

TRANSCRIPT OF PROCEEDINGS

IN THE MATTER OF:)
)
EXAMINATIONS OF WORK AREAS IN)
UNDERGROUND COAL MINES FOR)
VIOLATIONS OF MANDATORY HEALTH)
OR SAFETY STANDARDS)

Pages: 1 through 46

Place: Arlington, Virginia

Date: June 15, 2011

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IN THE MINE SAFETY AND HEALTH ADMINISTRATION

IN THE MATTER OF:)
)
 EXAMINATIONS OF WORK AREAS IN)
 UNDERGROUND COAL MINES FOR)
 VIOLATIONS OF MANDATORY HEALTH)
 OR SAFETY STANDARDS)

Arlington, Virginia

Wednesday
June 15, 2011

APPEARANCES

MSHA Panel: PATRICIA W. SILVEY, GREGORY FETTY,
KEVIN BURNS, ALFRED D. DuCHARME

Speakers:

GREG CONRAD
Executive Director
Interstate Mining and Compact Commission

LINDA RAISOVICH-PARSONS
United Mine Workers of America

JOSH NELSON
Campaign Manager, CREDO Action

P R O C E E D I N G S

(8:30 a.m.)

1
2
3 MODERATOR SILVEY: Good morning. My name is
4 Patricia W. Silvey, and I'm the Deputy Assistant
5 Secretary for Operations for the Mine Safety and
6 Health Administration. I will be the Moderator of
7 this public hearing on MSHA's Proposed Rule on
8 Examinations of Work Areas in Underground Coal Mines
9 for Violations of Mandatory Health or Safety
10 Standards.

11 On behalf of Assistant Secretary of Labor
12 for Mine Safety and Health Joseph A. Main, I'd like to
13 welcome all you here today.

14 At this point, I'd like to introduce the
15 members of the MSHA Panel. To my left, Gregory Fetty,
16 who is with Coal Mine Safety and Health; to his left,
17 Al DuCharme, who is with the Department of Labor,
18 Office of the Solicitor; and to my right, Kevin Burns,
19 who is with the Office of Educational Policy
20 Development.

21 I would also like to introduce a few people
22 in the audience who were instrumental in helping us
23 develop the proposed rule, and they are Larry Davey
24 and Erik Peterson, who are with the Office of
25 Standards.

1 In response to requests from the public,
2 MSHA is holding hearings on its Proposed Rule for
3 Examinations of Work Areas in Underground Coal Mines
4 for Violations of Mandatory Health or Safety
5 Standards.

6 This is the fourth public hearing on this
7 proposal. As most of you know, the earlier hearings
8 were held in Denver, Colorado, June 2nd; Charleston,
9 West Virginia, June 7th; and Birmingham, Alabama, June
10 9th.

11 In response to a request from the public,
12 MSHA will hold another hearing in Hazard, Kentucky, on
13 Tuesday, July 12th. MSHA will be putting a notice in
14 the Federal Register announcing the hearing.

15 The purpose of this hearing is to receive
16 information from the public that will help MSHA
17 evaluate the requirements in the proposal and produce
18 a final rule that will improve health and safety
19 conditions at mines.

20 As most of you also know, the hearings will
21 be conducted in an informal manner. Formal Rules of
22 Evidence will not apply.

23 The hearing panel may ask questions of the
24 speakers, and speakers may ask questions of the panel.

25 Speakers and other attendees may present

1 information to the court reporter for inclusion in the
2 rulemaking record.

3 MSHA will accept written comments and other
4 appropriate information for the record from any
5 interested party, including those not presenting oral
6 statements.

7 We ask that everyone in attendance sign the
8 attendance sheet.

9 MSHA is proposing to revise the existing
10 standards for pre-shift, on-shift, supplemental and
11 weekly examinations for underground coalmines. The
12 proposed rule would require mine operators to identify
13 and fix violations of mandatory health or safety
14 standards.

15 Requirements for these examinations are
16 mandated in the Mine Act and are a critical component
17 of an effective safety and health program for
18 underground mines.

19 The proposal would also require that on a
20 quarterly basis, mine operators review with mine
21 examiners the citations and orders issued in the areas
22 where pre-shift, supplemental, on-shift and weekly
23 examinations are required. In addition, the proposed
24 rule is an important part in the Department of Labor's
25 Plan, Prevent and Protect strategy.

1 MSHA requests comments from the mining
2 community on all aspects of the proposed rule, and is
3 particularly interested in comments that address
4 alternatives to keep revisions in the proposal.
5 Commenters are requested to be specific in their
6 comments and submit detailed rationale and supporting
7 documentation for suggested alternatives.

