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HEARING OF MAINTENANCE OF INCOMBUSTIBLE

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CONTENT OF ROCK DUST IN

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UNDERGROUND COAL MINES

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HEARING DATE:

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NOVEMBER 16, 2010

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COURT REPORTER:

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ANNIE BAUER

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PANEL:

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PATRICIA SILVEY

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MARIO DISTASIO

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GREGORY FETTY

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KEVIN BURNS

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DEBORAH GREEN

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STIPULATION

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The Hearing of Maintenance of Incombustible

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Content of Rock Dust in Underground Coal Mines taken at

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Hilton Suites Lexington Green, 245 Lexington Green

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Circle, Lexington, Kentucky on Tuesday, the 16th day of

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November, 2010 at approximately 9:08 a.m.; said

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deposition being taken pursuant to Notice for use in

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accordance with the Kentucky Rules of Civil Procedure.

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It is agreed that Annie Bauer, being a Notary

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Public and Court Reporter for the State of Kentucky,

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may swear the witness.

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## PROCEEDINGS

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PATRICIA SILVEY: Good morning. My name is

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Patricia W. Silvey, and I'm the director of the Mine --

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Mine Safety and Health Administration Office of

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Standards, Regulations and Variances. I will be the

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moderator of this public hearing on MSHA's emergency

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temporary standard on the maintenance of incombustible

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content of rock dust in underground coal mines. On

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behalf of Assistant Secretary of Labor for Mine Safety

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and Health, Joseph A. Main, I want to welcome all of

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you to this hearing today. At this point, I'd like to

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introduce the members of the MSHA panel. To my left is

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Gregory Fetty, and Greg is with the Office of Coal

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Mine Safety and Health. To his left is Kevin Burns.

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Kevin is with the Educational Policy Development

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Office. To my right, Deborah Green, and Deborah is our

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attorney in the Office of the Solicitor, the Division

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of Mine Safety and Health. And to her right is Mario

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Distasio, and Mario is Chief Economist in my office.

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This is the third of four hearings on the emergency

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temporary standard. As many of you know, the first

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hearing was in St. Louis on October 26th. The second

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hearing in Birmingham, Alabama on October 28th. And

1 the fourth hearing will be in Charleston, West Virginia  
2 on November 18th. The purpose of these hearings, as  
3 those of you who participated in MSHA's rule making  
4 over the years know, is to receive information from the  
5 public, that will help us evaluate requirements in the  
6 ETS, emergency temporary standard, and develop a final  
7 rule that protects miners from hazards associated with  
8 coal dust explosions. We will also use this data and  
9 information gained from these hearings to help us  
10 develop a final rule that responds to the needs and  
11 concerns of the mining public, so that the requirements  
12 of the final rule can be implemented in the most  
13 effective and appropriate manner. The ETS was issued  
14 in accordance with Section 101(b) of the Mine Act. On  
15 this Section 101(b), the ETS is effective until  
16 superseded by a mandatory standard. And in accordance  
17 with the Mine Act, the Mandatory Standard must be  
18 issued no later than nine months after publication of  
19 the ETS. The ETS also serves as the purposed rule and  
20 commences the regular rule making process. Mine  
21 operators supply rock dust in underground bituminous  
22 coal mines to reduce the explosion potential of coal  
23 dust and other dust generated during the mining  
24 process. Effective rock dust application is essential  
25 to protect miners from the potential of a coal dust

1 explosion, or if one occurs to reduce it's severity.

2 MSHA established this standard based on the Federal

3 Coal Mine Safety and Health Act of 1969, that required

4 operators to maintain and at least 80 percent incombustible

5 content of combined coal dust, rock dust and other dust

6 in return airways. In all other areas of the mine, the

7 combined dust needs to contain at least 65 percent

8 incombustible content. MSHA determined that revising

9 the standard for maintenance of incombustible content

10 of rock dust is necessary to immediately protect miners

11 from hazards of coal dust explosions. This

12 determination is based on MSHA's accident investigation

13 reports of mine explosions in intake air courses that

14 involve coal dust, and that -- and those reports are in

15 Dubaniewicz report 2009; the National Institute for

16 Occupational Safety and Health, or NIOSH, Report of

17 Investigations 9679, written by Cashdollar and others

18 2010: "Recommendations for a New Rock Dusting Standard

19 to Prevent Coal Dust Explosions in Intake Airways;"

