

**TRANSCRIPT OF PROCEEDINGS**

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

Pages: 1 through 224  
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## IN THE MINE SAFETY AND HEALTH ADMINISTRATION

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

Birmingham, Alabama

Thursday  
 June 9, 2011

APPEARANCES

MSHA Panel: PATRICIA W. SILVEY, AL DuCHARME,  
 KEVIN BURNS.

Speakers:

FRED ENGLAND; UMWA, Local 1948, Shoal Creek Mine  
 GARY JOLLY; UMWA, Vice President Local 1948,  
 Shoal Creek Mine, Member of State Board of Alabama Mine  
 Examiners

RANDY WIDEMAN; Drummond Oil Company, Shoal Creek  
 Mine

DAVID WHITWORTH; Drummond Oil Company, Shoal  
 Creek Mine

DANIEL KELLY; Coalminer/Fire Boss, Shoal Creek  
 Mine/Drummond Mine

JAMES BLANKENSHIP; UMWA, President, Local 2245,  
 Walter Energy, Inc., Number 4 Mines of Brookwood, Alabama

DWIGHT CAGLE; United Mine Workers No. 7, Local  
 2397, Walter Energy, Safety Committee

STEVEN MILLER; UMWA, Local 1948, Recording  
 Secretary

MS. SMALLEY, Attorney-at-Law

OTIS GIBSON; Cliff's Natural Resources, Local  
 2133, Safety Chairman

MARK ESLINGER; Five Star Mining, Inc./Black  
 Panther Mining, LLC, General Safety Manager

PHILLIP WHITLOW; Walter Energy, Inc.

THOMAS WILSON; UMWA, International Health &  
 Safety Representative

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## P R O C E E D I N G S

(9:00 a.m.)

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

10           On behalf of Assistant Secretary Joseph A.  
11 Main, I'd like to welcome all of you here today. I would  
12 like to introduce the members of the MSHA panel. I would  
13 ordinarily say to my left is Gregory Fetty, with the Coal  
14 Mine Safety and Health, but he couldn't be with us today.  
15 He had a medical appointment. To the left of me, is Al  
16 DuCharme, who is with the Department of Labor, Office of  
17 the Solicitor; and to my right, Kevin Burns, who is with  
18 MSHA's Office of Educational Policy Development.

19           I would also like to introduce a few people in  
20 the audience, Larry Davey, in the back of the room, and  
21 Erik Peterson, who also assisted on this project.

22           In response to requests from the public, MSHA  
23 is holding public hearings on its proposal for  
24 Examinations of Work Areas in Underground Coal Mines for  
25 Violations of Mandatory Health or Safety Standards. This

1 is the third of four public hearings on this proposed  
2 rule.

3 The other hearings were in Denver, Colorado on  
4 Thursday, June 2nd; and Charleston, West Virginia on  
5 Tuesday, June 7th; and there will be another hearing held  
6 in Arlington at our headquarters, on Wednesday, June  
7 15th.

8 The purpose of this hearing, as many of you  
9 know, is to receive information from the public that will  
10 help MSHA evaluate the requirements in the proposal and  
11 produce a final rule that will improve health and safety  
12 conditions at coalmines.

13 This hearing will begin with my opening  
14 statement, followed by an opportunity for members of the  
15 public to make oral presentations. Hearings will be  
16 conducted in an informal manner. Formal Rules of  
17 Evidence will not apply. The hearing panel may ask  
18 questions of the speaker, and speakers and other  
19 attendees may present information for inclusion in the  
20 rule-making record. MSHA will accept  
21 written comments and other appropriate information for  
22 the record from any interested party, including those not  
23 presenting oral statements.

24 We ask everyone in attendance -- and I think  
25 most of you have probably have done -- to sign the

1 attendance sheet so that we have a record of who's here,  
2 even if you don't plan to speak. Those of you who've  
3 notified MSHA in advance will make their presentations  
4 first, followed by others who wish to speak.

5           If you have a hard copy or electronic copy of  
6 your presentation, I ask that you please provide a copy  
7 to the court reporter, and MSHA will have a verbatim  
8 transcript of the proceeding, and the transcript will be  
9 posted on MSHA's website.

10           The post-hearing comment period for the  
11 proposed rule closes on June the 30th. MSHA must receive  
12 your comments by midnight, Eastern Daylight Savings Time,  
13 on that date.

14           MSHA is proposing to revise the existing  
15 standards for pre-shift, on-shift, supplemental, and  
16 weekly examination for underground coalmines. The  
17 proposed rule would require mine operators to identify  
18 and fix violations of mandatory health or safety  
19 standards.

20           Requirements for these examinations are  
21 mandated in the Mine Act and are a critical component of  
22 an effective safety and health program for underground  
23 coalmines. The proposal would also require that on a  
24 quarterly basis, mine operators review with mine  
25 examiners the citations and orders issued in the areas

1 where pre-shift, supplemental, on-shift, and weekly  
2 examinations are required. The proposed rule is an  
3 important element in the Agency's "Plan, Prevent and  
4 Protect" strategy.

5 MSHA requested comments from the mining  
6 community on all aspects of the proposed rule.  
7 Commenters are requested to be specific in their comments  
8 and submit detailed rationales and supporting  
9 documentation for suggested alternatives submitted. I  
10 cannot underscore this enough, that when you submit your  
11 comments, if you have suggested alternatives, we welcome  
12 those; and please be specific and please include your  
13 specific rationale for any suggested alternatives that  
14 you might have.

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

18 The proposed rule presents a more proactive  
19 approach in creating a culture of safety at the mine. It  
20 would enhance miners' safety because violations of health  
21 or safety standards would be identified and corrected,  
22 removing many of the conditions that could lead to danger  
23 in underground coalmines. The Agency is interested in  
24 alternatives to the proposal that could be effective in  
25 assuring that operators examine for violations of

1 mandatory health or safety standards, record and correct  
2 violations, and review the violations with examiners.

3           Mine examinations are critical to ensuring that  
4 all of the requirements in the mine ventilation plan,  
5 including the dust control plan, are in place and are  
6 working. Examiners check section and outby ventilation  
7 controls and respirable dust control parameters that are  
8 key factors in reducing miners' exposure to respirable  
9 coalmine dust. This could lower miners' exposure to  
10 respirable coalmine dust, thereby lowering the incidence  
11 of black lung and other respiratory diseases.

12           The Agency has prepared a Preliminary  
13 Regulatory Economic Analysis that contains supporting  
14 costs and benefit data for the proposed rule. MSHA has  
15 included a discussion of the costs and benefits in the  
16 Preamble. The Agency requests comments on all estimates  
17 of costs and benefits presented in the Preamble and in  
18 the Preliminary Regulatory Economic Analysis, including  
19 compliance costs, net benefits, approaches used, and  
20 assumptions made in the preliminary economic analysis.  
21 MSHA's cost estimates do not include the costs of any  
22 corrective actions that would be necessary to come into  
23 compliance with the underlying regulatory requirements.  
24 These costs were included in the Agency's estimates  
25 associated with the existing regulations and are not new

1 compliance costs resulting from the proposed rule.