8 MSHA has received several comments
9 suggesting alternatives to the proposal, and several
10 of them were specific and we want you to know that we
11 appreciate that.

12 At this point, I would like to reiterate
13 some requests for comments and information that were
14 included in the Preamble to the proposed rule.

15 The proposed rule presents a more proactive
16 approach in creating a culture of safety at the mine.
17 It would enhance miners' safety because violations of
18 health or safety standards would be identified and
19 corrected, removing many of the conditions that could
20 lead to danger in underground coalmines.

21 The Agency is interested in alternatives to
22 the proposal that could be effective in assuring that
23 operators examine for violations of mandatory health
24 or safety standards, record and correct violations,
25 and review the violations with examiners.

1 The Agency has prepared a Preliminary
2 Regulatory Economic Analysis that contains supporting
3 costs and benefit data for the proposed rule. The
4 Agency requests comments on all estimates of costs and
5 benefits presented in the Preamble and the Preliminary
6 Regulatory Economic Analysis, including compliance
7 costs, net benefits, approaches used, and assumptions
8 made in the Preliminary Economic Analysis.

9 MSHA's cost estimates do not include the
10 costs of any corrective actions that would be
11 necessary to come into compliance with the underlying
12 regulatory requirements. These costs were included in
13 the Agency's estimates associated with the existing
14 regulations and are not new compliance costs resulting
15 from the proposed rule.

16 Rather than waiting for violations to be
17 either identified by an MSHA inspector or rise to the
18 level of a hazardous condition and be identified by a
19 mine examiner, the proposed rule would require mine
20 operators to identify violations of mandatory
21 health or safety standards during mine examinations.
22 This would prevent some accidents because mine
23 operators would be required to take corrective actions
24 earlier than under the existing standards, that is
25 before a hazardous condition develops.

1 As you address the proposed provisions
2 either in your testimony today or in your written
3 comments, please be as specific as possible. We
4 cannot sufficiently evaluate general comments.

5 As I said earlier, please include your
6 specific suggested alternatives, your rationale,
7 benefits to miners, and any technological or economic
8 feasibility considerations and data to support your
9 comments.

10 And I know a number of you have heard me say
11 this, the more specific your information is, the
12 better it will be for MSHA to evaluate and produce a
13 final rule that will be responsive to the needs and
14 concerns of the mining public.

15 You may submit comments following this
16 public hearing; and as I mentioned earlier, we are
17 going to have another hearing. So now comments must
18 be received postmarked by August 1, 2011. Comments
19 may be submitted by any method identified in the
20 proposal.

21 MSHA will make available a verbatim
22 transcript of this public hearing approximately two
23 weeks after completion of the hearing. You may view
24 the transcripts on MSHA's website at www.msha.gov or
25 on www.regulations.gov.

1 We will now begin today's testimony. If you
2 have a hard copy of your presentation, please provide
3 it to the court reporter. Please begin clearly by
4 stating your name and organization and spelling your
5 name so that we can make certain that the court
6 reporter has an accurate record.

7 Our first speaker today will be Greg Conrad
8 with the Interstate Mining Compact Commission.

9 MR. CONRAD: Good morning.

10 MODERATOR SILVEY: Good morning.

11 MR. CONRAD: My name is Greg Conrad -- last
12 name is spelled C-O-N-R-A-D -- and I serve as
13 Executive Director of the Interstate Mining Compact
14 Commission.

15 IMCC is a multistate governmental
16 organization representing the natural resource and
17 environmental protection and mine safety and health
18 interests of its 24 member states. Many of IMCC
19 member states either operate their own mine safety and
20 health regulatory programs or carry out training and
21 certification responsibilities pursuant to the Federal
22 Mine Safety and Health Act of 1977, as amended by the
23 Mine Improvement and New Emergency Response Act of
24 2006.

25 I appreciate the opportunity today to appear

1 to present our views on the proposed rule regarding
2 examination of work areas and underground coalmines
3 published by MSHA on December 27, 2010.

4 State mine safety and health agencies share
5 many of the goals and objectives articulated in MSHA's
6 proposal, particularly improving health and safety for
7 miners. Several of our member states operate robust
8 mine safety and health programs that has as part of
9 those programs requirements for the certification of
10 mine personnel, including those who examine
11 underground coalmines. As such, we have a vested
12 interest in the purpose and potential implementation
13 of MSHA's proposed rule for mine examinations.

