PUBLIC HEARING

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LOWERING MINERS EXPOSURE TO RESPIRABLE COAL MINE DUST, INCLUDING CONTINUOUS PERSONAL DUST MONITORS

JANUARY 13, 2011, BIRMINGHAM, ALABAMA

APPEARANCES

APPEARING:

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ROBERT THAXTON
JENNIFER HONOR
RON FORD
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PRESENTING TESTIMONY:

TED SARTAIN
TOM MCNIDER
RANDY CLEMENTS
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MATTHEW LITTLE
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PRESENTING TESTIMONY (CONTINUED):

TED NICHOLS

FRED ENGLAND

THOMAS WILSON

I, Lauren H. Deerman, a Court Reporter of Birmingham, Alabama, and a Notary Public for the State of Alabama at Large, acting as Commissioner, certify that on this date there came before me on the 13th day of January, 2011, at Sheraton Birmingham Hotel, 2101 Richard Arrington, Jr. Boulevard North, Medical Forum G Meeting Room, Birmingham, Alabama, commencing at approximately 9:00 a.m, testimony in the above cause, whereupon the following proceedings were had:

GREGORY R. WAGNER: My name is Gregory Wagner. I'm the deputy assistant secretary for labor for Mine Safety and Health, and I'm also a physician. Before we get started on the formal hearing, I'd like to speak a little bit about those factors that have motivated the Agency to try to work on the issue of black lung and brought us to the point of proposing a new set of regulations. I'd like to thank everybody who has come here this morning and recognizing you're braving the cold and the unusual weather and also bring you greetings from Joseph A. Main the deputy assistant secretary that leads the Mine Safety and Health Administration.

Many of you recognize this photograph. It is of the Farmington No. 9 Mine in West Virginia, 1968. Fire explosion at the mine resulted in the

deaths of 78 miners. It also created a public focus that resulted in the 1969 Coal Mine Health and Safety Act. That act made significant improvements towards improved safety and the prevention of fires, explosions, and injuries and death from mining, but it also was developed at a time that there was a lot of tension being paid to the lung diseases that miners get, known collectively as black lung. That act not only created new rules in order to prevent acute injuries and fatalities but also made a commitment. In the 1969 Federal Coal Mine Health and Safety Act, Congress mandated that respirable coal mine dust exposures be reduced to a level they said which will prevent new instances of respiratory disease and the further development of such disease in any person.

Following the Scotia Mine Disaster in 1976, another set of legislation was passed, The Federal Mine Safety and Health Act of 1977, and in that, Congress said that the secretary shall set standards which assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with for such standard of the period of his working

life, no miner shall suffer.

Well, what's happened? 1995, the National Institute for Occupational Safety and Health did a comprehensive review of the world's scientific literature. Their analysis was published -- published in this document. The criteria document that made a series of recommendations for how to get rid of black lung. They noted that black lung was continuing beyond that that was expected and that new information could be brought to bear on it. The secretary of labor, at the time, set up an advisory committee made up of labor industry and independent experts, and they reviewed the NIOSH criteria document and any additional scientific information that they could.

They came out with a series of recommendations and conclusions. What we're doing today is a logical continuation of the recommendations from the National Institute for Occupational Safety and Health and from the Secretary’s Advisory Committee. Let me spend a minute to tell you about black lung. You can see in these pictures a normal lung, piece of a normal lung, that's over on the left side. In the middle, you see what happens is coal mine dust begins to be

deposited. You see the black areas that coal mine dust is there. The lungs begin to scar. Holes begin to form.

And you see on the right side the most advanced form of Coal Workers' Pneumoconiosis called progressive massive fibrosis and that lung scaring, distortion, the loss of lung tissue interferes with the ability of the oxygen to get to the body through the lungs. There are a number of diseases caused by coal mine dust. You have Coal Workers' Pneumoconiosis, the pictures that I just saw, and if you have silica in the dust, there's silicosis as well.

In addition, you have diseases that don't necessarily show up on X-rays. You have breathing diseases, air flow diseases that cause obstruction of the airways and destruction of the lung issue. Emphysema and bronchitis were much more common in miners who breathe coal mine dust. You have tuberculosis increased in miners who have high silica exposure. These diseases aren't just a problem because they kill you. They're a problem because they cause an extended period of disability, aggressive, progressive. They don't cause an acute problem. They're the gradual buildup of significant

problems.

So what's happened since 1969? 1969 imposed new dust limits in U.S. coal mines and ways to enforce those dust limits and sample for them, and they resulted in a gradual reduction in Coal Workers' Pneumoconiosis and other lung diseases from dust, starting in the 1970s and then going down to the year 2000. After the year 2000, it started to rise again. This information is from the NIOSH X-ray surveillance program.

There's a lot of thoughts as to why that rise may have happened. They started rising in people who had only been exposed during the current era of dust limits. NIOSH did studies in certain areas of the country, not everywhere, but in certain areas they found rapidly progressive Coal Workers' Pneumoconiosis and clustering of these effects.

Let me give you a couple of examples here: A set of X-rays from a roof bolter in West Virginia. On the left-hand side, by 1997 when he had only spent 19 years underground, he already had advanced form Category 3, there are only three categories, advanced category of Coal Workers' Pneumoconiosis, and just three years later, at the age of 40, he had progressive massive fibrosis

collapsing the lung and destruction of the lung tissue, 19 years underground, 40 years old.

Another example: From Virginia, in 2002, a 42-year-old with only 22 years underground experience was found to have the most advanced stage. It was a lung that, if you had been able to slice through, it would have looked like the one on the right-hand side that I showed earlier, Category 3, Stage C. It isn't just the changes on the X-ray or the diseases people have, it causes some much disruption in people's lives. Gradual loss of breathing, inability to do the things people like to do in their middle age and as they grow older, the things people expect to do no matter what their workplace exposures are.

It also has created a tremendous financial burden. Through the Black Lung Benefits Program, over $43 billion worth of benefits have been paid out since the beginning of the program, and that's only a slice. That's the federal program that relates to people who have been totally disabled from all coal mine employment as a result of their lung disease, $43 billion. That doesn't count state compensation. It doesn't count the medical costs that individuals face. And it doesn't count the loss

of earnings. So there's a lot of scientific evidence that says we ought to do something. We see that after years of going down, Coal Workers' Pneumoconiosis, one of the diseases miners get, is going up. The cases of severe disease are being seen in some miners that are young, as young as 40 years old, that when you go back to the original assumptions in the 1969 act, when the original dust limit was set, it made assumptions about the protection of miners, and it's been found in the scientific reviews, in the 1990s and beyond, that those assumptions were faulty. And we also learned that miners are at a greatly increased risk of other diseases, not just Coal Workers' Pneumoconiosis but emphysema and bronchitis.

Here's the bottom line: Black lung is caused by excessive exposure to coal mine dust. That's it. If you breathe in too much dust, that's what causes these lung diseases. Our goal is to reduce miners' exposure to respirable coal mine dust in order to prevent black lung. It's a simple goal. It's what we were told to do in 1969.

We proposed a rule that we're here to discuss today. It addresses certain problems. Currently sampling is for eight hours, but miners

work shifts that are typically longer than that. The proposal would require sampling for the entire work shift. Currently, the exposure determination is based on an average of five samples. But averaging could mark individual high exposures, and the proposal would make determinations based on each shift sample.

Right now, the bimonthly samples may not be collected at times that are truly representative of normal mining conditions, or they may be collected at unrepresentative times, such as the low production proposal to require representative samples at normal production levels. Right now, as I showed, miners are getting disease and developing the most severe form of disease. This isn't just a few.

Over the last decade, the decade of the 90s and into the 2000s, over 10,000 miners have died with dust diseases of the lungs, 10,000. That's an awesome number. We're reducing -- proposing reduction of the permissible exposure limit to coal mine dust consistent with the NIOSH recommendations, and also, the advisory committee of the secretary of labor in the mid 90s suggested that MSHA consider this as well.

There is also an effort to improve

medical monitoring. Black lung affects breathing, not just the X-ray spots. And the proposed medical monitoring includes measuring lung function. Right now, dust samples are only available a week or two after they're taken, and mining conditions are constantly changing. The proposal would encourage the use of the continuous personal dust monitor, and eventually, mandate it, and would permit rapid adjustment dust controls in response to realtime conditions.

This is a part of our comprehensive effort to end black lung that includes: Education outreach, improved enforcement, and now, the proposal for an improved set of rules to reduce miners' exposure to coal mine dust.

I'm going to now call our panel forward. We're going to begin the formal part of this hearing.

(Panel takes their seats.)

GREGORY R. WAGNER: For those of you who walked in a few minutes late I'll, again, say my name is Dr. Gregory Wagner. I'm deputy assistant secretary for Mine Safety and Health. Appreciate your coming, your interest in discussing this rule, and also bring you greetings from Joseph A. Main, the Mine Safety and Health assistant secretary who leads

the Mine Safety and Health Administration. I want to introduce members of our panel. Robert Thaxton and George Niewiadomski are from Coal Mine Safety and Health. Ron Ford and Susan Olinger are from the Office of Standards. And Jennifer Honor, to my right, is from the Office of the Solicitor, Mine Safety and Health Division.

The proposed rule for lowering miners' exposure to respirable coal mine dust is an important part of the Agency's Comprehensive Black Lung Initiative to End Black Lung -- Act Now. The Secretary of Labor considers ending black lung disease as one of the department's highest regulatory priorities.

The proposed rule was published in the Federal Register on October 19th, 2010. And in response to requests from the public, MSHA is extending the comment period from February 28th, 2011, to May 2, 2011. All comments and supporting documentation must be received or postmarked by May 2nd, 2011.

This is the third of seven public hearings on the proposed rule. The first was held December 7th, 2010, in West Virginia; the second, January 11th, 2011, at the MSHA Academy and in

Evansville, Indiana. And after this, four additional hearings will be held: One on January 25th in Salt Lake City, Utah; one February 8th in Washington, Pennsylvania; one on February 10th in Prestonsburg, Kentucky; one in Arlington, Virginia.

As many of you know, the purpose of these hearings is to allow the Agency to receive information from the public that will help us evaluate the proposed requirements and produce a final rule that protects miners from the health hazards that results from exposure to coal mine dust. MSHA will use the data and information from these hearings and responses to help us craft a rule that responds to the needs and concerns of the mining public so that its positions can be implemented in the most effective and appropriate manner.

MSHA solicits comments from the mining community on all aspects of the proposed rule. Commenters are requested to be specific in their comments and submit detailed rationale and supporting documentation for suggested alternatives. I want to reiterate some requests for comment and information that were included in the preamble to the proposed rule.

The proposed rule presents an integrated comprehensive approach for lowering miners' exposure to respirable coal mine dust. The Agency is

interested in alternatives to the proposal which will be effective in reducing miners' respirable dust exposure and invites comments on any alternatives.

MSHA solicits comments on the proposed respirable dust concentration standards. Please provide alternatives to be considered in developing the final rule, including specific suggested standards and your rationale.

The proposed rule bases the proposed respirable dust standard on an 8-hour shift and a 40-hour workweek. In its 1995 Criteria Document on Occupational Exposure to Respirable Coal Mine Dust, the National Institute for Occupational Safety and Health recommended lowering exposure to 1 milligram per meter cubed for each miner for up to a 10-hour work shift during a 40-hour workweek. MSHA solicits comments on the NIOSH recommendation.

MSHA included in the proposed phase-in periods for the proposed respirable dust standards to provide sufficient time for mine operators to implement or upgrade engineering or environmental controls. MSHA solicits comments on alternative time frames and factors that the Agency should consider. Please include any information and detailed rationale.

In the proposal, MSHA also plans to phase in the use of CPDMs to sample production areas of underground mines and part 90 miners. MSHA solicits comments on the proposed phasing in of CPDMs, including time periods and any information with respect to their availability. If shorter or longer time frames are recommended, please provide your rationale.

MSHA understands that some work shifts are longer than 12-hours, and that the dust sampling devices generally last for approximately 12 hours, that the batteries last for a 12-hour charge. MSHA solicits comments on appropriate time frames to switch out sampling devices, whether gravimetric samplers or CPDMs, to assure continued operation and uninterrupted production for miners for the entire shift.

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

technological and economy feasibility, compliance costs, and benefits.

MSHA is interested in commenters views on what actions should be taken by MSHA and the mine operator when a single shift respirable dust sample meets or exceeds the Excessive Concentration Value known as the ECV. In this situation, if an operator uses the continuous personal dust monitor, what alternative actions to those contained in the proposed rule would you suggest that MSHA and the operator take? MSHA is particularly interested in alternatives to those in the proposal and how such alternatives would be protective of miners.

The proposal includes a revised definition of normal production shift so that sampling is taken during shifts that would reasonably represent typical production and normal mining conditions on the MMU. Please comment on whether the average of the most recent 30 production shifts specified -- recent production shifts specified in the proposed definition would be representative of dust levels to which miners are typically exposed.

The proposed sampling provisions address interim use of supplementary controls when all feasible engineering or environmental controls have

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

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

approved dust controls.

The proposal would require the person certified in dust sampling or maintenance and calibration retake the examination every three years to maintain certification. Under the proposal, these certified persons would not have to retake the proposed MSHA course of instruction. MSHA solicits comments on this approach to certification. Please include specific rationale for any suggested alternatives.

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

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

The periodic medical surveillance provisions in the proposed rule would require operators to provide an initial examination to each

miner who begins work at a coal mine for the first time and then at least one follow-up examination after the initial examination. MSHA solicits comments on the proposed time periods and specified in -- for these examinations.

The proposed respirator training requirements are performance-based and the time required for respirator training would be in addition to that required under part 48. Under the proposal, mine operators could, however, integrate respirator training into their part 48 training schedules. The proposal would require that operators keep records of training for two years. Please comment on the Agency's proposed approach.

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

plan provisions and include supporting rationale with your recommendations.

The Agency has prepared a Preliminary Regulatory Economic Analysis which contains supporting cost and benefit data for the proposed rule. MSHA requests comments on all estimates of cost and benefits presented in the preamble and the Preliminary Regulatory Economic Analysis, including compliance costs, net benefits, and approaches used and assumptions made in the preliminary economic analysis. I point out that if you want to see the complete economic analysis, the methods used, the data available, you should go to the links on this the Web site. All of that information is available, and we would appreciate your review and comments and any recommendations you have that result from your review.

A commenter at the first public hearing suggested that the time frame for miners' review of the CPDM Performance Plan be expanded. I want to clarify MSHA's position in the proposed rule. In developing the proposed rule, MSHA relied on the time frame and process in the existing requirements for mine ventilation plans. In the proposal, they did not intend to change the existing time frame and

process and stated that the proposed rule is consistent with ventilation plan requirements and will allow miners' representatives the opportunity to fully participate in the process.

As you address the proposed provisions either in your testimony today or in your written comments, please be as specific as possible. We cannot sufficiently evaluate general comments. Please include specific suggested alternatives, your specific rationale, health benefits to miners, and any technological and economic or feasibility considerations and data to support your comments. The more specific your information is, the better it will be for us to evaluate and produce a final rule that will be responsive to the needs and concerns of the mining public.

As many of you know, this public hearing will be conducted in an informal manner; cross-examination and formal rules of evidence will not apply. The panel may ask questions of the speakers, and those of you who notified MSHA in advance of your intent to speak, or have signed up today to speak, will make the presentations first. After all scheduled speakers have finished, any others may do so. We're not going to impose any specific time

limits, but I would ask that all of you that are speaking please be mindful of the many people that have requested the opportunity to speak. Everyone has an opportunity to submit detailed written comments. So please permit everyone to get a chance. We will stay here until the last person has spoken. After all speakers, if you wish to present written statements or information today, please identify your material, and give a copy to the court reporter. You may also submit comments following this public hearing. Comments may be submitted by any method identified in the proposed rule.

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

We ask all of those in attendance to sign the attendance list in the back of the room. We're going to begin today's hearing. And please begin by stating your name and organization, and spell your name for the court reporter so that we can have an accurate record.

