

TRANSCRIPT OF PROCEEDINGS

In the Matter of:)
)
PUBLIC HEARING ON MSHA'S)
EMERGENCY TEMPORARY STANDARD)
FOR EMERGENCY MINE EVACUATIONS)

Pages: 1 through 137
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Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005-4018
(202) 628-4888
hrc@concentric.net

APPEARANCES (CONT'D)

SPEAKERS:

RON BOWERSOX
MARK COCHRAN
MIKE WRIGHT
TONY BUMBICO
DOUG CONAWAY
JOHN GALLICK
MARK ELLIS
CHRIS BRYAN
ERWIN CONRAD
JACK HENRY
ELIZABETH CHAMBERLIN
CHRIS HAMILTON
TIM BAKER
RICK ABRAHAM
JAMES SZALANKIEWICZ

1 P-R-O-C-E-E-D-I-N-G-S

2 (9:05 a.m.)

3 MR. SEXAUER: Good morning, my name is Edward
4 Sexauer. I am the Chief of the Regulatory Development
5 Division of the Office of Standards, Regulations, and
6 Variances for the Mine Safety and Health Administration. I
7 will be the moderator of this public hearing on MSHA's
8 Emergency Temporary Standard for emergency mine evacuations.

9 At this moment, would you pause with me for a
10 moment of silence in honor of the miners who lost their
11 lives and who were injured at the Sago Mine explosion and
12 the miners who lost their lives or were injured at the
13 Aracoma Alma Number 1 Mine accident, and for all the miners
14 who have lost their lives or have been injured this year,
15 and for all the miners who have lost their lives and have
16 been injured in this country since the beginning? So, if
17 you will, pause with me for a moment.

18 (Moment of silence.)

19 Thank you. On behalf of the Secretary of Labor,
20 Elaine Chao and David Dye, Acting Assistant Secretary of
21 Labor for the Mine Safety and Health Administration, I want
22 to welcome all of you here today. Also attending this
23 public hearing are several individuals from MSHA who are on
24 the committee drafting the rule. To my left, Eric Sherer,
25 of Coal Mine Safety and Health Division and Chair of the

1 subcommittee. On my right, Jeff Kravitz, Chief of the Mine
2 Emergency Operations and Special Projects, Pittsburgh Safety
3 and Health Technology Center. Tom MacLeod, Policy and
4 Program Coordination Division, Educational Policy and
5 Development. Ken Sproul, Quality Assurance Division,
6 Approval and Certification Center. Robert Snashall from our
7 Solicitor's Office. And, Debra Janes, Regulatory
8 Specialist, in the back of the room right now, but she'll be
9 joining us shortly. And, Ron Ford, Economist, from our
10 office.

11 This is the fourth hearing on the emergency
12 standard. The first hearing was held in Denver, Colorado,
13 on April 24. The second was held in Lexington, Kentucky, on
14 April 26. The third was held in Arlington, Virginia, on
15 April 28. Copies of the Emergency Temporary Standard, the
16 Federal Register notice that rescheduled this hearing from
17 April 11 to May 9, and volumes I and II of the compliance
18 guide are available on the table where you signed in your
19 attendance.

20 The purpose of these hearings is to receive
21 information from the public that would help us evaluate the
22 requirements contained in the emergency standard and produce
23 a final rule that promotes safety -- safe and effective
24 evacuation of miners during mine emergencies. We also will
25 use data and information gained from these hearings to help

1 us craft a rule that responds to the needs and concerns of
2 the mining public so that the provisions of the emergency
3 standard can be implemented in the most effective and
4 appropriate manner. We published the ETS in response to the
5 grave danger to which miners are exposed during underground
6 coal mine accidents. The ETS includes requirements in four
7 areas. The first area, immediate accident notification, is
8 applicable to all underground and surface mines, both coal
9 and metal/nonmetal. The three other areas covered by the
10 rule, self-contained self-rescuer storage and use,
11 evacuation training, and installation and maintenance of
12 lifelines apply only to underground coal mines. During
13 these hearings, we are soliciting public input on these
14 issues. The hearings give manufacturers, mine operators,
15 miners, and their representatives, and other interested
16 parties, an opportunity to present their views on these
17 issues.

18 MSHA issued this emergency standard on March 9,
19 2006, in response to the tragic accidents at the Sago Mine
20 on January 2 and the Aracoma Mine -- Alma No. 1 Mine on
21 January 19. MSHA determined that better notification,
22 safety, and training standards are necessary to further
23 protect miners when a mine accident takes place.

24 The ETS was issued in accordance with section
25 101(b) of the Federal Mine Safety and Health Act of 1977,

1 the Mine Act. Under section 101(b), the emergency standard
2 is effective until superseded by a mandatory standard which
3 is to be published no later than nine months after
4 publication of the emergency standard. The emergency
5 standard also serves as a proposed rule.

6 As stated earlier, we will use the information
7 provided by you to help us decide how best to craft the
8 final rule. In addition to the provisions of the emergency
9 standard, we are also considering the following issues and
10 seek further information from you. As you address these
11 issues, either in your comments to us today or those you
12 sent to us in Arlington, please be as specific as possible
13 with respect to impact on miner safety and health, mining
14 conditions, and the feasibility of implementation.

15 Some additional issues:

16 1. Should miners have the ability to tether
17 themselves together during escape through smoke-filled
18 environments? If so, what length of tether between miners
19 should be required? Should a miner's tether be capable of
20 clipping easily to another's so that any number of miners
21 could be attached together to work their way out of the
22 mine? How should the tether be attached to the miners'
23 belts, or, should there be a place other than the miners'
24 belts to attach the tether to the miners? Should the tether
25 be constructed of durable and/or reflective material? Where

1 should the tether be stored on the section, or could it be
2 part of the miner's belt? Should it be stored with
3 additional SCSRs in a readily accessible and identifiable
4 location, or in a separate location?

5 2. Should a training record under new paragraph
6 75.1502(c)(3) not only include a requirement that miners --
7 mine operators certify, by name, all miners who participated
8 in each emergency evacuation drill, but also include
9 additional information, such as a checklist? The checklist
10 could be used to itemize the successful completion of each
11 step in the training, as outlined in the approved program of
12 instruction.

13 3. When should a miner don an SCSR during an
14 evacuation? Currently, miners are told to don an SCSR when
15 they believe they are in danger or when smoke is
16 encountered. This may leave miners vulnerable to
17 irrespirable air, such as air that contains lethal carbon
18 monoxide levels or low oxygen. MSHA is considering
19 requiring that at least one miner in a group of miners, and
20 an individual miner when working alone, have at least one
21 multi-gas or air quality detector with them.

22 4. In the preamble to the ETS, we discussed a
23 method to locate additional SCSRs based on a joint MSHA-
24 NIOSH heart rate study. MSHA solicits comments on whether
25 the heart rate method is the most appropriate method to

1 determine location, whether it is realistic, and any other
2 comments you may have. What other reliable alternatives
3 exist for determining where to position additional SCSRs in
4 the mine?

5 5. MSHA is considering a requirement that
6 additional SCSRs under new paragraph 75.1714-4(c) be stored
7 in all escapeways in intervals of 5,000 for mines where the
8 escapeway height is above 48 inches, and 2,500 feet for all
9 other mines. Would such a specification standard be more
10 appropriate than the performance-oriented heart-rate method
11 provided in this ETS? Regarding such a specification
12 standard, what would be appropriate: a 5,000 and 2,500 foot
13 intervals for heights greater than 48 inches and heights of
14 48 inches or less, respectively? Or, some other specific
15 interval?

16 6. Should all underground coal miners be
17 required to use SCSRs exclusively? If so, is it appropriate
18 to prohibit the use of filter self-rescuers in all
19 underground coal mines? In addition, MSHA is considering
20 adding a new provision to 75.1714-4 that would allow the use
21 of new SCSR technology to comply with the standard, such as
22 SCSRs that have the ability to provide up to two or more
23 hours of oxygen per unit. Is such a provision appropriate?

24 7. Manufacturers sometimes lose track of which
25 mines purchased their SCSRs. When a mine shuts down, the

1 SCRS are often sold to another mine. In the past, problems
2 have been discovered with all brands of SCRS. MSHA is
3 considering requiring that the following information be
4 reported for each SCRS at each mine: 1) the total number of
5 SCRS, 2) the manufacturer, 3) the model, 4) the date of
6 manufacture, and 5) the serial number. Is it appropriate to
7 require mine operators to report to the relevant MSHA
8 District Manager the total number of SCRS in use at each
9 underground coal mine? If so, should any additional
10 information be reported?

11 8. Because, in the past, MSHA did not always
12 learn of problems associated with SCRS, MSHA is considering
13 a requirement that mine operators promptly report to the
14 MSHA District Manager in writing all incidents where any
15 SCRS required by 75.1714, is used for an accident or
16 emergency, and all instances where such SCRS devices do not
17 function properly. In addition, where any SCRS device does
18 not function properly, the mine operator would be required
19 to retain the device for at least 90 days for investigation
20 by MSHA. These requirements would help assure that MSHA is
21 notified of problems in a timely manner so that MSHA can
22 provide timely notice to both manufacturers and users to
23 assure that the affected SCRS are available for testing and
24 evaluation. Should MSHA include such requirements in the
25 final rule?

1 9. SCSR storage locations in escapeways may not
2 be readily accessible to all persons underground, such as
3 pumpers, outby crews, and examiners. Are there other ways
4 to provide readily accessible SCSR coverage for these
5 miners? Are there other storage locations that would be
6 readily accessible to such persons?

7 10. MSHA sought comments on the appropriateness
8 of requiring that signs to help locate SCSR storage areas be
9 made of a reflective material. MSHA also asked whether
10 there are alternative methods available for making SCSR
11 storage locations easy to locate when conditions in the mine
12 might obscure the storage location. What methods exist that
13 would make SCSR storage locations readily visible?

14 11. Under new paragraph 75.1714-4(c), operators
15 are required to have separate SCSR storage in each
16 escapeway. Where a mine has parallel and adjacent
17 escapeways, under what circumstances would it be appropriate
18 to allow a hardened room or "safe haven" to serve both
19 escapeways with one set of SCSRs? A hardened room is a room
20 constructed with permanent seal techniques, submarine-type
21 doors opening to both escapeways, and positive ventilation
22 from the surface through a borehole. Is a safe haven an
23 acceptable alternative? If so, what should be the minimum
24 criteria for MSHA to accept a hardened room or safe haven?

25 12. Currently, cone systems on lifelines --

1 this is number 12. Cone systems of lifelines vary, some
2 with the cones pointing toward the face, and others pointing
3 away from the face. Miners may become confused in an
4 emergency as to the direction of escape. Should cones or
5 other directional indicators on lifelines be standardized?
6 Following a NIOSH recommendation and for ease of movement,
7 should the point end of the cone be toward the face?

8 13. Miners should be able to safely evacuate a
9 mine without the use of mechanized transportation. There
10 may be unique escapeway conditions, including ladders,
11 manddoors, airlocks, and overcasts where hands-on experience
12 of these conditions is required in order to quickly and
13 safely escape the mine. Is it reasonable to require that
14 miners walk the escapeways at least under these unique
15 escapeway conditions? Should all miners be required to walk
16 the escapeway in it's entirety rather than use mechanized
17 transportation during the drills required by new paragraph
18 75.1502(c)? We are considering including a requirement in
19 the part 48 training program for new miners that new miners
20 travel, at least in part, both escapeways. Would this
21 training be appropriate, and should the training include
22 walking out part or all of the escapeways?

23 14. A more instructive emergency evacuation
24 practice may be provided by using realistic drills. For
25 example, conducting a drill in smoke or using a realistic

1 mouthpiece that provides the user with a sensation of
2 actually breathing through an SCSR, commonly referred to as
3 "expectations" training, are more realistic than simulation
4 training. What other realistic emergency evacuation
5 practices and scenarios would ensure that miners are better
6 prepared to act quickly and safely in an emergency?

7 We intend that scenarios required by the
8 Approved Program of Instruction under paragraph 75.1502(a)
9 be used to initiate the drills and to conduct the mine
10 emergency evacuation drills required by paragraph
11 75.1502(c). For example, to start a drill, the section
12 foreman may chose one of the mines' approved explosion
13 scenarios. The foreman would gather the miners on the
14 section and state where the explosion occurred, any special
15 circumstances of the event, and conditions requiring
16 immediate donning of SCSRs. The foreman and miners would
17 then physically follow the best options for evacuation as
18 the evacuate the mine. When the miners travel to the place
19 or into the conditions that require immediate SCSR donning,
20 the need to don the SCSR must be made clear so that it is
21 understood by all.

22 15. We expect that the scenarios developed as
23 part of the mine emergency and firefighting program of
24 instruction under new paragraph 75.1502(c) would be included
25 as part of the emergency evacuation drills under new

1 paragraph 75.1502(c), making the drills more realistic.

2 Should we further clarify this issue in the final rule? Are
3 there additional requirements that should be included in
4 this training to make it more realistic, such as conducting
5 SCSR donning in a smoke-filled environment?

6 16. We are considering putting all emergency
7 evacuation drill requirements in 75.1502. Thus, for
8 example, the escapeway drill requirements under existing
9 75.383 pertaining to the frequency of drills, how far miners
10 travel in the drills, and the number of miners involved in
11 each drill, would be incorporated into requirements under
12 new 75.1502. Under paragraph 75.383(b)(1) each miner must
13 participate in a "practice escapeway drill" at least once
14 every 90 days, but it is only required to travel to the area
15 where the split of air ventilating the working section
16 intersects a main course -- main air course, or 2,000 feet
17 outby the section loading point, whichever distance is
18 greater. Under new 75.1502, during the emergency evacuation
19 drills, the miner must travel to the surface or to the exits
20 at the bottom of the shaft or slope. Existing paragraphs
21 75.383(b)(2) and (b)(3) require that "practice escape
22 drills" occur at least once every six weeks, but only
23 involve two miners and a supervisor. Miners systematically
24 rotate in taking these drills so that eventually, all miners
25 participate. Under new 75.1502, emergency evacuation drills

1 are required for all miners and at periods of time not to
2 exceed 90 days. We will have to reconcile these time
3 differences.

4 MSHA is requesting comments on incorporating all
5 evacuation drill requirements into 75.1502. we also are
6 considering requiring section bosses to travel both
7 escapeways in their entirety prior to acting as a boss on
8 any working section or at any location where mechanized
9 mining equipment is being installed or removed.

10 17. We are -- also are considering requiring
11 that all mine fires be reported to MSHA, including fires
12 shorter than 30 minutes duration. This would address all
13 mine fire hazards, including situations where a number of
14 short duration fires occur. Should the definition for
15 "accident" in existing paragraph 50.2(h)(6) be revised to
16 include all unplanned underground mine fires, or fires of a
17 particular type or duration, or occurrences at particular
18 locations in the mine?

19 To date, we have received two comments on this
20 emergency standard. You can view these comments on our
21 website at www.msha.gov under the section entitled "rules
22 and regulations." We have also answered several questions
23 on compliance with the ETS covering a range of issues.
24 These questions and answers are included in the compliance
25 guide that I referred to earlier and are posted on our web

1 page.

2 Finally, we have received questions as to
3 whether the emergency evacuation training provisions for
4 metal and nonmetal mines are affected by the ETS. While the
5 ETS amends part 48 by adding references to the requirements
6 to the emergency evacuation plans in existing 57.11053 for
7 underground metal and nonmetal mines, these references do
8 not affect existing training requirements for metal and
9 nonmetal miners and it is our intent not to change the
10 existing part 48 emergency evacuation training provisions
11 for metal and nonmetal mines. We will clarify this in the
12 final rule.

13 The format for this public hearing will be as
14 follows:

15 Formal rules of evidence do not apply, and this
16 hearing will be conducted in an informal manner.

17 Those of you who have notified MSHA in advance
18 of your intent to speak or who have signed up today to speak
19 will make your presentations first. After all scheduled
20 speakers have finished, others can request to speak.

21 We also have an attendance list and ask that you
22 make sure that you sign it before you leave, if you haven't
23 done so.

24 If you wish to present any written statements or
25 information today, please clearly identify your material.

1 When you give it to me, I will identify the material by the
2 title as submitted. You may also submit comments following
3 this public hearing. To be considered, they must be
4 submitted to MSHA by May 30, 2006, which is the close of the
5 comment period. Comments may be submitted by any of the
6 foll -- any of the methods identified in the ETS. Again, we
7 have copies of the ETS and the compliance guide in the back
8 of the room and posted on our web page at www.msha.gov.

9 We will post the transcripts of the public
10 hearings on our website. I believe that three -- the
11 transcripts of the three previous hearings are already
12 posted on our website. Each transcript, including this one,
13 will be posted approximately one week from the completion of
14 the hearing. The transcript will include the full text of
15 the opening statement and any specific issues for which the
16 Agency seeks additional comment.

17 We will begin with persons who have requested to
18 speak. Please begin by clearly stating your name and
19 organization for the record, to make certain we obtain an
20 accurate record when you speak.

21 Our first speakers -- I believe we have two
22 speakers that are going to speak together. Ron Bowersox,
23 from the United Mine Workers of America, and Mark Cochran,
24 also of the United Mine Workers of America.

25 MR. BOWERSOX: Good morning.

1 MR. SEXAUER: Good morning.

2 MR. BOWERSOX: Can you hear me okay?

3 My name is Ron Bowersox. I'm a safety
4 representative with the United Mine Workers of America. I'd
5 like to take the opportunity to thank the panel for me to
6 speak here in regards to the Emergency Temporary Standards.

7 I do believe there would be more participation
8 from the mines, living in the Northern -- like, Western
9 Washington, PA area, the Northern mines in West Virginia,
10 PA, and Ohio. Those miners would be a lot easier to get to
11 that area, because that is a long distance to travel with
12 the long schedules those guys work now.

13 After receiving the final review and reading it,
14 it's clear there are issues that have existed for over 20-
15 plus years. Examples from the Register, 1984, 27 miners
16 lost their lives in a fire at the Wilberg Mine. 1990, 18
17 miners escaped from a fire at the Matthews Mine. Only seven
18 miners donned their SCSRs at their first sign of smoke.
19 1998, two miners, during the escape from the Willow Creek
20 Mine fire, miners that used the SCSRs had difficulty
21 starting the oxygen flow. Bottom line, 20-plus years later,
22 we're sitting here in Charleston, West Virginia, discussing
23 the things that should have already been taken care of.

24 I would like -- I would hope the Mine Safety and
25 Health Administration acts quickly and takes action that

1 protects miners when they must evacuate a mine after an
2 emergency occurs.

3 I have concerns about the current practice of
4 permitting mine fires that last less than 30 minutes to go
5 unreported. This should be eliminated. Far too often, such
6 events occur over and over because once a fire is
7 extinguished within 30 minutes, the operator is not
8 compelled to eliminate the source of the problem. This
9 reporting, I feel, with all mine fires, will eliminate many
10 of these hazards in the industry.

11 I believe the 15-minute notification must be
12 strictly enforced. Two hours, like at the Sago Mine, is
13 unacceptable. Fast notification, the faster response time
14 to mine site for mine rescue teams, federal, state, union,
15 and any others involved in mine rescue. Timing is
16 everything in a rescue mission.

17 I think lifelines are needed to be -- they need
18 to be flame-resistant. All cones should be faced toward the
19 face area. This would be standardized with less confusion.

20 The -- in closing, there is a lot of new
21 technology available. A few weeks ago, I was in Wheeling,
22 West Virginia, and there was over 100 vendors there. They
23 had communication tracking devices, new chambers, and I just
24 feel we all need to work together to make our mines safer
25 for our miners to return home, and our miners are our most

1 precious resource. Thank you.

2 MR. SEXAUER: Ron, thank you.

3 MR. COCHRAN: My name is Mark Cochran, United
4 Mine Workers of America Local 9909. I work at the Loveridge
5 Mine, CONSOL Energy.

