BEFORE THE
MINE SAFETY AND HEALTH ADMINISTRATION
PUBLIC HEARING
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IN RE: LOWERING MINERS' EXPOSURE TO RESPIRABLE COAL MINE DUST

BEFORE: GREGORY WAGNER, M.D., Chair
Robert Thaxton, Member
George Niewiandomski, Member
Mario Distasio, Member
Jennifer Honor, Member
Susan Olinger, Member

HEARING: Tuesday, December 7, 2010
9:04 a.m.

LOCATION: Mine Academy-Beaver
1301 Airport Road
Beaver, WV 25813

WITNESSES: Michael McGlothlin, Dennis O'Dell, Chris Hamilton, Susie Criss, Dennis Robertson, Joe Massie, Gary Harston, James Taylor, Bobby Crawford, Larry Dickey

Reporter: Juliette J. Hoffman

I N D E X

E X H I B I T S

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P R O C E E D I N G S

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DR. WAGNER:

My name is Gregory Wagner. I'm the Deputy Assistant Secretary for Mine Safety and Health. I'd like to welcome you to today's hearing on MSHA's proposed rule on lowering miners' exposure to respirable dust.

Before we get started with the formal hearing, I'm going to ask Bob Thaxton from Coal Mine Safety and Health to provide a fairly brief introduction and summary to the proposed rules, since we'll all be starting from the same place. Bob?

MR. THAXTON:

Good morning. I'm going to try to run through this and give you a briefing as to the major points and provisions in the rule. Again, this PowerPoint, please pay attention to the note at the bottom. It is for briefing purposes only. Please make

sure that you do read the rule in its entirety. Do not depend on this PowerPoint to tell you everything that's in the regulations.

To start out with, the rule is not a single section rule. We cover multiple parts. This rule covers Part 70 for underground mines, 71 for surface coal mines and facilities, Part 90 for those miners with Black Lung, Part 72, which covers both surface and underground coal miners as general, and Part 75 for ventilation plans.

Along with the proposed rules coming out, there are some new definitions. And what we've listed here are some major ones that are used throughout the rules. CMDPSU is the gravimetric sampler that you currently use, which is the MSA Escort ELF™. The CPDM is the new technology continuous personal dust monitor. Equipment concentrations, how we determine the concentration of dust

for --- keep it to an eight-hour equivalent so that it's MRE, maintained as we have now, as to an eight-hour exposure. And the calculations are described in the definition. MMU, we changed the definition of a MMU slightly, so you need to pay attention to that. This is how it affects ventilation exceptions. Normal production shift is now requiring production that is representative of what we normally see, what you expect at the mine on a day in and day out basis. Representative samples are the samples that we expect to show what normally is happening. That represents the normal activities throughout the shift. Weekly accumulated exposure and weekly permissible accumulated exposure are two new terms that have come out through use of the CPDM technology, and that is for calculating a weekly exposure.

The proposed standards

under 70, 71 and 90 address standards that we had in place, the two milligram. We're going to be lowering the current two milligram limit to 1.7 six months after the effective date of the rule. Those areas will go to 1.5 12 months later, after the effective date, and to one milligram 24 months after the effective date. At the same time, intake air will be lowered from the current one-milligram standard, it will be lowered to 0.5 milligram six months after the effective date of the rule. Part 90, also we're currently on one-milligram standard, will be reduced to a .5 standard six months after the effective date of the rule.

Quartz. There are a couple minor changes on the quartz provisions. We have now established specifically in the proposal that there is a standard .1 milligram per cubic meter or 100 micrograms per cubic meter, as the quartz level, but we will still continue with reducing

the standard. The only difference is that we will not start the standard development and standard reduction processes until we have a sample that exceeds the 100 micrograms.

Part 70, sampling. We will be using the gravimetric sample, the CMDPSU, at the effective date of the rule. Twelve (12) months after the effective date of the rule, everybody on the underground sections and on MMUs will be required to use CPDMs to sample designated occupations. The CPDM will be used in abating Section 304 rule to sample what we're calling ODOs, or other designated occupations. The gravimetric samples, the CMDPSU or the CPDM may be used for designated area sample. Those will be areas that are out on the section.

Continuing with Part 70, and Part 70 is only for underground mines, the miners are required to wear a CPDM and under this regulation

they're required to do training on the CPDM, and they'll be trained every 12 months that they're required to wear the units. If you're sampling, all sampling will be full shift, portal to portal. If you work ten hours, you do a ten-hour shift sample. If you worked eight, you get eight. Control filters are required to be used if you're using the gravimetric sampler. The operator will be required to do two records, one, that he'll record the length of each shift and maintain that record for six months. And then they will also have to record the actual production on each MMU and maintain that for six months as well. Production is raw finish, not clean coal.

Part 70, 71 and 90 CPDM has a plan, performance plan, in order to make use of the CPDM. That's developed by the operator, it's approved by the district manager. It is made available and provided so that

it can be reviewed and for comments by the represented miners, and it has to be posted on the mine bulletin board for everybody to see.

For Part 90 miners, because they are going to be sent in with CPDMs, then they also will have to have a performance plan for use of CPDM for each of those miners. Theirs will not be provided for comment due to privacy, and they're not posted on the mine bulletin board.

Sampling an MMU with the recommended sampler. Rule requires five samples for each bimonthly period for each DO, but not a single shift sample --- the equivalent concentration can be greater than or equal to the ECV, or excessive concentration values, that are specified in the rule. There is a table of values under table 70-1 that establishes for each standard what that ECV value is.

Gravimetric sampling on

an MMU when it's cited for excessive dust. Respirators have to be made available to the miners that are affected. The operator has to submit the corrective actions to the district manager for approval and then implement those corrective actions. And then once that has been done, you have five valid samples after the implementation of the controls. We will terminate that citation after the equivalent concentration of all five valid samples are collected, after the controls are put in place, if they all are less than or equal to the standard.

The revised ventilation plan incorporated approved corrective actions has been submitted and that plan has been approved by the district manager. After all those things are completed, then we will terminate the violation.

Part 70 says when you continue with gravimetrics on the MMU

when you just exceed the standard. This is sample exceeds the applicable standard or it's less than the ECV. So we do not have a sample citation. Respirators have to be made available to affected miners. Take corrective actions to reduce that concentration and record the corrective actions in a permanent record for the standard 75.363, hazardous conditions.

Continuing with the same thing on the MMU with the CPDM. You'll sample each DO each production shift every day. You'll sample ODOs. That's formerly the DAs on the MMU, such as a roof bolter DA. They'll be ODOs that will sample each productive shift for 14 consecutive days each quarter. DOs, ODOs, the samples are specified in the rule. And other ODOs may be designated by the DM.

Continuing with CPDM sample, no valid end-of-shift equivalent concentrations can be greater than or equal to the ECV in

Table 70.2. There is a different table of ECV values for a CPDM, so you need to keep them straight. The 70-1 was for gravimetric. 70-2 was for CPDM. No weekly accumulated exposure exceeds the weekly permissible accumulated exposure. That's new terminology, new situation, and the calculation is similar. We'll go over those later.

Part 70 sample continues with the CPDM. When cited for excessive dust, respirators have to be made available, the implemented corrective actions to meet the standard. Submit the corrective actions as a proposed revision to the ventilation plan for DM approval. We review the CPDM performance plan to make sure whether anything there needs to be updated based on your determination, and you record that excessive dust concentration and your corrective actions in the permanent record book.

Sampling with the CPDM exceeding the standard. The end-of-the-shift equivalent concentration exceeds the applicable standard but is less than the ECV, then we require respirators to be made available to the miners. You implement corrective actions to lower the concentrations to less than or equal to the standard. Record that excessive dust condition in your permanent record book. And you review the CPDM performance plan to see if there's any changes that need to be made.

Under Part 70 we go to Section Four, inability to comply with the standards. If an operator makes a determination that you're unable to maintain compliance with the feasible engineering or environmental controls, you may request approval to use supplemental controls for up to 24 months after the affective date of the rule. The maximum period for approval of one of these requests is six

months. Supplementary controls may include worker rotation in conjunction with monitoring with the CPDM.

Part 70 sampling for DA. We sample each DA five consecutive shifts each quarter using the gravimetric sample, the CMDPSU. No single shift equivalent concentration greater than or equal to the ECV value in 70-1. If you're using a CPDM, no end-of-shift equivalent concentration can be greater than or equal to the ECV in 70-2. Continue with the sampling for the DA, when cited for excessive dust, respirators were available for the affected miners. Submit corrective actions to the DM for approval and then implement. And then request five valid samples after implementation. We terminate a citation after we determine the concentration of all five of the samples was less than or equal to the standard. Revise the plan incorporated under controls where

corrective action was submitted and a revised plan has been approved by the district manager.

Section 70, with the CDPM, continuing with end-of-the-shift equivalent concentration exceeds the applicable standard but is less than the ECV. Respirators still have to be made available to affected miners. You have to implement corrective actions to lower the concentration to less than or equal to the standard, record the excessive dust condition in the permanent record book and review the CPDM performance plan to see if it remains to be accurate or needs to be modified.