14 Our overarching concern with respect to any
15 proposal addressing certification programs is the
16 impact that it could have on the existing role of
17 State Governments pursuant to their respective
18 regulatory programs.

19 In the area of certification of various
20 competencies that attend the operation of coalmines,
21 the states have always taken the lead pursuant to
22 their own programs as anticipated and authorized by
23 Sections 318, 502 and 503 of the Mine Safety and
24 Health Act; and while there are differences among the
25 states in how they address certification,

1 decertification, recertification and reciprocity, this
2 aspect of the overall mine safety and health statutory
3 and regulatory scheme has consistently worked well.

4 MSHA indicates in the Preamble of the
5 proposed rule, that it does not intend that the
6 proposal would significantly change the general scope
7 of examinations under the existing standards.

8 However, we believe that the proposed changes would
9 have exactly that effect with respect to the nature of
10 the examinations, the length of time required for the
11 examinations, and the consequences for mine examiners
12 and potentially state agencies who certify examiners
13 when violations of mandatory safety or health
14 standards are missed.

15 For instance, MSHA states that one of the
16 intended results of the proposal requirements is that
17 conditions, which might have been identified only by
18 MSHA inspectors, would now be found and corrected by
19 coal operators via mine examinations.

20 While we agree that there is value in
21 motivating mine operators to be more proactive in
22 creating a culture of safety in coalmines, MSHA's
23 approach fails to recognize the competencies in
24 training required of mine examiners under current
25 state laws and regulatory programs.

1 In order for MSHA to accomplish its intended
2 purpose under the proposal, state certification
3 programs would have to be significantly restructured,
4 and both current and new examiners would have to
5 undergo enhanced training and testing to ensure that
6 they can meet the new standard of identifying all
7 violations of mandatory health or safety standards.

8 The attendant time periods associated with
9 each of the impacted examinations, be they pre-shift,
10 on-shift, weekly or supplemental, would also need to
11 be adjusted to allow enough time for examiners to
12 undertake the expanded responsibilities associated
13 with the rule.

14 One of the larger concerns for the states is
15 the consequences for mine examiners and by extensions
16 to states who certify them if MSHA moves in this
17 direction. Some states are already seeing mine
18 examiners requesting to be decertified because of
19 concerns associated with heightened expectations
20 related to identifying all violations of mandatory
21 health or safety standards.

22 In some cases, this is a matter of not being
23 adequately trained to identify these violations. In
24 others, it is not having enough time during the course
25 of their examinations to find all violations, and in

1 every case, it is a matter of the examiner's
2 integrity, credibility, and potential personal
3 liability being on the line.

4 We expect that these concerns will be
5 heightened if MSHA adopts this rule in final form.
6 MSHA specifically states in the Preamble to the rule
7 that it would require that certified mine examiners
8 conduct more complete and thorough examinations. Such
9 a mandate will require appropriate adjustments in
10 training, certification and examination time periods,
11 routes, and follow-up.

12 More specifically, MSHA should take into
13 consideration the impacts that this rule could have
14 state certification programs, both in terms of costs
15 and continued viability of those programs. Should
16 MSHA expand the duties of mine examiners as proposed,
17 it will be incumbent on those states who certify these
18 examiners to ensure that they can meet and accomplish
19 these new requirements in an effective manner. To do
20 anything less than this could subject the state to
21 potential liability for inadequate certifications.

22 State budgets are already strapped in terms
23 of costs associated with training and certification
24 programs. Thus, depending upon the nature and extent
25 of the enhancements that states must undertake to meet

1 these new requirements, additional support in the way
2 of training grants from MSHA may be required.

3 In this regard, we disagree with MSHA's
4 findings pursuant to Executive Order 13132 that the
5 proposed rule does not have federalism implications
6 for the states because it will not have substantial
7 direct effects on the states.

8 We believe that the rule will have distinct
9 and real implications for the states in the way of
10 costs associated with training and certification, some
11 of which could be substantial.

12 We request an opportunity to pursue this
13 aspect of the rule further with MSHA so that we can
14 assure ourselves that adequate resources will be
15 available to meet any new mandates; otherwise, we may
16 find ourselves in the position of having our
17 certification programs challenged for being
18 ineffective or incomplete. Such a result would be
19 inappropriate and untenable under the circumstances.

20 Again, the states have consistently operated
21 first-rate certification programs, and we do not want
22 to see those programs jeopardized by an overlay of new
23 requirements that cannot be addressed without adequate
24 resources.