6 I want to speak a little bit here. Some of my
7 thoughts are about the same as Ron's here, but the reason --
8 one thing I have is response time. The length of time it
9 takes to get chromatograph machines and stuff to mount in
10 sites to analyze air samples, hours can be lost not having
11 machinery readily available to support mine rescue teams.
12 Many times, the only equipment available is hand-held
13 detectors. This is not capable of detecting or
14 differentiating between a lot of the mine gasses and
15 hydrocarbons which are given off during a mine fire or
16 explosion.

17 Also, I'd like to see seismograph machinery
18 located in areas where they can be put to use quickly and
19 efficiently in the field to aid the search for mine --
20 trapped miners.

21 I've also heard statements about the 15 minute
22 rule for reporting being too short a time. I personally
23 feel that this is more than enough time and that it would
24 help to get the people into the -- backup people in as
25 quickly as possible, even in an unknown emergency situation.

1 If there's a reasonable cause to think there is an
2 emergency, time is of the essence.

3 Also, I've been around a lot of mine rescue
4 teams and stuff, and it is recognized that mine rescue rules
5 change depending on emergency situations at each mines.
6 Specific guidelines are not always followed but must -- we
7 must protect the rescuer.

8 All mines need to have mine rescue teams and
9 some, depending on the amount of workers, could have at
10 least two teams available. This would or is better to have
11 an employee working at the mines and a mine rescue team that
12 is familiar with their mines. They know the locations of
13 most areas and the conditions at the mines. This would save
14 a lot of valuable time.

15 Again, speaking of the two hour response time by
16 the teams that are contracted out to the different mines,
17 there's a lot of valuable time lost in emergency situations.
18

19 It could also prove very valuable to have mine
20 rescue supply stations underground where material could be
21 accessed by the teams as they advance, rather than waiting
22 for supplies from the outside to arrive.

23 Self-contained self-rescuers used in the storage
24 plans to be placed on the sections or long-haulage belt
25 lines or other locations, I feel, should be checked as part

1 of the mine examiner's run. Along with this, I'd personally
2 like to see dates, times, and initials placed at the
3 different caches and also be recorded in a book on the
4 surface. This would ensure us that the self-contained self-
5 rescuers are being checked properly and are also stored in
6 their necessary locations.

7 And, to speak about part 50, the 30 minute rule,
8 as Ron spoke about here, to me, it is very necessary to
9 bring this -- bring an emergency as a fire out sooner. A
10 fire that's burning for 30 minutes, at least in the
11 Pittsburgh scene, is totally out of control by the time --
12 you know, I've been around Loveridge Mines. We've lost the
13 mines twice up there due to mine fires and got it back up
14 and everything, but 30 minutes is just entirely too long to
15 report a mine fire.

16 And also, speaking about the rescue chambers.
17 It could be beneficial in some circumstances, such as at the
18 Sago Mines. From this disaster, we can all say that there
19 must be an air supply that would sustain oxygen for a long
20 period of time, at least a 48 to 60 hour minimum. This
21 would need to be also large enough to support a section crew
22 and located where they could be readily available.

23 Also, there needs to be the thought of the outby
24 workers who may also be trapped in -- on the beltlines, and
25 et cetera. Thank you.

1 MR. SEXAUER: Let me just reiterate the Agency's
2 position that during a mine emergency, the first response to
3 be to evacuate the mine. You're addressing mine rescue
4 chambers, and, you know, that barricading in the mine would
5 be the last resort and defense. That's the way we look at
6 it.

7 MR. COCHRAN: I agree with you 100 percent on
8 that. I was in the Sago Mines, part of the investigation,
9 and that would be a very last resort. I don't know that I
10 would ever barricade, personally.

11 MR. SEXAUER: Okay. Any questions? Gentlemen,
12 thank you.

13 Are we picking up the sound from that second
14 mic? Can you hear in the back? You can? Okay.

15 Our next speaker will be Mike Wright.

16 MR. WRIGHT: Thank you, Mr. Sexauer.

17 My name is Mike Wright. I'm the Director of
18 Health, Safety, and Environment for the United Steel
19 Workers. We're a union that represents 850,000 workers in
20 North America, including the majority of unionized metal and
21 nonmetal miners in the United States and Canada. We also
22 represent a significant number of coal miners in Canada.

23 And, as I was walking over here this morning, I
24 remembered that today is the 14th anniversary of the worst
25 mining disaster in recent Canadian history, that was the

1 underground explosion and fire at the Westray Mine in Nova
2 Scotia, which killed 26 miners. We were in the middle of an
3 organizing campaign when that happened, and we continued
4 that campaign, even though the mine never reopened, and
5 continued to represent those families. One of the things
6 that came out of that disaster was a law across all of
7 Canada making killing through corporate negligence a crime
8 punishable by prison. I hope we can achieve that, some day,
9 in this country.

10 This hearing is focused exclusively on coal mine
11 safety and health, and that's appropriate. I'm sorry,
12 almost exclusively on coal mine safety and health, and
13 that's appropriate, given the tragedies of Sago and other
14 coal mines so far this year. Our union doesn't represent
15 coal mines in the United States -- coal miners. You might
16 ask why I'm here. It's really for three reasons: the first
17 is to demonstrate our support for the families of the Sago
18 miners and all the other victims and for our sister union,
19 indeed, our parent union, the United Mine Workers of
20 America; second, to strongly support the one part of the ETS
21 that applies to metal and nonmetal mines, the requirement
22 that MSHA be notified of accidents within 15 minutes; third,
23 to urge MSHA not to forget about metal and nonmetal miners
24 as it moves forward to develop, hopefully, stronger
25 requirements for mine evacuations, rescue, and refuge.

1 Let me start with the immediate notification of
2 mine accidents. I've been involved in too many rulemakings,
3 both OSHA and MSHA, to be very surprised about arguments
4 coming from mine operators or other employers, but I must
5 say they had to reach to come up with objections to the 15
6 minute rule. I've read a lot of those in the transcript.

7 They include things like "calling MSHA might
8 interfere with a rescue." Well, you'd better look at your
9 rescue plan if it's going to be disrupted by having to make
10 a single phone call. Or, "there may be only one phone line
11 and we need it to call 911." Well, if that's the case, buy
12 yourself a cell phone or a Blackberry or use the one you
13 probably already have, like the majority of Americans. And,
14 if you don't get a good signal where you are, I'm sure your
15 local service provider will be happy to install a second
16 line. Or, "we're really not sure there's been an accident
17 until we investigate." Well, call anyway. You're not going
18 to get cited by MSHA because the situation turned out to be
19 less serious than you originally thought.

20 In short, the 15 minute rule makes very good
21 sense, and MSHA should stick to it in the final rule. And,
22 by the way, the miners' rep ought to be immediately notified
23 as well, and the regulation ought to state that explicitly.

24 I do have to congratulate MSHA for the fact that
25 it appears to be enforcing the 15 minute rule. We had a

1 fire at the Carmeuse Limestone Mine in, I believe, Kentucky,
2 back on April 10, and that mine was cited under part 50
3 section 10 because they did not notify the Agency in the
4 prescribed time limit.

5 Let me now turn to other aspects of this ETS and
6 other regulations that should be applied, not just in coal
7 mines, but in all underground mines, but I want to make it
8 clear that nothing the USW proposes is meant to delay
9 effective action in coal mines. We are aware that MSHA
10 would need additional rulemaking to extend other provisions
11 of the ETS beyond coal, therefore, we urge the Agency to
12 finalize this rule as quickly as possible. You can take
13 less than the nine month statutory limit. That would be
14 great. And then, turn it's attention to metal/nonmetal
15 mines as part of a comprehensive regulatory process
16 involving escape, rescue, and refuge in all underground
17 mines.

18 Most of the deaths this year have occurred in
19 coal mines, and the ETS is especially concerned with coal
20 mine fires, but we should remember that the worst mining
21 disaster in the United States in the last 35 years happened
22 in an underground metal mine and it was a fire. Of course,
23 the fire was at the Sunshine Silver Mine in Kellogg, Idaho,
24 on May 2, 1972. Ninety-one miners died, all from carbon
25 monoxide poisoning. Incidentally, those miners had filter

1 self-rescuers. They didn't work. They were exposed to too
2 much carbon monoxide.

3 Sunshine was one factor leading to the Mine
4 Safety and Health Act itself, and many of the regulations
5 promulgated under the Mine Safety and Health Act have made
6 such fires far less likely. But, 45 percent of the mine
7 fires reported to MSHA between 1991 and 2000 occurred in
8 metal/nonmetal mines. There are plenty of combustible
9 materials in metal/nonmetal mines. Fuels for mobile
10 equipment and mobile equipment itself, old timers, belts,
11 methane, combustible ores like gilsonite, and other
12 materials. A January fire in a Saskatchewan potash mine
13 forced 72 miners into a refuge chamber for 28 hours because
14 of toxic gasses and smoke started in some plastic piping.
15 Potash, as you know, doesn't burn. There are plenty of
16 ignition sources, as well. Electrical sparking, belt
17 friction, cutting and welding, even spontaneous combustion.
18 And, of course, there are reasons other than a fire for
19 evacuating a mine, including, for example, flooding.

20 There is no good reasons why the lifelines
21 required for underground coal mines should not also be
22 required in metal/nonmetal mines, and there is certainly no
23 good reason not to even give notice on this issue in the
24 Federal Register and thereby making it impossible for MSHA
25 to require lifelines without -- in metal/nonmetal mines

1 without new rulemaking.

2 Obviously, the provisions for extra self-
3 contained self-rescuers will not apply because SCSRs are not
4 required in metal/nonmetal mines in the first place;
5 however, they should be required in at least some
6 metal/nonmetal mines. There was a proposal to do that on
7 MSHA's regulatory agenda in 2001. SCSRs would have been
8 required in high-risk mines, specifically, gassy mines, and
9 some others. That proposal was withdrawn by the current
10 administration. We believe it should be reinstated
11 immediately.

12 That concludes my comments. Thank you for the
13 opportunity to testify this morning.

14 MR. SEXAUER: Any questions? Mr. Wright, thank
15 you very much.

16 MR. WRIGHT: Thank you.

17 MR. SEXAUER: Our next speaker will be Tony
18 Bumbico from Arch Coal.

19 MR. BUMBICO: Good morning.

20 MR. SEXAUER: Good morning.

21 MR. BUMBICO: My name is Tony Bumbico. That's
22 spelled B-U-M-B-I-C-O. I'm the Vice President of Safety for
23 Arch Coal.

24 Arch is the second-largest coal producer in the
25 United States. Our corporate office is in St. Louis,

1 Missouri. Arch and its subsidiary companies have over
2 3,500 employees and we operate mines in Colorado, Kentucky,
3 Utah, Virginia, West Virginia, and Wyoming. With me is Doug
4 Conaway. Doug is the Corporate Safety Director for Arch.

5 We're here today in response to the Mine Safety
6 and Health Administrations request for comments on the
7 Emergency Temporary Standard published on March 9, 2006,
8 which contains regulations relevant to mine emergency
9 evacuation. Our comments will be offered in two parts. I
10 will discuss Arch's general position on the ETS. Following
11 my comments, Doug will respond to some of the specific
12 questions posed by MSHA in their opening comments.

13 Our comments today reflect support by Arch of
14 the testimony presented by the National Mining Association
15 at the April 28, 2006, hearing held in Arlington, Virginia.
16 In addition, our testimony will express concerns that are
17 specific to our operations. We appreciate the opportunity
18 to comment and hope that our comments will assist MSHA in
19 future decisions related to the subject.

20 Arch supports the intent of the ETS. The
21 objective of this regulatory initiative is to protect miners
22 from grave dangers they face when they must evacuate a mine
23 after an emergency occurs. Similar to other responsible
24 operators, we are committed to continuously improving health
25 and safety at our mines.

1 In particular, we support the Agency's overall
2 efforts to address several key issues related to self-escape
3 and aided rescue that were factors at the Sago and Alma
4 tragedies. We extend our sympathies to the families of the
5 Sago and Alma miners and the other miners who have lost
6 their lives this year.

7 As a company, Arch is committed to learn from
8 these events. We continue to emphasize to our employees
9 that self-escape is preferable to barricading when
10 confronted with an emergency. In addition, we stand ready
11 to work with MSHA and other responsible parties to improve
12 the ability of miners to escape when a disaster occurs.

13 Our initial comments are on training, part 48.
14 In general, Arch supports the revised part 48 training
15 requirements. In this area, we have two concerns.

16 The first relates to how these training
17 requirements apply to visitors of mines, mines, in
18 particular, that have multiple types of self-contained self-
19 rescuers. In our opinion, requiring visitors who are
20 unfamiliar with mining to don multiple SCSR units could
21 prove confusing. We encourage MSHA to consider a more
22 flexible approach in this area. Such an approach might
23 focus on donning the principal SCSR unit assigned to the
24 visitor, and using alternative types of training on
25 supplemental SCSR units. An approach of this type might

1 prove to be less confusing to visitors.

2 We have a similar concern with regard to SCSR
3 training for certain types of independent contractors. As
4 you're aware, some contractors are exposed to mine hazards
5 on a regular and continuing basis. We feel that contractors
6 in this category should receive the same type of SCSR
7 training as miners. On the other hand, many contractors are
8 only exposed to mine hazards on an infrequent and
9 intermittent basis. In our opinion, contractors in this
10 category should receive a level of SCSR training similar to
11 the training provided to visitors. We encourage MSHA to
12 consider these SCSR training concerns when drafting the
13 final rule.

14 Notification, part 50. The accident reporting
15 revisions incorporated in the ETS are intended to facilitate
16 rapid response by MSHA to serious mining accidents. Arch
17 strongly supports this objective. We agree with the need to
18 notify MSHA promptly to assist mine operators in dealing
19 with mine emergencies. When accidents occur that threaten
20 the safety of coal miners, a rapid emergency response is
21 appropriate and essential.

22 In life threatening situations, or situations
23 requiring potential rescue and recovery response, it is
24 essential to immediately dispatch emergency resources to the
25 accident scene. While we agree with the intent of the ETS,

1 we maintain that many of the immediately reportable
2 accidents requiring 15 minute notification do not justify a
3 rapid response. As a result, we recommend the development
4 of a rapid response notification system that requires
5 notification of response proportional to the nature of the
6 accident.

7 The ETS requires that all immediately reportable
8 accidents that occur on mine property, as defined by 30 CFR
9 50.2 be reported by the mine operator to MSHA within 15
10 minutes. Clearly, many of the events defined as immediately
11 reportable should require a mine operator to notify MSHA
12 within the prescribed 15 minutes. We contend, however, that
13 each event must be evaluated on it's own merits. It makes
14 no sense to contact MSHA within 15 minutes when the health
15 and safety of miners is not at risk.

16 In 2005, MSHA was notified of approximately
17 2,400 immediately reportable accidents. Approximately 90
18 percent of these 2,400 incidents did not involve an injury
19 to a miner. They involved accidents in two categories,
20 unplanned roof falls at or above the anchorage point and
21 damage to hoisting equipment that interferes with it's use
22 for more than 30 minutes.

23 Currently, MSHA documents the fact that they
24 were notified of accidents that fall in these two
25 categories. An MSHA inspector may visit the mine site to

1 conduct a follow-up investigation into these nonemergency
2 events. The Agency follows up according to the seriousness
3 of the accident reported. If an inspector does conduct a
4 follow-up inspection related to these non-life threatening
5 types of accidents that may occur a day or two after the
6 accident is reported, it would be counterproductive to
7 contact MSHA within the required 15 minute time frame for
8 these nonemergency events. It is not necessary to activate
9 mine rescue personnel and local emergency response resources
10 for all immediately-reportable accidents. Early
11 notification and rapid response should be in proportion to
12 the seriousness of the accident.

13 In our opinion, immediately reportable accident
14 trends indicate that no benefit will be derived from early
15 notification or rapid response for these types of non-
16 emergency, non-injury events. The 15 minute notification
17 period required by the ETS should be reserved for
18 fatalities, serious injuries, and accidents with the
19 potential to require a mine rescue or recovery response.

20 The ETS is solely focused on the 15 minute
21 notification requirement following an immediately reportable
22 accident. What the ETS fails to address is how MSHA will
23 receive and responds to these notification calls. We are
24 concerned that this omission will result in a system that
25 unnecessarily delays effective emergency response.

1 The current protocol requires a mine operator to
2 call their MSHA district office when an immediately-
3 reportable accident occurs. If that call is placed outside
4 of business hours, the caller is forwarded to an answering
5 service. The answering service provides the mine operator
6 with numbers to call to personally reach MSHA district
7 officials. If the caller can't reach one of these
8 individuals, he or she is expected to contact the MSHA
9 headquarters.

10 The MSHA notification protocol has built-in time
11 delays. It requires mine operators to place multiple calls
12 at a time when they should be focusing on responding to the
13 emergency event. MSHA needs to eliminate their system of
14 transferring calls and using answering machines to advise
15 callers of other emergency response numbers.

16 In an emergency, each additional call that a
17 mine operator has to make consumes precious time. MSHA
18 should consider streamlining the process.

19 One method of making this system more efficient
20 would be for MSHA to implement a protocol requiring
21 operators to make a single call to an 800 number to notify
22 the Agency of an accident. As an alternative, MSHA could
23 consider a system in which each MSHA district would provide
24 mine operators with a list of emergency contact numbers. In
25 addition, MSHA could assign staff to be on call to receive

1 emergency calls.

2 A mine operator should only be required to place
3 one call to a designated person when an emergency occurs.
4 That individual should have the ability to determine the
5 severity of the situation and the authority to direct an
6 appropriate response. A notification system of this type
7 would eliminate the built-in delays created by the current
8 accident reporting protocol.

9 Part 75. Similar to the proposed changes in
10 part 50, the revisions proposed under part 75 are intended
11 to address legitimate concerns related to self-escape during
12 a mine emergency. Arch agrees with many of these concepts
13 contained in part 75 of the ETS. We're concerned, however,
14 that practical application of some provisions of part 75 may
15 be counterproductive and difficult to achieve.

16 Section 75.387(i). Arch supports the use of
17 lifelines in escapeways as a means of facilitating self-
18 escape. Research indicates that lifelines can be a
19 significant aid to miners in an emergency situation, in
20 particular, when they encounter smoke -- a smoke-filled
21 environment. In fact, Arch's underground mines were using
22 lifelines prior to the effective date of the ETS.

23 We have concerns, however, about the
24 practicality of installing lifelines in main travelways. In
25 some situations, the installation of lifelines in the travel

1 -- in travelways creates a potential hazard. This is
2 especially true when the mine uses trolley power to power
3 haulage equipment. We also believe that lifelines installed
4 in the main travelways of mines using diesel equipment will
5 be very difficult to maintain.

6 To date, we have not identified an effective
7 method to install lifelines in the main travelways of our
8 underground mines. In our opinion, there is no good way to
9 install a lifeline in travelways that would be both
10 accessible to miners and protected from heavy equipment.

11 In most instances, miners will use a mantrip or
12 similar vehicle to exit the mine via the travelway in an
13 emergency situation. In these situations, a lifeline would
14 not be used. As a result, we recommend that MSHA reconsider
15 it's position on requiring lifelines in escapeways that also
16 serve as the main travelway of an underground mine. Or, as
17 an alternative, the Agency should assist industry in
18 developing appropriate methods to safely install and
19 maintain lifelines in these areas of the mine.

