



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

PUBLIC HEARING FOR )  
 )  
PROPOSED NOISE STANDARDS )

Harley Hotel  
3400 Rider Trail S.  
St. Louis, Missouri

Thursday,  
May 8, 1997

The parties met, pursuant to the notice of the  
Moderator, at 9:00 a.m.

BEFORE: MICHAEL VALOSKI  
Moderator

APPEARANCES:

MSHA Panel:

JAMES CARTER, Metal and Nonmetal  
VICTORIA PILATE, Office of Standards, Regulations  
and Variances  
MARVIN NICHOLS, Health Division  
MICHAEL VALOSKI, Office of Technical Support  
JACK POWASNIK, Solicitor's Office

Heritage Reporting Corporation  
(202) 628-4888

ROSLYN FONTAINE, Office of Standards, Regulations  
and Variances  
VERNON GOMEZ  
ROBERT THAXTON

## ADDITIONAL APPEARANCES:

SPEAKERS:

ELLIOTT BERGER, Senior Scientist, Auditory Research  
with Aearo Company

JOE URBAN, Regional Deputy Director of Organizing in  
the midwest, the United Mine Workers of America

BUTCH OLDHAM, International Representative, United  
Mine Workers

DON KUNKEL, Safety Committee Chairman, Local 15, UMWA

DUANE CHILDERS, Representative, United Mine Workers  
Local Union 2305

EDWIN WYATT, Peabody Coal Company, Camp 11 Mines

TYRUS BECKER, Local Union President, United Mine  
Workers Local 2412

DENNIS WALLACE, Local President Camp 11, Peabody Coal  
Company, Overfield, Kentucky

EUGENE GROSS, President, Local Union 1071, Union Town,  
Kentucky, Salmon Creek Coal Company

RANDY HENRY, Union President, United Mine Workers  
Local 12

JIM DUNN, Chairman, Safety Committee in Local 1793,  
Peabody Coal Company

WAYNE THOMPSON

RANDY WILDERMUTH, Safety Committeeman, Consolidation  
Coal, Burn Star Number 4 Mine in Cutler, Illinois

PAT LEET, Peabody Coal Company, Camp 9, Union County,

Heritage Reporting Corporation  
(202) 628-4888

Waverly, Kentucky

MIKE DILLINGHAM

ADDITIONAL APPEARANCES:

SPEAKERS:

WILLIAM HUBIAK, Grand De Malaney Company

JAN OSTERUD

JEFF GURLEY, Safety Supervisor



1           We are here to listen to your comments on the  
2           December 17, 1996, proposed rule, revising certain portions  
3           of the existing health standards for occupational noise  
4           exposure in coal and metal and nonmetal mines. The hearings  
5           are to be held in accordance with Section 101 of the Federal  
6           Mine Safety and Health Act, 1977. As is the practice of  
7           this agency, formal rules of evidence will not apply.

8           MSHA published an Advanced Notice of Proposed  
9           Rulemaking on December 4, 1989, as part of the agency's  
10          ongoing review of its safety and health standards. The  
11          agency's existing noise standards which were promulgated  
12          more than twenty years ago are inadequate to prevent the  
13          occurrence of occupational noise-induced hearing loss among  
14          miners. In the Advanced Notice of Proposed Rulemaking the  
15          agency solicited information for revisions of the noise  
16          standards for coal and metal and nonmetal mines. The  
17          comment period closed July 15, 1990. On December 17, 1996,  
18          in response to information received on the Advanced Notice  
19          of Proposed Rulemaking, MSHA published a proposed standard.  
20          The agency has developed a proposal that it estimates can  
21          reduce by two-thirds, the numbers of miners currently



1 projected to suffer material impairment of their hearing,  
2 but which it estimates can be implemented at a cost of less  
3 than nine million dollars (\$9,000,000.00) to the mining  
4 industry as a whole. The focus of the proposal is on the  
5 use of the most effective means to control noise.

6 Engineering controls to eliminate the noise or  
7 administrative controls. For example, rotating miners' duty  
8 to minimize noise exposure whenever feasible.

9           The proposed standard would retain the existing  
10 permissible exposure levels, the PEL. It would also  
11 establish a new action level of eight hour time weighted  
12 average at 85 dBA. If a miner's exposure exceeds the PEL,  
13 the proposed rule would require that the mine operator use  
14 feasible engineering and administrative controls to reduce  
15 the noise exposure to the PEL. If engineering and  
16 administrative controls do not reduce the noise exposure to  
17 the PEL, the operator must use these controls to lower  
18 exposure to as close to the PEL as is feasibly, -- as is  
19 feasible or achievable. In addition, the operator should  
20 have to provide any exposed miner annual audiometric  
21 examination, properly fitted hearing protection and ensure

1 that the miner takes the annual audiometric examination and  
2 uses such protection.

3 The comment period was extended from February 18,  
4 1997 to April 21, 1997, due to the requests from the mining  
5 community. MSHA has received a broad range of comments from  
6 over sixty different interests which include mine operators,  
7 industry trade associations, organized labor, colleges and  
8 universities and noise equipment manufacturers. The  
9 comments addressed the primary provisions of the proposed  
10 rule, such as the action level, the PEL, methods of  
11 compliance, exposure monitoring and audiometric testing.

12 Exposure to noise is measured under Proposed  
13 Section 62.120. The Proposed Section would require that a  
14 miner's noise exposure not be adjusted for the use of  
15 hearing protectors; that a miner's noise exposure integrate  
16 all sound levels from 80 dBA to at least 100 dBA during the  
17 miner's full work shift, and that the current 5 dBA exchange  
18 rate to measure the level of the miner's noise exposure  
19 could continue to be used, -- would continue to be used. An  
20 action level of (85) during any work shift or equivalent, a  
21 dose of 50 percent would also be established under the

1 proposed rule. For miners who are exposed to the 85 dBA  
2 action level, the proposed rule does not require the use of  
3 engineering and administrative controls. Rather, operators  
4 would be required to provide personal hearing protection.  
5 Upon a miner's request, an annual employee training and  
6 enrollment in the Hearing Conservation Program. The  
7 proposed rule would also retain the existing PEL of 90 dBA,  
8 requiring that no miner be exposed to noise exceeding a  
9 time-weighted average of 90 dBA(s) during any work shift, or  
10 equivalently, a dose of 100 percent. While PEL would not  
11 change the action required if noise exposure exceeds the PEL  
12 are different from the current requirements.

13 MSHA's existing metal and nonmetal noise  
14 standards, for example, already require the use of feasible  
15 engineering or administrative controls when a miner's noise  
16 exposure exceeds the PEL. The existing standards, however,  
17 do not require the miner operator to post a procedure for  
18 any administrative controls used; to conduct specific  
19 training or to enroll miners in a Hearing Conservation  
20 Program. Under MSHA's current coal mining standard a  
21 citation is not issued when a miner's exposure exceeds the

1 PEL, if appropriate hearing protection is being used by the  
2 miner. In the event a violation of the coal mining  
3 standard, operators are required to promptly institute  
4 engineering or administrative controls and to submit to MSHA  
5 a plan for the administration of a continuing, effective  
6 Hearing Conservation Program. The proposed rule would  
7 establish a hierarchy of controls for all miners when  
8 exposure exceeds the PEL. In addition, other aspects of the  
9 rule increase protections to miners and further reduce the  
10 potential for hearing loss. Under the proposal, mine  
11 operators must first utilize all feasible engineering  
12 controls and administrative controls to reduce sound levels  
13 to the PEL, before relying on other controls to protect  
14 against hearing loss. Furthermore, an operator would be  
15 required to ensure that a miner whose exposure exceeds the  
16 PEL takes the hearing examination offered to enrollment in  
17 the Hearing Conservation Program.

18 Under Proposed Section 62.120(f), MSHA would  
19 require operators to establish a system of monitoring which  
20 would effectively evaluate each miner's noise exposure. The  
21 proposal would also require that within fifteen calendar

1 days of determining whether a miner's exposure exceeded, --  
2 that a miner's exposure exceeded the action level, the PEL,  
3 the dual hearing protection level or the ceiling level, the  
4 mine operator notify the miner in writing of the over  
5 exposure and the cooperative action being taken, pursuant to  
6 Section 103(c) of the Act.

7           The proposed rule also provides for hearing  
8 protection in the training. Under Proposed Section 62.125,  
9 miners would be given a choice from at least one month type  
10 and one plug-type (A) hearing protector. Under Section  
11 62.130, miners would be given required training.  
12 Additionally, under Proposed Section 62.140, operators would  
13 be required to offer baseline audiograms to miners enrolled  
14 in a Hearing Conservation Program. That is, when a miner's  
15 exposure exceeds the action level. Prior to conducting the  
16 baseline audiogram, operators would be required to make  
17 certain that miners have at least a fourteen hour period  
18 where they are not exposed to workplace noise. Use of  
19 hearing protections as substitute for this quiet period  
20 would be prohibited. The proposed rule would also require  
21 mine operators to offer a valid audiogram at intervals not

1 exceeding twelve months, for as long as the miner remains in  
2 the Hearing Conservation Program. Proposed Section 62.150,  
3 would require the operator to ensure that all audiometric  
4 testing is conducted in accordance with scientifically  
5 validated procedures. MSHA would also require that  
6 audiometric testing records be maintained at the mine site  
7 for the duration of the effective miner's employment, plus,  
8 at least six months thereafter.

9 Under Proposed Section 62.160, operators would  
10 have thirty days in which to obtain audiometric testing  
11 results and interpretations. Additionally, under Proposed  
12 Section 62.180, MSHA would require that unless a physician  
13 or an audiologist determines that a Standard Threshold Shift  
14 is neither work-related nor aggravated by occupational noise  
15 exposure within thirty days of receiving evidence of the  
16 Standard Threshold Shift or results of a re-test confirming  
17 a Standard Threshold Shift, the operator must do the  
18 following: retrain the miner; allow the miner to select  
19 hearing protectors or a different hearing protector; and  
20 receive effectiveness of any engineering and administrative  
21 controls to identify and correct any deficiencies.

1            Proposed Section 62.190 would require that within  
2    ten working days of receiving the results of the audiogram  
3    or receiving results of a follow-up evaluation, the operator  
4    notify the miner in writing of the results and  
5    interpretation of the audiometric test, including, (1) any  
6    finding of a Standard Threshold Shift or reportable hearing  
7    loss; (2) if applicable, the need and reason for any further  
8    test or evaluation. Finally, the proposed rule would  
9    require that operators provide the miner, upon termination  
10   of employment, with a copy of all records that the  
11   operators' required to maintain under this part, without  
12   cost to the miner.

13           This the second of six hearings. We will also  
14   receive comment and testimony on the proposed rule in  
15   Denver, Colorado, on May 13th, in Las Vegas, Nevada, on May  
16   15th, in Atlanta, Georgia on May 28th and in Washington,  
17   D.C., on May 30th. The hearings all begin at 9 a.m. and end  
18   at 5 p.m. If necessary, however, MSHA will continue the  
19   hearings into the evening hours. A verbatim transcript of  
20   this hearing is being taken, it will be made an official  
21   part of the rulemaking record. The hearing transcript,

1 along with all of the comments that MSHA has received to-  
2 date on the proposed rule will be available for review by  
3 the public. If you wish a personal copy of the hearing  
4 transcript, however, you can make your own arrangements with  
5 the reporter. I will now turn this over to Mike Valoski,  
6 who's the hearing Moderator.

7 MR. VALOSKI: Good morning. As Vern said, my  
8 name is Mike Valoski, and I will be the Moderator for this  
9 public hearing.

10 MSHA views these rulemaking activities as  
11 extremely important and knows that your participation is  
12 also a reflection of the importance that you attach to this  
13 rulemaking. To ensure that an adequate record is made  
14 during this proceeding, when you present your oral  
15 statements or otherwise address the panel, I ask you to come  
16 to the podium and clearly state your name, spell your name,  
17 and state the name of the organization that you represent.

18 The order of presentation of public statements  
19 will be in the order in which the requests were received and  
20 will be as follows. The first presenter will be Elliott  
21 Berger, followed by Joe Urban, Butch Oldham, Don Kunkel,



1 Duane Childers, Edwin Wyatt, Larry Todd, Tyrus Becker,  
2 Dennis Wallace, Eugene Gross, Randy Henry, Nat Brice  
3 (phonetic), Jim Dunn, Wayne Thompson, Randy Wildermuth, Pat  
4 Leet and Mike Dillingham.

5           It is my intent, that during this hearing anyone  
6 who wishes to speak will be given an opportunity. Anyone  
7 who's not previously requested to speak should indicate  
8 their intentions to do so by signing the list of speakers,  
9 which is located at the far left end of my table. Time will  
10 be allocated for you to speak after the scheduled speakers.  
11 The Moderator will attempt to recognize all speakers in the  
12 order in which they requested to speak. If necessary,  
13 however, the Moderator reserves the right to modify the  
14 order of presentation in the interest of fairness. Also, as  
15 Moderator I may exercise discretion to exclude irrelevant or  
16 unduly repetitious material and in order to clarify certain  
17 points, the panel may ask questions of the speaker. All  
18 comments are important to the Agency. MSHA will accept  
19 written comments and other appropriate data on their  
20 proposal from any interested party, including those who do  
21 not wish to present an oral statement. Written comments may

1 be submitted to Roslyn Fontaine at the far left end of the  
2 table today, or sent to Patricia Silvey at the address  
3 listed in the hearing notice. All written comments and data  
4 submitted to MSHA will be included in a rulemaking record.  
5 Should anyone desire to modify their comments or submit  
6 additional comments following the hearings, the record will  
7 remain open until June 20, 1997, to allow for post-hearing  
8 comments and data. If possible, the Agency would appreciate  
9 receiving a copy of your comments on computer disk. Your  
10 comments are essential in helping MSHA develop the most  
11 appropriate rule that fosters safety and health of our  
12 nation's mines. We appreciate the constructive criticism  
13 and the hard work and careful thought which your comments  
14 represent.

15 Finally, I, personally, and on behalf of the  
16 Assistant Secretary, Davitt McAteer, would like to take this  
17 opportunity to express our appreciation to each one of you  
18 for being here today and for your input. We look forward to  
19 your continuing participation in the Agency's rulemaking  
20 activities. Before we begin with the first speaker I would  
21 remind you to sign the attendance sheet, which we have at

1 the table in the back of the room, whether or not you choose  
2 to speak. Also, once again, if your name does not yet  
3 appear on a list of speakers you will still have an  
4 opportunity to present the testimony. The list of speakers,  
5 if you want to talk, will down by Ros and you can sign up at  
6 anytime. For each speaker, as you begin your statement,  
7 please state your name and organization, who you represent.  
8 Also, please spell your last name for the reporter. If you  
9 have copies of your prepared testimony, please present the  
10 copies to the Agency panel as you begin. Our first speaker  
11 of the morning is Elliott Berger. You want somebody to flip  
12 them for you, Elliott?