2           Rather than waiting for violations to either be  
3 identified by an MSHA inspector, or rise to the level of  
4 a hazardous condition and be identified by a mine  
5 examiner, the proposed rule would require mine operators  
6 to identify violations of mandatory health or safety  
7 standards during mine examinations. This would prevent  
8 some accidents because mine operators would be required  
9 to take corrective actions earlier than under the  
10 existing standards, and that is before things would  
11 develop into a hazardous condition.

12           Under MSHA's requirements, if cited, operators  
13 must correct a violation of a mandatory health or safety  
14 standard such as removing coal dust accumulations from  
15 conveyor belts or maintaining equipment in safe operating  
16 condition to abate the citation.

17           MSHA requests comments on the Agency's estimate  
18 of the costs of corrective actions. As you address the  
19 proposed provisions, either in your testimony today or in  
20 your written comments, please be as specific as possible.  
21 We cannot sufficiently evaluate general comments.

22           And I'm saying it one more time, and I'll  
23 probably say it again before we close, please be very  
24 specific in your comments, not only in terms of providing  
25 us with specific suggestions, but also your specific

1 rationale, including benefits to miners and any  
2 technological and economic feasibility considerations and  
3 data to support your comments. The more specific your  
4 information is, the better it will be for MSHA to  
5 evaluate and produce a final rule that will be responsive  
6 to the needs and concerns of the mining public.

7 As I said earlier, all comments must be  
8 received or postmarked by June 30, 2011. Comments may be  
9 submitted by any method submitted in the -- identified in  
10 the proposed rule.

11 We will now proceed to the testimony. Please  
12 begin by clearly stating your name and organization, and  
13 spelling your name for the court reporter to make certain  
14 that we obtain an accurate record.

15 Our first speaker today is Fred England with  
16 the United Mine Workers of America.

17 MR. ENGLAND: I want to welcome ya'll back to  
18 Alabama.

19 MODERATOR SILVEY: Thank you.

20 MR. ENGLAND: My name is Fred England --  
21 F-R-E-D, E-N-G-L-A-N-D. I'm a United Mine Workers  
22 member, Local 1948, Shoal Creek Mine.

23 I'm a safety committeeman. I have mine foreman  
24 certification in the State of Alabama. I also have  
25 electrical cards and, in my classification, as a pump

1 man. I'm kind of -- I'm not a professional speaker, so -  
2 - but I, I do have some comments and things.

3 And I guess reviewing on the proposed rule, one  
4 big thing that stands out to me is examiners really need  
5 to be -- to have more training, education, especially as  
6 far as identifying violations.

7 I've been in the mines for 32 years, as a fire  
8 boss for approximately 12 years. My job I do today  
9 requires me to make an examination for myself, when I  
10 have to go in remote parts of the mine, such as bleeders  
11 and returns and whatever to work on pumps. But as far as  
12 any kind of formal education or training as to what to  
13 look for, common, everyday run-of-the-mill stuff, the old  
14 timers taught you to watch out for the top, make your  
15 methane test, things of that nature.

16 But when I -- when I got the fire boss job,  
17 they showed me a route and then checkpoints that I had to  
18 make, places to make air readings and things of that  
19 nature. But I never was trained on any kind of  
20 violations that I should recognize or anything along  
21 those lines. And most of what you're certified on with  
22 the State of Alabama -- well, actually the State of  
23 Alabama mining laws are way outdated. And -- but very  
24 little of it applies to -- very little of what's in the  
25 Alabama State law applies to or has any -- the State law

1 and the Federal law are -- they're -- they're two  
2 different animals altogether.

3           So, basically, you're certified in Alabama on  
4 the State law, and now we're going to have to work and  
5 make examinations and things of that nature under Federal  
6 law. I feel like that before an examiner is given the  
7 duties or responsibilities for checking or recognizing  
8 violations and all, they need to have more training as  
9 far as what to look for, what's the imminent danger,  
10 corrective actions.

11           If you -- you're making a section or whatever  
12 and there's rock dust behind, do you go immediately and  
13 try to find some rock dust and catch it up and correct  
14 it, or do you just write that up and report it to the  
15 company? Things like curtain, ventilation controls.  
16 Normally, if you find curtain behind, you correct that.  
17 But all that stuff takes time. There's -- there's just a  
18 lot of things that by adding the violation part in there,  
19 it's going to take a little bit longer time to make an  
20 examination.

21           Another thing as far as the training part goes,  
22 we have an eight-hour annual retraining. If you have  
23 electrical cards, you get eight hours a year electrical  
24 retraining. If you have the diesel cards and all, you  
25 get eight hours diesel retraining. But there is no

1 annual or eight hours a year for anybody that's  
2 certified. You go take your test, get your papers, and  
3 that's pretty much it in the State of Alabama. It may be  
4 somewhere else that they do. But here in Alabama, you  
5 don't. So I just feel like we need more training and all  
6 as far as recognizing violations and all that kind of  
7 stuff or explaining all that.

8 I work on the owl shift, and there's times like  
9 on the owl shift people making belt lines, checking power  
10 centers and roadway and stuff, as far as a crew shift  
11 examination. Usually on the owl shift, the belt lines  
12 are not running. The examiners make, make those belts,  
13 and they can do accumulations or identify some things  
14 that could be a hazard or violation.

15 But on the day shift and the evening shift, if  
16 the owl shift examiner makes a belt, on the day shift,  
17 the inspector comes in and that belt is running. The  
18 inspector may see a roller that's froze or stuck and not  
19 turning. When the examiner was there, the belt wasn't  
20 running, so he can't really tell if it was running or  
21 not -- I mean, if it was rolling or not because the belt  
22 wasn't running. And I don't feel like it would be fair  
23 to write an inadequate examination on the pre-shift  
24 examiner because he didn't see a stuck roller or  
25 something along those lines, that if the inspector had

1 have been there and the belt not running, he wouldn't  
2 have known it either. So, things like that happens.

3 And to me, it just -- it kind of ain't fair and  
4 square from all the way on the book.

5 But I think for the most part, the intent of  
6 the proposed rule is to help make coalmines safer for the  
7 miners in general, and I've got to thank ya'll for that.  
8 Anything is better than nothing. If you keep doing the  
9 same thing, you're going to keep getting the same  
10 results.

11 One thing myself, I think, might be a good idea  
12 to add to it is better communications. Right now, if an  
13 examiner makes an examination like a pre-shift, they come  
14 out and record it in a book and a foreman from the  
15 oncoming shift reads his comments, what he wrote up,  
16 whether it's a hazard violation or comment or whatever.  
17 And then they -- the oncoming shift supervisors, they  
18 take actions.

19 If there's a hazard, they, they get people to  
20 address the hazards, whatever it may be. My opinion,  
21 depending on the circumstance, if you have a hazard in an  
22 area and you come out and record that in a book, then  
23 they need to make everybody working in that area or that  
24 has to travel through the area where the hazard is, they  
25 need to make everybody aware of that, that we've got a

1 hazard in this area. The examiner from the previous  
2 shift had wrote it up as a hazard and we want to make  
3 sure everybody knows about it, so be careful; we're going  
4 to send people there to get it corrected or something  
5 along those lines. Better communications.

6           There's -- as far as the inadequate exams go,  
7 another thing that's happened where I work, pre-shift  
8 examiners have to make power centers. And that's more or  
9 less -- you check the area around the power centers for  
10 bad roof conditions, methane tests, things of that  
11 nature, make sure it's not blazing on fire or anything.