Part 71, now we're looking at the surface areas --- surface mines, surface areas of underground mines and facilities. All designated work positions, DWPs, sampling will be full shift. Control filters are required when using the CMDPSU in gravimetric sampling.

Miners are required to wear CPDM for sampling, have to be trained prior to the required wearing of the unit, and the operator has to record the length of each shift and maintain that record for six months.

For Part 71 sampling, you take one sample each quarter. The specific work positions are required to be sampled. Each highwall drill operator must be sampled, bulldozer operators, other positions designated by the district manager. Under part 71, no gravimetric or CMDPSU sample equivalent concentrations may be greater than or equal to the EVC listed at 71-1. And no CPDM reading at the end of shift equivalent concentrations greater than or equal to the ECV listed in 71-2.

When cited for excessive dust, respirators have to be made available to the affected miners. The operator submits corrective action to the DM for approval, and then

implements. Collect five valid samples after implementation. And if using a CPDM, review and revise of CPDM performance plan if necessary. The citation will be terminated after the equivalent concentration of all five valid samples are less than or equal to the applicable standard and submit a revised --- a dust control plan incorporating the approved corrective actions.

Exceeding the standard. If the representative quarterly sample exceeds the applicable standard but is less than the ECV, they'll sample DWP each normal shift until five valid representative samples are taken. We begin sampling first of the normal work shift after notification. Five samples used to determine compliance for the sampling period. Those five samples will be used in order to make a determination. If using CPDM for DWP sampling, you'll review and revise the CPDM performance plan if

necessary.

Proposed Part 90. The CMDPSU gravimetric sampler will be used for sampling the effective data of rule. The CPDM will be used for sampling 12 months after the effective date. Samples are collected for a full work shift. Control filters are required if you're using the gravimetric sampler. The operator must record the length of each shift that Part 90 miners work. If using a CPDM for sampling, the Part 90 miner has to be trained before he's required to use the CPDM and must maintain a record of that CPDM training.

CMDPSU or gravimetric sampling on a Part 90 miner will be five samples each quarter, and no single-shift CMDPSU equivalent concentration will be greater than or equal to the excessive concentration value listed in Table 90-1.

Continuing with the CMDPSU or gravimetric sampling when

cited for excessive dust on a Part 90 miner, respirators are made available to the affected miners. The operator submits corrective actions to the DM for approval and then can implement the corrective actions involving reducing dust levels, implement the corrective actions and collect five valid samples. If you're transferring a Part 90 miner, then you have to comply with the transfer requirements under 90.102 and then collect the five representative samples. We terminate the citation after the concentration for all five valid samples is less or equal to the standard and submit a revised --- a dust control plan incorporating the approved corrective actions if action was to reduce dust levels.

Gravimetric sampling exceeding the standard. If the sample exceeds the actual standard but is less than the ECV, respirators are made available to the affected miners

and you take corrective action to reduce the concentration, and then record those actions in a permanent record book.

Using the CPDM for Part 90 sampling, sample Part 90 miner each shift, each workday, new reduced standard due the quartz would be effective the first work shift, after the operator receives notice of the change. No valid end-of-shift equivalent concentrations greater than or equal to the ECV listed in Table 90-2. No weekly accumulated exposure can exceed the weekly permissible accumulated exposure. Continuing with the CPDM when cited for excessive dust, respirators should be made available to the Part 90 miner. The operator will make the corrective actions to meet the standard. If corrective actions are to lower the concentrations, submit the corrective actions to the proposed dust control plan or revisions to the approved Part

90 dust control plan for the DM's approval. Review the performance CPDM performance plan and submit any revisions that are necessary. Record excessive dust condition and corrective actions in the permanent record book. And if the corrective actions involve transferring Part 90, comply with the transfer requirements under 90.102 and sample accordingly.

Part 90, sampling with a CPDM, exceeding the standard, end-of-shift equivalent concentration exceeds the applicable standard but is less than ECV. Respirators will be made available. Make corrective actions to lower the concentration below the standard. And record the excessive dust condition and corrective actions in the current record book, review the CPDM performance plan and submit any revisions for approval.

Now, moving to Part 72, which affects both surface and

underground miners. This is all coal miners covered by Part 72. 72.100 is actual monitoring. Chest x-rays, spirometry symptom assessment, work history for all coal miners, surface and underground.

72.700, respiratory equipment and respirators. Operators will make available respirators as required by Part 70, 71 and 90.

72.800, single-sample determinations. The Secretary may use a single full-shift sample to determine compliance with respirable dust standards.

Now, moving to Part 75. 75.325, air quantity. Air measurements must be taken at the end of the face ventilating device with the scrubber turned off. 75.332, working section/working places, each MMU must be ventilated with a separate intake split. 75.350, belt air course ventilation. The standard will be lowered from 1.0 to 0.5 milligrams per

cubic meter six months after the effective date of rule. 75.362, on-shift examinations for respirable dust controls. The on-shift examinations and any corrective actions must be reported. The certification of exam will be recorded on a board that's maintained on the MMU so that miners can see that controls were checked. The recommended exam has to be verified and countersigned in a secure book, and that record book has to be retained at least one year. 75.371, mine ventilation plan contents. Plan has to include minimum quantity of air per each MMU, specific details of dust controls on each MMU and specify type, size and maintenance of scrubber screen. That completes the briefing on the rule, and now Mr. Wagner.

DR. WAGNER:

Thank you, Bob. Good morning, again. My name is Gregory Wagner. I'm the Deputy Assistant

Secretary of Mine Safety and Health Administration. I'm going to be the moderator for this public hearing on MSHA's proposed rule to lower miners' exposure to respirable coal mine dust, including the use of the continuous personal dust monitors.

First, on behalf of Joseph Main, the Assistant Secretary of Labor for Mine Safety and Health, I would like to welcome all of you to today's hearing and extend our appreciation for your participation in this rulemaking.

Let me first introduce the members of the MSHA panel. To my left is Robert Thaxton, who you met previously, and George Niewiandomski, both from Coal Mine Safety and Health. To my right I have Mario DiStasio and all the way down at the end, Susan Olinger, both from the Office of Standards. And in between them is Jennifer Honor, from the Office of the Solicitor for the Mine Safety and

Health Division.

The proposed rule for lowering miners' exposure to respirable coal mine dust is an important part of the Agency's comprehensive initiative to end Black Lung. The Secretary of Labor considers ending Black Lung disease as one of the Department's highest regulatory priorities. The proposed rule was published in the Federal Register on October 19th, 2010, and this is the first of seven public hearings on the proposed rule. Six others will be held on January 11th, 2011 in Evansville, Indiana; January 13th in Birmingham, Alabama; January 25th in Salt Lake City, Utah; February 8th in Washington, Pennsylvania; February 10th in Prestonsburg, Kentucky; and February 15th at the MSHA headquarters in Arlington, Virginia.

As many of you know, the purpose of these hearings is to allow

the Agency to receive information from the public that will help us evaluate the proposed requirements for this final rule that protects miners from health hazards that results from exposure to respirable coal mine dust. MSHA will use the information that's generated to help us craft the rule that responds to the needs and concerns of the mining public so that its provisions can be implemented in the most effective and appropriate manner. Let me be clear, Bob Thaxton's presentation going through steps of the rule stated that the rule does this, this rule does that if it would do that if it were implemented without any change. But the purpose of these hearings is to get a reaction and suggestions for improving the rule and to solicit comments from the mining community on all aspects of the proposed rule. Commentors are requested to be specific in their comments and specific detail,

rationale and the supporting documentation for any suggestions or alternatives submitted.

At this point I'd like to read for you the request for comments and information that were included in the Federal Register notice for the preamble proposed rule.

The proposed rule presents an integrated comprehensive approach ---.

BRIEF INTERRUPTION

DR. WAGNER:

The proposed rule presents an integrative comprehensive approach to lowering miners' exposure to respirable coal mine dust. The Agency sees this as an alternative proposal that would be effective in reducing miners' respirable dust exposure and invites comments for the alternatives and solicits comments on the proposed respirable dust concentration standards. And we'd like you to provide alternatives to be

considered in developing the final rule, including specific suggestion standards and your rationale.

The proposed rule bases the proposed respirable dust standard on an eight-hour work shift and a 40-hour workweek. In its 1995 Criteria Document on Occupational Exposure to Respirable Coal Mine Dust, The National Institute for Occupational Safety and Health, NIOSH, recommended lowering exposure to one milligram per meter cubed for each miner for up to a ten-hour work shift during a 40-hour workweek. MSHA solicits comments on the NIOSH recommendation.

MSHA included the proposed phase-in periods that Mr. Thaxton described for the proposed lower respirable dust standards in order to provide sufficient time for miner operators to implement or upgrade environmental and engineering controls. MSHA solicits comments on

alternative time frames and factors that the Agency should consider.

In the proposal, MSHA also plans to phase in the use of the continuous personal dust monitors, CPDMs, to sample production areas of underground mines and to miners who have been affected already by Black Lung, the Part 90 miners. MSHA solicits comments on the proposed phasing in of CPDMs, including time periods and any information with respect to their availability. If shorter or longer time frames are recommended, please provide your rationale.