20 75.1502(c)(1). Arch agrees with most aspects of
21 the fire drill training requirements contained in
22 75.1502(c)(1). In particular, we agree with the emphasis on
23 scenario training. Training of this type will help improve
24 the problem solving and decision making skills of miners
25 that are so critical during a mine emergency. We recommend,

1 however, that MSHA revise the requirement to conduct fire
2 drill training and mine emergency training every 90 days.
3 In lieu of the 90 day requirement, we suggest that the
4 training interval be modified to once each quarter. This
5 change would not impact the quality of training. It would,
6 however, provide more flexibility to large mines to
7 accomplish the training in a more efficient manner. Most of
8 Arch's underground mines are large complexes. Trying to
9 schedule 300 to 500 miners for training on SCSR transfers,
10 escapeway systems, firefighting, and evacuation drills would
11 be difficult to achieve. We can accomplish this important
12 task more effectively on a quarterly basis. This added
13 flexibility will enable us to schedule crews for training on
14 a systematic basis. It would also help to address
15 scheduling complicated by vacations and absenteeism. If
16 MSHA is concerned that a person would be trained at the end
17 of one quarter and the beginning of the next, the Agency
18 could require that the training be accomplished during a
19 window of time as proposed by the operator's plan.

20 75.1502(c)(2). Arch opposes requiring all
21 miners to walk the entire escapeway every 90 days. We do
22 not believe that physically traveling the entire escapeway
23 adds to the quality of the training. In some cases, it may
24 pose a hazard to the miners. We do believe that miners need
25 to receive additional training on a quarterly basis that

1 covers the location of escapeway entrances from the
2 workplace, the location of lifeline systems, the location of
3 SCSR caches, the unique physical escapeway characteristics,
4 and the location where important escape decisions will be
5 made.

6 As stated during previous hearings on the ETS,
7 MSHA needs to recognize that the coal industry has an aging
8 workforce. The average age of our workforce is in the
9 early- to mid-50s. In some circumstances, walking
10 escapeways could pose an unnecessary risk, illness, or
11 injury to these individuals.

12 As a result, Arch recommends that MSHA revise
13 the proposed evacuation drill requirements. Miners should
14 be permitted to travel their escape routes in vehicles or
15 walk short distances to the ventilation split where self-
16 escape decision making training could be conducted. In our
17 opinion, this change would enhance training and allow for
18 training on unique escapeway conditions and cover important
19 topics such as the location of lifelines and SCSR caches.

20 75.1502(c)(2)(2). Arch supports the use of
21 hands-on training with respect to donning and transferring
22 SCSR units. This type of training is effective and
23 necessary to familiarize miners with the proper procedure
24 for utilizing self-contained self-rescuers. In our opinion,
25 however, SCSR training can be accomplished more effectively

1 in a controlled environment on the surface as opposed to
2 underground. We support the Agency's recognition of this as
3 reflected in the Emergency Temporary Compliance Guide. We
4 suggest, however, that the training requirement for
5 transferring SCSR units be modified with respect to
6 operations that have multiple types of SCSR units. We
7 propose that MSHA consider a training system that permits
8 operators to alternate transfer training for different types
9 of SCSR units on a quarterly basis. In essence, we're
10 recommending that mines with multiple types of SCSR units be
11 required to train on one type of transfer each quarter.

12 75.1714-2 and -4. With respect to the signage
13 requirement for SCSR caches, Arch feels that the regulatory
14 language is too restrictive. The term "SCSR" is an
15 industry-wide term. It is used throughout the ETS. Section
16 75.1714(2)(f), however, requires the word "self-rescuer" or
17 "self-rescuers" to be used on storage cache signs. It
18 serves no useful purpose to require mines with existing SCSR
19 storage location signs to install signs stating "self-
20 rescuer." We recommend that the Agency reconsider their
21 position and permit the use of the term "SCSR" for storage
22 caches.

23 SCSR storage in the primary and alternative
24 escapeway. Section 75.1714-4(c) requires additional SCSR
25 storage in the primary and alternate escapeway to augment

1 other SCSR requirements of the ETS. A number of companies
2 have proposed the use of airlocks located between adjacent
3 escapeways for storage of SCSR units. The use of an airlock
4 has the additional benefit of providing employees with an
5 area isolated from the main air course for the transfer of
6 SCSR units. It could also be used to store other emergency
7 supplies. Another alternative proposal would be to build an
8 SCSR storage unit into a stopping to permit stored SCSR
9 units to be accessed from either escapeway. Both of these
10 proposals make practical sense. In MSHA's Emergency
11 Temporary Compliance Guide, the Agency rejected this
12 concept. We remind the agency that section 75.1714-4(c)
13 does not require identical quantities of SCSR units be
14 stored in both the primary and alternate escapeway. It
15 requires additional units in the primary and alternate
16 escapeway. The concept outlined above is practical. It
17 would place supplemental SCSR units in locations that
18 satisfy both primary and alternate escapeway storage. We
19 are requesting that MSHA reconsider it's position on this
20 subject.

21 MSHA also requested comments on the
22 appropriateness of using a hardened room or safe haven for
23 storage of SCSR units. According to MSHA, a storage room of
24 this type would have positive ventilation from the surface
25 through a borehole. My colleague, Doug Conaway, will

1 address this question in more detail. The related issue I
2 wish to address concerns surface rights and the practical
3 means of gaining access to surface areas in order to drill
4 boreholes. Many operations, particularly in the Western
5 states, are mining under significant cover, which, at times,
6 exceeds 2,000 feet. The surface rights for many of these
7 mines are controlled by the federal government. Gaining
8 access to surface areas at these operations to drill
9 boreholes or install communication equipment is not an easy
10 task. It is a task complicated by regulations, a lack of
11 access roads, rugged terrain, and difficult weather
12 conditions. If the Agency intends to require the
13 installation of additional boreholes or the installation of
14 communication systems on the surface, they need to consider
15 this factor. The industry needs a more efficient means of
16 accessing surface rights for emergency response and other
17 safety-related purposes. MSHA is encouraged to take this
18 factor into consideration when formulating the final rule.

19 In closing, I want to thank you for the
20 opportunity to comment on the ETS. At this point, Mr.
21 Conaway will address some of the specific questions
22 mentioned in the ETS and in the Agency's opening comments,
23 after which, we'll be able to able to respond to questions.

24 MR. CONAWAY: Good morning. My name is Doug
25 Conaway. I am the corporate Safety Director for Arch Coal.

1 I --

2 MR. SEXAUER: Excuse me, Mr. Conaway. That --
3 we're going to try another microphone setup, here, and see
4 if this works a little better.

5 MR. CONAWAY: I appreciate the opportunity to
6 comment on the Emergency Temporary Standard published by the
7 Mine Safety and Health Administration on March 9, 2006. My
8 specific purpose today is to offer testimony on some of the
9 specific questions offered by MSHA relating to the ETS.
10 MSHA has asked interested parties to respond to specific
11 questions. I will proceed by stating the question, followed
12 by the response.

13 Should miners have the ability to tether
14 themselves together during escape through smoke-filled
15 environment? Arch does not feel that tethering should be a
16 requirement. We do feel that miners should have the option
17 to tether and that the necessary equipment to tether should
18 be available to miners. Miners faced with an emergency
19 situation must have the flexibility to exercise judgment as
20 to the best means for all persons to exit the mine in a safe
21 manner. Each emergency has a unique set of conditions that
22 must be evaluated prior to evacuating the mine. We have to
23 rely on the problem solving and decision making skills of
24 the miners in that situation to analyze their circumstances
25 and exercise good judgment.

1 Storing a tether rope on a working section at
2 the SCSR storage location would provide miners the option of
3 tethering if they determine a need to link themselves
4 together. It is not necessary to mandate every detail of the
5 tether rope. This should be a performance-oriented issue.
6 Any related regulation should specify that the tether be
7 made of durable material of reasonable length and easy to
8 attach.

9 Should a training record under new paragraph
10 (c) (3) of 75.1502 include additional information, such as a
11 checklist? Arch agrees that developing performance-based
12 checklists that identify self-escape competencies would be a
13 valuable tool to evaluate the proficiency of miners.

14 When should a miner don an SCSR during an
15 evacuation? Should at least one miner in a group of miners
16 or an individual miner working alone have a multi-gas or
17 quality air detector? Arch feels that a regulation
18 requiring that an individual miner or one miner in a group
19 of miners to carry a multi-gas detector makes common sense.
20 This would enable miners in an emergency situation to
21 determine with more accuracy when to don an SCSR. If miners
22 wait until they see the first evidence of smoke, it may be
23 too late.

24 Should SCSR storage locations be determined by
25 the performance-oriented NIOSH-MSHA heart rate study, or

1 should specific distances, such as 2,500 and 5,000 feet,
2 depending on seam height, be specified by the regulation?
3 Arch does not feel that a prescriptive approach to SCSR
4 storage locations is appropriate. Operators should be
5 permitted to determine where caches are located based on the
6 recommended test in the ETS. We agree with the general
7 approach outlined in the MSHA-NIOSH heart rate study. In
8 our opinion, a performance-oriented approach to the location
9 of SCSR storage caches is more appropriate. Some states
10 have adopted a standard which establishes SCSR storage
11 locations by intervals based on the height of the coal seam.
12 We also agree that this type of approach to locating SCSR
13 storage caches, a performance-oriented standard of this type
14 is easily understood and implemented. The travel time
15 necessary to exit a mine varies considerably according to a
16 mine's seam height, other unique physical characteristics,
17 as well as the physical condition of the miners involved in
18 the evacuation. Locating SCSR storage caches according to
19 preset distances fails to address these variables. Finally,
20 we agree with the Agency's criteria for approving SCSR
21 storage plans should consider the materially different
22 quantities of available oxygens provided by competing types
23 of SCSR units. As the Agency is aware, some types of SCSR
24 units are capable of providing emergency air far beyond the
25 one hour rating capacity.

1 Should filter SCSR units be prohibited by the
2 regulation? Arch feels that filter-type rescuers should be
3 permitted under approved storage plans, specifically on long
4 wall faces, where facing -- where space and clearance is
5 very limited. Filter-type rescuers have historically been
6 proven serviceable. They provide mine-worthy protection
7 against hazardous levels of carbon monoxide. While many
8 miners -- mines have voluntarily eliminated filter-type
9 rescuers, operators should still have the option to continue
10 using filter-type rescuers to supplement the one-hour SCSR
11 units required by the ETS.

12 Should MSHA add a new provision to 75.1714-4 to
13 allow the use of new SCSR technology that may provide up to
14 two hours or more of oxygen? Our response to this question
15 is a very straightforward yes.

16 Should MSHA require the following information to
17 be reported for each SCSR at the mine: One, the number of
18 SCSR units; two, the manufacturer; three, the model; four,
19 the date of the manufacture; and five, the serial number?
20 This information is already a requirement for mines with
21 SCSR storage plans. These plans include the number and
22 location of the SCSR units. If the locations change, the
23 plans have to be updated. This provision would not require
24 any additional information-gathering for mines with storage
25 plans. While a requirement of this type would facilitate

1 research-oriented data gathering and enhance potential
2 recall efforts, the Agency first needs to arrive at a
3 mechanism such as a barcode to facilitate data gathering.
4 Even with a barcode, an additional reporting requirement of
5 this type would be time consuming. While we agree with the
6 information -- we agree that the information should be
7 available at the mine, we disagree with the need for
8 additional reporting requirements.

9 Should MSHA require mine operators to promptly
10 report to the District Manager incidents where the SCSR unit
11 used in an accident or emergency and all incidents where a
12 SCSR malfunctions? Arch has no objection notifying the
13 Agency when an SCSR unit used in an accident or emergency
14 fails. We also agree with the need to provide MSHA access
15 to units that failed during emergency use. We maintain,
16 however, that the Agency should permit operators to
17 participate in any testing and share test results. We see
18 no value in notifying the Agency when SCSR units are
19 routinely damaged or malfunction, unless there's a pattern
20 of damage indicative of a product defect.

21 Are there other ways to provide SCSR storage
22 locations for outby crews, pumpers, and examiners? If outby
23 crews, pumpers, and examiners are not able to access the
24 section escapeway SCSR storage caches within the allotted
25 timeframe established for their mine, SCSR coverage

1 consideration should be given to them on an individual
2 basis. Pumpers and examiners are miners that work routinely
3 in the same well-defined area of the mine. Utilizing the
4 time-distance tables, SCSRs could be placed at the necessary
5 locations to provide adequate coverage. Outby crews such as
6 belt maintenance, supply personnel, et cetera, require
7 transportation. These miners could use the SCSRs that are
8 required to be stored on all mantrips that enter and exit
9 the mine.

10 Where a mine has adjacent and parallel
11 escapeways, under what condition should MSHA allow a
12 hardened room or safe haven to be used to store SCSR units
13 for both escapeways? A hard room is constructed with
14 permanent seal techniques, submarine-type doors that open to
15 both escapeways, and has positive ventilation to the
16 surface. Based on the language of the ETS, a number of
17 operators have proposed, as an alternative, the use of
18 airlocks located between adjacent escapeways for the storage
19 of SCSR units. A storage location of this type could also
20 house other important emergency supplies. The use of an
21 airlock has the additional benefit of providing employees
22 with an area isolated from a main air course for which to
23 transfer SCSR units. Another alternative proposal is to
24 build an SCSR storage unit into the stopping to permanently
25 store SCSR units to be accessed from either escapeway. Arch

1 agrees with these concepts. Both proposals are simple,
2 functional, and can be engineered in a safe, mine-worthy
3 manner. Arch also maintains that an airlock can be
4 engineered so that SCSR units are readily accessible. This
5 might be accomplished by installing a larger door in the
6 stoppings. We do not believe that it is necessary for an
7 SCSR storage location of this type to be a hardened room
8 with submarine doors and a borehole to the surface, as
9 proposed in the Agency's opening comments.

10 Should the placement of directional cones be
11 standardized according to NIOSH recommendation? Arch
12 maintains that the placement of directional cones should be
13 standardized according to the NIOSH recommendation. Having
14 one standard method of installing directional cones will
15 avoid confusion for miners who transfer from one mine
16 location to another.

17 Should miners be required to walk the escapeway
18 in it's entirety rather than use mechanized transportation?
19 Should miners be required to walk a portion of the
20 escapeway that contains unique characteristics? As stated
21 in our general comments, Arch disagrees with the need to
22 physically walk the entire escapeway. Miners can be
23 familiarized with the general and unique characteristics of
24 the escape route if they use mechanized transportation to
25 travel this entry. We propose that the escapeway drill be

1 devoted to more meaningful scenarios and expectations
2 training in order to improve critical, problem solving, and
3 decision making skills.

4 Should more realistic escape training be
5 considered, such as smoke drills and expectations training,
6 such as breathing through an SCSR? As stated in response to
7 the previous question, Arch agrees that training of this
8 type would be more meaningful than walking the entire
9 escapeway.

10 Should all emergency evacuation drill
11 requirements be included in 75.1502? we agree that the
12 inclusion of all emergency evacuation drill requirements in
13 one section would help clarify this section.

14 Should a new section foreman be required to
15 travel both escapeways prior to acting as a boss on a
16 section? This is a requirement that makes good practical
17 sense. All supervisors should be familiar with the
18 escapeway prior to assuming responsibility of working on
19 that section. Those individuals who are currently
20 supervising and working on a section should be
21 grandfathered.

22 Should all mine fires be reported to MSHA,
23 including mines shorter than a 30 minute duration? Arch
24 maintains there is no compelling evidence justifying a
25 revision in a definition of an immediately reportable fire.

1 Current regulations require a mine operator to report an
2 unplanned mine fire that is not extinguished within 30
3 minutes of discovery. Historically, this 30 minute period
4 has provided mine operators with an adequate period to
5 extinguish and control an unplanned heating event. To
6 shorten the 30 minute period would result in numerous false
7 alarms. It would also lead to the inefficient use of
8 emergency response resources. The existing requirement in
9 this area is clear. Mine operators understand what types of
10 unplanned fires to report and what circumstance that
11 requires MSHA notification. While there will always be
12 unique circumstances that require a mine operator to
13 exercise good judgment, changing the current requirement
14 will only result in confusion. It will also result in
15 numerous unnecessary phone calls. The current requirement
16 for notifying MSHA of unplanned fires after 30 minutes is
17 effective. It should not be changed.

18 Thank you for the opportunity comment. We will
19 be available to respond to any questions you may have.

20 MR. SEXAUER: Gentlemen, would you be willing to
21 leave a copy of your written comments with us? Thank you.

22 Excuse me, I think we have a question or two,
23 here. I'm sorry.

24 MR. SHERER: Mr. Bumbico and Mr. Conaway, how
25 many of Arch's mines have parallel entries to the

1 haulageways that you were concerned about, as far as
2 lifelines?

3 MR. BUMBICO: A pretty common concerns of all of
4 our underground mines.

5 MR. SHERER: No, I mean, how many of your mines
6 have parallel entries to those haulageways? Do you just
7 have single haulageway entries that are on a separate split?

8 MR. BUMBICO: Well, a number of our mines in the
9 West are two-entry mines, so we're operating on that type of
10 a system, and I could get you some specific information in
11 writing as to what we have.

12 MR. SHERER: Okay. There's no requirement that
13 the escapeway be in the haulageway if you have a parallel
14 entry.

15 MR. BUMBICO: We understand that.

16 MR. SHERER: Okay. Another question, you talk
17 about using airlock doors for the storage of SCSRs. How
18 would you propose to ventilate those areas?

19 MR. CONAWAY: Well, current airlocks are not
20 ventilated -- I mean, they don't have a separate split of
21 ventilation in the mine environment today, but you could,
22 similar to ventilating a charger of sorts, you could provide
23 some form of ventilation into that airlock.

24 MR. SHERER: So, you would ventilate it from the
25 primary escapeway to the sec -- to the alternate escapeway?

1 MR. CONAWAY: I'm just saying, right now,
2 initially, Eric, that every airlock in a mine is not on a
3 separate split of air or ventilated.

4 MR. SHERER: Okay.

5 MR. MACLEOD: In your discussion on visitors and
6 hazard training, and possibly some independent contractors
7 who may not be in the mine for a length of time, you talked
8 about an alternate training different than, probably, what
9 other miners would get. You may not be able to do it now,
10 but could you provide us with some information on what you
11 envision this different training to be, or alternate?

12 MR. BUMBICO: Sure, we'd be happy to.

13 MR. MACLEOD: I appreciate it, thank you.

14 MR. KRAVITZ: I had one question. If you store
15 SCSRs in an airlock, do you think they'd be substantially
16 protected in an explosion -- in the event of an explosion?

17 MR. CONAWAY: Well, I mean, given any -- you
18 know, multiple scenarios of what may take place, I mean, you
19 have to pick a location and you have to place, you know, the
20 SCSRs strategically in the mine. Are they going to be
21 protected in all situations? I -- that -- I mean, that's
22 very difficult to answer.

23 MR. FORD: Mr. Conaway, do all mines owned by
24 Arch have a -- are those mines -- are all those mines on
25 storage plans?

1 MR. BUMBICO: No, they're not.

2 MR. FORD: Okay.

3 MR. BUMBICO: All of them, with the exception of
4 one of our subsidiaries, has a storage plan.

5 MR. FORD: Okay. The one that's not on the
6 storage plan, or the ones that are not on the storage plans,
7 do you keep the information that's -- concerning the SCSRs
8 in those mines, such as the total number of SCSRs,
9 manufactures, et cetera?

10 MR. BUMBICO: Yes, we do.

11 MR. FORD: You do? Okay. I guess that maybe
12 could clarify, then, your statement that you think that this
13 type of information should only be maintained in those mines
14 which have storage plans, but yet, you seem like you do it
15 in your other mines, also.

16 MR. BUMBICO: Well, also, with the introduction
17 of the ETS, we will have a storage plan at one subsidiary
18 that didn't have one previously, so it's information that
19 we're going to have at all of our locations.

20 MR. FORD: Okay, thank you.

21 MR. SEXAUER: Any more questions? Gentlemen,
22 thank you.

23 I think we'll take a 10 minute break right now.

24 (Whereupon, the proceedings in the foregoing
25 matter went off the record for approximately 10

1 minutes.)