12           We've had people wrote up and given an  
13 inadequate examination because the inspector came in and  
14 checked that power center and found a breaker setting on  
15 the box that was set up too high. To me, there again,  
16 that's not what the examiner is there looking for. He's  
17 a pre-shift examination, and that -- he's not -- he's not  
18 qualified to check the box unless he's got an electrical  
19 card or whatever. And it, to me, don't seem all the way  
20 fair and square, level, on the bubble or whatever to  
21 write somebody an inadequate examination for something  
22 that he's not qualified or certified in checking.

23           That's -- that's one -- some of the things  
24 that -- like the violation recognition, if you're going  
25 to have to check them power centers and look at all the

1 breakers and make sure everything is identified proper  
2 and all that, that's going to take a while to get done.  
3 I guess another thing is concern of what -- what kind of  
4 liability or responsibility all this is going to put on  
5 the examiner.

6 For instance, if something happened and  
7 somebody got hurt, we had some kind of a -- something  
8 happens, everything runs downhill, what extra is going to  
9 come downhill and land on the examiner? So you don't  
10 really know. But, anyway, I sort of kind of went blank.  
11 I'm not good at talking anyway.

12 I appreciate you listening to me, and I would  
13 ask you to consider maybe adding something along the  
14 lines of better training and communications. And  
15 appreciate your time.

16 MODERATOR SILVEY: Thank you.

17 MR. ENGLAND: You got any questions?

18 MODERATOR SILVEY: I don't think so. Thank you  
19 very much.

20 Our next speaker will be Gary Jolly with the  
21 United Mine Workers.

22 MR. JOLLY: My name is Gary Jolly -- G-A-R-Y,  
23 J-O-L-L-Y. I'm a safety committeeman for the Local 1948  
24 Shoal Creek Mines. I'm the Vice President of Shoal Creek  
25 Mines and am also a proud member of the State Board of

1 Alabama Examiners here in Alabama, which gives the test  
2 and certifies our fire bosses. I'm a fire boss at Shoal  
3 Creek. I have 36 years mining experience in underground  
4 mines. I represent 505 people at Shoal Creek Mines; 18  
5 of them are fire bosses; 19 of them are pumper and fire  
6 bosses; there's 50 more people there that hold their mine  
7 foremen certificates and fire boss papers. At least I  
8 say where I'm going with this because I'm -- as this plan  
9 is written, I'm totally against it at this point.

10 I think it puts too much pressure, even though  
11 fire bosses and pumper or fire bosses have a lot of  
12 responsibility on -- as we speak, when we give the test,  
13 on our test, we -- the questions and answers that they're  
14 required to do is for hazards, not citations. All  
15 hazards are a citation, but all citations are not a  
16 hazard in the coalmines. Therefore, I don't think our  
17 guys are trained enough to write citations.

18 As Fred -- my brother Fred England spoke back  
19 here, we get a lot of inadequates on situations where  
20 it -- I don't think we should be getting inadequates.  
21 One, like he said, was a power center. I have another  
22 example of man-door signs. We have man-door signs that  
23 get knocked down in the course of daily activity in the  
24 mines and big heavy diesel equipment. We have an  
25 inadequate on a man-door sign.

1           Now, what -- to me a hazard is a hazard, but a  
2 man-door sign is not a hazard. We have that a lot going  
3 on at Shoal Creek. MSHA is a highly trained inspector.  
4 They have as much as eight hours or more to do their  
5 inspection. Our guys have got a three-hour window that  
6 we have to do our pre-shift. And I think -- if this plan  
7 goes through the way that it is written, I think it will  
8 put too much responsibility, too much liability on our --  
9 on our pre-shift examiners because we only have a three-  
10 hour window.

11           We need to extend that if this plan goes  
12 through. Three hours is not enough because the MSHA  
13 inspectors have as much as eight hours or more to write  
14 citations and hazards. And I, I do travel with MSHA  
15 inspectors a lot. They are highly trained guys, but they  
16 miss things, too. They drive by some things, and if I  
17 see it and they don't, I write up a work order for it and  
18 turn it in to the safety department to have it corrected.

19           And that helps with -- you know, it saves on  
20 citations and you know, that saves on costs. But I just  
21 think this plan puts too much emphasis on the  
22 responsibility and liability on a fire boss. And from  
23 the result of that, the reason I brought -- said  
24 something about how many people I represent here, the  
25 reason I said that is because a lot of our guys are

1 already talking about giving their papers up, that they  
2 do not want that responsibility. If that happens, we're  
3 going to have an unsafer mine because what the company is  
4 going to do if everybody turns their papers in,  
5 contractors is going to come in the mine. The company is  
6 going to go back to the pre-shift.

7           And I trust my union brother a lot more than I  
8 do the company or a contractor to write up hazards. I  
9 think it will make for a lot unsafer mine if that  
10 happens. And from what I'm hearing, the people I talk  
11 to, that's what they're going to do. And -- all right.  
12 I have a couple of questions about this.

13           Talk about citations and hazards. Does this  
14 mean all citations? Because in our course of our  
15 inspection -- pre-shift inspection, examination, we pass  
16 dozens of diesel equipment on the roadways; we walk by  
17 the feeders on the section; we walk all the belt lines,  
18 the roadways, travelways; we have an area of about 5  
19 square miles that one pre-shift guy makes every day in  
20 our mines. We have five pre-shift examiners at our mines  
21 on pre-shift, and then we've got a few of the pumpers  
22 that do pre-shift.

23           Now, if we have to -- if we have to check every  
24 piece of equipment we pass by in examination to see if  
25 there's any citation, we'll never get through with our

1 pre-shift because -- I'll go back to our MSHA inspectors.

2           They've got three months to do an inspection of  
3 that mine to cover the mines totally. They check a piece  
4 of equipment one time. They mark it off the list -- as  
5 they walk the belt line, they mark it off the list. We  
6 make it every day. Are we going to be responsible every  
7 day to check every piece of equipment that we walk by  
8 under this plan? Because it's not real vague when it  
9 says -- when it says citations and all -- we pass a lot  
10 of equipment.

11           Are we going to be held to the responsibility  
12 of checking that piece of equipment during our pre-shift,  
13 during our three-hour time limit, to write up citations  
14 on that piece of equipment? Because if we are, we'll  
15 never do it. It will never be made. And I think that's  
16 going to make unsafer mines because I think our pre-shift  
17 examiners are going to miss a lot of the hazards, the  
18 roof, rib, the gas, the dust, explosive dust that's built  
19 up on the belt lines. I think they'll get their mind off  
20 of looking for hazards, which to me is the most important  
21 thing. Because that's what saves lives, is correcting  
22 and identifying hazards. And I just think that's what  
23 will happen.

24           So as I stated before, we need to get back to  
25 the fire bosses writing the hazards. We may have a

1 problem with that in some areas of the mines. And I can  
2 only speak for Shoal Creek, but I honestly believe our  
3 guys at Shoal Creek are -- and not just because I'm a  
4 fire boss. But I honestly believe that our guys at Shoal  
5 Creek do an excellent job of identifying and correcting  
6 hazards. We don't always correct them in our course of  
7 action, but if we do find a hazard, we do try to identify  
8 it, danger board it out so the next man, until it gets  
9 corrected, can identify the hazard easily than just  
10 walking by, say, a roof pin out or a rib pin out or  
11 whatever.