MSHA understands that some work shifts are longer than 12 hours and that batteries on dust sampling devices generally last for approximately 12 hours. MSHA solicits comments on appropriate time frames to switch out sampling devices, whether gravimetric samplers or CPDMs, to assure continued operation and

uninterrupted protection for miners for the entire shift.

The proposed single sample provision is based on improvements in sampling technology, MSHA experience, updated data and comments and testimony from earlier notices and proposals that addressed the accuracy of single sample measurements. The Agency is particularly interested in comments on new information added to the record since October 2003 concerning MSHA's quantitative risk assessment, technological and economic feasibility, compliance costs and benefits.

The proposal includes a revised definition of normal production shift so that sampling is taken during shifts that reasonably represent typical production and normal mining conditions on the MMU. Please comment on whether the average of the most recent 30 production

shifts specified in the proposed definition would be representative of dust levels to which miners are typically exposed.

The proposed sampling provisions address interim use of supplementary controls when all feasible engineering or environmental controls have been used, but the mine operator is unable to maintain compliance with the dust standard. With MSHA approval, operators could use supplementary controls, such as rotation of miners, or alteration of mining or of production schedules, in conjunction with CPDMs to monitor miners' exposures. MSHA solicits comments on this proposed approach and any suggested alternatives, as well as the types of supplemental controls that would be appropriate to use on a short-term basis.

The proposed rule addresses which occupations must be sampled using continuous personal dust

monitors and which work positions and areas could be sampled using either CPDMs or gravimetric samplers. MSHA solicits comments on the proposed sampling occupations and locations and the proposed frequency of sampling. For example, please comment on whether there are other positions or areas where it may be appropriate to require the use of CPDMs and whether, for instance, sampling of other designated occupations should be more frequent than 14 days each calendar quarter. Also, comment on whether the proposed CPDM sampling of the ODOs on the mechanized mining unit is sufficient to address different mining techniques, potential overexposures, and ineffective use of approved dust controls.

The proposal would require that persons certified in dust sampling, maintenance and calibration retake the applicable MSHA examination every three years in order to maintain

certification. Under the proposal, these certified persons would not have to retake the proposed MSHA course instruction. MSHA solicits comments on this approach to certification. Please include specific rationale for any suggested alternatives.

In the proposal, MSHA would require that the CPDM daily sample and error data file information be submitted electronically to the Agency on a weekly basis. MSHA solicits comments on a suggested alternative time frames, particularly in light of the CPDM's limited memory capacity of about 20 shifts.

The proposal contains requirements for posting information on sampling results and miners' exposures on the mine bulletin board. MSHA solicits comments on the lengths of time proposed for posting data. If a standard format for reporting and posting data were developed, what should it include?

The periodic medical surveillance provisions in the proposed rule would require operators to provide an initial examination to each miner who begins work at a coal mine for the first time and then at least one follow-up examination after the initial examination. MSHA solicits comment on the proposed time periods specified for these examinations.

The proposed respirator training requirements are performance based and the time required for respirator training would be in addition to that required under Part 48. Under the proposal, mine operators could, however, integrate respirator training into their Part 48 training schedules.

The proposal would require that operators keep records of training for two years. Please comment on the Agency's proposed approach and whether the final rule

should specify the content and format of the training record.

The proposed rule specifies procedures and information to be included in CPDM plans to ensure miners are not exposed to respirable dust concentrations that exceed proposed standards. For example, the proposed plan would include pre-operational examination, testing and set-up procedures to verify the operational readiness of the CPDM before each shift. It would also include procedures for scheduled maintenance, downloading and transmission of sampling information, and posting of reported results. Please comment on the proposed plan provisions and include supporting rationale with your recommendations.

The Agency has prepared a Preliminary Regulatory Economic Analysis, which contains supporting cost and benefit data for the proposed rule. MSHA has included a discussion

of the costs and benefits in the preamble. MSHA requests comments on all estimates of costs and benefits presented in the preamble and the Preliminary Regulatory Economic Analysis, including compliance costs, net benefits, and approaches used and assumptions made in the Preliminary Economic Analysis.

I want to reiterate that as you address the proposed provisions either in your testimony today or in your written comments, please be as specific as possible. I'd also like to request that you include specific suggested alternatives, your rationale, health benefits to miners, and any technological or economic feasibility considerations and data to support your comments. The more specific your information is, the better it will be for MSHA to evaluate and produce a final rule that will be responsive to the needs and concerns of the mining public.

As many of you know, this public hearing will be conducted in an informal manner. Cross Examination and formal rules of evidence will not apply. The panel may ask questions of the speakers. Those of you who notified MSHA in advance of your intent to speak, or have signed up today to speak, will make your presentations first. After all scheduled speakers have finished, any others who wish to speak may do so. I'd request that those of you who are speaking be mindful of those who wish to speak after you and make sure that you save them time. We will let anyone who wants to speak, speak. And everyone has the opportunity to submit a written statement either today or subsequently. If you wish to present written statements or information today, please clearly identify your material and give a copy to the court reporter. The court reporter want to wave. There's the court reporter.

And you can also submit comments following this public hearing. Comments must be received by MSHA by midnight Eastern Standard Time on February 28th, 2011. MSHA has received requests for an extension of the comment period and the Agency is considering the requests. Comments may be submitted by any method identified in the proposed rule.

MSHA will make available transcripts of all the public hearings approximately two weeks after the completion of the hearing. You may view the transcripts of the public hearings and comments on MSHA's website at www.msha.gov.

I think that all of you have signed the attendance list in the back of the room. If you haven't, please sign it. And now we're going to begin today's hearing. When I call you up, please begin by clearly stating your name and organization, spell out your name for the court

reporter so that we have an accurate record.

Our first speaker will be Jonathan James. So please come up here, Mr. James. Mr. James is apparently not present, so let me ask for David Saxon. Is Mr. Saxon present? I'll give them an opportunity later if they may have gotten stuck on the roads. Michael McGlothlin from --- if you'd please come forward.

MR. MCGLOTHLIN:

My name is Mike McGlothlin.

DR. WAGNER:

Please spell your name for the court reporter.

MR. MCGLOTHLIN:

M-I-C-H-A-E-L, M-C, capital G, L-O-T-H-L-I-N. I'm a coal miner, plain and simple. I'm a Part 90 miner. I think the dust standard that we're going to is a good move for coal miners, but I do have some

concerns as a Part 90 miner. Would you all like me to put my equipment on? I want to put on what I wear every day.

I know technology and time, I have seen a lot of changes in the mines. There have been some good changes and there have been some bad changes, plain and simple. I'm concerned about my health or I wouldn't be here. My dad was a coal miner. I see him suffer from Black Lung. If anyone has been around the mines and watched a coal miner that has Black Lung, breathing becomes a problem in their lives. The weight of equipment or anything that you carry makes a big different to them. This here's a light, and I carry it every day. This light weighs 1.02 pounds. If I have to start wearing this right here every day, the cord and the headpiece alone weigh more than my light. The headpiece and the cord weighs 1.13 pounds. The entire unit

weighs 6.13 pounds. You take the difference in weight, put that on a man every day to wear it, it affects the way you perform. It will definitely affect your health with your back, your hips, your legs, your knees. And I still got several years to work. I got two young boys that I want to see grow up. I want to see my grandchildren grow up. So I think this dust, cutting it down, is a great thing. But with technology we can make this unit --- I feel like we can make it smaller, because with the Health & Safety ruling, it's what we need to be concerned about. And the cord is real stiff. I could take a cord on my light and I can sort of twist it and make it mold it my light. I have wore this. It will not mold. It sticks out. Anything that you get around, it will catch and it becomes a safety hazard if you get in tight quarters. So I think we need to really think about things like that,

to try to get something that is more efficient, to help us do our jobs, but also to keep us out of dust, because I think this is a good thing if it was only smaller. And I believe the technology --- we can come up with something that would be better. I know it runs very loud. It's annoying. I know for the days that I wore it, just the stiffness of the cord, it pulls on your neck and the weight, it pulls on your hips. So please take all of this into consideration for coal miners because we do a job that I think really helps our country. And I thank you for the time.

DR. WAGNER:

Thank you very much, Mr. McGlothlin. Let me --- are you willing to answer any questions?

MR. MCGLOTHLIN:

Any questions you got.

DR. WAGNER:

Thank you very much for

your time. I appreciate your input.
APPLAUSE

DR. WAGNER:

I'd next like to invite Dennis O'Dell.

MR. O'DELL:

My name is Dennis O'Dell, D-E-N-N-I-S, O, apostrophe, capital D, E-L-L. Good morning. As I just stated, my name is Dennis O'Dell. I am the Administrator of Occupational Health and Safety for the United Mine Workers of America, covering the United States and Canada. I have been in this industry for 33 years, close to 20 years as an underground coal miners, seven years as an international safety field rep for the UMWA, and the last six years and currently serving as the Administrator of Occupational Health and Safety for the UMWA International Union.

I would like to thank you today for the opportunity to address an issue that has always been

a top priority for the United Mine Workers of American and that is protecting the health of our nation's miners. This proposed rule aimed at reducing miners' exposure to dust will hopefully fulfill the dream of miners being provided a healthy environment in which we work and a healthy set of lungs at the end of our working careers, just as Mr. McGlothlin spoke of.