The first person to sign up is Ted Sartain from Chevron Mining.

TED SARTAIN: Good morning, Doctor, Panel. My name is Ted Sartain, T-E-D, S-A-R-T-A-I-N. I am a technical services manager for Chevron Mining, North River Mine. I have participated in the rule making process many times in the past and would like to thank the panel for conducting this hearing here in Birmingham and giving me the opportunity to speak today on behalf of Chevron Mining.

My comments will be brief and general in nature. I know you requested for specifics. There are some specifics, and if you do have questions, I will -- if I can't answer them today, I will certainly jot those down. We do intend to submit written comments that will provide more detailed rationale for our positions.

We do appreciate the fact that you extended the comment period. This will afford us the opportunity to better understand and predict the effectiveness of the proposed changes and project the impact of these changes to our operations. We ask the Agency to give careful consideration of our written comments that will be submitted at a later date. Let me start by saying that at Chevron Mining, the health and safety of our employees is paramount in everything that we do. We strive to provide our

employees with a safe and healthy workplace every shift, every day.

While we agree with MSHA that black lung and silicosis are dreadful diseases that need to be eradicated, we do not agree with the approach the Agency has taken. As you stated earlier, Dr. Wagner, I believe the language in the preamble is a comprehensive integrated approach. This proposed rule, in our opinion, is too complicated and complex. It addresses ventilation plans, ventilation requirements, exposure reductions, production requirements, introduction of personal dust monitors, increased examinations, a mandatory medical surveillance program, and a host of recordkeeping changes or issues. So it definitely is a comprehensive complex approach.

We believe the rule will be simply impossible to administer and enforce in its current form. This rule reduces the current exposure limit by more than 50 percent, which may be achievable -- may be unachievable by many of our U.S. operations. If I understand correctly, by simply changing from an 8-hour sample to a 10-hour full-shift sample, the current 2-milligram-per-cubic-meter standard automatically becomes a 1.6-milligram-per-cubic-meter

standard. And I guess I'm asking that in the form of a question. Am I understanding that correctly?

ROBERT THAXTON: Close, yes.

TED SARTAIN: Okay. Likewise, a 1-milligram standard in a proposal for the future would become a 0.8 standard for a 10-hour full-shift sample. Furthermore, I venture to say that this rule would assuredly eliminate work shifts greater than 8 hours and workweeks greater than 40 hours for our employees. The question is: Will this rule effectively reduce or limit occupational related lung disease in the U.S. coal industry?

My second question is: Does MSHA have an adequate scientific basis for establishing exposure limits in this rule? A perceived problem in one region of this country should not be the basis for applying such drastic regulatory changes to the U.S. coal industry. I ask how confident are you that miners who have developed these diseases have been working -- that you mentioned in your introduction, Dr. Wagner -- how confident are we that those that have developed these diseases in recent times have been working day in and day out in environments less than 2 milligrams? Is there sound science behind these conclusions?

And does the Agency have an accurate understanding of the dose/response relationship between coal dust exposure and chronic lung dysfunction. Regardless of the standard and the sampling device used, we believe all samples should be personal samples. An adequate sampling frequency of individuals determined to be at risk will eliminate the need for occupational or area-type sampling. It would also provide accurate personal exposure which can be compared to the results of a medical surveillance program.

In fact, routine day-to-day sampling of individuals who work in selected occupations could conceivably eliminate most of the other requirements in this rule. For example, outlier sampling, production requirements, ventilation requirements, engineering controls. The mine operator would be responsible for having all of those things intact to ensure that the miners were below the standard. We are asking for a performance-based rule that establishes the appropriate minimum exposure limit and provides the operator with the responsibility and flexibility to determine how best to meet or exceed that objective.

Personal protection equipment and

administrative controls should not be constrained, and sampling should include the effectiveness of these controls. I ask what is the basis of the 30-day average turn-in requirement? This will probably double the number of samples that we currently take for compliance purposes. It will be difficult to achieve the tonnage each and every day that you're sampling that is required in this rule. As you stated earlier, mining is dynamic and production -- also the production -- day-to-day production rates are dynamic as well.

Neither the CPDM or the gravimetric sampler provides the necessary accuracy to reliably use single-shift samples for compliance. Chevron Mining has and continues to support the development of the personal dust monitor for sampling miners' exposure to coal dust. The current version of the PDM appears to be a great engineering tool for evaluating engineering and administrative controls, and the device has a potential to be a good compliance sampling device to replace the gravimetric sampler. It will afford miners the ability to monitor their exposure in realtime and make adjustments to their work habits and lower their exposure to respirable dust.

Also, the data logging capabilities will provide useful information to associate exposures with specific tasks and provide an exposure history for the individual worker. While we do not currently employ PDMs at our operations, Chevron Mining has participated in the NIOSH field studies of the device. We have closely monitored the development of the PDM, and we have collaborated with mine operators who have experience with PDMs. And we plan to purchase some when we believe them to be proven to be accurate and reliable. However, this has not yet been demonstrated.

Today, approximately, 200 PDMs have been purchased by co-operators since they were approved for use underground. It is my understanding that most all of these units were returned to the manufacturer at least once for repair during the first year of operation. In 2006, NIOSH stated that the PDM is more accurate than the gravimetric sampler. Now, that does not appear to be the case.

In a recent stakeholders meeting at the NIOSH Pittsburgh Research Center, a NIOSH official was asked if the PDM provided the accuracy needed for a single shift sample for compliance purposes. He hesitated at first, and then he said he believed the

device to be as accurate as the gravimetric sampler. And we know the gravimetric sampler to be -- accuracy of the gravimetric sampler is plus or minus 25 percent.

The current design of the PDM is bulky, heavy, and is not adaptable to the modern technology. And also, the PDM software continues to have unresolved issues. North River Mine has three MMUs, one longwall, and two continuous monitoring sections. We anticipate that at least 55 PDMs would be purchased and deployed to comply with this rule. If you extrapolate these numbers across the industry, thousands of units will be needed to fulfill the needs of the industry. Thermo Fisher's the only manufacturer of this device, which raises the questions of delivery, service, and future pricing.

By our estimates, in addition to the 55 PDMs, North River Mine would need to add 12 certified people to administer the proposed sampling program and monitor compliance. There are many issue that need to be resolved before the Agency imposes industry-wide use of the PDM. Premature imposition of a new standard can be unnecessarily costly. For example, in response to the 2006 Miners Act, North River Mine was the first mine in District 11, and

possibly the nation, to obtain an approved emergency response plan.

In 2007, North River Mine purchased and installed a leaky feeder electronic communication and tracking system at a cost of approximately $1 million. Two years later, MSHA changed the coverage area requirements for electronic tracking, and North River Mine was required to purchase and install a second electronic tracking system and scrap the first one, again, at a cost of, approximately, $1 million.

Also, some mine operators purchased approved refuge chambers that MSHA later rejected due to issues with climate control. So I urge the Agency to be cautious when imposing these costly standards. We need to get it right the first time. We urge MSHA to support further development of the personal dust monitor that will be accurate, reliability, and ergonomically friendly to the miner prior to mandating routine use of this device.

A reduction of the current 8-hour, 2-milligram standard to a 1-milligram full-shift sample is simply too aggressive and burdensome without adequate evidence that a 1-milligram standard is scientifically justified. This is a reduction of

more than 50 percent, and quite frankly, may be unachievable in the allotted time frame. When quartz is present, further reducing the exposure limit, many operators will assuredly be unable to comply under the proposed sampling strategy. And we believe that we need a silica standard that is independent of the coal standard.

As I stated in the beginning, these are general comments outlining some of Chevron Mining's concerns, and we plan to elaborate on each of these issues in our subsequent written submittal which will be forthcoming. Again, I'd like to thank the Agency for extending the comment period which will afford the industry time to provide a more reasonable approach to monitoring exposure and reducing the risk of respirable illness in this country.

GREGORY R. WAGNER: Thank you very much for your comments. I'm going to turn to the panel first for any questions or responses they may have. Susan, do you want to --

SUSAN OLINGER: Morning. I just wanted to point out that, in the preamble, we do address the basis of the 30 days for normal production shift. Part of its basis is both from the NIOSH criteria document and the advisory committee report, and I'd

also like to point out that 30-day period would be used during a limited amount of time while the gravimetric sampler is used. Once the CPDM is in use, it would be running continually, so you wouldn't be taking that 30-day average.

I think -- the standard is an environmental standard, and the act also prohibits that PPE be used as a substitute for environmental controls. And I think Jennifer will probably address that as well.

JENNIFER HONOR: Not necessarily. Susan explained it well in that the act doesn't permit operators to use PPE as a primary means of controlling dust, so we are stuck with what we have in the act. So that's the basis for using environmental and engineering controls as your primary means of controlling dust.

TED SARTAIN: I was not suggesting that PPE be used for a primary control, but it could be used in certain circumstances, I think.

JENNIFER HONOR: Okay. Thank you.

GEORGE NIEWIADOMSKI: Mr. Sartain, I have a couple of questions for you. At one point, you had mentioned you had asked the Agency how confident is MSHA that miners with CWP were exposed

to dust levels or below 2 milligrams; is that correct? Am I paraphrasing that correctly?

TED SARTAIN: (Nods head.)

GEORGE NIEWIADOMSKI: Can you elaborate exactly what you're getting at? What are you getting at?

TED SARTAIN: It appears that the Agency believes that the standard needs to be reduced to something below 2 milligrams because people are currently working in environments day in and day out in an environment below 2 milligrams, and they are still contracting these diseases. And my question is: Is our sampling regiment in its current form -- I think, Dr. Wagner said it earlier that, you know, bimonthly sampling may not necessarily be representative of what workers are being exposed to on a day-to-day basis.

So with that said, we appear to be taking compliance samples, which is the dose, and comparing it to the NIOSH surveillance program which is the response, and from those two things, we are deducting that we need a lower standard.

GEORGE NIEWIADOMSKI: I'm glad you clarified that because the law is very clear that these particular sampling requirements were

promulgated back in 1980, and they asked for the samples to be representative of five shifts. Remember, prior to 1980, the sampling scheme was somewhat different. We asked for more sampling to be conducted. However, that was changed based on information that was gathered in the past decade that indicated we could reduce the frequency of sampling to five shifts provided if those five shifts were representative of what normally happens.

So if the compliance samples indicated compliance on those five shifts and mine operators did everything during the non-sampling periods as what they did during those five shifts, one would assume that people are being protected, okay? And as a result, I just wanted to point out, because that's the best information that we have. That's the best information that NIOSH has is the millions of compliance samples that mine operators have presented to MSHA as being representative as what miners are being exposed to. That information basically tells us, since 1983, the average concentration -- I realize there's going to be some concentrations above that -- but the average concentration is at or above 1 milligram since 1983.

TED SARTAIN: It's at or below what?

GEORGE NIEWIADOMSKI: 1 milligram per cubic meter. I just wanted to mention that that's the best available information. Even though we may suspect that those samples at times are not representative, there's no way for us to actually determine, okay, quantify what is the actual concentration based on the bimonthly samples.

TED SARTAIN: Okay. And I guess my question is simply, recognizing that that is the best available information, the question is: Is that information sufficient to take these drastic -- make these drastic reductions and exposure limits?

GEORGE NIEWIADOMSKI: That's duly noted. Let me ask another question. You mentioned that you would suggest that the Agency pursue a more performance-based rule. What do you use -- are you going to be providing more additional comments what that would consist of?

TED SARTAIN: Yes, sir.

GEORGE NIEWIADOMSKI: Okay. Thank you. The one thing that you had mentioned and you were opposed to taking enforcement action on the results of a single shift sample.

TED SARTAIN: (Nods head.)

GEORGE NIEWIADOMSKI: Citing on the

sample, correct? I believe you indicated you feel it's not accurate enough to make a determination based on a single shift?

TED SARTAIN: Yes.

GEORGE NIEWIADOMSKI: What is your position on, we have -- also, of course, we have a single shift -- but we also have a weekly permissible accumulative exposure limit. What is your position on that? That's looking at the exposure accumulative over a full workweek? Any comment on that?

TED SARTAIN: Yes, sir. I would be more agreeable to a weekly exposure than a single shift --

GEORGE NIEWIADOMSKI: But, you know, that is part of this rule also. We have two provisions, and as Dr. Wagner had mentioned, one is to provide protections for extended work shifts, and the second is to provide protection for extended workweeks. I have no further comments.

ROBERT THAXTON: I only, actually, have a couple of questions to ask you, and one of them is in relation to what George was asking you. I understood you to say that you actually don't think that either sampler is accurate enough to actually make a single statement determination from it?

TED SARTAIN: Exactly.

ROBERT THAXTON: Would you be willing and can you provide us your analysis and your determination from that data or analysis to indicate to you that neither sampler is actually accurate enough to make that determination? We'd like to see that information if you could provide it to us.

The second area is that you gave us an estimate.

TED SARTAIN: Can I speak to that?

ROBERT THAXTON: Sure.

TED SARTAIN: I guess I'm repeating myself, but I base that position on two things. Early in my career, I did a lot of work in the area of dust control. A lot of -- took lots of samples. In fact, I built boxes where I could take side-by-side samples, three samples from the same area, hung from the same roof bolt on the same shield, and you see, you know, quite a disparity between the results of these samples. They don't all read 1 milligram. One might read 1 milligram. One might read .8. And one might read 2.5. So these devices are not extremely accurate. There are excursions, and we've taken many dust samples over the years, recognize that you get excursions.

From time to time, we'll get a notice

for noncompliance where most of the -- four of the samples will be in the 1-milligram range, well below the 2-milligram standard. And you might have a sample that's 3- or 4- or 5 milligrams. Some people in the Agency take the position that's what that person is exposed to during that day. We need to find out what that problem is. I maintain that it's more likely that that's an erroneous sample when you have four that average one and an excursion one particular shift, that's in the 3-, 4-, or 5-milligram range.

And I guess that's part of my concern when we talk about a single-shift sample and then, as I stated earlier, when you have one of the higher officials at the NIOSH research center in Pittsburgh that knows, that has worked with this PDM for 10 or 15 years, however long they've been working on it, he hesitates to say that the PDM -- I was talking about the gravimetric earlier, now the PDM -- they have reservations about the accuracy, day in and day out, of the device. Particularly, when you talk about single shift compliance.

So I think we would be better served to look at five days or a week than we would be to, you know -- we'll be looking at -- we'll use the PDM and

be looking at it in realtime, but when you're talking about compliance purposes, I don't think there's enough accuracy in these devices to write citations based on one sample.

ROBERT THAXTON: NIOSH has published a couple of documents that do go to the accuracy of both instruments, and their work is peer reviewed and stuff, and that's why I'm only asking, can you provide the data that you're relying on?

TED SARTAIN: Since they published those documents, like I said, there's 150 to 200 more units that are out in the field during the past year used by operators. And now, they're getting feedback, the operators give feedback to Thermo Fisher and NIOSH. So I think they're rethinking the accuracy and the reliability of the current -- of the PDM and its current design.

ROBERT THAXTON: And like I said, if you can just provide us as much information in your analysis, we'd really appreciate it, because that gives us something to work from.

The second question I had for you was that you indicated that the calculation of the estimated number of CPMs that you would need for your operation and the number of certified persons you

would have to have. Can you provide the analysis that you used to determine those numbers for the number of CPDMs as well as the number of certified persons to us to see how you actually came to that conclusion on those numbers compared to what we would actually expect you to use? I have nothing further.

GREGORY R. WAGNER: Few things. You started by noting your concerns about the complexity of the proposed rule. I'm not asking you to do it now, but in your comments, I hope you'd suggest ways to simplify the rule that would receive the same goal of adequate protection of miners from respirable dust in order to eliminate black lung.

You raised questions about the -- really what a normal production shift should be for use of the gravimetric sampler, but you also raise questions as to whether or not current sampling endeavor does reflect normal conditions. We appreciate your giving information as to what it is that you believe would be representative conditions during which sampling should be taking place.

