatory
9 review, as MSHA did recently. MSHA reduced, through
10 policy, compliance dust sampling from six times a year to
11 four times a year, and treating those as noncompliance
12 target samples. That was mentioned on Tuesday. What is
13 our guarantee you will not reduce this even further in
14 the future to say, two times per year?

15 The proposals make a number of other changes
16 which would alter the allowable dust levels up to 8
17 milligrams and even more for compliance purposes. An
18 example of policy changes, to add to the confusion, would
19 be in 7202(b), which states, "Sampling devices must be
20 calibrated." Not "approved sampling devices," as does in
21 the existing 7204(b), but "sampling devices must be
22 calibrated at a flow rate of 2 liters per minute, or at a
23 different flow rate as prescribed by the Secretary of
24 Health and Human Services for the particular device
25 before they are put into service, and thereafter, at

1 intervals proscribed by the manufacturer."

2 Proposed 7202(b) does not address the
3 calibrating being done at intervals not to exceed 200
4 hours of operating time thereafter that is already in the
5 204(b) and MSHA policy. It refers to time intervals
6 proscribed by the manufacturer. Gentlemen, which one is
7 it? What procedure is to be followed?

8 In the past two years, MSHA has made a number of
9 major policy changes affecting the respirable dust
10 program. Changes that eliminate standards, changes that
11 adversely affect and diminish the protection of miners in
12 this country. In December 2001, MSHA announced that they
13 withdrawn action on two key rules. One standard was on
14 continuous dust monitors to be used in underground
15 coalmines. The second was a standard requiring
16 respirable dust levels to be lowered in the nation's
17 mines.

18 Despite Agency promises to beef up MSHA dust
19 sampling inspections, in 2002 MSHA made changes in the
20 sampling policy, cutting MSHA compliance sampling from
21 six shifts a year to four. With the new Agency policy
22 also comes a new enforcement scheme.

23 To add insult to injury, the Agency recently
24 proposed the new belt air ventilation rule. This rule
25 allows an operator to have an unlimited velocity of air

1 in the belt entry. Air that will be used to ventilate
2 the face. Air that will be sending dust along the belt
3 line into the lungs of workers at the face. Air that,
4 under the current rule, should not have in excess of 2
5 milligrams of dust, as proscribed by law, but now, under
6 the proposed rule would be allowed to have in excess of 8
7 milligrams, with higher velocities of air, in particular
8 in the belt, comes more dust. Dust going to the face.

9 With that, I'd just like to make one other
10 statement. Last year there was several incidents. One
11 in particular gained nationwide attention, and that was
12 the Que Creek incident. A lot of work was put in that.
13 There was Commissions formed. There was investigations.
14 Ongoing. Again, there was other inundations that
15 happened. You had Jim Walters that took the lives of 13
16 miners. And with that, it took upwards of a year to have
17 a report on that. Que Creek, still nothing come out on
18 that.

19 And with these reports, usually there's rules or
20 something to be promulgated to protect our miners in this
21 country. There are going on for some period of time.
22 Now, all of a sudden, we're getting rules thrown at us.
23 We get this dust rule thrown at us, which, in our
24 opinion, is going to hurt miners, and I'm confused on how
25 this whole thing works.

1 I mean, we had incidents where miners were
2 killed. Where 18 miners were almost killed. I don't see
3 the urgency into protecting miners in this country from
4 the incidents that happened there, where I see something
5 here that's being railroaded to us that's going to be
6 worse. That's just totally confusing, and I have trouble
7 understanding that. That's all I have to say

8 MR. NICHOLS: Thanks.

9 (Applause.)

10 MR. NICHOLS: Russell Thompson?

11 MR. THOMPSON: Hello, my name's Russell
12 Thompson. R-U-S-S-E-L-L T-H-O-M-P-S-O-N. Talking about
13 testimony, and I'm not going to try to be long, but it
14 should be honest, and it should be from somebody that has
15 experience. We have a lot of things in common. We put
16 our pants on the same way every day, me and you both.
17 But we don't breathe the same air all the time.

18 Being an underground miner for 22 and three-
19 quarter years, I've seen a lot of progress in the mining
20 industry. I've seen a lot of progress with MSHA and the
21 different departments. I've been on walk-arounds. For
22 17 years I've been a mine health and safety committeeman.
23 I took the job because, when I started in the coal mines
24 as a shuttle car operator, you had to bounce off the rim
25 till you finally hit what they called the biner. And

1 then he'd try to lug you and you'd just run your chain
2 and you didn't know how much you had on there, because
3 you couldn't see.

4 It has changed quite considerably throughout the
5 years, but what made me change my mind and get into the
6 health and safety part of it was because I saw when they
7 started on the dust samples, it made such an increase in
8 the air, and everything was so different. I could see,
9 finally. And I could breathe better.

10 As a young man, I didn't think much about it,
11 because my breathing was real good. But throughout the
12 time now, I wake up in the middle of the night, and I've
13 got to get up on all fours and try to struggle to breathe
14 from the dust that I neglected years ago to try to take
15 care of.

16 But my point is, we have a technology today. If
17 I was very intelligent, I would probably be up there on
18 the panel, and I wouldn't be inside the coalmine to begin
19 with, but the thing about it is, I represent men,
20 coalminers that are in there every day breathing this
21 dust, and they rely on me to stand up for them. And I
22 have tried to do my best to stand up for them. I have
23 walked with MSHA's inspectors, and I have been up to the
24 Mine Academy many years. And I heard Davitt McAteer make
25 a statement a couple of years ago saying, our goal is to

1 get black lung out of the coal mines. Well, that's been
2 our goal for years.

3 And now I see the technology to do this, and
4 it's in the personal sampler thing. And that was one of
5 my suggestions years ago, that until you got something to
6 monitor the coalminer personally, every single day, then
7 you can forget about it. The Airstream helmets. It
8 sounds like a good solution. But like I said, coalminers
9 -- and I work on a continuous mine section -- we rely on
10 sight and sound. You can't tell me that you can put
11 something on my head that's going to continue to have a
12 fan back here.

13 And we had tried it. At one of our mines we did
14 try it, but it didn't take long to find out that you
15 can't hear, your sight is obstructed from the dust that
16 collects on this, because coalminers, we're not the
17 cleanest people, we're going to handle dark grease and
18 we're going to wipe them. And you can't see, first thing
19 you know, well, they break that seal, they're going to
20 take that thing off, because they're going to say, hey,
21 when that top goes to working, I want to be able to hear,
22 and I want to be able to see.

23 I don't care what them people and lawmakers say,
24 they're not the ones is here doing my job. They're not
25 the ones. This is my life. And I made it my goal years

1 ago that I'm going to work, Lord willing, 30 years, if
2 that's what it takes, or 40, but I want to do it the safe
3 and healthiest way that I can do it.

4 And from talking to many men that have wore the
5 Airstream helmets, and they tell me how they're
6 restricted from their air and their hearing, and all
7 this, and they can take -- and they're going to jam a
8 sock in there to get that filter out of there so they can
9 breathe some, so it's not feeling like they're
10 suffocating. And from the time we started wearing these
11 selfrescuers, and you got all this other apparatus, and
12 you want to put a helmet on me. And it's true, I heard
13 somebody say earlier today, it's like walking on the moon
14 or something. You look like a man on the moon. You
15 don't need to be restricted.

16 I worked high coal, and I now work in the medium
17 coal, and sometimes it's low. And you need to be able to
18 see, you need to be able to hear, you need to be able to
19 move around, not be restricted. But you also -- it has
20 been proven that -- Davitt McAteer made a statement. He
21 said, in my office I get these reports. My man comes
22 back and he say, well, this sampling is 1.7, but I don't
23 understand how come so many men are going to the
24 hospital, getting these x-rays, and they're dying from
25 black lung. There's something wrong. And there is

1 something wrong. And it's a fact. And job security and
2 all.

3 The coal companies, when you allow them to do
4 the dust sampling, common sense wise, they're going to
5 take that little sampler and they're going to hang it
6 over there in the intake. They're going to keep it out
7 of that dust. Now you say, well, why ain't the men smart
8 enough? It's not that they're not smart enough and they
9 don't know what's going on. They are job secured, for
10 one thing. That's the biggest reason. Because what they
11 hear is, you're going to shut this place down. If they
12 come in here and we can't be in compliance, they're going
13 to shut us down, or we're going to have to pay out all
14 this extra money. And the bottom line is money.

15 And I'd like to say that my life is worth more
16 than all the money out there, and all the men I work with
17 is worth more than money. And if it's technology, I
18 mean, it has surprised me that we haven't moved further
19 in technology in the 22 years that I've worked in the
20 coal mines, almost 23 years. And to see something like
21 this personal dust sampler, it makes me feel good to know
22 that if I'm on a section that each and every one of them
23 make, we can just push a button and we can see what we're
24 being exposed to, and we can shut it down, or say, hey,
25 we're going to hang some more curtain, take some curtain

1 down, we're going to have to clean some scrubbers, put
2 some more water sprays, clean them out, or whatever it
3 takes, let's get some more air up here.

4 Because you can't always see that dust. We know
5 that. But when you break a seal on a helmet or
6 something, you're going to breathing that stuff right in
7 there. And you're going to increase that? You can't
8 see. When the dust is increased, you cannot visibly see
9 that machine that you're going to be going up to load
10 behind. They're so wide, and the places get so narrow
11 anymore, and the machinery gets bigger. You're going to
12 take bigger risk of running on top of somebody. And I
13 just don't want this personally.

14 I've always backed MSHA when it come, as a walk-
15 around, take my notes, and I do my best to help MSHA in
16 any way that I can, what time they are there. And
17 they'll tell you that they know, when they come, that
18 they're going to be -- the faces will probably be flush.
19 They're going to start over here. They're going to run.
20 And they're going to be in the clean air all day long,
21 what time they're there. I mean, you know, it's no
22 secret. Everybody knows that. Then when they leave,
23 it's up to the men, but if we had a sampler on our side
24 where we can have a readout at the end of the day, I
25 mean, that sounds unbelievable to know that this kind of

1 technology can go straight back in to MSHA, and they can
2 see if Davitt wants to see, or whoever, they can see the
3 true facts of after, when they're not there, what goes
4 on. That's all I have to say.

5 MR. NICHOLS: Thanks a lot.

6 MALE VOICE: Amen.

7 (Applause.)

8 MR. NICHOLS: The court reporter's in dire
9 straights over here, so we'll take a five-minute break.

10 MR. THAXTON: The next speaker is Joe Carter.

11 MR. CARTER: Thank you. Is this on?

12 MR. THAXTON: Yes. You have to talk real close
13 to it.

14 MR. CARTER: Okay. Thank you and welcome to
15 District 17. My name is Joe Carter. I'm the president
16 of Unit W-8, District 17.

17 MR. THAXTON: Could you spell your last name for
18 the court reporter, please?

19 MR. CARTER: Carter, C-A-R-T-E-R. I've had the
20 privilege of representing coal miners for many years now.
21 I worked underground in a coal mine for a lot of years,
22 and I've witnessed the plight of miners and the advances
23 that we have made. Those advances have come at an
24 extremely high price. And living in West Virginia, I
25 understand the significance of the Federal Coal Mine

1 Safety and Health Act of 1969.

2 Many people see the creation of the act as a
3 result of a disaster that occurred in Farmington, West
4 Virginia, in 1968. Today, we may all agree that that was
5 the catalyst for this landmark legislation. However, the
6 reason for the nation's health and safety laws in the
7 mining industry are rooted in the bloody and horrific
8 history of the mining industry.

9 Literally hundreds of thousands of miners have
10 lost their lives since the turn of the century. These
11 men and women were killed in mining accidents that were
12 immediate and severe. We have all seen their stories in
13 the news. They are the foundation of the 1969 act. But
14 those are not the group of miners that we're here to
15 discuss today. Those miners deserve our admiration, and
16 their families our support and sympathy.

17 There is, however, another group that created
18 the framework for the act. Generally speaking, they die
19 a horrific and painful death in the quiet of their homes
20 or in the hospitals or nursing homes. These miners are
21 out of the eye of the public and literally suffocate as a
22 result of Black Lung. They were sacrificed by their
23 employer for the sake of higher production. And until
24 miners demanded better, they were ignored by their
25 government for the sake of business interests.

1 No operator gave us better health and safety
2 conditions, nor did a government agency give us decreased
3 dust levels in the mines. Miners and those in attendance
4 who have witnessed our brothers and sisters gasp with
5 their last breath demanded it. They fought for it, and
6 many of them have died for it. I'm here to tell you as a
7 miner and president of District 17 that no one, no
8 operator or this agency, is going to take these
9 protections from us.

10 I will explain some of my specific problems with
11 the proposed rules, but it is important for everyone to
12 understand where this dialog begins. The dust rules are
13 a slap in the face of miners. It would outrageously
14 reverse many improvements for controlling dust and ignore
15 testimony of miners and representatives across the
16 country. We're not going to permit any reduction in the
17 dust standards. And please understand what I'm saying.
18 We're not talking about what is believed that we are
19 entitled to, but what we know that our rights as miners
20 are.

21 No one is going to sell away our right to a safe
22 work environment. And that's what the act says. The act
23 says that the miners would have a safe work environment.
24 That was why it was offered. That is why it was brought
25 about, was to give miners better health in safety.

1 The 1969 act called for a reduction in
2 respirable dust of 2 milligrams per cubic meter. Your
3 proposed rule ignores that standard and allows dust
4 levels in the air that miners will be working in to
5 increase as much as 8 milligrams per cubic meter. What
6 is worse is that this has been done in such a way that a
7 casual reader of this proposal would never know it. I
8 myself have looked at -- I have looked at the proposal,
9 and it states 2 milligrams per cubic meter of dust.

10 Your decision to allow powered air purifying
11 respirators and introduce protection factors is a cruel
12 method to increase dust levels in the mine. The mine
13 workers will not tolerate this increase, nor will we
14 tolerate this deception. Miners have demanded that the
15 agency take over the dust sampling program and increase
16 the number of samples taken each year. Your proposal to
17 allow the operators to verify their own dust plan and
18 have reduced sampling, in some cases by 90 percent, is
19 just unconscionable.

20 Gentlemen, miners in District 17 and across this
21 country are losing faith in your ability and desire to
22 protect them. They've seen reductions in enforcement.
23 They've seen a lack of caring. But this rule, they see a
24 far uglier side of the mine -- of management. They see
25 an agency who understands that at today's dust levels,

1 1,600 miners will die this year from Black Lung. But do
2 they care? They see you as willing to increase dust
3 levels fourfold for the sake of production and at their
4 expense.

5 Your proposal cannot be allowed to become law.
6 You may be willing to roll the dice on the lives of these
7 miners, but I'm not. We will fight to defeat this rule,
8 and we will continue to oppose such callous proposals.
9 It's time that we listen to miners in this country, the
10 men and women who know best, and write a rule that offers
11 the protection that they deserve.

12 And also, I would like to point to the fact that
13 the advisory committee that was formed, in their report
14 -- this proposal seems to go against many of their
15 suggestions and their recommendations to this agency.
16 And you know, as a parting thought, I'd just like to say
17 that West Virginia worker's compensation -- and I know
18 that's not a concern to you, but it's in a terrible
19 condition at this time by all reports, and how it's
20 financially strapped.

21 Do you know if you increase the dust levels in
22 the mine by fourfold, there is another thing that is
23 going to make a terrible impact up on worker's comp in
24 the state of West Virginia, on down the road. It may not
25 be immediate, but as these miners are exposed to more

1 dust, they're going to have more breathing impairment
2 problems. And West Virginia worker's comp is going to
3 reap that problem.

4 You know, something that I would like to ask you
5 all to consider is that these miners, they just want to
6 work and make a living. Since 1969, which is about 34
7 years, it has been 2 milligrams. Everything that is
8 reported suggests that they're still contracting
9 pneumoconiosis. They're still breathing enough
10 respirable dust that is causing impairment to their
11 lungs. And if anybody disagrees with that, you know,
12 feel free to say so. But that's what that I'm told, and
13 that's what I read.

14 But yet, through this rule and this new
15 proposal, there stands a chance that you'll increase the
16 dust levels instead of continuous monitoring, as they
17 have developed the system that the gentleman demonstrated
18 to us this morning that they could monitor continuously
19 and use those to make sure that the dust levels that the
20 miners work in are in compliance. And I just believe
21 this rule is unreasonable. I believe that it needs to be
22 taken back and rewritten, and that you need to recognize
23 the framework of the 1969 Coal Mine Health and Safety
24 Act.

25 And I thank you all for being here in

1 Charleston, and thank you for this opportunity to make
2 comments at this hearing.

3 MR. NICHOLS: Thank you.

4 (Applause)

5 MR. NICHOLS: Roger Slayton.

6 MR. SLAYTON: Yes. My name is Roger Slayton.
7 I've been in the coal mines for approximately 30 years.
8 I've worked about under any conditions that a coal miner
9 can work under. And I am against this rule change
10 because it may allow the dust level to be increased in
11 the coal mine, thus creating the potential for dust
12 explosion, which is the most violent type of explosion
13 that you could have. And increasing the dust level would
14 also increase the number of miners and families of miners
15 who would suffer from breathing the dust.