13 MR. BERGER: I'm going to have a couple I need to  
14 point to, so I'll run up there as well.

15 MR. VALOSKI: Okay.

16 MR. BERGER: My name is Elliott Berger and you  
17 can see it spelled on the overhead. I'm the Senior  
18 Scientist for Auditory Research with Aearo Company. And my  
19 comments this morning are going to focus on, --

20 MR. VALOSKI: Elliott, please spell it for the  
21 reporter.

1 MR. BERGER: E-L-L-I-O-T-T, Berger, B-E-R-G-E-R.

2 MR. VALOSKI: Thank you.

3 MR. BERGER: And Aearo is an odd one, it's A-E-A-  
4 R-O. My comments this morning are going to focus on key  
5 points of the written testimony that was already submitted  
6 by Aearo Company to the MSHA docket. In addition, as Chair  
7 of the American Industrial Hygiene Association Noise  
8 Committee and their representative to the coalition to  
9 protect worker's hearing, I will be speaking to their  
10 comments as well, in that the Aearo Company comments are a  
11 subset of the coalition requirements. Aearo did not address  
12 all of the areas that the coalition did, but the comments  
13 that Aearo provided are in agreement with those same  
14 comments that appear from the coalition.

15 We certainly support the efforts of MSHA and think  
16 that the proposal in large part, will provide a greater  
17 measure of protection of workers' hearing in the mining  
18 industry. But there are a number of areas that we would  
19 like to address that we feel could bear improvement in the  
20 current proposal. And those are in the areas listed on this  
21 first overhead of hearing protectors, Hearing Conservation

1 Program definition and aspects of the program, audiometry  
2 and noise measurements.

3 I'll begin by addressing the area of hearing  
4 protectors. There's four topics that I'd like to look at,  
5 they're outlined on this first overhead. MSHA cited a wide  
6 number of studies in their record, that have shown that  
7 hearing protector performance falls far short of label  
8 values that are required to be put on products by the  
9 Environmental Protection Agency or the EPA. And I commend  
10 MSHA on their attention to those issues. Also, a number of  
11 their own studies show these same results. However, what  
12 MSHA chose to do as a result of that, was to ignore all data  
13 whatsoever for hearing protector attenuation. And, in part,  
14 the reasoning was that there were no standardized methods  
15 available at the time of the advance notice in 1989, '90, or  
16 at the time of the proposed rule late last year, that would  
17 guide an agency in how this testing should be accomplished.  
18 That situation has now been rectified. A new standard was  
19 approved in February of this year that was developed by ANSI  
20 12, Working Group 11, and the standard is designated ANSI  
21 12.6-1997. That document was approved in February and it

1 will be printed early this summer. It includes two methods  
2 for measuring hearing protector attenuation. The second of  
3 them being Method B or a naive subject fit. And the  
4 specific purpose of that method was to develop hearing  
5 protector data that would provide a reasonable indication of  
6 the values that could be achievable in a well-run Hearing  
7 Conservation Program. And I have cited in my written  
8 testimony a paper put together by myself and John Franks,  
9 and also recently submitted by the Working Group to the  
10 General Acoustical Society, and will submit that to the  
11 record today. I have a few overheads that I'd like to show  
12 you, giving you an indication of what the type of data are  
13 that result from this testing. And I guess what I'll need  
14 to is take this microphone up front then.

15 I don't want to belabor the point here, but I'd  
16 like to show you a few details. The Working Group 11 was  
17 involved for about seven years in developing this standard.  
18 There was a pilot and a full scale inter-laboratory study  
19 that the Working Group conducted. And here are some of the  
20 results from those studies. What you see here are data for  
21 a foam earplug. And we're looking at a attenuation or noise

1 reduction on this axis. The attenuation increases as you go  
2 down the chart. We'll just focus on these lines in the  
3 lower half of the graph. The blue curve represents the  
4 published attenuation data for this form earplug per the EPA  
5 requirements. The range of green curves are data from  
6 sixteen field studies in countries around the world  
7 conducted in the last fifteen years. The red curve  
8 represents the results from the type of tests called for by  
9 the new ANSI Standard. What you can see is that there is a  
10 very large divergence between the current label values and  
11 any of the field data. There is certainly a range of values  
12 in field performance, probably due, in part, to the range in  
13 quality of those Hearing Conservation Programs. The goal of  
14 the Working Group was to represent perhaps the upper  
15 quartile, the upper 25 percent of what you could hope to  
16 obtain in real world environments. And from these data it  
17 would certainly appear as though that had been achieved and  
18 the results are, as you note, substantially different than  
19 the current label values. Just to give you an example, for  
20 another type of protector here is a pre-molded earplug.  
21 There are about five field studies available. Once again,

1 you can see the manufacturer's published data. The green  
2 curves and this green box represent the field performance  
3 values and the red curve, the data from the new ANSI  
4 Standard Method B. And, again, you can see that it  
5 provides, in this case, almost an upper-bound to the real  
6 world performance.

7           There were two other protectors tested. If anyone  
8 asks, we can look at those data as well; another earplug and  
9 an earmuff and the same sort of performance was apparent.

10           The results of the new standard or that  
11 standardized method, I can tell you have received wide  
12 support in the professional community. There was an NHCA  
13 Task Force established in the early 1990(s), the National  
14 Hearing Conservation Association. And that Task Force on  
15 Hearing Protector Effectiveness, which consisted of nineteen  
16 professional agencies, organizations and Working Groups,  
17 came to a consensus finding supporting the results of tests  
18 according to this new standard. The purpose of that Task  
19 Force was to provide recommendations to the EPA on how to  
20 revise the current EPA labeling regulation. In addition,  
21 since that time, nine professional organizations, all listed



1 under Item 3, which consist of the American Academy of  
2 Audiology, the American Academy of Occupational Health  
3 Nurses, the American Academy of Otolaryngology, Head and  
4 Neck Surgery, the American Industrial Hygiene Association,  
5 the Acoustical Society of American, the American Speech,  
6 Hearing, Language Association, the American Society of  
7 Safety Engineers, CAOHC, the Council on Accrediting Hearing  
8 Technicians, and the National Hearing Conservation  
9 Association, have all formally endorsed the findings of the  
10 Task Force and hence, recommended use of the new ANSI  
11 Standard for developing hearing protector attenuation data.  
12 Now that that document's available, I would strongly  
13 recommend that MSHA consider its adoption. The current MSHA  
14 proposal treats all hearing protectors as equal. And  
15 certainly there is some degree of uniformity among certain  
16 types of devices, but there are data that definitely  
17 indicate that some types or brands of hearing protectors can  
18 perform better than others, and there should be a way for  
19 the user to distinguish those in the higher noise  
20 environments where it may be important to select the devices  
21 with the greatest attenuation.

1           In that regard then, the written comments indicate  
2 how this standard should be utilized to evaluate the  
3 acceptability of hearing protectors in noisy environments  
4 and specifically, when an STS or a Standard Threshold Shift  
5 exists one, one of the follow-up measures, other than simply  
6 checking the performance of the hearing, -- checking the  
7 quality of the hearing protector and the fit, and other  
8 issues that may have led to the STS. If you go through all  
9 that, and you find out that it looks like the person was  
10 wearing the hearing protector correctly and it was in good  
11 condition and it really is an STS, then the obvious next  
12 possibility is maybe they need a more protective device.  
13 And this standard would then provide data that could be used  
14 so that the assessment would be also evaluate maybe a more  
15 protective device needs to be utilized.

16           Last year NIOSH in their proposed criteria  
17 document, under Item 1(a)(7), they indicated a derating  
18 proposal, which was a percentage derating of current label  
19 values. That derating was, in part, based on work that I  
20 had done in conjunction with NIOSH, and does provide a  
21 reasonable reflection that would bring the current label

1 values into correspondence with field performance. But it's  
2 a very crude estimation. The reason being, that the current  
3 label values have been shown to provide neither a good  
4 indication of the absolute performance of hearing protector,  
5 or even a proper rank ordering of their performance. So  
6 that it's very difficult to do anything at all with the  
7 existing laboratory data. The much better approach is to go  
8 back to square one, start over and require new testing. And  
9 in that regard, MSHA could provide quite a service to not  
10 only the mining community, but industry as well. As you may  
11 be aware, many of these professional organizations have  
12 petitioned EPA to revise the labeling regulation. There's  
13 nobody home at EPA. There's no one in that office of Noise  
14 Abatement and Control, and although it's possible they may  
15 receive funding in the next couple of years, there's nobody  
16 right now to do anything with those petitions. So,  
17 activity's going to be slow at the EPA. If MSHA were to  
18 require these type of data be provided for the mining  
19 community then manufacturers would have to start to provide  
20 those data to mine operators and there would be somewhat of  
21 a fool-proof, -- there would be an impetus for the hearing

1 protection manufacturers to have to provide those data  
2 perhaps as well as the existing type of EPA data.

3 Item B is the use of hearing protectors in low  
4 sound levels. Although it's worded in a rather obscure  
5 manner in the proposal, what you can note is that the  
6 requirement is that if an employee's exposed above the PEL,  
7 then at anytime they're exposure is above a sound level of  
8 80 dB they have to be wearing a hearing protector as long as  
9 their overall TWA is above the PEL. I believe that that is  
10 a flawed recommendation and it's going to lead to problems.  
11 For starters, the data clearly show that as sound levels  
12 diminish, hearing protectors will interfere with the ability  
13 to hear critical warning sounds, speech and other  
14 communication signals. The turnover point is about 85 dBA,  
15 so when the sound levels get below about (85) hearing  
16 protectors can negatively impact your ability to hearing  
17 noise. In addition, below 85 dBA the sounds are much less  
18 hazardous to one's hearing. It's going to be much more  
19 difficult to motivate employees to wear hearing protectors  
20 in those very low sound level environments. To many people,  
21 sounds of 80 dB just aren't annoying at all, let alone,

1 painful or hazardous. So it's very difficult to convince  
2 them to wear a hearing protector at those levels. The  
3 requirements should simply be that when the TWA exceeds a  
4 certain amount those employees need to be wearing hearing  
5 protection. The logic is also flawed. For example, an  
6 employee who would be exposed to a TWA of 84 dBA would not  
7 have to wear a hearing protector. Even an employee exposed  
8 to 89 dBA would not have to wear a hearing protector. But  
9 an employee who had a TWA of (91) for a, -- average exposure  
10 of (91) for seven hours, who might spend a little time at 80  
11 dB, would now have to be wearing a hearing protector at  
12 those 80 dB levels because their PEL was over (90). As  
13 someone enforcing it, how do you differentiate the person  
14 who's in that 80 dB noise who at some other time had a  
15 higher exposure, so, therefore, they have to be wearing a  
16 hearing protector, from someone who works all the time in  
17 that 80 dB noise and doesn't have to be wearing a hearing  
18 protector? So, it becomes a very difficult enforcement  
19 scenario in the mining environment. And the last point  
20 there, is that in most of the computations I was able to  
21 look at where you have noise exposures at various sound

1 levels, the principal contribution to the hazard is from  
2 those higher level exposures. So, let's focus on those high  
3 level exposures and make sure that that's where the person  
4 is wearing the hearing protection.

5 Item C is the selection of hearing protectors to  
6 be provided. MSHA reviewed the literature, especially the  
7 findings of the NHCA Task Force and acknowledged the  
8 importance of a miner being able to select a hearing  
9 protector that's comfortable, because the key issue is a  
10 comfortable noise blocking seal that someone can wear  
11 consistently throughout the day. In the opinion of myself,  
12 as well as the coalition, a selection from just one muff and  
13 one plug is not sufficient to accomplish those goals.  
14 Basically, that is no selection at all, once a person has  
15 decided they either want to wear a plug or a muff, they're  
16 then stuck with that style. Further, if they were exposed  
17 above (105) and had to be wearing dual hearing protection  
18 there would be no selection because they would simply have  
19 that muff and that plug to wear. So, at a minimum, the  
20 requirement in the regulation should be four different  
21 models of hearing protectors, including at least two plugs

1 and one muff. And certainly, many hearing conservationists  
2 would recommend even a larger selection.

3           Item D is allowance for hearing protectors in lieu  
4 of the fourteen hour quiet period for baseline audiograms.  
5 Currently, of course, OSHA allows hearing protector use.  
6 MSHA looked at the data, and rightfully noticed that hearing  
7 protectors often don't perform as you would expect, and so,  
8 it would be likely that you might not be able to rely on  
9 them to ensure a noise-free period prior to the baseline.  
10 And therefore said, "You can't use hearing protectors". My  
11 recommendation is that that is an impractical scenario; that  
12 it's going to be difficult for mines to administer that  
13 baseline audiogram prior to work, for all miners. In  
14 addition, you can't control the off-job exposure. And it's  
15 quite possible that somebody, depending on their  
16 recreational activities or even how they drove to work that  
17 day, could have a pre-work exposure that would lead to some  
18 minor or temporary threshold shifts and a contaminated  
19 baseline. So, a better compromise, in my opinion, would be  
20 that hearing protectors could be used in lieu of that  
21 fourteen hour quiet period with those four provisos listed.

1 Number 1, that a short period of time before that test there  
2 would be individual training and retraining of the employee  
3 in how to use the hearing protector and advise them that  
4 it's in their own best interest to wear it correctly so that  
5 they can get an uncontaminated baseline audiogram. Also,  
6 that the hearing protector that will be used, its condition  
7 be checked to make sure that the resilient parts are still  
8 working; that there's no cracks; that it hasn't been  
9 degraded. Item 3, that the choice of hearing protector for  
10 this particular application be either an earmuff or a foam  
11 earplug. And that recommendation is based on evaluation of  
12 twenty-two field studies with over three thousand employees  
13 that indicates that those types of hearing protectors are  
14 the ones that give the best protection in practice. And  
15 Item 4, would be if the TWA is greater than 100 dBA for that  
16 employee, that they would need to use dual hearing  
17 protection on the day prior to their baseline audiogram.  
18 Those are my points on hearing protection.