2 MR. SEXAUER: We'll go back on the record.

3 Next speaker is Mr. John Gallick.

4 MR. GALLICK: My name is John Gallick, G-A-L-L-
5 I-C-K. I am the Director of Safety for Foundation Coal
6 Corporation.

7 Foundation Coal is the fifth largest coal
8 company in the United States with operations in
9 Pennsylvania, West Virginia, Illinois, and Wyoming.
10 Foundation Coal has a strong interest in this emergency
11 standard. I will be offering my opinion to the panel on
12 specific issues within these regulations that either need
13 clarified or that the intent of the regulation can be
14 enhanced by changes in the present wording of the emergency
15 regulation. I will address each segment of the regulation
16 separately.

17 One, part 48, training. In general, I support
18 the revised part 48 standard changes proposed in the
19 emergency standard. I believe that there should be
20 clarification as to what exactly will be required by an
21 operator when training a non-miner. Using the definition of
22 "miner" from part 48.2(a)(1), non-miners include visitors
23 and people on the property for a short time frame. As
24 presently written, the ETS changes only impact miners, yet
25 the preamble discusses requiring hands-on training and SCSR

1 transferring training for visitors. This issues needs
2 clarified. Our position is that non-miners visiting the
3 operations can receive adequate training via demonstration
4 or video review of the use of an SCSR. Any visitor or non-
5 miner is accompanied at all times by an escort. Visitors
6 depend on these escorts to provide for their safety.
7 Providing an overview of SCSR training without the detailed
8 training needed for miners is adequate. To require hands-on
9 training and transferring of the SCSR units for visitors
10 will not enhance safety and will limit the number of
11 visitors tours that mines will agree to accompany.

12 Number two, part 50, notification. The action
13 reporting standard changes under part 50 are clearly
14 intended to facilitate a rapid response by the Agency to
15 serious accidents, particularly, those accidents that
16 require additional resources for rescue and recovery. This
17 is understandable and I support the attempt by MSHA to
18 assure a rapid and coordinated response for those relatively
19 rare instances. As written, however, the 15 minute
20 notification requirement includes the entire list of
21 accidents as defined in part 50 as being immediately
22 reportable. I don't believe that was the original intent of
23 establish a 15 minuet notification requirement. I believe
24 that this standard would be enhanced by limiting the 15
25 minute response requirement to those events that require a

1 rapid, coordinated response for rescue and recovery. That
2 said, if the Agency chooses to require a 15 minute
3 notification for all immediately reportable accidents, I
4 believe that MSHA should provide one district phone number
5 to contact, to contact MSHA, and not a call chain of numbers
6 that has been typically used and is discussed in the
7 preamble as MSHA's plan to receive calls. I believe that
8 changing the MSHA protocol to providing a one-call number at
9 each district will enhance the operator's ability to provide
10 timely notification to MSHA. It is important to recognize
11 that a number of other calls need to be made by that
12 operator in the event of an emergency. By MSHA providing
13 one number to call for notification, the operator can then
14 turn his attention to his other calls and ensure that all
15 the remaining calls required in an emergency can also be
16 timely conducted.

17 I'd also like to comment on the practical effect
18 of the requirement that all accidents listed as immediately
19 reportable must be called into MSHA within 15 minutes.
20 Prior to this change in the regulation, most incidents were
21 not called in to MSHA by the surface attendant but were
22 called in from someone in management who was notified of the
23 event by that surface attendant. Generally, the person
24 calling MSHA could answer questions and provide some detail
25 as to the seriousness of the event. Granted, this was not

1 in the 15 minute time frame, but the additional information
2 and coordination was a benefit to both the operator and
3 MSHA. In the preamble, the Agency has indicated that the 15
4 minute period begins after the operator has determined that
5 an accident has occurred. Further, the Agency has indicated
6 the operator needs to convey sufficient information so that
7 the Agency knows what has happened. The difficulty is that
8 the period of 15 minutes is far too short to gather any
9 substantive information. The operator may only know that
10 something that the Agency would consider an accident has
11 occurred without having any details. Under the 15 minute
12 notification requirement, it is more likely that the call to
13 MSHA will be made by the surface attendant and only a bare
14 minimum of details will be available during this call. This
15 will just be a reality of the new system, however, it is not
16 the best way to make certain MSHA learns of an accid --
17 emergency and has enough information to make subsequent
18 decisions.

19 Number three, part 75, mandatory safety
20 standards, section 75.3807(i). In general, I support the
21 changes in the regulations that require the use of lifelines
22 in escapeways. I think that this standard would be improved
23 if an exemption was included that eliminated lifeline in
24 track entries and in beltlines. The entries without track
25 or belt structure may need lifelines as a guide for quicker

1 escape. I believe that this guide is not needed where other
2 structures such as track or belt structure is already
3 available for guidance in escaping. Further, I believe that
4 lifelines in/around track switches can actually be a
5 detriment to the day-to-day mine safety. These lifelines
6 fall loose from the roof. They can be caught by haulage
7 equipment and either pulled down in a domino effect or
8 possibly injure a person in or around the switch area. I
9 ask the panel to consider these issues when developing the
10 final regulation.

11 Lastly, in one of the question and answers
12 provided for this section of the emergency standard, a
13 question were asked about using insulated j-hooks to hang
14 lifeline from mine's high voltage cables. MSHA's answer was
15 that that was unacceptable. I respectfully disagree with
16 that answer. The present regulation concerns only
17 regularly-traveled under emergency-energized high-voltage
18 cables. Hopefully, the need to travel under the high-
19 voltage cable will never be needed, and any training
20 sessions that can be conducted without traveling on -- can
21 be conducted without traveling under unguarded high-voltage
22 cables. It is difficult in non-track travelways to assure
23 that the lifeline or other cables will not be hit by mobile
24 equipment. Placing as many of these cables on one side of
25 the entry minimizes this problem.

1 Section 75.1502(a)(1). I want to reinforce the
2 process under section 75.1502(i)(4), sorry. We train our
3 employees to fight fires as a first line of defense so we
4 don't have a full-blown mine emergency. I commend MSHA for
5 acknowledging this fact. I would ask that MSHA train their
6 local inspectors and field supervisors to support and
7 understand our plans for firefighting. There have been too
8 many occurrences where fighting -- firefighting has been
9 hindered by 103(k) orders or other orders of withdrawal from
10 firefighting activities. Many of these orders of withdrawal
11 are made over the phone. One of my issues concerning the
12 immediate notification process previously discussed is that
13 the mine-level caller may not either have the proper
14 information because of the extremely limited time period for
15 notification or may end up speaking to someone from the
16 Agency who issues a blanket withdrawal order without really
17 knowing what the operator is trying to do to control the
18 emergency. We believe that MSHA can help in this training
19 by directing local inspectors to become familiar with the
20 mine's firefighting practices. It is my opinion that a
21 103(k) order withdrawal should be issued -- should not be
22 issued until the Agency representative has enough details of
23 the situation the operator is confronting and what actions
24 the operator is taking to handle the situation. Operator
25 evacuation and firefighting plans are designed to address

1 the handling of emergencies. It is important to allow for
2 these plans to proceed as designed. I believe that both the
3 operators and Agency want the emergency plan of action that
4 includes firefighting to be enacted and not to be
5 prematurely halted due to miscommunication.

6 Section 75.1502(c)(1). I recognize that the
7 standard interval for fire training -- fire drill training
8 and, subsequently, mine emergency training, has always been
9 "not more than 90 days." With the addition of more
10 extensive training requirements in the ETS, I recommend that
11 this time frame be modified to "once each quarter." This
12 change will enable the operator to train more efficiently
13 without any negative effect on the actual training standard.
14 Large mines will be training over 400 people on SCSR
15 transfers, escapeway systems, firefighting and evacuation
16 drills. This can all be accomplished quarterly. By
17 providing timing flexibility, crews can be pulled
18 systematically for training. If there is a concern that
19 someone might train at the end of one quarter and at the
20 beginning of the next quarter, the rule could be written to
21 provide that the training must be accomplished in a window
22 of time. For example, the rule can require that training be
23 accomplished in the months of -- in a month during each
24 quarter, for example, January, April, July, and September.
25 The schedule can be listed in the plan. We all want

1 whatever training we do to be quality training. By simply
2 changing the time frames so that we have flexibility in
3 training during a month in each quarter, this quality can be
4 enhanced. This is not much different than the present
5 interpretation of an annual retraining date, where the due
6 date for retraining is triggered not by the date of that
7 training, but by the month of that training.

8 Section 75.1502(c)(2). I disagree with the
9 requirement that all people must travel the entire escapeway
10 every 90 days as part of the training requirement. This is,
11 at best, rote training. Physically traveling an entry does
12 not train a person on escape. It would be more logical to
13 train miners on expectation training concerning their
14 escapability in a mine emergency. Instructing workers on
15 the entrances from their work locations to the escape
16 system, the lifeline systems, SCSR locations, and physical
17 issues in the escapeways, such as areas that are low or more
18 difficult to travel, locations where decisions need to be
19 made such as overcast banks, et cetera, would be better use
20 of training time. It is more important to train miners on
21 the decision making required in an emergency rather than
22 engage in the drudgery of simply exiting through the
23 escapeway.

24 We need to look no further than Sago to observe
25 the necessity of this. The Sago miners tried to come out

1 the track and the intake escapeway and were turned back in
2 both cases. They then decided to barricade. It's far more
3 useful for miners to use these types of situations as
4 discussion points in training exercises and to understand
5 these type of choices rather than trudging out of the entire
6 escapeway every 90 days. Additionally, much of the NIOSH
7 studies on escape emergencies discussed the fact that many
8 times, the workers who are escaping have little knowledge of
9 the location, size of a fire. Again, this is a training
10 issue that can be of more beneficial use than -- working on
11 this, than spending time walking the entire escapeway.

12 The second issue with travel of escapeways by
13 all employees is the physical condition of people. There
14 are a number of employees at mines that will have a
15 difficult time walking the distances of some of the
16 escapeways or the condition of escapeways, such as the
17 travel height. This does not mean that in an emergency,
18 that these workers can't escape. That's an entirely
19 different issue. The question is, should an employee with
20 an arthritic knee be forced to suffer for days after an
21 escapeway walk, or is it more important that he know the
22 escape system? I recommend that this section be changed to
23 require the operator to provide quarterly training of all
24 employees on escape routes, emergency escape scenarios, SCSR
25 locations, and areas and escape systems where decisions for

1 which direction to escape may need to be made. It is clear
2 that 75.1500 will now be a major addition to the industry's
3 training requirements. Let's use this time wisely to make
4 miners better prepared for emergencies, rather than just
5 traveling entries.

6 Section 75.1502(c)(2)(ii). I want to reinforce
7 the position that donning and transfer training on SCSRs can
8 be accomplished more effectively on the surface. I realize
9 MSHA has stated in the Q&A on the ETS that this is
10 acceptable, but I just want it restated. I do not object to
11 transfer and donning hands-on training requirements. I
12 recommend that this be modified, however, so that operations
13 that have multi-types of SCSRs be permitted to train for
14 varied transfer each quarter. For example, an operation may
15 wear a belt worn unit such as an SR100 and have in storage
16 other SR100s as the additional rescuer. This operation may
17 also store in caches Ocenco units. In theory, the worker
18 would transfer SR-100 to SR-100, SR-100 to Ocenco, or SR-100
19 to Ocenco and then back to SR-100. I recommend that one
20 type of transfer be required to be trained each quarter.

21 75.1714-2 and 75.1714-4, signs. This may seem a
22 small matter to the panel, but the ETS language requiring
23 specific wording such as "self-rescuer" or "self-rescuers"
24 is much too prescriptive. Whatever sign verbiage that is
25 chosen by the operation to designate self-rescuer storage

1 should be acceptable.

2 SCSR storages in escapeways. Section 75.1714-
3 4(c) requires additional self-rescuers in the primary and
4 alternate escapeways to augment other SCSR requirements when
5 length of the escapeway is greater than one hour of travel
6 time. A number of operations have escapeways in adjacent
7 entries. Logically, one cache of rescuers properly located
8 in the cross-cut between these entries should suffice for
9 both escapeways. The Agency has rejected this idea. I
10 believe the Agency is wrong. A self-rescuer cache in the
11 cross-cut, properly marked, equipped with escapeway-sized
12 doors as prescribed in the regulations, forming an airlock,
13 does not hinder access to the rescuers or hinder
14 escapability of workers.

15 Thank you for the opportunity to speak at this
16 proceeding, and I will answer any questions you may have.

17 MR. SEXAUER: Do you have a question?

18 MR. SNASHALL: The 5010 notification provision
19 has always required that the notification be immediate. To
20 be clear, are you saying that non-rapid response events do
21 not need to be immediately reported?

22 MR. GALLICK: I guess what I'm really saying is
23 that in non-rapid response emergencies, is it better to have
24 a delay in reporting with details of the event, such as a
25 roof fall with nobody injured or an elevator with nobody on

1 it that is not running, than to make a immediate call with
2 no information and the turmoil that causes? In the past,
3 frankly, we -- in those kind of events, we always went over
4 the 15 minutes and, you know, but we always -- when we did
5 call, there was detailed information available, you know,
6 and the person calling was somebody who was familiar with
7 the area or somebody from management. All I'm saying is, if
8 you -- if we -- if you leave all the accident notification -
9 - 15 minutes, please be aware that all we're going to -- all
10 you're going to get is a very, very basic report. There was
11 a roof fall reported by a fire boss in a return in 3 Left.
12 No details as to -- will be available to that fellow that
13 he's going to make in 15 minutes, I guarantee it, but he'll
14 know it's a roof fall above the anchorage point, therefore,
15 he only has the 15 minutes to call. Just accept that.

16 The other -- you know, my other point is,
17 obviously, just, you need one phone number. We don•t need a
18 call chain.

19 MR. SEXAUER: Okay. Thank you, Mr. Gallick.

20 MR. GALLICK: You're welcome.

21 MR. SEXAUER: Next, we have two speakers
22 together, Chris Bryan and Mark Ellis.

23 MR. ELLIS: Good morning.

24 MR. SEXAUER: Good morning.

25 MR. ELLIS: I am Mark Ellis, E-L-L-i-S,

1 President of the Industrial Minerals Association North
2 America, or IMA-NA. With me today is Mr. Chris Bryan, B-R-
3 Y-A-N, Occupational and Safety Health Manager for U.S.
4 Silica Company, a member company of IMA-NA.

5 We plan to testify as a two-person and would
6 prefer to respond to questions at the conclusion of our
7 testimony. Is that acceptable to you, Mr. Chairman?

8 MR. SEXAUER: Yes, it is.

9 MR. ELLIS: The Industrial Minerals Association
10 North America is a trade association representing producers
11 and processors of industrial minerals, as well as equipment
12 manufacturers, railroad and trucking companies, media
13 companies, law firms, and consulting professionals that
14 serve the industrial minerals industry. IMA-NA's membership
15 currently include companies that mine and/or process all
16 clay, bentonite, borates, feldspar, industrial sand, mica,
17 soda ash, sodium silicate, talc, wollastonite, and other
18 minerals. These minerals are the industrial feed stocks for
19 the manufacturing and agricultural industries, providing the
20 raw materials for such essential products as glass,
21 ceramics, paints, plastics, metal castings, and fertilizer.

22 All IMA-NA producer members operating in the
23 United States are impacted by the Mine Safety and Health
24 Administration's Emergency Temporary Standard on emergency
25 mine evacuation, issued on March 9, 2006, specifically, the

1 provisions of 30 CFR section 50.10 addressing immediate
2 notification of MSHA by mine operators when an accident
3 occurs. IMA-NA is pleased to testify on the proposed rule
4 on their behalf.

5 Requiring that MSHA be notified within 15
6 minutes of an accident in all cases is impractical and even
7 may be dangerous. In the event of a mine emergency, mine
8 personnel immediately are engaged in activities designed to
9 save lives and limit harmful effects. Reasonable and timely
10 notification to MSHA is necessary but not such as it has --
11 not such that it has the potential to distract mine
12 personnel from lifesaving activities. Whether such a
13 stringent requirement would endanger or assist an injured
14 miner will depend upon the situation.

15 The former requirement of 30 CFR section 50.10
16 that "if an accident occurs, an operator shall immediately
17 contact MSHA" could accommodate such situations. As MSHA
18 notes in the preamble to it's proposal, the Mine Safety and
19 Health Review Commission has observed that "immediately" is
20 a term of common usage and that the application of the
21 former requirement must be evaluated on a case-by-case
22 basis. We concur. It is not reasonable to require
23 notification to MSHA within 15 minutes of all accidents
24 occurring, since it could distract mine personnel from
25 actions needed to save lives.

1 MSHA, itself, recognizes that a "bright line" 15
2 minute immediate notification rule is not appropriate in all
3 circumstances. The current CFR 50.10 provides that "if
4 communications are lost because of an emergency or other
5 unexpected event, the operator shall notify MSHA at once
6 without delay and within 15 minutes of having access to a
7 telephone or other means of communication." Should not a
8 similar exception exist for mine personnel engaged in
9 actions to save lives? We think so and believe that the
10 straightforward requirements for immediate notification
11 contained in the former 30 CFR 50.10 is best suited to
12 address such exceptions. A performance-based standard is
13 preferable to a specification-based standard.

14 I'd now like to turn the microphone over to Mr.
15 Bryan.

16 MR. BRYAN: Thank you, Mark, and good morning.
17 I'm Chris Bryan, B-R-Y-A-N, Certified Mine Safety
18 Professional, and I'm the Occupational Health and Safety
19 Manager for U.S. Silica Company, a member company of IMA-NA.

20 U.S. Silica Company represents more than a
21 century of mining and providing processing experience in
22 industrial minerals. It has established a standard of
23 excellence in the production of silica and industrial --
24 other industrial mineral products. That commitment to
25 excellence extends to providing a safe and healthful

1 workplace for it's employees.

2 IMA-NA does not disagree in concept with the
3 rationale advanced by MSHA in it's support of proposed rule
4 requiring mine operators to immediately notify MSHA of an
5 accident. Specifically, coordination of appropriate mine
6 rescue and other emergency response, enabling help to arrive
7 sooner at the mine can protect miners from grave dangers of
8 physical injury and death and activation of MSHA's district
9 emergency response plan.

10 Operator notification to MSHA in the event of a
11 mine accident is vital to enable the Agency to respond
12 effectively in emergency or potentially life-threatening
13 situations; however, what happens when mine personnel,
14 perhaps, as few as one or two miners, are confronted with an
15 injured miner and as first responders, they are called upon
16 to administer first aid? Should they cease administering
17 cardiopulmonary resuscitation or applying direct pressure to
18 a bleeding wound, or treating an individual in shock? We
19 think not. Again, reasonable and timely notification to
20 MSHA is necessary, but not such that it has a potential to
21 distract mine personnel from life-saving activities. It is
22 not reasonable to require notification to MSHA within 15
23 minutes of all accidents occurring because, in some
24 instances, it could distract mine personnel from actions
25 needed to save lives.

1 Could other situations exist where it would not
2 be reasonable or appropriate to notify MSHA within 15
3 minutes of an accident? Conceivably. We would all hope --
4 we would hope that all mine operators would recognize that
5 notification of MSHA of an accident is urgent and must be
6 made a priority; however, we would hope that MSHA would
7 recognize that there are situations that can occur where
8 strict adherence to the 15 minute rule, the 15 minute
9 reporting requirement, could endanger the life of one or
10 more miners.

11 The straightforward requirement of the former 30
12 CFR 5010 for immediate notification is best suited to
13 address such situations. As a performance-based standard,
14 it is preferable to the proposed 15 minute specification-
15 based standard.