12 But I think our guys do an excellent job now.  
13 I'm not going to speak long because I know there's  
14 several other people here. But in closing, I think we  
15 need to take this proposal back to Washington and take a  
16 better look at this proposal.

17 And if you could promise me that all these  
18 recommendations that the United Mine Workers has got in  
19 here, I'd be more subjectable to this plan. I really  
20 would. Because I think the United Mine Workers has  
21 really got some great ideas in here to help the workers  
22 and protect the workers. And that's what we need because  
23 the company -- if we start getting inadequates and we get  
24 too many inadequates, they're going to start putting  
25 letters in our file. So nobody is going to want to fire

1 boss. Nobody is going to want to pre-shift. So we go  
2 back to contractors and companies doing a job that, I  
3 think, is not as reliable as our union brothers making  
4 our pre-shift for us.

5           And what I would like to see -- I think the  
6 real key to this -- and I don't want to see any MSHA  
7 inspectors laid off because I think, you know, a lot of  
8 that could happen if we go to this. But I'd like to see  
9 many MSHA people in the mine. I'd like to see more  
10 enforcement for the people, not only for our union mines  
11 but for our nonunion mines.

12           And I think that's what we need to focus on  
13 because I believe we'd have a lot safer mines in every  
14 state if MSHA would enforce the rules and regulations  
15 that we have now equally to not only the nonunion mines  
16 but the union mines. And I appreciate ya'll's time.

17           MODERATOR SILVEY: Thank you.

18           MR. JOLLY: Any questions?

19           MODERATOR SILVEY: I've got a few comments.

20           MR. JOLLY: Okay.

21           MODERATOR SILVEY: Because we have heard some  
22 of the same comments already in -- at both hearings that  
23 we've held, and we have heard from examiners. We heard  
24 from examiners in Denver in our Denver hearing. And I'd  
25 just like to say a couple things.

1           One of the things that, that we heard in  
2 Charleston sort of made me think a little in that -- and  
3 we heard this from the industry, which led me to think  
4 that people thought violations -- examining for  
5 violations of mandatory health and safety standards was  
6 for the MSHA inspector to do.

7           Now -- and I said on the record, and if you --  
8 if somebody wants to get the transcript later and review  
9 it -- and I asked some -- there was some discussion that  
10 went back and forth, that under the existing rule that we  
11 have, violations for mandatory health and safety  
12 standards is the responsibility -- to maintain compliance  
13 with mandatory health and safety standards is the  
14 responsibility for the operator.

15           So I asked -- so even under the existing rule,  
16 at some point in time, you're exactly right. While the  
17 pre-shift under the existing rule is examined for  
18 hazardous conditions, for hazards, but at some other  
19 point in time during the day -- I don't know when it  
20 happens -- you know, the operator, I'm sure has somebody  
21 examining for violations of mandatory health and safety  
22 standards. So I guess -- I just want to see if we -- if  
23 there's some understanding about roles and  
24 responsibilities. And in terms of -- I'm not asking you  
25 any question or anything. I'm just making some comments

1 in terms of what I'm hearing and what I -- what we have  
2 heard at the various hearings that we've held.

3 I would also like to say that -- and maybe  
4 people could think about this, you know, everybody who's  
5 in attendance here who, who -- for people who try to --  
6 this rule that's in place now was put in place in 1992.  
7 And prior to 1992, there was a responsibility to examine  
8 for violations of mandatory health and safety standards  
9 in the pre-shift and in the weekly examination. So if  
10 people were to also review the record, I've asked people  
11 who were examiners, either examiners or had  
12 responsibility for underground coalmines prior to 1992,  
13 if they can remember how those two examinations were  
14 carried out; that is, the pre-shift and the weekly with  
15 respect to violations of mandatory health and safety  
16 standards, and did that present any particular problems  
17 to you all.

18 Now, granted that's asking people to remember  
19 back a while. But I'm sure some people do remember. And  
20 so and -- and, actually, those were the only -- the only  
21 two things that I wanted to say. So, anyway, thank you.

22 MR. JOLLY: Thank you.

23 MODERATOR SILVEY: Our next speaker will be  
24 Randy Wideman, UMWA.

25 MR. WIDEMAN: My name is Randy Wideman. I'm

1 employed by the Drummond Coal Company, Shoal Creek Mine.

2 My work began in the coal mine in September of  
3 1978. I'm also the Chairman of the Mine Committee, and I  
4 got my mine foreman certification in 1982.

5 I was thinking this was a two-part hearing, the  
6 POV and the Examinations. So I'm just going to be  
7 addressing Examinations.

8 MODERATOR SILVEY: Yes.

9 MR. WIDEMAN: After reading this and giving it  
10 a lot of thought and discussing it with my co-workers and  
11 meeting with all officers of 1948 and meeting with  
12 District 20 officials, I've formed my personal opinion  
13 and come to the following conclusions.

14 In my opinion, this part of the legislation  
15 will eventually lead to a more unsafe work place instead  
16 of an intended safer work place as far as the Shoal Creek  
17 is concerned. Shoal Creek is a very large mine with the  
18 majority of it being examined by union fire bosses and  
19 pumpers.

20 The legislation, as proposed, has a significant  
21 burden to the already strained time limit that must be  
22 adhered to by pre-shift examiners. In some cases, we  
23 have to cover 4 miles or more of territory in the three-  
24 hour time limit, which is, in realty, about two-and-a-  
25 half hours. No one in this room can truthfully say that

1 they can travel these routes and not miss seeing  
2 something under the present standards of the pre-shift  
3 examination.

4           It would appear by the wording in this  
5 legislation that the authors assume our examiners do not  
6 know to report situations that are or will be citations.  
7 They do. Some of our fire bosses already have done  
8 testified, Mr. Jolly and Fred. They report those  
9 conditions on a regular basis. And I, I do fill in as  
10 the fire boss from time-to-time. And when we run across  
11 situations that we'll be -- that are violations or could  
12 be violations, we report it to the mine foreman and note  
13 it in the comments in the fire boss books quite often.  
14 It's already being done.

15           This legislation adds a substantial burden on  
16 our people leading to a more -- leading to more potential  
17 inadequate exam citations due to the increased  
18 responsibility. And with increased responsibility, comes  
19 increased liability. Many of us feel that this is too  
20 much of a burden to add without limiting the area an  
21 examiner must cover or increasing the time in which to do  
22 it.

23           What I feel this legislation does do is create  
24 a level under the MSHA inspector, and we've placed blame  
25 in the event of another tragedy like the one at Upper Big

1 Branch. I feel most of our union fire bosses will remain  
2 in our classifications if this goes through until the  
3 next Upper Big Branch occurs and the finger pointing  
4 starts.

5           It will be at that time when the men will  
6 vacate these positions leaving the company with no choice  
7 but to make company supervisors or contract out these  
8 crucially important jobs. And that would be nonunion  
9 personnel.