19 I'd like to turn to Hearing Conservation Program  
20 issues. MSHA indicated that because there were new rules  
21 being developed for the mining industry that it might be



1 less confusing if they redefined what a Hearing Conservation  
2 Program was. And the definition in the current proposal is  
3 that a Hearing Conservation Program is hearing testing. I  
4 think that is an incredible disservice to the hearing  
5 conservation community. Not only has OSHA, but the entire  
6 professional community has come to realize that a Hearing  
7 Conservation Program is much more than testing hearing. If  
8 all you do is test hearing, what you're going to do is  
9 simply document the onset of noise-induced hearing loss.  
10 Hearing testing is only a portion of the picture and it must  
11 be accompanied by all the other aspects of the program, the  
12 noise control, the noise surveys, the use of hearing  
13 protection, the education and training, the recordkeeping  
14 and other aspects that have been included in, -- for  
15 example, the NIOSH definition of the Hearing Conservation  
16 Program, which have to do with auditing a follow-up. So,  
17 it's really important that this rule that MSHA's developing  
18 utilize the term "hearing conservation," in its accepted  
19 format and recognize what is required to go into hearing  
20 conservation.

21 Item D is the enrollment in the Hearing

1 Conservation Program. That is somewhat confusing to be in  
2 the current proposal. If you're above the action level you  
3 are required to receive the training. And, of course,  
4 that's not considered the Hearing Conservation Program, but  
5 you do have to get your training. However, whether or not  
6 the miner takes an audiogram is up to the miner, it's  
7 voluntary. This partial enrollment I see as leading to less  
8 effectiveness in the Hearing Conservation Program. For  
9 starters, there is a requirement that if there is an STS  
10 detected, that there's certain follow-up actions. But  
11 there's no means of detecting that STS between 85 and 90 dBA  
12 for those employees who have chosen not to have an  
13 audiogram. It's going to be much more difficult to motivate  
14 the employees when there is this diversity in how some are  
15 treated and how others are treated. And, finally, there  
16 will be incomplete data, so that if MSHA or the mining  
17 community wants to, at a later time, examine the  
18 effectiveness of the program there's going to be sketchy  
19 audiometry available in that (85) to (90) range. And for  
20 people in that range who aren't wearing hearing protection  
21 may be as susceptible to getting hearing loss, as those at

1 (90), (91) and (92) who are wearing their hearing  
2 protection. So it's really important to have data for the  
3 entire group above the action level that are involved in  
4 hearing conservation, -- hopefully, what will become called  
5 the Hearing Conservation Program.

6 A requirement that is not in the OSHA standard,  
7 that both Aearo and the coalition recommend is that there be  
8 some measure of program effectiveness on an annual basis;  
9 that there be a requirement that there be an annual audit,  
10 although no definition in mandatory terms of how that audit  
11 should be accomplished; that a non-mandatory annex be  
12 included that would discuss a subjective evaluation or all  
13 components of the Hearing Conservation Program present on an  
14 objective evaluation according to the ANSI Draft Standard  
15 S(12)(13), which will probably become a full standard within  
16 the next couple of years. And that standard describes how  
17 to evaluate a Hearing Conservation Program by examination of  
18 the audiograms. As well as other measures involving the  
19 supervisors and foremen, the rate of Standard Threshold  
20 Shifts and other details that could be included in that non-  
21 mandatory attendance.

1           Item 3 is audiometry. To begin with, the  
2 reportable hearing loss that's proposed in the rule is one  
3 of 25 dB. That is in contrast again, to the recommendations  
4 of the coalition and most of the professional community. If  
5 you take a look at the onset of hearing loss due to noise  
6 exposure, it is impossible for someone to have two shifts of  
7 25 dB in a working lifetime due to industrial noise. By the  
8 time you have one shift, the person is probably through  
9 their entire career. It's an incredibly large shift when  
10 averaged over those three frequencies. The coalition last  
11 February, February '96, in response to the OSHA requests for  
12 testimony, supported an earlier AIHA position, which is to  
13 say that reportable hearing loss should be synonymous with a  
14 confirmed work-related STS. Not just an STS, but a  
15 confirmed, persistent, work-related STS. And I would refer  
16 you to the AIHA position statement in the summer '96 issue  
17 of the American Industrial Hygiene Association Journal that  
18 describes the number of steps, of which there's about a half  
19 a dozen, that are involved in confirming that an STS is  
20 persistent and work-related. And under those conditions  
21 it's certainly reasonable to require that as a reportable

1 hearing loss, consistent with OSHA, consistent with the STS  
2 measures in the proposed rule.

3           The proposal by MSHA talks about conducting  
4 audiograms with scientifically validated procedures. My  
5 feeling is, that that is simply going to lead to contention,  
6 litigation, endless acrimony over what are those validated  
7 procedures. There needs to be some definition in there or  
8 ANSI Standard that provides specifications on audiometers,  
9 permissive background noise and methods for audiometric  
10 testing. That should certainly be cited in the proposed  
11 rule as what defines a validated type of procedure. In  
12 particular, the background room noise requirements from that  
13 ANSI Standard should be strongly considered. They are more  
14 stringent than the OSHA requirements and it has been clearly  
15 shown by many investigators, including myself, that the OSHA  
16 requirements are inadequate to provide a noise-free,  
17 unmasked audiogram. However, because of practical concerns,  
18 I would concur with the coalition findings that a 5 dB  
19 relaxation in the ANSI levels be permitted at 500 Hz because  
20 of the lack of likelihood that that is going to be a noise  
21 effective frequency and also practical concerns in terms of

1 meeting noise requirements at 500 Hz.

2           There are no specifications in the current  
3 standard on revising baselines. And what I can tell you is  
4 that within the professional community that has been a very  
5 difficult issue to resolve. In 1990, Dr. Julia Royster  
6 presented a paper and then was asked to chair an Ad Hoc Task  
7 Force for the National Hearing Conservation Association and  
8 spent five years trying to come to consensus on how a  
9 seemingly simple task of revising baselines could be  
10 accomplished. They did come up with some guidelines and I  
11 think they're an excellent and clear set of recommendations.  
12 They were published in 1996 by the NHCA, and it would be a  
13 very good guidance to the professional community on when a  
14 baseline should be revised to overcome the supplemental  
15 reference or whatever it's going to be called, based on  
16 either improved hearing or the discovery of STS.

17           And finally, the ten day notification in the  
18 current proposal I think is unduly restrictive and  
19 unnecessary. This isn't a dramatic or incredibly fast-  
20 acting event. OSHA permits twenty-one days, and when you  
21 look at it administrative issues, vacation, leave time, et

1 cetera, ten days can often be a difficult time frame to  
2 meet.

3           Finally, I'd like to talk about our noise  
4 measurements. As a person in a company who fields questions  
5 from customers, one of the common questions that I get is,  
6 "I measured a person's noise exposure and they were over the  
7 limit today, but they really won't be in general, except one  
8 day a week or a couple of days a month. What's OSHA going  
9 to do? Do I have to put them in a program? How do I treat  
10 these issues?" And basically, it's a game of gambling or  
11 deciding how safe you want to be, or deciding will OSHA be  
12 there on that one day when the person's exposure may be  
13 high, or will they be there on a day when the exposure's  
14 low. So I think a way to provide more uniformity of  
15 decision-making here, would be to accept the recommendations  
16 of Dr. Edgar Shaw from Canada, who studied this issue and  
17 others in the early 1990(s) for the, -- for Ontario Province  
18 in Canada and recommended that a forty hour equivalent  
19 exposure be developed. At least for those who would have  
20 variable daily exposures. So that there'd be some means of  
21 defining how MSHA would treat these issues. That instead of

1 just looking at an eight hour equivalent exposure you'd look  
2 at the equivalent exposure over a work week.

3 The issue of a ceiling level is a little bit  
4 confusing in the current document. It's understandable why  
5 there would be a concern to have exposures permitted above  
6 115, -- at 115 dB for fifteen minutes a day, which is, of  
7 course, what the current table would permit. And that  
8 problem arises because of the use of the 5 dB tray instead  
9 of the 3 dB tray. However, the solution of simply saying  
10 that any exposures over (115) are not permitted, I don't  
11 think is a good one, because it's clear from those who've  
12 used those dosimeters that have the 115 dB warning lights  
13 that they're almost all gone. It's just very easy to get  
14 any spurious sort of bump or other noise that will tip that  
15 115 dB indicator. So, there needs to be a better type of  
16 definition. For example, if it would be possible to require  
17 that no exposures of 115 dB for a total of one minute during  
18 the day would be permitted. By this I mean that you would  
19 have to add up these spurious bumps and bangs and if there  
20 was more than a minute of them then you would consider that  
21 that was over a 115 dB and outside the ceiling limits of the



1 proposed rule.

2 Those are the extent of my comments. As I said,  
3 they focus on key issues in the written testimony. All of  
4 them are amplified there to a greater extent and I can leave  
5 a copy of the overheads, as well as the paper describing the  
6 test results of the Working Group with you this morning.

7 MR. VALOSKI: Any questions?

8 THE PANEL: (No verbal response.)

9 MR. VALOSKI: Thank you very much. Elliott,  
10 please leave them with Ros down at the far left. Okay. Our  
11 next speaker will be Joe Urban.

12 MR. URBAN: Mike, to help expedite the hearing  
13 today, two of the individuals that are on our list will not  
14 be speaking. That is Larry Todd and Nat Brice.

15 MR. VALOSKI: Thank you.

16 MR. URBAN: My name is Joe Urban, J-O-E, U-R-B-A-  
17 N. Mr. Chairman and distinguished committee, my name is Joe  
18 Urban. I am the Regional Deputy Director of Organizing in  
19 the midwest, the United Mine Workers of America. In  
20 addition, I represent miners and safety matters in District  
21 12 of the United Mine Workers. District 12 now encompasses

1 ten states in the midwest.

2 I wish to take this opportunity to thank MSHA for  
3 holding these public hearings near the coal fields  
4 throughout the United States, in order to give those  
5 individuals, working miners, who will be the most affected  
6 by these rules, an opportunity to voice their concerns,  
7 especially about the proposed rule.

8 I have with me here today, miners from around the  
9 tri-state area, and I would greatly appreciate your  
10 undivided attention, in not only listening, but also in  
11 giving serious consideration to their concerns. To begin  
12 with, these individuals are not new miners. They will have  
13 average mining experience. And again for the record, we're  
14 referring to coal miners, metal and nonmetal individuals.  
15 But these people have a range of fifteen to twenty-five  
16 years of experience of working in coal mines. They know  
17 first hand, the problems that they've had to live with in  
18 respect to noise in the workplace. You will hear testimony  
19 from miners that work at the surface coal mines, underground  
20 coal mines and coal mine preparation plants. My comments  
21 primarily, are going to be in general terms, thereby

1 allowing the miners themselves to share specific problems of  
2 which they have had to deal with and continue to deal with  
3 on a daily basis.

4 In order to set the tone for today's hearing; and  
5 there have been hearings in the past at which sometimes  
6 United Mine Workers had been defined as rather abusive to  
7 the committee. I hope to change that reflection somewhat  
8 today. And that an overview of the proposed noise standards  
9 and evaluation of the proposed noise standards, indicates  
10 definite improvements and technical requirements over the  
11 current policy concerning noise. Half or most of those  
12 improvements are overshadowed by the lack of sound  
13 monitoring or enforcement requirements. It is the  
14 monitoring aspect of which I wish to speak specifically  
15 about to you today.

16 The most damaging aspect of the proposed rule is  
17 the fact that it is performance oriented. Or in other  
18 words, self-enforced by the operator. The operators will be  
19 solely responsible for establishing a system of monitoring  
20 noise and taking appropriate action under the rules whenever  
21 they find themselves out of compliance. What was

1 disheartening was the fact that the entire language of the  
2 rule consists of fourteen words.

3 "Operators shall establish a  
4 system of monitoring, which  
5 effectively evaluates each  
6 miner's noise exposure."

7 And that's found at 62.120(f)(1).

8 Now, let us compare the regulations covering  
9 monitoring to respirable dust. Four pages are on when, how,  
10 under what conditions and who does sampling. And five pages  
11 on a sampling method. Under these rules on respirable dust,  
12 mine operators have been perpetrating fraud for twenty-five  
13 years. The proposed rule on monitoring noise is an  
14 invitation to abuse it. Furthermore, MSHA's role will be  
15 limited to taking their own measurements whenever they deem  
16 appropriate and checking the operator's record at the mine  
17 site for compliance. I do not foresee many operators  
18 admitting that they have a noise problem and self-imposing  
19 costly engineering controls. Ladies and gentlemen, let's be  
20 honest with each other, if we had performance-oriented laws  
21 in our state, -- and this is an example that I use quite

1 frequently. Unfortunately, I received a speeding ticket  
2 last week in Kentucky. Now, if I had the performance-  
3 oriented right to police myself, I don't believe I would  
4 have gave myself an eighty-nine dollar (\$89.00) ticket.  
5 Stop and think about that. This requirement is wholly  
6 deficient. It fails to specify the type of instrument, its  
7 maintenance and calibration, that it should be permissible  
8 when used in underground coal mines; the circumstances under  
9 which exposure evaluation should be done; the training of  
10 the person who evaluates the miner's exposure; the rights of  
11 miners to observe exposure measurements, what should be  
12 recorded and how, and who should be able to see the records,  
13 when and under what circumstances; even its own terms are  
14 left undefined. What is a system of monitoring? What is  
15 effective? If this paragraph is adopted, too many important  
16 matters will be left to lawyers and judges to decide, and  
17 many more will be neglected altogether.

18 Almost from the days when the Coal Mine Act was  
19 passed in 1969, we've seen some mine operators, -- and  
20 again, some mine operators, betray the trust delegated to  
21 them by MSHA to take accurate samples of exposures of

1 respirable dust. This proposed rule on monitoring miners'  
2 exposure to noise willfully ignores history and assumes, --  
3 and ladies and gentlemen you know what happens when we  
4 assume, okay, that operators will do the right thing. This  
5 is a false assumption. We do not believe that mine  
6 operators will do the right thing. We do not believe that  
7 mine operators are addicted to cheating, but that given the  
8 opportunity to cheat, some will. This proposed rule not  
9 only provides the opportunity, it is an invitation to cheat.  
10 A situation could arise, for example, that an operator  
11 develops his version of a monitoring program that is not  
12 effective.