In saying that, I would like to speak on some of those issues in this proposed rule. The rule will apply to underground and surface mines. We have known for years that surface miners like underground miners have performed jobs where they have been exposed to high concentrations of coal and silica dust. We support the fact that surface miners will be included in this rule. We would like to also ask that the rule be further expanded to cover coal loading facilities, such as a coal terminal or

overland conveyor systems where workers may also be exposed to coal dust during loading, transportation and the shipping of coal.

We are pleased that miners will be afforded expanded medical surveillance by adding spirometry testing with the chest x-ray program. However, we are concerned about how this information will be used. Miners have a right to have their medical information protected under the HIPAA laws and must remain private. Miners should be able to use this information to determine what they believe is best about whether to continue employment in the mining industry. If over the years a miner is unfortunately diagnosed with Black Lung, it should be the miner's right to decide to either apply for his Part 90 status or leave the industry. This should not and cannot be a tool for the operator to use to fire someone or for an

operator to get out from having to cover or to challenge the miner's black Lung benefits, if they're required.

We support the method proposed for determining air measurements at the end of the ventilating face with the scrubber turned off. This will help to ensure that the working face is ventilated with the minimum amount of air required and lessen the fear that a face may gas off if the power on the scrubber is cut off.

We are pleased with the proposal that each working section or MMU will be required to be ventilated by a separate split of air directed by overcast, undercast or permanent ventilation controls. We know that by requiring this, miners will be better protected by intake air sweeping the face. This will be especially important where super sections are used.

We fully support the proposal lowering the standard on belt air course ventilation from the current one milligram to a 0.5 milligram per cubic meter. The UMWA has historically been opposed to the use of belt air for many reasons. It has always been known that belt lines can generate large amounts of dust. When the use of belt air ventilation is allowed, that dust is directed onto the working face, further increasing miners' exposure, so it is important to reduce the amount of dust that will be permitted along the belt lines whenever belt air is used.

We are pleased to see that MSHA will require initial training and annual training on the use of the CPDMs. We would like to emphasize that this training must be separate from and in addition to the already-required annual retraining given to miners today. Miners already tell us that the annual retraining

classes are crammed with way too much information, making it difficult to retain all that is thrown at them for the day. If we truly want miners to benefit and to learn how to use the CPDM, it is important to give them the needed time to be educated about the use of the CPDM so that when they use them on their worksites, they can be empowered with the necessary knowledge to help reduce our dust exposures.

The union embraces the idea of a CPDM Performance Plan. This will benefit both the operator and the miner as a guide to maintain compliance to control overexposure of dust on their working sections. The rule should further expand the time limits under all sections that call for miners' comments and notifications. Miners should be given ten days rather than the five days proposed, for example, under Part 70 and 71 in the proposed rule. Also, under all sections where written to

provide miners information as upon requested, should instead be written to require a copy of the information to be provided to the representative miner, as an example is given in the proposed rule order 70.206(b)(9)(c)(1), 71.206(a)(1) and (a)(2) and others. Miners should not have to make the request for information that they should be provided.

We are pleased that MSHA has proposed requiring operators to make approved respirators available when sampling has exceeded the applicable dust standard. However, it should not take a violation to cause the operator to make approved respirators available. Operators should be required to have approved respirators available at all times for miners, whether in compliance with the applicable dust standard or not. Many of our operators do this today.

Representatives of the

UMWA made it very clear in prior court filings and in public testimony related to MSHA's failed 2003 dust proposal that the Agency, and I need to reinforce it is the Agency, not the operator, who should be responsible for compliance sampling. History has shown us that an operator-controlled system is not credible with regard to compliance sampling. We cannot and will not support this proposal insofar as it would have the operator being in charge. MSHA must be in charge of the sampling. A lot of people in this room face what we faced in the '70s, when we accused the operators of lying, cheating, taking false samples, lawsuits. It got ugly. Everybody saw it. Everybody lived through it. MSHA took the sampling over and resolved it, and that's where it needs to stay.

We do not and will not support the idea of being able to rotate miners out of their job positions as the response when an

operator is out of compliance. The Mine Act requires that every operator control the mine atmosphere, not move the miner in and out to lower a miner's measured exposure.

The union believes that with the new technology of the CDPM, every miner should be sampled at least once a year. Even though those identified by MSHA will be sampled more often, it's important every miner have the opportunity to have his or her dust exposure sampled that will reflect their normal work exposure.

The union has historically supported the reduction of dust exposure to our nation's miners. In 1995 and 1996, when NIOSH and the Dust Advisory Committee came out with a one milligram ten-hour standard, we supported it. But we need to be reminded that this all came about before the development and testing of the CPDM. We now know that we can obtain more accurate

information and truer data with the use of the CPDM versus the data that has been obtained in the past with current gravimetrics.

The personal dust monitor, the CPDM, which is now available for use in the nation's coal miners, presents an opportunity to provide meaningful reform in coal mine respirable dust sampling. It allows individual coal miners to monitor their respirable dust exposure in real time and empowers them to make adjustments to reduce their individual exposure to concentrations of respirable dust. It can become a powerful tool in the fight against coal workers' pneumoconiosis, or Black Lung.

Current respirable dust monitoring in the nation's coal mines has not kept up with the changes in mining technology and miners' work schedules. For example, the current sampling system does not account for

nontraditional work schedules, which have generally replaced the traditional eight hours per day, five days per week format, or the increases in coal production that have been achieved in part due to the prevalence of longwall mining. We are pleased to see an effort to address this in the proposed rule.

We would like to suggest that MSHA move forward with the use of the CPDM to gather true sample readings of what miners are being exposed to today with the current extended work shifts and the various coal seams before we actually determine what is protective and what can be realistically achieved. During this time we can also address the matter of the heaviness and bulkiness of which you just heard a miner previously speak about. This can be done with the use of single-shift handling for compliance to keep the operators in check while doing so.

The UMWA and the BCOA as a joint project has worked together with NIOSH and MSHA over the years to develop a system that is easily understandable and credible to the miner, who is the individual we are all trying to protect. The CPDM provides the Mine Safety and Health Administration, mine operators and miners the ability to collect exposure data for compliance purposes and a monitoring tool to help control respirable dust exposure in real time.

While the CPDM was being developed, we began thinking about how to best use this instrument, some ideas of which we shared with you in past meetings. The shortcomings of the present gravimetric sampling system provided the foundation for a list of things that needed to be corrected and could be corrected with the CPDM. We believe that the CPDM has superior capabilities over the present gravimetric system and it is

important to take advantage of them. The CPDM's significant sampling improvements should be used as the basis for whatever new regulations are being developed.

One significant problem we see with this proposed rule is how complicated it truly is. The explanations are confusing and it appears that this proposed rule goes much further than a one milligram per cubic meter, ten-hour standard that was suggested and supported by NIOSH, the Dust Advisory Committee and the UMWA, and even lower than a one milligram per cubic meter eight-hour standard the proposed rule indicates. If I have done my math properly, and I may not have, but you'll have to correct me if I haven't, longwall miners and some section miners could possibly be held to a 0.6 milligram per cubic meter or possibly a 0.4 milligram per cubic meter standard. This will be very difficult to meet.

I don’t want anyone in this room to be confused with what I just said and leave here saying that the UMWA is against reducing miners' exposure to respirable dust. The UMWA has always and will always support reducing miners' exposure to dust and eliminating the dreaded Black Lung disease, of which I saw my grandfather both suffer and die from. However, we strongly believe that current mining practices, with improvements, can be continued without jeopardizing miners' health. We want to make sure the rule doesn't make it infeasible for coal miners to work in coal mines. The common goal of the coal mining industry, and that's every one of us in this room, should be to develop a system that is easily understandable and credible to the miner, who is the individual that we are trying to protect. That's why we ask MSHA to better explain the various scenarios so we can understand what this rule

will actually do and what exposures could or would be. Let me give you an example. The average longwall miner that works a ten-hour shift cutting rock to rock, as many of our miners do, and which I did for a number of years. What is to be the expected standard under this proposed rule? For a miner that works 12-hour shifts, like our weekend warriors, as many work today, what is to be the expected standard under this proposed rule? The calculation tables and explanations you have inserted in your proposal are very confusing and need to be better defined so that the rank-and-file miners can understand exactly what they're trying to say. As written, parts of the proposed rule is unintelligible. I think it is very important over the course of these public hearings being held throughout our coal fields for the Agency to better explain to everyone how far this rule actually goes and what data

and reasoning was used to draft your proposal.

What we do know is that the CPDM will empower miners with real time data and the ability to act immediately to reduce their exposures rather than wait for weeks for the results as we do today. This is very important and we fully support that. There should also be language added to this rule that mandates miners have the right to make whatever corrections are necessary to reduce their exposure if they see their exposures exceed what is deemed acceptable. It further needs to be spelled out in this rule that the operator cannot discipline or retaliate against the miner when they invoke this right.