16 Thank you, Mr. Chairman, and members of the
17 panel, for your attention. Mr. Ellis and I are now
18 available to respond to your questions.

19 MR. SEXAUER: At this point, we have no
20 questions. Thank you very much.

21 Our next speaker will be Jack Henry and another
22 gentleman will be joining him, I think. If you'll use the
23 microphone in the center.

24 MR. CONRAD: Good morning.

25 MR. SEXAUER: Good morning.

1 MR. CONRAD: Thank the panel -- we thank the
2 panel for your travels and your participation, here, in
3 Charleston, today.

4 The -- we represent Mine Safe House. It's a
5 limited liability company in West Virginia with affiliation
6 of other international concerns in the research industry and
7 in the carbon industry.

8 MR. SEXAUER: Could I ask you to say your names
9 for the record, please? I had a little difficulty reading
10 it on the list.

11 PARTICIPANT: We can't hear.

12 MR. CONRAD: My name is Erwin Conrad and with me
13 is Jack Henry. We represent Mine Safe House LLC.

14 We commend the panel for being here and we also
15 recognize the critical importance of escape. We believe, as
16 miners underground believe, that escape is the first thing
17 that enters their mind in an emergency. An escape must be
18 emphasized. But, we are equally reminded by the haunting
19 words and the letter of Randy McLoy that sometimes, escape
20 is not possible. And, his words saying that they tried to
21 travel out and they were blocked, to me, that says that they
22 tried to escape, and we've heard other speakers say that
23 they tried in a couple of different ways to escape and were
24 unable to escape.

25 Our concern that we would like to address is

1 that the critical SCSRs that are necessary for escape are
2 not being protected adequately. If you have SCSRs that will
3 be degraded or compromised or exploded in an explosion or a
4 fire, then they should be protected adequately. If they are
5 to be stored in a plastic container, a wooden box, then
6 certainly, in a mine fire that can reach intensity of 1,900
7 degrees Fahrenheit or an explosion of 50 to 75 PSI, they're
8 not going to be protected to be available for the miner in
9 the event that they need it.

10 We are concerned about that and if there's
11 affordable and safe technology to protect the SCSRs, we
12 would encourage the panel to adopt standards to allow those
13 to be used. In that connection, as well, when miners are
14 unable to escape, there has been mentioned of safe havens.
15 It's been called shelters, refuge chambers. We call it a
16 safe house. We are concerned that with the experiences of
17 MSHA as noted in the Federal Register of the March 9, 2006,
18 hearings concerning the reported underground fires, 56, I
19 believe, in a 10 year period of 30 degrees or greater
20 duration and the studies by MSHA of the various disasters in
21 the last 50 years, indicating that mine fires will sometimes
22 range to 1,952 degrees Fahrenheit, that explosions have had
23 measured intensity up to 75 PSI, we are concerned with some
24 of the comments indicating that an acceptable level for
25 resistance to fire would be 300 degrees Fahrenheit and an

1 acceptable level to explosion would be 26 PSI for any sort
2 of shelter, chamber, or safe house.

3 We are particularly concerned in that there are
4 materials and prototypes have been built by our company with
5 the wonderful assistance of the Coal Research -- National
6 Coal Research Facility at West Virginia University and two
7 international firms that will resist fires beyond 2,000
8 degrees Fahrenheit and explosive forces to 75 PSI. Also,
9 the material does not have the thermal conductivity of
10 steel, which degrades at 850 degrees, and will conduct heat
11 to the inside 460 times greater than Grafoam Safety Foam,
12 which is used in the prototypes that have been developed to
13 respond to Sago and to respond to Alma and other such
14 catastrophes in the past.

15 Our concern is that underground, the most
16 important asset is not the continuous miner or any other
17 piece of equipment, it is the coal miner or materials miner,
18 and if we can't provide for their safety, truly, in a safe
19 structure, then all of the other components and all of the
20 other assets that would be utilized to try to help them
21 could be nearly worthless. If there is safe and affordable
22 technology, then we would encourage you to set standards
23 that would allow that safe and affordable technology to be
24 used. It does exist, it has been privately tested, it will
25 be submitted to MSHA for testing, and we -- it's our

1 position to encourage you to not either encourage states or,
2 through MSHA, the entire industry to adopt standards that
3 are less than safe for miners underground.

4 We are particularly encouraged by Illinois and
5 other states that have either passed or are considering
6 passage of provisions requiring shelters underground.
7 Again, we understand that every coal miner wants to escape,
8 but if they can not and if they are to be provided something
9 that's pinpointed so that they can be found in a reasonable
10 period of time, we believe that they're entitled to have
11 breathable air for a sufficient period of time at a minimum
12 72 hours, not, as some have been reporting, 24 hours, and
13 that they be in a structure that will resist all measured
14 underground fires and explosions that have been experienced
15 in the past.

16 That is something that we would encourage you to
17 look at. We will provide you the test results on the
18 material that is in prototypes that were available for
19 inspection at Wheeling at the wonderful symposium that was
20 sponsored there. Some of you may have had an opportunity to
21 see one of the two prototypes that were taken to that
22 particular location.

23 With that, I'll ask Mr. Henry if he would like
24 to make some remarks.

25 MR. HENRY: Just briefly, again. I'm Jack

1 Henry, I'm a pastor. Right quick, you're wondering what in
2 the world is a pastor doing here? Well, I was once a coal
3 operator and, but, for the last 25 years, I've been in
4 ministry.

5 But, I've been real concerned that we have all
6 this great natural resource wealth but we weren't getting
7 the maximum dollar value that we could be getting by
8 bringing them to their ultimate product that they could
9 become and to make a long story short, I began to study and
10 that's where I first met the chemical engineers and the
11 industrial engineers, the civil engineers at WVU, and gave
12 them my concerns, and I learned that they had been working
13 for many years to try to bring these natural resources to
14 this maximum dollar that they could become. I learned that
15 they, too, were as interested as I was in creating jobs in
16 West Virginia, and so, with that in mind, the chain led to a
17 major company, Graftech, by name, who is already making some
18 things that had been jointly discovered by WVU, and
19 Graftech, through their research, but long story short, I
20 saw these materials that they had made. I was able to be
21 there when they tested them, I experienced the fire
22 resistance that they used with the torches and other -- and
23 then, they showed me the testing that they had done.

24 It was collision-resistant material, it was
25 explosion-resistant, it was fire-resistant, and the thought

1 that came to our mind was that we ought to be making this
2 into armor protection for military applications, and we
3 began to pursue that, and we were making great headway, but
4 in January, another organization, by the way, that we
5 formed, was called Believe in West Virginia Leadership
6 Foundation, and in that organization, that's how I met Erwin
7 and he became a part of that a couple of years ago with us.

8 But, we began to move toward this armor
9 protection, but in January, when the Sago thing happened,
10 one Mr. Conrad's clients had asked him -- had given him his
11 idea about a safe house and Erwin right quick called me and
12 the rest -- we began to work and went back to revisit WVU
13 and these Graftech and others and all of us were on the same
14 page, that we believe that this was kind-of divinely led,
15 that we could make a safe house, and so, for three months,
16 we crammed, we worked, and we traveled, and we brought to
17 pass, and we brought into existence this prototype that
18 we're talking about and we believe that it's portable enough
19 to be moved inside the coal mines, it can be brought up
20 within 200 feet of the men at all times, in a section, a
21 normal section. It can be adapted to long wall, of course,
22 the structure would be different. It could be adapted to
23 low-vein mining, low coal, and -- as well as the high coal
24 seams.

25 We really believe that had this technology been

1 in existence and been in operation at Sago, that those 12
2 miners might have walked out, had they had this safety for
3 the 72 hours that we're talking about having.

4 So, we're motivated not by any greed but -- by
5 creating jobs, yes, but safety of these men was the highest
6 priority that we have, and so, gentlemen, the things that
7 Mr. Conrad told you are in existence and we would welcome
8 the opportunity to demonstrate them, and we'll -- that's
9 about what I have to say for you.

10 MR. SEXAUER: Gentlemen, thank you very much.

11 Let me just reiterate what I said earlier, at
12 the outset, that the Agency's position is that our first
13 response should be to evacuate the mine and that barricading
14 would be the last line of defense for the miners.

15 The next speaker on the list is Elizabeth
16 Chamberlin from CONSOL.

17 MS. CHAMBERLIN: Ladies and gentlemen --

18 MR. SEXAUER: Excuse me. Could we ask you to
19 speak into the larger microphone?

20 MS. CHAMBERLIN: Okay. Ladies and gentlemen,
21 good morning. My name is Elizabeth Chamberlin. I am
22 General Manager of Safety for CONSOL. I have with me today
23 Todd Moor, who is a Chief Inspector for the Safety
24 Department with CONSOL Energy. He is also a member of the
25 West Virginia Mine Safety Technology Taskforce.

1 CONSOL Energy is a multi-energy producer of
2 coal, gas, and electricity. We currently have 17 mining
3 complexes located in various states within the United
4 States.

5 MR. SEXAUER: Excuse me, Elizabeth.

6 MS. CHAMBERLIN: Yes?

7 MR. SEXAUER: Would you mind moving the
8 microphone a little closer to you, there? Thank you.

9 MS. CHAMBERLIN: And, actually, I can speak up,
10 gentlemen. I've had a long career of having to speak up and
11 make a point, but just keep reminding me.

12 All of the CONSOL Energy mining complexes are
13 associated with underground mining operations, with the
14 exception of some mining that's occurring at Mahoning Valley
15 in Eastern Ohio, Mill Creek in -- operations in Eastern
16 Kentucky employs a combination of underground and surface
17 mining methods. Currently, we are operating in Utah,
18 Kentucky, Virginia, West Virginia, and Pennsylvania.

19 CONSOL Energy appreciates the opportunity to
20 comment on the Emergency Temporary Standard on emergency
21 mine evacuation and we hope to offer a few thoughts and
22 recommendations on improvement of the Emergency Temporary
23 Standard.

24 We recognize that the ETS was prompted by the
25 high level of concern for miner safety coming out of the

1 tragic events in the West Virginia mining industry earlier
2 this year and I want to assure the Agency that we support
3 the underlying goals of the ETS fully.

4 Some of our comments, I will try not to
5 duplicate comments made by some of the other operators, but
6 we do have common thoughts on many of these processes.

7 CONSOL Energy supports the revised training
8 requirements for miners contained within part 48, but we
9 would like to use the opportunity to comment on two specific
10 areas.

11 First, with regard to hazard training, we
12 recommend clearly providing the operators the flexibility to
13 accept form 5023 documentation of applicable, up-to-date
14 SCSR training in lieu of hands-on training for non-mine
15 employees such as visitors, vendors, contractors, and other
16 non-mining personnel. We support hands-on training for
17 these personnel, we simply do not see the need for redundant
18 training if they have had recent training within the proper
19 time frames.

20 The second recommendation deals with 30 CFR
21 parts 48.5(b)(5) and 48.6(b)(5), requirements for emergency
22 evacuation and barricading instructions for new and
23 experienced miners. CONSOL Energy sincerely believes that
24 this industry must focus it's emergency response efforts
25 first on prevention, second on fire fighting preparedness,

1 and third on evacuation training, in that order. Given the
2 fact that coal is a fuel source and given the historic
3 evidence of secondary explosions, our employees must be
4 taught, and in CONSOL Energy, are taught that barricading is
5 the avenue of last resort. We appreciate the Agency's
6 position on this point.

7 CONSOL Energy has put these recommendations into
8 practice and has benefitted from strong management and
9 employee support at all levels as a result. Our efforts are
10 extensive and will be touched upon in greater detail later
11 in our comments.

12 Next, let me turn to the 15 minute notification
13 requirement of part 50. The ETS explains that the purpose
14 of revising part 50 to include a 15 minute notification
15 requirement is to enable the coordination of appropriate
16 mine rescue or other emergency response. This objective is
17 commendable, however, the part 50 definition of accident
18 appears inappropriately broad for this purpose and may prove
19 counterproductive.

20 As detailed in the NMA comments of April 28,
21 experience has shown us that it is not necessary to activate
22 mine rescue personnel or local emergency response resources
23 in many of the instances that are defined within part 50 as
24 accidents, and as earlier speakers have mentioned, there
25 would be areas such as unplanned roof falls at or above the

1 anchorage point or damage to hoisting equipment that
2 interferes with it's use for more than 30 minutes.

3 By requiring the toll-free answering service
4 maintained by MSHA Headquarters, which relies on individuals
5 with no hands-on mining experience, to distinguish whether a
6 call is a true emergency, we believe, sets the stage for
7 false alarms along with the unnecessary mobilization of
8 emergency response personnel. We are also concerned that
9 the resulting media reporting frenzy that follows such
10 situations will further exacerbate such an error and will
11 also create angst among our families and negative press for
12 the industry as a whole.

13 Therefore, we believe a preferable alternative
14 would be to limit the 15 minute notification that is made to
15 just the emergency call center, to be limited just to
16 accidents that pose a threat to life or ones that require
17 rescue or other emergency response for trapped or injured
18 miners.

19 Next, I'd like to turn to the mandatory safety
20 standards under part 75, first with regard to section
21 75.387(i). CONSOL Energy supports the Agency's efforts to
22 facilitate evacuation under adverse conditions. We commend
23 the Agency for drafting section 75.380(d)(7) to permit a
24 lifeline or an equivalent device. Such an important issue
25 isn't -- is -- with such an important issue, it is important

1 to elevate form over substance. Recognizing that lifelines
2 in many track entries and belt entries may be ineffective
3 and potentially hazardous, we encourage the Agency to
4 maintain an open mind with regard to any proposals for
5 equivalent devices. Where lifelines are being used within
6 CONSOL Energy, we are utilizing the Cav (phonetic spelling)
7 lifelines with reflective materials along with cones
8 pointing in by per the NIOSH-recommended convention.

9 Our mines are also storing taglines in our SCSR
10 storage boxes. These taglines are set up in much the same
11 way as the taglines that are used for our mine rescue teams.

12 With regard to section 75.1502(a)(1), CONSOL
13 supports the NMA's comments on this section. The section
14 addresses the procedures for rapid assembly and
15 transportation of necessary miners, fire suppression
16 equipment, and mine rescue apparatus to the scene of the
17 mine emergency. To prevent full-blown mine emergencies,
18 however, and recognizing that the first few minutes of a
19 fire are critical, CONSOL Energy elects to prepare our
20 employees and expects them to be first responders, and we do
21 this by providing hands-on firefighting training using the
22 resources that are available to our miners at their
23 worksite. Experience has shown us that this training has
24 given our employees the confidence to efficiently and safely
25 fight a fire when required. This training is only a portion

1 of our total program of prevention, fire fighting
2 preparedness, and evacuation training.

3 A few examples may be helpful in understanding
4 our commitment and investment in this philosophy. CONSOL
5 Energy's mining group employs five Fire Prevention Managers
6 who audit and maintain our fire prevention and emergency
7 response preparedness efforts. Three mobile gas
8 chromatographs and skilled technical personnel are another
9 part of this arsenal.

10 At the next level, CONSOL is extremely proud to
11 have developed one large, cohesive, well-equipped mine
12 rescue team approximately 120 employees strong, consisting
13 of members from our 12 major underground mining operations.
14 These team members are equipped and trained far in excess
15 of any regulatory requirements and participate in mine
16 rescue competitions to further enhance their skills. Our
17 team, along with many other fine teams, assisted at Sago and
18 Aracoma Alma and we would like to take a minute to commend
19 all of the teams for the dedication and skill that was shown
20 under those difficult circumstances.

21 To assist teams, we have also strategically
22 located at two separate spots storages of or caches of
23 supplies that are necessary, based on our experience, for
24 mine rescue efforts. We think by doing this that we can
25 expedite our response to any emergency situation that we may

1 encounter within our operations.

2 Internally-conducted MERD exercises also forms a
3 part of our program and I will take a moment to thank MSHA
4 and the state mining agencies for their participation in
5 these exercises with special thanks to Virginia DMME, it's
6 Chief, Frank Linkous, and it's staff, particularly, Wayne
7 Davis.

8 We commend the Agency, also, for the focus on
9 smoke training. For some years now, CONSOL Energy has
10 provided training in smoke for our mine rescue teams and in-
11 smoke evacuation training at our mine sites for all of our
12 employees. We have utilized the services of NIOSH and the
13 West Virginia Extension Service, but we now also own 16
14 smokers of our own to facilitate training whenever it is
15 needed.

16 Finally, I will touch briefly on CONSOL Energy's
17 two communication centers, one of which is dedicated
18 strictly to our coal mining operations. These communication
19 centers are key components in CONSOL Energy's emergency
20 response process. they are manned 24/7 by knowledgeable
21 personnel. They act as comprehensive communications and
22 monitoring hubs for key installations and systems such as
23 fans and CO monitoring systems. In addition to day-to-day
24 handle -- handling day-to-day communications throughout the
25 company, these centers are also tasked with activating mine

1 rescue teams if needed and making emergency notifications
2 when specifically requested.

3 In summation, emergency response preparedness,
4 in our mind, is more than SCSR and evacuation training.
5 While improving our evacuation capabilities and encouraging
6 the Agency in their efforts in this regard, the industry
7 must also maintain it's primary focus on prevention and fire
8 fighting response.

9 Now, I'd like to turn next to section -- to
10 comments on section 75.1502(c)(1). CONSOL Energy, here
11 again, adopts the NMA recommendation that the 90-day time
12 frame for training under 75.1502(c)(1) be modified to once
13 each quarter. This change would enable the operator to
14 train more effectively without any negative effect on the
15 actual training standard. This is particularly important to
16 CONSOL Energy. Our large mines will be training 400 to 600
17 people on SCSR transfers, escapeway systems, fire fighting,
18 and evacuation drills, making flexibility in the timing of
19 this training an important consideration.

20 To alleviate any concern of a person being
21 trained at the end of one quarter and at the beginning of
22 the next, however, we would suggest that MSHA could require
23 that the training be accomplished during a window of time.
24 For example, the rule could require that training be
25 accomplished in a month in each quarter, for example,

1 January, April, July, and September. This schedule would --
2 could be listed in the mine plans that are submitted to the
3 Agency for approval.

4 Proposed revisions to 75.1502(c)(2) will be my
5 next area of comment. CONSOL Energy has serious
6 reservations regarding the training requirement mandating
7 all miners travel an entire escapeway every 90 days, and we
8 have concerns our employees will come to view these drills
9 as punishment rather than training when walking rather than
10 riding out of the escapeway is mandated. A more effective
11 method of training miners on escapeways as commented upon by
12 previous speakers would be the exception training,
13 instructing miners on entrances from their workstations, the
14 location of lifelines and SCSR caches, any significant
15 unusual physical characteristics of the escapeway, and the -
16 - showing the locations where important escape decisions
17 would have to be made.

18 As an example, let's look at a typical CONSOL
19 Energy long-wall section. Escapeways are at an entry that
20 is generally isolated with a solid pillar at once side and a
21 stopping line on the other side. Once you are in the
22 escapeway, there is no escape decision to be made until you
23 reached the neck of the section or perhaps even the escape
24 shaft. Under this circumstances, showing employees the
25 entrance to the escapeway, transporting them by vehicle to

1 the location of the SCSR storage and to decision making
2 junctions would achieve enhanced training and education
3 while still allowing for training on the condition of
4 escapeways and locations of lifelines, and stored SCSRs,
5 where applicable.

6 Using this proposal, quality focus training is
7 achieved, which we feel that this result is less likely
8 under the proposed Emergency Temporary Standards.

9 Referring to section 75.1502(c)(2)(2), CONSOL
10 Energy, again, adopts my reference, the NMA comments on SCSR
11 training requirements relating to this section. CONSOL
12 joins other NMA members in supporting the hands-on training
13 requirement with transferring and donning of SCSRs, however,
14 at sites with multiple -- where multiple units are used,
15 experience indicates that enhanced training would be
16 achieved if we could focus on one specific element during
17 each quarter of training.