13           If the agency takes action to correct such  
14 practice, the first issue to litigate, -- and I'm glad that  
15 we have a representative from the Solicitor's office. The  
16 first issue to litigate would be the meaning of effective.  
17 Am I correct? And the person who would likely end up  
18 deciding this matter is an ALJ. Not someone more familiar  
19 with noise or mining. With all due respect, judges are not  
20 qualified to make such decisions. And litigation is not the  
21 best procedure to use. This issue should be settled now,

1 during rulemaking, by people who are knowledgeable and  
2 qualified to do so. Furthermore, with respect to this  
3 hypothetical case, time and resources would be devoted to  
4 litigating an issue that is best and directly related to  
5 miners' exposure to noise. Miners would be deafened, while  
6 lawyers sip an issue of legal semantics. We suggest MSHA  
7 eliminate this sentence. We suggest that MSHA draft one  
8 that will require operators to monitor exposure in a  
9 credible and useful manner, and that will establish a  
10 standard of performance to which operators can be held  
11 accountable. We have drafted language that would achieve  
12 these purposes. We used three documents as templates on how  
13 to monitor miners' exposure. (1) The recently concluded  
14 deliberations of the Advisory Committee on the Prevention of  
15 Pneumoconiosis; (2) the report of the Agency Task Force on  
16 dust monitoring; and (3) existing rules on monitoring  
17 exposure to respirable dust in 30(c) of our part 70-S  
18 Guides. These documents were developed by deliberations  
19 within the agency, among mine operators, the UMWA and health  
20 professionals and through rulemaking. Consequently, they  
21 represent a consensus view of good practice, that they are

1 concerned with dust rather than noise, if of a secondary  
2 importance. We looked at them as a template, as a list of  
3 the topics to consider when monitoring exposure.

4 I appreciate the opportunity to speak before the  
5 committee today. The United Mine Workers feels that this is  
6 a very important proposal that is being put together. The  
7 miners, I feel, will give you information today that  
8 hopefully will give you insight to the direct exposure that  
9 they have had, the problems that they have had. With that,  
10 I would also beg the indulgence of the committee to allow  
11 final wrap-up comments at the conclusion of our guest list  
12 of speakers. With that, thank you, gentlemen and ladies.  
13 If you have any questions.

14 MR. VALOSKI: Let the record show that an ALJ is  
15 an Administrative Law Judge. Okay. Our next speaker is  
16 Butch Oldham.

17 MR. OLDHAM: My name is Butch Oldham, it's O-L-D-  
18 H-A-M. I'm a International Representative for the United  
19 Mine Workers, and I represent workers also in UMWA District  
20 12. And I'd just like to say I appreciate, Mr. Chairman,  
21 the opportunity to speak before you today, and ladies and



1 gentlemen of the panel.

2           And with that, what I want to discuss today, is  
3 why, -- you know, I feel like MSHA would want to come up  
4 with what appears to be another definition for  
5 representative of the miners. And when they refer to the  
6 "miners' designated representative" in Section 62.200,  
7 access to records of the proposed rule. You know, in  
8 everywhere in the Mine Act, published CFR and MSHA's Program  
9 Policy Manuals, it references the representative of the  
10 miners. For instance, under 30 CFR 40.1(p), a definition  
11 has already been well established for representative of the  
12 miners. MSHA, along with the UMWA, have been through the  
13 court systems to uphold the meaning of this definition. And  
14 now, they want to put another twist to the definition. The  
15 Mine Act also makes numerous references to the  
16 representative of the miners. Yet, no where could I find  
17 where it refers to the term "miners' designated  
18 representative". And I feel like if Congress had intended  
19 for there to be another definition, I feel they would have  
20 included it in the Mine Act. But Congress chose not to have  
21 various definitions so there wouldn't be any confusion on

1 the miners' or the operators' part. And even at that, as  
2 previous (sic) stated, there have been many court cases over  
3 that single definition for representative of the miners.  
4 Various places in MSHA's Program Policy Manuals make  
5 reference to the representative of the miners. A few  
6 examples that I found are in Part 43-1, under "The  
7 Procedures for Processing Hazardous Condition Complaints,"  
8 where it uses the terminology "representative of the  
9 miners". Part 104.4 also addresses representative of the  
10 miners, when the district manager receives a decision from  
11 the administrator to issue a pattern of violations. It  
12 requires a copy of the notice be provided to the  
13 representative of the miners. Section 104.5 also addresses  
14 representative of the miners, as it requires that if a  
15 pattern of violation notice is terminated that a copy be  
16 provided to the representative of the miners. Again, no  
17 where in the policy manuals about now the terminology "the  
18 miners' designated representative," but have found where it  
19 explicitly references the representative of the miners. I  
20 ask that MSHA take another look at this issue and to use the  
21 well-established terminology for representative of the

1 miners that is presently in place and not create new  
2 definitions. Again, this will only lead to confusion among  
3 the coal operators and the miners. And this is something  
4 that we can do without. I feel like that it's been settled  
5 through the courts and will probably pick on a Solicitor,  
6 and I don't think they really want to have to go through  
7 that again, also. MSHA needs to retain the definition of  
8 representative of the miners in the final rule as it is  
9 presently defined in the Mine Act, the 30 CFR and MSHA's own  
10 Program Policy Manual.

11 Another issue that I feel needs to be addressed is  
12 testing requirements for extended work shifts. Many miners  
13 today are required to work longer than eight hour days.  
14 Sometimes as much as ten, twelve hours a day. Therefore, I  
15 feel like MSHA needs to adjust it's testing procedures to  
16 accommodate for these extended shifts and extended hours  
17 that miners are required to work. And I would be interested  
18 to know if MSHA has at the present time or have any plans in  
19 the future to do any testing regarding extended work shift  
20 exposure to noise for miners.

21 With that, I appreciate your patience and if you

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1 have any questions I'll be glad to answer them.

2 MR. VALOSKI: Thank you. Our speaker will be Don  
3 Kunkel.

4 MR. KUNKEL: My name is Donald Kunkel, that's K-  
5 U-N-K-E-L. I'm the Safety Committee Chairman for Local 15  
6 UMWA.

7 And I'm employed at OH of Illinois Coal and Mine.  
8 And I want to describe a piece of the equipment that's been  
9 installed there in November. It's called the Arch Layer and  
10 it's a new, state-of-the-art computer-controlled piece of  
11 equipment. And it has a continuous miner with a bolter car  
12 hooked behind it, and a continuous hauling system that is  
13 attached to that. And when this thing was manufactured and  
14 put together out in Pittsburgh, people from Tri-delphi  
15 (phonetic) came down and approved this thing as they heard  
16 it operate out there. And it was not in a confined area or  
17 anything as it is now. When it was installed at the mines,  
18 the first time it was started up under a no, -- non-  
19 production situation, the two operators on this bolter car,  
20 the dB was (108) under a non-production bolt. And with a  
21 nine million dollar (\$9,000,000.00) piece of equipment we

1 can't understand why the engineering controls and stuff,  
2 they couldn't monitor or do something with this situation.  
3 Even though to operate this you have to wear earplugs plus  
4 muffs, and we have a communication system that is built in  
5 with the muffs, where everyone on this unit can talk to one  
6 another at anytime. But this bolter car has four drill  
7 pumps on it, if you understand what I'm talking about. The  
8 two front ones will drill what we call a "starter hole," and  
9 the two back ones, they can finish the hole for whatever  
10 depth it has to be and install the roof bolt. We have lots  
11 of limestone in our area, so that multiplies the noise. And  
12 there's a possibility that you can have all four of these  
13 drill pumps milling the limestone at one time. So, no  
14 telling what the dBA is at that one time. Plus this machine  
15 has a conveyor running through it where coal is conveyed off  
16 of the miner and through this, and you have the Arch Layer  
17 behind it. So you can have all these conveyors running,  
18 plus all this here at the same time. And with all this  
19 involved, with this hearing protection and stuff, your sense  
20 of hearing is totally destroyed, the people right there  
21 operating that, because they can't hear a fracture of the

1 roof or anything possible close to them. All they can count  
2 on is sight and feel. That's the only protection they've  
3 got.

4 And on some other areas possibly there, we feel  
5 that there should be a dosimeter mounted on some of this  
6 equipment that has the problem areas, so as the roof  
7 structure changes or you have, -- start having mechanical  
8 failure, the people operating this equipment can notify  
9 personnel and get it repaired as needed. That is all I  
10 have. Is there any questions?

11 MR. VALOSKI: One question. You said people from  
12 Tri-delphi came out and validated the system?

13 MR. KUNKEL: It was approved; the people from  
14 Tri-delphi approved it before this unit was shipped.

15 MR. VALOSKI: What exactly did they approve?

16 MR. KUNKEL: They approved the machine as it was,  
17 you know, to go into production.

18 MR. VALOSKI: Electrical testing?

19 MR. KUNKEL: Yes.

20 MR. VALOSKI: Okay. Thank you. Our next speaker  
21 will be Duane Childers.

1           MR. CHILDERS:    My name is Duane Childers; it's  
2           spelled D-U-A-N-E, C-H-I-L-D-E-R-S.  I'm the representative  
3           for the United Mine Workers Local Union 2305.  I work at the  
4           Camp 11 Mine, Overfield, Kentucky.

5                        And basically what I have to comment on is there  
6           is no standards I know of that MSHA puts on the  
7           manufacturers before they let the equipment come to the  
8           mines, such as, -- such as Don's equipment.  They bring  
9           equipment to the mines, it's noisy when it gets there,  
10          people have to deal with it.  You talk about the noise that  
11          people are exposed to, something nobody ever talks about is  
12          the noise that people have to put up with; they can't hear  
13          nobody talking to them; can't hardly hear the roof 'cause  
14          some of it's so noisy.  We've had people run over by ramp  
15          cars, luckily not hurt too bad.  On two different occasions  
16          I know of because the continuous miner was a lot noisier  
17          than the ramp car and they couldn't hear it coming.  Ramp  
18          cars are hard to see from.  And, you know, one of my  
19          personal experiences is as a safety committeeman, at one of  
20          our district safety quarterlies, our miners' rep had Texas  
21          Four come down and put on a class for us on noise and they

1 put on ways of dampening the sound, such as blocks, putting  
2 up a block to block the sound, noise dampening. And at the  
3 time I was a scoop operator and I got some ideas out of that  
4 class. So I went back to the  
5 mines, -- and my scoop was very noisy, the top motor on it  
6 was really loud, it had a loud squeal to it, and I went to  
7 our shop and got some noise dampening material and I took  
8 and, -- put the noise dampening material between me and the  
9 motors and stopped every crack and cranny I could to keep  
10 the noise away from me. It dropped the noise just  
11 unbelievable. You could actually carry on a conversation  
12 with somebody behind you that wanted to talk. You could  
13 hear people holler at you or ding their bell at you, and  
14 before, you couldn't hardly hear it. And I know if I can do  
15 that and not being an engineer, -- I'm not an engineer. I  
16 know if I can do that, somebody can do that at the factory.  
17 And if MSHA required something on that, -- I really believe  
18 that if they would require something on that before it got  
19 to the factory (sic), somebody would put out the effort, we  
20 would alleviate a lot of the problems that we have now.  
21 Such as a stage-loader on our longwall. I believe if you



1 covered that stage-loader with a lot of belting and closed a  
2 lot of the, -- a lot of the noise from the pit breaker is  
3 when you have heads and lots of large rocks go through, that  
4 would keep a lot of the noise exposure down. But it seems  
5 the first thing we want to do, we want to do the simple,  
6 easy, non-expensive way and run out and stick earplugs in  
7 somebody's ear or put earmuffs on, or both. We don't want  
8 to take the time to spend twenty-five dollars (\$25.00) on  
9 noise dampening material to maybe line the motors, or if  
10 nothing else, just build a block to keep the sound away.  
11 Build a barrier around the noise, to shield you from the  
12 noise. But instead, the first thing we want to do, "Let's  
13 do the easy thing. Let's go get earmuffs, stick earmuffs,  
14 earplugs on everybody". You know, if you really want to do  
15 something to help the miners, go to the manufacturers and  
16 tell them, "We want this equipment built as quiet as it can  
17 be built," and there's bound to be some kind of standard. I  
18 think if you took the technology you have today, -- I mean,  
19 I'm sure McDonnell Douglas, a lot of corporations out there,  
20 -- I've been in bulldozers before that were really quiet  
21 because they took the time to manufacturer them and put

1 operators in a place where his environment was quiet. I  
2 mean, they put a air conditioner in it to keep you cool.  
3 That way he can stay concealed in a canopy where it's quiet,  
4 clean and safe. But when it comes to underground equipment,  
5 nobody thinks about that, evidently, because there's no time  
6 being spent on it. I'm not seeing it.

7 So, you know, if you want to call it criticism,  
8 call it what you may, but I'm not here to blast my company,  
9 'cause my company will let you do things like that. But I'm  
10 not an engineer. I'm sure an engineer could do a lot better  
11 job than I could. That's all I have. Any questions?

12 THE PANEL: (No verbal response.)

13 MR. VALOSKI: Thank you. Our next speaker will  
14 be Edwin Wyatt.

15 MR. WYATT: My name is Edwin Wyatt, E-D-W-I-N, W-  
16 Y-A-T-T. I work at Peabody Coal Company, Camp 11 Mines.  
17 I'm a roof bolter over there, I'm a member of the Safety  
18 Committee.

19 And the thing I would like to touch on with you  
20 today is where it says that hearing protectors will be  
21 virtually worn all the time or provided to the miner and

1 worn by the miner. I would just like to speak to you about  
2 these sections. I feel that where miners are working in  
3 environments where it is virtually imperative at times to be  
4 in a more highly sensitive state of control of all your  
5 senses in any situation you could ever be put in on the  
6 surface or possibly another mining area. I've been a roof  
7 bolter for many years and I can tell you for a fact that at  
8 many times throughout my mining career I have escaped  
9 certain disabling injuries or probable death, simply by the  
10 fact of my hearing sense being my greatest asset. All too  
11 often hearing gives you that split second to react, where  
12 sight alone would only let you see in retrospect, possibly  
13 like the train running over you, or in our case, the roof  
14 falling on you. If miners are required to wear hearing  
15 protectors at all times, I feel that this would be a hazard  
16 instead of an enhancement and cause more accidents, if not  
17 fatalities. Now, there are many different kinds of roof  
18 conditions in Western Kentucky where we work, we have a  
19 slight, tight top, we have kettle bottoms and we have heads  
20 that fall without hardly any discernible noise. And as a  
21 roof bolter, our first line of defense in securing the top

1 to make it safe for all those involved in the mining  
2 process, shouldn't we be provided with engineering controls  
3 to reduce noise sources to as low a level as feasible so as  
4 not to only reduce a miner's exposure, but also make for a  
5 safer working environment. I realize that in this area of  
6 budget consciousness that all too often there are half-  
7 hearted attempts made to quick-fix seemingly menial  
8 problems. But is a partial or totally hearing loss a minor  
9 cause for concern? And what will partial or total  
10 disability or worse yet, death, because of not fully  
11 exploring all technical advances that are available. I say  
12 to you, how can you, -- no, how can we, settle for anything  
13 less than the best of modern engineering and technology can  
14 provide for the health and safety of the United Mine Workers  
15 of America and all coal and metal and nonmetal mining  
16 workers. That's all I have.