16 You know, we've heard a lot about coal miners
17 down with the Black Lung today. But what about the
18 families of those coal miners? I watched my father die,
19 by God, from breathing coal dust. When he went to the
20 hospital and they suctioned him out, you've got to reach
21 in there and pull it up with your fingers. I don't want
22 that for no more coal miners in this state or this
23 country. I don't want no man to have to go through with
24 watching their father lay there and die like that. And
25 to let a coal company develop their own dust plan --

1 they'll never be out of compliance, no way.

2 What we need is a continuous dust monitoring
3 system to where each individual knows what he's in and
4 knows what he has to do to get out of there. If we drop
5 the ventilation, the water -- a coal miner is smart
6 enough to where he knows when he is in too much dust.
7 He'll get out of it. And he'll shut that section down
8 until it's fixed, if he knows it. But he has got to have
9 something to stand on. You can't wait six months for
10 that inspector to get there to tell you you're out of
11 compliance. You've got to file a complaint to get them
12 out if you feel like you're in too much dust.

13 We need something that will continuously monitor
14 that dust, and where we've got something that we can
15 immediately get hold of the federal government or whoever
16 we need to get hold of to get the situation taken care
17 of. And that's basically all I've got to say.

18 MR. NICHOLS: Thank you very much.

19 (Applause)

20 MR. NICHOLS: Now Dennis O'Dell.

21 MR. O'DELL: Good afternoon. My name is Dennis
22 O'Dell, D-E-N-N-I-S, O, apostrophe, capital D-E-L-L. I'm
23 an international health and safety representative for the
24 United Mine Workers, and I come before you today, as I
25 did in Washington, PA, a couple of days ago, to speak to

1 you on this rule.

2 MR. NICHOLS: Hold on a minute. We're doing the
3 best we can with this mike. But you guys in the back,
4 come on up here close to the front so you can hear this.

5 We have to kind of stay close to the mike.

6 MR. O'DELL: Is that better? Better or worse?

7 MR. NICHOLS: I hear you good. It's the guys in
8 the back that keep raising their hands.

9 MR. O'DELL: Okay. Today I come before you as a
10 representative of the miners. I would like to thank this
11 committee for the opportunity to speak on what I believe
12 may be one of the single important issues today and for
13 the future that deal with miners all across this nation.

14 Tuesday, in Washington, PA's testimony, I had
15 spoke to you on some technical aspects. Today I'd like
16 to speak to you on a different level. We as miners have
17 a lot of stake in this. We, meaning miners who are under
18 the jurisdiction of the Department of Labor of Mine,
19 Safety, and Health Administration, have always been very
20 grateful for the protection that your agency has had to
21 offer us in the past. By far, we know that we are
22 blessed with what is know throughout the world as
23 probably some of the safest coal mines to work in. And a
24 lot of this should be, and is credited, to you and your
25 agencies, as well as the inspectors from your agencies,

1 who are on the ground every day trying to enforce the
2 code known as 30 CFR.

3 With saying that, it also needs to be pointed
4 out to all of us that somehow we've missed a part of that
5 that we were mandated to do. And when I say we, I speak
6 of everybody in this room. We've missed a part of the
7 act somehow, when the agency is failing to protect the
8 health of the miners. We've gotten pretty good on the
9 safety end, but we failed on the health of the miners.

10 Miners today are still dying not just from roof
11 falls, fires, explosions, and other mine-related
12 injuries, but miners are still dying today of health-
13 related illnesses such as Black Lung. I truly believe
14 that as I've talked to some of the gentlemen on this
15 panel before me that somehow you've tried to fix this
16 problem. Somehow you believe that maybe there are some
17 things in this proposed rule that try to address that.

18 But unfortunately, in looking at the rule as a
19 whole, it has failed and fell short in getting done in
20 what you've attempted to do. This proposal, as you've
21 heard today by many who have testified before me, is
22 considered to be complicated and considered to have fell
23 short of that mark that we have all tried to achieve.
24 Many people, for example, of the miners, lawyers,
25 representatives, and the general public are really not

1 sure what this rule says, proposed rule says.

2 To further complicate the issue, there was a
3 limited time to digest and try to understand exactly what
4 was being said in this proposed rule. One of the biggest
5 single questions that I've heard is what is actually in a
6 rule and what is in the preamble. What is enforceable
7 and what is not? The preamble addresses a lot of things,
8 but as we're all aware, inspectors, the very guys on the
9 ground trying to enforce these laws, cannot enforce or
10 cite a preamble. Judges will rule against that, and they
11 will continue to say that if it was implied and it was
12 intended to be law, then it should have been listed in
13 law, not a preamble.

14 Taking us a back a little bit, if anybody can
15 remember what happened with the new ventilation regs that
16 we went through -- and we got this nice little blue Q&A
17 book, question and answer book. It was given out to
18 everybody when we were going through this process. It
19 ended up being nothing more than a nice piece of bathroom
20 reading material, basically. That's all it became worth
21 because it couldn't be used for anything else.

22 Does anybody in here ever remember seeing a
23 citation used quoting the blue Q&A book or preamble in a
24 body of a citation when a company violated this plan? I
25 think if you look back, you'll find the answer to that

1 question is no. That's not only what I fear -- I know
2 will happen with the same thing with this new proposed
3 dust rule.

4 Another thing that we need to look at is how to
5 fix the exposure limits. Looking back, we went from a
6 mindset of tossing around a 1 milligram standard about
7 four years ago to now giving up a mandated 2 milligram
8 standard, as guaranteed by the act, and possibly allowing
9 a standard that will allow dust exposures to go to 8 or 9
10 milligram standard.

11 We asked for samples to be taken for entire
12 shifts at the 2 milligram standard, and you gave us an
13 entire shift sample with a 2.3 milligram standard with a
14 lot of other factors included in that, calculated by some
15 mathematician or somebody.

16 Also, the flexibility of the operator hasn't
17 been fixed. When they're allowed to go in excess of 115
18 percent of the quantity specified in the plan, they're
19 allowed to exceed the production levels as specified in
20 the plan by 32 percent. I think if I read it right, it's
21 not until 33 percent of the production shifts exceed that
22 triggers a new plan verification, and that's up to the
23 discretion of the MSHA district manager. And I still
24 don't understand where the gains for the worker
25 protection are in this.

1 Once an operator submits his plan to the
2 district manager -- it's another point that I'd like to
3 bring out today. The district will give the operator
4 what is called a provisional plan approval to operate
5 under until such time that the MSHA inspector can come to
6 the mine and make the samples. We have numerous plans
7 out there. At one point, I heard 700-plus plans -- it
8 may be more than that -- that is going to have to go
9 through this process. So it's going to be awhile before
10 they can get to the mines to check these.

11 Then the operator will call the agency and tell
12 them the day and the time that they want them to be on
13 the property to watch the sample, which to me is prior
14 notification, no matter how you look at it or who calls
15 who. Why? If our field offices have all this collection
16 of data on a mine at their districts, and they have a lot
17 of history of data collected, based on past history of
18 dust samples, inspections, and the district manager feels
19 comfortable giving a provisional plan approval based on
20 this, by telephone or e-mail or whatever -- you get the
21 picture -- and it's okay to operate under this plan until
22 MSHA can come to watch the verification sample being
23 taken place, then why does notification have to take
24 place?

25 I've been told on one side that this is the best

1 thing since the creation of sliced bread, yet we don't
2 feel comfortable enough to go to a mine unannounced with
3 the very thing that we've already approved via fax or e-
4 mail or telephone.

5 I don't know what the problem would be because
6 guess what? On the date of the verification sampling, if
7 I read this right, and the operator doesn't have in place
8 what he submitted under that plan, it's no big deal
9 because, number one, he can adjust his parameters at that
10 time to come into compliance with his plan; or two, he
11 can make no adjustments.

12 In other words, whatever it takes for the
13 operator to comply on that date he is going to be allowed
14 to do. And it still doesn't matter because there is no
15 incentive for them to do that because MSHA is not even
16 going to cite the operator at that point. MSHA is just
17 going to let them to try to do it over and over again
18 until they get it right. This type of loose enforcement
19 is not going to scare Mr. Profit Coal Company.

20 Some of the things that we've addressed, too,
21 was all the miners activities that the advisory committee
22 had addressed. The miners' participation in the interim
23 of the operator dust sampling program -- this should be
24 encouraged to provide assurances that a credible and
25 effective dust sampling program is in place. And to some

1 extent, it has been addressed. Miners designated as
2 representing the miners should be afforded the
3 opportunity to participate in all aspects of dust
4 sampling for compliance at the mine without loss of pay,
5 as provided by the section 103(f) phrase in the Federal
6 Mine Act. And I understand this was addressed.

7 Miners' reps should also have the right to
8 participate in dust sampling activities that would be
9 carried out by the operator for verification of dust
10 control plans with no loss of pay. This hasn't been.

11 As a representative of the miners, I have been
12 asked to come before you today, as well as me having a
13 personal interest in this, to fix some of the problems
14 that I and many other miners have raised before you.
15 Show us where these will be guaranteed, black and white
16 fixes.

17 I haven't heard this argument come up yet, but
18 I'm sure it's going to appear at one time or another. So
19 being around as long as I have, I've just got it in my
20 gut that it is going to pop up, so I'll throw it out
21 there myself for the sake of argument. That argument
22 will be -- or I anticipate an argument that the agency
23 will say that we won't mandate a rule to force companies
24 to use something if it isn't economically feasible to do
25 so.

1 And I got this impression that the agency may
2 feel that a PDM in their minds may not be economically
3 feasible to force the companies to use. That somewhat
4 doesn't hold water when we have a rule that mandates
5 airstream elements at a certain level after all
6 engineering controls have been exhausted. That could be
7 argued that this isn't economically feasible as well.

8 The companies for a long time have argued that
9 the unions aren't economically feasible. They argue that
10 MSHA is not economically feasible. They try to do away
11 with you. They try to do away with us. And they're
12 going to argue that some of these other things aren't
13 economically feasible.

14 I wonder what the real difference is in the cost
15 of a PDM versus airstream elements. The initial reaction
16 is the PDM is probably more costly. But I think we need
17 to look at that on a longer term and a broader scope.
18 airstreams are simple helmets, supposedly. There will be
19 an additional cost because it's something that the mine
20 operators don't have on a lot of their properties to this
21 day. So they have a cost of a helmet that has chargers
22 and filters, as well as whatever maintenance and cost it
23 is to provide initially.

24 On the other hand, miners need cap lights to see
25 underground. PDMs have cap lights attached to them. So

1 this is a way to offset that cost as well. But you have
2 to look at what would be, in my opinion and in the
3 public's opinion, and should be in everybody's opinion,
4 the largest economic cost of this rule, of PDMs versus
5 airstreams with an 8 milligram standard, and that is the
6 economic impact of what it's going to be on society with
7 the loss of many, many miners' lives by either sickness
8 and/or death of Black Lung, and additional mine fires and
9 explosions.

10 The argument of airstreams used earlier on,
11 which I heard today, about having the option to either
12 put airstream helmets on a miner or take that miner out
13 of that dusty environment and putting him in a less dusty
14 environment is also ludicrous.

15 Number one, it still allows for a more dusty
16 work environment. And number two, the companies won't
17 move miners from one work place to another. It just
18 won't happen. Just like this rule, the moving of miners
19 out of a dusty area to a less dusty environment is
20 unrealistic. The only true way to fix this whole mess is
21 for us all to get back to the basics, simplify, simplify
22 things by following what was mandated by the '69 and the
23 '77 Coal Act.

24 We need to go back to enforcing a 2.0 milligram
25 standard at an eight hour period, less milligrams for

1 longer work shifts, not more. We need to sample work
2 areas. We need to sample occupations. We need to lower
3 dust, lower dust, lower dust. We need to enforce the
4 law, enforce the law, enforce the law. We need to go
5 back to protecting the health of the miners, not the
6 pocketbooks of the operators.

7 I intend in the hearing in Colorado to lay out
8 what I believe should be implemented in a plan
9 verification process and what should be used. But with
10 other miners who need to speak today, I understand that
11 time is short. If I were you guys sitting at that panel
12 today, I'd be pissed off. I'd be so pissed off, I'd want
13 to chew nails. You've had to listen to several miners in
14 Pennsylvania. You've had to listen to several miners
15 here in Charleston today. As we sat here today, we had
16 thousands of miners in front of the state capital
17 protesting this rule.

18 That should show you as a panel that somebody
19 has misinformed you on what should be done. One operator
20 spoke in Pennsylvania. I don't even know if we have any
21 operators here today. That tells me they think this rule
22 is in the bag, and they think it's great. That should
23 make everybody question where we're going and what is
24 going on.

25 In closing, I wonder what has caused us to

1 become calloused to miners. And I don't say this to be
2 disrespectful. But sometimes we become calloused to
3 miners' please. I often wonder if anybody really listens
4 to what miners are asking of this agency.

5 When MSHA was in trouble with the Cass Ballinger
6 bill, and he was wanting to eliminate you guys, we
7 listened. We knew how important it was to make every
8 attempt that we could and to do whatever was necessary to
9 save this agency. All we ask is that you listen and do
10 what is right to save us by protecting our health and
11 safety rights, not eliminate or reduce the standard.

12 When rule changes take place, they often need to
13 be equal to -- or they should be equal to or greater
14 than, not less than, the existing rules. And by far,
15 this is less than what the act has mandated by Congress.

16 Thank you.

17 MR. NICHOLS: Thank you.

18 (Applause)

19 MR. NICHOLS: Lonnie Alsbrook.

20 MR. ALSBROOK: Good evening. My name is Lonnie
21 Alsbrook, L-O-N-N-I-E, A-L-S-B-R-O-O-K. I know how we
22 felt on 9/11, and I hope you all felt the same way when
23 you all was attacked and had fear. Well, that's the way
24 we feel now. With this that's coming up, you all are
25 setting us up on a time bomb in the mines. I mean every

1 mines in the areas where we had fires, and all you all
2 are setting us up on is there. And I don't know if any
3 of you all have ever worked in the coal mines. It's
4 obvious you all haven't.

5 Do any of you have mining experience? And I
6 think you all need to look in the mirror at yourself
7 before you all okay this and tell them, hey, it's our
8 lives you all are dealing with. This is just not on
9 paper. It's us, period. And you all need to take this
10 back to them and say, hey, this is not right because,
11 really, this is terrorist. I mean, my goodness. You all
12 need to wake up and realize what you're doing to us
13 because it is our lives that you all are dealing with.
14 And I've got kids, and I've got family, too. How would
15 you like it if we would threaten you all? Because that's
16 what you all are doing to us.

17 All right. And on the space helmets -- we tried
18 them in our mines. They do not work. They're top-heavy.
19 We have neck injuries over them. People hurt their
20 backs by jamming their heads in the top. The company did
21 not take care of the space helmets. We had to use the
22 same helmets the other people did. Everybody started
23 getting sick, like one person have a cold, they'd just
24 throw it in a rack, and when you went up there on the
25 lawn mower, they say, there it is, you use it, and you had

1 to use it.

2 And none of them maintain this stuff. And you
3 all really know it, if you know it deep down, if you'll
4 be truthful with yourself. Because they will not do it.

5 They just throw them in a rack. Dust got on them.
6 There was no cleaning done on it. You had to take your
7 own filters in if you wanted a filter for it. And there
8 is not going to be no rules to make them do it because
9 there ain't going to be nobody there to check them. And
10 who are we going to call, the people that wrote the law?

11 Well, you know they ain't going to settle.

12 So where do we stand as miners? We're going
13 back in the stone age, and you're doing completely away
14 with the act. That's what you all are wanting to do with
15 our rights. Well, we're not going to give them up. I'll
16 tell you that right now. We'll fight to the very end.

17 Thank you.

18 (Applause)

19 MR. NICHOLS: Thank you. Next, Dennis Bailey.

20 MR. BAILEY: Dennis Bailey, D-E-N-N-I-S,
21 B-A-I-L-E-Y. I'm in my 29th year of mining, District 17,
22 Wyoming County. I worked considerably longwall
23 experience, construction, and continuous mine of
24 sections. I've basically been all throughout the mines
25 in my career. And as of July this past, I'm now a part

1 90 miner, which is not good news for me to hear.

2 September 2nd is when my sampling began, my
3 personal sampling. I'd like to share three out of four
4 of my personal samples. This is my own experience. This
5 is my reasons for consistent sampling.

6 The very first time I was ordered to put on a
7 dust pump, I was ordered to paint a mine office with my
8 dust pump on for eight hours. That was a slap in my
9 face. That was an insult to my intelligence and to this
10 whole system. Upon protesting, 10 minutes into the
11 shift, a federal mine inspector came around the corner of
12 the mine office. Of course, I summoned him. I told him
13 what was going on. He got the mine foreman and asked the
14 mine foreman to come to talk, the three of us.