25 Finally, the states want to make it clear

1 that we are committed to high quality performance by
2 mine examiners within our borders. Where blatant,
3 poor performance through misses, incomplete or
4 inadequate examinations is an issue, the states are
5 prepared to take action through their respective
6 program requirements. Investigations are routinely
7 initiated and where poor performance or negligence is
8 established, the state will immediately decertify the
9 examiner or suspend the certification.

10 We believe that in the final analysis, this
11 state review and decertification process is where the
12 biggest difference can be made in terms of ensuring
13 complete and adequate examinations, quality examiners,
14 and protection of miners. Whatever the eventual
15 requirements are for mine examinations, the key to
16 success is an effective certification program at the
17 state level and remaining committed to the integrity
18 and effectiveness of those programs.

19 Thank you for the opportunity to present
20 these views and perspectives today. We will submit
21 written comments for the record on or before the due
22 date, which I believe, Pat, you said is now August
23 1st?

24 MODERATOR SILVEY: Yes.

25 MR. CONRAD: Instead of June 30th.

1 MODERATOR SILVEY: Thank you. I have a few
2 comments, and I'm going to say these comments, mention
3 them for anybody else who might be testifying.

4 MSHA's goal in issuing this proposed rule
5 was that -- and as I stated in my opening statement,
6 was that violations of mandatory health or safety
7 standards, right now as everybody knows, the existing
8 rule, examiners examine for hazardous conditions. And
9 MSHA's goal was that violations of mandatory health or
10 safety standards be identified directly as you pointed
11 out, during these four examination periods before they
12 could lead to hazardous conditions.

13 And as I have stated at the three public
14 hearings so far, it would be my impression -- and I'm
15 kind of talking to the wrong person by you
16 representing the states -- but I'm just making this
17 comment that operators would have somebody during the
18 course of a shift at a mine, correcting violations of
19 mandatory health or safety standards without -- before
20 waiting until the MSHA inspector comes to find these
21 violations. Because I would -- I would think that it
22 would be in an optimum situation.

23 The operators would want the MSHA inspector
24 to come and find no violations of mandatory health or
25 safety standards. So that was our goal when we issued

1 the proposed rule, that violations of mandatory health
2 or safety standards would be identified and fixed, as
3 well as hazardous conditions.

4 Now, granted, I'll say to everybody here,
5 we've gathered a lot of comments; and as I said, and
6 some specific alternatives, and we appreciate those,
7 some comments from examiners themselves, who said
8 certain things to us, and we appreciate those and we
9 will be taking those into consideration.

10 But in terms of any violations of mandatory
11 health or safety standards, I guess the question that
12 I would ask of anybody is, the operator's program, as
13 we stated, any proactive approach to health and
14 safety, when does the operator identify and correct
15 those conditions, the ones that don't rise to the
16 level of hazardous conditions?

17 And for you, I guess in a way, that's sort
18 of a rhetorical question because you don't run a mine.
19 But I'm making this statement because I want people,
20 anybody who -- if anybody who comes up to testify does
21 indeed operate a mine, if they would, if they would
22 address that.

23 MR. CONRAD: And our concern in that respect
24 is if we're going to -- if we're going to increase it,
25 enhance the current protocol, which is focused on

1 identifying hazards and move toward an identification
2 of all mandatory health or safety standard violations,
3 it's going to substantially change the role and the
4 necessary training for these individuals.

5 MODERATOR SILVEY: No, I understand that.
6 But I guess my question was one of operators must be
7 doing that now. And I know you understand what I'm
8 saying. And I asked this at another public hearing,
9 and I did get an answer from some operators, and I
10 just want to know, when do they do that?

11 In the course of a day then, when do they
12 have somebody go through the mine and identify things
13 that might be violations of health or safety
14 standards?

15 Because as I've also said, too, at other
16 public hearings, you may take -- if we take 30 C.F.R.
17 Part 75, you may take one violation, and I've given
18 this sort of scenario, and I don't want to -- I don't
19 want to, right now, say what the violation might be,
20 but let's say it might be a ventilation type of
21 violation, and it, in and of itself, might not be a
22 hazardous condition.

23 You know, I would say probably, on the
24 record I would say, all hazardous conditions are
25 violations of mandatory health or safety standards,

1 but all violations of mandatory health or safety
2 standards may not be hazardous conditions, but indeed
3 they might lead to hazardous conditions or singularly
4 they might not be a hazardous condition when,
5 together, you might have one that may not be a
6 hazardous condition, but you may have another one of
7 the same type, it may not be a hazardous condition.
8 You may even have a third one that may not be, but
9 then a fourth one, sometimes four coming together
10 dependent upon what the type they are, they might
11 constitute a hazardous condition.