17 MR. VALOSKI: Thank you. Our next speaker will  
18 be Tyrus Becker.

19 MR. BECKER: Mr. Chairman, ladies and gentlemen  
20 of the panel. My name is Tyrus Becker, B-E-C-K-E-R. I'm a  
21 Local Union President, United Mine Workers Local 2412. I'm

1 employed at Peabody Coal Company, Marissa Mine, Marissa,  
2 Illinois.

3 I come before you today to talk about several  
4 issues, mainly the ones that I have personal experience and  
5 knowledge about at the Marissa Mine. As Local Union  
6 President of the miner operators at the Marissa Mine, namely  
7 Carl Phillips, Ardel Williams, Dennis Beck, Gibsdale Horn,  
8 Farley Risten and Butch Chandler, continuous miner operators  
9 have suffered from roof falls. Basically each and everyone  
10 of them wearing hearing protection, whether it be earmuffs,  
11 plugs, whatever. I suggest to you that because of the  
12 miners working in an environment that it is of the utmost  
13 importanceny (sic) for them to not only have sight, sound,  
14 feel and everything else of their human senses that without  
15 the utmost and 100 percent hearing accuracy available to  
16 them, without restrictions by muffs or plugs, that some of  
17 these injuries, being everyone of them, lost time injuries;  
18 one of them being up to sixteen months off the job and out  
19 of work, that they could have and should have been avoided.  
20 A roof is the first sign of trouble in a coal mine, a miner  
21 must rely on the sound. The sight gets done too late to

1 react. The sound is the first thing that we must rely on.  
2 I've been a roof bolter for eight years at Marissa Mine.  
3 During that time I have tried both muffs, plugs, any hearing  
4 protection that was available to me, and I can tell you  
5 first-hand that anything as far as hearing protection goes  
6 on the market today, does not allow you to listen to the top  
7 conditions and the warning signs and warning signals that  
8 the top initiates prior to the fall of most roof falls, or  
9 just rock falls. The partner that I bolted with over a  
10 continued time, we could not rely on verbal communications  
11 because we could not hear one another, not being more than  
12 myself to you, the panel itself, between us and the distance  
13 in the roof bolting situation.

14 MR. VALOSKI: Excuse me a second. Let the record  
15 show we are approximately 12 feet away?

16 MR. BECKER: Yes.

17 MR. VALOSKI: Thank you.

18 MR. BECKER: We could not rely, even at that  
19 distance, on verbal communication. If I was watching for  
20 him or him (sic) was watching for myself while we were  
21 bolting, we could not rely on him hollering or warning

1 verbally to me. He would literally have to shut the machine  
2 off, that giving me the signal that something was wrong.  
3 And I suggest to you that that is, -- at that time it's too  
4 late to really react and it could be fatal or serious  
5 injury. We do not need more administrative controls, we  
6 need engineering controls. Something that does not require  
7 us to virtually be under the ear protection constantly. It  
8 only hinders our situation.

9           One other thing is the extended work shifts.  
10 There is no really such thing as a eight hour work day in  
11 the coal mines as we know it today. Nor is there a forty  
12 hour work week in the coal industry today. At the Marissa  
13 Mine we work what we call an "alternative schedule," ten  
14 hours a day, four till four. The mine works six days a week  
15 producing coal. It virtually works on the seventh day on an  
16 everyday regular basis. So I say to you, is that we are  
17 exposed to the noise on much longer levels than eight hours  
18 or forty hours per week. There is really no such thing as  
19 that in the coal industry as you know it today.

20           The last thing that I want to mention about is the  
21 small business or small entity of five hundred employees.

1 I'm a Local Union President, the Marissa Mine had three  
2 hundred and thirty-two workers at the Marissa Mine. The  
3 third largest coal mine in Illinois, Indiana and Kentucky.  
4 The largest coal mine that I am aware of today, is the Ker-  
5 McGee Collation (phonetic) Mine, that is the only mine that  
6 has over five hundred employees. Without going into any  
7 detail, the Collation Mine, I'm sure that those people would  
8 appreciate any help in that noise level regulation. But,  
9 that is the only mine that I am aware of that employs over  
10 five hundred coal miners in the tri-state area. So I would  
11 submit that more reasonably would be ten, fifteen or twenty  
12 people would be the logical number for a small business.  
13 Thank you.

14 MR. VALOSKI: Thank you. Our next speaker will  
15 be Dennis Wallace.

16 MR. WALLACE: Good morning. My name is Dennis  
17 Wallace; I'm the Local President Camp 11, Peabody Coal  
18 Company, Overfield, Kentucky. And I've got twenty-one years  
19 mining experience.

20 Before I begin, we first must agree what the  
21 proposed rule is for, and that is to preserve hearing. My



1 comments concern the Hearing Conservation Program. Some of  
2 my examples are taken from within my workplace, and I have  
3 names and addresses if anyone needs them. The current  
4 policy with most operators is there is no policy, nor a  
5 mandatory Hearing Conservation Program. Nor is there a  
6 mandatory baseline audiogram to determine a decline in  
7 hearing acuity or a temporary threshold shift in hearing.  
8 Some employees from our operation, and one in particular,  
9 Joe Gregory, who upon returning to work after a short-term  
10 layoff was required to take a hearing test for his physical.  
11 Upon results of the test he had lost 23 percent hearing in  
12 his left ear and 27 percent in his right ear. He was  
13 further recommended to go to a certified audiologist  
14 (sic), correct on that, to verify this. He did. This test  
15 was taken in 1991. Upon the test, there's been no Hearing  
16 Conservation Program established at our mines. There has  
17 been no mandatory baseline audiogram to determine if there  
18 has been a shift in his hearing. I encourage you and your  
19 panel, to take this rule and do what it was supposed to do,  
20 and that is to preserve hearing.

21 I have men that are working as machine operators,

1 roof bolters and belt-men on stationary belt drives who have  
2 to wearing a hearing muff now that take away from their  
3 safety. I think you've heard it from most of these men in  
4 here. This is a problem. But we need a starting point. We  
5 need these mandatory Hearing Conservation Programs. That's  
6 all I have. Any questions?

7 THE PANEL: (No verbal response.)

8 MR. VALOSKI: Thank you. Our next speaker will  
9 be Eugene Gross.

10 MR. GROSS: Mr. Chairman, ladies and gentlemen of  
11 the panel. My name is Eugene Gross, that's G-R-O-S-S. I'm  
12 President of Local Union 1071, Union Town, Kentucky, Salmon  
13 Creek Coal Company.

14 I've worked underground for my twenty-two years,  
15 both underground and on the surface. At the present time  
16 I'm on the surface. The noise underground, you talk about  
17 miners and pinnerers when you're in a confined area, it's one  
18 thing. When you get in a prep plant you've got so many  
19 vibrators, dryers, it's unreal. You take companies like the  
20 Sal that I work for, you get to talking about feasibility.  
21 You ask them to try something for the noise, the first thing

1 they tell you, "Go put in some earplugs". I'd like to ask  
2 y'all, all through your discuss already, Mr. Chairman, you  
3 talked about feasibility, what is feasible? You know, they  
4 come and say, "Well, we don't have the money. You know,  
5 we're losing money everyday, every month, year to year, it's  
6 not feasible for us to do noise controls. Let's do the  
7 earplugs". And like the people talking earlier on earplugs,  
8 we had a miner operator that was running the mine on Number  
9 3, Danny Fowler, he had earplugs in. The miner helper  
10 happened to walk up out by the rim, it was approximately, --  
11 in by the rim it's approximately 10 feet. He had earplugs  
12 in, Fowler did, the helper heard the roof pop, he hollered  
13 "Run". Danny Fowler never heard the topper. The shuttle  
14 car might have been loaded. The shuttle car operator had  
15 earplugs in but he didn't hear the topper either, because of  
16 the noise of the miner and the shuttle car running. They  
17 took off running, -- the helper told him to run, he took off  
18 running, it covered the miner up, it covered the shuttle car  
19 up; almost got three people. But one guy saved them all  
20 because he didn't have hearing protection in. You know,  
21 we've got to do the engineering controls; it's the first and

1     foremost thing we've got to do.  Forget about the  
2     feasibility, you know, if it's, -- there's all kinds of  
3     things out there to do.  It's like Mr. Childers said awhile  
4     ago, you know, simple things could save lives.  We've just  
5     got to make sure that it's done.

6             Another thing, in your, -- in this policy it talks  
7     about physicians or audiologists.  Physicians are not  
8     hearing specialists.  And I think the word physician needs  
9     to be struck from the record.  You know, we need somebody  
10    competent to go to school and knows about the hearing.

11            And I thank you for your time.  And we do, --  
12    something new with hearing, some of the points in this rule  
13    is good points.  But all of them, you know, we need to look  
14    at and make sure we do the right thing for everybody  
15    involved.  And I thank you.

16            MR. VALOSKI:  Thank you.

17            MR. BERGER:  Are questions from the audience  
18    permitted?

19            MR. VALOSKI:  Yes.  Come up to the podium, state  
20    your name, spell it and ask your question.

21            MR. BERGER:  Elliott Berger, E-L-L-I-O-T-T,

1 Berger, B-E-R-G-E-R. Could you clarify on the example you  
2 gave of the three miners? As I heard it, one miner had no  
3 hearing protection, heard the roof crack?

4 MR. GROSS: Correct.

5 MR. BERGER: The other two miners, one who didn't  
6 have hearing protection and also didn't hear a crack, one  
7 had hearing protection and didn't hear a crack?

8 MR. GROSS: Correct.

9 MR. BERGER: A comment or a question I have  
10 perhaps of the three prior speakers. I agree that hearing  
11 protection in low noise levels will impede the ability to  
12 hear warning sounds or communication. It's clear though,  
13 from many, many research studies that if noise is present  
14 above a level of about 85 dB that hearing protection will  
15 have either no affect or may have a beneficial affect,  
16 unless the person has a substantial hearing loss. So my  
17 question on the roof crack issue is, are these people who  
18 are listening in quiet, the equipment has stopped and then  
19 they missed the crack because they had hearing protection  
20 in, or are you concerned about people trying to hear the  
21 roof cracks while they put the top rating? 'Cause as far as

1 I can tell, while the equipment is operating if anything,  
2 they may have a better chance while the hearing a  
3 protection. The other concern I have is that if somebody, -  
4 - and I'm not addressing engineering noise control issues,  
5 that's certainly a valid concern. But if you have the  
6 noise, if somebody is now exposed to noise for eight, ten,  
7 twelve hours, and they're not wearing hearing protection,  
8 they will have a substantial temporary hearing loss at the  
9 end of the day due to that high level noise exposure. That  
10 hearing loss acts as though they're wearing a hearing  
11 protector. So somebody six hours into the shift who didn't  
12 wear hearing protection, has enough hearing loss that it's  
13 like they were wearing a hearing protector to begin with,  
14 and, they can't hear any sounds as well as they could. So,  
15 if the noise is present, and you know, the issue of  
16 engineering controls is separate, but if the noise is  
17 present, it seems to me, -- and perhaps these other  
18 gentlemen can verify that the hearing protection may be  
19 beneficial or not problematic. It's only when a noise isn't  
20 present or it's at a low level that the hearing protection  
21 is going to interfere with those abilities.

1           MR. CHILDERS:    Mr. Berger, excuse me.  What was  
2 your question?

3           MR. BERGER:    My question was, the clarification  
4 at the beginning.  In the example that was given what I  
5 wanted to clarify was that one of the people who didn't hear  
6 it, also did not have hearing protection in.  So I don't  
7 know that the example shows that hearing protection is the  
8 problem.  It may be that noise is the problem.  And when  
9 noise is present you can't hear these sounds, it's not  
10 necessarily the case that the hearing protection is the  
11 problem.

12           MR. GROSS:    But one of them had the hearing  
13 protection in.  The operator had it in.

14           MR. BERGER:    And he didn't hear it?

15           MR. GROSS:    He didn't hear it.  You know, he's  
16 running a miner, he's got a shuttle cars behind him, you  
17 know, -- the cutting head's running, the conveyor's running  
18 on both pieces of equipment, he had hearing protectors and  
19 he didn't hear it topping.

20           MR. BERGER:    But the other guy who didn't have it  
21 in also didn't hear it.  So, it may, --

1           MR. GROSS:    Because of the noise of both pieces  
2 of equipment running.

3           MR. BERGER:   And, so, maybe if the noise is the  
4 problem hearing protection doesn't make it better, it  
5 doesn't make it worse.  But if you're working in that high  
6 level noise, --

7           MR. GROSS:    That's why if they do something to  
8 engineering controls we won't have to depend on the hearing  
9 aides (sic) to start with.

10          MR. BERGER:   And I agree with you on that.  If  
11 you engineer it out so it's quiet enough that you don't need  
12 hearing protection.  I'm addressing the issue if the noise  
13 is present, it's not clear to me that hearing protection  
14 makes it more hazardous.  In fact, it may make it safer, if  
15 the given is, -- if the noise is there, or while it does  
16 exist.

17          MR. GROSS:    Mr. Berger, not being asinine, have  
18 you ever worked in a coal mine?

19          MR. BERGER:   I have not worked in a coal mine; I  
20 have been in a coal mine.

21          MR. GROSS:    Have you ever had to try to run from



1 a 300 ton rock?

2 MR. BERGER: No.

3 MR. VALOSKI: Let's take a five minute break and  
4 we'll get back in five minutes.

5 (Whereupon, at 10:35 a.m., the hearing was  
6 recessed, to reconvene this same day at 10:43 a.m.)