This is the first hearing of many to be held on this rule in which the UMWA plans to participate. As we continue to review, hear comments and listen to explanations of this proposed rule, we

will be giving additional comments. We also will be submitting written comments before the end of the deadline on which they are due. I look forward to the opportunity to address much more of this proposed rule as the process moves forward and after we hear more of MSHA explanations. Thank you.

DR. WAGNER:

Thanks very much. Mr. O'Dell, are you willing to answer a few questions if people have them?

MR. O'DELL:

I can.

MR. NIEWIANDOMSKI:

Dennis, can you sort of reiterate again your position about the use of the CPDM? I know you mentioned support for the CPDM to gather true readings about what miners are currently being exposed to under current conditions. Are you, in fact, saying that before we mandate the use of the CPDM as we propose, that you're

suggesting we hold off on that and use the CPDM to collect what the miners are actually being exposed to, the concentrations?

MR. O'DELL:

I think it's important that before the proposed rule is placed in the industry, that we have real time data that can be provided to understand what can actually be achieved. Under the current data that we have looked at --- let's just take the average miner who works eight-hour shifts, which many of our miners don't do that anymore. They work about 2,000 hours a year. And with the current sampling system that we have today, and I believe it may be some of the information that you viewed to come up with this proposal, that only accounts for 12 percent of what their annual exposure of dust actually is. With the CPDM, we'll be monitoring miners 24/7 for however long they work, from portal to portal, and we'll

be able to see what is protective and what is achieved in the industry versus 12 percent of the data or even if we go to 12-hour shifts like some of our miners work, it would only be eight percent of the data to determine what we needed to do.

MR. NIEWANDOMSKI:

Is the collected data used to support a lowering of the standard to see whether or not they're actually --- whether or not there are actual concentrations below the current standards?

MR. O'DELL:

Since 1995 or '96, like I said in my statement, we have supported the NIOSH recommendation the Dust Advisory's recommendation of one milligram, ten-hour standard. Now, that was before the CPDM came out. And in viewing what we've seen take place with the testing we're encouraged, that now we can actually not only see what miners are being

exposed to, but we can control our destiny. So in other words, instead of having to wait weeks to find out what we're actually exposed to, to not be able to correct it, now we have a tool that can be put in place to immediately correct any overexposures that miners may have submitted to. I'm just saying that we need to take that and look and determine where we go further before we actually say, this is what is truly achievable.

MR. THAXTON:

Dennis, you indicated that you thought the Agency should be responsible for compliance sampling, but not the operator. Under the current proposal both MSHA and the operators take samples for compliance. Are you indicating that you would like for MSHA samples to only be used for compliance purposes and operator samples will be used for information for the miner to take action?

MR. O'DELL:

I believe that, as I said, MSHA should be in charge of all compliance sampling, in charge of the program, so that we don't have to go through the battling that we've seen occur over the years with that. On the latter part of that, I need to think about that. I think it definitely has to be used as a tool for miners to be empowered with to make corrective action.

DR. WAGNER:

One question on the medical surveillance and your concerns about the confidentiality. Do you have concerns about the proposal as written, about the confidentiality of medical information and non-discrimination?

MR. O'DELL:

What I said was that however this --- I agree that we do need additional medical surveillance for miners to be made available. I just worry about how that information

may fall in the wrong hands and be used against miners. I think it's a valuable means for miners to have information to determine what their health is and to keep track of what their health is throughout their working career. I just don't want to see it be used down the road where somebody can make a FOIA request or request that information so that it can be used against the miner to blackball him from the industry.

DR. WAGNER:

Thank you very much. Chris Hamilton is the next speaker.

MR. HAMILTON:

Good morning. My name is Chris Hamilton, with the West Virginia Coal Association. C-H-R-I-S, H-A-M-I-L-T-O-N. We appreciate the opportunity to participate in today's hearing. By way of background, the West Virginia Coal Association is a trade association comprised of coal-producing companies who

collectively account for approximately 85 percent of the state's annual coal production. Our membership also includes mine maintenance and specialty contractors, mine reclamation companies, equipment manufacturers, land companies and general service companies.

The State of West Virginia is the nation's leading underground coal producing state. We've averaged about 155 million tons of annual coal production over the past decade. That comes from approximately 200 underground mining operations, employing about 16,000 underground miners.

The State of West Virginia and our member companies are arguably affected more directly by this proposal than any other state. West Virginia is also part of a group of eastern coal states, states that produce coal east of the Mississippi River who account for approximately 40

percent of the nation's production of coal. We represent nearly 80 percent of the nation's coal workforce. This region of the country has seen its share of national production fall from a high of about 625 million tons 20 years ago, 1990, to an estimated 333 million tons, or a near 50-percent drop, this year, 2010. The central states of this region, principally comprised of West Virginia, Kentucky and Virginia, have also clearly been under attack by the Obama Administration and federal agencies with responsibility for mining that collectively seem destined to see production from this region severely restricted and all associated mine permitting and operating costs elevated. We would hope that this rule, as proposed, is not part of that strategy, as some submit that it clearly is. With that backdrop, our interest in this rulemaking and today's hearing is obvious in that it

is our clear desire to see coal workers' pneumoconiosis, or CWP, eliminated from the industry. In fact, our member companies in today's workforce currently work tirelessly together to maintain the lowest possible levels of respirable dust in their respective operations. This is accomplished daily by the deployment --- the utilization of state of the art dust control mine ventilation technologies, combined with human resource development and training programs and the critical oversight of an array of best management practices. We would also observe for today's record that the improvements made in these areas are prevalent throughout the industry and are attested to daily by the ever-improving conditions of underground coal mines and the significant decrease in the incidence of CWP over the past couple of decades. The preceding statement is not meant to suggest that there are no

problems existing within today's industry, nor does it imply that further improvement cannot be made. It is simply intended to observe all the progress that has been made and that is a matter of record today.

Regarding the proposed rule before us and topic of today's hearing, our primary position and comment is we strongly object to the proposal in its current form, which in our belief is fraught with technical and operational impracticalities, the misapplication of dust control technologies, relies on the --- on an inappropriate, convoluted or uneven enforcement scheme, circumvents recent congressional activity and current congressional activity on this topic and represents a departure from the cooperative approach being necessary to eradicate CWP from the industry. Accordingly, we would respectfully request MSHA to dispense with and set aside this rulemaking and

alternatively recommend that MSHA continue on the course it set out last year when it launched the End Black Lung Initiative, which incidentally occurred in the same facility, about this same time a year ago. That approach was all encompassing, clearly envisioned all interested parties, i.e. government, labor, healthcare industry to work together towards our shared goal of ending Black Lung. It is unfortunate that the spirit of the End Black Lung Initiative and ability for all of us to continue to work effectively going forward has been severely compromised as a result of this proposed rulemaking.

We would also note for the record that the same general topic addressed by this rulemaking, which I briefly referenced, is also addressed in the proposed comprehensive Federal Mine Safety Legislation currently being developed by Congress. Countless hours of research,

deliberations and valuable congressional time has been and continues to be devoted towards this effort, which includes input and participation from all interested parties. Arguably, MSHA is circumventing Congress in its course to unilaterally and selectively implement provisions of proposed federal legislation for its rulemaking agenda. This is a very concerning trend and we have recently experienced MSHA issuing new requirements for pattern violations, rock dusting and now respirable dust control, all of which have been and continue to be under the purview of Congress.

So as to avoid any suggestion that we only offer criticism towards the present or proposed rule, we will also forward a series of recommendations for your consideration as part of our final comments. Recommendations that would otherwise be advanced, discussed

openly and evaluated had we been provided the opportunity to do so in a different, more open forum.

We would also note for the record that we believe MSHA places unparalleled weight and support for the rule behind recent studies and information presented by various members of NIOSH. Other than the vague references in the rule preamble, the Agency has not discussed the report data, its methodologies and conclusions in an open and engaging manner with all interested parties. Although these presentations and reports contain noteworthy information, we are left to question the bases for its findings and recommendations. Quite frankly, some of this information has not undergone the level of scrutiny, nor has it been subjected to the degree of peer review required if it's going to be relied upon to drive rulemaking and attendant requirements of this magnitude.

We do not believe that the data has been substantiated for accuracy or fact, nor does it necessarily support the provisions within the proposed rule. Rather the conclusions drawn from this information appear to be predicated on the appending of its authors and presenters. One report particularly also ignores the effect and realities of mine inspector presence within the noted hotspot regions and realities of the mining industry. In other words, if so-called hotspots do exist or existed within certain geographical areas and are further the result of substandard mine operation practices, the underlying problems should have been long alleviated or remedied and simply do not warrant industry-wide rulemaking. The industry has made repeated requests for the underlying data which has been relied upon to drive its conclusions contained in some of the most prevalent NIOSH

reports. We make that same request today. We simply want the ability to engage our experts with the same data points and information to determine whether the findings and conclusions are consistent with those of the report authors or perhaps we will find that they direct further research or provide focus in some other direction. Plainly and simply put, MSHA has not adequately supported the need or desirability of many of the provisions within the proposed rule. In our final and written comments we will provide a section-by-section analysis, evaluations and comment on all of these points. We would also like to question today whether MSHA has complied with its congressionally-imposed mandate to perform a sound fiscal impact statement and analysis of the proposed rule. Even a cursory review of the fiscal information which accompanies the rule indicates that the numbers

are way off mark and woefully understated. This has been a recurring practice of the Agency in recent years. Consequently, the numbers provided by MSHA make it impossible to ascertain the true costs of the proposed rule and all but obviates a cost/benefit analysis of the proposal.