TED SARTAIN: I'm tempted to answer that now.

GREGORY R. WAGNER: Please if you want, go ahead.

TED SARTAIN: I need to collaborate with others in my company before I take a company position.

GREGORY R. WAGNER: But I think the issue for us and for you is: What's normal? Miners are exposed day after day to variable working conditions. How do we decide? And I think the proposal reflects the belief that average over a few weeks production is a reflection of normal and --

TED SARTAIN: I can tell you what I personally think with regard to a sample strategy that would accurately represent what miners are being exposed to, and that would be to wear a dust monitor every shift, every day.

GREGORY R. WAGNER: Is this your recommendation to the Agency that we --

TED SARTAIN: I'm not making that in the form of a recommendation. I'm just saying, that's an approach or an option that I think should be looked at, and I think if you set a standard -- or let me suggest that we leave the standard where it is; do full shift, that reduces the 2 milligrams to 1.6 as people are typically working 10-hour shifts on production units; sample every day and then a more rigorous surveillance program will give you response

information.

If you sample every day, you don't have to worry about production, averaging production or capturing production. You don't have to worry about area sampling. You don't have to worry about ventilation requirements, plan requirements. We're going to know at the end of every day, at the end of the week, at the end of the year, what each of these individuals are exposed to. That's truly the way you get a full understanding, a representation of what an individual is exposed to.

GREGORY R. WAGNER: Thank you. That's very helpful. And if you could also in your comments when you submit them, give us information about the economical and technical feasibility of that kind of an approach or any other alternative approaches that you might be recommending. Any other questions or comments? Then I want to thank you once again for your thoughtful and comprehensive comments. We look forward to having the specific and detailed information, data on which you base your recommendations available to the Agency as we move forward here. Thanks again.

TED SARTAIN: Like I said, we appreciate you extending the comment period which will afford us

time.

GREGORY R. WAGNER: Great. I'd like to call Tom McNider from Walter Energy, Jim Walter Resources.

TOM MCNIDER: Good morning. Welcome to Birmingham.

GREGORY R. WAGNER: Thank you.

TOM MCNIDER: My name is Tom McNider and that's -- last name M-C, capital, N-I-D-E-R. And I represent Walter Energy. I'd like to thank the panel for giving me the opportunity to comment on the proposed regulation as presented in the Federal Register RIN 1219-AB64. The focus of my comments will be on part 70 and part 75.

Walter Energy, through Jim Walter Resources, has been an active participant in this rule making process by working with MSHA and NIOSH in the development and testing of the PDM in our mines on numerous occasions. We were one of the first companies to work with MSHA in testing the machine-mounted continuous dust monitor that later was miniaturized into the personal wearable that we were talking about today. We've taken an active role through the regulatory review and comment on proposed rules and policies prior to publishing of

this rule. We've commented many times.

We have worked through both the National Mining Association and the Bituminous Coal Operators Association in an effort to help direct MSHA in the formation of this proposed rule. It is disturbing to us that MSHA will not move towards a performance-based regulation and embrace new technology, such as the CPDM, that will allow them to do that.

Rather than sample the person so that you know what his exposure is and the miner taking ownership in maintaining as dust free an environment as possible, MSHA is to sample the occupation. I know, I sat here, and I heard that MSHA is taking the position that you would sample the environment and that you're deeming the environment to be where the person is, working with the equipment. We deem the environment is from when the person steps on the cage, wherever he goes through the mine. That's a person's working environment, and we believe to protect the environment, you put a monitor on the man, and you sample him from portal to portal for his full shift, whatever that shift may be. That the environment a person is exposed to, the individual.

And we believe the act allows you to do

that. And if not, MSHA should go back to the Congress and try to enact it so that we can have a proper rule that protects the individual, not an occupation. I started in this profession 35 years ago when operators sampled the individual through the use of the gravimetric sampler. The operator was required to take five samples and mail them off to get the results analyzed by MSHA's lab which could take weeks. Realizing that a miner could be overexposed, MSHA elected to sample the occupation, which MSHA defined as multiple people. There was some rationale in this. By being conservative, if the group occupation was in compliance, then there was a very good chance that the individual would be in compliance. In a sense, this builds in a safety factor in an effort to better protect the person.

Today, though, with the CPDM, the miner can get his dust exposure as he performs his job and immediately correct his work position or engineering tool that may have caused him to be overexposed. The miner can track his exposure in realtime and immediately know if he's being overexposed. This is what we thought was the primary reason for the development of the CPDM, and we've commented this way many, many times.

The way this proposal is written, it's not a personal dust monitor. Industry has repeatedly stated that they want to sample the person and monitor his or her exposure. This proposed regulation is even more burdensome to the operator. Just by the very nature of how this regulation is written, there is a high probability that the operator will continually be out of compliance and MSHA continually requiring more and more ventilation plan revisions. MSHA is able to require the operator resubmit this dust control plan that may or may not help. We're repeating the mistakes of the past, and we're not utilizing technology to make it better.

MSHA has missed the mark for not allowing for personal sampling. We believe that the focus should be to sample the person, measure his exposure, and in an effort, immediately lower his exposure through doing that. After the CPDM is in place in the workplace, then MSHA should phase into a lower standard. MSHA should start out with 2-milligrams-per-cubic-meter standard that is reduced for extended shifts over 8 hours and more than 40 hours per week. In effect, the miner will not be exposed to more than 10 milligrams of exposure per week no matter what his work schedule and hours of

exposure are. Prepared in the way of a miner sample today for 8 hours and no consideration for extended shifts, this would be an immediate reduction to what he is exposed to.

As experience is gained with the CPDM, the standard can effectively -- can be effectively reduced to the extent necessary by limiting person's exposure to added people rotation and certain work sites or even by elimination of a person's exposure through automation and time.

So in effect, we think you start with the CPDM. You sample the 2-milligram standard as a person actually works. You allow for extended shifts that, if there is a reduction, you allow for a 10-milligram standard dose over a week, but that in effect, immediately lowers the standard, and it gives the operator a chance to put the CPDMs in place, see how they're going to function, and give them a chance to comply and move forward into a reduction as time permits. But yet we've got an immediate protection to the worker from the very start.

We're also concerned that MSHA's taking the 2-milligram standard and reducing it to 1 milligram per cubic meter over a 2-year period. This in itself is concerning, but the impact of the

regulation does not stop there. MSHA takes the 1 milligram per cubic meter standard and reduces it for any time worked over an 8-hour shift. For instance, if a miner is underground for 10 hours, his exposure limit is reduced from 1 milligram per cubic meter to .8 per cubic meter.

His exposure can be reduced again if he works more than 40 hours per week, so in effect, we've got a double whammy. The regulation would be shortened for anything over 8 hours. It's reduced again for anything over 40. Now, we've said 2 milligrams, we see that, but with 1, that's too big of a bite all at one time. Shifts were -- his exposure can be reduced again if he works more than 40 hours as it says. Shifts over 8 hours at more than five shifts per week are routine in the industry, and it's a major shift from today's way of determining compliance.

Exposure will also be reduced for silica, over 100 micrograms per cubic meter. Therefore, silica is present and there are extended shifts -- therefore, silica is present, and there are extended shifts and exposure limit as low as .5 milligrams per cubic meter or lower as possible. Maintaining compliance at this level, utilizing

occupational sampling, and today's technology is virtually impossible.

If the operator cannot maintain compliance, MSHA has allowed for the temporary use of supplement controls which include worker rotation and monitoring of the miners' exposure with CPDMs to reduce miners' dust exposures. This is what the operators are asking for on a permanent basis, to determine a miner's true exposure. Why do it after he's out of compliance, which this rule, in effect, is forcing you to be out of compliance. Do it from the start. MSHA has missed the mark, one, by not allowing for personal sampling, and two, by phasing in a reduced standard of more than 50 percent reduction. A slower phase, then, of the reduced standard for any time worked over 8 hours per day or 40 hours per week would give the operator a legitimate chance to properly administer this regulation.

The following are specific regulations we are concerned about: "70.2, definitions, normal production shift. A production shift during which the amount of material produced by an MMU is at least equal to the average production recorded by the operator for the most recent 30 production shifts."

Just by the very nature of how an average is determined means there will be shifts that are less than the average, and we will be sited.

"70.2, definitions, weekly accumulated exposure -- weekly permissible accumulated exposure." Not clear in the standard how these are calculated and how they are used. But with a 1-milligram standard, we feel like for the extending of the shift and this and the silica, that would be a very difficult thing for an operator to have a shot at trying to comply with.

"70.100, respirable dust standard. 1 milligram per cubic meter within 24 months of effective date of rule." We feel like with occupational samples together with the reductions for extended shifts and silica, this is too aggressive and cannot be achieved.

"70.101, respirable dust standard when quartz is present. Reduced standard when 100 micrograms per cubic is exceeded." We believe there should be a separate standard for silica and not a reduction to the respirable dust standard. It should stand alone.

"70.201(e), sampling devices shall remain with the occupation or DA being sampled and shall be

operational during the entire shift." This provision is contrary to what the industry has envisioned for the CPM since its conception. We believe it should be used to sample the person and should stay with the individual for the entire shift, and whatever MSHA needs to do to make this happen, that's what we think should happen. We should sample the individual.

"70.206(a) and (b), CPDM performance plan." The way the regulation is written there's a good chance the operator will struggle to maintain compliance. Should the operator get out of compliance, MSHA can require a change to the plan. This is one of primary flaws of the way the dust compliance is administered today. Industry has constantly commented how they believe MSHA puts us in a position of putting things in our plan that we don't necessarily agree with, and it's just a club to try to get the industry through an engineering control to a standard that, you know, that we believe that we could meet if we sample the person. And we think we have a legitimate shot at doing that.

And here again, we would prefer a performance-based regulation, relies heavily on an individual's exposure and less on the plan.

"75.332(a)(1), each MMU on each working

section and each area would recognize mining equipment being installed or removed, Shall be ventilated by a separate split of intake air directed by overcast, undercast, and permanent ventilation controls." We don't see the logic in this. MSHA's prohibiting more than one MMU being ventilated by a single intake. Each MMU is on a single split of air and would be monitored for dust. This will have a major negative impact to the industry. It will eliminate supersections, setting up longwalls while the section completes the bleeders or any construction project that may have its own MMU.

As a summary, Walter Energy endorses the use of new technology and associated regulations if they are used in a proper way. We've commented many times, and we have worked with NIOSH and MSHA on the CPDM. We believe in this new technology. We think it has a good shot of making it where we can move dust control and personal exposure in the right direction in reducing it. The CPDM is an instrument that, by name, implies a personal monitor. We strongly believe this instrument should be used to sample the person and not accumulated dust concentration for multiple individuals. Industry has repeatedly commented in this manner from the concept

of the personal wearable dust monitor. The regulation should be all about protecting the individual through whatever steps are necessary, even if this means administrative controls or wearing a powered air filter.

We'd like to close our comments by thanking the Agency for extending the comment period to give us more time to properly evaluate this rule in more depth and then, you know, give you specific comments. I think I've been fairly specific where we see issues in this, but it goes much deeper than even what I've commented on.

GREGORY R. WAGNER: Thank you very much. Appreciate your comments. I'm going to turn to the panel to see whether or not we have any additional questions. Susan?

GEORGE NIEWIADOMSKI: Tom, you had mentioned, well, two things, you touted the benefits of the CPDM, continuous monitoring, and so forth, but you also mentioned that under this rule, mine operators will be certainly out of compliance. Am I correctly paraphrasing what you said?

TOM MCNIDER: Well, we feel like by the way the regulation is reduced and reduced very rapidly, the way we see it, and you -- occupationally

-- your sampling the occupation, which is what we've done in the past. That is where we have the huge issue with this rule.

GEORGE NIEWIADOMSKI: But with the CPDM, of course, the benefits being that you know the concentrations during the shift, okay, and that, in fact, if they're reaching sort of dangerous levels, the intent is you could take corrective action. Are you implying that the way -- that even though you have that capability but because of the lowering of the standard that the technology is not available to take those corrective actions during the shift to change the environment?

TOM MCNIDER: We feel like it needs to be -- the CPDM does give the operator and the person wearing it a chance to see how he should work and monitor his exposure. But if I'm passing that light, and it's a light, and I think it's a safety hazard just by the nature of passing something like that, but if I pass it to you, you have, one, me as an operator. I don't really know, for instance, when you passed, what the issue was, why, with your exposure versus my exposure. You don't buy into the full concept of getting in the best work environment as you, as an individual -- that that monitor's with

you every day. You're responsible for watching where you work. It's diluted by passing it. Just by the very nature, it complicates it. And it makes it where an operator immediately -- why would MSHA be opposed to sampling the person?

You say that you don't believe that it's required through the act. We disagree with you about that. We think the environment is what you, as a worker, sees when you're underground. We want to sample your work exposure, not a group.

GEORGE NIEWIADOMSKI: One follow-up question too, when you said, "to sample the worker," in your, Jim Walter's mines, specifically the CM sections, how often do you change the CM operator during the shift?

TOM MCNIDER: I don't know. I can't say that. I can get that information for you.

GEORGE NIEWIADOMSKI: Would you because that's kind of our --

TOM MCNIDER: We do have an operator and a helper, and they are rotated. But I'd have to get that for you.

GEORGE NIEWIADOMSKI: No further questions, thank you.

ROBERT THAXTON: I have just one

question. You had stated several times that you are proposing that we do personal sampling. Do you have an idea or a proposal or something that you can share with us on the number of people that would be required to be sampled, the frequency that each person would be sampled? Is this something you would sample every day, every shift, every miner?

If so, whatever scheme you could come up with, if you could provide the data and information where you did that analysis, and also, what's the likely cost and benefits of that?

TOM MCNIDER: We worked with a group earlier on BCOA, and we came up with an industry proposal. I don't know that they would endorse that today, but it was to where you would sample at least a DO on a daily basis, and you would be held responsible for that person's exposure. Therefore, it takes the plan out of the -- and production out of the equation. You're sampling 24/7, whatever time he works and however many shifts he works. So therefore, you're looking at the individual, and you're held accountable for the individual. That's what we believe is more -- how we should look at a performance-type regulation.

Now, exactly how many people -- but

that's generally the way we believe would be better than the way we're looking at it today.

ROBERT THAXTON: If you could provide the analysis and specifics on it, it would allow us to evaluate it in a better fashion so we could then respond to that. Thank you.

GREGORY R. WAGNER: Just a couple more things. You expressed concern about the pace of the implementation. And the recommendations, advice, and the reasoning behind it that would give a different timetable would be quite useful. And also, you expressed concern about the definition of a normal production shift on which sampling for gravimetric samplers can be used. If you could provide suggested alternatives and reasoning behind that as well, we would appreciate that. And once again, I'd like to thank you for taking the time to come up here and share your comments and observations with us.

TOM MCNIDER: We appreciate it.

GREGORY R. WAGNER: Next speaker will be Randy Clements.

RANDY CLEMENTS: Morning.

GREGORY R. WAGNER: Good morning.

RANDY CLEMENTS: I'd like to thank you for the opportunity to come up here and speak today.

My last name is Clements, C-L-E-M-E-N-T-S. I represent the Drummond Coal Company at the Shoal Creek Mine. As you stated in opening statements was that the Agency's goal is to provide a safe place for miners to work. That is also our goal. Day in and day out we want our miners to work safe and work in a healthy environment, but we do disagree with this new proposed rule that you have out. This rule is a very complicated and hard rule to understand.

To my knowledge, I don't know of any proposed rule that has addressed so many parts of the Code of Federal Regulations at one time. This rule addresses part 70, part 71, part 75, and part 90 with major, major changes. As I stated, it is a very complicated and hard rule to understand. I do appreciate the extension of the comment period. Due to that fact, to allow us the opportunity to really understand and study this rule and to send in appropriate comments. And we will be sending in appropriate comments.