18 In addition, this training should be done in the
19 proper training environment, and we would suggest that
20 reality training be done only periodically, as determined by
21 the operator. For example, in CONSOL Energy mines, our
22 employees will wear Ocenco M-20 units with Ocenco EBA 6.5
23 devices stored on personnel carriers, in section storage
24 areas, at construction sites, along our belt lines, and at
25 various other key locations, to provide appropriate coverage

1 for our employees. CSE SR-100 units will -- may be
2 available for specialized uses.

3 Under the NMA proposed modification to this
4 provision, the first quarter training might well focus on
5 the transfer from an Ocenco M-20 device to an Ocenco EBA 6.5
6 device. The second quarter training may focus on the
7 donning of an SR-100 unit, or the donning of an M-20 unit,
8 or the donning of an EBA 6.5 unit.

9 More comprehensive training may also be
10 considered for part 48 annual refresher training under the
11 type of scenario that we are proposing to you.

12 These proposed modifications, in our view, place
13 quality over quantity and places the best interest in the
14 safety of our employees at the forefront.

15 Turning next to the revisions to section
16 75.1714-2 and .1714-4, CONSOL Energy supports the Agency's
17 efforts to enhance the resources available to our employees
18 and others for the safe evacuation from underground coal
19 mines in the event of an emergency. The industry is
20 committed, and CONSOL is committed, to preventing a
21 repetition of the tragic loss of life suffered at Sago and
22 Aracoma Alma. In an emergency situation, however, it is
23 critical that the additional storage of SCSRs contemplated
24 by the Emergency Temporary Standard be used for prompt
25 evacuation from the mine. Again, as we've said before,

1 barricading remains a last resort.

2 ETS section 75.17-4(b) provides that if a
3 mantrip or mobile equipment is used to enter or exit the
4 mine, additional one-hour or greater SCSR devices shall be
5 available for all persons who use such transportation. In
6 contradiction with the plain language of this provision, we
7 have found that various MSHA districts are interpreting this
8 section, and, we believe, misinterpreting this section to
9 require the storage of two SCSRs per employee on the
10 personnel carrier if a one-hour belt-wearable unit is not
11 employed. Other methods are available, as illustrated by
12 CONSOL Energy's submitted plans which fully comply with the
13 requirements of 17.14-4(b) and with the purposes of that
14 section.

15 For this reason, CONSOL takes exception to the
16 more prescriptive district positions. Our operations have
17 had a generous Ocenco SCSR storage plan for many years.
18 Under our current plans, our in-mine storage deploys 14
19 times more units underground than is required by the ETS.
20 These units, as I mentioned before, are stored strategically
21 throughout the mine. In addition, under our submitted ETS
22 storage plans, our employees will be provided with belt-
23 wearable Ocenco M-20s that will replace the W-65 chemical
24 units that are currently in use. This means our employees
25 will always have multiple oxygen units readily available for

1 their use should the need arise.

2 Turning to SCSRs in primary and alternate
3 escapeways, that's section 75.1714-4(c), which requires
4 additional SCSR storage in the primary and alternate
5 escapeways to augment other SCSR requirements, where the
6 requirements do not provide enough oxygen for all persons to
7 safely evacuate. Where the operator determines additional
8 SCSRs are required, the operator must submit a plan setting
9 forth the location, quantity, and type of additional SCSRs,
10 and they may be required by this section, by the district --
11 under this section, by the District Manager, to demonstrate
12 the plan's adequacy. Under the plain language of this
13 provision and the preamble, a number of operators, including
14 CONSOL, have proposed, as an alternative, to use airlocks
15 located between the adjacent escapeways for storage of SCSRs
16 along with other important emergency supplies. The use of
17 an airlock has the additional benefit of providing employees
18 with a space that is somewhat isolated from the main airflow
19 courses for the transfer of SCSR units. Another alternative
20 proposal would be to build an SCSR storage unit into the
21 stopping to permit storage units to be accessed from either
22 escapeway.

23 CONSOL believes both of these proposals are
24 simple, functional, and mine worthy, however, in it's recent
25 guidance documents, the Agency has rejected these proposals,

1 taking a prescriptive position that equal numbers of stored
2 SCSRs required in both escapeways. I believe that the
3 stated basis for this rejection is speculative and that it
4 encroaches on the -- and that it should be withdrawn.
5 17.14-4(c) does not require that identical quantities of
6 additional units be stored in both the primary and alternate
7 escapeway. Instead, this section requires additional units
8 in both escapeways. Furthermore, the operator's
9 alternatives, as described above, would place the SCSRs in
10 locations that would satisfy both primary and secondary
11 escapeway storage.

12 We recommend that the Agency consider a
13 specification standard such as one that has been adopted by
14 various other states which establishes SCSR storage
15 locations at simply based intervals, established on entry
16 height and seam characteristics. However, a standard along
17 these lines, while easily understood and implemented, we
18 believe, should also recognize the quantity available -- of
19 available oxygen provided by the SCSR unit utilized at the
20 mine and not be limited simply to the rated capacity of the
21 SCSR unit.

22 Finally, the preamble to the Emergency Temporary
23 Standard poses a series of questions. Most have been, I
24 believe, addressed by CONSOL Energy's testimony. A few have
25 not, and we will submit supplemental comments, written

1 comments, to the Agency. We want to touch upon two of the
2 inquiries, however, directly.

3 The first one is the question of whether the
4 operator should report details such as serial numbers for
5 SCSRs to the District Manager. CONSOL shares Arch's view on
6 this position. The point we would like to make that is, is
7 with the increasingly large number of SCSRs that are being
8 placed underground in all of our mining operations, there
9 needs to be a good reason for this type of data gathering on
10 any increased frequency. More importantly, the Agency needs
11 to encourage the manufacturers of these devices to
12 incorporate a tracking device, whether it be some type of
13 antenna or barcode into the devices, simplifying the
14 collection of this data. The technology is available, the
15 encouragement would be appreciated, and it is the direction
16 that CONSOL Energy is attempting to go with the storage of
17 our units.

18 The second question we'll address is the
19 question as to whether or not operators should be required
20 to notify the Agency of SCSR failure or use as well as
21 requiring the operator to maintain failed units for 90 days.
22 We have no objection to notifying the Agency of failed
23 units or providing them with these units subject to the
24 Agency's agreement to allow the operator to participate in
25 any testing of the failed units and subject to the Agency's

1 agreement to share any test results with the operator;
2 however, we see no valid purpose for the Agency to be
3 notified of used or damaged units unless we see a pattern of
4 damage that was -- that is indicative of a product defect.
5 In other words, we see no use -- we see no good purpose of
6 notifying a unit if an SCSR is run over by a scoop and
7 destroyed. That's just one example.

8 In closing, let me thank you, again, for
9 providing us with the opportunity to comment on this
10 standard. I would be pleased to respond to any questions
11 you may have.

12 MR. SEXAUER: Ron, you have a question?

13 MR. FORD: Yeah. You said that in some CONSOL
14 mines, you have more SCSRs than that are required by the ETS
15 rules? Was that correct?

16 MS. CHAMBERLIN: Yes.

17 MR. FORD: Okay, how many --

18 MS. CHAMBERLIN: And, we are in the process of
19 augmenting our supplies of SCSRs underground currently, and
20 of course, we have differing requirements in the state of
21 West Virginia than we do in our other operations, regulatory
22 requirements, as you are well aware.

23 MR. FORD: Okay. Do you know what percentage
24 that is where you have more SCSRs in mines than are
25 currently required than the ETS rule? Is it 90 percent of

1 your underground coal mines, or --

2 MS. CHAMBERLIN: Oh, they would be all of our
3 underground coal mines.

4 MR. FORD: All of them?

5 MS. CHAMBERLIN: Just because of the existing
6 caches that we have and we have already augmented those
7 caches once with our available units and we have orders in
8 which will, again, significantly augment those units. As I
9 said, our calculations are that it's -- at our mines, it
10 averages 14 times more than what is required by the ETS.

11 MR. FORD: Okay, thank you.

12 MR. KRAVITZ: Elizabeth, as far as the
13 evacuation and smoke training, is that being carried out
14 underground or is that in a surface facility?

15 MS. CHAMBERLIN: Both.

16 MR. KRAVITZ: Okay.

17 MS. CHAMBERLIN: Mine rescue team training is
18 conducted at Lake Lynn. Underground training is -- for our
19 employees, for evacuation, is conducted underground at the
20 individual coal mines. We also use the smoke trailer or
21 chamber that the West Virginia Extension Service has
22 available to us. So, we use whatever means happens to be
23 available at the time we want to do the training. The
24 important aspect of it is the exposure to smoke and the
25 training that goes along with that to show our employees how

1 to deal with the smoke.

2 MR. KRAVITZ: Okay. Can you estimate what
3 percentage of your escapeways, both alternate and primary,
4 are travelable by mechanized vehicles?

5 MS. CHAMBERLIN: Any escapeway that we have
6 that's in our track entry.

7 MR. KRAVITZ: Uh-huh.

8 MS. CHAMBERLIN: And, a percentage, about 50
9 percent.

10 MR. KRAVITZ: About 50 percent? Okay. And, you
11 said you're now in the process of trying to incorporate
12 tracking devices in your SCSRs. What method are you using
13 for this?

14 MS. CHAMBERLIN: We've been talking with the --
15 with Ocenco, with the manufacturer. They're here today.
16 They might be in better position to comment than I am, but
17 apparently, it's a -- rather than being a barcode, which is
18 what we're using in other applications within CONSOL,
19 apparently, it's some small transmitter device. But, same
20 concept.

21 MR. KRAVITZ: Okay, same --

22 MS. CHAMBERLIN: Same concept. You know,
23 yourself, that if one of the more deadly attacks that any
24 safety person, or, at least in our operation, any safety
25 person had is to have their light shining on a Ocenco serial

1 number and copy them down at the same time. We're trying to
2 facilitate that and make better use of our time.

3 MR. KRAVITZ: Okay. I think it would be nice to
4 have that included as part of the record. If you could, in
5 your formal comments, by the end of the comment period, if
6 you could detail that, I'd appreciate that.

7 MS. CHAMBERLIN: We would do that.

8 MR. KRAVITZ: Okay.

9 MS. CHAMBERLIN: Again, it's in the talking
10 stages as we go, and quite frankly, we have two priorities
11 here. One is getting something in the new units that we're
12 purchasing. Secondly, it's trying to incorporate
13 something in our existing caches of SCSRs.

14 MR. KRAVITZ: Sure, okay.

15 MR. SNASHALL: You mentioned, when you were
16 talking about smoking in training -- or, smoke in training,
17 something about 16 smokers.

18 MS. CHAMBERLIN: Yes.

19 MR. SNASHALL: Did I get that correct?

20 MS. CHAMBERLIN: Yes, they're --

21 MR. SNASHALL: Could you describe what --

22 MS. CHAMBERLIN: Smokers are a device that's
23 utilized to generate the white smoke that's used underground
24 for smoke training. It's just the equipment.

25 MR. SNASHALL: You're talking about theatrical-

1 type equipment?

2 MS. CHAMBERLIN: Yes.

3 MR. SNASHALL: And, is that theatrical-type
4 equipment readily available to the industry?

5 MS. CHAMBERLIN: We were able to obtain it.
6 Whether it was readily available or not, I don't know. We
7 made a decision to obtain it and placed a purchase order.

8 MR. SNASHALL: Do you know approximately how
9 much a unit costs?

10 MS. CHAMBERLIN: You know, I did, but sitting
11 here today, I don't. We can submit comments on that. No, I
12 -- we -- it's -- we can give you that information. That's
13 not a problem.

14 MR. SEXAUER: Okay, we have no more questions.

15 MS. CHAMBERLIN: Thank you.

16 MR. SEXAUER: I think what we'll do at this
17 juncture is to take a break for lunch and reconvene at 1:00.
18 We have about four or five more speakers listed. If anyone
19 else would like to speak, feel free to sign up on the
20 speaker list and -- so, we'll recess now until 1:00.

21 (Whereupon, the proceedings in the foregoing
22 matter went off the record for approximately one
23 hour.)

24 MR. SEXAUER: We're going to go back on the
25 record. Good afternoon. Our first speaker this afternoon

1 is Chris Hamilton with the West Virginia Coal Association.

2 MR. HAMILTON: Good afternoon. Did that pick
3 up? I'm Chris Hamilton, West Virginia Coal Association.

4 I appreciate the opportunity to comment on the
5 Emergency Temporary Standard before us today. The West
6 Virginia Coal Association is a trade association comprised
7 of coal-producing companies that account for approximately
8 75 percent of the state's coal production. West Virginia's
9 coal industry also accounts for nearly 110 million tons of
10 annual coal production from underground mining operations,
11 thus, west Virginia remains the leading underground coal
12 producing state in the country. Our membership also
13 includes land companies, equipment manufacturers, mine
14 supply and service companies.

15 Again, we appreciate the opportunity to
16 participate in this rulemaking and to comment on MSHA's
17 Emergency Temporary Standard for mine evacuation, published
18 in the Federal Register on March 9, 2006. We remain
19 committed to operating the safest mines in the country and
20 the world and offer the following comments to enhance and
21 strengthen the overall effect of this rulemaking.

22 Initially, we would also like to point to the
23 comments --

24 MR. SEXAUER: We're having a little trouble with
25 the mic. Let's go off the record and see if we can fix

1 this.

2 (Whereupon, the proceedings in the foregoing
3 matter went off the record for approximately two
4 minutes.)

5 MR. SEXAUER: Okay, we'll go back on the record.

6 MR. HAMILTON: I thought maybe you had this
7 space reserved for David McAteer the way this mic system's
8 acting up, here.

9 We would also like to point to the comments
10 presented by the National Mine Association at the public
11 hearing held in Arlington, Virginia, on April 28, and would
12 observe that many of our member companies and safety
13 professionals within those organizations contributed to the
14 development of those comments. For the record, we
15 wholeheartedly embrace and support those comments and would
16 urge your consideration of the same. Many of the highlights
17 were presented here today by representatives of Arch
18 Foundation and CONSOL, and again, we would support those
19 remarks as well.

20 We also would like to point out that today's
21 hearing comes nearly four months after the enactment of a
22 major piece of legislation here in West Virginia, west
23 Virginia Senate Bill 247 addressing many of the same topics
24 in requirements that are presented within MSHA's ETS. It's
25 also noteworthy to observe that a special joint labor-

1 management workgroup comprised of Mine Health and Safety
2 professionals was also convened to assist in the development
3 of administrative rules to implement the specific
4 requirements of Senate Bill 247. These rules were initially
5 filed on January 1 and revised on February 28, earlier this
6 year. The amended emergency rule filed on February 28
7 contains a number of changes to the February 1 version based
8 on a careful analysis, evaluation by the Mine Safety and
9 Technology Taskforce of Procedures, Protocols, and
10 Requirements for mine operating procedures, mine emergency
11 preparedness, mine evacuation needs, including the proper
12 sequencing of escaping from a mine and the placement of
13 additional breathing apparatuses and lifelines throughout
14 the mine.

15 We respectfully submit for your consideration
16 and request that MSHCA examine these requirements which I'll
17 submit for your reference and to consider modifications to
18 your ETS consistent with West Virginia's requirements, or
19 alternatively, consider developing a procedure within this
20 rulemaking for MSHA to approve a state plan for adequately
21 addressing these topics in a similar fashion that MSHA
22 approves state plans for important miner certification
23 programs. Such plans would meet specific criteria and
24 standards consistent with those in federal law and would
25 additionally provide the same or a higher level of safety or

1 protection for mines and miners. We recommend the same
2 process be adopted for state-approved plans for mine
3 evacuation programs and requirements.

4 Regardless of the approach MSHA elects to
5 proceed, it is undeniable that MSHA's current ETS and West
6 Virginia's emergency rules address the same -- many of the
7 same topics, but do so quite remarkably in a different
8 fashion. Unfortunately, this leaves coal operations in West
9 Virginia with two distinct, separate compliance standards.
10 To avoid compliance and enforcement complexities, the state
11 and mine safety offices should join together in this
12 important endeavor to provide uniformity within the rules.
13 I would also observe that many, if not all, of the members
14 of that state taskforce, including their chairman, are here
15 today, or at least were here today before we broke, in the
16 event someone wanted to initiate that dialogue.

17 We would also call to your attention to the West
18 Virginia Mine Safety Technology Taskforce, which is a second
19 joint government, management, and labor entity, and it's
20 obligation to issue a final report by June 1 of this year,
21 outlining it's specific findings and recommendations with
22 respect to the implementation and compliance of similar mine
23 safety requirements.

24 This taskforce was created to study issues
25 related to the implementation, compliance, and enforcement

1 of the safety requirements contained within the state's
2 emergency rule dealing with additional SCSRs, escaping
3 sequencing, escaping procedures, mine emergency operations,
4 and preparedness, generally, as well as the placement of
5 lifelines in escapeways.

6 As an industry, we are remained committed to
7 operating the safest mines in the country, and for that
8 matter, the world, and pledge our full support toward
9 achieving this shared goal. Since January, we have drawn
10 upon our collective mine health and safety, and technical
11 and operational expertise to work with state and federal
12 regulators, miners, and other concerned stakeholders to
13 identify and implement mine health and safety measures that
14 will affect real change and real improvement in the mining
15 industry. Among those initiatives include increased numbers
16 of SCSRs throughout practically every mine in West Virginia.
17 There are now additional supplies with strategically placed
18 SCSRs per miners in all mines. West Virginia mines have
19 expanded the number of lifelines and fire protection systems
20 that are available. Mine operators have stepped up their
21 mine emergency training programs. All mine emergency and
22 preparedness drills and procedures have been updated and
23 reviewed. Operators are providing increased training and
24 simulation drills currently to ensure that miners and
25 supervisors are fully prepared in case of emergencies. Our

1 association of members are working with the West Virginia
2 Office of Homeland Security and Emergency Response along
3 with state mine safety office officials to develop the very
4 best in immediate accident notification system to ensure
5 timely rescue in the event of an emergency.

6 Along those lines, I also want to point out that
7 we've had several months of experience with our immediate
8 notification standard. I believe the standard contained in
9 your ETS mimics -- by and large, mimics the standard
10 embodied in West Virginia's law and rule, and as was
11 previously pointed out, here, earlier today, about 90
12 percent of all the calls that have come into MSHA during
13 last year are of a nature that mine safety professionals
14 would tend to agree are not life threatening or situations
15 that really warrant above ordinary mine emergency kinds of
16 responses. We've had the same experience here in west
17 Virginia. About 90 percent of those that have been called
18 into our system were of an unplanned roof fall or some minor
19 to moderate damage to hoisting equipment.

20 We have made a change in our state requirement
21 to effectively carve out those two occurrences, so you don't
22 put that kind of a volume and strain on a system that you
23 want readily available 24/7 to respond, react to true mine
24 emergencies. That change was filed in a revised rulemaking
25 here on the state level about a week ago. I will also

1 provide that for your review and your consideration.

2 We're also in the process of evaluating the
3 appropriateness and effectiveness of safety shelters on a
4 firsthand basis here in West Virginia mining operations.
5 We've advocated the creation of and are participating with
6 the Mine Safety and Technology Task Force. Again, this task
7 force is charged with evaluating and proposing for industry
8 use improvements and advancements in mine health and safety,
9 miner tracking systems, and also, new mine communication
10 systems. Again, we would urge that you work closely with
11 this group to the extent that you can get together as mine
12 health and safety professionals and develop uniformity and
13 consistency within both the federal ETS and the state
14 requirements would certainly be welcomed by the mining
15 community here in west Virginia.