MSHA has calculated the compliance process of proposed rule for underground coal operations to be less than $40 million annually. This estimate drastically understates the cost of the proposed rule. The complexity of this rule and the administrative burden is extraordinary. Operators are currently required to collect approximately 25,000 DO samples per year. The proposed rule, as we understand it, would require operators to collect nearly 750,000 DO and ODO samples each year. The administrative costs of the rule will exceed $75

million per year for underground coal operators alone, and total compliance costs could easily exceed a billion dollars per year as operators are forced to adjust reduction schedules, modify methods of mining, alter effective mine ventilation systems by adding overcast permanent stopping lines and additional air shafts in some situations.

The compliance cost section of the proposed rule identifies three situations in underground mines in which mine operators could incur additional cost. One of these situations is directly related to the proposed planned revision to the current 30 C.F.R. 75.332(a)(1) standard which now requires that each working section and each area where mechanized mining equipment is being installed or removed shall be ventilated by a separate split of intake area directed by overcasts, undercasts or other

permanent ventilation controls. Although this section of the proposed rule identifies that there could be additional costs, there is no specific discussion to outline the benefit or how much the estimated additional cost could be. In most cases, additional overcasts would have to be installed, along with the additional intake stopping line, to deliver the intake air to each individual MMU within the same working section. In many cases this would also require the installation of additional air shafts. Although this may not have been the intent of the proposed rule, the strict language of the revised 75.332(a)(1) standard dictates the addition of these permanent ventilation controls would be mandatory. Many underground mines here in West Virginia and elsewhere successfully operate two independent and separate MMUs within the same working section. In these cases, two

separate production crews and two separate sets of mining equipment are used. Each MMU is ventilated with a separate split of intake air. This is accomplished by using permanent ventilation controls to direct an intake air split to the working section, then splitting the intake air split near the working places inby the section loading point using approved temporary ventilation controls so that two separate and distinct splits of intake air ventilating the working faces. This method of fishtailing provides a separate split of intake air for each set of mining equipment associated with the individual MMU. The separate intake air split provided to each MMU has not been used to ventilate any other working section. This method of providing fishtail ventilation for two MMUs on the same working section was outlined in the Federal Register dated May 15th, 1992 and was intended to provide miners

with a separate intake air split that was not contaminated with gases or dust from another set of mining equipment. As a result of the success of this type of ventilation scheme from a health and safety standpoint, many mining operations have designated the coal mines that designed the mines to operate two MMUs within the same working section. The 75.332(a)(1) standard was again addressed in the Federal Register, dated March 11th, 1996, during the revision of the 1992 ventilation regulations. At that time, commenters suggested the standard be revised to permit the installation of mechanized mining equipment in either the return or intake air courses of working sections. However, the risk of introducing hazards associated with mine fires and/or explosions was identified as the reason the final rule did not adopt the suggestion. The safety benefits of using a

separate split of intake air were well established from the final rule promulgated in 1992. The operational cost of redesigning the ventilation systems of underground mines would be excessive and unnecessary based on our interpretation and reading the implications of the proposed rule. There have not been any recent mining accidents related to fishtail ventilation. The permanent ventilation controls have proven effective in delivering a separate split of intake air to the working section. In conjunction with the permanent ventilation controls, the approved temporary ventilation controls have proven effective in splitting the air near the working faces to provide each MMU with a separate and distinct split of intake air.

As stated previously, we intend to submit very specific objections and rationale for each

proposed change or comment that we have on a section-by-section basis. However, just to mention a couple areas of general concern and perhaps some observations --- we would also mention to PDM. We do not believe that mandating the PDMs, as proposed within the rule before us, is appropriate at this time. We heard some testimony already towards that end, which we would support and fully embrace. We have a lot of experience already based on several companies utilizing the PDM. There's been a number of deficiencies and problems that have been experienced during this period of evaluation. We'll provide that experience and the findings from that experience in written form, further argue that the unit should commence immediately and be extradited. As already mentioned, the unit weighs approximately six pounds. It is simply too bulky today, especially when it's factored along

with the other items that the miners are required to wear on his or her person. The PDM technology is most effective when used in combination with a dose concept weekly, not a simple shift exposure, a weekly accumulated dose based on the amount of mass a person is expected to --- or exposed to, rather, is what's important. PDM technology, which incidentally we fully embrace, just don't think it's quite ready to be implemented throughout the industry today, we've embraced this technology for some time. Many of our members have participated on a national effort and activity to gauge universal and industry-wide support towards its implementation. They were also implementing plans and protocols that we supported that were part of our support for the PDM. And we will also submit for the record with our written comments those implementation plans and protocols.

A couple other points. PDM technology will be most effectively used as a personal sampler, not as a designated occupation sample. The cap light should be eliminated from the unit, we believe. PDM should be made smaller, more ergonomic, prior to implementing on a nation-wide basis. It simply needs more time to work out some of the affordability and reliability issues. We believe, at a minimum, mine operators should be permitted to use administrative controls to minimize respirable dust exposure to the individual miners, particularly when confronted with abnormal geologic abnormalities. Scrubbers should be operated and properly maintained at all times for continuous miners operating in development areas, with a certain --- with the curtain set back necessary to allow the scrubber to operate effectively. We had a real problem with our inability to use

scrubbers here in the State of West Virginia at the current time. There's not a day goes by that we don't hear from a miner or a mine operator that says that MSHA is unnecessarily and inappropriately refusing to allow them to use their scrubber device, a piece of technology that's been around the industry for sometime. Its effectiveness has been attested to by all. But yet for some reason unbeknownst to us we're simply not permitted to use that technology here in West Virginia. And incidentally, that scrubber device is designed to mitigate, control and reduce harmless respirable dangerous levels of coal dust at the point of generation, not 500 feet outby, not in old workings, which the previous proposed rule required that we rock dust and made noncombustible but at the point of generation. And we would ask that MSHA simply remove its moratorium on allowing scrubbers here in West

Virginia to do their work.

The procedure set forth in Chapter One reports the evaluation are flawed and are not --- simply are not being followed through by MSHA. In some instances, MMUs are not being evaluated on MSHA samples. Weight gains have been adequate --- when weight gains have been adequate for an evaluation. Some of these things --- some of these comments here are redundant. We'll try to eliminate that. Recordkeeping of production shifts, et cetera, is too extensive. The PDM sample time is set according to shift length and production shouldn't matter. And a personal sampling scenario using those concepts on a weekly accumulation, those would be a concern. Entering shift exposure in a fire boss book as a hazardous condition by mine-certified persons could be problematic.

And as a concluding comment, I would simply restate our

primary objective, to provide a safe and healthy environment for our employees, our mine managers, engineers and technical staff, join with them daily to accomplish this overriding goal. We support MSHA's End Black Lung Initiative. We pledged our support and eagerness to work with all interested parties to eradicate this disease from our industry. We would also offer that we possess and commit the --- and we commit the expertise, technical competence and operational experience towards that end. However, for reasons stated herein and those which we will submit in writing, we strongly object to the current rule and respectfully request the Agency to suspend this rulemaking at the current time.

I would also offer and I'd be remiss if I didn't raise the issue of deep cut extended face remote mining during this hearing. We think it goes part and parcel with the

scrubber issue. We had about 25 years and perhaps pioneered deep cut extended face remote mining here in West Virginia. About the same amount of time and experience that we had with ATRS systems, again here in West Virginia. Both technologies have clearly been touted by our safety professionals as being a major contributor towards our ever improving mine health and safety performance record during the past two and a half decades. But yet here in West Virginia, for all intents and purposes, we have a moratorium in place on approving new mines that want to use and ventilation plans that seek to use deep cut, remote control miners with scrubbers equipped on those machines. And we simply --- and we also have a situation where every --- almost every existing approved plan is being threatened on a daily basis. It's threatened to be revoked. This is inconceivable to us. The number of

equipment moves because of MSHA's moratorium that you're forcing on a working section and the high degree of hazards and the high degree of susceptibility that miners --- hundreds and thousands of miners are exposed to on a daily basis because of the multiple many more equipment moves, not just with continuous miners but also with roof bolters, with the haulage equipment, it's just --- it's unconscionable to us. We don't understand it. And yes, it is hurting severely productivity here in the State of West Virginia, which I don't mind raising because I don't think that's necessarily bad. But from a health and safety standpoint, MSHA's actions, or more importantly, inactions on this topic is creating hazards on a daily basis by exposing miners to so many more equipment moves and confined spaces than what the equipment and technology that they were utilizing would otherwise permit.

And that should be visited and, in my humble opinion, cease to --- or altered immediately. Allowing the machines to mine as they are safely designed to safely mine and provide a little higher protection for our miners that are working in these underground mines on a daily basis.

That concludes my remarks here today. I'd be glad to try to answer any questions. And again, we will follow up with more detailed written comments.

DR. WAGNER:

Thank you very much.