10           I have a study here that was funded by NIOSH  
11 and conducted by Stanford School of Law entitled, *Coal*  
12 *Mine Safety, Do Unions Make a Difference?* I have copies  
13 for the panel if ya'll would like to --

14           MODERATOR SILVEY: I've seen it.

15           MR. WIDEMAN: Do you need one for the record?

16           MODERATOR SILVEY: If you would like. Yes, we  
17 have it.

18           MR. WIDEMAN: The professor Alison Morantz,  
19 asked that -- I refer to this as a draft study. It has  
20 one more round of peer review before being accepted for  
21 publication. This study found a 17 to 33 percent drop in  
22 traumatic injury frequency and a 33 to 72 percent drop in  
23 fatalities when comparing union to nonunion mines. The  
24 study ranged from 1993 to 2008.

25           We have long suspected this to be the case, but

1 now have a complex study confirming our belief. With  
2 this in mind, we do not want legislation put into effect  
3 that's going to bring the level of safety in a union work  
4 place to anywhere close to that in a nonunion  
5 environment.

6           And I, I feel like that our fire -- our union  
7 fire bosses under the strain of this responsibility will  
8 eventually vacate those positions.

9           Personally, I'm close to retirement. I don't  
10 think that I would want to put my family at risk to  
11 the -- to the liability that's going to carry with this  
12 extra burden. It's just too much to place on a person  
13 that really has time -- a hard time meeting the time  
14 limits like it is, with just, just no hazardous  
15 conditions.

16           I don't see -- I don't think it's possible for  
17 a person to adequately cover everything and not be able  
18 to get an inadequate exam with this new law going into  
19 effect.

20           With all due respect, the tragedies that  
21 occurred at Upper Big Branch, Crandall Canyon and Sago  
22 were all at nonunion mines. We feel that greater  
23 enforcement of the existing laws would serve us far  
24 better than adding provisions to the law that we feel in  
25 the long run will be much more harmful than helpful. I'd

1 like to make a request to the panel. If it's -- if it's  
2 out of line, I'm not sure. I'd like for ya'll to ask  
3 each person that has comments today if they possess a  
4 mine foreman certification. I think it would be  
5 interesting to know the feelings of those directly  
6 affected by this legislation and those affected  
7 indirectly by it, one way or another.

8           Would it be out of line to make that request  
9 that ya'll ask each person if they possess a mine board  
10 certification?

11           MODERATOR SILVEY: I think it would be out of  
12 line for us to ask each person.

13           MR. WIDEMAN: Well, may I make a request of  
14 each person that makes comments, would they please to  
15 volunteer that? Would that be out of line?

16           MODERATOR SILVEY: No, that's not --

17           MR. WIDEMAN: Well, with that said, I think  
18 that's all I've got to say. I, I'm opposed to it  
19 completely.

20           MODERATOR SILVEY: Thank you.

21           Well, let -- before you leave, though, I've got  
22 a few more comments. And I appreciate -- as I said  
23 earlier, I appreciate persons and organizations who  
24 submitted to us specific detailed alternatives to the  
25 proposal. Because our goal in issuing the proposal was

1 to improve safety conditions in underground coalmines and  
2 not to do the opposite.

3 With that said -- and in two ways, we were  
4 trying to do this with this proposal; and that is, having  
5 conditions and practices identified in the underground  
6 coalmines prior to them developing into a hazardous  
7 condition. Because one of your brothers testified  
8 earlier that -- and let me see -- I wrote it down -- and  
9 he -- that one of the -- one person wrote it down. Let's  
10 see.

11 Oh, things that are violations or that could  
12 lead to violations. And I think one of the things -- I  
13 know what we were trying to do was have the practices  
14 identified earlier before they developed into a hazardous  
15 condition.

16 Now, as I have stated at other hearings, my  
17 assumption is that at the -- under the existing rule,  
18 operators are having somebody do that right now,  
19 identify, identify conditions and practices before they  
20 develop into hazardous conditions. It's just that the  
21 hazards are being identified and corrected during the  
22 pre-shift period and the on-shift and the supplemental  
23 and the weekly examination period. And so that's -- I'm  
24 assuming that that's how it's working now.

25 MR. WIDEMAN: That was Mr. Jolly.

1           MODERATOR SILVEY. Yes. And, and so everybody  
2 -- I just want people who are coming forward to testify  
3 and anybody that -- to think about that -- you know, the  
4 setup under the current -- under the existing standard  
5 and what -- the things that I'm saying in terms of how we  
6 expected the proposal to operate.

7           But like I said, I do appreciate the specific  
8 alternatives we're getting. And, and also, because we  
9 have heard from examiners -- and I'm hearing from a lot  
10 of examiners today. And I also want to say that we know  
11 that the job that examiners do everyday, every shift,  
12 throughout the shift; we know that that is an important  
13 job.

14           It is a solemn responsibility, and we know that  
15 you take it seriously; and we know that when you finish  
16 your examination and you certify before that oncoming  
17 shift comes on that that mine is safe, that's a big  
18 certification. And we know that that plays a large role  
19 in safety in underground coalmines. And we appreciate  
20 that also. Thank you.

21           MR. WIDEMAN: If I could, I'd like to address  
22 that, your comment there. If you could separate this,  
23 the first three hours of the shift, fire bosses could go  
24 check for violations and what might become citations.  
25 That wouldn't -- they've got three hours the first part

1 of the shift they could do that. The three-hour pre-  
2 shift, they could take care of their hazards and pre-  
3 shift exam. It would still be placing extra  
4 responsibility and liability, but it would be spreading  
5 it out in such a way that it could at least possibly be  
6 done that way. I don't think it can possibly be done in  
7 this present form. Thank you, ma'am.

8 MODERATOR SILVEY: Thank you.

9 Our next speaker will be David Whitworth,  
10 United Mine Workers.

11 MR. WHITWORTH: My name is David Whitworth. I  
12 work for the Drummond Company at Shoal Creek Mine. The  
13 spelling of my last name is W-H-I-T-W-O-R-T-H.

14 Currently, I'm a pre-shift examiner. I became  
15 certified October 24th of 2007. I've been a fire boss at  
16 Shoal Creek for the past two years. I started to work in  
17 the mines in 1978, so I have a little over 30 years'  
18 experience.

19 One thing that I'd like to address with you  
20 this morning is -- and we've talked about this among  
21 ourselves a couple of different times. As you stated a  
22 while ago, in 1992 -- and, actually, I think it was  
23 January 27, 1988 -- this proposal came up one time  
24 before, did it not?

25 MODERATOR SILVEY: Yes, it did.

1 MR. WHITWORTH: Okay. And, finally, they made  
2 a final ruling on that in -- I believe it was 1996.

3 But, anyway, the intended focus was on hazards.  
4 And if you will, let me just read your own words here.  
5 It says: "MSHA published final rule in 1996 at 61 FR  
6 97640. In response to the comments, the final rule did  
7 not include the proposed, proposed requirement that a  
8 pre-shift examination include examinations for violations  
9 of mandatory health or safety standards stating the  
10 Agency's intent to focus the attention of the examiner on  
11 critical areas so that the examiner could identify  
12 conditions that pose a hazard to miners."

13 And to me, that's the most important part  
14 because of the fact that we have that three-hour window  
15 there that we have to -- by law, now, we have to have  
16 this pre-shift exam done.