15 He asked the mine foreman if I was ordered to
16 paint this mine office, which I've never been asked to do
17 before in my career. He said, yes, he will. He says,
18 and you asked him to wear this dust pump while painting a
19 mine office. He said, yes, I did. He said, are you
20 going to order this man to paint mine offices the rest of
21 his career while he is at this coal mine? He said, no,
22 just today. He said, you take it off, or you'll get a
23 citation. That was my first experience with dust
24 sampling. And we all know that wouldn't have been a true
25 sample or a good sample.

1 My second experience with samples -- and like I
2 say, this is just since this past September. I was told
3 to operator a ram car, hauling coal, in dust. I operated
4 this ram car. Monday morning, I was told to get my dust
5 pump. They wanted to sample me as I did this. I didn't
6 get the dust pump. They didn't have it available.

7 Tuesday morning, the same thing. I ran a ram
8 car, hauling coal. No dust pump was available. And the
9 same thing Wednesday. Three days in a row, I was ordered
10 to run a ram car, substituting for a man who was off.
11 The fourth day, Thursday, I was given my dust pump, and
12 they said I didn't have to run a ram car that day. I was
13 told to check pumps, water pumps, out by in good, fresh
14 air.

15 Those are bad experiences. Those are not true,
16 and those are not fair samples. And anything you're
17 basing your determinations upon should be true and fair.

18 And that's why a consistent sampling is really needed.
19 There is no use you basing decisions on untrue samples.
20 And I've heard these stories from other miners, but this
21 is my personal experience. And this is not old and hard
22 to forget. It's just since September.

23 The third time, I wore a dust pump until 3:10,
24 3:15 p.m., from 8 o'clock that morning. They took my
25 samples from me, took it outside, and ordered me to go

1 deface in a dusty atmosphere. I respectfully protested.

2 I didn't have to go. Had I listened and obeyed the
3 order, I would have gone into the dust after my sample
4 was outside. That's another reason for consistent
5 sampling. You and we have been duped by companies that
6 are sending in false information, and you can't base a
7 true and clear decision on something that is false. And
8 I'm sure many men here can testify to that also.

9 We now have technology available to sample
10 consistently, and I'm living proof that we need it. And
11 based on my testimony, that's why I feel strongly that we
12 need this technology put into effect. If we can solve
13 the problems of NASA, we can bring moon rockets back, we
14 can do this to our miners and with our miners. The
15 technology is there. The education is there.

16 Also, I'm a 10-year member of the fire brigade
17 in my rescue team where I work. I've now retired. My
18 health is failing, and I don't feel like I'm a
19 contributing party anymore. But I've seen and I know the
20 problems and the dangers of mine fires, and I understand
21 an elevated dust level is elevating the risk. That's
22 another reason I'd like to see the dust kept where it's
23 at, lowered, not raised.

24 I'm a one-year veteran of safety walkaround with
25 mine inspectors, and I wish you could be with me and see

1 the things that I see firsthand. I would like to bring
2 what I'm saying to your level so we can meet and talk on
3 level ground, eye to eye. I understand clearly that your
4 decisions are made on things that you're really not aware
5 of. And things are a lot worse than you could ever
6 imagine.

7 As a former ambulance driver -- my next-door
8 neighbor died of Black Lung. I was 18 years old. I had
9 to pick him up. It wasn't a good trip. It wasn't a good
10 thing. Also, while I worked for this company -- I worked
11 for the funeral home. I was an apprentice embalmer. I
12 witnessed personally an autopsy of a Black Lung victim.
13 It's not a pretty site.

14 All these things are leading to more of these
15 victims, and we don't need that. As a fire department
16 member of my home town, our smoke mask protects us from
17 smoke. But we can be blown out of the building by
18 backdrafts. Same thing with an airstream helmet. Even
19 if they did work and keep us out of dust levels, it's not
20 what keeps me blowing out of a coal mine. Dust levels
21 raised could present this opportunity and this
22 possibility.

23 So it's a bad choice, to go out slowly with dust
24 or be blown out quickly. But I really feel, as a fire
25 department member and a former miner rescue and fire

1 brigade member that we are endangering our coal miners,
2 not just protecting them from dust, but we're raising a
3 dust level where there is possibility of explosion.

4 This is a clear violation of the Mine Safety and
5 Health Act. We know that. We've discussed that several
6 times. It's really too late for me. I've been declared
7 a part 90 miner. It's my goal, as two and a half more
8 years in my career, to, if I could, eliminate anymore
9 dust. I've had enough. I don't want anymore. I'm doing
10 everything I can to prevent myself from being worse.

11 I also would like to say that if my statement
12 here can help the future miners, it's well worth it. I
13 don't want to be selfish and just say I've got it, I'm
14 not going to say anything. I want to help the future
15 miners. And it has been determined I have lung on my
16 dust by a team of knowledged doctors. May it not be
17 determined that you have blood on your hands for making
18 decisions that could kill our miners.

19 Thank you very much.

20 (Applause)

21 MR. NICHOLS: William Chapman.

22 MR. CHAPMAN: My name is William Chapman.

23 That's W-I-L-L-I-A-M, C-H-A-P-M-A-N. I'm with United
24 Mine Workers, president of Local 7093. With machines
25 being used to mine coal in today's modern day mining,

1 there is more dust in the mines today than ever before.
2 And in the past 10 years, 13,000 people have died from
3 the painful disease Black Lung. Painful, yes, because
4 you smother to death.

5 You all sitting at the table out there, look out
6 to your right up there. There is a sign that says King's
7 Inn. See that purple look? That's what a man looks like
8 when he's sucking for air, when a cold sweat is running
9 off of you. Now you work your lungs like that there, and
10 your heart is overcongested, and you die of congestive
11 heart failure.

12 So why would MSHA ignore the advisory
13 committee's recommendations and propose to raise the
14 respirable dust levels and reduce the number of dust
15 sampling tests? That's absurd. The proposed changes
16 that you all would make would greatly increase the
17 miners' chance to be inflicted with this dreadful Black
18 Lung disease.

19 We the miners who mine the coal that afford 70
20 percent of the nation the luxury of electricity deserve
21 and demand a safer work place. And we demand the peace
22 of mind of knowing that MSHA is working with us and not
23 against us. We urge for more increased dust sampling and
24 the reduction of respirable dust levels. This is why we
25 urge MSHA to put in place the advisory committee's

1 recommendations, which include miners' participation.

2 And if we're going to end this dreaded Black Lung

3 disease, we must unite. And "unite" starts with U.

4 Thank you, gentlemen.

5 MR. NICHOLS: Thank you.

6 (Applause)

7 MR. NICHOLS: Clyde McKnight. Okay. You think
8 Clyde is gone for the day?

9 MR. KNISELY: My name is Bob Knisely. That's
10 K-N-I-S-E-L-Y. I'm going to read a prepared statement.
11 I wish I was articulate enough to speak off the top of my
12 head. But I'm going to try to read this prepared
13 statement. And following that, I'd like to submit it to
14 the committee so it can be put in the record. And I'll
15 explain a little bit of that later.

16 I'm a coal miner employed by Consol Energy at
17 their Robinson Run mines. I have 30 years experience
18 underground, and it's all at this location. My mine is
19 represented by the UMWA. I have served several years on
20 the health and safety committee and have had many
21 opportunities to speak before such committees in the
22 past. I now serve on our political action committee.

23 And my mine employs approximately 500 people.
24 We have four continuous mining sections and one longwall.
25 And my mine produces approximately 6 million ton of coal

1 per year.

2 I had the opportunity to speak at the first
3 meeting in Washington, Pennsylvania, on Tuesday, but I
4 declined. I did this not because I like what I had heard
5 or had seen about these proposed regulations. But
6 instead, I felt that I was unprepared to speak at that
7 hearing. Well, guess what? I wasn't the only one
8 unprepared.

9 This committee has set forth a proposal which is
10 not only complicated, in my mind, close to being illegal.

11 My experience in the past has shown me that MSHA has
12 often lost their way in regulating the mining industry.
13 If it were not for regular, everyday coal miners and the
14 UMWA coming to these hearings and voicing our opposition,
15 I often wonder where would the health and safety of our
16 nation's miners be today.

17 And please don't misunderstand me. I take no
18 pleasure in pointing fingers at this committee or its
19 members, nor do I mean my comments as any personal
20 attacks to any of you. You must be aware of the
21 frustration of the coal miners in this country, who must
22 sacrifice time off from work and from their families in
23 order to attend these public comment periods. Most of
24 the men and women who will speak are only working people
25 who ask that you listen and hear what they're saying to

1 you.

2 I made a statement earlier that I felt these
3 proposed regulations in my mind were so flawed that they
4 were close to being illegal, and I want to tell you why.

5 In the Mine Act of '69, it is clearly stated that the
6 purpose and intent of Congress with this law, when it was
7 enacted -- and I'm quoting -- the first priority and
8 concern of all in the coal or other mining industry must
9 be the health and safety of its most precious resource,
10 and that's the miners.

11 I see no concern for the health and safety of
12 the most precious resource in these proposed regulations.

13 For years, we have been working to clean up the mine
14 atmosphere. MSHA inspectors for the most part have
15 forced operators to a 2 milligram standard. As flawed as
16 the current dust regulations might be, it is a system
17 that can be enforced much more easily than what you have
18 proposed.

19 There can be no enforcement if no one can
20 understand the regulations. Having had the opportunity
21 to listen to the first round of comments, it is clear to
22 me that there is nothing in this document which will
23 guarantee or ensure better health conditions in this
24 nation's coal mines.

25 The director of health and safety for UMWA, Joe

1 Maien, stated at the first meeting that this committee
2 did not take under consideration the recommendations of
3 the advisory committee, nor NIOSH, nor the comments of
4 coal miners during the 2000 comment period, nor even
5 industry. Well, what they were telling you is this. We
6 want less dust, more monitoring, and continuous monitors.
7 And it's not complicated.

8 We all see a problem in the industry. At the
9 current dust levels of 2 milligrams, we still have coal
10 miners contracting Black Lung. Your approach in this
11 document would be less sampling and more dust, up to --
12 and according to Mr. Thaxton at Tuesday's hearings -- an
13 8 milligram. And another cornerstone of these proposals
14 would be to have people wear PAPRs, which are powered air
15 purifying respirators.

16 There seems to be a big controversy over single
17 sampling instead of the current averaging of samples.
18 The view of this committee seems to be that this single
19 sample would give us a better view of the true nature of
20 the dust problem. What has changed to make you believe
21 that this one sample would tell you the truth? I can
22 tell you this, that on the day of taking this sample, all
23 dust control devices would be in place and would no way
24 show you the true nature of mining coal on a day-to-day
25 basis. Also, how would these regulations address the

1 problems of dust in our out-by areas such as our
2 beltlines?

3 With the increased tonnage being mined on
4 today's longwalls, these out-by areas must be monitored,
5 and the dust levels controlled. You want to use the
6 PPARs for compliance. How many miners have to sit before
7 you and testify that these do not work and do not aid and
8 oftentimes hinder their health and safety before you hear
9 them? I know it has been several years we have heard the
10 same thing at these meetings. They don't work. The
11 space helmets do not work. UMWA and NIOSH has
12 spearheaded the continuous monitoring technology. It was
13 reported in Washington, PA, on Tuesday of this week that
14 these devices are ready for field studies and will start
15 this month.

16 After all the time and effort, why are we now on
17 the fast track to enact these flawed and complicated and
18 inadequate regulations? I don't know, but it couldn't be
19 because 2004 is an election year. I mean, that's just my
20 opinion.

21 I, as a coal miner that work in the mines every
22 day, ask you as a committee to take a step back, look at
23 what you have presented to us, and reconsider. Go back
24 and look up why this committee exists in the first place.
25 Write regulations that make sense and protect the coal

1 miners, the most precious resource, the coal miner.

2 As a coal miner who has worked the last 30 years
3 underground, I, as many of my fellow coal miners, feel
4 that we have no voice. We look to MSHA as our protector,
5 but often we feel we are ignored or assaulted with the
6 argument that if we insist on a safe work place, then the
7 cost to operators would force them out of business. And
8 I ask you this, when did MSHA become an economist for the
9 coal operators? How did the original of the Mine Act
10 become an economic issue?

11 On Tuesday, in Washington, PA, Mr. Nichols asked
12 one respondent, what do we do to comply if continuous
13 monitors shows no compliance. In response, I asked him
14 -- I asked you, Mr. Nichols, have we considered slowing
15 down the shears on the longwall faces? Have we
16 considered cutting one direction on a longwall face?
17 We're not allowing people in by the shear as it's cutting
18 coal. We're simply making the fines where it would be to
19 the operator's advantage to keep the dust control devices
20 in place.

21 I assure you that if you as a committee raise
22 the bars as far as dust in the nation's mines, then the
23 mining industry will comply. They'll follow you. We
24 cannot allow more coal dust to legally exist in
25 underground coal mines. We must write regulations which

1 make sense for the conditions which are encountered in
2 today's mines.

3 At the mines where I work, in 2002 -- and I'm
4 not proud of this -- we were cited 804 times. We have
5 had several citations on dust problems. Many of these
6 citations were for return airways and beltlines. How
7 does this proposed regulation attempt to address these
8 problems? Also, our mine has had several dust ignitions
9 in the recent past. What would the outcome have been if
10 legally we could mine coal at four times the dust levels?

11 Having tried to look through and make sense out
12 of these regulations, I must tell you that I defy any
13 reasonably intelligent miner to make any sense of these
14 proposed dust regulations. Why do you as a committee
15 believe that such regulations, ones which cannot be
16 understood, ensure that the health and safety of this
17 nation's mines would be protected?

18 We in this country have seen many disasters in
19 our recent past, and many people have lost their lives.
20 And the whole world joined us in mourning the loss of our
21 citizens. My question to you is who will mourn for our
22 brothers and sisters who are suffering or have died from
23 Black Lung? The UMW has a rich history. We've had many
24 champions who were not afraid to stand with us in the
25 many fights we have had in the past. One of the most

1 famous ones was Mother Jones. She said one time, when
2 asked about the death of some coal miners -- and I'm
3 quoting -- we must pray for the dead and fight like hell
4 for the living.

5 And to answer my own question, I ask you to look
6 at not only my face, but the faces in this room. This is
7 but a fraction of the people who are represented here.
8 Who will fight? I'll tell you this, and please convey
9 this sentiment to the power that be, we as coal miners
10 will fight like hell for the living.

11 That concludes my prepared statement. What I
12 would like to -- I would like to address this to the
13 committee as part of the records. I've attached on the
14 back part of the Mine Act.

15 MR. NICHOLS: Okay.

16 MR. KNISELY: If there is a question as to what
17 the purpose of MSHA should be or ought to be legally,
18 then right there is why I made the statement I made. And
19 I'd like to present this, if I might.

20 MR. NICHOLS: Thank you.

21 (Applause)

22 MR. NICHOLS: Dave Mullens.

23 MR. MULLENS: My name is David Mullens. That's
24 D-A-V-I-D, M-U-L-L-E-N-S. I got 26 years experience in
25 the mines. I'm here with the UMWA, Local 1713. I'm a

1 safety committeeman. And I'm sure everybody in here has
2 heard the statement or the sling that has been pointed
3 toward the miners as being dumb coal miners. And
4 evidently, the agency is believing this, for them to try
5 to stick this on us. Evidently, they think we're dumb.
6 But I don't think we are.

7 I just can't see how something like this can be
8 put before us to try to help the miners. I just can't
9 see it. And another thing, too, is the companies are
10 fighting the violations that the inspectors are writing
11 to them, and beating most of them. And how do they think
12 that an inspector is going to write a violation on this
13 when he can't understand, and thinking that he's going to
14 get it stuck back on him? I don't believe he'll enforce
15 it. I believe it will be overlooked.

16 I think there is too many loopholes in it on the
17 company's part, and formulas to figure up. And I don't
18 even seen why you would need a formula to figure up how
19 much dust a miner is in. Two is two, eight is eight, no
20 matter whether you're in coal or not. If you're in two,
21 you're in two. If you're in eight, you're in eight. And
22 why would you have a formula to try to figure that out?

23 I can't see how anybody would try to put the
24 miners back to the '60s as far as healthwise. And I
25 can't see how anybody could put this on the miners and

1 thinking it's safety for them. Only two things that I
2 can figure out. It's either people don't know mining, or
3 either it's politics. And evidently, these people that
4 come up with this has never had family members to suffer
5 with Black Lung. I have. I've seen it.

6 And the question asked earlier about the
7 airstream helmets, why does miners wear them if they
8 don't like. They're in compliance or they're working.
9 It's about like going outside with an umbrella with a
10 hole in the top of it. It blocks a little bit, but
11 you're still going to get a little bit wet. You're still
12 going to get a little bit Black Lung.

13 I think the best thing that has happened is the
14 PDM-1. I mean, it's the only thing we've got right now
15 of fighting force, and we need it. And we need your help
16 to try to help us with this and try to protect the miners
17 from Black Lung. And that's basically about all I've
18 got.

19 MR. NICHOLS: Thank you very much.

20 MR. MULLENS: And also, the trust that people
21 has for the agency I think is on the line on you all's
22 part, and you really need to be looking at that.