20 and, MSHA's own experience and data. MSHA has

21 estimated the economic impact of the ETS and has

22 included a discussion of the cost and benefits in the

23 Preamble. As stated earlier, we will use the

24 information provided by you, to help use decide how to

25 develop the final rule. The Preamble to the ETS

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1 discusses the requirements of the ETS and also includes  
2 several requests for comments and information. As you  
3 address the requirements of the ETS and any specific  
4 request for comment that we have made, either in  
5 comments to us today, or those sent to us in  
6 Arlington, please be as specific as possible, with  
7 respect to the impact on miner safety and health,  
8 specific mining conditions and feasibility of  
9 implementation. That will be very important. At this  
10 point, I want to reiterate the specific requests for  
11 comment and information that we included in the ETS.  
12 MSHA solicits comments from the mining community,  
13 regarding the increase in incombustible content of dust  
14 in air courses where methane is present. The ETS  
15 requires an additional 0.4 percent total incombustible  
16 content, or TIC, for each 0.1 percent of methane, where  
17 methane is present in any ventilating current. Please  
18 include your rationale and supporting documentation for  
19 any suggested alternative compliance matters. MSHA  
20 requests comments on all the estimates of cost and  
21 benefits, including net benefits, presented in the ETS.  
22 Specifically, MSHA requests comments on the agency's  
23 benefit estimates, as well as supporting data. MSHA  
24 solicits information from the mining community that  
25 would enable a more specific analysis of cost, which

1 would include costs of additional rock dust, increased  
2 labor needed to apply the rock dust and any additional  
3 equipment that would be necessary, such as pod dusters,  
4 trickle dusters, finger dusters, and scoop batteries.  
5 For equipment, please include the type, the number of  
6 pieces, cost, and expected service life. Please  
7 explain whether mining methods would affect costs, such  
8 as longwall mines compared to non-longwall mines. To  
9 date, the agency has received one comment on the ETS.  
10 And you can view comments on the agency's website at  
11 [www.MSHA.gov](http://www.MSHA.gov) under the section entitled Rules and  
12 Regulations. In addition, we have published the two  
13 transcripts from the two public hearings so far. You  
14 can review those transcripts on the agency's website.  
15 The post hearing comment period for the proposal closes  
16 on December 20th, 2010. And MSHA must receive your  
17 comments by midnight, Eastern standard time on that  
18 date. You may submit comments following this hearing  
19 by any of the methods identified in the ETS. The  
20 hearing, as many of you know, will be conducted in an  
21 informal manner, cross examinations and formal rules of  
22 evidence will not apply. The panel may ask  
23 questions of the speakers, the speakers may ask  
24 questions of the panel. MSHA will make the transcript  
25 of the hearing available on the agencies website within



1 one week of the hearing. If you wish to present  
2 written statements or information, please clearly  
3 identify your material and give a copy to the court  
4 reporter. We also ask that those in attendance, sign  
5 an attendance sheet in the room. Please begin by  
6 clearly stating your name and organization. And to  
7 make sure we have an accurate record, I would ask,  
8 please, if you would spell your name for the court  
9 reporter. And now we will begin today's hearing. And  
10 our first speaker will be Edgar Butch Oldham with the  
11 United Mine Workers of America.

12 EDGAR OLDHAM: I'm going to pass for now.

13 PATRICIA SIVLEY: Does -- does -- does  
14 anybody else wish to make a statement? If -- if nobody  
15 else wishes to make a statement, then I will -- I will  
16 -- we -- we are going to take a break. Why don't we  
17 take a, I don't know, a break right now.

18 (OFF THE RECORD)

19 PATRICIA SILVEY: At -- at this time, we will  
20 reconvene the Mine Safety and Health Administrations'  
21 public hearing on the emergency temporary standard on  
22 the maintenance of incombustible content of rock dust  
23 in underground coal mines. If nobody else -- is there  
24 anybody else who wishes to make a presentation? If  
25 nobody else wishes to make a presentation, I want to

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1 say, again, that the Mine Safety and Health  
2 Administration appreciates your participation in this  
3 public hearing. I want to remind you that all comments  
4 must be received by midnight, Eastern standard time on  
5 December 20th, 2010. And I also want to say that we  
6 participate -- I mean we appreciate those of you who  
7 attended and may not have made a presentation, but the  
8 fact that you attended the hearing shows that you have  
9 some interest in this rule making, and we appreciate  
10 that. I can assure you that we will take your comments  
11 and your concerns into consideration in developing the  
12 agency's final rules on the maintenance of  
13 incombustible content of rock dust in underground coal  
14 mines. I want to encourage all of you to continue to  
15 participate throughout the rule making process. As I  
16 said earlier, the final and fourth hearing will be in  
17 Charleston on this Thursday, November the 18th. This  
18 public hearing is now concluded, and thank you very  
19 much.

20 (HEARING CONCLUDED AT 10:09 A.M.)

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CERTIFICATE OF REPORTER

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COMMONWEALTH OF KENTUCKY AT LARGE

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5

I do hereby certify that the witness in the foregoing

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transcript was taken on the date, and at the time and

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place set out on the Title page hereof by me after

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first being duly sworn to testify the truth, the whole

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truth, and nothing but the truth; and that the said

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matter was recorded stenographically and mechanically

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by me and then reduced to typewritten form under my

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direction, and constitutes a true record of the

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transcript as taken, all to the best of my skill and

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ability. I certify that I am not a relative or

15

employee of either counsel, and that I am in no way

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interested financially, directly or indirectly, in this

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action.

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ANNIE BAUER,

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COURT REPORTER / NOTARY

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MY COMMISSION EXPIRES: 08/19/2014

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SUBMITTED ON: 11/30/2010