17 A lot of people have made mention to the fact  
18 that there's nothing that says that you have to have it  
19 done prior to 3:00 o'clock. That would be -- I work the  
20 day shift. But a lot of people say you don't have to  
21 have it done by 3:00 o'clock. If it lapses over into the  
22 next shift, that's okay. That's fine. Take that  
23 additional time.

24 But I say that's incorrect because if you are  
25 doing a pre-shift exam, it is exactly that. You're

1 supposed to pre-shift the mines to deem it safe for the  
2 oncoming shift. If you lapse over into the next shift,  
3 basically what you're doing is an on-shift. Okay? So  
4 that's -- that's one point that I wanted to bring out  
5 there.

6           The examinations that we make, we try our  
7 absolute best to do a good job with it. And we try to  
8 key on the things that are most important, you know. You  
9 know, do we have the right quantity of air, you know?  
10 You know, how much methane is present? Conditions of the  
11 roof and ribs? These are things that are going to  
12 present the biggest hazard to the miners.

13           Other areas, you know, of lesser importance,  
14 you know, would be ventilation controls and things of  
15 that nature, whether it had a hole in a stopping or  
16 something of that nature. That would be something that  
17 would probably be considered to be of less importance,  
18 but nonetheless, it's important. In my opinion, if  
19 you're going to examine for those kinds of things, you're  
20 not -- in keeping with the three-hour window of getting  
21 this pre-shift done, I don't think that it's going to be  
22 possible to get everything that you're wanting to do done  
23 within that three-hour window.

24           And I -- myself, I don't advocate changing the  
25 three-hour rule. And the primary reason for that is

1 because I feel like that, you know, you're trying to make  
2 the mine safe for the oncoming shift. You want it as  
3 current as you can possibly make it. So I'm not in favor  
4 of extending that time frame.

5           There's a couple of things that I wanted to  
6 bring your attention to that I felt like was, was pretty  
7 serious or was pretty big. Under the -- it says: "Under  
8 the proposed standards, MSHA intends that examiners who  
9 conduct on-shift examinations identify and correct  
10 hazardous conditions and violations of mandatory health  
11 and safety standards that arise during the miner's shift.  
12 MSHA also intends that weekly examiners identify and  
13 correct hazardous conditions and violations of mandatory  
14 health and safety standards during the required  
15 examination as well."

16           That, to me, seems like an impossibility.  
17 Because if you go down and you make your examination, you  
18 may not -- you may not be able to do that. I mean, there  
19 again, keeping with the three-hour time frame. So I  
20 think that's almost an impossibility to do that. Now,  
21 you know, I'm sure that MSHA is worried about, well, are  
22 we -- you know, are we trying to do as good a job as we  
23 can possibly do when we do this pre-shift? Most  
24 definitely. Most definitely. As far as the things of  
25 lesser importance, we'll say, like citations and

1 violations; yes, we do look at that and we do have a  
2 place for that in our report.

3 I want you to understand that it's not -- we're  
4 not just going down there and looking at the hazards and  
5 making a report based strictly on hazards and letting  
6 everything else go. That's -- that's not the way it is.  
7 We do have a place for that. And what we do is in the  
8 "Comments" section of our report, we write down anything  
9 that we see or -- we can put down anything we want to put  
10 down in that. And I think that that's something that if  
11 MSHA wants to do anything, then probably look at that.  
12 Look at the "Comments" section and see what's been  
13 written; see how the company has reacted to it; and see  
14 what they've done about getting it corrected. That's  
15 a -- I think that's a pretty important thing.

16 Like some of the other guys before me  
17 mentioned, you know, we don't have the training. I mean,  
18 we absolutely don't have the training to do what the MSHA  
19 inspectors do. I'm concerned about that. If I'm  
20 expected to take on this additional responsibility and  
21 liability, then definitely we're going to have to have  
22 some additional training. No question about it.

23 MSHA inspectors, I was told the other day, have  
24 approximately 144 days a year -- per year worth of  
25 training. You know, when you go and get your mine

1 foreman certification in the State of Alabama, you take  
2 the test, you're done. You have an annual refresher that  
3 you're going to have, but it's not for certified people.  
4 It's just for a coalmine, period. If MSHA wants to do  
5 something to improve things, in my opinion, you need to  
6 have a mandatory refresher course, at least eight hours  
7 for all certified people. That's -- you wanted a  
8 recommendation. I recommend that.

9 But, anyway, the training portion of it, I  
10 think that's a big issue and needs to be addressed. And  
11 if you want to change something, I would change that  
12 aspect of it.

13 Now, I know that probably this is -- this is  
14 not of any real importance, but I did happen to notice  
15 that they were talking about the economic portion of this  
16 thing. And according to MSHA, it's not very significant,  
17 if it's less than \$100 million, the impact on the  
18 economy. And I think -- and there again, in all  
19 fairness, I haven't read everything that MSHA said about  
20 that. But just taking a look at it under that, from 20  
21 to 500 employees mine size, they're -- what they're  
22 saying is, you've got approximately 331 out of 424 mines  
23 that have 300 -- I mean, 424 coalmines in the United  
24 States have 331 employees -- and I would say that as far  
25 as the cost and everything, if we have to expand this

1 examination time a little bit, I think that's a bad  
2 thing.

3           But there again, I think if you have to add  
4 fire bosses, you've got to look at the cost. And that's  
5 -- that's one of the big things is the cost, what will it  
6 cost to add. And I think you'll have to add two per  
7 shift to 331 mines throughout the country and probably  
8 more than that. It's significant because it comes down  
9 to over \$200 million. And that's just for that.

10           And if you're looking for additional citations  
11 and violations, I think it's going to result in lost  
12 productivity, you know. There's going to be, you know,  
13 pre-shift exams that's going to go on for longer than the  
14 three-hour window there. It's going to lapse over into  
15 the other shift. It's going to cut back on, you know,  
16 the men being able to get to the section and being able  
17 to run the coal. Keep in mind, if you have to hire 2  
18 fire bosses per shift, times 331 mines, it runs \$200  
19 million; you're only talking about probably a couple of  
20 pennies per ton. But contracts have been lost over a  
21 couple cents a ton. And there again, you're talking  
22 about loss of jobs.

23           So I felt like it's important to make mention  
24 of that. It's not as important as the rest of this, but  
25 definitely I feel like it's important. But I do

1 appreciate your time. And I guess, as you know,  
2 coalminers don't make good speakers. So I thank you.

3 MODERATOR SILVEY: Thank you very much.

4 And we do -- I'm going to say again -- you  
5 asked, I think maybe not so rhetorically, you're trying  
6 to do a good job, the examiners, and I -- as I said  
7 earlier, we know you're trying to do a good job, the  
8 examiners, day in and day out.

9 On our -- I would like to say again that -- and  
10 I'm holding up the 1977 Mine Act now, as amended by the  
11 Miner Act. But everybody knows that the basis for the  
12 '77 Act was the 1969 Coal Act.

13 And when you look in that section, then that --  
14 this Act has interim mandatory safety and health  
15 standards in here. And I know some of the people in the  
16 room know this. And in the interim safety standards is  
17 Section 303, which is the section on ventilation. And  
18 under that section -- under the pre-shift section, it  
19 does say that they examine -- examine for hazards and  
20 violations of mandatory health and safety standards.