Dealing with the CPDM, we had just purchased one just to learn how the unit operates. We have had that unit for approximately two weeks, and the individuals that we use to take dust samples are still trying to understand that unit. It, too,

is a hard unit to understand. It's difficult. The unit is a good unit, but by people that I have talked to, but they also have had a lot of trouble with it. We have tried to download the program of this continued personal dust monitor, and we have not been able to do that yet. We're going to contact the manufacturer and see what we're doing wrong or what's wrong with it.

Speaking of the -- still talking on the CPDMs, we were concerned about the availability of these because we, in the near future, hope to be operating approximately six units, which is a great deal of these monitors that we will have to purchase should this rule go into effect. I talked to one of the sales representatives for that company, and he told me, as of right now, all they're capable of producing is 100 units per quarter, 400 units a year. That was the statement that was made to me. Whether that's true or false, I don't know. That was one of the sales representatives. He did make a comment, if I ordered now, I could go ahead and get them. So maybe that's just a typical salesperson.

We have put this unit on individuals, not for the purpose of dust sampling, just to see -- get their feedback. First comments of these was

talking about the bulkiness of it, how heavy it is. And one of the problems they see is the part of keeping your hard hat on. Because of the stiffness of the cord, it's got several holes and your light cord, it goes up, and the light cord comes out the side of the light instead of over the top, which poses a problem. But during the winter months when the individual puts on his coat, the cord is so stiff, it pushes his hard hat off his head. That poses another problem. A hazard to the miner. This unit needs, even though it is a good unit, it needs to go back and be changed and make it lighter weight and more user friendly for the miners to wear.

As you read through this proposed rule, it seems to me like it is focused on trying to get more people involved in the dust sampling. I say that because even the person that's wearing the pump, you have to train them on the use of it, how to read it, and I think that's a good thing. I think everybody needs to be involved. In order to make an environment safe, everybody's got to be involved in that. That is our goal. We have to get people involved.

But again, like I stated, it's very difficult for everybody to understand, and this needs

to be rewritten to make it more simple and user -- for people to understand, everyone to understand. I have a few questions concerning the certification. As stated in the proposed rule, it says, "Persons not certified in sampling and those certified only in maintenance and calibration procedures in accordance to 70.203(b) are not permitted to collect respirable dust samples required by this part or handle approved sampling devices being used in sampling." The question I have on that is: Does this indicate that the person, the DO or the ODO, are they also required to be certified? Because they will be handling the pump.

And if they are required, then that poses another problem. Does MSHA have the staff to certify all of these people? Because we would be looking at certifying several -- 100 to 150 people.

ROBERT THAXTON: We can go ahead and tell you now. There is no requirement in the rule making the miners that are wearing the units to be certified. They do have the units on them. They're able to have it on them. They place it on their equipment and stuff. The requirement is only if the pump has to be carried underground to a person or to a location or carried out of the mine. Somebody

actually has to prep the unit in the morning, to put it on people, or fill out the cards, those people have to be certified in sampling procedures. Maintenance and calibration people are certified to do maintenance and calibration only. So they are not certified to do sampling because they're not trained on the sampling provisions.

RANDY CLEMENTS: Well, in that case, I would appreciate it if there were some type of explanation on the handling procedures. Because looking through this, I see coming, in the near future -- an inspector comes up and citing us for the person that's wearing it, because he is handling it. He is toting it, just a definition on the handling procedures.

Another question I have, if a person is already certified in sampling and maintenance and calibration, prior to the implementation of this new rule, will they also have to be recertified?

ROBERT THAXTON: The proposal says that people that are certified will have to be recertified every three years. If you're certified at the time the rule goes into effect, within three years, that person would have to go through and be retested.

RANDY CLEMENTS: Upon the implementation

of the new rule, three years from that period you have to go through recertification?

ROBERT THAXTON: Yes, that's correct.

RANDY CLEMENTS: Again, that goes back to my concern of dealing with the instructors at MSHA, which I know that's something y'all will take care of. Will there be enough hands-on staff or instructors to handle the number of people that are going to have to go through these to be certified because you're talking about several people. And I think the time they have to go through it, the periods, the days of the class. That's just a question I have.

Has MSHA gave any consideration on how long this course will take as far as being certified? Is it similar to what we do now?

ROBERT THAXTON: The recertification doesn't require retaking a class. It's only the initial person, when they get certified, that's required to take the class. So recertification periodically on the 3-year increment only requires the retesting. So it's just the amount of time it would take to do a test. If a person wants to take the class over, they're quite welcome and able to do that. The class right now, though, is basically,

what you see right now for the current sampler is probably two to three hours, up to a day, depends on the level of expertise of the people that's being trained.

RANDY CLEMENTS: Concerning the -- or a question I have. If an individual's certification is revoked, is there any procedure set out -- can that person ever be recertified, or is their certification revoked from now on?

ROBERT THAXTON: The decertifications that MSHA has proposed and has done in the past, basically, they're good to be decertified for one year. The person can come back and ask to be recertified after that point. Sometimes, there are other ways of being decertified that eliminate people from the program for life. But our administrative procedure does not anticipate doing that. That is strictly a criminal procedure, but the administrative procedure is basically one year, or it could be less. It's the district manager's call as to -- based on the situation, as to how long the decertification lasts.

RANDY CLEMENTS: Another question I have, the new proposed rule says that the CMDPSU or the CPDM can be used for DA sampling. I guess one of the questions I have on that, because of the amount

of pumps we would have to buy, can the district manager require us to use only the CPDMs on all sampling?

ROBERT THAXTON: No. The rule is very specific that it's the operators' choice as to whether you want to use the gravimetric sampler or the CPDM to do sampling. It's your choice.

RANDY CLEMENTS: Another question I have is concerning downloading the information or sending it to MSHA at the end of the week. Is MSHA going to come up with a standard form just like we do under 7001s electronically and the 7002s? Will they have a standard form that we'll fill out to send in?

ROBERT THAXTON: Actually, yes. The Agency is developing and will have ready a computer-based system that will essentially go through the E-Gov program that you do now for diesel equipment that you would be able to access. It would have standard information that's general that's attached to the file and then the two files that are imbedded into the CPDM would actually be uploaded with no changes being made to them.

RANDY CLEMENTS: Well, that poses another question because we do have a timetable we have to submit these. If that system is down, what

are the operators required to do?

ROBERT THAXTON: The plan right now is that you would still be able to get on to the system. You would be able to indicate problems that it wasn't accessible to you, or you can also contact the district and be able to report that problem as well. Much like the diesel program, there is a part of this that's built in that provides notification through your local district as to what your attempts are, what you're trying to do. Also, it would provide feedback to you as to whether your files were actually transmitted or received or not and which ones weren't.

RANDY CLEMENTS: That's the concern I have is the time frame we have to submit them, and if we don't get them in this time, what the recourses could be as far as the MSHA.

Another question or concern or comment, on the posted requirements, can someone expand on the posting within the one hour, on the board, after the date when the shift is sampled, the purpose of that? Because most of the time, after the person gets out from underground, the person that sees or that had this sample is already gone. The people that goes underground are already underground. And just trying

to understand why the requirement must be posted within one hour after the shift, the sample time and why it should be maintained and posted on the board for four to six days.

GREGORY R. WAGNER: We appreciate your continuing with your comments and recommendations, and we'll run through them at the end.

RANDY CLEMENTS: On the record or a comment concerning the records that -- again, I guess this is another question. What I'll do is a lot of -- I've had these questions, and I will -- we will submit them in the comments because we have to understand this thing to be able to make sure it works. And that's the whole goal, and as I stated at first, it's a very complicated rule to understand, proposed rule. And we will be submitting comments and just asking that the thing be more simplified so everyone can understand what's going on, what the proposed rule means.

GREGORY R. WAGNER: If I can make one request, if you could submit your comments and questions to us as soon as possible, that would give the Agency time, if there are specific areas that have not been adequately addressed in what's come out earlier in the room here that gives the Agency time

to clarify them for everyone. So we'd appreciate that.

RANDY CLEMENTS: And again, I would like to thank the Agency for extending the comment period because, as you understand, it is trying to get all of this together at one time. And in closing, I think I would like to say the Agency, because if you look back just here recently, there have been several new proposed rules or rules that have been implemented, and sometimes, you feel like it's about time, you know, let's stop. Let's wait and see what effects what we're doing is having. It seems like we're constantly being bombarded with different rules, different proposed rules. As I understand, there's a possibility of four more proposed rules coming out by June. That's just what I've understood and comments that have been made. I just ask that the Agency back off for a little bit, and let's see what effects of what we're doing is happening. That's all I have.

GREGORY R. WAGNER: Thank you very much.

RON FORD: Mr. Clements, just concerning your comment about a manufacturer saying that currently there's only 400 units available to purchase, I mean, to manufacture per year.

Generally, firms can allocate more resources to particular units or products as demand increases. And right now, there is no demand for the CPDM to be used. I mean, there's no requirement for the CPDM to be used in the mine. But I want to ask a question about that one CPDM that you did purchase. Do you know the price that you purchased?

THE WITNESS: $12,900.

RON FORD: Did that include any warranty?

RANDY CLEMENTS: Yes. I'll have to get the paperwork. I'll put it into the paperwork I'll be sending.

RON FORD: Thank you. And just other question. Do you know the price of the filters?

RANDY CLEMENTS: All of that is broke down. I'll have to put it into the documents too.

RON FORD: Thank you.

RANDY CLEMENTS: The concern I had on the 400 units -- and I understand it's like any industry. If you have a higher demand, you're going to have more of what the item is. I understand that. But we are restricted to, if this new rule goes into effect, we must be using them within 12 months. Can there be enough units because a lot of operators do

not have these units. We're looking at probably close to 100 ourselves, and we're just one coal mine. Will they be able to because they're not going to hire anybody on until this rule passes. Because any smart business man would not do that. That is the concern we have as to availability, too.

JENNIFER HONOR: I'll just speak a little bit further on that Mr. Clements. MSHA addresses that in the preamble, and I don't have a page number in front of me, but they do talk about the availability. And in part, that phase-in period is intended to allow them to ramp up production. MSHA says in the preamble that if following, the effective date, if there aren't enough of the units available, they'll either issue a federal register notice with more information, or they will accept a valid purchase order. And I think that MSHA is, in the past with the SCSRs, there was a similar situation with not enough SCSRs available. And as long as the operators made a good faith attempt to purchase the item, then they weren't penalized.

RANDY CLEMENTS: Yeah.

GEORGE NIEWIADOMSKI: I have no comments.

GREGORY R. WAGNER: I want to thank you

again for your comments, and we'll be looking forward to seeing the written remarks. Adam Ritch.

ADAM RITCH: Good morning, ladies and gentlemen of the panel. My name is Adam Ritch, R-I-T-C-H. I'm safety coordinator for Cliffs Natural Resources, Oak Grove Resources, which includes Concord Prep Plant and North American Mining.

GREGORY R. WAGNER: I think maybe if you could speak into the mic, tilt that down more towards you if you would.

ADAM RITCH: I apologize. Mr. Sartain is a little bit taller than I am. First off, we also have one CPDM that I have put in the limited service and serviced a couple of times, and currently, the things I have noticed was that the CPM has presented an ergonomic challenge to the wearer such as a scoop operator, or when you're performing menial tasks like maintenance and service inside of a longwall shield or so forth.

And I've received complaints about that. Furthermore, the device is bulky and heavy at 3 kilograms, which is significantly in contrast to the current technology we have today including the cordless lamps that we currently employ. Where coal mine hazards exist, I feel that this should improve,

increased damage to the unit itself. Also, not sure, because I haven't experienced it yet, what effects it will have on the TEOM being jarred really hard, haven't experienced that. I was just wondering if NIOSH had any data relating to that because Thermo Fisher didn't provide me any information on that as well.

Furthermore, the CPDM does not replace the gravimetric sampling for quartz or silicon dioxide. It has been shown to be far more prevalent in terms of exposure in coal mines. Silicosis affects approximately one to two million people a year in and outside of the industry as opposed to approximately 40,000 with black lung.

Also, the silica exposure, as referenced by Dr. Grayson, his article, is that the likely culprit for these higher results and concentrations could be attributed to silica. And therefore, is the Agency really, outside of the proposed rule, really digging into other sampling procedures for silica? Also, the mass transducer, which is basically the sampling portion of the unit, it does not -- there's a mechanism, a latch mechanism, that you remove the mass transducer with for cleaning and maintenance purposes. That is not foolproof from being removed

in sample -- which produces an error sample, which is basically a waste of our time. We'll have to start back at square one.

What means can the producer do to kind of lock that mechanism until we can remove it from the monitor to do maintenance and calibrations. Also, the port is poorly constructed in my opinion. This is my personal opinion from my experience. It's made of brass, which I understand is for non-sparking, but if a person were to strike the cap lamp against something hard like a shield or so forth, I can't see this thing holding up for a very extended period of time. Especially, since we only have a one year warranty on the device. So the repairs would be on us on day 366. So I have a direct issue with that.

The location of the port. I know data has shown that there's very little evidence to show differences in concentrations from the cap, from in front of the lapel. I accept that, again, but the exposure of the inlet especially due to the size of port, I think it's more susceptible to being contaminated from metal fragments, welding fumes, and so forth, which has shown in prior times that welding fumes will skew the results.

The calibration of the unit is complex. It's very tedious, which requires more time. And if you cannot get a unit to calibrate, you have to remove that from service, which means, basically, you're going to have to have two ready to sample one person. Especially, if it doesn't warm up correctly, doesn't calibrate correctly, so we will face more and more internal issue in terms of putting this thing into service.

The operators' manual for the CPDM warns against getting the battery wet. I'm not sure how often you've ever experienced longwall operating, but there's going to be times where water exposure is going to be great. Especially, when you're having to do anything below the normal standing or crawling levels. Also, the tapered element oscillating microbalance, a plus or minus 25 percent margin of error and 95 percent confidence, to me, is just not exact. Especially, in terms of determining compliance. In the IH world, that's extremely high, where as you can see some places it's plus or minus 5 percent.

Why can't we, industry and labor, get with the manufacturers of these devices, come to terms in trying to find a more accurate device, which in

turn, will determine our employees' direct exposure. Secondly, the TE frequency has been demonstrated to be susceptible to temperature fluctuating, humidity concentrations, and low pulsations and filter pressure drops, which will also cause an error on the device. Here in Alabama, average humidity is probably 65 to 70 percent, relatively, in the coal mine. The device was sampled in 40 to 45 percent in the lab. I think more research needs to be shown in the higher and lower humid areas of the coal mining to gain a more representative data sample going forward.

Lastly, during the programming, you have to select the temperature range. Given our unseasonable weather, that can pose challenges. Where in your travel ways, you have direct intake air, it could be colder than what the operator programmed it for. And when you get to the face, it could be -- it could stabilize making your range you want it to work -- or it could get hot. With this, the guessing game to me is not the right approach.

On the surface, when I program this device, I have to select the range to program it to the best of my knowledge, which may or may not reflect the conditions of the employee's shift. Also

again, currently, there's no competition in this model; and sales and purchasing lead times right now are one to three months, and according to the sales rep I talked to, could go up to one year from the date of order. By that time, under the proposed rule, as it sits, we're looking at an exposure of 1.5 milligrams per cubic meter. Already, we're kind of behind the ball in trying to get a great handle on the issue.

More importantly, did MSHA estimate the non-warranty cost in the economic assessment that they performed? And then finally, in my opinion, the CPDM in its current stage could be a very useful tool in assessing the realtime coal dust exposure for our employee. However, also due to its infancy at this time, I don't think it's field ready in mass. Until we can get more exact margins of error and also wait to actually do replacing of the gravimetric sampler for silica, for quartz, however, you want to say it, and I think that right there would give us better data to work on eradicating black lung.

Also, I want to thank the Agency for extending the comment period, again, due to the issues of the complexity and ambiguity of parts of the law and the volume to further anaylize that. And

I also urge the Agency to incorporate, as a last resort, the acceptance of supplied respirators or something like that to determine the miners' exposure because that's what he is physically exposed to not necessarily the encompassed environment. So that is, again, as a last resort, but it also should be credited when all else fails. So you're looking at almost totally purifying the air around a person. And that's the goal here, to have zero cases going forward.