12 So, you know, I'm sure you -- it was
13 obviously that type of thing that we sought to address
14 but, yet, I do recognize the comments that people are
15 making to us. And I guess, still my, question is for
16 anybody who might be testifying and who might
17 represent a mine, would be -- I would like them to
18 tell me how do they address those conditions in their
19 daily, you know, at the mine during the course of a
20 day, or a shift, or multiple shifts, for that matter.

21 MR. CONRAD: And I think you've -- another
22 aspect of this that I think you probably heard about
23 at other hearings is the whole question of what is a
24 violation in a particular circumstance and the time
25 lag between what an examiner, assuming they're looking

1 for all violations, as well as hazards, the time lag
2 that might occur between when they pre-shift an area
3 and when an inspector follows behind and the
4 significant, you know, changing environment that
5 attends --

6 MODERATOR SILVEY: And I understand that,
7 but I will still ask mine and for the purposes of our
8 discussion here a rhetorical question --

9 MR. CONRAD: I understand.

10 MODERATOR SILVEY: -- and I want people
11 to -- you understand what I'm saying.

12 MR. CONRAD: I do.

13 MODERATOR SILVEY: Okay. I don't -- oh, I
14 did have a couple of other comments.

15 At some point in your -- in your testimony,
16 you said that you believe the rule would have distinct
17 and real implications for states in the way of costs
18 associated with training, some of which could be
19 substantial.

20 Could you be specific there and explain to
21 me what --

22 MR. CONRAD: I don't have the numbers
23 associated with this at that point in time --

24 MODERATOR SILVEY: But could you --

25 MR. CONRAD: -- but I can try to --

1 MODERATOR SILVEY: Could you do that?

2 MR. CONRAD: -- do an analysis that provides
3 you with that kind of information.

4 MODERATOR SILVEY: Yeah, some -- even if
5 it's -- even if it's generally specific.

6 MR. CONRAD: Right.

7 MODERATOR SILVEY: Some, some --

8 MR. CONRAD: Well, what we're anticipating
9 is that the numbers of hours of training that are
10 required right now for mine examiners and to be
11 certified under state requirements would be
12 significantly enhanced and that would be --

13 MODERATOR SILVEY: But if you could provide
14 some specifics, I would appreciate it.

15 MR. CONRAD: Okay. I'll check with my
16 member states and see what we can do.

17 MODERATOR SILVEY: Okay.

18 MR. CONRAD: Any other questions?

19 MR. DuCHARME: I have one question.

20 MR. CONRAD: Sure.

21 MR. DuCHARME: Mr. Conrad, if I understood
22 you correctly, you expressed some concern that this
23 rule would create liability for states. If I didn't
24 understand you correctly, then you can stop me right
25 there; but if I did, can you express or give an

1 example rather of what you mean by that? Because this
2 rule, of course, would affect operators.

3 MR. CONRAD: Right. We understand that, but
4 we're the people who are certifying these examiners.
5 So the concern is that if examiners and operators are
6 held liable for defective examinations, we -- there's
7 the concern that this could go all the way back to the
8 certification process itself, that the states are
9 responsible for, and that it might not be a legal
10 liability; but it certainly would be a liability in
11 terms of the integrity and credibility of those
12 certification programs if we don't get this right.

13 MODERATOR SILVEY: Okay. Thank you.

14 MR. CONRAD: Does that help?

15 MR. DuCHARME: It does. I wanted to make
16 sure that that's what you were talking about --

17 MR. CONRAD: Yes.

18 MR. DuCHARME: -- and not a legal liability.

19 MR. CONRAD: It is.

20 MODERATOR SILVEY: Thank you.

21 MR. CONRAD: Okay. Thank you. I believe
22 the court reporter has a copy of my written --

23 COURT REPORTER: No.

24 MR. CONRAD: No, okay. I'll provide this to
25 you.

1 MODERATOR SILVEY: Our next speaker will be
2 Linda Raisovich-Parsons with the United Mine Workers.

3 MS. RAISOVICH-PARSONS: Good morning. My
4 name is Linda Raisovich-Parsons, and I'm the Deputy
5 Administrator of the United Mine Workers' Department
6 of Occupational Health and Safety.

7 The United Mine Workers is in support of
8 this proposed rule. The proposed rule would require
9 that violations of mandatory health or safety
10 standards are timely identified and recorded by mine
11 examiners. The language to require mine examiners to
12 record violations is required by Section 303 of the
13 Mine Act. This proposal simply places the language of
14 the Mine Act into the ventilation standards.