23 MR. NICHOLS: Okay. Thanks.

24 MR. MULLENS: Thank you.

25 (Applause)

1 MR. NICHOLS: Dave Dearman.

2 MR. DEARMAN: I appreciate you gentlemen sitting
3 here listening to us today. My name is David Dearman.
4 That's D-A-V-I-D, D-E-A-R-M-A-N, a miner from Island
5 Creek, VP No. 8, Virginia. I'd just like to say that I
6 don't have anything prepared for this. I just want to
7 speak from my heart and take just a few minutes. But,
8 gentlemen, I'm opposed to this. And I've been in the
9 mines for 30 years. I've been in and around longwall,
10 seen these helmets, laid back on the ribs and back in the
11 toolboxes and not used. And it seems they didn't use
12 them, and I know they're not going to use them unless
13 they're made to use them. And I know the company is not
14 going to make them use them unless you all are around.

15 So I don't think the system is going to work any
16 way, form, or fashion as far as using any kind of a
17 helmet. And I'd like for you all to think deep and hard
18 of what MSHA is. It's supposed to be a mine, safety, and
19 health administration, made up for the benefits of the
20 working miners, whether it be union or non-union. And
21 I'd like for you to just take pride in that because
22 without you all, we know where we would stand with the
23 companies, and we depend on you all for our health and
24 our safety. And I'm depending on you all to reconsider
25 this, and we can come up with something better.

1 I don't know what the answer is to it. But I
2 can say for myself, I've been around a lot of especially
3 the older men walking on the canes and carrying their
4 canisters with them of oxygen. I've seen it firsthand,
5 and thank God that I'm not in that shape myself.

6 With that, I'll end my statement.

7 MR. NICHOLS: Thank you very much.

8 (Applause)

9 MR. NICHOLS: Roger Horton.

10 MR. HORTON: My name is Roger Horton. That's
11 H-O-R-T-O-N. I'm a mine worker's representative here in
12 District 17, and glad to have the opportunity to be here.
13 I wish it was under a more pleasant circumstances. But
14 be it as it may, we'll go ahead anyway.

15 I started my mining career in 1974, and it was a
16 very low coal scene, Rum Creek in Logan, West Virginia.
17 It was the Winifreed Mine, metallurgical coal. And about
18 that time, the agency, which you now represent, was in
19 its fledgling years, and they were experimenting with
20 different types of water supplies and different areas,
21 different ways to eliminate dust and to cut it down. And
22 my father was part of that team who -- I call them a team
23 -- who tried to implement all these various dust control
24 measures. It was a conventional mining section when I
25 began and later went to a continuous mining section.

1 Then there was occasions they had numbers of
2 people employing many different methods trying to control
3 the dust. Well, they worked very, very hard to do that,
4 and were successful to a very much good degree. And they
5 understood the dust was a problem, not only from an
6 explosive nature, but from a health and safety nature.
7 They understood it then. And we understand that now.

8 You know, the continuous mining device that has
9 been developed is a God-send. It really is. We no
10 longer have to argue about the amounts of dust that we're
11 in. It's going to lessen the work that MSHA has to do,
12 and it will lessen the worries of not only the miner, but
13 the families themselves. They will not have to worry
14 about their husbands and wives if they work there
15 inhaling the deadly dust. You know, it's going to
16 eliminate it. And it's something that we wanted to do
17 since the implementation of the act, is eliminate the
18 exposure to the harmful effects of rock dust and coal
19 dust. And we're at the threshold now of being able to
20 comply with that. And they will do that. And then all
21 of a sudden, we have this rule that says you're going to
22 do otherwise.

23 Well, I don't think that we should do it. And
24 the reason I don't think that we should is because the
25 rule itself is -- it's a violation of the act. It really

1 is. You know, you've heard many people today testify
2 that the reason for the act itself is to protect the most
3 precious resource, which is the miner. And in fact, it
4 is. No one can debate that. No one should even attempt
5 to do so nor even try to do so in a manner that is not
6 consistent with good sound policy.

7 It's almost as if someone is trying to weasel
8 out of citing violations, you know. It just doesn't make
9 sense to me. We have the technology to eliminate this.
10 Let's please do it. Let's please do it.

11 Now I've been very fortunate in having to have
12 worked in a union mine for nearly most of my mining
13 career. And if you're a non-union miner, you do not have
14 the same tools and the same leverage that we have because
15 of the mine workers. You know, we're not afraid to stand
16 up and implement the rights under the act. Those who are
17 in the non-union sectors, they are scared to death. They
18 would not do so. They would not. They depend totally
19 upon you. And without your help, they're going to die a
20 horrible death.

21 So I implore you to please take this rule back.
22 You have a file for it -- I'm sure it's called file 13
23 -- and place it there, and leave it there.

24 And I know it has been a long day, gentlemen,
25 and I thank you for the opportunity again, and I hope

1 you'll reconsider. Thank you.

2 MR. NICHOLS: Thank you.

3 (Applause)

4 MR. NICHOLS: James Tiller.

5 MR. TILLER: My name is James Tiller. I'm
6 representative of 2888.

7 MR. NICHOLS: I don't think they can -- can you
8 hear?

9 MR. TILLER: James Tiller.

10 MR. NICHOLS: You'll have to get a little
11 closer, James.

12 MR. TILLER: James Tiller, representative of
13 2888. I don't have much to say, but I have been a coal
14 miner for 28 years. Right now, in my position, I'm a
15 supply motorman, and we breathe a lot of dust, sand dust,
16 rock dust, coal dust, diesel fumes. And we have been on
17 to several federal people trying to help us, and they say
18 they don't have no plan for us. And I believe we're
19 going to hear -- it would be a real help to us in
20 monitoring where we go. You know, we're catching it all
21 the time, in and out. And whenever they do sample the
22 company, you know, we don't do no spline, and that's
23 where they get their sampling for us. And in the eight
24 years I've been on that supply, they have never run a
25 sample on us.

1 That's all I have.

2 MR. NICHOLS: Okay. Thank you.

3 (Applause)

4 MR. NICHOLS: Go ahead.

5 MR. COHEN: Hi. My name is Robert Cohen,
6 C-O-H-E-N. And I want to thank you very much for the
7 opportunity to come and speak to you today. Just a
8 little bit about who I am. I'm the medical director of
9 the Black Lung Clinic's program at Cook County Hospital.
10 I also serve as the medical director for the National
11 Coalition of Black Lung and Respiratory Disease Clinics,
12 which is the coalition of Black Lung clinics that are
13 funded by Health and Human Services. So I act as their
14 advisor and also help them with treatment, diagnostic
15 guidelines, and so forth.

16 I'm a pulmonary specialist, board certified in
17 pulmonary medicine and critical care, and I'm also
18 appointed to the division of occupational medicine at
19 Cook County Hospital, as well as in the Department of
20 Environmental Occupational Health Sciences at the
21 University of Illinois' School of Public Health. So I
22 work with them quite a bit. And I've been working with
23 coal miners since about 1988, working with the clinics
24 since the early '90s.

25 I just wanted to speak a little bit about the

1 medicine and epidemiology of Black Lung. I know that --
2 which is what these whole dust rules are designed to
3 prevent. And then some of my impressions -- I'm not an
4 industrial hygienist, but I know a fair amount about
5 industrial hygiene from my work with my industrial
6 hygiene colleagues. And just from the point of view of
7 those that work in the clinics that take care of these
8 miners, what some of our concerns are.

9 The first thing that we're concerned about is
10 that -- or that we are concerned about is that we're not
11 here today talking about implementing the REL that NIOSH
12 recommended in 1996. You know, it seemed that we all
13 were very, very interested in reading the criteria
14 document that NIOSH publish in '96 -- I guess dated '95,
15 but published in '96 -- which was a tremendous summary of
16 the world literature on the medical effects or health
17 effects of coal mine dust, and which summarized not only
18 the U.S. literature, but worldwide literature on those
19 effects.

20 And based on that review, we learned several
21 things. One is that pneumoconiosis, in terms of
22 radiologic disease, scarring in the lung, simple
23 pneumoconiosis, and to a smaller degree complicated
24 pneumoconiosis is still occurring at these 2 milligram
25 cubed standard.

1 The other thing that we learned is that there is
2 a very significant problem with lung function impairment
3 at the current levels of 2 milligrams per meter cubed.
4 It's not just the scarring in the lungs that we are all
5 taught classically in medical school we should be
6 concerned about with coal mine dust exposure. But it's
7 the development of chronic obstructive pulmonary disease,
8 emphysema, which were very clearly shown, at least in
9 NIOSH's summary, certainly in this five or eight years
10 since then, have been proven over and over again in other
11 epidemiologic studies in the U.S. and worldwide that coal
12 mine dust does result in emphysema and chronic
13 obstructive lung disease and lung function impairment.

14 And I think the best data that NIOSH summarized
15 comes from articles by Mike Atfield and colleagues from
16 the national study of coal workers' pneumoconiosis. And
17 their data on post-1970 coal miners shows that a year of
18 underground coal mining for a miner who has only worked
19 after 1970 is equivalent to about a half a pack year of
20 smoking. So smoking a half a pack of cigarettes per day
21 is about equivalent to an eight-hour shift underground,
22 mining under post-1970 dust controls of 2 milligrams per
23 meter cubed.

24 So recommending that our miners smoke half a
25 pack a day of cigarettes or allowing that wasn't

1 acceptable. And I think that that was a huge part of why
2 NIOSH took the step of proposing a recommended exposure
3 limit of 1 milligram per meter cubed. And so when I
4 teach my medical students, they say, well, that's great.
5 REL of 1 milligram, that's what it should be. Then I
6 have to explain the difference between what is
7 recommended by the scientific and research organizations
8 of the U.S. government and then what is actually put into
9 regulations by the regulatory agencies, which in this
10 case is MSHA for non-mining OSHA.

11 But so I was hoping that at some point I would
12 be sitting at hearing saying this is wonderful that we're
13 implementing the 1 milligram per meter cubed, which we
14 know -- or at least from all the world literature -- is
15 what we should be doing.

16 The other thing I think Bob Thaxton, in his
17 original presentation this morning, showed the data that
18 NIOSH published in the most recent MMWR on radiologic
19 pneumoconiosis, which I just wanted to comment on a
20 couple of things from that presentation or that article,
21 and that's that there is a very clear plateau for miners
22 with less than 20 years of mining tenure in their rates
23 of pneumoconiosis. It's not going down any further for
24 the younger miners. The rates were dropping for people
25 with higher tenure. And Bob pointed that out when he

1 showed us that it was at 2.9 and 2.8 percent, which for
2 all practical purposes is the same number.

3 So there has been no decline at all since 1995
4 in radiologic pneumoconiosis. And I think it's important
5 to point out that coal workers' surveillance -- chest X-
6 ray surveillance program and the miner's choice program,
7 which I don't think is existent anymore -- are still only
8 measuring the tip of the iceberg in terms of what were
9 termed as contract miners or miners that are working for
10 contractors -- only 0.1 percent of those miners
11 participated in that chest X-ray study.

12 So we really have no idea what is going on among
13 those miners, who tend to be, as I understand it, more
14 likely to be working in small mines, and also more likely
15 to be non-union mines, and therefore I think less likely
16 to be as well controlled in terms of their exposures to
17 coal mine dust. The data they did have on those miners
18 showed a rate of PMF which was five times higher than
19 those of noncontract miners.

20 Also. the study showed that for small mines, the
21 rates of pneumoconiosis were higher than for larger
22 employers. And we have lots and lots of small mines that
23 are opening up in the country, which is of concern
24 because I think that there tend to be less stringent
25 regulations or attention to regulation, and therefore

1 more disease. Those mines tend to be sicker mines, I
2 think, ecologically, and therefore should be of great
3 concern in terms of the development of disease.

4 So I think that this article should give us
5 pause. It was just published three weeks ago. And let
6 us understand that we're certainly under the current
7 program seeing disease, and we're seeing disease --
8 that's just radiologic disease. But we're also not
9 measuring lung function problems anymore. That was part
10 of a national study of coal workers' pneumoconiosis,
11 which is not really ongoing to a large extent. And in
12 NIOSH's document, they recommended that medical
13 surveillance for miners includes spirometry, which that
14 hasn't been implemented yet either as a regular
15 surveillance technique.

16 So I would just say that we're really operating
17 largely in the dark in terms of how much disease is
18 really out there for lung function impairment. And in
19 terms of chest X-ray available disease, we see the tip of
20 the iceberg, I think, with some of the surveillance
21 programs that are currently in place. But we're still, I
22 think, somewhat lacking in what is really going on.

23 So I'm very, very concerned that we're not
24 implementing 1 milligram per meter cubed. And I guess I
25 would be laughed out of the room if I said that we should

1 modify, go back to the drawing board when we're rewriting
2 this rule and put in 1 milligram. But I would recommend
3 that. I think that when NIOSH drew up its document, it
4 was a very, very persuasive document. It still is
5 persuasive. And there is nothing that has been written
6 in the medical literature since 1995 -- and I've reviewed
7 it pretty carefully. I do searches on the health effects
8 of coal mine dust frequently. There is nothing that has
9 said that the 2 milligram cubed is healthy since that
10 time.

11 So I think that what has been recommended by
12 NIOSH in 1995 still stands, that that is what we should
13 be talking about now, and not 2 milligrams per meter
14 cubed and sustaining that. And then if we're going to be
15 talking about 2 milligrams, I just wanted to mention a
16 few of the details that I understand from the proposed
17 regulations. And I must admit, I'm not thoroughly
18 familiar with every page of that document, but I saw the
19 presentations and went through some of the summaries.

20 One question one would have is if we're -- in
21 the single sample strategy, you are recommending that we
22 take into account measurement error, which makes sense.
23 Certainly, the devices that we're using to measure if it
24 was a single sample does give us a range of error. So
25 you're recommending looking at the 95 percent confidence

1 intervals for those measurements.

2 But then when you look at a confidence interval,
3 you have a choice of accepting the upper limit of normal,
4 where you would issue a citation, or the lower -- the
5 upper limit of the range of error or the lower limit of
6 the range of error. And I noticed in the proposed
7 regulations that MSHA is recommending using the upper
8 limit of error before issuing a citation, which is -- I'm
9 just wondering why that is done when NIOSH already
10 recommended 1 milligram as being a safer level. I forget
11 what the lower level of the 95 percent confidence
12 interval -- maybe someone can tell me. I know 2.33 was
13 the upper limit. The lower was 1.78 or something. I
14 can't remember. 1.71.

15 But it seems to me that if we're trying to err
16 on the side of protecting the health and safety of the
17 miners and preventing disease, which is I think why we're
18 all here, that one would err on the side of exposing the
19 miners to less dust. So I think that that's something
20 that from the point of view of a practitioner in the
21 clinics that we would recommend that if we're going to
22 understand that there is measurement error, and we know
23 that, and the fewer samples you take, the more error
24 there is, so the wider the 95 percent confidence interval
25 will be, that we choose the lower -- you know, we choose

1 the end that would favor protecting the health and safety
2 of the miners as opposed to the end which might result in
3 him being exposed to -- him or her being exposed to
4 higher levels.

5 I think that we know from medicine -- we have a
6 saying in medicine that was sent by -- I guess we say
7 this in medical school in residency by physicians who
8 didn't want to work very hard. We would say, if you
9 don't take a temperature, you won't find a fever. You
10 know, we didn't want to do blood cultures and urinalysis
11 and do all the work of chest X-rays and workups, so we
12 just would not want them to take temperatures and find
13 out that our patients were sick. And I'm concerned that
14 cutting down the number of samples that we do -- you
15 know, basically monitoring the health of our patient,
16 taking the temperature of our coal mines -- if we don't
17 take enough temperatures, we won't find the fevers. We
18 won't find the disease or the sicker mines, and we won't
19 be able to implement treatment, which means we won't have
20 to work hard because we're not going to be doing the
21 citations, doing the repeat inspections.

22 But from my point of view, I think that the more
23 temperatures we take, the more samples that we take, the
24 better that we're going to be able to protect the health
25 and safety of our miners. We'll know what are the

1 conditions in those mines. And that's taking into
2 account -- I'm not very, very familiar with the history
3 of fraud and other issues in sampling. But I know that
4 it existed. I don't think it was fabrication. I never
5 went to criminal trials. But there was stuff that was
6 going on there.

7 So clearly, the more government regulatory
8 agencies are responsible for taking those measurements
9 and doing them frequently, and the more data that we
10 have, the safer and healthier the environment can be made
11 for our miners. So I think that I applaud MSHA's not
12 averaging out the low samples with the high ones, which I
13 think is a good thing. But then after we've done that --
14 and then issuing a citation on the overexposures makes
15 sense. But then reducing the number of samples so that
16 we only do it six times a year or three times a year --
17 it's a little confusing to me exactly how many times a
18 year it will be done. But it's clearly less than what is
19 happening now with the operator plus MSHA samples
20 combined, that we may be missing some fevers. We may be
21 missing some bad conditions in the mines that we
22 shouldn't be missing.