GREGORY R. WAGNER: Thank you. I thought you were done.

ADAM RITCH: Well, I've got two questions. According to the data of the 10,000 miners who succumbed to complications of black lung, the average age was 78. And I didn't get the entire age range on that. I was just wondering, would the Agency provide that because I was curious just for my research alone.

And then also, did NIOSH take into effect that during the 1990s that was the lowest number of miners in the industry across the nation and people were -- went to other industries such as railroads, steel mills, the military, and I was curious during the assessments of the persons, was

that taken into account? I think that's very prevalent data to have, especially if, like in my case, I was exposed to very poor air in Afghanistan, which may have a direct reading on me down the line. I was just wondering does the Agency and NIOSH take that into account?

And then finally, we're going to reserve the right to extend our comments and also revise comments with data as they come forward. And also we'll be submitting more comments in writing.

GREGORY R. WAGNER: Thank you very much for your comments.

RON FORD: Mr. Ritch, you stated your question was: Did MSHA estimate the non-warranty cost in the economic analysis? Could you be more specific? Did you mean like annual maintenance costs or --

ADAM RITCH: Well, for example, say month 18, the 18-month period we have this unit, it gets internally damaged for whatever reason. That cost will not be warrantied (verbatim) by Thermo. I'm just wondering what that cost would be from the Agency's standpoint. I do not know. I was just curious is the data floating around saying this is what it's going to cost to refurbish the unit,

non-warranty versus warranty, or just the TEOM warranty versus no warranty, stuff like. I was just curious.

RON FORD: In the economic analysis, we have a cost-worthy unit and a separate cost for the warranty for the unit, 5-year warranty. In addition to that, we also have annual maintenance costs that we estimated for the unit. What we would want you to do is to look at those numbers and then also give us any input on that. Like, if you have any updates or anything more accurate that you have in addition to other costs that we have in the economic analysis, also, like, downloading the information and preparing it before your shift. That's also included.

ADAM RITCH: Thank you.

GEORGE NIEWIADOMSKI: I have a couple of questions for you. You pointed out a number of potential shortcomings with the CPDM based on your limited experience using it. Have you shared that with the manufacturer?

ADAM RITCH: No, sir. I have not. I haven't had a chance to speak with our local rep.

GEORGE NIEWIADOMSKI: We'd suggest you do that, okay? They need to know that. My second question is: You have indicated that you've used it

on a limited basis. How have you, in fact, used it? Can you share that with the panel?

ADAM RITCH: Sure. I've worn it twice, and one thing was for me to actually try to manipulate it and see where my spikes and fluctuations would occur. That was very easy to do because, just the nature of the coal mine, you can falsify the -- or you can skew the data very easily. The second time I wore it as an assessment tool from the standpoint of where a miner should or should not stand, where the highest concentrations were, and so forth. And also, have a person wear it to simulate, like I was talking about, working on the longwall. I gave it to the person just to wear at that moment. And basically, I received less than rave reviews for that.

GEORGE NIEWIADOMSKI: Did that work result in some work -- changes in some work practices?

ADAM RITCH: For him it was non-routine, which poses a question there. In a case like that where a person is going to do maintenance or other work outside of his current work capacity or standard work capacity, can he put the unit somewhere else or is that going to -- to me, that still assesses his

exposure. The exposure levels didn't change. It was just the ergonomics that changed for that person. That raised an issue with me. I'm thinking that can cause strains and sprains and so forth, getting caught by it and caught on it and things like that.

GEORGE NIEWIADOMSKI: Thank you, Mr. Ritch.

GREGORY R. WAGNER: You mentioned, as our prior speaker did, the issue of silica. Just note that MSHA has announced in its regulatory agenda an intention to put out a silica rule. And you asked the question about the data, the deaths of people with black lung and other chronic lung diseases. I suggest that you go to the NIOSH Web site, or you can either access it directly or through the Centers for Disease Control Web site, and that gives the various assumptions for the work-related lung disease surveillance report. Or you can just type in CWP, black lung, whatever, and you ought to be able to get the assumptions that they used and the sources of their data. And once again, thank you. We'll look forward to more detailed information. Dale Byram. Is he here?

DALE BYRAM: Good morning.

GREGORY R. WAGNER: Good morning.

DALE BYRAM: My name is Dale, D-A-L-E, BYRAM, B-Y-R-A-M. I work with Walter Energy. Like everyone before me, I appreciate the opportunity to speak to you today. And I'm speaking on behalf of the Alabama Coal Association Safety Committee. As an association, we support our members and their comments and concerns that they've shared with you today. I know that Chevron Mining had identified concerns relating to the science and determining the accuracy of the testing. They also identified concerns and requested consideration from administrative and engineering controls to help us protect our miners. Jim Walter Resources spoke specifically to part 70 and 75, and they had concerns that MSHA had really missed the mark on what value we could use the PDM for. Drummond/Shoal Creek also talked about concerns with the posting requirements and other specifics. Cliffs National Resources just identified several specifics related to the PDM and some of the shortcomings.

I think we'll hear again, as the day goes on, other people that have concerns about the ergonomics of the unit and potential safety hazards with the design. The safety and health and the wellbeing of our miners are of the upmost importance

to the Alabama Coal Associations and its members. The intent is to lower the exposure to respirable dust. The primary sampling tool, as we've heard so far, references CPDM.

From its conception, the CPDM was designed to provide personal samples for the miner wearing the device. It appears that the intent in the proposed regulation is to use the CPDM more as an area sampler. However, consideration should be given to the value of using the PDM as it was designed, and thus, in itself, one could believe that by sampling the individual, that we would also be able to have an accurate sample of the environment.

Dr. Wagner, when you began today with your introduction, you talked about some of the things, the catalysts, that had driven us to this proposed regulation. And you also showed several slides of lung -- lung tissue that had been affected by coal mining dust exposure. I'd like to share a concern with the technical aspects related to the surveillance testing specific to the X-ray program, because again, that had to be one of the catalysts to help lead us to this proposed regulation.

Under the black lung surveillance program, operators are required to offer chest X-rays

on a scheduled basis for their miners. The X-ray has to be read by a B certified reader, and it has to go along with the NIOSH regulations or standards. That's how I understand it. It's our understanding also that the NIOSH regulations requires the films to be processed by wet prep. In 2009, we received a call from a medical center that provided our particular B reader service telling us that they would no longer do wet-prep reads, that it had become obsolete, that better technology was available.

At that point in time, we contacted NIOSH and shared two things: One, the problem we were having trying to find a B reader to do wet prep now in this area; and two, about our concerns that the testing that was being done now was probably not as accurate and defined as the digital imaging would be. We had several conversations on the phone, and we shared correspondence with Dr. Weissman at the respiratory control or disease center. Unfortunately, they were sympathetic to our problem but could not make any changes to the regulation. This brought up two issues: One, we had -- at that time, we had like 30 days to find another B reader so our mines would be in compliance with the regulation, and we could continue to offer our miners the

opportunity for X-ray. You have to have two sources, maybe a mobile van, and then a physical location that if they missed the opportunity to be x-rayed at the van, that you could send your miners to. The closest wet prep -- B reader for wet prep from our location was probably about 50 miles away.

This in itself was a deterrent for trying to get the number of miners -- every miner you would like to have the opportunity to conveniently get a chest X-ray. But we met compliance as we are in compliance today. Prior to today, I recontacted NIOSH to get an update on where we were. And yesterday, I found that we have made no progress. That's a little bit wrong. They are making progress. They feel like they are a few months away from being able to accept digital imaging, but it was presented by, however, before we can do that, the regulation would again have to be changed. If there is better technology out there that has been in place for at least a couple of years, we want our miners to be able to use this technology to more accurately identify the potential for pneumoconiosis. And we would like to request that there be some movement in this area.

Finally, we'd like to thank you for this

opportunity to make these comments on behalf of our miners who the proposed intent of this regulation is to protect. Their health and safety is of the upmost importance to us. We appreciate the extension of the comment period because I believe we'll be able to glean more technical specifics related to this regulation.

GREGORY R. WAGNER: Thank you very much. I'm glad to hear that NIOSH is reporting that their using digital X-rays may be only a few months away. I know there were substantial delays from what they wanted, and hopefully, what I'm told is that the regulatory change, unlike this one, may be quite simple, noncontroversial, and be able to permit the adoption quickly.

DALE BYRAM: We'll be able to make supportive comments on that regulation.

GREGORY R. WAGNER: Excellent. Thank you for your time.

DALE BYRAM: Thank you.

GREGORY R. WAGNER: I apologize. I inadvertently went out of order. Larry McGiboney.

LARRY MCGIBONEY: Thank you. Good morning.

GREGORY R. WAGNER: Good morning.

LARRY MCGIBONEY: I'm Larry McGiboney. I'm with Jim Walter Resources. The spelling of my last name, M-C-G-I-B-O-N-E-Y, and I want to talk on the personal dust monitor itself. We at Jim Walter Resources have two units. We have used these units underground. I feel like the CPDM is a great unit. It gives realtime dust readings for the wearer. Out of the two units, we have a failure with one that we had to send back to the manufacturer. It was repaired and sent back. Dealing with the wearer on the longwall, I feel like this unit is an unfriendly unit to the wearer. And I'm speaking of longwall face. Most of my samples were conducted on the longwall. I feel that's one of the most critical areas in mining and probably one of the most confining areas with them traveling up and down the face.

The cord, with it being stiff and long, mounted on the side, the operator couldn't keep his hard hat on. Periodically through the day, he would have to pick it up and put it back on. It was -- it wasn't feasible for him to have it and wear it like that on the longwall.

I came up, I put the unit in a backpack and stuffed the cord down on it and allowed him just

enough cord out to mount on his hat, and it seemed to where it would keep the unit and keep his hat on during the shift. But in doing that, the employee could not get his readings. He would have to stop, take the backpack off, open everything up, look at his unit, put everything back up, and then strap it back on again. Our miner operators, we ask them to carry remotes. They've got remotes on their chest. We put a 7-pound unit on them, and they're wearing it, too, during the day while they're operating their equipment. And to me, I feel like that's a hazard for those guys to be exposed to.

Roof bolters, they already work in confined spaces. We use dual head roof bolters, and they're side by side. They're turning; they're climbing, reaching, and with this unit in the state that it's in now, it's a hazard for the roof bolters. So we really need to think about coming up with some kind of engineering to reduce the size of this unit so that we can use it in the way that it needs to be used. And like I say, this unit was designed to be a personal dust monitor, and if it's used in that aspect, this unit can be outstanding for the mining industry.

Also, I wanted to talk about

calibration. It might take an hour, it might take a day to calibrate one of these units. They're so high-tech. We don't have that much experience with them yet, and I know we'll get better with time, but right now, it's a nightmare to try to maintain these units. As it was spoken to earlier, that you basically have to have two units for every person that you're going to sample in case you have a failure. These units are programmed 30 minutes before shift change and shift start. And during that 30 minutes, you might as well go ahead and start two because if anything malfunctions on one, you're going to go ahead and give him another one. And the sampler will not start sampling until it's went through its heating process.

Also, on the longwall, dealing with water, we have fog and mist on longwalls, and I know these units have heaters in them to take moisture out of the air so the sample would be good. My concern is, on a day-to-day basis in this heater, that these units will not last any time on a longwall with it day in and day out. That's something that when the tests were made, you come and you make a test one day on the longwall, and it works fine, you know, but for day in and day out, I foresee problems.

Down time on the units, like I say, you have to clean the unit. You have to download the unit. You have to charge the unit. Now, you've got to program the unit. It is going to be a burden on the company that -- with manpower. It's going to take a lot more manpower to deal with these units than what we're accustomed to right now. And that's, you know, we've had experience with them, and, like I say, I like them for the realtime read out, and it works.

And that's basically all I've got to say on the unit, and I appreciate you letting me come and speak to you this morning. I appreciate the Agency for extending the comment period, and I would like to thank you.

GREGORY R. WAGNER: We appreciate your sharing your experience with the unit with us.

ROBERT THAXTON: I just have a couple of short ones. First, you indicated that the cord was a bit of a problem, it knocked the guys hat off. Have you contacted the manufacturer to get the cord shortened so that it's a more appropriate length for what you need at your mine to try to eliminate that problem, or have you just worked with the one that you received?

LARRY MCGIBONEY: I worked with the one that I received. The manufacturer said that when I got my units, it was one of the first ones, and that later on, they were going to come out with a shorter cord. It was not available during the time that I got my units.

ROBERT THAXTON: Also, you indicated that it's difficult to work with, you're still getting used to it. Did the manufacturer come to your facility and provide you with training on the use of the CPDM and how to maintain it? If so, how many of your people attended the training and to what extent was that training?

LARRY MCGIBONEY: Myself and one more person went to Louisville to the Fisher Scientific class that they put on.

ROBERT THAXTON: Was that one day?

LARRY MCGIBONEY: One day.

ROBERT THAXTON: Okay. Thank you.

LARRY MCGIBONEY: All right.

GREGORY R. WAGNER: Thank you, again. Mr. Noble Linn.

NOBLE LINN: Good morning. My name Noble, N-O-B-L-E, Linn, L-I-N-N. I'm employed with Jim Walters No. 4 Mine. I'm a full-time safety

committeeman for the UMWA local 2245, District 20. First off, I want to say thank you for the 80 percent rock dust rule. I know that the time will come when this will save lives. On behalf of the UMWA local 2245, District 20, you have our heartfelt gratitude. Thank you very much. We appreciate it.

In saying that, I'd like to address a few issues on the proposed rule to reduce miners' exposure to dust. We would ask that the rule be expanded to include shaft and slope construction workers. Also, where workers are exposed to coal dust during loading, transportation, and the shipping of coal. Anywhere there is coal, there will be coal dust, and any worker whose occupation requires them to be exposed to respirable coal dust or silica should be covered by this rule.

Next, we fully support the proposal that each working section or MMU would be required to be ventilated by a separate split of air directed by undercast, overcast, or ventilation controls. We know the miners will be better protected by intake air sweeping the face, especially, where super sections are used.

Next, we are pleased with the proposal of lowering the standard on belt air force

ventilation from the current 1.0 milligram per cubic meter to 0.5 milligrams per cubic meter. We at JWR No. 4 Mine have used belt air for many years, and for all of those years, we have been exposed to the dust which is generated by the feeder at the loading point. We would ask MSHA to clearly state in the proposed rule that all belt air dust samples be taken inby the feeder for the precise sample of the dust that miners at the face are being exposed to. We would also have MSHA to consider establishing a predetermined distance inby all belt headers and transfer points as a DA, or designated area, for dust sampling. These areas are historically known to be problem areas for dust control and should be a part of the pre-shift examination with results and corrective actions taken to assure compliance with dust control parameters and the approved mine ventilation plan.

We also feel the 6-month phase-in period to meet the new requirements would be adequate and reasonable. We are pleased to see that MSHA will require initial and annual retraining on the use of the CPDMs. We would ask MSHA to clearly state in the language of this rule that a person could only be certified and sample with or maintain and calibrate a

specific CPDM and that all certifications cards clearly state the specific model of CPDM the cardholder was certified with. We would also request this training be separate from all other training and ample time allowed for the miners to be educated on the proper use and necessary knowledge to help reduce their dust exposures.

In MSHA's own words on Page 64427 in the right column, and I quote, accuracy and quality of dust sample results can be significantly effected by the procedures used during the collection process. MSHA believes that only persons certified in dust sampling procedures should be allowed to perform this important responsibility. The quality of training and the time spent on training should be a reflection of this statement. Particular training must be given to the miners in calculating permissible exposure limits. The proposed calculations are confusing and difficult to understand. We would assume there would be a standardized form provided to perform calculations.