15 Under current standards, a mine examiner
16 conducting pre-shift, supplemental, on-shift and
17 weekly examinations is only required to identify and
18 record those conditions the examiner believes, in
19 their subjective opinion, to be hazards. The proposed
20 rule addresses a glaring deficiency in the existing
21 standard by replacing language to require examiners to
22 look for violations of mandatory health or safety
23 standards.

24 The UMWA supports the Agency's decision to
25 insert the requirement back in the rule.

1 We point out that the mine operator has the
2 primary responsibility to prevent unsafe and unhealthy
3 conditions, and this should be the first line of
4 defense in identifying and correcting all unsafe and
5 unhealthy conditions, as well as violations.

6 In a perfect world, the MSHA inspector's
7 role should be only to confirm that operators are
8 meeting this obligation, and they should not be the
9 first one to identify violations, which the mine
10 operator is equally able to find and correct.

11 Once the rule is in place with examiners
12 identifying and recording violations of health and
13 safety standards and operators obeying them promptly,
14 not only should there be the reduction in fatal and
15 non-fatal accidents that MSHA projects, but we should
16 be able to expect MSHA inspections to become more
17 efficient. If operators are finding and correcting
18 violations of health and safety standards as they
19 arise, inspectors should begin to find fewer
20 violations when they inspect.

21 If MSHA inspections become quicker to
22 complete, savings will be realized both for the
23 Government by nature of reducing MSHA's manpower and
24 related administrative costs. Further, if MSHA
25 inspections are streamlined, the time spent by the

1 operator's representative and the miner's
2 representative accompanying the MSHA inspector would
3 also be reduced, saving the mine operator money.

4 And, finally, the sooner violations are
5 detected and corrected, the better will be the miner's
6 health and safety, which is the Mine Act's major goal.

7 Although the UMWA supports this proposed
8 rule, we would like to see four basic changes made to
9 improve upon the rule. I will describe each as
10 follows:

11 Number one, adding and requiring uniform
12 reasonable time for abatement. Under the new
13 regulation, [75.363} and [75.364} should specify that
14 operators must abate health and safety violations
15 within a reasonable time as the Act requires for the
16 violations MSHA cites. MSHA's background and
17 information suggests that operator-found violations
18 would have to be abated within a reasonable time.
19 However, the proposed rule itself fails to include
20 this reasonable time language referenced in MSHA's
21 commentary.

22 We realize that the operator must be granted
23 reasonable time to fix or abate violations. There
24 have been far too many instances where abatement time
25 has been extended beyond what we believe is

1 reasonable. The UMWA would support the two-day rule
2 currently used by MSHA and referenced to the proposal.
3 We believe the Agency has been too often willing to
4 extend abatement time without legitimate justification
5 for such extensions.

6 The UMWA proposes a procedure for applying a
7 reasonable time standard. Once a violation of a
8 mandatory health or safety standard is identified and
9 recorded, abatement work should be implemented or at
10 least concrete steps to abate immediately. The
11 initial step would involve the devotion of resources
12 to abate the violation in a timely manner.

13 We would recommend that a written record be
14 kept of each step taken until abatement has been
15 achieved. The record would be made available to all
16 parties. If MSHA determines that the operator has not
17 designated enough manpower or equipment to complete
18 the abatement in a timely fashion, the Agency should
19 require the operator increase its commitment.

20 Number two, the miners' representative's
21 role. The rule should incorporate the valuable role
22 of the miners' representative can play in identifying
23 violations. The UMWA proposes that at least one
24 miner's representative be included in the quarterly
25 review process. The miners' representative should be

1 provided the opportunity to review all conditions
2 recorded by the examiner and have the right to provide
3 a written description of safety concerns to both the
4 mine examiner and the mine operator. The miners'
5 representative must also be provided access to the
6 secured book or computer system required by the
7 proposed rule for the purpose of recording results of
8 examinations.

9 Number three, the mine examiner's training.
10 The Agency's proposal will add much responsibility to
11 the mine examiner's role. They will now be
12 responsible to identify and record violations of
13 mandatory health or safety standards. With more
14 responsibility, the examiner will need adequate
15 training to assume greater liability for the health
16 and safety conditions of their mine.

17 In fact, the mine examiners should be
18 provided with the same training and equipment provided
19 to MSHA inspectors. The content and frequency of such
20 training and an inventory of the equipment provided to
21 the mine examiners should be submitted to MSHA for
22 approval like any other mine plan. Refresher training
23 should be provided on at least an annual basis.