23 So I really think that not averaging up, you
24 know, the bad stuff to make it look better makes sense.
25 But I think more sampling makes even more sense, which

1 means that the continuous dust sampling which is a
2 revolutionary device and a wonderful device -- I remember
3 talking to Dr. Volkwein from the Pittsburgh laboratories
4 when he was explaining the engineering of that device,
5 and we were very interested in trying it in Ukraine and
6 other mining atmospheres where there is very, very high
7 dust levels. And now I see the prototype of the device
8 here, which looks pretty complete. It's just wonderful.

9 That kind of device and the opportunities that
10 that provides for continuous data, it just seems on the
11 verge of having a new CT scanner, that we would say that
12 we're not going to mandate that we use the CT scanner.
13 We have wonderful technology to treat something, but
14 we're not going to mandate that it be used.

15 I applaud that MSHA's rules are allowing for the
16 possibility for it to be used. That makes -- you know, I
17 think that's wonderful. But I think that unless we
18 mandate it, I'm very, very concerned that it won't be
19 used very much, if at all. And at that type of device,
20 as long as it's calibrated correctly -- and we have the
21 standard cyclone pumps and standard MSHA technology to
22 confirm what we're seeing with those continuous samplers
23 -- is exactly what we need. We need to get that out
24 there, and it needs to be much stronger in the
25 regulations than as just an option.

1 I don't think that if we just take it as an
2 option that that option will necessarily be taken by many
3 of the mining operations, and certainly not the very
4 small mining operations where we see from the medical
5 data and the epidemiology that those are the sicker
6 mines. Those mines are the mines where we're getting the
7 cases of pneumoconiosis. And certainly, that tracks the
8 cases of obstructive lung disease and lung function
9 impairment that we see.

10 So I think that the use of the continuous dust
11 monitor, which is tremendous -- and I really think that
12 the work that NIOSH has done in conjunction with your
13 contractors and companies that you're working with in
14 Pittsburgh to develop that device is fantastic. And I
15 really -- it sounds like we're right there. We're right
16 there within just a few months of being able to actually
17 use that device. So certainly, these rules should -- I
18 believe should consider some mandatory role for that
19 technology.

20 Finally, I just want to make a few comments
21 about the use of personal protective equipment. When I
22 trained in occupational medicine and pulmonary medicine,
23 we're always taught the classic hierarchy of controls in
24 terms of controlling any occupational exposure, and the
25 first being engineering controls. And the very, very

1 last thing, only out of desperation, and I mean true
2 desperation, do we consider relying on personal
3 protective equipment to maintain the health and safety of
4 our miners.

5 And it just seems to me -- and again, I'm not a
6 mining engineer. But I think that we have the
7 technology. And I know that in other countries,
8 Australia, New Zealand, there are mines where you can see
9 from one end of a longwall, you know, 500 feet or 800
10 feet down to the other end and see perfectly clearly,
11 that you can engineer the dust out of the mines to levels
12 that are healthy, certainly to levels like the 2
13 milligram per meter cubed level.

14 I think that that engineering work can be done.
15 We have an incredible technological capacity in our
16 country to produce amazing things. And I think that
17 relying on miners to wear personal protective equipment
18 to protect their health and safety under the conditions
19 of heavy labor in those mines is very, very troubling. I
20 think that as an adjunct, that's fine. But to change the
21 regulations to allow for higher exposures and rely on
22 personal protective equipment to achieve our minimum
23 thresholds of health and safety is really a dangerous
24 door that we're opening. And I think that that has to be
25 very, very seriously reconsidered. And I think that if

1 there is a particular mine that is so dusty and so dirty
2 that there is no way that it can be engineered, then
3 perhaps that particular mining unit doesn't need to be
4 operating.

5 But otherwise, I think that this should be able
6 to be engineered, except for very, very exceptional
7 circumstances. I'm afraid that we're opening a Pandora's
8 box by allowing the PPE to replace a reasonable
9 engineering control or engineering controls. And I think
10 that that basically completes my remarks. Thank you.

11 MR. NICHOLS: Thank you.

12 (Applause)

13 MR. NICHOLS: Ronald Sharp.

14 MR. SHARP: I'm Ronald Sharp, S-H-A-R-P. I
15 represent Local 7170. I don't know that much about this
16 new device. I've never seen one up until today. But my
17 problem is on our dust sampling at our mine, the company
18 sends bosses to make sure that no man is allowed to get
19 near dust when he is wearing a sampler. He'll empty his
20 dust box, do whatever is necessary to make sure that man
21 stays out-by.

22 I've asked MSHA about it when they do their
23 inspections, and nobody can give me an answer to it. I'd
24 just like to have an answer. But I believe that to be
25 declared illegal, the way they're doing it. Now me, I

1 have Black Lung. You sent me a card to carry if I want
2 to present it. But who wants to go down and shovel belt
3 dust? That's even worse than face dust.

4 So I would rather see them get the observation
5 down lower than what we have now, not higher. And I
6 thank you.

7 MR. NICHOLS: Thank you.

8 (Applause)

9 MR. NICHOLS: I may have marked Carl Morris off
10 accidentally here. Has Carl been up here? He spoke?
11 Okay. Bobby Mullins.

12 MR. MULLINS: Thank you, Mr. Chairman. My name
13 is Bobby Mullins, B-O-B-B-Y, M-U-L-L-I-N-S. I'm the
14 chairman of the safety committee for the UMW at the Rock
15 Lake prep plant in Boone County for Peabody Coal.

16 The proposal that you put forth today seems to
17 rely heavily on company engineering controls. I'd like
18 to talk a little bit about what we have done at Rock
19 Lake. We do have a dust collect engineering control
20 system at our plant. But like most places, we work with
21 a minimum crew. A lot of times, when a man retires, he
22 is not replaced. We have people off on comp, so we're
23 always short-handed. And when it comes to maintenance,
24 it seems like our dust collect is always on the bottom of
25 the list, and it is always a constant battle, and always

1 the burden is on us, the union and the safety committee,
2 to make sure that the dust collect is working the way it
3 was designed to do. And we have failed at that. We
4 haven't been able to keep it up that way.

5 The managers, the company officials who are in
6 their offices outside of the contaminated atmosphere,
7 make the argument that the dust is at an acceptable
8 level. And the reason they make that argument is that on
9 all of our inspections we have been -- all but one
10 exception -- we have been in compliance with the MSHA
11 inspections on dust, the dust samples that they've taken.

12 But I've worked in a temple all of my working
13 life in the coal mines. And recently, I was diagnosed
14 that I have between 5 and 10 percent Black Lung. Now
15 certainly, in my own life, I've noticed a reduction in
16 breathing ability. I wear a dust mask almost all the
17 time at work, one of the dust flow single filter types.
18 But I can't wear it all the time. We work in an
19 uncomfortable atmosphere. The work is uncomfortable
20 anyway. And to put those things and to have to do either
21 maintenance or have to do any communication with
22 coworkers is almost impossible. And when it gets hot,
23 it's almost impossible to keep it on all the time. I
24 wear it as much as I can.

25 So here I've been diagnosed with Black Lung,

1 wearing the dust mask, and yet hearing that companies can
2 engineer, that they should be given the responsibility to
3 engineer the dust at our work place so that I won't get
4 Black Lung.

5 If we had tighter restrictions on the amount of
6 dust allowed in the air that we breath, like the NIOSH
7 recommendation of 1 percent, I think it would be a lot
8 easier to get the dust control levels down. It would be
9 a lot more effective. We don't need a restriction that
10 allows more dust in the air. We need tighter controls
11 and more frequent dust samples so that we as miners and
12 the MSHA inspectors that come up there can have a little
13 bit of teeth in what they do to reduce the dust level in
14 the working place.

15 And I know it's underground. They have -- like
16 on the working face, they have higher levels. I work on
17 a temple, so I know that they have a higher level of dust
18 they have to work in than what we do. This would reduce
19 opportunities to ignore, manipulate -- like reducing --
20 right now, when an inspector comes in to do a dust
21 sample, we can reduce the amount of coal we put on belts,
22 which is going to reduce the amount of dust in the air.
23 We can run a different type coal. Some coals are a
24 little more moist than others. We always run our moister
25 coal whenever the inspectors are around. And they choose

1 who is sampled. They can choose a less dusty part of the
2 plant because they don't sample everybody. They just
3 take a slice of the work force -- or otherwise escape the
4 hassle of handling dust in the work place.

5 At the mandated congressional level of 2 percent
6 or even more, like the 1 percent recommended by NIOSH, we
7 still have Black Lung. We still have Black Lung. I know
8 it in my own life. It still shows up. But if we're
9 serious about miners' health, we need to lower those
10 levels that we're looking at. And one way that I've
11 thought about it in our work place that would really work
12 great is that continuous dust monitoring. That would be
13 a great thing in our work place. But it needs to be --
14 it would have to be forced upon the work place. And the
15 miners would have to have a lot of input because the
16 companies know who and who does not have to work in this
17 dust.

18 That's about all I have to say about this. But
19 one thing I would like to add is being a surface miner on
20 a prep plant, one thing that we have to deal with that
21 they don't underground is magnetite. When you consider
22 your regulations for surface, I'd like for you to
23 remember that, that you can look at the magnetite as well
24 because from what I understand, it can be even harsher
25 than the coal dust on breathing. Thank you.

1 MR. NICHOLS: Thank you.

2 (Applause)

3 MR. NICHOLS: Frank Wyda? Oh. Okay, John.

4 Come on up.

5 MR. STEWART: Yeah. My name is John Stewart,
6 J-O-H-N, S-T-E-W-A-R-T. I've been a coal miner for 32
7 years, 29 of them being underground. In that 32 years,
8 I've seen a lot of changes. Most of them have been
9 improvements of conditions for the miners. I'm also the
10 National Black Lung Association president. And on a
11 daily basis, I deal with widows who have lost their
12 husbands due to Black Lung, and members who are slowly
13 dying a painful death of Black Lung.

14 From 1968 to 1992, there was 59,000 deaths from
15 Black Lung. In the last 10 years, there has been 18,240
16 deaths from Black Lung disease. That's reported deaths.

17 It could possibly be more. That's a total of 77,245
18 Black Lung deaths. These are people's lives, their
19 families, that we're talking about. MSHA is trying to
20 increase the death limit, is what we see, possibly four
21 times higher than what it is now. Estimating that in the
22 next 10 years, that would be about 72,980 more people
23 that will die of Black Lung compared to the preceding 10
24 years, being four times higher, which the coal companies
25 deny Black Lung even exists. But yet, every six hours,

1 we have a member die of Black Lung.

2 Black Lung disease was discovered in 1831. Now
3 it's 172 years later, and our members are still dying of
4 Black Lung. The emotional impact on the miners and his
5 family who is dying of Black Lung is beyond measure.
6 Because of the coal company's money and the politicians
7 they buy, the members can't even get the benefits that
8 they need to treat Black Lung before they die of it.

9 Over 160 individuals or companies has been
10 convicted or pled guilty to criminal charges of
11 respirable dust role. That probably won't change much.
12 MSHA stands for Mine Health and Safety Administration. I
13 say that because everybody should know that the health
14 and safety of the miners is your total goal, should be.
15 We all would hope that MSHA would set standards to assure
16 that working conditions are free of respirable dust
17 concentrations and that no miner will have to suffer
18 impairments of health by Black Lung, and to lower the
19 dust and increase the samplings, not to ignore the needs
20 of the miner, increase the dust, and decrease the
21 samplings.

22 For MSHA to raise the level of coal dust four
23 times higher than it is now and reduce the sampling of
24 coal dust from 34 shifts down to as level as three shifts
25 a year, and to allow coal companies to put our members

1 wearing airstreams helmets that will not protect our
2 members from the dust particles that causes Black Lung,
3 that also will fog up and will affect their vision for
4 safety of what is happening around them. And to expect
5 the coal companies to verify their own dust plan, that's
6 like asking a bank robber to hold your billfold so you
7 won't lose it.

8 This is all contrary to the 1969 Coal Act. It's
9 reversing our current protection back 40-plus years. The
10 new rules don't even require citing the coal companies
11 until the dust level gets way above the exceeded amount.

12 MSHA knows because of all the studies that has been done
13 that 2.0 milligrams of respirable dust per cubic meter of
14 air is already causing our members to die of Black Lung
15 disease.

16 But because of taking care of the coal
17 companies, I feel that we're going to kill thousands of
18 more members of Black Lung. Our members are already
19 afflicted with disease and agony and death, while the
20 coal companies make big profits, and the government
21 officials and the politicians sit idle in their office.
22 We are sending a message to MSHA, the National Black Lung
23 Association, that we are fighting for our members'
24 freedom of breathe. Thousands of our members who spend
25 decades in the mines to fuel the energy of this great

1 country, they should not have to die a slow death of
2 Black Lung disease because MSHA refuses to decrease the
3 coal dust in the mines.

4 These rules must be withdrawn and rewritten.

5 Thank you.

6 MR. NICHOLS: Thank you.

7 (Applause)

8 MR. NICHOLS: Okay. Do you think Wyda is gone?

9 Okay.

10 MR. RYAN: My name is Rick Ryan, R-I-C-K, R-Y-
11 A-N. And I appreciate you all being here today to listen
12 to us and giving me this opportunity to talk. I don't
13 have a whole lot to say, but I want to start out and tell
14 you a little bit of history. I do work in a prep plant.
15 I'm 45 years old. I've got 26 years mining experience.
16 I work for Hobat Mining. I'm a recording secretary,
17 mine and safety committee, for Local Union 2286 of United
18 Mine Workers.

19 We have 270 strip miners. We've got 45 that
20 work in and around the prep plant, and a deep mine that
21 supplies coal to the prep plant with 40 employees, for a
22 total of 355 miners. And this deep mine is in the
23 process of putting on another section, so they're looking
24 to go up to about 80 employees total.

25 So we represent a wide variety of different type

1 miners in different type situations. On the average, we
2 usually load clean coal, anywhere from 4-1/2 million to 5
3 million tons a year, into the railroad car. We have 10
4 miles of overland belt. We have got 2-1/2 miles of
5 refuse belt. It's a large prep plant. We have nine
6 crushers, 22 feeders. We have 97 transfer points, and we
7 have seven large stockpiles. And with running as much
8 coal as we do in all these places, we all know what
9 happens when you transport and move coal. They all
10 create coal dust that we have to breath and we have to
11 put up with.

12 Back when it was proven that the coal companies
13 were being illegal with their dust sampling, we thought
14 we've got to go to MSHA and let MSHA do it. We can't
15 trust the coal companies, so surely we can trust MSHA
16 with more or less our lives because that's what it boils
17 down to.

18 But the people that work on our job -- and the
19 way that we see MSHA leaning more toward the coal
20 companies now when we thought you were going to be our
21 saviors -- we see you nothing -- no more than what the
22 coal companies was. So we can't trust you now. You
23 know, we have no other place to turn but you guys. We
24 need your help. When you come on a job now, and one of
25 your inspectors writes a citation, the company almost

1 automatically -- he is going to conference that.

2 We go to that conference, and we back your
3 inspectors 100 percent because we know we need him. But
4 still, it seems like when you come out with a deal like
5 this, you lean more to their side than you do us. And I
6 don't know. I might be wrong. But I was always under
7 the impression that when MSHA come into being, that you
8 came into existence to protect the coal miner, not to
9 protect the coal company.

10 I don't know. Maybe I'm -- somebody can give me
11 some better history on it if I'm thinking wrong. But I
12 thought you all were to enforce the laws of the act that
13 Congress initiated and put down into a law for you to
14 make sure that the coal companies live by.

15 Well, why should they have to live by these if
16 they're going to change or be changed to make it easier
17 for them to get by without having to live up to it. All
18 we want is a little backbone in the laws that we have.
19 We don't want you to raise the 2 milligram standard. If
20 it goes anywhere, we want to see it come down because I
21 have friends, good friends, that's got this disease. I
22 have young friends that's got this disease. And I know
23 people that has died from it, and it's not easy to watch.

24 We need something done. We need the dust
25 monitoring system that they've come out with. It's so

1 close to being perfected to put into the mines. Why did
2 this have to come down now? Why couldn't it have been
3 waited on just a little longer to give this a chance to
4 work? It seems like it's like everything else. We've
5 got to get something shoved down our throats that's not
6 going to help us. All it's going to do is hurt us.

7 Like I say, the guys that I work -- well, we've
8 got 355 people out here. And we're a union mine, and we
9 can stand up for ourselves. And I feel real sorry for
10 the non-union guys out there that can't even do that.
11 And without you all, we're going to hurt. But without
12 you all, I don't know how they're going to exist because
13 they have no say-so. They can't stand up and say, no,
14 I'm not going to work in that dusty area today because if
15 they do, they're going to be looking for a job, period.

16 Like I say, we don't want you to raise the 2
17 percent milligram. We'd rather see it go to 1, like
18 NIOSH recommended, which we feel that would wipe it out
19 quicker than any other thing that any agency could do.
20 When the federal -- the Dust Advisory Committee come
21 around -- they came and toured our job. You know, Joe
22 Maien was with them. And I said, Joe, are you going to
23 go down and tour the plant, the prep plant? He said,
24 yeah, we're going to try our best to us. I said, well,
25 you know they don't want you to go down there. He said,

1 well, we're going to go anyhow. I said, well -- on the
2 way down the hill to this plant, I said, don't be
3 surprised when we get there if this plant is not shut
4 down. Joe is here today. When we got down to the plant,
5 it just so happened on our way from point A to point B,
6 they had something that happened. They had to shut the
7 plant down. They didn't want to see all the dust
8 floating in the air. They had an excuse to shut it down.