16 I also want to observe that just last Friday,
17 the state, once again, took bold action which our
18 association supported, and established new requirements to
19 have eight additional mine rescue teams fully equipped with
20 all the listening and detection devices here within the
21 state, hopefully by some time by early Fall, those -- all
22 those components will be in place, but it was an
23 administrative rule developed by our Mine Health and Safety
24 Board which has been an arm of the legislative process here
25 in West Virginia. Both management and labor representatives

1 participate. The Board has been in effect for some 30 years
2 now and has a record of quickly responding and reacting to
3 mine health and safety issues here within the state. It's
4 not intended to supplant any existing mine rescue function,
5 if you will. It's intended to provide a fully -- compliment
6 trained and staffed complement of mine rescue capabilities
7 on the state level, to supplement those that are currently
8 implemented and exist through company programs.

9 So, with that, I'll conclude and just express
10 our appreciation for you coming to town, giving us the
11 opportunity to comment on these rules, and we look forward
12 to working with you again in our pursuit of making further
13 improvements to our overall mine safety performance record
14 here in West Virginia. Thank you.

15 MR. SEXAUER: Thank you. Any questions? No?
16 May I have those two documents that you mentioned? Thank
17 you very much.

18 Just for the record, I'll note that we received
19 three documents. One is the West Virginia Coal Association
20 comments. Another one is on NMA stationary, the testimony
21 of Bruce Wattsman before MSHA. And, another document, West
22 Virginia Secretary of State Law Division, Notice of an
23 Emergency Amendment to an Emergency Rule. So, we'll put
24 those into the record.

25 Okay. Our next speaker -- we have, I guess,

1 three members from the United Mine Workers. Will they be --
2 will you all be speaking together? Ron Bowersox, J.R.
3 Pastey, and Gary Trout.

4 MR. BAKER: Actually, Gary had to go to town and
5 I guess the rest of the group is gone, so I'll sit in, in
6 their stead, if that's all right.

7 MR. SEXAUER: Sure, absolutely.

8 MR. BAKER: I guess it's this microphone?

9 MR. SEXAUER: Yes.

10 MR. BAKER: Okay. My name is Tim Baker, that's
11 B-A-K-E-R. I am Deputy Administrator for Occupational
12 Health and Safety for the United Mine Workers. I have
13 already commented fairly extensively on a lot of the
14 emergency standard but would like to make a few other
15 comments for the record.

16 First of all, you know, I've got to point it
17 out, I find it ironic that almost without exception, at the
18 three hearings I've attended and also the hearing in Denver
19 where I read the transcript, that universally, mine
20 operators say how they support the idea and they support the
21 emergency standard, and then they subsequently, piece by
22 piece, tear every section of the proposed regulation apart,
23 which I think should be of real concern to all of us. You
24 begin to wonder which statement is, in fact, the truth, and
25 I think as we look at the comments that have been made, that

1 it's not difficult for me to figure out which is the truth,
2 and just as a couple of for-instances, the 15 minute rule
3 causing confusion is inconceivable to me whenever at the
4 same time we discussed and continue to discuss the problems
5 that miners have donning self-rescuers, but it's not going
6 to be confusing teaching them how to don two or three
7 different units, but it's going to be confusing for the mine
8 operator to report to the Agency within 15 minutes.

9 Somehow, here, I believe we have our priorities
10 backward. We still support the idea of a 15-minute
11 notification for any accident, for any fire of any duration,
12 we believe needs to be reported and I will agree to a
13 certain extent that on MSHA's side of the ledger, we need to
14 have some sort of an 800-number where we have employees of
15 the Agency with some knowledge about mining so that they can
16 field this information and get it to the proper individuals
17 to take care of the situation. At the same time, simply
18 having a responsible individual on the surface who doesn't
19 have experience or doesn't have intricate knowledge of that
20 mine is just as bad on the front end. So, as we begin to
21 discuss how we're going to report accidents, how we're going
22 to report events, it's not sufficient to say "MSHA, you're
23 not doing your job, we can't get through," or, "we can't get
24 the information." I would submit to you that operators have
25 a responsibility to have individuals on the surface who are

1 uniquely qualified to handle those situations, understand
2 the mine, understand the structure, understand how to get a
3 hold of people. So, let's not lay this all on one end of
4 the ledger. Both sides are culpable when it comes to
5 reporting accidents and what events should occur and flow
6 from that.

7 I would also suggest to you, as I have stated
8 previously, that -- and, for anyone of you who were at the
9 Sago hearings, we got to hear about the expertise of MSHA,
10 and I would agree that in many of these situations, that the
11 Agency does have expertise. So, therefore, as we report
12 accidents, we should defer to their expertise in that 15-
13 minute time frame, let MSHA decide what they need to do at
14 that point. I am not at all comfortable, and I think
15 history shows that I should not be comfortable, with mine
16 operators deciding "should I report? Shouldn't I report?"
17 Let's let MSHA make the decision after the reporting period
18 what action to take. I don't think there's a miner who has
19 been involved in any of these things who is comfortable with
20 the mine operator making a decision over the course of two
21 hours when there's a fire, or two and a half hours when
22 there's an explosion, "should I notify? Should I not
23 notify? What should I do?" Fifteen minutes is 15 minutes,
24 all accidents, all mine fires. I don't think it's too much
25 to ask. I don't think it's complicated. And, lord knows,

1 if that's confusing, that mine operator has a problem. That
2 mine operator has a major problem.

3 I heard some discussion earlier today, also, and
4 previously about lifelines in entries where there's track or
5 there's haulage and this is a two-fold argument for the mine
6 workers. We are in support of regulations that would
7 eliminate the use of belt air, that would eliminate the
8 three entry system as we know it. The situation becomes
9 very simple. All mine operators, then, play on the same
10 playing field. You have a four entry system, one which is a
11 designated intake escapeway. We eliminate the need to worry
12 about where the trolley line is or what equipment's running
13 up and down that heading, you have a separate, distinct
14 intake escapeway. We don't have to worry that operator A is
15 not competing properly with operator B because one drives
16 four entries, one drives three. We take care of the
17 situation in that manner and eliminate two problems at once.

18 We would not argue, either, that there is a need
19 to enhance firefighting capabilities and enhance those
20 activities. I was a little confused this morning that there
21 was -- there continues to be this undercurrent that as soon
22 as a 103(k) order is issued that all activity stops and
23 nobody's allowed to do anything and if fire fighting is
24 going on, then MSHA's now in charge, and my understanding of
25 the K order is fairly simple, and maybe it's too simple,

1 but I think it's the way the system works, is, the K order
2 does not prevent fire fighting that is ongoing. The K order
3 requires plans to be drawn up, and I would submit to you, if
4 the condition is so severe that we are calling in the Agency
5 and that plans need to be drawn up, those plans shouldn't
6 take hours to do. Those plans should be readily available
7 when the individual inspector shows up on site. So, I don't
8 see -- and I continue to hear that from different places
9 that the K order stops everything. I'm unaware of that
10 being the case.

11 To go over a few of the specific questions that
12 were asked, we have been in favor of and do support the idea
13 of tethering miners who need to escape from an area or a
14 section. The -- obviously, the tethering -- the tethers
15 have to be long enough so that people don't get entangled,
16 whether they're walking or crawling, however that would
17 work, to progress out of the mine. We think those tethers
18 should be located, first of all, at the beginning of the
19 lifeline, which would be the most logical place to have that
20 tether, however, I don't think it's too much to ask that the
21 tethers also be available at storage stations for the SCSRs,
22 and obviously, those lifelines should go directly to those
23 storage centers, the SCSR storage centers. In the event of
24 dense smoke or limited visibility, obviously, this would be
25 extremely helpful in getting people to those locations.

1 Understanding the need for reflective signs, but the
2 lifelines are going to be much more useful.

3 We've already talked, previously, that the union
4 firmly believes that in order for the escape drills to be
5 practicable, and we are not, at this point, advocating
6 walking the entire length of the escapeway each quarter, but
7 we are certainly in favor of walking the escapeway, and how
8 we accomplish that, I think, is something that we will
9 comment on broader in our written comments, but we do need
10 to walk those escapeways, and as we said before, the
11 inspector's got to walk the escapeways every 90 days, that's
12 the time to do it. That inspector should be with that crew,
13 with those individuals. That way, we eliminate any
14 possibility of a paper compliance system which does exist in
15 many instances. So, we eliminate that.

16 We have come to the conclusion since the last
17 time I testified that a reasonable distance for SCSR storage
18 should be considered in a time frame because, in reality,
19 distances mean very little when you're trying to make an
20 escape. The time is of the essence, and we have concluded
21 that SCSR caches should be in every mine at 30 minute
22 intervals, and those distances will obviously vary based on
23 the height of the coal seam, but it seems reasonable to us
24 that 30 minutes is a long enough distance to have to travel.

25 We do need to move on, also, to the next

1 generation of SCSRs. I think that that is on the horizon.
2 I think that technology needs to be pushed, here, and this
3 Agency has the ability to and should push that technology
4 for a rescuer that lasts an hour and a half or two hours, or
5 whatever that may be. We need to push for those things to
6 occur.

7 Records for SCSRs. I've got to believe that
8 most of this information, whether it's the total number at
9 the mine, the manufacturer, the serial number, the -- I
10 mean, it's got to be on a computer somewhere. This does not
11 seem to me to be overcomplicated for them to transfer that
12 information from the mine office or the corporate office to
13 the MSHA district office that's responsible for that mining
14 operation.

15 One thing I would also suggest, since it seems
16 important to us, is that the sale or purchase of SCSRs,
17 whether you purchase a mining operation as has been done in
18 many instances, for instance, central Pennsylvania, where
19 the mines were purchased and then subsequently closed down,
20 those SCSRs that are transferred, that information should be
21 very quickly sent to the Agency so we know where those units
22 are, and that tracking information should be readily
23 available. This is not a complicated -- I don't think it's
24 a complicated function.

25 The other thing that I commented on to some

1 extent, and is something that concerns us greatly is the
2 idea of what we're calling a safe haven. I believe, as I
3 stated before, this gives miners a false sense of security.
4 If we're dealing with a safe haven that has a door on each
5 end of the cross-cut and some SCSRs in between, this is in
6 no way a safe area. When the door opens, if the air outside
7 is contaminated, the air inside quickly becomes
8 contaminated, but I think just the structure itself lends
9 itself to the idea that "oh, this is a good place to be, I
10 can either wait here or I can take my time changing out my
11 SCSR," so, safe havens, in our opinion, just are not the
12 solution. If you're going to be a ball kit seal, if you're
13 going to put submarine doors in it, if you're going to have
14 positive pressure, then in reality, you may have a safe
15 haven there. That may be the truth.

16 One thing I would caution against is, we go down
17 this road and we put a safe haven at the head gate of a long
18 wall panel that's 20 -- going to be 20,000 feet long, we
19 soon have no access to that safe haven. It may well be a
20 very good protectionary for the SCSRs, and that's the
21 investment that operators are making at this point, that
22 that may well be the case, but it's not a safe investment
23 for the miner. We are looking into safety chambers, rescue
24 chambers is kind of a bad terminology, I think, and as we
25 look at those particular pieces of equipment, there are a

1 variety out there. We need to be very careful as we go
2 through that. I was glad that the individual who was -- who
3 I was told was going to go -- come here and speak about the
4 one he built in his garage didn't arrive. We need to have
5 some very specific parameters when we deal with safety
6 chambers. These things need to meet certain standards and
7 we can't have a -- we need to have a prescriptive solution
8 to that. To allow too much flexibility will lead to the
9 least common denominator, "what can I get cheapest that I
10 can live with and the Agency will accept?" I think we need
11 to set some parameters there. And, we will be dealing with
12 a couple of those in our written comments that we've had a
13 chance to really look at.

14 Another issue that we need to deal with, I
15 think, and there are several that seem germane to the issue
16 but kind of got missed in the rule. We do need to revamp
17 and revise, and really, revitalize our mine rescue team and
18 our mine rescue team concept. There are not enough, despite
19 what anybody says. There are not enough. I think that some
20 of the recent problems that we've had in the mining industry
21 indicates that we can wear these teams out fairly quickly.
22 Not only is it dangerous and stressful, these are long hours
23 and long periods of time, and we need to look at how we
24 expand that nucleus of mine rescue team members, and
25 perhaps, in some instances, I think has been suggested by

1 some senators on Capitol Hill, give some incentive to
2 increase that capacity. But, we need to look at those
3 things.

4 We need to also look at how we deal with small
5 mines. I want to be careful about how I define small mines
6 and a small operator. Small operator is not an operator who
7 runs 20 mines with 20 or less people. That's not a small
8 operator, okay? They may have a small operation, but
9 they're a larger operator than most would think. They don't
10 necessarily fall into a position where they get this small
11 operator caveat, and -- at least from our perspective.

12 But, we do need to address how we deal with
13 those, whether we have one or two individuals on site with
14 mine rescue capabilities and understanding of the particular
15 mine, and they need to be readily available, and mine rescue
16 teams, then, from the closest mine that has a mine rescue
17 team, not from god knows where, you know, two and a half
18 hours away, or from the closest facility that has a mine
19 rescue team arrives, they can be on site and they can brief
20 and they can get things ready.

21 Beyond that, our position is, the Act is clear
22 that mine rescue teams are required. Two mine rescue teams
23 are required at all operations when men are working
24 underground. Readily available, in the opinion of the
25 United Mine Workers, means that if you have a mine rescue

1 team and the members are on midnight shift and it's midnight
2 shift, that team is not readily available. Therefore, two
3 other teams must be available. That is a clear
4 understanding of the act. It's not complicated, it's not
5 difficult reading as some things are. So, that is what we
6 are looking at. We need to revitalize the entire system.

7 I believe that should be pretty much the end of
8 our comments for the record, at least at these hearings, and
9 hopefully, we will be given the chance to have hearings --
10 additional hearings either in Washington, Pennsylvania,
11 Morgantown, West Virginia, and Tuscaloosa, Alabama, would be
12 a good place. These are concentrations of large mines and
13 those individuals need an opportunity to speak, and I
14 realize people can say "we came to Charleston, Tim, and we
15 were in the coal fields." The membership of the mine
16 workers that attended today have a six hour round trip.
17 Now, that may not be a hardship for me because they pay me
18 to travel and they pay me to speak, and I don't have to
19 worry about getting dressed for midnight shift tonight, but
20 that is a hardship for miners. That's -- it is not, in our
21 opinion, proper to have hearings this way. I have heard and
22 you have heard, and everybody's heard from operator after
23 operator, and you've heard from me more often than you need
24 to, but the reality is that they, the operators, like I,
25 that's my responsibility for the day, and at the end of

1 today, my day is done and I prepare for the next thing I'm
2 going to do tomorrow. The miners sitting in the back of the
3 room will prepare for their midnight shift tonight. It's
4 not the proper way to run this operation. The concern, the
5 charge, the responsibility of this Agency is not the mine
6 operator. It is not the mine operator. It is every miner
7 who goes to work every day. They need to be heard. To this
8 point, few have been. We need to correct that.

9 In closing, I've got to say one more time that
10 flexibility is a right. Flexibility is something you earn.
11 Flexibility is something this industry has not earned. If
12 it's not prescriptive, if it's not demanded, those things
13 will fall by the wayside. Those things will not occur.
14 This industry is no more capable today of policing itself
15 than it was in 1968. That's a sad reality of the situation.
16 That is what we deal with. So, flexibility has, as I've
17 said in the past, allowed for belt air, allowed for diesel
18 generators in underground coal mines, allowed for three
19 entry systems and two entry systems. These things aid
20 production, these things increase profit, these things do
21 not -- absolutely do not enhance the health and safety of
22 any coal miner in this nation. We need to listen carefully
23 to what flexibility really means. They have not earned it,
24 they don't -- do not deserve it.

25 If there are any questions, I'd be more than

1 happy to answer any questions you have.

2 MR. SEXAUER: Any questions? Okay.

3 MR. SHERER: Mr. Baker, you talk about spacing
4 the SCSRs at 30-minute intervals. Any suggestions about how
5 do you determine that 30 minute interval?

6 MR. BAKER: Well, I guess, and part of that
7 process would have to be with the -- with, at least to a
8 certain extent, the escapeway drills that you're going to
9 do, and as I said before, I'm not advocating having somebody
10 start at the face and walk 10 miles out of the mine. We may
11 need to do this incrementally, but that would at least be a
12 beginning test of how far from the face to the first cache
13 you need to be.

14 I'm not so certain that the NIOSH heart rate
15 study is effective. To be honest with you, I'm not that
16 familiar with it, and, you know, most of the math, here,
17 confuses rather than clarifies. But, I think that we're not
18 that far away from being able to do that. I think there's
19 some semblance of the people of the experts not only in this
20 room but other agencies or with mine operators and miners,
21 that distances shouldn't be that hard to figure out to get
22 to 30 minutes. I think, sometimes, we try to create so much
23 science around a subject that we lose track of the simple
24 "how can we walk this thing, how do we walk it and how long
25 is it going to take?" Some of it's simpler rather than

1 difficult.

2 MR. SEXAUER: Thank you, Tim.

3 MR. BAKER: Thank you.

4 MR. SEXAUER: Our next speaker is Rick Abraham
5 from the Rio Group.

6 PARTICIPANT: We're having trouble hearing.

7 MR. SEXAUER: Okay.

8 MR. ABRAHAM: Well, I'll pull this mic up a
9 little closer. Can you hear that?

10 PARTICIPANT: There you go.

11 MR. ABRAHAM: My name is -- let me get it a
12 little higher. I'm Rick Abraham. I'm from Logan, West
13 Virginia. I have about 38 years of underground mining
14 experience. Since 1974 I have, at all times, been part
15 owner and operator of coal mines.

16 In my 38 years of mining, I have had the
17 privilege of, at all times, work above drainage, or what's
18 commonly referred to as mountaintop mining. I have never
19 detected any measurable amount of methane, either with
20 machine-mounted monitor or hand-held monitor, in any coal
21 mine that I've ever owned or operated, or, in fact, actually
22 worked in.

23 Before I move forward, I would want to say one
24 thing. The judicial branch of government is somewhat -- the
25 branch of government that is tasked to interpret our laws.

1 That is not a privilege given to the executive branch, as
2 seen with abortion or prayer in schools. A federal judge in
3 Florida may determine abortion's legal in Florida. It has
4 no relevance in West Virginia. With that being said,
5 whatever rules you do come up with, they should be clear,
6 concise, and be very careful to avoid language that uses
7 phrases like "approved by Directors," that opens them up to
8 interpretation and different interpretations by district, by
9 district manager, by supervisor, and even by inspector.
10 That is not a privilege that MSHA has. These are not that
11 complex. I would implore on you to train your personnel
12 whatever the rules are that they be trained and that printed
13 information be given to the industry so that they also have
14 a clear understanding of what we're tasked to accomplish.

15 On the issue of SCRs, with it being said, that
16 in the mines that I operate, it is just as likely to have a
17 fire as in any coal mine, but I would disagree with those
18 that would say I have the same likelihood of explosion.
19 Because you do not have the authority to control commerce,
20 and you should not have, there is an issue with compliance.
21 I would submit that you, one, either reduce the standard
22 for outby SCSRs and change the time frame for this reason.
23 When I placed my order, I was told "don't even think about
24 them for a year." I just heard the lady with CONSOL, and
25 god bless them, not only do they have what you're asking,

1 they have more.

2 If it is the belief of this panel and the
3 consensus of the miners and the industry that all miners are
4 entitled to more than one breathing apparatus, then without
5 your ability to control commerce, I don't know any other way
6 for you to ensure that every miner at least has two before
7 some have 20. I don't know the urgency in a mountaintop
8 mine to store additional, additional on top of each other.
9 I would also suggest that more of a concern for me would be
10 those who most need them, get them, and I don't think that's
11 actually my company. I think that's those deep in the earth
12 who have methane should get theirs first. I believe you can
13 control that by either removing some of your proposals for
14 more than just in the face with a time frame. Once that's
15 accomplished in a manner, that then you can bring forward
16 the next rule that would allow more and more and let
17 everybody come into compliance in the same fashion.