21 As I was asking earlier, for those of you who  
22 can remember pre-1992, how did the examiners do that --  
23 do in that -- in the context of the earlier group? Did  
24 they examine for violations of health and safety, or did  
25 it just sort of occur and people didn't give much thought

1 to it? I'm sure it was done. But for people who have a  
2 recollection of how it was done, when you come up to  
3 speak, if you do and if you care to provide it, if you  
4 would, sort of give a recollection of how that was done.

5 A few specific questions, on -- on MSHA's  
6 statement that something is not significant, I think it  
7 is not significant if it's less than \$100 million. But  
8 just so everybody will know, that is a requirement in the  
9 Executive Order 12866 on improving Government regulations  
10 as to the distinguishing between a major rule and a non-  
11 major rule and the requirements, the review requirements,  
12 that pertain to both. So that's why that distinction is  
13 made.

14 With respect to your thought that you've got to  
15 add two fire bosses per shift under this proposal, if you  
16 would, provide the -- how did you come up with the two  
17 fire bosses per shift that you would have to add?

18 MR. WHITWORTH: Well, as far as the amount  
19 of -- and there again, keep in mind, I've been in the  
20 mine since 1978. In '78, when I started, the mines were  
21 significantly smaller than what they are. I mean, they  
22 had -- they had mined probably 25 percent of the  
23 territory in 30 years that we now mined in 16 years. I  
24 mean, it is just -- it's amazing at how fast the mines  
25 are growing in size.

1           And so by that, I'm looking -- I'm looking at  
2 the size of the mine that it is right now and the number  
3 of people that we've got to cover the entire mine and at  
4 the rate of growth that it's growing and everything.

5           And I just -- I think if you add additional  
6 responsibility to that, you're going to have to have  
7 additional people to cover it, in which, you know,  
8 naturally I'm sure that they've looked at that. But  
9 nonetheless, I'm saying that if you increase the  
10 responsibility at this point in time, then you're going  
11 to have to do that immediately, you know, now rather than  
12 later.

13           So -- and I was just trying to make the point  
14 that it would significantly impact the economy of over a  
15 hundred million dollars to do that, not including the  
16 loss of production and other aspects of it.

17           MODERATOR SILVEY: Thank you.

18           MR. WHITWORTH: Thank you.

19           MODERATOR SILVEY: Our next speaker will be  
20 Daniel Kelly with the UMWA.

21           MR. KELLY: My name is Daniel Kelly. It's K-E-  
22 L-L-Y. I've been an underground coal miner since 1977.  
23 I've been a fire boss since 1998. I work at the Shoal  
24 Creek, Drummond Mines. And I take fire bossing very  
25 seriously. I'm very conscientious with it, and I do love

1 my job. But I do have some concerns that I'd like to  
2 talk about.

3 First of all, I want to say that we are for  
4 safety. We're for a safer coal mine. I don't want there  
5 to be any doubt about, you know, my comments. It's not  
6 meant to -- I don't want any doubt about that. I'm a  
7 hundred percent for safety. But I do have some concerns  
8 with this proposal.

9 One of my number one concerns is the operator  
10 determines the number of mine examiners and the length of  
11 the routes to be examined. We have no control over that.  
12 They give us the length of the route, and they give us  
13 the number of people to do those routes.

14 At Shoal Creek, the average route is  
15 approximately 4 miles if you count your roadways and your  
16 belt lines. And that's a lot of territory to cover in  
17 three hours. We're pretty much loaded to the limit  
18 already on what we do, and the hazards is the number one  
19 concern for us, a hazard being an imminent danger, a  
20 life-threatening condition, or something that could cause  
21 bodily injury or harm to someone. And that's my main  
22 focus.

23 Another thing, MSHA determines the length of  
24 time for the pre-shift. That's three hours prior to the  
25 following shift. We have no control over that. We're

1 given a job to do, a task to do. We're given three hours  
2 to do this task. The operator determines the length of  
3 the routes. The operator determines the number of people  
4 who covers those routes. And so those things we have no  
5 control over. With the length of the route and the time  
6 limitation, we're already spread thin by performing the  
7 requirements of our duties as the fire boss for the pre-  
8 shift. So what I'm saying is -- and ya'll already know  
9 this. We don't have control over certain things.

10 We have a job to do, and we do the best that we  
11 can. We put our hearts into it because I don't want to  
12 see anybody hurt. It don't matter who they are. I don't  
13 want to see anybody hurt. And I'm going to do my very  
14 best when I do my route to make sure that there's nothing  
15 there that's going to cause somebody bodily harm or  
16 physical injury.

17 And we've got several problems, and I'm going  
18 to just hit these problems briefly because they've  
19 already been covered several times. One time -- one is  
20 the time factor. Three-hour pre-shift, the operators at  
21 MSHA and the fire bosses, I guess we're all still  
22 under -- that we work eight-hour shifts. I mean, it's in  
23 the MSHA thing. It refers to the eight-hour shift. You  
24 know, eight-hour shifts; they've been gone for years.  
25 You know, we hot seat. We work 10, 12 hours a day

1 sometimes, hot seat. So, you know, three hours prior to  
2 the beginning of the next shift, we're talking about  
3 eight-hour shifts, is something of a peist [sic]. That  
4 works six, seven days a week. I'm down there more than  
5 at home sometimes.

6           And during the older days, in the eight-hour  
7 shift, that was portal-to-portal. That means from the  
8 time you dropped on your shift until the time you got  
9 out, it was eight hours. That's not the case anymore.  
10 Now, we have staggered drop times, which mark the  
11 beginning of the following shift, fire bosses -- this is  
12 our start time.

13           Day shift starts at 6:40 a.m.; evening shift at  
14 2:40 p.m.; and the owl shift starts at 10:40 p.m.; which  
15 means if I start at 10:40 a.m., and we go at the three-  
16 hour pre-shift, I'm already cut 20 minutes of my pre-  
17 shift time. Three-hours -- if I have to start at 8:00  
18 because the mind frame is you can't start until 8:00  
19 o'clock on the evening shift. I know the law says three  
20 hours, but the mind frame is we're still under eight-hour  
21 shifts. They don't take into consideration the drop  
22 time, that the shifts are staggered now.

23           So the beginning of the owl shift actually  
24 starts 20 minutes earlier, and my shift is actually over  
25 20 minutes before the end of that -- let me just give you

1 what this means. This takes 20 minutes out of every pre-  
2 shift. We've got five fire bosses per pre-shift. A  
3 hundred -- that's a hundred and -- we've got three  
4 shifts. That's 300 minutes. That's five hours a day  
5 that our pre-shifts have been cut back.

6           The next problem that we have is -- and it's  
7 probably a question. What in the MSHA protects fire  
8 bosses from management if we take the immediate action?  
9 The reason I'm saying that, since I've been fire bossing,  
10 I've been almost fired; I've had disciplinary action for  
11 taking immediate response to a hazard -- what I  
12 considered to be a hazardous condition. So I'm saying  
13 that we need some kind of a something that gives us  
14 protection.