9 That's the same thing that went on with our dust
10 sampling. It was a running joke where I worked when
11 they'd do a dust sample. We had river duty. We got to
12 go over and lounge on a river bank all day and watch a
13 pump run. We wasn't over where the dust was at.

14 We don't want it to go back to those things. We
15 want MSHA to take care of the dust samples, continual
16 sampling, lower the standards and give us a chance. You
17 know, when MSHA was getting ready to be cut -- they were
18 slashing MSHA, going to try to do away with it -- we were
19 there. We were there to help you all so you all can
20 exist. Well, we're here now needing MSHA to help us so
21 we can exist, so that we can live.

22 And that's what this is. Without these dust
23 regs, when we go to work at a coal mine, we just well
24 sign our death warrant because believe me, these coal
25 companies are not going to do one thing more than they're

1 made to do. And that's about all I have to say. I
2 appreciate it.

3 MR. NICHOLS: Okay. Thanks.

4 (Applause)

5 MR. SERIAN: Ralph Serian, S-E-R-I-A-N, Local
6 1501, Consol Mine 95. I had a lot to say. I don't
7 really have a lot to say now. I noticed one thing in
8 these hearings today, that a lot of people have said that
9 they were thankful, you know, for these hearings. If you
10 buy my lunch, I'll be thankful. But this happens to be
11 my right, to speak my opinion on this.

12 And I guess I'm charged with trying to convince
13 you all what a bad law it is. But hell, you guys know
14 this is a bad law. I don't have to convince you. You
15 know the facts and figures. I mean, they've been out
16 there for years. And you don't have to be a coal miner
17 to know it's a bad law. My wife doesn't know the first
18 goddamned thing about coal mining. So I'll tell her --
19 she's a school teacher. She thinks it's ludicrous. And
20 the other thing she said is that they either think you're
21 stupid or they don't respect you. And I don't think you
22 think we're stupid. But I don't think you all respect
23 us, you know, what we're saying because all of the
24 studies, all the everything supports that this is bad.
25 And the people who crafted this and who support this,

1 they don't respect the coal miners. They don't respect
2 the laws that are on the books to stop this from
3 happening. And they don't respect anything about what we
4 do.

5 They don't respect the promise made to us to
6 lower the dust, the continuous monitoring. And all that
7 we want is the promise kept that was made to us, the
8 continuous monitor, and lower the dust standards. And
9 that's all I have to say.

10 (Applause)

11 MR. NICHOLS: Max Kennedy.

12 MR. KENNEDY: My name is Max Kennedy, M-A-X,
13 K-E-N-N-E-D-Y. I'm a third-generation coal miner from
14 Virginia. I'm also an international health and safety
15 rep for the United Mine Workers of America. Gentlemen,
16 it has been a trying two years for the United Mine
17 Workers and the miners across the eastern part of the
18 United States. It started out with 9/11. Then on the
19 23rd of that month, we lost 13 miners in Alabama with a
20 coal dust explosion, a secondary coal dust explosion
21 occurring.

22 Then from there, we had a rash of mine fires
23 occurring in northern West Virginia. And as recent as
24 three weeks ago, we had a belt conveyor fire at the
25 Consul VP-8 mine, of which miners you heard testimony

1 here today.

2 During this time, the agency has pushed through
3 proposed regulations on ventilating active working
4 sections with conveyor belt intake air. In the midst of
5 this, we've had a rash of fires on these belt entries and
6 the velocities on these entries. And you can go back and
7 you can check the records of coal float dust cited by
8 75400 on these entries. And my point is what the miners
9 are saying today is true. If you allow PPE in above the
10 2 milligram standard, you will have float dust
11 accumulation continuing in these coal mines, and you will
12 have visibility problems because as far as feasible --
13 the definition of feasible can mean anything to anyone
14 that's operating a coal mine.

15 Unless you mandate what is engineering controls,
16 then that definition is wide open. And as far as the
17 preamble to your proposed reg, an ALJ -- it doesn't mean
18 anything to an ALJ. It doesn't mean anything -- the
19 review commission may point to it. But if it's not set
20 in writing and clear, it's not enforceable. And you know
21 that.

22 This reg is so complicated, I don't understand
23 it. The testimony that I gave you in Prestonsburg, well,
24 that's the very same issue. I had questions that you
25 couldn't answer. And I think the gentleman on the end

1 referred to the comment that I made was a valid comment,
2 and it needed to be addressed. I don't see it addressed
3 in this proposed reg.

4 So apparently, you're not listening to the
5 miners. You're not listening to valid statements of what
6 is going on in the industry as it occurs right now.
7 Instead of taking the time and effort of the experts on
8 respirable dust in an advisory committee report -- and
9 you heard the doctor a few minutes ago talk about that
10 report as a valid report -- and not incorporate each one
11 of those recommendations into this rulemaking is not the
12 process, as I see it, that Congress intended as far as
13 the 1977 Mine Act. And you'll just have to excuse me a
14 minute because I've seen so much death, fatalities, and
15 people killed, that it sickens me to see this government
16 say that it's okay.

17 You know, we're hunting down two people who are
18 guilty of war crimes. One is in Iraq. The other one is
19 in Afghanistan. And those troops that we sent over
20 there, if they were caught and prisoners of war, they're
21 given better treatment under the Geneva Convention than
22 our coal miners are. And we charge people in other
23 countries with human rights violations for conditions
24 that they work in or live in. But coal miners have less
25 than that. They don't have a right to breath.

1 We're not asking for pure, clean air. We're
2 just asking for what the doctor said that won't kill us.
3 One milligram. Is that so much to ask? The technology
4 is here. But it's too late because you're pushing this
5 reg through. And that's why it sickens me. It does
6 sicken me. Both my grandfathers and my father died
7 because of this disease. And I'm tired of seeing it. I
8 am. I'm tired of going seeing old man in Walmart pulling
9 their oxygen cart. But you say this is okay. This will
10 cure us, that 2 milligram, as was stated a while ago,
11 prolonged periods of just 2 milligram is not healthy for
12 you.

13 But in the statement I gave you and the
14 questions I asked you, what studies was done on airstream
15 helmets at higher velocities -- when the higher velocity
16 overcomes the fan in the airstream helmet, what
17 protection is given? Did you all go out and do a study
18 on that? Do you have the data on that? What velocity
19 did you set for these? Each and every PAPR that you have
20 in this reg, is it documented that that is the protection
21 level? Or where did that number come from?

22 There is no reason why any coal operator at this
23 point in time with the technology -- the spray systems
24 that are currently utilized, if maintained -- and that's
25 the key, maintained in these entries in the sections on

1 the lawn laws. If they're maintained in administrative
2 controls as far as work areas, and time limits on those
3 individuals in the areas of the longwall, you can bring
4 those people in compliance.

5 Now the operator will argue about that. But the
6 argument is not valid because today because there are
7 lawn laws in compliance with administrative controls
8 without airstream helmets.

9 And with that, I want to submit my written
10 statement for the final time, if you'll listen to it.
11 And this is the same statement I gave you in
12 Prestonsburg.

13 (Applause)

14 MR. NICHOLS: Thanks.

15 MR. CIENAWSKI: I'm Chuck Cienawski. I was down
16 at the other meeting in Pennsylvania the other day. I'll
17 spell the last name again. C-I-E-N-A-W-S-K-I. I worked
18 in mines 27 years, worked underground, worked the
19 preparation plant, worked heavy equipment. I've done
20 everything just about that there is to do. I've seen
21 everything, too. So it's really hard to imagine MSHA is
22 looking out for the health and safety of our country's
23 coal miners.

24 This rule, if approved, will send the coal
25 industry back into the '30s, a time when the dust dosage

1 was at an uncontrolled level. We will see the dust
2 dosage increase about or above 8 milligrams from 2
3 milligrams. That's four times higher than we have seen
4 it before. Lowering the respirable dust limits is what
5 we need to be doing here, not increasing them. Increase
6 the sampling, not decreasing the sampling.

7 If the rule is allowed to pass, we will see the
8 blood of our brothers and sisters shed again because of
9 the more violent explosions and the return of higher
10 levels of Black Lung injuries. MSHA needs to work with
11 her experts on coal dust in coal mines, the
12 professionals, our nation's coal miners. Who else knows
13 any better?

14 Getting to the PDM-1 is something that we need
15 to be looking at. It's a full-time dust monitor, and it
16 doesn't tell a lie. Do the right thing. Kill the dust
17 rule and monitor our nation's coal miners. It's your
18 responsibility, MSHA. Thank you all.

19 MR. NICHOLS: Thank you.

20 (Applause)

21 MR. NICHOLS: James Linville.

22 MR. LINVILLE: Hello. My name is James
23 Linville, L-I-N-V-I-L-L-E. I'm a surface miner. I work
24 for Obit Mining near Danville, West Virginia. I've been
25 in the mining industry for over 25 years. Most of that

1 time is being a -- I worked in a preparation plant for
2 about two years, and the rest of the time has been
3 construction and working on the strip mine.

4 I'm currently chairman of mine health and
5 safety, and I've been involved in safety for most of my
6 mining career. And I've traveled with mining inspectors,
7 accompanying them on a lot of dust sampling. And I have
8 a lot of knowledge and input into how that has been done.

9 I'd like to propose a question for you to think
10 about. What has changed in the coal field? We wanted to
11 change a law. Since 1969, we've had 2 percent, 2 parts
12 per million rule that has kept the companies in line.
13 Now you think that's no longer necessary because it seems
14 as though MSHA is bent on changing this law that has been
15 in effect for so many years.

16 My argument is that the need for dust sampling
17 still exists. It's still there. I would like for you to
18 think about when you drove to this meeting last night or
19 today or whenever it was. There were several laws that
20 you had to obey on your way here. One of them was the
21 speed limit. It was 55 miles an hour, 60 miles an hour,
22 65, or 70, whatever it might be.

23 Most of us will travel five to eight to ten
24 miles per hour over the speed limit because we know that
25 we can get by with it. The coal companies have been

1 doing the same thing with the dust samplings. They have
2 been traveling a few miles over the speed limit because
3 they know they can get buy with it. You heard testimony
4 today from a lot of individuals, and I've seen it myself,
5 that when you're going to be sampled, the day that you're
6 going to be sampled, things are not normal.

7 Now we have a lot of employees on the strip job.

8 And when the mine inspectors come out to run dust
9 samples, usually they have about 14 pumps. In the
10 interest of production, the company will arrange for two
11 or three of those individuals not to do their normal
12 duties, or there is something wrong with their piece of
13 equipment that has been wrong with it for a week, but all
14 of a sudden they decide it's time to fix it.

15 Now this goes on. That's a part of running over
16 55 miles per hour. I feel that as a result of the dust
17 sampling that has been done in the manner that it has
18 been done that there have been a lot of miners' lives
19 that has been preserved as a result of it.

20 We all know that this is a hard economic times
21 for a lot of corporations, and the coal industry has not
22 been exempt from this. And I'm sure that there has been
23 a lot of pressure put on the politicians and on probably
24 MSHA and the state regulators also to help ease some of
25 the restrictions that is being placed on them and the way

1 they see it. I'm hoping that we don't consider someone's
2 life less important than the economics of our country or
3 the coal companies that are involved in the coal mining
4 business.

5 Sampling forces the coal companies to spend
6 money on defective equipment and get it fixed because
7 they know if they don't they're going to get a fine for
8 it. One thing that really bothered me on the new
9 proposal was the fact that MSHA is thinking about
10 eliminating the S&S. If you were to be in our position
11 and travel with the mine inspectors and see the concern
12 that the company has for an S&S citation, you would
13 understand how important this is for the miner.

14 They don't want to get any S&S. If they get a
15 citation, they definitely don't want it to be an S&S
16 because that carries a lot of weight with the corporate
17 of headquarters, CEOs, or whoever. So they'll go to
18 great lengths to get an S&S taken off from a citation
19 that has been issued to them. Our company protests quite
20 a few of their citations in an effort to try to get this
21 done.

22 As Rick Ryan, who works for the same company I
23 do -- we work on different ends of the job. As he has
24 said, we accompany the mining inspectors. So when it
25 comes time for the company to protest a citation, we go

1 to the conference and we uphold and try to support our
2 mine inspectors as much as we can because we know we need
3 them.

4 I'd like to make this statement, and if you
5 would, I'd like for you to write this down. There must
6 be something in the law requiring mine operators to
7 furnish the miners with safety equipment at the
8 operator's expense. And you go ahead and put "shall" in
9 there or some might strong words that they can't get
10 around. And I'd like to relate to you, a few weeks ago,
11 we had an incident happen on our job where the company
12 decided it was going to quit furnishing white paper or
13 paper coveralls for their people doing maintenance work.

14 Now these coveralls were not very expensive.
15 They was about \$2.50 apiece. But they had to buy several
16 of them, and they told us they spent \$26,000 on these
17 coveralls, and they didn't have to do it because the law
18 didn't require them to do it. So we went through a
19 procedure and had MSHA involved. And in the process, it
20 looked like we were going to get a better quality
21 coverall than what we had, and the price went from \$2.50
22 to \$25 a pair for these coveralls that would keep
23 carcinogenic material off of you.

24 Well, as time went on, and two or three days
25 went by, and the first thing you know MSHA backed up on

1 their position and quoted the law as stating that the
2 company must ensure that their employees had protective
3 clothing. But the law did not say that the company had
4 to furnish it.

5 Now, gentlemen, I'm telling you, these are hard
6 economic times for these corporations. They're going to
7 turn a buck however they can turn it, and it don't mean
8 giving us something that they don't have to. The law
9 doesn't mandate it. Anything you write a new law for --
10 I read there a while ago where you was talking about your
11 equipment. It was going to be a requirement for the
12 company to make sure that these miners had it. But I
13 didn't see in there anywhere that the company had to pay
14 for it. So who do you think is going to have to pay for
15 that?

16 The company says, Mr. Miner, you've got to have
17 this article, and it's your responsibility to buy it.
18 It's not ours. Now how many of these miners can afford
19 to go out and buy an airstream helmet or one of these
20 constant monitoring devices that you have in here? Not
21 very many. We all have families to feed. We make a
22 pretty good buck, but it takes a lot of money to feed a
23 family and keep everybody going. They take a lot of
24 taxes out on us, too. We don't realize the money that we
25 make after taxes.

1 So anything you got to do, make sure that you
2 put in the law "shall" or whatever language you feel you
3 need to use to make sure that companies are paying for
4 this new type of safety equipment you wanted implemented.

5 Sure. Dust sampling is expensive. It costs
6 MSHA a lot of money. When they run dust on our job, they
7 send two mine inspectors in. And it costs the company a
8 lot of money because there is two miners' reps have to go
9 with their two mine inspectors because they're in
10 different vehicles and going to different parts of the
11 job. It's very expensive.

12 Do we have a moral obligation to protect our
13 miners, to run dust pumps and make sure they are not
14 being overexposed? Yes, we do. This is the right thing
15 to do. Yes, it is.

16 We had another incident that happened on our
17 job. In the interest of production, the company decided
18 they was going to start leaving their 240-ton trucks
19 parked fully loaded. Well, we objected to this. And
20 again, they pointed out to us by law that they could do
21 it. The law didn't say they couldn't do it. When we
22 talked with MSHA, the same thing. Well, I'm sorry, but
23 we don't have a law that covers this.

24 I'm telling you, gentlemen, we're dealing with a
25 group of people that are more concerned with profit than

1 they are with people, with getting people hurt or
2 injured. It's low on their priority, even though they
3 say they're safety minded. Our goal, according to them,
4 is to be the safest, most productive company in the
5 world. They'll tell you that, and they got the little
6 plaques up on the wall. But what they do does not
7 demonstrate that. When you start parking the truck fully
8 loaded, and then the guy gets off from it. Another man
9 comes on the next shift, he has to walk around that truck
10 and preshift it with stuff hanging over the edges of it.
11 This is not right. This is not morally right. Is it
12 legal? Yes, it probably is. There is nothing in the law
13 that says they can't do it.

14 But when you guys enact any kind of law on dust
15 or whatever it might be, think about it. If you're going
16 to require some type of equipment for the miner to wear,
17 who is going to pay for it? If you don't put it in black
18 and white, it comes down on the miner, and the company
19 will force him to wear it. They'll implement a policy
20 that says you must wear this or you must do this, and the
21 miner has to do it.

22 Now we're facing some hard times ourselves. Our
23 numbers are decreasing. There is less and less
24 corporations that are UMWA. And from what I understand,
25 some of them are dropping out of the BCOA. And it may be

1 questionable whether we'll be union in a few years or
2 not. So we need all the help we can get, and we
3 definitely don't need laws that take away our rights and
4 our benefits.

5 I've had the highest regards for MSHA. I've
6 always regarded them as a straightforward organization,
7 and I'd like to continue to think of them as that way,
8 not someone trying to take our health and safety away
9 from us. Thank you.