We positively support the idea of a CPDM performance plan. The rule should further expand time limits under all sections that call for miners' comments and notifications. Miners should be given

ten days rather than the five days proposed. Also, under all sections were written to provide miners information as upon request should instead be written to require a copy of the information to be provided to the representative of miners. For example, 70.206(b)(9),(c)(1) and 71.206 (a)(1)and (a)(2). We are pleased that MSHA has proposed requiring operators to make approved respirators available when sampling has exceeded the dust sample. The rule should be expanded to forbid operators from offering cheaper respirators that are not NIOSH approved. Currently, there are operators who put out cheap unapproved respirators in prominent places where they are readily available. Miners are lulled into a false sense of security by wearing these unapproved respirators. MSHA should ban their use.

The new rule continues to put control of the sampling program in the hands of the operator, and the UMWA continues to insist control of the sampling program should be put in the hands of MSHA. The UMWA produces the use of worker rotation as a means of lowering respirable dust exposure. This does nothing to control the dust. All this does is pull one miner out of harm's way and put another miner in harm's way. We should not -- we should

control the dust and not the miners' exposure to the dust.

There should be language in this rule that mandates miners have a right to make corrections as necessary when they see their exposures exceed what is deemed acceptable. It further needs to state the operator cannot discipline or retaliate against the miner. Thank you.

GREGORY R. WAGNER: Thank you very much for your comments. Thank you, again. Phillip Whitlow.

PHILLIP WHITLOW: Good morning.

GREGORY R. WAGNER: Morning.

PHILLIP WHITLOW: My name is Phillip Whitlow, W-H-I-T-L-O-W. I'm a safety committee representative for the Local 1926, North River Mine in Berry, Alabama, which is owned and operated by Chevron. I have six years underground experience at this mine, four years as a roof bolter, one year outlier utility and currently had just over a year motor supply. There's a few things I'd like to touch on as far as problem areas we see with dust at our mine. The first is our haulage ways and belt lines.

Not long ago, we were here talking about a new rock dust rule. I truly believe if we started

wet dusting in haulage ways and belt lines, that would eliminate a lot of our dust problems or issues we have in these areas. It would also aid in keeping our rock dust up to standards we'd like to see.

Another area is our dirt loaders. The biggest thing for me is when the dust filters and dust boxes stop up. If it's not changed immediately, it contaminates our exhaust system on them machines. When this happens, it puts pure dust into the air, which causes in the next entry where the air's going. And when this dust gets into the airways -- it's pure dust. It's like flour, real powdery. A lot of times, you can't even see it unless you're right there on it.

And this might not be a problem today or tomorrow, but after day in and day out experience with this, potentially, it will kill you. And I believe that if we would implement, maybe, like a scrubber system on a ram car or water box that would collect this dust, we could eliminate this problem very easily. Not long ago, we installed some seals on the south end of our mine. And while we was down there setting these seals up, there was no way for us to control the dust down there. It was a dead end of the mine. It was very dusty down there when

setting these seals up, and our union men, we set the seals up, and we had contractors come in and pour the seals for us.

When the contractors came in to pour these seals, the dust, you couldn't even see the man standing beside you. And these men was working in these ungodly dust parameters down there with no way to control it. We'd like something to be done in these areas.

There's a few things that we didn't like in this proposed plan, 1926, and the biggest thing is the worker rotation on the job. Like my buddy before me said, we're not eliminating the dust problem here. We're just eliminating the amount of time we're exposed to it each shift. Our local 1926 feels that if it's too dusty for the operators to work in this constantly, then they don't need to be taken off the job, but the dust needs to be taken out of the air.

Lastly, we feel that MSHA should handle all the samplings so the operator's not tampering with the results. If we give these operators an inch, they will take a mile. I hope I didn't ramble too much, and I appreciate your time, and thank you.

GREGORY R. WAGNER: Thank you very much for your comments. If you want to wait just one

second. Thank you. Next speaker is Matthew Little.

MATTHEW LITTLE: Good morning.

GREGORY R. WAGNER: Good morning.

MATTHEW LITTLE: I'm Matthew Little, M-A-T-T-H-E-W, L-I-T-T-L-E, 33 years old, married, and I've got three kids ages 12, 8, and 7. I'm in the coal industry as a construction worker. I sink shafts for a living, often referred to as a hard rock miner. 80 percent of my work deals with rock. Very seldom do we get coal seams, most of the time anywhere from 2 inches to a foot at the most. I'm here today simply because, in the future, I'd like to be able to attend my children's weddings, see my grandchildren grow up, and enjoy retirement one of these days.

My main purpose for today is reflected in the Federal Registry of Proposed Rule on Page 64420, at the specific location, and I believe other locations throughout this proposed rule, there's language which states this proposal is consistent with recommendations of the NIOSH criteria document and the Dust Advisory Committee. I disagree with this statement. Because after reviewing the rules, I cannot find anywhere in that document that covers me, a hard rock miner. Any time that it's stated in that

document, it says, coal miner. I'm not a coal miner. I'm a hard rock miner. In my job, we have one means of intake and one means of exhaust. We're in a shaft. Air comes in one way and goes out one way. We don't have the luxury of an intake side and an exhaust side. Our means of ventilation is one way in, one way out.

For example, quoted from the summary on Page 64412 of the Federal Register proposed plan, it says, "The proposed rule would significantly improve health protections for this nation's coal miner by reducing their occupational exposure to coal mine dust and lowering the risk that they will suffer material impairment of health and functional capacity over their working lives."

I would also like to read from the Advisory Committee Report. The report of the Secretary of Labor's Advisory Committee on the elimination of pneumoconiosis among coal mine workers, October 1996. "The committee determined that surface miners, workers of surface facilities and underground mines, mine construction workers, and independent contractors needed to be better protected against the hazards of respirable coal mine dust and silica. In the case of mine construction and

independent contracting, the committee concluded that these workers have been neglected under the current coal mine respirable dust program. MSHA developed an initiative to ensure the protection of mine construction workers, contract drillers, and other contract employees with respirable coal mine dust and silica exposure. This effort should include estimations of types of contractors, number of workers at risk, and their levels of exposure; exploration of means of assuring compliance with permissible exposure limits, the use of dust control plans, sampling, and training, delineating responsibility of mine operators and contractor workers; and implementation of compliance activities to protect this sector of mine workers.

MSHA should also improve recordkeeping of exposure to dusts, occupational lung disease and other hazards that occurred to workers of construction and other contractors in order to prevent occupational disease and injury." The proposed rule does none of this.

"MSHA should work with NIOSH to expand medical surveillance to appropriate groups of mine contract workers and to contract research pertinent to preventing respiratory disease and dust exposures

in mine contractor workers." Has this been done?

"MSHA should collaborate with OSHA in bringing similar attention to operations such as exploratory drilling, which fall under OSHA jurisdiction." Has this been done?

On recommendation No. 14 in the same document, "MSHA should develop an initiative to ensure the protection of mine construction workers, contract drillers, and other contractor employees with respirable coal mine dust and silica exposures. This effort should include estimation of types of contractors, number of workers at risk, their level of exposure; exploration of means of assuring compliance with permissible exposure limits, the use of dust control sampling and training; delineating the responsibility of mine operators and contractors in protecting contractor workers; and implementation of compliance activities to protect this sector of mine workers. MSHA should also improve recordkeeping of exposure to dust, occupational lung disease, and other hazards that occur to workers and construction -- occur to workers of construction and other contractors in order to prevent occupational disease and injury." Our construction workers were included in the Secretary of Labor's visions of good jobs for

everyone, and will construction workers be a part of MSHA's Comprehensive Initiative To End Black Lung -- Act Now campaign as stated in the introduction of the Federal Register proposed rule on Page 64412?

My coworkers, my friends, and myself who are at significant risk of material impairment of health will continue to be if MSHA does not cover construction in this rule. Irreversible damage, which ultimately may be fatal to many construction workers, is occurring because MSHA continues to neglect construction workers. I ask that this rule be expanded to cover construction workers to cover my industry. I want to ask the audience that supports expanding this rule to cover construction workers, please stand if you're in support of this rule or adding construction workers.

(Audience members stand.)

Mr. Chairman, I would like the record to reflect that 16 persons stood supporting expanding this rule for construction workers. On Page 64419 of the proposed plan, MSHA states, "In a small number of cases, MSHA expects that operators may have to initially limit production, reconfigure major ventilation sources, as for example, install a new shaft or install major ventilation controls. Should

new shafts become necessary, the number of at-risk construction workers will increase." Please protect them as well as the ones already in this industry.

Also, on Page 64421 of the proposed rule, I reviewed Respirable Dust Standard When quartz Is Present. As I stated earlier, my work is 80 percent rock. And I'm exposed to a lot of quartz, silica, whatever you call it. I rise in the support of lowering these standards. I rise in support of Comprehensive Initiative To End Black Lung -- Act Now campaign provided that includes me. And I rise in support of the Secretary of Labor's vision of good jobs for everyone as long as my construction workers are included in everyone. Thank you very much for your time. I'll provide you with booklets of the report that I read from with highlighted areas that concern the construction workers.

GREGORY R. WAGNER: Thanks very much. And please, when you leave, just leave them with the reporter. Let me just do a quick rundown. Again. Thanks so much for your contribution. I appreciate it. We have two more speakers that have signed up. Dwight Cagle is the next one.

DWIGHT CAGLE: Good morning. Welcome to Alabama. My name is Dwight, D-W-I-G-H-T, C-A-G-L-E.

I'm a UMWA Local 2397 safety committee at Jim Walter Resources No. 7 Mines, which we have over 700 union employees at this mine, six sections and two longwalls. These miners are exposed to this dust. Our main goal right now is to end black lung. That's what this is about, exposure of the miners to respirable coal dust. We need to stop it now.

We need continuous dust monitors on our people to inform our people at the time they're exposed. We don't need to be waiting two, three weeks later to know what these people are exposed to. The exposure level, at that time, we need to take action to remove the people and not just by swapping another worker out. We need to inform our miners about the dust level. We need the work-area sample. Also, to let them know the exposure they're getting into, which we do that now. And to remove, means to -- we need to correct whatever means possible to reduce the dust and just monitor -- rotating miners, that won't cure this problem.

By means of whatever necessary, controlling the dust, whatever we need to do, we need to do it. Our shifts now are over 10 hours. We work six, seven days a week. Travel time is, over some sections, some longwalls, up to an hour travel time.

Right now, we have -- our miners are exposed on the track because of the high velocity of air. We have safeguards in place to cover this. Sometimes, this doesn't get taken care of, down the tracks, so they are exposed on tracks also. So the sampling should -- three or four shift sample.

Second, we also have belt air, which we probably couldn't run if we didn't have because of the way the mines are designed. Section C of the belt air, we use belt air as part of our ventilation to the sections, which we commented on in the past. The belt air needed to be clean and below 5 milligrams, and we agree with these sections of on-shift examiner 75.362(a)(2), must record the results and action taken to ensure that we are in compliance not just work design, work design don't cure this. We need to know, at this time, what they're going to do.

In the recent Wall Street Journal ad here, people tested positive -- The National Institute for Occupational Safety and Health has found that roughly 9 percent of workers with 25 years or more in the mines tested positive for black lung. This was in 2005, 2006. The latest publication data up from about 4 percent in the late 90s. The rate

also doubles for the people with 20 to 24 years in mining including many of their -- in their 30s and 40s according to NIOSH, part of the Centers for Disease Control and Prevention.

That's what I say. It hasn't gone away. I don't know if it got -- I don't know -- beliefs about masks or whatever they're wearing, but the production of coal is up. That's my belief on this. Just went from a million ton a year to 3.3 million tons a month through the longwall. And they were -- earlier speakers were discussing about the cost. What's the matter with -- there's no cost you can put on it. I know we update our sampling cost, $16,000. We had to update repairs. That was last month. And then, like, the other comment was on pumps. You use three different pumps, you get three different readings. We need our people trained on maintenance of the pump, not one man doing the sampling -- doing the sampling and repairs, the maintenance of the pump. We need training. They need to be retrained every six months on it. I'm not saying that his pumps were bad but sounds like maintenance of the pumps, calibrations of the pump if they give you three different readings.

So these people need to be trained. We

need more than one person trained for sampling. Like I said, it's costing miners lives. And this training on calibration and testing, this should be going on now. Not after this, it should be going on now. We hope the new rule goes in. And Mr. McNider, on his testimony he was going to get back with you about, the operators and the helpers are switched out at lunch, on the longwall, at Jim Walter No. 7. They rotate out, but both people are exposed. They're still exposed. Both of them still stay in the same area, one take the head gate and one take the tailgate. We're still in the same area. Rotate them out. It don't change.

Same way as continuous miner operators, the helper operator, rotate out during lunch. So the occupation don't change. They're still exposed. That's all I have at this time.

GREGORY R. WAGNER: Thank you very much for your comments.

GEORGE NIEWIADOMSKI: No questions.

GREGORY R. WAGNER: Thank you very much. Our last speaker signed up is Gary Jolly.

GARY JOLLY: Good to have y'all back in Alabama. Probably couldn't read my writing, but my name is Gary Jolly, G-A-R-Y, J-O-L-L-Y. I'm on the

safety committee with Shoal Creek Mining, been employed by Drummond Company for 35 years, third generation coal miner. I'm also a member of the State Board of Mine Examiners here in Alabama, fixing to start my second term on the board, really enjoy doing that kind of work.

As a stated, I'm a third generation coal miner. My Grandad, he died from black lung. My dad had black lung, but it was not the cause of his death, but he had black lung, diagnosed with it. And I really appreciate y'all looking at this. You know, when we started in the mines 35 years ago, dust was a problem, you know, conventional mining. We improved it with ventilation. Now, we're in a new generation, fast coal mining, miners, longwalls, faster equipment, bigger equipment. We need to control it because we've got less people in the mines working, but we've got faster equipment, which creates more dust. So we really appreciate this effort that MSHA is doing to try to cut down on coal mines. You know, we want our guys to live a long, happy, successful life when they leave the mines. We don't want them to be unhealthy, you know, because the life expectancy of a coal miner is not very long to start with. We appreciate this.

Yes, there are concerns in this plan that we are concerned with, but I want to look at the aspects of what's good. The part 90 miner, really appreciate that since my grandad and my dad had black lung -- they were diagnosed with black lung. We really appreciate that. These guys and the part 90 miners, they've already been diagnosed with black lung. So we need to do everything we can to insure their safety and health at the mines until they get ready to retire because they've already got this disease. We do appreciate that.

Shoal Creek Mines is a unique mine. It's probably one of the few mines in Alabama that have rubber-tired equipment transportation throughout the mines, which creates a lot of dust. These are some of the areas I'm concerned about is our outlier people working in the dust. On our faces, on our CM units, we have some of the best ventilation for dust control that you can have is exhaust fans. I don't think it would be a problem to reach that goal on our mining end because of the exhaust fans. If you're familiar with the auxiliary fans, they do a great job of controlling dust. They're not very good on gas. Fortunately, we're not in a lot of gas right now in our mines. But they do control the dust very well.

But our outlying areas of the mines are -- we have a problem keeping the roadways wet, dusty, and that's a lot of my concern is we have a lot of people. How is this going to effect our outlier people? Is it going to monitor them in this atmosphere that they're working in?

And other things our construction guy spoke about awhile ago. I'm a fire boss now at Shoal Creek, and I shift a lot of areas where we build seals and bore holes, and these guys work in a tremendous amount of dust, and building seals and drilling these bore holes, and I'd really like for y'all to look at that really hard and heavy because this is an area that's in great concern.

Especially, like I said, since I've been on the fireballs I get to see a lot more of the mines. And these areas are a big concern. In the wintertime at Shoal Creek -- we have a lot of wet conditions at Shoal Creek, which we're getting out of that problem, but in the wintertime, the mine dries out. As you know, we have a lot more dust, so it's harder to control in the wintertime. We appreciate y'all taking a look at that.

Another area that I've always been concerned with is our intake air. I really

appreciate y'all dropping the level on our belt lines because our air and our belt is all intake air. So that part we really back y'all up on that because air goes directly to the face. No matter where you're at in the mines, intake air, belt lining, roadways, goes straight to the face. That's another problem that, the wetting of the roads and things and conditions. A couple of questions, I know we heard the guy speak about this unit. Yeah, it's big, and it's heavy, you know, I wouldn't want to wear one.