7 MR. VALOSKI: I'd like to reconvene the meeting  
8 now. Our next speaker will be Randy Henry.

9 MR. HENRY: Good morning, Mr. Moderator, ladies  
10 and gentlemen. My name is Randy Henry, H-E-N-R-Y. I work  
11 for Freeman United Coal Company, Crown 3 Mine, in  
12 Farmersville, Illinois. And I am the Local Union President  
13 of the United Mine Workers Local 12. More importantly, I'm  
14 a coal miner. I have been a coal miner for the last twenty  
15 years, off and on through layoff situations. I also operate  
16 the preparation plant at our facility. And I've done that  
17 since 1981, approximately fifteen years old. That job's  
18 responsibilities are the safe and effective operation of the  
19 preparation plant. That includes all the people  
20 encompassing in that preparation plant. To draw you a  
21 picture, the preparation plant is a multi-level facility,

1     it's eight different floor levels. I have as many as five  
2     different people in that facility at a time while I'm trying  
3     to operate. And the communication with all the employees in  
4     that preparation plant are ultimately never safe, -- safety  
5     throughout the day. I want to emphasize their safety in the  
6     ability to communicate with them. We have no TV monitors.  
7     My eyes in the preparation plant are the eyes of my  
8     additional people in the plant. We run the plant, -- I run  
9     the plant by feel, hearing and sight. Those three main  
10    things to keep my people safe and I operate that plant to  
11    its optimum efficiency. It's imperative that we have that  
12    communication. If we go to a dual hearing protection  
13    requirement in a preparation plant, which most preparation  
14    plants that I've ever heard of would have to go to, to be in  
15    compliance, it would definitely impair the ability to  
16    communicate with the people that work around and with me for  
17    their safety.

18           I have some real problems with, -- we have radio  
19    communications with our people and a dual hearing protection  
20    would definitely wipe out any possibility for them to be  
21    able to communicate with me. In the control room I have

1 personally taken some measures to try and quiet that  
2 operating room down so that it is in compliance, so that I  
3 don't have to wear hearing protection throughout the entire  
4 day because of safe operation of the plant. I use my  
5 hearing just as much as I do my feel or my sight in  
6 operating that plant. It has been effective, the measures  
7 that I've taken trying to seal that room, as far as  
8 dampening the noise environment. But it also has given me  
9 the ability to be able to operate the plant. These  
10 engineering controls, -- and I'm just a coal miner, can be  
11 done much more effectively by an engineer. There are ways  
12 to dampen the noise in a preparation plant by putting  
13 plastic screens in instead of metal screens or stainless  
14 screens and a double-deck vibrator. Dryers can be quieted  
15 with insulation. Chutes can be lined with ceramic or  
16 plastic to deaden the sound. These are engineering controls  
17 that need to be considered, rather than double hearing  
18 protection for our people. I have a hearing loss, I know I  
19 do, or at least my wife says I do. But it is evident and  
20 it's due to the environment in which I work in. I shoot  
21 pistol on a competitive basis and I wear hearing protection,

1 earmuffs. They're a high-cost dollar item that I wear,  
2 trying to protect what hearing I have left. And I shoot  
3 once or twice a month, but I do not shoot without hearing  
4 protection, period. But it's a lot better earmuffs than  
5 they even offer at the mine. These are for competitive-  
6 type earmuffs that have been professionally designed for  
7 high impact sound. Does anybody have any questions?

8 THE PANEL: (No verbal response.)

9 MR. VALOSKI: Thank you.

10 MR. HENRY: Thank you.

11 MR. VALOSKI: Our next speaker will be Jim Dunn.

12 MR. DUNN: Good morning, Mr. Chairman, ladies and  
13 gentlemen of the panel. My name is Jim Dunn, D-U-N-N. I'm  
14 in the UMWA. I'm Chairman of the Safety Committee in Local  
15 1793, Peabody Coal Company.

16 And, what I'd like to say to the panel is that I  
17 hope you get the message that I think is being said here  
18 today that hearing protection is not the answer for this  
19 noise problem. It's a band-aid on an open wound. In the  
20 first place, the hearing protectors that are being offered,  
21 the method of evaluating them, we don't agree with. It

1 should be on the basis of performance. But it's not the  
2 answer. Where's the technology motivating in this, -- in  
3 these parts that you want to add? You know, where's the  
4 technology motivated to improve the noise? You hear today  
5 that economics, they keep playing a big factor in  
6 everything. Or not feasible. You're not as young and re-  
7 employable, which I can explain to mean when their fathers  
8 come home and can't hear. You know, where do the economics  
9 play in there? And that's all I have to say.

10 MR. VALOSKI: Thank you. Our next speaker will  
11 be Wayne Thompson.

12 MR. THOMPSON: Good morning, Mr. Chairman, ladies  
13 and gentlemen of the panel. I'd like to address the  
14 proposed law, Section 62.125(A) and (B). Thompson, T-H-O-M-  
15 P-S-O-N. I'm sorry.

16 I'm going to read it here. It says,  
17 "When hearing protection is  
18 required pursuant to this part  
19 an operator shall (A) allow  
20 the miner after such miner has  
21 received the training

1 specified by Section 62.130 at  
2 least once, to choose a  
3 hearing protector from at  
4 least one muff type and one  
5 plug type. And in the event  
6 dual hearing protection is  
7 required, to choose one of  
8 each type. (B) In most cases  
9 in which the operator is  
10 required to ensure the use by  
11 a miner of hearing protectors,  
12 ensure that the protector is  
13 worn by the miner when exposed  
14 to sound levels which are  
15 required to be integrated into  
16 a miner's noise exposure  
17 measurements".

18 I'd like to comment on (A). Providing a miner with a choice  
19 between one muff type and one plug type hearing protector  
20 makes a mockery of having a choice of hearing protectors to  
21 use. Miners should have a meaningful range to chose from.

1 And on (B). This seems to require that if a miner is  
2 required to wear a hearing protector based on exposure to  
3 noise at or above the action level of 85 decibels, then the  
4 miner would be required to wear it when he or she is exposed  
5 to sound levels which are required to be integrated into a  
6 miner's exposure measurements, example, 80 decibels. And  
7 you know, you see Section 60.120(a)(3) on that. This would  
8 mean the miner would have to wear his hearing protectors  
9 practically all the time. This is simply not practical.

10 And I would like to address something personally  
11 to add for me. I'm a scoop operator. We have six out-by  
12 scoops, -- I'm an out-by scoop operator; load a lot of rock  
13 parts. We had one scoop that the pump motor was noisy on;  
14 had one of the other out-by scoop operators complain about  
15 it. Well, the company's response was, "Well, we'll just  
16 simply put hearing protectors on everyone". I depend on my  
17 ears tremendously loading rock parts because I'm scooping  
18 out the rock before the pinner comes in and pins. And so I  
19 tried to wear the hearing protectors. The very first rock  
20 fall that I was on, -- and it don't always happen, had a  
21 load of rock, started to back out from under the rock fall,

1 the top yield, about 4 foot of rock come in, the rocks slide  
2 down the bucket in the limestone, about a 6 foot piece of  
3 rock, about 4 foot thick. If I had, -- I believe, that if I  
4 hadn't been wearing those hearing protectors that I could  
5 have heard that rock fall when I was in there scooping. But  
6 I could not hear it because I was wearing them hearing  
7 protector. And what we're trying to say here is that if the  
8 technology is there to engineer these scoops and stuff to  
9 where we can listen. We don't have to fight the pump motor  
10 problems and everything. Just quieten (sic), quieten (sic)  
11 them down. Quiet the machinery down. Thanks a lot.

12 MR. VALOSKI: Thank you. Our next speaker will  
13 be Randy Wildermuth.

14 MR. WILDERMUTH: Good morning. Randy Wildermuth,  
15 W-I-L-D-E-R-M-U-T-H. I'm a Safety Committeeman at  
16 Consolidation Coal, Burn Star Number 4 Mine in Cutler,  
17 Illinois. And it's a service operation.

18 And I guess I'm going to be addressing the same  
19 problems so many other people have today, is that it's not  
20 enough done to do away with the noise, most of the time the  
21 first thing they want to do is to use hearing protection.



1 We have one instance, we have a B-10 Caterpillar Tractor, a  
2 dozer, it's got an extremely loud hydraulic pump. It falls  
3 under 90, 87, 88, 89 depth dB. Everyone wants to change it  
4 except the superintendent, strictly because it costs and he  
5 doesn't have to. And it's happened over the years with  
6 transmissions, different things that can become extremely  
7 noisy and because they don't have to, they won't change  
8 them. And our operators, it's true, they wear, -- everyone  
9 wears hearing protection. But why not do what we can to  
10 eliminate the noise, especially when we know the problem.  
11 And this has, -- since it's a hydraulic pump, it's not going  
12 to last; it's lasted a year longer than it should have, but  
13 because our superintendent, -- even the Safety Director  
14 would like to change it. But to the superintendent, it's  
15 strictly a cost thing.

16 Like I said, this is a surface operation in the  
17 shop areas, it's not practical to wear hearing protection  
18 because so often you're working with another person and  
19 you're communicating back and forth what you're doing with  
20 overhead hoists, large tires, what have you, and you've got  
21 to hear each other, what action you're going to be taking.

1 And quite often there's air arcing and grinding, sledging  
2 going on in your area, most of the time these, -- or quite  
3 often, these operations can be isolated from the main  
4 workforce. But, because it's inconvenient, you complain  
5 about it, they tell you to wear your hearing protection.  
6 And it's not practical. You take one problem away and you  
7 make another one far worse.

8 Air starters on large diesel equipment; I don't  
9 know if you're familiar with them, but they're, -- some of  
10 them are extremely noisy. In a shop it's like an echo  
11 chamber. They hit these starters and it dumps a huge amount  
12 of air into an air starter and it's deafening for a certain  
13 period, -- short period of time. It's true because the  
14 average doesn't add up to over (90) during the day, but this  
15 accumulated effect of sledging and high noises adds up day  
16 in and day out, and so often they can be eliminated. Like  
17 these air starters, the new starters that they buy, which is  
18 a rarity, 'cause they usually rebuild the old ones, but the  
19 new starters are what they call "turbo starters," are  
20 extremely quiet. They're not going to buy them because of  
21 the expense and that's another example of how they could

1 eliminate extreme noises by buying new ones, but they  
2 continue to be, -- rebuilding these old ones, just, again,  
3 for the, -- 'cause of the cost. But, again, at surface  
4 insulations, especially in the shop area, so often these  
5 extreme noises could be isolated from the main workforce,  
6 and only the people that do grinding or air arcing would  
7 have to do it, -- could be around the noise. But because of  
8 the inconvenience, you're told to put earplugs in or do  
9 whatever and, -- because they don't have to. And that's a  
10 problem we have there, it's always that they don't have to,  
11 because your average dB for the day will be under (90), and  
12 the extreme noises aren't taken into consideration. And I  
13 thank you.

14 MR. THAXTON: Excuse me. Which mine did you say  
15 you worked at?

16 MR. WILDERMUTH: Consolidation Coal, Burn Star  
17 Number 4, in Cutler, Illinois.

18 MR. THAXTON: Thank you.

19 MR. VALOSKI: Thank you. Our next speaker will  
20 be Pat Leet.

21 MS. LEET: Good morning. My name is Patricia

1     Leet, P-A-T-R-I-C-I-A, L-E-E-T.  I work for Peabody Coal  
2     Company, Camp 9, in Union County in Waverly, Kentucky.  I  
3     have been employed by Peabody for twenty years.  I work in a  
4     preparation plant where I'm exposed to constant, continuous  
5     noise on a daily basis.

6             Two of the issues that I would like to talk to you  
7     about today are the self-enforcement by the operators.  When  
8     I was a kid and my mother and father would have a  
9     disagreement I would hear my mother make a statement to my  
10    father, "Well, Arley, if you're going to let the fox guard  
11    the chicken house we'll not have any eggs in the morning".  
12    However humorous that sounds, history has taught us that  
13    that is true; that we have to guard ourselves and other  
14    people and our property, our financial status and everything  
15    else we do in life, we have to be responsible for it.  I  
16    believe that we must take responsibility for our own health  
17    and safety, as well as those of our fellow miners.  And we  
18    must demand that MSHA does not shift their job solely to the  
19    operator.  And going back to what Mr. Becker said, there is  
20    no such thing as a forty hour work week.  I work seven days  
21    a week periodically for sixteen hours on Sunday (sic).

1           Going to the second point in the proposed rule, is  
2 the redefinition of a small entity to include mines  
3 employing less than five hundred people. Mr. Becker stated  
4 that they had three hundred and some odd people. This is  
5 amazing to me, because we have forty-one. Which we are a  
6 small operation, we're a preparation plant. But in this day  
7 and age you don't hear of large mines anymore due to  
8 cutbacks and competition. And who are we to say that one  
9 person is not as important as five hundred? We owe these  
10 people the most protection that we can give them. And  
11 that's all I had to say today.

12           MR. VALOSKI: Any questions?

13           THE PANEL: (No verbal response.)

14           MR. VALOSKI: Thank you. Our last scheduled  
15 speaker is Mike Dillingham.

16           MR. DILLINGHAM: Thank you. My name's Michael  
17 Dillingham, D-I-L-L-I-N-G-H-A-M. I'd like to thank y'all  
18 today for letting me speak. I've listened to everybody's  
19 testimony this morning and it's covered a big, wide  
20 spectrum, but I think most of the people's concerns is that  
21 noise is a big factor in the coal mines. And, myself, I

1 personally don't feel that hearing protection over  
2 innovative engineering is going to help that much. I heard  
3 some discussion at the break where they were talking about  
4 coal miners wearing ear protection; could you not hear over  
5 the roof in case you were having a roof problem? I'll give  
6 you a scenario that happened to me. I was the fire boss  
7 walking the belt, I was coming up on the working section, I  
8 had finished walking the belt except for about from here to  
9 that wall.

10 MR. VALOSKI: Now, let the record show, --

11 MR. DILLINGHAM: About 20, 25 foot.

12 MR. VALOSKI: Thank you.

13 MR. DILLINGHAM: And I came up on the tail where  
14 the feeder was sitting, of course the big breaker was  
15 running, it was crunching rocks and coal, and I was making  
16 my initials in that spot, 'cause that was my last point of  
17 check. I made my initials, I started to turn and walk by  
18 the feeder to make a visual hit, and something told me to  
19 stop. At the same time I heard three loud cracks that  
20 sounded just like a .22 rifle or a pistol shot and I  
21 stopped. And immediately in front of me; which the roof is

1 bolted from 4 foot to the rib-line, there's a 4 foot span,  
2 there was a chunk of rock fell out approximately 8 foot  
3 long, 6 inches thick and 4 foot wide. If I had not heard  
4 those three snaps I would have been under that rock. I did  
5 not have hearing protection in. And I'm not saying if I had  
6 of had it in I would not heard that, but I think it would  
7 have been a factor where it could have deterred what I would  
8 have heard.