10 MR. NICHOLS: Thank you.

11 (Applause)

12 MR. NICHOLS: Ron Dress? I thought you had a
13 break earlier. Is Ron gone? How about Bobby Santonio?
14 Yeah, yeah, go ahead. I'm just putting them on notice.

15 (Whereupon, a short recess was taken.)

16 MR. NICHOLS: Go ahead.

17 MR. SIEMIACZKO: My name is Dwight Siemiaczko.
18 That's spelled D-W-I-G-H-T, S-I-E-M-I-A-C-Z-K-O. I'm a
19 safety representative for United Mine Workers Local Union
20 8833, Hamilton, West Virginia, and I have over 21 years
21 underground mining experience.

22 After reviewing and being briefed on this
23 complicated MSHA proposal concerning control of
24 respirable coal dust in underground coal mines, I find
25 this proposal to be, number one, illegal, and number two,

1 unethical. This proposal is illegal because MSHA is
2 ignoring the 2 milligram standard set forth by Congress.

3 What right does MSHA have to ignore coal mine safety
4 standards set forth by Congress? What right do you have
5 to do that? That's a question to the panel.

6 MR. NICHOLS: Have you read the rule?

7 MR. SIEMIACZKO: Yeah. Well, yeah. I read, and
8 probably derived what everybody else has --

9 MR. NICHOLS: I don't want to get in a lot of
10 back and forth here because we've got other people --

11 MR. SIEMIACZKO: All right. We'll let that lay.

12 MR. NICHOLS: All right.

13 MR. SIEMIACZKO: Well, who is it at MSHA who
14 believes that they are above the law of the land? We'll
15 let that one lay then.

16 The fact of the matter is no one has the right
17 to replace or displace a law without legal arbitration.
18 Therefore, this proposal is illegal and violates the act.

19 It is apparent MSHA is trying to ram this proposal
20 through the system with total disregard to the legal
21 system which we all live under, and is ignoring
22 recommendations from credible groups and individuals,
23 from labor, management, and safety organizations who
24 state this proposal is the wrong way to control coal dust
25 exposure levels inside coal mines.

1 This proposal is unethical because it allows
2 coal dust to accumulate in amounts greater than four
3 times above what is not considered a safe level of 2
4 milligrams. MSHA is justifying this unethical deed by
5 stating that personal respiratorial protection will also be
6 increased to protect the coal miner. It is odd. Nowhere
7 can it be found that it is permissible or even
8 recommended to substitute personal protection for
9 engineering controls. It is known fact the way to manage
10 airborne coal dust is to increase water and air flow.
11 And as long as there is air and as long as there is
12 water, there will be no limitation for feasible
13 engineering controls regarding airborne coal dust.

14 Someone in MSHA has failed to realize airborne
15 coal dust can do other things besides cause Black Lung.
16 It is a well-known fact that coal dust can explode and
17 contributes to mine fires. By allowing coal dust to be
18 generated at or above 8 milligrams, it is going to
19 increase coal mine dust explosion and mine fires.

20 Passage of this proposal will place coal miners
21 inside what is equivalent to fully primed cannon barrels
22 ready to go off. There is no doubt death due to coal
23 mine dust explosions and mine fires will increase if this
24 proposal is allowed to become law.

25 What is so upsetting to coal miners is MSHA, of

1 all organizations, of all people -- it is MSHA who is
2 going to allow this to happen by creating the conditions.

3 Even today, under 2 milligram standards, coal mines do
4 catch on fire and explode due to coal dust accumulation.

5 Just imagine what is going to happen if the coal mine
6 operator will be allowed to increase the generation of
7 coal dust four times greater. Isn't it reasonable to
8 believe that coal dust explosions and mine fires will
9 increase four times also?

10 We are very much aware coal dust explosion and
11 mine fires can bring death. With that being so, I am not
12 willing to accept this proposal. I'm not willing to go
13 back 30, 40, 50 years ago when the life of a coal miner
14 was considered an expendable and disposable item of doing
15 business. No, I will not jeopardize life or limb by
16 accepting the proposal. And no, I am not willing to
17 support any proposal that will take me or my fellow
18 worker back to the days of high coal dust exposure of
19 yesteryear.

20 I can remember the days when a 100-watt light on
21 a shuttle car at 2 feet away was dimmer than a candle due
22 to high dust concentrations. I remember those days all
23 too well, and I'm not willing to go back. As my duty as
24 a safety committeean, I will report my opinion of this
25 proposal to the miners I represent as unacceptable.

1 Also, as my duty as safety representative of the
2 miners, I will report to MSHA what will be accepted.

3 Number one, I'm willing to accept lowering the coal dust
4 levels by using engineering controls which modifies the
5 usage of water and air. It is a time proven fact water
6 and air can and does control coal dust.

7 Number two, I am willing to support monitoring
8 of the mine atmosphere as a whole more frequently and at
9 longer intervals.

10 Number three, I am willing to accept a
11 continuous, 24-hour a day, seven day a week individual
12 air sampling program which would include the usage of a
13 device that would give recordable and instantaneous
14 readout of exposure levels.

15 I'm having problems understanding why MSHA would
16 not support the views that I have. It is well known
17 NIOSH is on the verge of releasing a device which can
18 monitor the coal dust levels of a coal miner 24 hours a
19 day, seven days a week. We coal miners do have the right
20 to know what we're exposed to. At least that's what I
21 have derived from MSHA's hazcom program. Therefore, an
22 air monitoring device that measured coal dust levels
23 continuously should find support under the MSHA's hazcom
24 program.

25 We coal miners have read the allegations that

1 for his own benefit a Pennsylvania coal operator can have
2 MSHA inspectors transferred. If these allegations are
3 true, one also has to think where does this policy begin
4 and where does this policy end. There is no coal miner
5 who I know understands how they will reap any benefits by
6 means of this MSHA proposal. If there is not any
7 benefits in this proposal for the working coal miner,
8 than who does it benefit?

9 Passage of this proposal will be remembered as
10 the dawn of the darkest days in modern coal mining
11 history. And for that reason, I do not and I will not
12 accept this proposal. And I am willing to either lead or
13 follow my union to the courts to stop this. That's all I
14 have to say.

15 MR. NICHOLS: Okay.

16 (Applause)

17 MR. NICHOLS: Okay. Tim, I've got some people
18 on here that I need to check on. Charlie Santonio, is he
19 here? Okay. James Jarrell? Dennis Robertson? Okay.
20 You wanted to put somebody else on in your last. Yeah,
21 okay.

22 MS. CHAPMAN: My name is Linda Chapman,
23 L-I-N-D-A, Chapman, C-H-A-P-M-A-N. I walked easily up
24 here. I don't have lung disease. I'm not breathing
25 hard. It was easy for me to walk up here. I walked up

1 here today because my husband couldn't. See, my husband
2 had Black Lung, had pneumoconiosis, had silicosis, had
3 chronic bronchitis, had just about every lung disease
4 known to a coal miner.

5 You know, we talk about samples, one sample
6 after another. We talk about the samples and the air
7 quality that these men are forced to work in every day.
8 If we don't get the levels correct, if we don't get them
9 low enough, we read a whole different kind of sample. We
10 read autopsy samples. And that's what I was forced to do
11 two years ago.

12 You know, it started out just about like any
13 normal day for a coal miner who is dying of lung disease.
14 He got till he no longer could shave himself, could not
15 bathe himself, got to he couldn't even feed himself
16 without strangling on his own food. Now why is that?
17 Why does a coal miner strangle on his food? Because he
18 is trying to breath through this mouth and eat at the
19 same time. So food is sucked down the wrong way.

20 Does this happen often? Daily. It happens
21 daily. When I wasn't at home and I was on my job
22 working, I wouldn't leave food by his recliner because I
23 was afraid he would strangle and I wouldn't be there to
24 help him. Now my husband died in his own bed. I made
25 sure of that. That's what he requested. Even though my

1 mom and my dad kept begging me to take him to the
2 hospital -- you don't want him to die in your bed. I
3 said no. He's going to die at home.

4 Most miners, though, die not in their own bed.
5 They die in a recliner. Why is that? Because they can't
6 breath laying down. There was a miner who testified here
7 20 minutes ago, and he said he got so sick of seeing
8 death. He choked up when he told you that. Well, I
9 watched death for about four years. Four years.

10 Our home is a split level. The last year and a
11 half of my husband's life, he never had a meal in our
12 dining room because he couldn't take those two steps to
13 go into the dining room to eat. All of his meals got
14 carried to him.

15 The morning he passed away started like just any
16 other days for him. I bathed him and I shaved him. I
17 powdered, pampered, and tucked him. That's what I called
18 it. This was a mountain man, much pride, much honor, who
19 couldn't even take care of himself, did not have the lung
20 capacity or the air capacity to take care of his own
21 personal needs.

22 When I got him ready for the day, he smiled
23 great big, and he said, you got me ready. And I said,
24 yeah, I got you ready, Bear, because we had a lot of
25 company coming in, a lot of friends and family because

1 the doctors had told me it was soon. It would be soon.
2 I said, yes, I got you ready, Bear. And he kind of
3 winked at me, and he said, you got me ready to go home.
4 And I said, oh, Bear, we got a few more days. We got a
5 few more days. I didn't get you ready to go home. You
6 got me ready to go home. I said, Bear, I'll do that when
7 it's time. And for the third time, he said to me, you
8 got me ready to go home.

9 So that gave me a little clue that maybe
10 something was going to be a little bit different this
11 day. So I kept an eye on him. He fell asleep. And for
12 10-minute increments, I kept checking on him. And the
13 house started filling full of friends and family coming
14 by because the time was close. And I said, you know, I
15 don't want to wake him up. He doesn't rest good because
16 of the machinery. There were machines and stuff, the air
17 quality machine trying to keep the air filtered out of
18 the bedroom even. I said no. I said, let's not wake him
19 up. He's resting. And for three hours, in 10-minute
20 increments, I kept checking on him. And I noticed around
21 noon there was a change. And I tried to rouse him, and I
22 couldn't.

23 For the second time that morning, I flipped back
24 the blankets and I lay down with my husband, and I
25 cuddled with him, and I stayed with him. And I told him

1 that I would be all right. For the first time in my
2 marriage, I lied to my husband. I told him it was okay
3 for him to go home. I would be all right. And 20
4 minutes later, he was gone.

5 A miner told you a while ago that he got so sick
6 of seeing death. Six weeks before my husband died, he
7 pretty much quit eating. He was going to call his own
8 destiny. And I begged him not to give up. Please don't
9 give up, Bear. And he smiled at me, and he said, Linda,
10 I'm not tired of life. I love my life with you. I'm not
11 tired of life. But I'm tired of dying. Because you see,
12 he had been dying for about four years. Towards the end,
13 it was about four years, and no quality of life. None.
14 Living with an air tank strapped to him.

15 My husband had 21 years coal mining experience.
16 He was third generation. He was a proud man. He was an
17 honorable man. The men that worked alongside of him said
18 he had the strength of 10 men on many a day. And he
19 couldn't even shake himself because of this dreadful
20 disease.

21 When it comes to a time when a disease will take
22 your dignity to the point that you can't even get
23 yourself off of a commode -- now that's why we have to
24 regulate the dust in these mines. You know, these men
25 are honorable men. They are great men, every one of

1 them. But if we don't take care of the laws and the
2 regulations that take care of them, they're as disposable
3 as this cup.

4 We live in a disposable age. We throw things
5 away when we're done with them, and they're discarded,
6 and they no longer have any use. When a coal miner ends
7 up with pneumoconiosis, he's disposable. And once he
8 gets that round of disease, the law is against him even
9 to helping with his medical needs.

10 I don't think I've met any of you before. I
11 guarantee you this won't be the last time you'll see me.

12 I set out a year ago from the capital down here, and I
13 walked to Washington, D.C., from Charleston. I walked
14 every day for almost a month to get there because I
15 wanted Washington, D.C., and the lawmakers there to
16 understand that these miners are honorable men. They
17 can't be disposable. And when we start treating them as
18 disposable, some day the light is going to go out because
19 no one is going to want to go down in that mountain and
20 get this ore out because it's too deadly. The price is
21 too high.

22 I was training for this walk on September 11th
23 when the towers went down in New York City. I was on a
24 treadmill training because I was supposed to leave in
25 October for Washington, D.C. I shut my treadmill off,

1 and I prayed to the father above that he would help those
2 people because their need was great. I didn't know what
3 I could do, but pray. Thirty-five hundred people lost
4 their lives in those two towers that day.

5 But two weeks later, there was something that
6 was told on the news that really captivated my attention.

7 The rescue workers and the survivors and the people that
8 was going in and around what they considered ground zero
9 was already complaining of respiratory difficulties from
10 breathing the dust off of those towers when they come
11 down. Just two weeks later, the damage was already done.

12 And they started the study. That was in September. By
13 January of that year, they said 35 percent of the people
14 that was working in and around ground zero was already
15 affected with terminal lung disease, already suffering at
16 night, couldn't breath when they lay down. COPD had
17 already been diagnosed in many of them.

18 But we have miners going in 10 years, 20 years,
19 30 years, and 40 years, and we are led to believe that
20 they annihilated this disease and it no longer exists. I
21 know what has been annihilated. The laws are being
22 annihilated and the rules are being annihilated that
23 helps these men, that keeps the coal operator in some
24 guidelines and helps them -- makes them be accountable
25 for these men.

1 I've been asked what is the hardest days after I
2 lost my husband. I first said it was anniversaries,
3 birthdays, holidays. But it's also Mondays and Tuesdays,
4 Wednesdays, Thursdays, Fridays, Saturdays, and Sundays.
5 I've carried many titles through my life. I've been a
6 friend, a daughter, a worker. I've been a volunteer.
7 I've been many things. And know I'm a widow. And it's
8 up to you. You all have the power. You all have the
9 final say that none of these men will ever be considered
10 disposable. Thank you.

11 MR. NICHOLS: Thank you.

12 (Applause)

13 MR. NICHOLS: Tim Baker.

14 MR. BAKER: Excuse me. My name is Tim Baker.
15 That's B-A-K-E-R. What I'd like to do first is briefly
16 read a statement into the record on the union's position
17 on the part 72, determination of concentration of
18 respirable coal mine dust single sample policy.

19 MSHA proposes two changes in their single sample
20 policy. The first is that citations would be based on
21 MSHA's samples rather than operator samples. The second
22 is that citations would be based on a single sample
23 rather than the average of five. On the surface, there
24 appears to be improvements, but there are many problems
25 that are buried in the details.

1 Compared to the operator samples, MSHA samples
2 are more likely to be accurate. In addition, if
3 citations are based on an average, dust levels can easily
4 go over the standard on single shifts, and the average
5 will be below the standard. But if citations are based
6 on single samples, if the dust level is too high on that
7 sample, MSHA could issue a citation based on a single
8 sample.

9 This policy is more in keeping with the Mine Act
10 because it requires that concentrations of respirable
11 dust be at or below the standard for each miner on each
12 shift and expresses a clear preference for taking samples
13 on a single shift rather than over several shifts. But
14 MSHA makes several adjustments that weaken these
15 improvements. These adjustments come from a) the way we
16 define a shift; b) they define a single sample, and what
17 they mean by over the standard.

18 First, in spite of miners regularly working 10
19 or 12 hour shifts, MSHA considers a shift to be eight
20 hours or less. They propose to start the sample when the
21 miner enters the section and turn it off eight hours
22 later, regardless of how long a shift is. The Mine Act
23 refers to a shift without defining how long it is. Thus
24 the MSHA proposal would not measure miners' true exposure
25 if it is longer than eight hours.

1 Second, MSHA proposes to take samples for
2 several miners on a shift. But even if more than one
3 miner is exposed over the standard, MSHA will issue one
4 citation. In other words, not every single sample that
5 is over the standard will result in a single citation.
6 This does not protect each miner on each shift. Not only
7 does this not provide adequate protection, it also has
8 the effect of making the likelihood of MSHA issuing
9 citations depend on the number of samples taken rather
10 than the level of dust.

11 Third, what MSHA means by over standard is over
12 2.33 milligrams per cubic meter of air, for a 2.0
13 milligram per cubic meter standard. To complicate things
14 more, they propose smaller adjustments if they average
15 samples, or if there is a reduced standard because of
16 quartz. They explained this adjustment because the dust
17 sampler does not always give precise results.

18 For example, even though the true dust
19 concentration may be 2 milligrams per cubic meter, it
20 might read 1.9 or 2.1, depending on many small variations
21 in how the filter is weighed, whether the battery is
22 fully charged, whether it pumps at the right rate and so
23 on. In other words, there is some doubt about whether
24 any samples give the true concentration. And the closer
25 you get to 2 milligrams per cubic meter, the greater the

1 doubts.

2 MSHA gives nearly all the benefit of the doubt
3 to the mine operator. If you measure exactly how the
4 sampler varies above and below the true value, then 95
5 percent of the time any measurement greater than 2.33 is
6 in fact greater than 2.0.