MR. THAXTON:

Chris, in relation to the fishtail ventilation on the section, you were describing how that fresh air was being delivered to both working sections or MMUs. Can you tell me then in your experience what you see then as far as the section endpoint? Where is it located in relation to this setup?

MR. HAMILTON:

You know what I'd like to do with that? I think that issue is so critical, and there may be a little disconnect between your perceived interpretation of that rule and our understanding and interpretation of that rule. I'd like to provide some engineering diagrams and some ventilation sequences with our comments on that point, which would, I think, help understand our concern.

MR. THAXTON:

Thank you.

DR. WAGNER:

Any more questions?

MR. DISTASIO:

Chris, hi. We have about 60 pages on monitoring in our Regulatory Economic Analysis.

OFF RECORD DISCUSSION

MR. DISTASIO:

We have about 60 pages plus on monitoring. Are you going to

be able to submit specific comments on those estimates?

MR. HAMILTON:

On the cost of the monitors?

MR. DISTASIO:

Yes.

MR. HAMILTON:

Yes.

MR. DISTASIO:

Because we discuss each and every administrative plan that has to be put out, changing plans, posting, taking the monitoring, I'm a little bit surprised that you think we've underestimated the biggest cost of the standard.

MR. HAMILTON:

You know, I recall sitting in a proceeding like this that dealt with increased assessments and increased penalties about four years ago, and I think that same comment was mentioned then, that you were surprised that we thought the Agency

had understated the fiscal impact of the new assessments. If I'm not mistaken, those numbers, you know, were expanded beyond a factor of five of what the Agency --- maybe six, of what the Agency proposed at that time. We just found that the cost was so astronomical associated with this proposal and that the Agency's fiscal analysis is so --- we just believe it's off the mark. And again, we'll provide follow-up, detailed comments on that. And we think there's an obligation. I mean, we think that, you know, under the many rulemaking requirements and obligations that federal agencies have, we think you have a clear obligation to clearly state what the cost of fiscal impact of the rule is. It simply doesn't meet the test that you're required to meet.

DR. WAGNER:

I just wanted to take a second on the scrubber issue, since

you raised it, to clarify that MSHA does not have any policy banning the use of scrubbers. And the scrubbers, when used in compliance with MSHA policy and regulatory requirements, can reduce safety and health hazards associated with coal mine dust and improve health protection for miners. That's an Agency policy. And that the use of scrubbers can be part of a coal mine's ventilation dust control, but their safety must be evaluated as part of the overall evaluation approval of the ventilation system. So any operator that wants to use a scrubber and can demonstrate through their ventilation approval plan process that their proposed plan does comply with regulatory policy dust control requirements, and then the district managers review those health plans and on a mine-by-mine basis they approve them.

MR. HAMILTON:

Do you really think

that's happening?

DR. WAGNER:

Yes.

MR. HAMILTON:

This isn't really the forum. We're going to digress. And I know that's the --- you know, I know that's the storyline, and I know that you're compelled to say that. But I tell you, every single person sitting behind me in this room knows differently. Every single person working in the mines in West Virginia, management, worker alike, engineer, knows differently. More miners approach me --- more miners approach me than mine operators who I typically represent and ask why they can't use that scrubber. Why are they being refused the opportunity to use the scrubbing device designed to mitigate and reduce harmful coal dust. And there's an absolute moratorium on deep-cut mining machines here in West Virginia, on the approval to use those

machines as they are designed and engineered to be used.

DR. WAGNER:

So am I mistaken in understanding that more than half and perhaps as much as 70 percent of mechanized mining units do have approved use of scrubbers?

MR. HAMILTON:

How many, more than half?

DR. WAGNER:

More than half.

MR. HAMILTON:

I would ask where's the other half? I don't know if that's accurate or not. I have not seen those numbers. Why aren't we achieving the hundred percent rate?

DR. WAGNER:

I think that a hundred percent would be achievable if they're part of the approved plan. So as you said, we might continue this discussion elsewhere, but ---.

MR. HAMILTON:

It's a problem.

DR. WAGNER:

I hear what you're saying.

MR. HAMILTON:

It's a major problem and we really ask that the Agency look into it with an eye to resolving, not being combative, not being he said/she said. There is a real issue here. There's a legitimate, bona fide issue that requires, you know, some engagement and resolution.

DR. WAGNER:

Thank you very much for your comments.

MR. HAMILTON:

Thank you.

DR. WAGNER:

We look forward to your written comments as well.

APPLAUSE

DR. WAGNER:

I'd like to invite Susie

Criss to come up.

MS. CRISS:

Hello. My name is Susie Criss. First name is S-U-S-I-E. Last name is C-R-I-S-S. I work with New River Breathing Center in Fayette County, West Virginia. And like Chris said, I was just here a year ago when MSHA announcement the End Black Lung Now Campaign just across the hall, and I was able to speak on behalf of the West Virginia Black Lung clinics and the National Coalition of Black Lung Clinics. We still support MSHA's efforts to lower the dust standards in the coal mines. Chris had mentioned NIOSH and the hotspots that have been reported in southwestern Virginia, southern West Virginia and eastern Kentucky. We were not part of that study, but what I can tell you is that at our Black Lung clinic in Fayette County, which is just a few miles down the road from here, we see on average 300 to 400 miners a year, and we do

Black Lung testing and chest x-rays on these miners, and we are seeing much younger miners with complicated Black Lung disease. I've been with the New River Breathing Center for 18 years, and 18 years ago you rarely saw a patient with complicated Black Lung disease. But we're seeing miners --- I've had ten in the past two years who have developed complicated Black Lung disease at a younger age. They range in ages from 38 to 68. And a lot of times their x-rays are really bad, but their breathing capacity has not dropped yet. When you have to tell that miner what they're facing in the next few years, it becomes a very complicated case for them to decide between their health and working and supporting their families. So I just wanted to be here today and support this. I think it's a good step in the right direction. It's --- you know, there's a lot of things that are needed. We hear stories from lots of

miners about what they've done on the job and there are a lot of reasons that they're probably developing complicated Black Lung disease now versus 20 years ago. But we have to do something, and this is a step in the right direction. So we want to support you and say that we will do anything that we can for the health and safety of our miners, and we don't want to see this disease anymore. Everybody in this room has someone in their family or that they work with who has Black Lung disease. I, myself, have people --- everyone in my family is supported by the coal industry, so I know the importance of jobs in West Virginia. But I also want my family and my patients to remain healthy. That's all I have to say.

DR. WAGNER:

Thank you very much. We're going to take a ten-minute break now.

SHORT BREAK TAKEN

DR. WAGNER:

Has David Saxon arrived? Dennis Robertson? Please.

MR. ROBERTSON:

Good morning, ladies and gentlemen. Thank you for the privilege and opportunity to speak before you today. My name is Dennis W. Robertson, R-O-B-E-R-T-S-O-N. I work at Bluestone Health Center, a Black Lung program in Mercer County, West Virginia. And I'm also the Chairman of the West Virginia Black Lung Clinics Program annual conference where we discuss a lot of these issues that we're talking about today.

What I'm here for, and I'll be very candid with you, I am pro coal miner. I believe that we need business, commerce and --- business, commerce and industry. I believe that they are viable and are our needs to thrive, but even more so, I believe that those who work with them should

work with them under the trust of being treated with dignity, integrity and honor and doing their utmost to protect their lives. Speaking from a philosophical perspective, I don't know if I could do this religiously, the Bible tells you that if you work for someone, you should work for them as if you was working for the Lord himself. But that same wording says do not oppress, which to me means that you treat your employees with dignity, integrity and honor. You do not expose them to standards or risk factors that are going to put their life in jeopardy for the short term or for the long term. The expectation is that most working people, most, not all, but most working people work honorably, do your job, and then when you're at the end of your working career, you expect the commitments that have been made to you to be honored. You expect to be given what you need in multiple ways. Let me

give you my opinion of the perfect worker, someone who works 30, 35, 40 years, works hard, produces and benefits their employer. In the end, no Social Security. No other kind of compensation. No pension. No nothing. That empowers and makes sure that the bottom line stays well off, but I am here on behalf of the healthcare of, you know, coal miners, especially at the end of their working careers, even during their working careers, what they're exposed to. I am here to protect their interests as far as their healthcare while they're working in the kind of conditions that they're working in, which is going to lead to what kind of life they're going to live when they can't work anymore. I'm here to speak on behalf of --- they have the right to work in the least injurious circumstances that they possibly can while working.