18 I think there's been a mixing of phrases like
19 "safe houses" and a company coming forward and saying "we
20 would like to store them in a safe location." They were not
21 suggesting that -- sharing those in a primary and a
22 secondary escapeway would somehow be compliance with your
23 proposed rule for a safe house in a coal mine. I would
24 suggest, they should be able to do this along with sharing
25 of the rescuers in a wall. Those that oppose it presume

1 that the air is -- the air quality is good on one side and
2 it's not good on the other side. That's not at all a good
3 assumption, especially if someone's suggesting the
4 temperature's 1,000 degrees. If the temperature's 1,000
5 degrees, I would suggest it's more likely that the quality
6 of air and the temperature would be more likely on both
7 sides of the wall, and if we're dealing in thousands of
8 degrees, we've got catastrophic problems to start with.

9 It's sort of ironic that he mentioned that
10 something would be built in a garage, because I, in fact,
11 have built a box in my garage or my shop with less than one
12 hour research on the internet and a couple hundred dollars
13 of materials that may have been thought to be exotic years
14 ago, but due to the space program, are just common, for
15 \$6.00 a square foot, I was able to build a steel box that
16 would be placed into a wall 24 inches thick, would store 120
17 rescuers, and when tested, I maintained the door temperature
18 at 500 degrees by blowing on it with a gas turbine for over
19 two hours, and the temperature in the box was less than 100
20 degrees. The box was empty. I did not have the rescuers to
21 put in it nor did I put any mass into it, but my
22 recollection from thermodynamics from college years ago
23 would suggest, had their been mass inside that box, the
24 temperature would have been much less.

25 Also, the standard which you have set is

1 basically none. I could just as well store my self-rescuers
2 in a cereal box so long as I paint it with fire retardant
3 paint. Those that have come forward suggesting that by
4 combining them, not only would it release for other
5 operators like myself to gain rescuers that otherwise may
6 not get them, you have no standard to protect them from roof
7 fall, rib fall, temperature, moisture, movement, location.
8 All of these things would be improved by placing them
9 between two walls or placing them in a box accessible from
10 both sides that won't get up and walk off on the third shift
11 because of a miscommunication between foremen, and now,
12 nobody knows where the box is at.

13 The question should not be "is it allowed," the
14 question I have of you is "why is not mandatory?" That's
15 the question. Not "should we be doing it," it's "why are
16 you not requiring us to put them between two walls, put them
17 in a box in a stopping that won't move, and protect them?"

18 In fairness of full disclosure, my mining
19 company did start a subsidiary for the purpose to research,
20 develop, and sell a lifeline. I don't want to really
21 discuss that issue, other than just let you know that it is
22 something I'm doing, and I have some interesting results,
23 but it's nothing that I want to share today.

24 My brother was a highly trained military pilot
25 who was trained to fly in all weather conditions, and I did

1 that with him. The disorientation by no visual contact or
2 any reference -- of course, it was also enhanced by no real
3 sense of gravity up or down, but you had no reference on the
4 compass of where you were at, is frightening. For the same
5 reason that highly trained pilots look at their instruments
6 that tells them they're flying straight and level but will
7 turn their planes and fly them into a mountainside is the
8 same thing that you need to give a lot of thought to when
9 miners are in zero-visibility conditions. It's not just so
10 simple to go over there and grab the lifeline and find your
11 way out. If you could find it, it gives you hope. I've
12 heard nothing that would suggest anything that's going to
13 help me go find it. I can tell you what doesn't work: a
14 strobe light.

15 On the issue of smoke machines, if anybody's
16 looking to just -- for a small room or what I've built,
17 there's a number of theatrical smoke machines. The one I
18 bought was \$300.00. They're readily available at Mac and
19 Dave's, any music store has them, they're on the internet,
20 they're theatrical smoke, latex, they're safe to breathe.
21 The bigger machines are also on the internet. A lot of
22 people have got them.

23 One thing, there seemed to have been some
24 criticism in Logan about the fire department and their
25 involvement in one of the recent disasters. They do have a

1 technology that's thermal imaging. I have taken the camera
2 underground. Some of the results are interesting. It's not
3 the sole answer, but it's something that MSHA should look at
4 and give major consideration. I've tested lights, laser
5 beams, smoke is tough to look through. Thermal imaging can
6 do it. It can be used to guide vehicles or people to
7 safety. It would be unconscionable to stop and say "buy 16
8 rescuers and everybody's happy," and go away until the next
9 disaster.

10 One thing, I guess it's FOX News and the
11 publicity that the last two disasters just happened to be
12 smoke and fire, but had it been a couple years ago, it was
13 an inundation of water. That seems to be off the headlines
14 today.

15 The other thing that I'm a bit confused about,
16 and I don't even know if you have the ability to fix it,
17 there seems to be -- we've used the word SCSR in law and
18 that, by definition, defines what it is that's available to
19 me. When I went to the fire department, the guy pulled up
20 an apparatus that's available today, it would give me two
21 hours of breathable air, a full face shield, I can speak
22 with it on, I can replenish the air in it without taking it
23 off and donning it and switching from one brand to another,
24 but it's my understanding it was a matter of law, these
25 things can not be considered because the law was written and

1 defined what a breathing apparatus is. I would suggest that
2 the SCSR would be a device to get you to something else, and
3 once you get there, the world should be open to new
4 technologies and new ideas.

5 I guess that's the same reason I'm not a member
6 of a mine rescue team, but it's my understanding, that's not
7 their device their choice when going back into ruined
8 environments, where the air is not breathable. That is not
9 the device they choose to wear. Now, there is a reason for
10 that. MSHA should look at that, and if the law is wrong,
11 then it should go back to congress if you don't have the
12 ability to fix it, then we have a congress that has the
13 ability to fix it.

14 And, with that, I'll get off my soap box and I
15 thank you for your time.

16 MR. SEXAUER: Any questions? No? Thank you.

17 Our next speaker is James Szalankiewicz.

18 MR. SZALANKIEWICZ: Thank you for this
19 opportunity, and after sitting back there all this morning,
20 I'll try to keep up close and talk loud.

21 I am an owner/operator in Western Pennsylvania,
22 four small underground coal mines. Three of them are low
23 coal, one of them is a little bit higher. And, the low coal
24 I am defining as 36 inches, and the unique nature of a 36-
25 inch coal seams, I don't think has been intentionally

1 neglected, but I think they have to be recognized, 36-inch
2 coal seams. And also, the unique nature of a small coal
3 mine and, as I said, our mines are relatively small, one
4 production unit in it, the mines are in the upper Freeport
5 coal seam, ingress and egress as by method of a three-wheel,
6 battery mantrip, permissible and nonpermissible, depending
7 on where they're used. Those are how the men go in the
8 mine.

9 As an owner/operator, I do not want to see any
10 type of injuries. Knee injuries are, by far, our largest
11 reportable accident, and they can be chronic, so we do
12 everything in our power to make sure that the man in the
13 mine gets a ride to wherever he's going, a ride back out, or
14 any examinations. The only place that a worker for us is on
15 his hands and knees, and in 36-inch coal, make no doubt
16 about it, you're on your hands and knees, is in the working
17 place. The mantrip is, basically, outby area and they ride
18 in, leave their lunch there, and do their work.

19 Our primary escapeway is also our way into and
20 out of the mine. The men coming into the mine ride in that
21 entry -- escapeway or intake, main intake way, and ride out
22 every day as part of the routine. They are riding a three-
23 wheel mantrip, either permissible or nonpermissible,
24 depending where they need to go.

25 Our entire -- our secondary escapeways are all

1 in our belt entry directly adjacent to our primary
2 escapeway, our main intake. The beltway is separate air
3 course and again, it is our secondary escapeway. One is
4 adjacent to the other. Any of our mines, you can also ride
5 a three-wheeler the entire length of the secondary
6 escapeway, around belt drives, the whole way out. They're
7 designed that way because I recognize as a fact that the
8 more our gentlemen crawl, our coal miners, the more injuries
9 they're going to have and the more likely they're going to
10 get hurt. So, again, we groom the mines so there's no place
11 or no duty other than the actual loading coal that the man
12 can not get there. Weekly return runs, they're all traveled
13 on a three-wheeler.

14 But, one of the major concerns I have is the
15 idea of our men having to crawl a mile and a half, two miles
16 out of a 36-inch coal seam. As I said, our biggest injuries
17 is knee injuries. We've been involved in multiple studies
18 over the past several years with NIOSH and with MSHA from
19 the District 2 office, evaluating different types of
20 kneepads, different techniques, different snake oils,
21 anything we can to keep these gentlemen healthy and keep
22 their knees healthy, and for me to ask my men to go through
23 the exercise of leaving that perfectly good mantrip there
24 and crawl two miles out of a mine, it's very, very foolish.
25 I'll make the prediction right now, for the record, that if

1 I'm required to have my men crawl out of that coal mine, my
2 lost time accidents are going to more than triple. At
3 least, more than triple. It just isn't conducive.

4 Again, bear in mind that the characteristics and
5 the environment of these mines are all dedicated around
6 being able to ride in and ride out, and there is generally
7 multiple sources of transportation. There's probably two
8 vehicles for every -- you know, two options to get in and
9 out of the mine, so I'm very, very concerned of that idea of
10 having to crawl in and out of the mine. It just does not
11 make any sense. Certainly, I want to be familiar with the
12 escapeway routes, but they're very simple. You know, one
13 entry in, one entry out.

14 So, I am very concerned about that portion of
15 the proposed regulations. None of our job descriptions in
16 our coal mine involve crawling in or out of our mine. You
17 crawl in or about the working place, you have proper
18 kneepads, any kind of kneepad imaginable, but none of them
19 include crawling in and out of the mine.

20 With that said, I do -- again, to reiterate, I
21 do not believe we should be required to crawl in and out of
22 the mine.

23 One thing that I've noticed, and, of course, I'm
24 perfectly aware of it, in a disaster, a mine emergency
25 situation, I agree with what's been said today: evacuation

1 is paramount. Get out of there. I have a somewhat strange
2 situation in the Commonwealth of Pennsylvania. If there is
3 a fan outage in the Commonwealth of Pennsylvania, my
4 gentlemen are required to leave their mantrip there and
5 crawl out of the coal mine, no if, ands, or buts about it.
6 Now, let's couple that fan outage with a possible emergency.
7 With the new regulations, my men are going to carry an SCSR
8 by their side. They're going to have one on the mantrip or
9 the scoop for each of the men. If there is a fan outage and
10 there is an esc -- an emergency, my men have to leave their
11 mantrip and crawl to their death, two and a half miles out
12 of the mine. I mean, it just -- it doesn't make sense.

13 Now, I realize the MSHA regulations allow us to
14 do that, but, you know, we're looking at emergency
15 standards, here. I think an emergency standard might be due
16 in this situation that in the case of a fan outage, the men
17 be able to exit that mine. You know, with today's
18 technology, with multiple gas testers, you know, get out,
19 but it's very frustrating to me as an owner/operator.

20 The lifelines also present a somewhat unique
21 situation in low coal. I'm not saying not to have
22 lifelines. That's not my intent. My intent is, try to
23 develop some way that they're practical in low coal. Again,
24 it's 36 inches and if you have them in your primary and
25 secondary escapeway, our primary escapeway is a route into

1 and out of the mine and placement of that lifeline is going
2 to be very difficult to come up with. You've got to put it
3 some place where, first of all, it will remain in place and
4 not be torn down by a scoop or a mantrip, and you've also
5 got to place it some place where the operator of that scoop
6 or mantrip isn't going to get decapitated. That's why the -
7 - John Gallick had mentioned the possibility, and we have
8 basically asked him to, to consider putting it on the high
9 voltage cable. I realize that that's a -- you know, that's
10 a point of concern, but in our mines, that high voltage
11 cable is one area that nobody ever goes as a rule, and it's
12 always protected. That would be in our primary escapeway.

13 The second situation is in our secondary
14 escapeway, it's a conveyor belt. From the loading point
15 clear outside, you just keep that belt on your right-hand
16 side, and you're going outside. I'm not saying lifelines
17 aren't practical, but again, put yourself in my operator --
18 my coal miner's position. There is an emergency, he has to
19 crawl out, carry one rescuer, wear another one, and hold a
20 lifeline. I'm not -- believe me, I don't say that they
21 shouldn't work, but I think the local aspect maybe deserves
22 a lot more consideration than possibly it's getting.

23 Now, I wasn't at the other three meetings. In
24 fact, I almost didn't come to this meeting because I'm like
25 the gentleman from Pennsylvania, I'm six hours away, but I

1 think that the lifelines themselves do consider -- have to
2 have some consideration of where they could go. I suggest
3 that if it's a belt entry that the belt is in the secondary
4 and it's continuous to the outside, I don't think you have
5 anything more permanent than that, and as far as a primary
6 escapeway, I would like to see consideration to leaving it
7 on the high voltage cable. Again, maybe it won't work, I
8 don't know, but some way, it's going to be a very, very
9 difficult task to keep that lifeline suspended to the roof
10 without having it torn down routinely, and certainly, if
11 it's there, you want to be able to count on it. You don't
12 want to be able to have an emergency and someone assume the
13 lifeline was continuous, you're following it, and it get
14 taken down somehow.

15 Now, the SCSR issue, you know, I certainly have
16 no problem with that. I hope we never need them, but as one
17 gentleman said, we've all placed our orders now and it's
18 going to be some time before we get them. One of my
19 particular coal mines is in there quite a ways and we're
20 going to have at least two cache areas, and I understand
21 that right now, that the outlook is, you put one in a
22 primary sec -- escapeway and one cache in a secondary
23 escapeway. Well, in our situation, the primary and the
24 secondary are right beside each other. In other words, you
25 can go through a mandoor from one to the other. Now, when I

1 start to get these SCSRs delivered and if I don't have
2 enough to do the entire mine when they come, I would suggest
3 that I do put them in a common crosscut and I do put a
4 stopping on each side and a mandoor on each side. That way,
5 either entry, the gentlemen have, at least for the time
6 being, they could get by both routes. Now, when I do get
7 enough to do the entire mine, my intent there is, you know,
8 basically, I'm going to have one storage area on one side of
9 a stopping for the -- if you need to come out the primary.
10 On the other side, I'll have the other storage area if you
11 need to come out the secondary, and lord help us if we need
12 any more and we're coming out the primary, we just go
13 through the secondary to get them. So, you know, I think
14 the idea of the consideration for -- at least until all the
15 ones that are manufactured are needed -- I mean, are needed
16 are manufactured, some consideration to be given to that
17 outlook of it.

18 And, now that we're all taking a little closer
19 look at our SCSRs, we're also beginning to think that maybe
20 we should be getting rid of some. We're losing some through
21 attrition, by looking at them closer, so that's also going
22 to be a little bit of problem on the supply. But, we're
23 prepared for it, so we've made our orders and there's good
24 storage units out there on the market, and we'll put them in
25 there when they come, but my purpose is to make sure that,

1 fellows, we don't -- and I'm not sure what the other
2 meetings were like, if any low coal operators spoke, but we
3 are in a unique situation. I'm sure there's nobody at that
4 table could, you know, crawl two miles out of a mile or one
5 mile out of a mine, and I know you've heard that, so I would
6 like to have -- go on the record as I think that the
7 evacuation plans should be allowed to be ridden out of the
8 mine. If we don't, as I said once before, you're going to
9 see my accident -- lost-time accidents go up drastically.

10 But, I do want to thank you gentlemen and lady
11 for the opportunity. I said I didn't really intend to come
12 and I apologize for the informal nature. If I thought I was
13 going to speak, I'd have written something up, and I will
14 follow up with a hard copy, but as I listened to the meeting
15 today and I heard very little concern about my application
16 with low coal, I thought I'd like to get on the record with
17 that and maybe get a little bit more attention if at all
18 possible.

19 Any questions?

20 MR. SEXAUER: Do you have a question?

21 MR. FORD: Sir, since your mines are small, like
22 you said, do you operate one shift per day?

23 MR. SZALANKIEWICZ: No, some of them are two
24 shifts per day. Some are two shifts a day. And, with the
25 new regulations, with the amount of SCSRs, we will be

1 staggering them so I don't have to double it one more time.
2 They won't be, you know, hot changes. I will have one crew
3 come out of the mine, the other crew go back in the mine,
4 which is no problem, but it will save me doubling the SCSRs
5 one more time.

6 MR. FORD: Okay. On average, how many workers
7 are in -- on -- per mine?

8 MR. SZALANKIEWICZ: In -- on the average, on a
9 two-shift operation, I have about 25 men. On the daylight
10 shift with a super, the mine foreman, major foreman is
11 there, it would be slightly over half. On the afternoon
12 shift, they're slightly less than half.

13 MR. FORD: Okay. So, you've got about 12 men on
14 a shift?

15 MR. SZALANKIEWICZ: Yes, sir. Approximately. A
16 matter of fact, our storage plan, I think we're -- we
17 designated 15 at each cache. That way, we were certain to
18 cover the guys in the mine.

19 MR. FORD: Okay. I've just got one more
20 question.

21 MR. SZALANKIEWICZ: Sure.

22 MR. FORD: On your ordering purchases for SCSRs,
23 --

24 MR. SZALANKIEWICZ: Yes, sir?

25 MR. FORD: -- can you tell me what kind of SCSRs

1 you --

2 MR. SZALANKIEWICZ: We've been doing them --

3 MR. FORD: -- have been ordering and about the
4 average price?

5 MR. SZALANKIEWICZ: We have always used the
6 CSEs. We're happy with them. We -- when I first went in
7 business about 15 years ago, we considered a W-65, but we
8 said, "let's just go with the self -- it's there, it's good
9 for an hour," and when we first started buying them, I don't
10 mean to indicate that the economics are going to dictate
11 over safety, not -- that's not my intent, I don't think
12 there's anybody in this room that isn't here to improve mine
13 safety, but when we first started buying, they were around
14 four and a quarter a piece, now they're \$600.00 a piece, and
15 I'm -- support, you know, capitalism, supply and demand,
16 they're probably going to go up some more, but to me, that
17 has nothing to do with mine safety, and I don't think any of
18 the other mine operators have that problem either. We
19 certainly want to get any type of consideration, and again,
20 I do feel that keeping in the same cross-cut, in our unique
21 situation, would not be a problem, but, you know, we'll do
22 what you guys need us to do, but if I do have to put them in
23 separate entries, I am going to put them one on each side of
24 a stopping with a mandoor. If the guys need them, they're
25 there.

1 MR. SEXAUER: Thank you, and thank you for
2 coming the distance to speak to us.

3 We've covered all the speakers that have signed
4 up. Is there anyone else in the audience who would like to
5 address the group?

6 I'd like to express my appreciation on behalf of
7 MSHA to all of you who participated today at the public
8 hearing and your comments and testimony will help us develop
9 a final rule that provides the most appropriate and
10 effective protection for miners and we'll take into
11 consideration all the comments and testimony that we've
12 heard. So, thank you once again. This hearing is
13 adjourned.

14 (Whereupon, at 2:13 p.m., the proceedings in the
15 foregoing matter were concluded.)

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REPORTER'S CERTIFICATE

CASE TITLE: Public Hearing on MSHA's Emergency
Temporary Standard for Emergency Mine
Evacuations

HEARING DATE: May 9, 2006

LOCATION: Lexington, Kentucky

I hereby certify that the proceedings and
evidence are contained fully and accurately on the
tapes and notes reported by me at the hearing in
the above case before the
Department of Labor.

Date: May 11, 2006

Kristopher Robert Kaun

Official Reporter

Heritage Reporting Corporation

Suite 600

1220 L Street, N. W.

Washington, D. C. 20005-4018