9 I've been coal mining for twenty-three years. I  
10 worked the surface, underground, mine construction, -- what  
11 we have at our mine is, -- they supply the law; they go in,  
12 they make noise surveys; they post them. They give you a  
13 box of earplugs over there, and say, "There they are if you  
14 want them. There they are if you don't. That's up to you".  
15 I work in a Prep Plant now, I've worked underground. I work  
16 in Prep Plant where, like these guys and lady just stated,  
17 that there's a lot of noise due to the vibrators, the  
18 shakers and everything involved.

19 We're supposed to have a controlled atmosphere in  
20 our control room, where it's dust-free, noise-free. Well,  
21 here's how our company handled it. We were having a lot of

1 dust problems inside our computer room, instead of making  
2 the room dust-free or to where it will not be exposed to  
3 outside elements, their solution is, we allotted twenty  
4 thousand dollars (\$20,000.00) to get a new computer 'cause  
5 the coal dust ate it up. Instead of going with engineers  
6 and getting something there to reduce the dust levels in  
7 this operation, they went more to just spending money,  
8 "Let's get a new computer". So that shows you what the  
9 companies are going to do for us. I feel that we need a  
10 miners' rep to monitor and be a part of this noise sampling.  
11 I don't feel that the companies are trustworthy to do this  
12 on their own. It's like we stated, you don't put a fox to  
13 guard the chicken house, 'cause you can't trust that he  
14 ain't going to eat one while you ain't looking.

15 So, therefore, I feel like that, -- I appreciate  
16 what you're trying to do here on this noise and stuff. And  
17 it's just like the respirable dust, the diesel rigs, we're  
18 falling short for the coal miner. The coal miner needs to  
19 be a little bit more protected, because until you live the  
20 way he does and in the atmosphere he does, then it's hard to  
21 make a decision of what to do for him. That's why he should



1 try to take care of his-self (sic) and everybody should look  
2 to try to take care of them for you. Thank you.

3 MR. VALOSKI: Thank you. Now we're going to go  
4 to the speakers who signed up today. The first speaker that  
5 signed up today is William A. Hubiak. I hope I pronounced  
6 it correctly.

7 MR. HUBIAK: My name is William Hubiak, H-U-B-I-  
8 A-K. I'm here representing Grand De Malaney (phonetic)  
9 Company. I'd like to thank the panel for giving me the  
10 opportunity to speak today.

11 I have over twenty years experience in the coal  
12 mine industry. This includes both underground, surface and  
13 most recently in my career, coal preparation. The evolution  
14 in training with our mining people in the industry has come  
15 a long way in advancement in the twenty years that I've been  
16 around. We have made our people more and more aware of the  
17 hazards and the dangers that they face on a daily basis.  
18 And this includes damage to hearing. I have seen in these  
19 twenty years more and more of the workforce become  
20 personally responsible for their hearing protection, as well  
21 as other protections. The last two years I've been the

1     Manager for the Preparation and Loading Dock facility for  
2     this company, which employees sixteen hourly people.     And I  
3     have four supervisors under my control.     And of these  
4     sixteen individuals we have no plan, no enforcement of  
5     hearing protection.     We afford it to the employees and the  
6     supervisors, and we have 100 percent utilization at this  
7     facility.     We offer them a, -- different methods of hearing  
8     protection, earmuffs and two different styles of the form  
9     earplugs.     We have found that different operators, whether  
10    on mobile equipment, and a person's natural ear size and  
11    whatever their features are, or not conducive to each  
12    individual type of hearing protection.     So, we try to give  
13    the employee what they want, so they'll wear it.     We have  
14    found that ten, out of our sixteen hourly employees, wear  
15    the ear foams and the muffs, they're great for their, you  
16    know, longevity.     And life can be a hazardous and hostile  
17    environment in a preparation facility.     And six of the other  
18    employees wear the foam earplugs.     And mostly they're on the  
19    loading dock and on the mobile equipment, which consists of  
20    988(s), occasionally bulldozers.     We also supply our  
21    employees with radios, 'cause communication is the essence

1 in all operations, for both safety and productivity in a  
2 dangerous environment. We supply these radios with ear  
3 jacks so that the hearing protection that's afforded to them  
4 is not impaired at any time. It runs up through the, --  
5 they bring them up through your shirt, take them off, put  
6 them inside your earmuffs. I commend my men for doing this  
7 without being prodded into having to do such things, because  
8 they've become more aware of the dangers. Our workforce at  
9 this mine is not of, -- consists of more middle aged than  
10 younger miners, compared to the national workforce average  
11 age. And I think that most of the younger generation of  
12 miners, and I'm talking in their thirties and early forties,  
13 are more aware of the hazards and dangers of prolonged  
14 hearing decibel high level ranges and the effect that it can  
15 have on it. We try to give them something that's  
16 comfortable. Everybody's talked about the forty hour work  
17 week, or more. So, if you're going to have something on for  
18 a duration longer than eight hours, up to twelve hours,  
19 which we work twelve hour shifts, doing preventative  
20 maintenance. Of course, during preventative maintenance the  
21 plant's not in operation and we do not have all that noise.

1 But we try to give them something that's comfortable for  
2 them to wear. The mobile equipment operators are under the  
3 same routine. They are afforded different earplugs also and  
4 the majority of the mobile equipment workers at the surface  
5 operation that feeds this preparation plant, wear their's  
6 also.

7 Our preparation facility is a five level  
8 structure. And the basic engineering mechanism by which the  
9 coal is prepared and separated makes the engineering  
10 controls for the mechanisms by which the coal is separated  
11 and processed. Engineering can have very little effect on  
12 reducing the total decibel level, just by the nature of the  
13 mechanisms, by vibrating, -- in the conveyor motions, the  
14 vibrators, the dryers and the crushers, the rotary breaker.  
15 By enclosing these things and dampening the sound would lead  
16 to a potential for liberating methane gas in operations that  
17 have methane inherent in your coal. It's something to be  
18 considered. Also cause mechanical problems which cite to  
19 everything in a preparation plant is looked at by how well  
20 everything is flowing through a circuit; the bins of coal on  
21 the vibrating screens how well the circuit is feeding. The

1 coal on the screens have a dampening effect of the total  
2 noise level when that mechanism is running while being not  
3 under level. These things need to be looked at. The cost  
4 of upgrading preparation facilities to the newest levels  
5 right now, would be cost-prohibitive to a small operator,  
6 such as which we are, under the two million tons a year.  
7 The technology is not out there at this time to do things to  
8 where I think these levels which are being required in the  
9 85 decibel range are in our grasp. I think that what we do  
10 with the hearing protection afforded to the people at this  
11 level, is the greatest enhancement we can do at this point.  
12 I would recommend that in the future that all engineering  
13 design should try to dampen levels. But I think that cost-  
14 prohibitive and what we have in today's market in the coal  
15 industry is not the avenue of engineering controls.

16 The rugged environment which mobile equipment  
17 works, -- yes, manufacturers have come out with great cab  
18 designs and sound damage assistance. But after a few years  
19 in these operations, an equipment life being extended out on  
20 five, ten years, under these kind of conditions, even with  
21 rebuilds, makes it practically impossible to keep the

1 conditions of an operator's cab completely enclosed and  
2 sound-dampened. You can not afford to operate and replace  
3 equipment on a yearly basis. And it's because of the  
4 hostile environment in which it works. Therefore, the  
5 hearing protection is one of the main things that helps each  
6 individual operator protect their own individual hearing.

7 I think that if you look through the records in  
8 the past because we had so much hearing loss is because  
9 people were not aware of the dangers and thought, "Well, if  
10 the other guy don't wear it, why should I". I think that  
11 it's changed. And through training and making our people  
12 aware of the dangers they become more cognizant of the  
13 dangers and do something about it. I'd like to thank  
14 everybody for the time. If there's any questions, --

15 MR. VALOSKI: I'd like to ask a question. You  
16 said that future designs for noise control in prep plants, -  
17 - are you advocating a grandfathering, so to speak, of the  
18 current preparation facilities from engineering noise  
19 controls?

20 MR. HUBIAK: Yes, you could say that. Until  
21 plants can be ungraded, I think, to new future things, new

1 designs, they should try to make things as quiet as  
2 possible. In preparation, less noise means less vibration,  
3 which means less wear and tear on a piece of equipment,  
4 which enhances its life, which, -- and lower maintenance  
5 cost, greater operational and lower the cost for coal  
6 production itself, for the longevity of coal mining itself.  
7 I think that's something that's reasonable and should be  
8 looked at in the future, trying to upgrade each individual  
9 plant. The plant that I operate is only eight years old.  
10 It's not an ancient dinosaur. And it would be very cost-  
11 prohibitive for something that runs under, -- we only run a  
12 maximum of 425 tons an hour, we don't have a mega plant.

13 MR. THAXTON: You mentioned that you have 988 end  
14 loaders, --

15 MR. HUBIAK: Correct.

16 MR. THAXTON: -- that have cabs on them. But  
17 it's cost-prohibitive to maintain those cabs. What kind of  
18 cost figures are you looking at in cab maintenance?

19 MR. HUBIAK: Basically a piece of equipment, any  
20 mobile equipment, such as a bulldozer or a end-loader, the  
21 cab is separated from the actual frame of the machine, it's

1 got rubber bushings mounted on it, vibration on it, the  
2 insulation inside the cab can be replaced, but the doors and  
3 windows through the cost of twisting and turning will become  
4 worn and make it impossible to make a tight seal to  
5 downgrade all outside noises. Basically, your noise in a  
6 end-loader comes from the engine, your turbo chargers, your  
7 hydraulic pumps and transmission. So, under years of abuse,  
8 in a 988 end-loader, ours is a, -- '88 models; we're trying  
9 to replace them now, but you're looking at a piece of  
10 equipment that's ten years old. To try to keep the cab in a  
11 maintained environment and a hostile area, with erosion and  
12 contamination due to the coal fires, working around  
13 stockpile areas which cause rust and things to fit, -- of  
14 the cab assembly itself, it would become cost-prohibitive on  
15 a yearly basis.

16 MR. THAXTON: But do you have any cost figures?  
17 You say it's cost, --

18 MR. HUBIAK: No, I don't have any figures.

19 MS. FONTAINE: Is that something you could submit  
20 at a later time?

21 MR. HUBIAK: Yes. We could probably put



1 something together on that.

2 MR. VALOSKI: Okay. Questions from the audience,  
3 please direct them towards us, not towards the speaker.  
4 We're not here for a debate between you and the speaker.

5  
6 COMMENT FROM THE FLOOR: Yes sir. I would like  
7 to know if his company requires mandatory hearing  
8 protection?

9 MR. VALOSKI: He answered that in the, --

10 COMMENT FROM THE FLOOR: I understand that. But  
11 there's a, -- you know, I realize where he works at, I  
12 realize where he's coming from, he's coming from the  
13 company's standpoint. I just wondered if there is?

14 MR. VALOSKI: When he started his, --

15 COMMENT FROM THE FLOOR: These employees do have  
16 the right to refuse to wear hearing protection.

17 MR. VALOSKI: At the beginning of his statement  
18 he answered that question, which was that they did not have  
19 a mandatory policy of wearing hearing protectors.

20 COMMENT FROM THE FLOOR: Okay. I'm sorry.

21 MR. VALOSKI: Yes.

1           MR. HENRY:   Getting back when you were talking  
2    about cost control, you know, I must have heard the  
3    feasibility y'all mentioned over and over again, you know,  
4    he reiterated that, you know, it costs too much money.  But  
5    I'd like to know in his prep plant what kind of screens, --  
6    does he have metal screens, plastic screens, you know.  The  
7    difference in cost between the plastic and the metal is not  
8    that much difference.  And the plastic, you know, lasts a  
9    lot longer.  You know, the sound, I don't know what they've  
10   got, but, you know, the cost is not that much of a  
11   difference with the plastic screens and the metal screens.

12           MR. VALOSKI:   We'll take that into consideration.  
13   Thank you.

14           MR. HUBIAK:   Can I answer his question?

15           MR. VALOSKI:   If you wish.

16           MR. HUBIAK:   Yeah.  Our plant employs both,  
17   plastic and metal screen types on our shakers.

18           MR. VALOSKI:   Okay.  Thank you.

19           MS. PILATE:   I'd like to add something.  When you  
20   do submit your written comments, I have a request that you  
21   specify for each engineering control that you've mentioned,

1 that you believe is cost-prohibitive, that you specify the  
2 actual cost of it, as well as the average life of those  
3 engineering controls.

4 MR. VALOSKI: Okay.

5 COMMENT FROM THE FLOOR: It's not a question to  
6 him, it, -- he'll say he's not technology feasible to keep  
7 these, -- maintenance up on these (sic) equipment and the  
8 screens on it. What is the profit margin there that makes  
9 that call? How much money do you have to make before you  
10 can do a maintenance program? Do you make a profit? The  
11 question I guess is, how much of the profit does it make  
12 that feasible? Am I making any sense there?

13 MR. VALOSKI: Yes. We'll take it into  
14 consideration. And we do the economic impact analysis based  
15 upon new information that we receive. Thank you. Our next  
16 speaker is Jan Osterud.

17 MR. OSTERUD: Good morning, ladies and gentlemen.  
18 I appreciate being able to speak to you this morning. My  
19 name is Jan, J-A-N, Osterud, O-S-T-E-R-U-D. I've been a  
20 coal miner over twenty years. I was employed at, -- for  
21 AMAC at HR Mine for eighteen and a half years. It was a

1 union mine. I learned early on, through their annual safety  
2 specialty training, of noise levels of different equipment,  
3 bulldozers, dragline harnesses, preparation plant, and it  
4 made impressions upon me early on of what protection, --  
5 personal protective equipment would afford me, if I would  
6 use it. So, I used that equipment that was available to me  
7 pretty much 100 percent of the time. Because I felt that  
8 the environment was hazardous to my hearing and I used my  
9 association with the work I did was twelve years in heavy  
10 equipment, most of it on scraper, bulldozer. And it was  
11 easy for me to wear that. It wasn't uncomfortable, I got  
12 used to doing it. By using that equipment, the protective  
13 ear equipment, it calmed down, -- being in that equipment  
14 hour after hour, it calmed down the, -- I guess you'd call  
15 it the stress you'd feel from the noise. And it made it  
16 easier to do that work. Three years of that eighteen and a  
17 half years I was in their preparation plant where the noise  
18 levels were higher than the bulldozer equipment. And I  
19 can't imagine not using the ear protection in that  
20 environment. I can sympathize with other people as far as  
21 wanting extra hearing to hear people and being able to have

1 that extra hearing, but I don't have any reservations about  
2 not using hearing protection in a coal facility. At the HR  
3 Mine, the equipment was readily available, the ear  
4 protection. We could go to the warehouse and get different  
5 types of ear protection when we wanted it.