24 As with any other training requirement, a
25 record must be kept and maintained for examination by

1 interested parties at the mine.

2 The training must also include a requirement
3 that any regulatory change made by MSHA or policy
4 updates must be reviewed with the mine examiners as
5 soon as possible. If the mine examiner is expected to
6 identify and report violations of mandatory health or
7 safety standards, they must be kept abreast of any
8 changes in those requirements.

9 The mine examiner's authority, number four.
10 First and foremost, mine examiners must be granted the
11 ultimate authority to do their jobs as they see fit.
12 It is critical that the mine examiner have no
13 superiors while conducting their examinations.
14 Otherwise, some operators will try to direct the
15 examiners or influence them not to report certain
16 unsafe conditions in the record as has been done in
17 the past. It is very important that the mine examiner
18 be granted uninfluenced authority to identify and
19 report conditions.

20 Another problem that the UMWA experiences on
21 a regular basis is operators requiring miners who hold
22 mine foreman certification to fill in as examiners or
23 section foremen. Hourly employees who are certified
24 should be guaranteed the right to refuse to use their
25 certification if they so choose. The only exception

1 to this would be when regulations anticipate that the
2 miner who -- may perform their own pre-shift when
3 working in remote areas pumping water.

4 This concludes my testimony. I thank you
5 for the opportunity to address the Union's position on
6 this proposed rule. If you have any questions --

7 I might add, that I understand that some of
8 our members have testified at some of the hearings in
9 opposition to this rule, but I think their concerns,
10 you know, once this rule gets into place and everyone
11 becomes comfortable with it, that those concerns will
12 be allayed.

13 Some of them are concerned that, you know,
14 if they examine an area and they miss something, a
15 MSHA inspector comes behind them and finds it, and
16 then they would be disciplined for not recording that
17 or seeing that on their examination.

18 And, you know, one question we had is, will
19 they be expected -- this is another concern they have,
20 to carry a Title 30 in their pocket and they recognize
21 hazard conditions, say there's a guard missing from a
22 belt drive or whatever, and they record that, but will
23 they be expected to cite the standard --

24 MODERATOR SILVEY: No.

25 MS. RAISOVICH-PARSONS: -- that is in

1 violation because they're going to physically stand
2 there. It's going to slow down their examination.
3 They're going to physically stand there and look up
4 the standard that's been violated, and that's another
5 concern that they have.

6 MODERATOR SILVEY: And I don't think we
7 would be expecting them to cite the precise standard
8 that's being --

9 MS. RAISOVICH-PARSONS: That's it. These
10 folks will basically be doing MSHA's job --

11 MODERATOR SILVEY: Right. No, no, it's more
12 the condition though or the practice of -- that is the
13 substance of the standard.

14 MS. RAISOVICH-PARSONS: Yeah, because, you
15 know, they're concerned -- they would have to be well
16 versed in the law, which they should be anyway, and
17 they have state standards also to consider where
18 there's a state agency and state standards to enforce.
19 So --

20 MODERATOR SILVEY: Yeah. No, we have, as
21 you -- no, we -- I have a fair amount of testimony
22 from the miners and so --

23 MS. RAISOVICH-PARSONS: Right. Okay.

24 MODERATOR SILVEY: Okay. Thank you.

25 MS. RAISOVICH-PARSONS: Thank you.

1 MODERATOR SILVEY: Our next speaker will be
2 Josh Nelson with CREDO.

3 MR. NELSON: Good morning.

4 MODERATOR SILVEY: Good morning.

5 MR. NELSON: Thank you for allowing me the
6 opportunity to speak for a few minutes today.

7 My name is Josh Nelson. That's N-E-L-S-O-N
8 -- and I'm a Campaign Manager with CREDO Action.

9 On behalf of CREDO'S more than 2 million
10 members, I'm here to testify in favor of the Mine
11 Safety and Health Administration proposed rules on
12 mine safety.

13 Coal mining is inherently dangerous.
14 Everyone in this room knows that. Sadly, due to
15 decades of the coal industry creating greed and lax
16 regulations, coal mining in the United States is far
17 too often not only dangerous, but also deadly.

18 Fortunately, the Mine Safety and Health
19 Administration is moving forward with measures to make
20 the industry much safer in this country.

21 But why do so many coal miners die at work?
22 It is because the coal companies habitually disregard
23 common sense safety regulations that are intended to
24 protect miners. Their mantra is profit before people,
25 and it's time for that to change.