Most coal miners that I see over the 25 years I've been

working, I have seen them with tears in the eyes when they file for benefits and so on. Dennis, why are they doing this to me? Tears in their eyes. These are the people who have faced falling rock, machinery that can hurt them, methane conditions, dust conditions, all the things --- the risk factors that go with it. They realize that these are risk factors. But it goes way beyond what is the risk factor when you're doing your best. When you look at the history in this country of the working conditions, especially in coal mines, when improvements and betterment came or safety standards, health standards and the standards on which they work, it was not done voluntarily. It was done involuntarily through explosions and so forth that brought the health and safety standards that you do have. I realize that each of you has the awesome responsibility in protecting the workplace. It benefits not only

the coal worker but the employer, too, and the business that they have. But it is best for both parties, both the employers and employees to get the best health standards. In particular, today, pertaining to the respirable dust standard, I would like to see the dust standard be the same as if the operator's families were in there, in a coal mine. I think that each of those coal miners in those circumstances should breathe the same air they would want their children, their grandchildren, their brothers, their sisters, their nephews and nieces. That's what I would ask for. We were here several years ago with an increase demand that they wanted to increase it somewhere around 300 or 400 percent. And thank God that didn't happen. But here we are now, and we're asking for the reduction. I'm asking if you would work in those conditions. What kind of respirable dust standard would you want to work

under? The threat with the hotspots in southern West Virginia, eastern Kentucky, southwest Virginia, this is a real serious threat, and not only with older miners but with younger miners. Thank you for hearing my voice. I guess I could go on and on, but I want to respect the opportunity for others to speak and speak their mind. Thank you.

DR. WAGNER:

Thank you very much.

APPLAUSE

DR. WAGNER:

Joe Massie?

MR. MASSIE:

My name is Joe Massie, and J-O-E, M-A-S-S-I-E. and I'm a retired coal miner, had 30 years service, and I'm the president of the National Black Lung Association and also president of Fayette County Black Lung Association. We have about 130 members and we have about 11 states in the National Black Lung that we take

care of. And we have three chapters here in West Virginia at the present time.

We support any changes that MSHA can make to prevent miners from getting Black Lung. We support continuous personal dust monitors, provide for the use of a single full shift sample to determine compliance, address extended work shifts and redefine normal production shifts. We also support extended medical surveillance so the miner can take steps to better manage their health. Over the past decade more than 10,000 miners have died from Black Lung. The Federal Government has paid more than $44 billion in compensation for miners totally disabled by Black Lung since 1970. We also support End Black Lung Act One training, which includes enforcement, outreach, education and training. Thank you very much.

DR. WAGNER:

Thank you. Appreciate

your comments. Are there any others who have not yet signed up who would like to make comments today?

MR. HARSTON:

My name is Gary Harston. Gary, G-A-R-Y, Harston, H-A-R-S-T-O-N. I worked in a mine 27 and a half years and I had come out when I was 48 years old. You know, a lot of times you get scared for standing up for your rights. A lot of times we ain't had nobody to stand up for us. I thank --- you're trying to do a good job to help more that are scared to speak up for themselves and look out for themselves. I think it is good to try to take the dust down to one percent. I heard him saying about the scrubbers. I was an electrician in a coal mine. Most times the scrubbers wouldn't even work. And I have been used --- you had good air coming from behind the curtain with the scrubber, the good air come up the curtain and come across. What's happened with the

scrubbers, they quit doing what they were supposed to do. The coal miner really eats all the dust that's coming in. I don't know. I've been out of the mines about eight years. I don't know if they've upgraded the scrubbers, what they're doing now, but when I worked in there, we worked on what they --- when the inspector wasn't there, most times you cut it off because of the dust that was coming through. The buggy man, he built a --- air come down across the main instead going behind the curtain. Like I say, I don't know if they've changed it since then, but when I worked in the coal mines, it was totally different because, like I say, they could have upgraded and changed out. The other mines, how they had and how they done it, but like I say, I worked on two mines that had the scrubber. Biggest part of the time they didn't even work. But like I said, when the inspector come, we

would work and try to go through --- we hoped they worked. And like I say, most of the times we would begin work one or two hours, but most of the time they didn't work. Like I say, they might have something better nowadays, but when I was working they didn't have that. Like I say, you used a scrubber.

And like I say, it hurt me when I couldn't work no more. When I watched my wife go out and work when I was supposed to be doing the work --- we was all ---. But when you can't do what you're supposed to do, when you can't be where you're supposed to be, when you're supposed to be taking care of the family and you sit there, watching your wife go out. I've got a grandson right now that I can't run and play with like I want to. I would love to be able to play basketball with him, but I can't even play basketball with him. I can sit there and shoot the ball, but run

up and down the court, I cannot do it. You know, there's a lot of that that I'd like to do, but because of my lungs, they won't let me do it. Most of the time I got to worry about is if I got a cold or not. Because if I got a cold, most of the time I end up in the hospital. It's something that's got to be done. It's something that we got to work towards getting done. I look at my brother right there. He's younger than me and he's breathing harder than me. And you know, a lot of times they don't take the x-rays because they're scared what's going to happen to them, what the company is going to do, you know. And if you don't stand up for yourself, nobody else will. At least we got some people who's trying to come here and stand up for the rights of the coal miner. Like I say, I worked --- sometimes I worked seven --- from 10 to 15 hours a day, every day, six days a week. You know, I did

my work for the company. You know, I wanted to do my best for the company. You know, I didn't ask for nothing in return but what I was deserving. Then when I got sick, when I asked them to help me out, they told --- they had nothing for me. Then after I get my Black Lung, they for it. Like I said, we need somebody to stand up and help us and come forward. Like I said, there's a lot of men out there that are struggling right now, wondering what they're going to do. You know, I didn't want to quit, but I had to make a choice. My doctor said in two years that I would be on oxygen. I quit working. So I had to make a decision what I wanted to do, and so I quit work. But like I said, it still don't make it easy. And you know, I'd love to say something that will help someone because I worry about my younger brother and to watch him struggle and breathing just as hard as I am, but he's still working to

provide for his family. That's all I have to say.

DR. WAGNER:

Thank you very much.

APPLAUSE

DR. WAGNER:

Is there anyone else who would like to speak?

MR. TAYLOR:

My name is James Taylor, J-A-M-E-S, T-A-Y-L-O-R, and I'm a miner operator. I sat here and listened to all these people talk about scrubbers and stuff. I just don't see how anybody can sit there and watch and run with it and run without it and they won't, you know ---. I don't know why you won't let us turn it. I really don't. I mean, it's just like a giant vacuum cleaner sucking dust, is what it is. It's the best thing I've ever seen. I mean, I just don't understand why you can't run it. Maybe one of you all can tell me. Is one of you all responsible for

that?

DR. WAGNER:

As I said before, scrubbers can be approved as ---.

MR. TAYLOR:

That's another thing. Why did it take so long to get any plan approved? I mean, I've passed company samples, I've passed you alls, and we're still waiting, still waiting. I don't understand why it took so long. We're doing everything we're supposed to do, trying to get it, and we're not getting it. We're trying to get your plans out. I understand. It shouldn't take so long to get us stuff like that.

DR. WAGNER:

Thank you for your comment.

MR. TAYLOR:

Do you have an answer for that, why it takes so long to get it?

DR. WAGNER:

I don’t know your particular situation.

MR. TAYLOR:

I understand that. You understand that we need it to run? I certainly don't understand why you can't tell me why we can't run it. He said --- I mean, you can clear it --- you can come in and clear it running with it, without it. It's clearly better with it, but we're not allowed to run it. I don't understand that. That's all I got.

DR. WAGNER:

Thank you very much, sir.

APPLAUSE

DR. WAGNER:

Is there anyone else who would like to speak?

MR. CRAWFORD:

Bobby Crawford, B-O-B-B-Y, C-R-A-W-F-O-R-D. My concern, in part, is the worker rotation on the job. You know, the

union --- I'm union. You know, we fought hard for job bidding. So what are we going to do, take somebody's 55 years and say, you're full, let's give it to a 19-year-old? That's my main concern --- or not main but some of my concern on this. I think we should get the dust controlled.

DR. WAGNER:

Thank you very much. Is there anyone else who would like to make a comment on the record at this time?

MR. DICKEY:

My name is Larry Dickey, L-A-R-R-Y, D-I-C-K-E-Y. I'm going on 41 years in the mine, still working. Twenty-seven (27) years underground. I've heard the word respirator mentioned. Some called it in compliance with --- come in with dust monitors. What's wrong with the respirators? Why can't we demand that our miners use those? You know, we got laws. We had problems with

smoking underground, and we came out with laws. Some states got it as a felony. What does MSHA do? Prosecutes people if you catch them, right. You know, that's protecting our miners there. We need to protect our miners from this. I'm for protection, really. It seems like we're going out in left field with what you all recommended. We got one easy thing to do, respirators. Demand and make it work. If you don't make the miners responsible themselves, we're fighting a losing battle. I've been there over 40 years. We got to make them responsible. Okay? Thank you.

DR. WAGNER:

Thank you very much. Are there others who would like to make a comment on the record at this time? Since they signed up previously, I'm going to make one last call for Jonathan James. Are you here? Or David Saxon? If no one

wishes to make a presentation, I again want to say that the Mine Safety and Health Administration appreciates your participation at this public hearing. I want to thank everyone who's made presentations, as well as those who did not present for your interest in this rulemaking.

I want to emphasize that all comments must be received by midnight Eastern Standard time on February 28, 2011. MSHA will take your comments and your concerns into consideration in developing the Agency's final rule. I want to encourage all of you to continue to participate throughout the rulemaking process. This public hearing is concluded. Thank you very much.

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HEARING CONCLUDED AT 11:30 A.M.

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CERTIFICATE

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

Juliette Hoffman
Court Reporter

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