I was a miner operator for over 25 years, and I can tell you about the dust and having crawled in and out of some of these areas, and it is a bad area. But you know, I've heard a lot of complaints about the dust monitor itself, the new one, but I haven't heard a lot of complaints about dropping the levels. So I was sitting back there and the thought come to me that, if we're not getting a lot of complaints about the dust level, let's go ahead and drop the standard. It's a 2-year program, if I read this right. It starts at 24 months and gets to a certain level. Go ahead and drop it. Use the standard we've got now, checking for dust to see if we can get it down until we come up with some new technology on the dust monitors. The technology is

out there. We've just got to take time to get it there. But for our guys, lets drop the standard, start the program. Let's get it down and check the dust with our old dust monitors that we've got now to see if we can comply with that regulation and then, maybe in a few years, maybe we can come up with a better way, smaller unit, you know. Technology's out there every day. So that's one thing that I was sitting back there and I heard. And then this -- like I said, I didn't hear a lot of complaints about it.

Another thing I'd like to mention is our non-union mines all over the United States. I don't think we have that problem here in Alabama. How is MSHA going to look at our non-union mines? How are they going to regulate them? Because most of our accidents, most of our dust explosions and gas explosions are at non-union mines. How are we going to regulate them? We know our union mines are going to be regulated. We know that MSHA is going to regulate our union mines. We know that.

As a union member, I'm concerned with that. We don't want to lose jobs. We've lost jobs over the years, but let's look into this situation. That's the question I have for you. I don't think

this district here -- we have a problem because I know 95 percent of the people personally and professionally that are inspectors. I don't think we have a problem here. Parts of the United States, we do have a problem in that area. And I'm concerned with how MSHA is going to regulate this problem with our non-union mines.

We really do appreciate it. As a United Mine Worker, Local 1948, we applaud y'all for dropping the dust standards and working on this problem and really appreciate you coming down and letting us speak to you again. Any questions?

GREGORY R. WAGNER: Thank you very much. Once again, look forward if you want to send written comments and appreciate you being here today and your interest in this area. I now ask if there's anybody that didn't previously sign up, would you please come forward?

TED NICHOLS: Good morning. My name is Ted Nichols, N-I-C-H-O-L-S. I'm with Reed Minerals out of Walker County. I am with the surface installation. We have three coal mines and a trucking company. I have one question mainly to the comment, reference 71.207 of designated work positions, if it's covered and I have not read it, I

apologize. Subsection B says, "Designated work position samples shall be collected at locations to measure the respirable dust generation sources in the active workings. The work positions at each mine where DWP samples shall be collected to include: One, each highwall drill operator; two, bulldozer operators."

My question is: At this time, our DWPs are established by dust samples that are taken by MSHA. If we are over 1.0 or 5 percent quartz, then DWP is issued. Am I reading this correct that each drill and each bulldozer will become a DWP if this passes?

ROBERT THAXTON: Each highwall drill will become a DWP automatically. Each bulldozer would not. They would be representative bulldozers if you have, say, two dozers that are pushing spoil, if you have two that are doing reformation work, we accept you do the sample of, essentially, one of each so that you're representative of all the exposures.

TED NICHOLS: Is that something that we would decide at the operators -- in my operation, most of our dozers are in the push -- in the overburden, we are a reformation crew. Is that something that the district manager would tell us,

we're going to separate these dozers, or how would that be laid out?

ROBERT THAXTON: It actually is a program that you would work through the district manager, and you would be providing the district manager which occupations you have on your particular mine site and identify which ones would need to be sampled. If he has other opinions about which ones should be sampled, then he would work that out with you. Plus, the combination of MSHA coming out and doing inspections, we would evaluate the positions and identify additional positions that would need to be sampled.

TED NICHOLS: Reference to the drills as becoming an automatic DWP, at this time, I have nine drills between three operations. I have zero DWPs because the samples that have been collected would be locally standard at this time. So to go from zero to nine automatic, even though I'm below the standard, seemed a little aggressive. I personally have no problem with going to a 10 standard because I'm below a 10 standard with my samples that MSHA has collected, but to go from zero DWPs to nine and then the representative dozers and most of my dozers being in the push, I'm looking going 20, 25 DWPs from 0.

So I would ask the panel and ask MSHA to relook at this, how a drill would become automatic as opposed to, now, when the sample has to be taken. It's like we're trying to correct a problem with a drill when there is no problem and everything. All our samples are good, and we're automatically being -- I don't want to use the word, "punished," -- because I had a driller when I was an operator. But we have zero now. We're going to go to at least nine, and by the time you count my dozers, 20 to 25, so I would ask that be looked at.

GREGORY R. WAGNER: Thank you very much. Appreciate your observation. Susan?

SUSAN OLINGER: For some discussion of your first question, I would just like to acquaint you to the Page 64440 of the preamble where it discusses DWPs. That might help.

TED NICHOLS: One more question. I'm sorry. On the CPDM, it is not available to record quartz content. Am I correct about that?

GREGORY R. WAGNER: That's correct.

TIM NICHOLS: So when I do my DWP as MSHA measured for quartz over a one year period to take a DWP off, will that still be done or once the drill is a DWP, he'll always be a DWP?

ROBERT THAXTON: As the proposal's written right now, a drill would never come out of sampling. The other occupations that are established based on sampling, the district manager could remove from sampling after sufficient data's gathered that shows that it's not a problem but not the ones that are established by the regulation.

TED NICHOLS: Will we be required to run the CPDM at a surface installation, or can I continue to run the pumps I run now?

ROBERT THAXTON: The surface would have the option of using either CPDM or the current gravimetric sampler. It's your choice.

TED NICHOLS: Thank you very much.

GREGORY R. WAGNER: Thank you. Anyone else who wishes to make a comment?

THOMAS WILSON: Hello. I'm Thomas Wilson, T-H-O-M-A-S, W-I-L-S-O-N. I'm currently a UMWA International Health and Safety representative. I've held that position for the last 25 years. I started in mining in 1976, initially working at Peabody Coal Company in Southern Indiana. Then in 1979, coming to Alabama and working for Walter Engineering at Jim Walter Resources No. 4 Mine.

During the 25 years that I've been as

International Health and Safety representative, as many of you on the panel know, much of that time has been following many attempts of trying to improve the dust standards in this country. I attended all the Dust Advisory Committee meetings, and I believe each and every public hearing has been held on dust. And I want to start by saying this is a well written proposed rule, and it will save lives. I compliment you on that.

During those 25 years, I've listened to the industry explain the complications of moving forward and cleaning up this industry. And while they change or explain progress away, miners continue to get sick, diseased, and die. Again, I want to thank you on the thoroughness of this proposal.

I want to start by -- I heard this morning talking about how unfriendly of a unit this continuous monitor is and how burdensome it is and other adjectives that they used explaining complications of wearing it. I'd like everybody to pause for just a moment and really think what burdensome is and what unfriendly is. Unfriendly is having to carry an oxygen tank when you're trying to hold your grandchild. Unfriendly is in pouring down rain trying to load groceries while you're holding an

oxygen tank in one hand. Unfriendly is trying to drive down the street while you're connected to an oxygen pump. Unfriendly is not living long enough to see your children married, as Matthew Little mentioned, or getting to play with your grandchildren or getting to spend time with your wife and your retirement that you worked for.

We have several things in the proposed rule I want to discuss. I want to start by saying, the new rule continues to put control of the sampling program in the hands of the coal operator. In past comments, the UMWA has insisted that MSHA should take control of the sampling program. We maintain this position. Realizing that that's not the proposal on the table, I'm going to go forward and discuss the proposal that's on the table.

Also, I want to say for the record, Section 70.208(h) of the proposed rule permits worker rotation to be used as a supplementary control when the operator is unable to maintain compliance through environmental or engineering control. The UMWA supports language that would achieve compliance through environmental and or engineering controls. The UMWA opposes the use of worker rotation as a means of lowering respirable dust exposure. Allowing

rotation will do nothing to control the dust, will not provide any incentive to come into compliance, and it merely rotates one guinea pig out of the dust and places another one in the dust.

In Beckley, West Virginia, Dennis O'Dell discussed expanding the regulations coverage. I believe Matthew Little did an excellent job urging MSHA to insure that this proposed rule covers shaft and slopes. Matthew called himself a hard rock miner, but in fact, I consider Matthew a coal miner. Every shaft Matthew sinks is on mine property. Gary Jolly just discussed expanding to persons pouring seals, and I believe he was referring to having to work in returns to pour seals. He also mentioned for you to consider expanding it to cover mine examiners, and I believe, again, mine examiners are required to work in the returns.

On the topic of expanding, there's some underground jobs that are absolutely essential that we expand and make sure that we get coverage of under our sampling program. Really, any time construction work or rock work is being done in the underground coal mine, for example, shooting and/or mining of overcast, our industry has really one new fad in the industry that's really taken off is raise bore

drilling or shafts. This raise bore drilling requires constant clean up of pure rock shavings that fall back down into the mine. This raise bore drill and clean up of the shavings needs to be monitored.

One issue that is prevalent on every underground mine, the persons that spoke today, of the operators that spoke today, is they, each and every one of them, allow drill shavings from the roof bolters to be dumped on the section roadways. That's followed by equipment running through it causing those contaminates to continuously become airborne. We would ask MSHA to address in this proposal the waste that is left over from roof-bolt drilling and for that not to be allowed to be left on our section roadways. These are just a few -- laundry list of problem areas that we would urge MSHA to further address.

On Page 64415 of the proposed rule and preamble, third column, it states, "However, the Secretary of Labor considers ending black lung disease as one of the Department's highest regulatory priorities and strongly believes that the proposed integrated regulatory approach represents the most effective strategy for reducing miners' exposure to respirable dust." We appreciate that position, and

we applaud it.

At the bottom of the same page, the bottom of that column, it states, "the Agency believes that the integrated approach in the proposed rule would achieve an effective and balanced regulatory program consistent with MSHA's Comprehensive Black Lung Initiative to lower coal miners' exposure to respirable coal mine dust and end lung disease. The Agency believes that a more compartmentalized approach would lessen the impact of the benefits to be achieved by this important initiative and would not reduce the risk of serious lung disease from coal mine dust exposure." I agree with MSHA's position.

On Page 64416, again, third column, reads, "To provide effective protection to miners working longer than 8 hours, the proposal would require that dust concentration measurements for these be converted to an 8-hour equivalent concentration as measured by the MRE instrument. The proposal is consistent with generally accepted industrial hygiene practices that adjust worker exposures to account for all time worked, recognizing that an extended work shift results in a shorter time to recover before the next exposure." Again, that's

the position that I agree with.

On Page 64417, middle column, bottom of the page, states that, "The proposal would revise the definition to require that each set of mining equipment be identified as a separate MMU if two sets of mining equipment are used in a series of working places in the same working section and two production crews are employed. This would be a change from the existing standards that requires that the MMUs must be 'simultaneously engaged in the production of material' within the same working section in order to be identified as separate MMUs. MSHA believes the change is necessary because miners can be exposed to respirable dust and quartz when there is no simultaneous production of material. The proposal would protect the health of miners on the working section." Again, that's a statement we agree with, what MSHA is saying and doing.

"Normal production shift, the proposed definition of normal production shift would revise the existing definition to mean a production shift during which the amount of material produced by an MMU is at least equal to the average production recorded for the most recent 30 production shifts or, two, if fewer than 30 shifts of production data are

available, a production shift during which the amount of material produced by an MMU is at least equal to the average production recorded by the operator for all of the MMU's production shifts." Again, that is an area of agreement on what MSHA is saying and doing.

On Page 64418, MSHA approaches a question. This is in the middle column, "MSHA believes that the proposed definition 'normal production shift' would significantly improve miners' health by requiring operators' samples to be collected during shifts that are more representative of typical conditions at the mine. The Agency solicits comments on the approach taken in the proposed plan. Please be specific in your comments and include the rationale for suggested alternatives." MSHA must insure that normal equipment is operating during these samples, and I want to give you some examples or an example. You have a surface facility in Alabama that also operates a thermal dryer, and in the past, when samples were being taken, it was quite normal not -- to operate the plan but to not operate the thermal dryer, which would leave a completely different result as far as the dust levels. So any time these samples are being

taken from the B representative, we must make sure that normal equipment is operating also.

On Page 64419, third column, "MSHA believes that with the proposed phase-in of exposure limits, all coal mines, regardless of their size and type of mining system would have sufficient time to either upgrade existing controls or to install additional measures to meet the proposed requirements." Again, that is a time frame we agree with.

Further down on that column, "MSHA believes that the phase-in period would provide an appropriate amount of time for mine operators to feasibly come into compliance with the new proposed limit." Totally agree.

GREGORY R. WAGNER: Excuse me. I wonder if there are specifics that you have to recommend, either agency changes or modifications, that would be particularly helpful. As you previously mentioned in your testimony, if these are areas of substantial agreement, we'd appreciate your just noting that, but it's a little bit unclear. If you don't mention something, does that mean that you disagree with it?

THOMAS WILSON: Absolutely not, sir.

GREGORY R. WAGNER: Okay. Then we would

appreciate if there are specific points where you have suggestions for improvements that you would identify those.

THOMAS WILSON: On Page 64420, third column, middle of that column, it says, "MSHA solicits comment on proposed phase-in period for lowering the respirable dust limit from 1 milligram to .5 milligrams for belt air courses and part 90 miners." I'm believing that there should be a second phase-in period that would lower the intakes and belts to even lower than .5. Our intakes and our belts are areas that we can get those dust levels down if we just apply ourselves to do them, if we're required to do them. So I'd like to see MSHA go even further with the first phase-in going down to .5, and the second phase going even lower.

At the bottom of that column, it says, "MSHA believes that the two year phrase-in period is sufficient time for mine operators to reduce respirable dust exposures to an acceptable level." I believe that is an adequate time. Actually, it's a very generous time.

On the top of Page 64421, our respirable dust standards, I support this section, but want to stress that underground construction projects, such

as overcast work, shaft, and slope work must be included.

On Page 64423, first column, middle of the column, "the Agency requests comments on the proposed phase-in on the use of CPDMs, including the time period and the Agency's intent with respect to availability of CPDMs." Very concerned that MSHA is being too lax with the suggested phase-in, especially, with the language of the purchase order.

On the same page, middle column, middle of that column, "Proposed 70.201(e) would account for all the time that a miner works and is exposed to respirable coal dust." I do support sampling devices being operated.

And on the third column, "Working extended shifts increases exposure resulting in increased health risks to miners, both in terms of incidence and severity. The proposal with respect to extended shifts is consistent with generally accepted industrial hygiene principles today, which take into consideration all of the time a worker is exposed to an airborne contaminate, even if it exceeds 8 hours a day." This approach is very much needed with this industry going to extended shifts.

On Page 64424, at the bottom of the

middle column, "Proposed paragraph (g) is new and would require the operator to make a record showing the length of each production shift for each MMU, to retain the records for at least six months." It is my belief that retaining the records should be extended to 12 months.

Third column of that page, discussing the proposed paragraph (h), "Redesignated in paragraph (c), would be revised to require that, upon request from the District Manager, the operator would submit the date and time any respirable dust sampling would begin and submit that information to the District Manager at least 48 hours prior to scheduled sampling. MSHA has included the proposed 48-hour notification requirement." Again, that is really good and long overdue for an opportunity for MSHA to get out there and monitor to operator sampling.

A little further down in that column, again, it refers to the six months retaining of records for at least six months. Again, I would recommend a 12-month retention of records. Six months goes by so fast. We could be in the middle of an issue at that mine and find out that the records just got destroyed.

At the bottom of that page, and column,

"Proposal paragraph (j) is new and would require mine operators using CPDMs to provide training to all miners expected to wear one." This needs to be totally separate from other training. Our other training is quite full of topics, and as far as the quality that a trainer can put on each item, with the importance of this, we need separate and distinct training.