1 Consider these facts. On April 5, 2010, 29
2 miners died in an explosion at the Upper Big Branch
3 Mine in Montcoal, West Virginia. In the 3 months
4 prior to the disaster, this mine had been cited for
5 120 safety violations, including 2 earlier that day.
6 If stronger mine safety rules had been in place at the
7 time, those 29 miners would be alive today.

8 After the Upper Big Branch disaster last
9 year, MSHA began a series of special inspections at
10 U.S. mines. In just over a year, the Agency issued
11 more than 5,000 citations for violations of safety
12 rules. In April of this year alone, more than 250
13 safety citations were issued.

14 But coal mining doesn't have to be that
15 deadly. There are safety procedures that, if
16 followed, would make it a much safer industry, saving
17 the lives and protecting the health of countless coal
18 miners. Unfortunately, the industry has disregarded
19 these regulations for years, choosing higher profit
20 margins over miners' safety time and time again. This
21 has got to stop.

22 One of the major points of contention today
23 is the Mine Safety and Health Administration proposal
24 that would return a key mine safety rule to how it
25 stood from 1969 until 1992. The Mine Health and

1 Safety Act of 1969 requires coal companies to check
2 for all safety violations and mark each of them with a
3 danger sign prior to each shift. But in 1992, the
4 first Bush Administration modified the rule, only
5 requiring safety checks that identify violations that
6 cause an immediate hazard to miners.

7 The proposal would be to return this rule to
8 how it was originally intended to be implemented. As
9 MSHA Chief Joe Main told a Senate Committee in April,
10 this kind of planning, coupled with enforcement, will
11 result in actual protection for workers by identifying
12 safety problems like buildups of dangerous gases
13 before they get out of hand. This rule will help coal
14 companies solve problems before they become deadly.
15 This is a common sense rule that will save lives.

16 Minor safety violations are precursors to
17 major safety violations. Catching and dealing with
18 small problems early on is the best way to prevent
19 them from becoming bigger problems in the future.

20 As Labor Secretary Hilda Solis explained
21 last spring, the reinstatement of this practice should
22 result in reduced risk of injury, death and illness.
23 This really shouldn't be controversial, but for the
24 coal industry, it is.

25 John Gallick, Alpha Natural Resources Vice

1 President of Safety, argued at a hearing last week
2 that requiring coal companies to check for all safety
3 violations before each shift as they were required to
4 do for two decades, would place an unrealistic burden
5 on examiners. He even went as far as to claim that
6 the proposed rule detracts from the purpose of
7 conducting examinations. His argument seems to be
8 that stronger safety rules somehow make coalmines less
9 safe. This just doesn't make much sense to me.

10 In fact, the opposite is true. More
11 stringent mine safety rules will help fulfill the
12 purpose of conducting exams by identifying potential
13 safety problems before they get out of hand. Arguing
14 otherwise is disingenuous.

15 Thank you for your time.

16 MODERATOR SILVEY: Thank you.

17 MR. DuCHARME: Thank you.

18 MODERATOR SILVEY: That's everybody who
19 signed up to speak.

20 Is there anybody else who wishes to speak?
21 Anybody else who wishes to speak?

22 If nobody else then wishes to speak, I am
23 going to tentatively close this hearing. If anybody
24 comes who wishes to speak, then at that appropriate
25 time, I can reopen the hearing; but, right now, I'm

1 going to tentatively close it.

2 I, again, want to say that the Mine Safety
3 and Health Administration appreciates your
4 participation at this public hearing. I want to thank
5 everybody who made presentations, and as well, I want
6 to thank the people who didn't make presentations but
7 attended the hearing because that suggests to us that
8 you have an interest in this rulemaking, and we
9 appreciate that.

10 I'd like to emphasize that all comments must
11 be received or postmarked now by August 1, 2011. MSHA
12 will take your comments and your concerns into
13 consideration in developing the Agency's final rule.

14 I'd like to encourage all of you to continue
15 to participate throughout this rulemaking process and
16 in all of MSHA's rulemaking.

17 This public hearing is now concluded. Thank
18 you very much.

19 (Whereupon, at 9:30 a.m., the hearing in the
20 above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

CASE TITLE: Examinations of Work Areas
HEARING DATE: June 15, 2011
LOCATION: Arlington, Virginia

I hereby certify that the proceedings and evidence are contained fully and accurately on the audio and notes reported by me at the hearing in the above case before the Department of Labor, Mine Safety and Health Administration.

Date: June 15, 2011

ANTHONY & ASSOCIATES, INC.


TIMOTHY S. ATKINSON, JR. / mtd
(Official Reporter)