6           Where I work now is Grand Eagle Mine and Peabody  
7 Mine, the same location. Bill had just spoke before I, when  
8 he was up here. The equipment is available, it's not  
9 mandatory, but the people I'm around with there, they use  
10 that, because they have been around people that have not  
11 used ear protection and they have hearing loss from not  
12 using ear protection. So, pretty much the majority of the  
13 people use ear protection. The person that I work with, the  
14 operator, he, -- the first mine I worked at he was there at  
15 the beginning, at the preparation plant. He was there for  
16 almost twenty years. He did not use ear protection and he  
17 has ringing in his ears right now and he's younger than I  
18 am. And I feel that by ear protection being afforded to me  
19 and being allowed to use it, I believe that that is why my  
20 hearing is still intact. And I appreciate the annual  
21 retraining that I had that told me about that, shared the

1 noise levels and what could happen. And I believe that my  
2 level of hearing is that well because of ear protection.  
3 That's all I have to say.

4 MR. VALOSKI: Any questions? You said at the  
5 previous mine that you could get, -- choose from a  
6 selection. How many hearing protectors were you afforded a  
7 choice from?

8 MR. OSTERUD: There was just two, but through the  
9 years they changed different muff designs. So, basically,  
10 just two, but there were periodically, upgrades of different  
11 muffs.

12 MR. VALOSKI: Okay.

13 MR. THAXTON: Have you ever had an audiometric  
14 exam?

15 MR. OSTERUD: Yes.

16 MR. THAXTON: How often?

17 MR. OSTERUD: Probably the recent one was when I  
18 was hired on at Grand, which was probably three years ago.

19 MR. THAXTON: Have you had them before that?

20 MR. OSTERUD: Yes. It was probably maybe ten  
21 years before that. It was probably ten years into working,

1 -- my history, I had it, and then not quite often, but  
2 probably two.

3 MR. THAXTON: Has the results of those audiograms  
4 indicated that your hearing has not suffered from the  
5 exposure and the environment?

6 MR. OSTERUD: Yes.

7 MS. PILATE: How long did it take to have the  
8 exam?

9 MR. OSTERUD: It was pretty extensive, maybe  
10 around thirty minutes or so.

11 MS. PILATE: And that was company-paid?

12 MR. OSTERUD: Well, it seems like, -- I don't  
13 know exactly. I've had a couple. I can't say for sure if  
14 that's correct or not. But through my association with, --  
15 like in environments where I hear with my daughter or hear  
16 with my wife, I don't have any loss as far as, you know,  
17 "Did you hear that," or "I can hear that, too". Little  
18 beeps of sound that would come from being in different  
19 areas, like backup (indiscernible) equipment would be  
20 operating like in the neighborhood or something and I would  
21 ask them, you know, "Can you hear that sound?" And

1 sometimes they would say, "No," so I guess I'm assuming that  
2 recently, like right now, my hearing protection is, you  
3 know, as good as it can be.

4 MR. VALOSKI: Okay. Thank you. Our next speaker  
5 who signed up is Jeff Gurley.

6 MR. GURLEY: My name is Jeff Gurley, and it's G-  
7 U-R-L-E-Y. And I'm employed by the coal company. I  
8 appreciate the opportunity to speak this morning and I'll  
9 try to keep my comments as brief as possible.

10 The mining industry is unique and we were forced  
11 into several situations that rely, -- force us heavily to  
12 rely on personal protective equipment to ensure compliance  
13 with workplace noise requirements. Most of this is due to  
14 noise sources that are unable to be controlled or reduced,  
15 using current technology. A few examples of some of these  
16 are: the nature of mining itself is that coal and rock are  
17 ground and cut, using bits. This grinding/cutting  
18 introduces high noise levels into the work environment. In  
19 an effort to reduce dust, we've also introduced flood-a-bed  
20 (phonetic) scrubbers in the workplace. These scrubbers move  
21 high volumes of air and have resulted in substantial



1 reductions of respirable dust levels. But the velocity of  
2 air also increases the noise level in the workplace. Then  
3 we work in an environment where we have roof, rib and floor  
4 that encloses the area and allows the noise levels to  
5 accumulate. Our coal company's installed some of the latest  
6 engineering controls that are available. They use things  
7 such as noise deadening tails on a continuous miner.  
8 Installation packages on scrubbers. Our chief's even  
9 changed the take-ups on the conveyors, to eliminate slapping  
10 of the conveyor chain. And things like that. However,  
11 we're unable to reduce the noise levels in all instances to  
12 the levels that are required through compliance in the  
13 regulations. Other engineering controls such enclosures,  
14 barriers and noise curtains, absorption of vibration,  
15 isolation, are not very practical, or not always practical  
16 for use in underground coal mines. Due to the moving of  
17 equipment, the rapidly changing environment we work in.

18           It's been talked about earlier, a lot of our  
19 operation is signaled toward the UMWA-VCO Contract. And  
20 this agreement does limit flexibility on just placing  
21 people, as far as administrative controls are concerned.

1           As I stated above, we are a unique industry when  
2 it comes to controlling noise. OSHA allows for the use of  
3 personal protective equipment in their compliance strategy.  
4 Most of the injuries, -- most of their industries that can  
5 deal with more hurdles than we're forced to deal with in  
6 ours.

7           Some people feel that hearing protection reduces  
8 their safety by preventing them from hearing the top work  
9 and speech communications. This is not necessarily true, as  
10 was mentioned earlier by Mr. Berger. Hearing protection is  
11 designed to protect the wearer from, -- preventing noise  
12 from entering the ear, and it's effective in doing this.  
13 Hearing protection, however, is not effective at all noise  
14 ranges, 'cause a study showed it, -- at all frequency  
15 ranges, I'm sorry. The higher frequencies in high noise  
16 levels is more effective than at the lower frequencies.  
17 This in time widens the gap between the perceived levels of  
18 low and high frequency and most of these warning signs are  
19 in the low frequency range, they're not high frequency  
20 noise. So after adjustment it's usually easier to hear  
21 these noise with hearing protection than without. When

1 looking at noise control strategies, cost must be weighed  
2 against the benefit. Let's take a continuous miner for  
3 example. A continuous miner, there are multiple noise  
4 sources. A few of these sources of motors, scrubber,  
5 conveyor, deer cases (phonetic) on the beds to pick up the  
6 coal. If each of these five sources produce 90 decibels  
7 each, the cumulative result would be 97 decibels in the  
8 workplace. If we use technology to reduce two of these  
9 sources to 70 decibels or dBA, the cumulative result would  
10 be 95 dBA in the workplace still. That's only a reduction  
11 of 2 dBA. If three of those five sources were reduced to 70  
12 dBA, the cumulative result would still be 93 dBA. The cost  
13 to achieve those reductions on those items would be high.  
14 The cumulative effect of noise in the workplace makes  
15 controlling noise without personal protective equipment a  
16 crap shoot. For example, put ten sources of noise and each  
17 of those sources produced 80 dBA, all less than 50 percent  
18 of the proposed action level, the cumulative noise level  
19 would be 90 dBA. That's in excess of 200 percent of the  
20 proposed action level. With the ever changing environment  
21 that we work in we can still have noise sources that are

1 well within compliance levels. However, due to the  
2 cumulative effect they would not be in compliance. Without  
3 credit for personal protective equipment we can not truly  
4 ensure the compliance of proposed noise levels as protection  
5 of our people. Keep in mind, hearing loss is not only  
6 caused by exposure to the workplace, activities away from  
7 work, such as farming, hunting, -- and activities like  
8 those, do also contribute to hearing loss. And,  
9 additionally, the age of a coal miner, the average age has  
10 increased and hearing loss also increases with that.

11 The protection of our workers from injury and  
12 illness is important to our company, the coal industry and  
13 myself. I feel that the Government's efforts could be used  
14 better, to improve the technology in reducing the health and  
15 safety risks in the workplace. Thank you.

16 MR. THAXTON: Mr. Gurley, what position do you  
17 hold?

18 MR. GURLEY: Safety Supervisor.

19 MS. PILATE: For the engineering controls that  
20 you mentioned that your mine does use, the noise dampening  
21 tapes and the insulation for scrubbers, do you have a figure

1 on how much the engineering controls costs?

2 MR. GURLEY: I do not.

3 MS. PILATE: Is it something that you might be  
4 able to provide us with at a later time?

5 MR. GURLEY: I can try, yes.

6 MS. PILATE: And you mentioned the, -- some of  
7 the impractical engineering controls, such as curtains, and  
8 other engineering controls you couldn't use. And that was  
9 only due to the fact that those would be attached to mobile  
10 equipment?

11 MR. GURLEY: Not necessarily. The confined  
12 workplace that we're involved in, to place a, -- for  
13 example, to place a screen or curtain between an operator  
14 and the head of the miner, would be impractical most of the  
15 time in every instance I can think of.

16 MS. PILATE: Does your company ever have to send  
17 your miners for hearing tests?

18 MR. GURLEY: Pardon?

19 MS. PILATE: Does your company ever have to send  
20 miners for hearing tests?

21 MR. GURLEY: We have, but not in many years. But

1 we do a pre-employment physical.

2 MR. VALOSKI: Anything else? You all need to  
3 remember to direct your questions towards us. We're not  
4 here for a big debate between you and the speakers.

5 MR. BERGER: I would like a point of  
6 clarification. Mike Dillingham, an earlier presenter, gave  
7 a personal example of hearing the roof talk, and said that  
8 it sounded like a gun discharge, which would be primarily a  
9 middle high frequency type of sound. Mr. Gurley, who's  
10 speaking now, said that the warning sounds that miners need  
11 to hear are primarily low frequency sounds. And I'm  
12 wondering are they talking about different sorts of warning  
13 sounds or are they both describing roof talk and describing  
14 it differently?

15 MR. VALOSKI: My sense is that one's a warning  
16 signal on equipment. With the last gentleman he was talking  
17 about warning signals on equipment, whereas Mr. Dillingham  
18 was talking about sounds that come from the roof, which were  
19 two different sound sources.

20 MR. BERGER: Could you ask the speaker to clarify  
21 that? That wasn't my understanding listening to them, but

1 you may be right on that.

2 MR. GURLEY: My comment dealt with roof warning  
3 signs, the top working, that type of sound. And I'd say  
4 those are low, to possibly mid frequencies.

5 MR. VALOSKI: Okay. Thank you. Yes.

6 COMMENT FROM THE FLOOR: Mr. Moderator, just to  
7 clarify Elliott's question. A lot of times these are not  
8 constant sounds, they're variable. Sometime those roof  
9 indicator noises can be low pitch or they can be high  
10 pitched, depending on the size, the weight, the height,  
11 things of that nature. So it can be variable.

12 MR. VALOSKI: Thank you. Those are the only  
13 speakers that we have listed. Mr. Urban, requested to  
14 address us after all the testimony was done.

15 MR. URBAN: Thank you, sir, for allowing number  
16 one, United Mine Workers to be a part of this process.  
17 Getting back to a couple of questions I have now for the  
18 panel. In the new proposal, the proposal speaks of once we  
19 reach an exposure level, overexposure level, then it's a  
20 requirement for both engineering controls and administrative  
21 controls to be put in place. Is that correct?

1 MR. VALOSKI: Yes.

2 MR. URBAN: Okay. To what degree of each?

3 MR. VALOSKI: I can't answer that question.

4 MR. URBAN: Something the panel needs to  
5 consider.

6 MR. VALOSKI: We will consider your comment about  
7 how much of each control needs to be implemented. As it  
8 currently is written in the proposal, both of them must be  
9 utilized.

10 MR. URBAN: But it doesn't stipulate to what  
11 degree.

12 MR. VALOSKI: It does not stipulate to what  
13 degree.

14 MR. URBAN: My second question, we looked in the  
15 regulation, 30 CFR 77.404 or 75.1725(a). There are  
16 safeguards built in those particular regulations that  
17 requires either surface or underground, that operators  
18 maintain equipment in safe operating conditions. Now mainly  
19 that's always has been applied to the physical safety aspect  
20 of equipment. Again, another consideration for the panel.  
21 Let's do that, perhaps. Safety is not just physical safety,



1 health and safety. Thank you.

2 MR. VALOSKI: As there are no other speakers, the  
3 panel will take a lunch break and we'll reconvene at 1:30.  
4 Thank you.

5 (Whereupon, at 11:45 a.m., the hearing was  
6 recessed, to reconvene this same day at 1:30 p.m.)

7 MR. VALOSKI: Okay. It's now 1:30 in the  
8 afternoon. We have no people in the audience and nobody  
9 else has signed up, so we're going to take another recess  
10 for sixty minutes.

11 (Whereupon, at 1:31 p.m., the hearing was  
12 recessed, to reconvene this same day at 2:30 p.m.)

13 MR. VALOSKI: Okay. It's now 2:30, we have  
14 nobody in the audience and nobody assigned to give  
15 testimony. Therefore, we're going to take another sixty  
16 minute recess. Thank you.

17 (Whereupon, at 2:31 p.m., the hearing was  
18 recessed, to reconvene this same day at 3:30 p.m.)

19 MR. VALOSKI: Okay. It's now, -- it is 3:30. We  
20 still have nobody in the audience and nobody signed up to  
21 present testimony. Therefore, we'll take another sixty

1 minute recess. Thank you.

2 (Whereupon, at 3:31 p.m., the hearing was  
3 recessed, to reconvene this same day at 4:30 p.m.)

4 MR. VALOSKI: Okay. It is now 4:30. We still  
5 have nobody in the audience and nobody has signed up to  
6 speak. Therefore, we will recess the public hearing until  
7 five o'clock. Thank you.

8 (Whereupon, at 4:30 p.m., the hearing was  
9 recessed, to reconvene this same day at 5:00 p.m.)

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13 MR. VALOSKI: It is now 5 p.m., there is still  
14 nobody in the audience and nobody has signed up. Therefore,  
15 we're going to close the record for the day. Thank you for  
16 coming.

17 (Whereupon, at 5:00 p.m., the hearing was  
18 concluded.)

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