On Page 64425, first column, "Proposed paragraphs (j)(1) through (j)(5) would require that the miner be instructed on: The basic features of the CPDM and its capabilities; how to set up the CPDM for compliance sampling; the various types of numerical displays on the CPDM readout and how to access that information; how to start and stop a short-term sample run during compliance sampling; and the importance of continuously monitoring dust concentrations and properly wearing the CPDM." Again, I believe what is trained on should be expanded to also include the miners' rights as he approaches noncompliance.

At the bottom of that column, it talks about, "MSHA believes that it is impractical to include the proposed comprehensive training on CPDMs within the prescribed time limits under part 48."

Again, that's something I agree with, and I know to be correct.

GREGORY R. WAGNER: May I ask, will you be submitting these comments in writing as well, or are you not planning to?

THOMAS WILSON: No, sir.

GREGORY R. WAGNER: Okay. Good. Thank you.

THOMAS WILSON: On Page 64425, middle column, "Proposed paragraph (k) is new and would require mine operators to maintain a record of training at the mine site two years following completion of training. MSHA believes it is important to retain these records to verify that the required training has been approved." We agree with and support MSHA's selection of a two year time frame.

At the bottom of that page, "70.203(b) would retain the existing requirement that candidates for certification pass an MSHA examination to demonstrate competency in respirable dust sampling procedures or in maintenance and calibration procedures, as appropriate. To ensure consistent administration of this certification process, however, the proposal would add a new requirement

that candidates complete an MSHA course of instruction prior to certification." We support that.

GREGORY R. WAGNER: Excuse me, again, if I could ask if you could justify the areas, as you have been before, where you are suggesting alternatives as opposed to indicating support. Because otherwise, we will assume that anything that's in here that you don't mention you are supporting. If there are changes or improvements that you're recommending, we'd appreciate you identifying those areas and suggesting the changes that you would recommend.

THOMAS WILSON: On Page 64426, first column, "Propose 70.202(c) and 70.203(c) are new and would require persons certified in dust sampling procedures or maintenance and calibration procedures to pass the MSHA examination demonstrating competency in sampling procedures or maintenance and calibration procedures every three years." I object to the three-year time frame. I believe it should be shortened. For three years to pass, there could be a problem that becomes a major problem. I believe that that time frame needs to be shortened.

Page 64433, first column, under J

Section 70.208, Sampling of Mechanized Mining Units; Requirements When Using a CPDM, talks about, "An interim use of supplementary controls when all feasible engineering and environmental controls have been used." I object to that language being in the proposal. Historically this language has been a failure to cause compliance, but if MSHA moves forward and uses this language, the 24 months should be shortened to a lesser time.

On Page 64434, talks about the mechanics working on the longwall would be sampled under paragraph (a)(2). This is very important for MSHA to maintain this for the mechanics on our longwalls. Further down on that column, it talks about, "the Agency requests comments on the proposed locations for the use of the CPDMs." We recommend that -- back to the mine examiners that must work the returns, to do their examinations, I believe all examiners required to work returns should be required to be sampled with a CPDM.

On Page 64435, middle column, it's talking about, "Proposed paragraph (h) would provide that for the 24-month period following the effective date of the final rule, if an operator is unable to maintain compliance with the applicable standards for

an MMU and the operator determines that all feasible engineering or environmental controls are being used on the MMU, the operator may request through the District Manager that the administrator of Coal Mine Safety and Health approve, for a period not to exceed six months, the use of supplementary controls, including worker rotation, in conjunction with monitoring miners' exposures with the CPDMs to reduce effective miners' dust exposure. When making such request, the operator would have to provide a report that: Evaluates the specific situation in the MMU; outlines all the controls that will be used during this time period to prevent miners from being exposed to concentrations exceeding the applicable standard; and three, address the actions that will be taken to reduce miners' exposures through the use of engineering and environmental controls; and four, establishes the time line for the implementation of engineering and environmental controls." Again, the UMWA objects to this approach and believes that MSHA is opening the flood gates and that this will be an area of abuse.

Also on that page, 64435, on the bottom of the third column, "Any approved use of supplementary controls would only be in effect for a

period not to exceed six months. MSHA believes a six-month period is a reasonable time in which supplementary controls may be used. If approved, supplementary controls would be permitted until other feasible engineering or environmental controls are implemented. In addition, if an operator cannot meet the applicable standards after the six-month period, the operator may make another request to use supplementary controls; however, the use of supplementary controls would not be permitted beyond the 24 months following the effective date of the final rule." I object to that approach. That's telling me that we'll have two years of noncompliance.

GREGORY R. WAGNER: I think -- excuse me. With regard to the length of your testimony, when people came in, we said we want people to be mindful that there are others that want to testify. What I'd like to do, with your permission, is let the other people who have signed up at this point come in and testify in case they need to get somewhere and then ask you to come back and complete your testimony, would that be okay?

THOMAS WILSON: Yes, sir.

GREGORY R. WAGNER: I'd like to invite

Joe Craig Weldon.

JOE CRAIG WELDON: Weldon.

GREGORY R. WAGNER: Excuse me. Weldon.

JOE CRAIG WELDON: I was going to say good morning, but afternoon now.

GREGORY R. WAGNER: Afternoon.

JOE CRAIG WELDON: My name is Joe Craig Weldon. That's J-O-E, C-R-A-I-G, W-E-L-D-O-N, UMWA local 1948th, District 20 Chairman of Safe Committee, Drummond Company/Shoal Creek Miners. I'm 50 years old. I've got 31 and a half years in coal mining, all of it underground. I'm a coal miner at heart, and I guess I always will be. The lord has truly blessed me with a lot of friends and family in the mining community, not only here in Alabama, but all across this country. I know his favor's with me, and I guess I said all that to say this: From a rank-and-file miner, and a proud one at that, I believe that the subject y'all chose to speak on today is a true representation of the way it is.

And having said that, I want to talk to you about 70.208, which is involving worker rotation. We all know that this does nothing to control the dust or the hazards of dust in the coal mines. We stand in opposition of this section of the proposed

rule because we feel that this section undermines our seniority rights and in the process that we have contract, and that in order to comply with the proposed rule, instead of taking steps to reduce dust and dusty conditions in the mines, this would be a lot easier than doing that.

And I'd probably say, if I was in that position, I would probably do the same thing. Because this is just a quick fix and an easy way out to comply, and it don't have anything to do with trying to remove the workers from the dusty conditions.

And then it would be just business as usual. And we're standing in opposition of worker rotation. I don't think worker rotation is the answer. I think that the answer to reducing dust would be to start in the belt lines where we use belt air and the haulage ways where you have rubber-tired haulage -- I know we have rubber-tired haulage in our mines, and we're talking about big equipment that don't pull the air through the radiator, but it blows air out of the radiator.

And with that in mind, it creates even more dust than just the tire stirring up dust on the roadway. The fans are so strong, it will blow rock

dust off the top, off the roof, and the ribs. So what's happening is, the area that is getting to the face is already contaminated, is already polluted. So when you have dust that's getting to the face, then once it gets to the face, you even get more dust than, you know, you have a double-edged sword there.

So I believe that if we control the dust on our belt lines where we have belt air, we can control the dust on the roadways where we have rubber tired haulage and track haulage, that we would be able to comply with this. And that's just my opinion, and I think it's a pretty legitimate opinion since I work on the roadways every day. I work out -- I work on rubber tired haulage, and that's what I do. And sometimes, we have to get into returns when they're cutting on the face. I know how dusty it gets. You can't see 25 feet. So I believe that it's, in our opinion, that worker rotation's not going to work. Dust and controlling respirable dust and protecting miners, that's why we're all here, no other reason we're here other than that. If we're here for any other reason, we're here for the wrong reason. And I feel that we can all put our heads together to come to solve this problem and set a precedent to insure all those workers and employees,

whether it be union, whether it be salary, whether it be construction, whether it be contractors, to protect them.

And I also feel that we need -- the company and the union need to have all the information and all the tools and all the help from MSHA to achieve this goal. We're going to have to all work together to achieve this goal. If we don't, it's not going to happen. This proposal and this standard is achievable. It's just going to take us all pushing in the same direction to ensure the safety of the miner comes first. That's why we're here, to protect coal miners, to make sure that they're safe, that they'll be able to breathe when they retire.

I've got about four and a half more years, and if everything works out all right, I'm going to be retired, and I'll be 55 then. And I hope that I'll still be able to do some of the things that I enjoy doing. And I believe that what we're doing now is going to carry on for several generations.

So we need to look and think hard and all push the same direction to make this happen. I guess that's all I have. I'll answer any questions if you have any.

GREGORY R. WAGNER: Thank you very much. Questions?

GEORGE NIEWIADOMSKI: No questions.

GREGORY R. WAGNER: Very good. Thanks for taking the time to speak with us today.

GREGORY R. WAGNER: Fred England.

FRED ENGLAND: My name is Fred England, F-R-E-D, E-N-G-L-A-N-D. I've got 32 years in the coal mines. I started back with a bunch of old timers. We didn't have continuous miner, longwalls, and all that. It was the conventional mining, cutting machine, coal drill, shuttle cars. To sort of sum up everything, I've heard here today -- when they came out with the miner everybody -- nobody wanted the miners. They was going to put us all out of a job. It was going to be a bear, and they was going to cost so much the companies was going to go broke. But the ones that could buy one was going to run more coal and get all the big contracts and put the rest of us out of work, so nobody wanted the miner. Then the longwalls come along. That's the first class, topnotch, Cadillac-way to mine coal. If you don't have a longwall these days, you're not competitive. You can't produce or make money. And that's one of the things that we're up against here

in Alabama. To be competitive in the mining industry, you just about have to have a longwall. The drawbacks to it, all this new high level equipment, it all generates dust. The continuous miner, the haulage -- the rubber tired haulage we have, the fan ventilation systems, all of it -- it is a part of mining nowadays, but it all generates dust. And people have to work in that in areas where there's just a lot of dust. It's contaminated.

As far as the new proposed rule, I think it's a step in the right direction as far as doing away or helping to eliminate black lung. I was surprised at some of the comments from the operators, and they -- I want to commend some of the things I heard from that side. But there's not nothing that we can't achieve as far as the dust, ventilation, equipment, but we do need some working slack to be able to -- what might work at one mine may not necessarily work at another one. We've got a different-type ventilation, the tubing and exhaust fans. Most other normal mines, they've got line curtain or belt and that type ventilation system, scrubbers on their miner. We don't have a scrubber on the miner. So what we do as far as what would work on our ventilation system wouldn't necessarily

work across the board for everybody else, or what they do for theirs may not help ours.

But anyway, to sum it all up, I agree with what Joe said, it's a doable deal, and it's for the good of everybody. Nobody likes change. Just like the old timer didn't like change. Nobody wants change now. The dust pumps, the new monitors, and all that, it's all new to everybody, really, even the people making them. But as far as -- it's a doable deal, and I feel like we need to do it.

And another thing I wanted to hit was the raise borer. That roof bolter, it drills an inch and three-eighths hole, and if you open up the dust compartment, after he drilled one hole, it's a 6-foot hole, there's probably going to be a shovel full of dust in and all that. And it's got a cyclone in there that separates it into different sizes, but that's just one hole, an inch and three-eighths in diameter. Them raise borers are from 16 feet up to 24 feet in diameter. It generates an ungodly amount of dust. I'm talking about tons.

And here, we have an ignition in one of our raised bore shafts from a year or two ago, got five men burnt. But as a result of that, they started blowing air down that and drawing air out too

to try to eliminate methane from building up inside that hole. But at the same time, I think it may be blowing some more of that dust down on the -- into the mines and through the returns.

But anyway, there's workable solutions for whatever -- you've just got to put your heads together and do it, and I think if we all work together, company operator, MSHA, and the good Lord, we can all do anything. Thank you.

GREGORY R. WAGNER: Thank you very much for your comments. I'll ask the panel if they have any questions. Appreciate your time. Before we invite Mr. Waters to come back -- excuse me -- Mr. Wilson to come back, were there any other individuals who wanted to present? Mr. Wilson, the microphone is yours.

THOMAS WILSON: Again, Thomas Wilson, T-H-O-M-A-S, W-I-L-S-O-N. Starting back on Page 64436, middle of the first column, it's talking about, "Proposed 70.209(a) would revise existing 70.208 (a) and require operators, who are using CMDPSUs or CPDMs, to sample each DA for five consecutive shifts every calendar quarter." We need language added to that section that would capture major projects. For example, the drilling of raise bore shafts.

On Page 64438, third column, under B Section 71.100, Respirable Dust Standards, MSHA solicits comment on the phase-in periods. Again, I believe that phase-in period is reasonable, actually, it is quite long. But based on the samples, operator samples, everybody can have levels lowered during the gracious phase-in period.

Again, on Page 64439, again, talks about training on CPDMs that would be the same comment as earlier that it not be part 48 training.

Page 64440, "Proposed 71.207(a) would revise existing 71.208(a) and require operators, who are using CMDPSUs or CPDMs, to take one sample every calendar quarter from the working environment of each DWP." I want to make a long distance observation here from some of the strip mines that's in our areas. From a long distance observation, and that's an observation from the road, it appears to me that conditions are getting worse not better in our strip mines. And in recent times, we've had -- the dust has been so overwhelming at some of our local strip mines that it's even harder to get down the highways to our underground mines. The dust -- you're in a fog out on the highways. And I don't understand.

We also have some strip mines that are

operating directly next to our central shop and supply, and again, it's not uncommon for that strip mine to dust out our shop workers and our supply workers. So based on those observations, I believe it's not the time to cut back on the frequency at our strip mines. I think we need to be stepping things up at the strip mines.

At the bottom of that page, proposed 71.207(b) and comment under that section would be that MSHA should consider including all front-end loaders on that sampling. One commenter mentioned earlier about having two different standards, one for coal dust and one for silica. Unfortunately, a miner only has one set of lungs. MSHA does have it right when considering the miners' health. And I'm asking that you continue with the reduced standard. With that, I thank you and would welcome any questions.

GREGORY R. WAGNER: Thank you very much for your review of the document.

SUSAN OLINGER: You had a lot of specific comments. I know you indicated that you may not be submitting any written comments, but in some cases, it would help us to evaluate your suggestions if you were able to include rationale in written comments, such as why to include front-end loaders

and some of your other comments. Thank you.

GEORGE NIEWIADOMSKI: No questions.

GREGORY R. WAGNER: Again, on your last comment about one set of lungs, I think that MSHA is interested in controlling both the coal mine dust to a level that won't be harmful and silica dust to a level that won't be harmful. Any consideration of separating the two would not be less protective, but it would be to be equal or greater protection than the miner has right now. So that's definitely the intent. And we invite you to, as I'm sure you will, take a look at the silica rulemaking at the point at which that comes out and to offer your thoughts and comments at that point as well. And again, we really appreciate the thoroughness with which you have provided your comments.

THOMAS WILSON: Thank you.

GREGORY R. WAGNER: Are there any other individuals in the room now who would like to offer additional comments, data, or thoughts on the proposed rule? Seeing none, I want to thank everyone who has participated in this meeting today. You've provided useful information that will be quite valuable to the Agency in trying to improve our approaches to reducing dust exposure for miners in

order to eliminate black lung. Again, I would remind you that we have a written comment period that is open until May 2nd, 2011. MSHA will take your comments and your concerns into consideration in developing the Agency's final rule. I'd like to encourage all of you to participate throughout the rulemaking process. And at this point, this hearing is concluded. Thank you and safe travels.

C E R T I F I C A T E

STATE OF ALABAMA)
JEFFERSON COUNTY)

I hereby certify that the above and foregoing deposition was taken down by me in stenotype, and the questions and answers thereto were reduced to computer print under my supervision, and that the foregoing represents a true and correct transcript of the deposition given by said witness upon said hearing.

I further certify that I am neither of counsel nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.

_____
Lauren H. Deerman, Commissioner
ACBR # 583