7 Of course, you could look at the other side of
8 the problem. If MSHA were giving the benefit of the
9 doubt to miners, they could require citations be issued
10 if a single sample measurement were above 1.67. That is
11 when you could be 95 percent sure the exposure was below
12 that standard. That is, subtract .33 from 2.0 to make
13 sure that you are below the standard rather than add .33
14 to make sure that you were above the standard.

15 Incidentally, with MSHA's policy on plan
16 verification, they require that dust be below 1.67. For
17 this reason -- but to make the unusual two steps backward
18 for every forward, this measurement, a single sample
19 measurement is taken by the mine operators and not by
20 MSHA. By giving the benefit of the doubt to operators,
21 the MSHA policy sacrifices miners' health to operators'
22 rights. It is a clear demonstration that they do not
23 think miners' health is as important as mine operators'
24 legal rights.

25 But the purpose of the Mine Act, as we recall,

1 is to protect miners' health. The MSHA policy is a step
2 in the wrong direction. When we consider that NIOSH has
3 recommended that the standard of 2 milligrams per cubic
4 meter be lowered to 1 milligram per cubic meter, this
5 adjustment for simply variability is another step in the
6 wrong direction.

7 MSHA should enforce the Mine Act as written.
8 For example, if 2 milligrams is the exposure level, MSHA
9 should issue citations if exposures above 2 milligrams
10 per cubic meter for each miner on each shift is detected.
11 If the shift is longer than eight hours, the standard
12 should be adjusted down so that, for example, if a miner
13 worked 10 hours, the standard should be 1.6 milligrams
14 per cubic meter for eight hours. If there is uncertainty
15 about the measurement, let the burden be borne equally by
16 miners and operators rather than give the benefit of the
17 doubt to the mine operators.

18 So while we have talked previously about our
19 position on a single sample, and we have supported single
20 sample, I think that when we look at the entire package,
21 we're making a grave mistake here whenever we begin to
22 determine that citations won't be issued until we go
23 beyond a 95 percent confidence level. And I guess one of
24 the questions that is on my mind as I read through this
25 is if we're going to give a benefit of the doubt, as the

1 document says, why did we not issue citations at 1.67?
2 Ninety-five percent confidence level -- we should give
3 the benefit of the doubt to the miner.

4 I would submit that the reason is probably
5 because everybody on this panel would say a judge would
6 throw that out of court and we wouldn't be able to
7 sustain that, and we wouldn't get any citation issued
8 anyhow. I would submit to you that before these hearings
9 are all over, we're going to make it very clear that 2.33
10 is unacceptable, and we will do everything in our power
11 to make sure that MSHA is not allowed to stretch to 2.33,
12 and that that should never be allowed in court either.
13 Two-oh is two-oh. How we get there and we make sure that
14 is enforced and enforced every time is maybe something we
15 need to discuss and we can build that model around
16 continuous dust monitoring.

17 And we have looked at the single sample, and we
18 are fine with I guess the general idea. We're very upset
19 with the fact that we would give the benefit of the doubt
20 to the mine operator.

21 A few other comments that I have -- and I'm
22 going to read some stuff, just very brief statements out
23 of the criteria document because it was mentioned on
24 Tuesday that NIOSH criteria document was a basis for this
25 rule. And so if I can -- and I'll try not to bore

1 everybody, but some of these things need to be put on the
2 record. And we will admit the entire criteria document
3 as part of the record.

4 This criteria document reviews available
5 information about the adverse health effects associated
6 with exposure to respirable coal mine dust.
7 Epidemiological studies have clearly demonstrated that
8 miners have elevated risk of developing occupational
9 respiratory disease when they are exposed to respirable
10 coal mine dust over a working lifetime at the current
11 MSHA permissible exposure limit of 2 milligrams per cubic
12 meter. The exposure limit of 1 milligram per cubic meter
13 recommended in this document is based on an evaluation of
14 health effects data, sampling and analytical feasibility
15 and technological feasibility.

16 In a very brief statement, I think we've clearly
17 said it all, that we're overexposing people at 2.0.
18 Black Lung is still a problem at 2.0. Not only as NIOSH
19 stated that it should be 1.0, they clearly have concluded
20 in 1995 that we have the feasible controls available to
21 us to accomplish that. And what we're talking about is
22 accomplishing that in the mine atmosphere.

23 They go on to say that their recommended
24 exposure levels of respirable coal mine dust be limited
25 to 1 milligram per cubic meter as a time weighted average

1 for up to 10 hours a day, up to 40 hours a week, as
2 currently measured by MSHA's methods. So clearly, they
3 were taking into consideration the changes within the
4 industry. And we need to look to that.

5 The NIOSH REL represents the upper limit of
6 exposure for each worker during each work shift and shall
7 not be adjusted upward to account for measurement
8 uncertainty. To minimize the risk of adverse health
9 effects, exposure shall be kept as far below the REL as
10 possible using engineering controls and work practices.

11 So now we are saying that -- or NIOSH has
12 clearly said that 2.33 should not exist, okay? And I
13 won't read all of these. I would point out that on page
14 2 of NIOSH's report and going into page 3 that they again
15 discuss and talk about 1 milligram and not adjusting the
16 exposure for errors in calibration of equipment.

17 On page 4, when we discussed the participation
18 of miners, they actually go beyond what sometimes we look
19 at as miners' reps, that we should be involved in all
20 aspects of sampling. Whether that is MSHA sampling or
21 operator sampling, we should be involved. But NIOSH
22 actually went into claiming that mine operators should
23 ensure that miners can participate in all medical
24 screening and surveillance programs at reasonable time
25 and place without loss of pay to the miner. So we're

1 even talking about medical screening as we go through the
2 criteria document.

3 It says on page 11 of the document the current
4 U.S. standard of 2 milligrams per cubic meter for
5 respirable coal mine dust is based primarily on estimates
6 of early studies. The intent of the standard of 2
7 milligrams is to prevent the development of PMF by
8 preventing progression of simple CWP to a category of two
9 or greater. More recent studies from the United States
10 and the United Kingdom indicates that the risk of PMF is
11 higher than estimated in these studies used to base the
12 current U.S. dust standard.

13 They estimate that at age 58 an average of seven
14 out of every 1,000 U.S. workers exposed to lower dust
15 standards would possibly contract Black Lung.

16 Somebody had mentioned earlier -- and there has
17 been some discussions about -- and I know that there is a
18 real difference in opinion on whether or not we ever get
19 to 4 milligrams, 6 milligrams, or 8 milligrams. And at
20 Tuesday's hearing, I had expressed my concern that the
21 proposed rule retards any desire to do any new
22 engineering controls. And I think that's very true. And
23 what I based that on is even what I see in the NIOSH
24 document -- I see an increase from -- and these figures
25 are rather old, but they nonetheless hold true.

1 From 1980 until 1990, coal production has
2 increased vastly. And between 1980 and -- in 1980,
3 miners were producing about 16.32 tons per day per miner.
4 In 1990, that was up to approximately 33.25. Now I
5 would suggest to you that that double increase in
6 production also brings with it a corresponding doubling
7 of dust that is generated because what we're talking
8 about is advancements in machinery, larger machines that
9 produce more, produce faster. And when you're cutting
10 coal faster and you're cutting more coal, you're
11 producing more dust.

12 In that time, while we have not been at all
13 happy with the fact that miners still continue to
14 contract Black Lung, we have at least had a standard that
15 said you still can't go above 2.0. I would suggest that
16 those machines are going to continue to keep getting
17 bigger. Coal is going to be mined faster. Dust is going
18 to be generated much greater than this 1990 study shows.

19 And it probably is already, and it will only increase.

20 If in fact that does occur, and we do not have a
21 rule that forces technology, that forces environmental
22 and engineering controls that meet the increase in
23 production, then we will very quickly hit a standard that
24 says eight-oh PAPR. I would suggest that that is a
25 reality that is just around the corner because production

1 is going to increase, dust is going to increase. There
2 is nothing to drive engineering.

3 On page 41 of the criteria document, the study
4 states that before 1970, the average concentration of
5 respirable dust for most job categories of underground
6 coal mines exceeded 2 milligrams per cubic meter. The
7 average concentration for some jobs at the working face
8 where coal is being extracted exceeded 6 milligrams per
9 cubic meter. We're headed in the wrong direction.
10 They're saying that it was outrageous that they found 6
11 milligrams. And I suggest to you that if this rule
12 continues, they will be even more outraged because we
13 will find 8 milligrams.

14 We will admit the document, of course, into the
15 record. I'm sure you had it. One last statement that I
16 would like to read. The excess -- and this is part of
17 their study. The excess prevalence of simple CWP, PMF,
18 and decreased lung function is estimated to be
19 substantially reduced if lifetime average exposure to
20 respirable coal mine dust is reduced from 2.0 to .5
21 milligrams per cubic meter. However, even in a mean
22 concentration of .5 milligrams per cubic meter, miners
23 have a risk of 1 in 1,000 of developing these conditions.
24 A 1 in 1,000 risk is defined as significant by the
25 United States Supreme Court in the 1980 benzene decision.

1 And that decision states, if the odds are 1 in 1,000
2 that regular inhalation of gasoline vapors that are 2
3 percent benzene will be fatal, a reasonable person might
4 consider the risk significant and take appropriate steps
5 to decrease or eliminate it.

6 Now that's one quarter of what we are currently
7 talking about in the standard. And the United States
8 Supreme Court said this was outrageous. So we need to
9 continue to look to decrease our exposure.

10 There was some questions raised earlier today
11 about -- and I think, George, that you had raised the
12 question to an individual who is here, and you said,
13 well, if these helmets are faulty and they're leaky, why
14 would you wear them. And I think to a certain extent
15 there is a feeling out there, a misconception in many
16 respects, on the part of some miners, and we try our best
17 to educate the people in the union. But there is a
18 misconception out there that these things actually work.

19 And I would submit to you that there is probably a lot
20 of operations out there that we may not represent that
21 these people are educated by their employer and told
22 these things work, and you can work in as much dust as
23 want. You're just in good shape. I think that's one
24 concern.

25 The other thing is I think that miners at least

1 now tend to be more proactive when it comes to health.
2 And, you know, if there is a chance that this thing is
3 going to work, and even if they know it's faulty, you
4 know, it's better than what they had. It's not what it
5 needs to be. But I think in many respects, that's what
6 -- you know, I'll give it a try. I'll see if it works.
7 I think over the course of time, they found out it not
8 only does not work, it doesn't function as it should.
9 But in fact, they can't wear it for a full shift, and
10 they can't use in certain specific tasks they have to do.

11 So I would commend them for at least putting
12 forth the effort. I think we need to go much further on
13 exploring how to correct the problem rather than just
14 discuss why would you wear it anyhow.

15 On Tuesday, there was some discussion on the
16 scarce resources. I think that the statement was made by
17 someone on the panel that, you know, we're going to do --
18 allow the employers to do the verification sampling, and
19 we're going to start the compliance sampling. But we're
20 going to go out to the ones that can't get in compliance.

21 It will better allow us to utilize our limited
22 resources.

23 I would suggest that there is a problem there,
24 too. And I think Joe Maien alluded to it on Tuesday.
25 But what we need to look at is if the resources are

1 limited, then there should be a concern with the
2 reduction in the budgets that are being requested at
3 MSHA. And I know we have expressed a concern with that,
4 and we need to look at increasing resources rather than
5 decreasing sampling. We need to protect these miners.

6 Just a short while ago today, there were 1,500
7 miners and their family members and supporters who
8 rallied at the capital in Charleston. And I would
9 suggest that if you add those 1,500 miners and family
10 members and friends to the roughly 75 people that have
11 attended these last two hearings, I would say that I have
12 not heard one person, including the lone operator who
13 testified, ask for this rule to be moved forward. Not
14 one person has come forward and said, listen, this is a
15 good thing. We need to go with it.

16 That is a message that I think clearly each of
17 you have heard. I think that is a message that you as
18 the panel need to carry back to Arlington. This is
19 clearly a nonstarter. This is a bad proposal. It is bad
20 for miners. It would appear from the deafening silence
21 on the other side except for one operator that it's not
22 very good for them either. I'm not sure how that works.

23 But nobody has spoken in support. And I think that that
24 speaks volumes.

25 I will close by saying what I said whenever I

1 opened on Tuesday. You have overstretched your
2 authority. You have no right to propose and do what you
3 were doing. We would hope that you would recognize that
4 fact. We would hope that you would take this proposal
5 back and build it around a single sample -- or I'm sorry,
6 a continuous sampling device. We think that's the right
7 thing to do. That's the proper thing to do. And to be
8 honest with you, neither side, neither one of us, or the
9 operators need to be dragged down in a quagmire that
10 continues this process when nobody wants it. The
11 technology to correct the problem is just around the
12 corner.

13 To be honest with you, we can stop now. We can
14 stop the hearings. You can take it back. We can get our
15 continuous sampling, which is right around the corner,
16 and we'd all be better off a lot sooner than what we're
17 going to be going through this process.

18 I'll be happy to take any questions. But I'm
19 guessing it's the end of the day, and there probably
20 won't be any, not even one. Thank you very much for --

21 MR. NICHOLS: You're correct. Thank you. Tim
22 is our last scheduled speaker, so thanks for showing up.

23 Thanks for your comments. How much time do you want?
24 You already had 45 minutes.

25 MR. MAIEN: Yeah. I don't want to keep you guys

1 here. I apologize. When I promised this morning to do
2 something, I wanted to deliver that. Joe Maien with
3 United Mine Workers. And I'll be real brief here. When
4 I spoke this morning, I had laid out a case that there
5 was a number of sections of the Mine Act that was being
6 violated by these rules. And when I finished my
7 testimony, I had failed to provide you with that
8 information.

9 With regard to the rule that will increase the
10 dust levels to upwards of 8 milligrams and will have
11 respirators replace engineering controls under the rule,
12 we have done an assessment of the rule after hearing the
13 testimony or the message from the agency on Tuesday and
14 found that it violates section 202(b) regarding the
15 mandate that the cumulative gram standard not be
16 exceeded. It violates section 202(h), which says that
17 the mine operators are prohibited from using respirators
18 to replace engineering controls, environmental controls
19 with those respirator devices, which we have found to be
20 faulty as well.

21 It violates various parts of section 303(b),
22 which dictates that the government has to make sure that
23 the operator has sufficient air used to dilute and render
24 harmless dust and in specific cases respirable dust. It
25 violates part 75.325(a)(1), which dictates air

1 requirements for diluting and rendering harmless dust to
2 the air quality standard. It violates part 75.321(a)(1)
3 with regard to air quality that requires that the air be
4 used to dilute and render harmless dust.

5 It violates part 75.300 that explicitly
6 prohibits respiratory equipment from being used to
7 replace engineering controls and requires, as has been
8 since 1969, respiratory equipment to be provided under
9 the current law. This is not something that's new. It's
10 something they have to do. Again, the proposal would
11 violate that section by allowing respirators to replace
12 engineering controls.

13 It violations section 70.100 with regard to the
14 2 milligram standard being exceeded in the mine
15 environment with regard to the way that this rule is
16 proposed. It violates section 101(a)(9) of the Mine Act,
17 which says that you cannot diminish protections miners
18 currently have or are afforded under the Mine Act. It
19 violates section 101(a)(6)(a), which sets straightforward
20 a provision of lowering dust levels in the nation's coal
21 mines to protect miners, and it says that it shall set
22 standards which most adequately assure on the basis of
23 the best available evidence that no miner will suffer
24 material impairment of health or functional capacity,
25 even if such miner has regular exposure to hazards dealt

1 with by such standard for the period of his working life.

2 With regard to the proposal to change the
3 sampling of coal mines, it violates section 75.207, which
4 mandates bimonthly inspections, at least a frequency of
5 inspections of working sections, and it violates part
6 75.208, which mandates bimonthly dust sampling
7 inspections in out-by areas of mines.

8 These are all standards that we have identified
9 very readily that would be violated by the proposal that
10 has been pushed forward by the agency. And at the end of
11 the day, just looking at those standards alone, this
12 proposal is highly illegal under the Mine Act and
13 violates both the intent and direct language of Congress.

14 And in closing, I will say that I would urge you
15 as well to send a message back to the leadership of MSHA
16 that through two days of hearings in the coal fields, two
17 key areas, West Virginia and Pennsylvania, there has been
18 no support for this rule. As expressed in these public
19 hearings, we set out to do that, to provide guidance and
20 information to the panel. And we would urge that the
21 agency immediately withdraw this rule, which has been the
22 overwhelming message that has been received at both these
23 public hearings, including that of the one mine operator
24 who testified on Tuesday in Washington, PA. Thank you
25 very much.

1 MR. NICHOLS: Thank you. That concludes our
2 hearing.

3 (Whereupon, at 4:01 p.m., the hearing in the
4 above-entitled matter was adjourned.)

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REPORTER'S CERTIFICATE

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3 DOCKET NO.: N/A

4 CASE TITLE: Office of standards, Regulations, and
5 Variances

6 HEARING DATE: May 8, 2003

7 LOCATION: Charleston, West Virginia

8

9 I hereby certify that the proceedings and evidence
10 are contained fully and accurately on the tapes and notes
11 reported by me at the hearing in the above case before
12 the
13 Department of Labor.

14

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Date: 5/8/03

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