15           The third problem is training. Times are  
16 constantly changing. Under the proposal, it requires the  
17 operator to review citations and orders issued. That's a  
18 good thing, but it don't go far enough. We need MSHA to  
19 require or make available adequate training needed for  
20 residents, inspectors, at the beginning of their  
21 quarterly inspection. We would like to see them sit down  
22 with the fire bosses and give them up front what they  
23 expect for that quarter.

24           And the reason I say this is, each MSHA  
25 inspector interprets the law differently. And I discuss

1 this over and over with them as they come to the mines.  
2 This quarter, they're looking for a particular thing.  
3 They get us in that mind frame; and the next quarter, an  
4 inspector comes along and he's got a different agenda.  
5 We have to be retrained every quarter. I'd like them to  
6 set down at the beginning of the quarter and tell us what  
7 they expect out of that quarter.

8           They're issuing inadequate exams, so I'd like  
9 to know what they expect. And not getting off subject,  
10 but it's -- you know, it's kind of like a preacher that  
11 interprets the Bible. You've got a different church on  
12 every corner. They're reading the same law, but it's  
13 different. It's the same with MSHA inspectors. You've  
14 got the law, and they look at it differently.

15           The fourth thing I see is authority. We must  
16 have the support from MSHA and authority to do what is  
17 proposed -- this proposal asks of us as mine examiners.  
18 In the closing statements -- I may be wrong but as a mine  
19 examiner, I believe that this proposal is a shift from  
20 the responsibility and accountabilities from MSHA to the  
21 mine examiners.

22           In this proposal as written, I cannot support  
23 it. But we must take -- if we must take on the  
24 responsibility and accountability and we must -- then we  
25 must have four things be included in this proposal. And

1 this is what I would like for you to look at, if you  
2 would.

3 We must have mandatory training. We must have  
4 the authority to do the job that we're instructed to do.  
5 We must have the protection -- if we do the job that we  
6 do, we must have the protection in this proposal. And  
7 fourth, we must have the time to do the job that ya'll  
8 are proposing that we do. Thank you.

9 MODERATOR SILVEY: Thank you.

10 MR. WHITWORTH: And if you have any questions,  
11 I'd be glad to --

12 MODERATOR SILVEY: No, I don't have any. Thank  
13 you.

14 Our next speaker will be Mr. Blankenship, UMWA.

15 MR. BLANKENSHIP: My name is James Blankenship,  
16 B-L-A-N-K-E-N-S-H-I-P. I'm Local 2245 President. It's  
17 in Walter Energy Number 4 Mines. I've been there about  
18 31 years.

19 Prior to that, I worked at the Olga Coal  
20 Company in Coalwood, West Virginia, Local 1922, where I  
21 was vice president of said committee. I've been an  
22 officer of this union almost my entire career. I've  
23 probably -- went with MSHA inspectors as a miner rep as  
24 much as anybody in this -- in this room.

25 Until I had the opportunity to attend the

1 Beckley Academy and take some courses of how the MSHA  
2 inspector was trained to do an inspection, I didn't  
3 understand everything he was looking at or looking for.  
4 That training really helped me to be able to go in those  
5 coalmines and see a violation. These, these rules, as  
6 they're written -- the concept is good, but as they're  
7 written, it isn't going to work.

8           If we're going to require our examiners to do  
9 this job, which is my opinion, MSHA's job, we're going to  
10 have to give them MSHA training. And I'm not talking  
11 about sending them to Walter Energy's training center and  
12 giving them eight hours. I'm talking about giving them  
13 mine academy training.

14           And I know in this proposal, in the back of it,  
15 it talks about money and costs. To send all these  
16 examiners to Beckley would probably cost a lot of money.  
17 But you can bring the examiners to Alabama for a whole  
18 lot less, be in a room just like this here, set the  
19 courses up and let all the operators send those examiners  
20 to those courses. And once they go through to get that  
21 training, you will get what this -- what this proposal  
22 wants, a safer coal mine.

23           There's no way that, that our examiners can do  
24 what this proposal asks of them without the training.  
25 They've got to have it. And if you're not willing to

1 give that training to them as part of this proposal, then  
2 it doesn't need to pass. Because you're putting --  
3 they're going to turn their papers in. They're not going  
4 to be fire bosses, just like my brothers said, or they're  
5 going to be the scapegoat. They're going to do their  
6 pre-shift. MSHA is going to come in and write a  
7 citation, and they're going to say, well, we had a guy  
8 doing that, we need to discipline him. He didn't know.  
9 I've got my mine foreman's papers, my electrician papers  
10 and a diesel -- diesel reg certified. I've got it all.

11 I doubt very seriously if there's an examiner  
12 at our mines, Jim Walter 4, Walter Energy's 4, that knows  
13 diesel regs. When they're doing their route and they  
14 walk past a piece of equipment that they know what to  
15 look for. I doubt very seriously if there's any of them  
16 that can. But an inspector comes by and writes that same  
17 piece of equipment up, you know, there's a problem. We  
18 need to take that language out. We need to fix that  
19 problem. And to fix it is bring the instructors to the  
20 states to do it.

21 The cost is minimal to bring one or two  
22 instructors down here for a week at a time. Like I said,  
23 I've had the opportunity to go to Beckley several times.  
24 Our Local sends us every year up there for training and  
25 it helps out tremendously. And I give you a good

1 example. We spend thousands of dollars training our  
2 safety committeemen, and then Jim Walter hires them as  
3 safety supervisors because they know their training,  
4 because they know the law, they know the violations.  
5 That's what we need for every examiner now. If we're  
6 going to tell them to do it, we've got to give them the  
7 training. And you want specifics, that's one way to do  
8 it. That's the only way I can see that it will really  
9 work.

10 I don't have a written statement. I'll just  
11 shoot from the hip. And I guess sometimes that gets me  
12 in trouble, but we're going to keep on going.

13 Another thing in here, it talks about -- on  
14 page 18 -- I mean, 81167, it talks about reasonable time  
15 to fix a violation in the book. A reasonable time at Jim  
16 -- at Walter Energy's 4 is, we've got the part ordered to  
17 fix it. It will be here in three weeks. That's a  
18 reasonable time. Can't get it. That reasonable time  
19 needs to be eight hours, one day, some specific -- not  
20 just "a reasonable time." I know for a fact that  
21 we've -- that citations have been extended at Jim Walter  
22 4 for weeks because we've got the part ordered. It  
23 hasn't got here yet. We're trying to get it. And show  
24 them a -- a bill -- not a bill, but a supply order and  
25 that's extended right on. That don't need to happen. If

1 they find it, "reasonable time" needs to be addressed.

2           Going over with the certified people every  
3 quarter is a good thing if they're trained. Then they'll  
4 know what they're talking about. Then they'll know how.  
5 It goes back to -- back to the academy in Beckley. I  
6 mean, you've got some of the best instructors I've ever  
7 been around. McDormick's class was tremendous. He's the  
8 one that really showed me how to look in that coalmine  
9 and see a violation and how to rate that violation,  
10 whether it's S&S, non-S&S, whether it's something I need  
11 to get on right then or something I can report and get  
12 done later. But we need that big time.

13           Like I said earlier about the, you know -- on  
14 pages 81169, 75175 -- 1725-A talks about mobile, mobile  
15 and stationary equipment. Like I said, our inspectors,  
16 examiners don't know that law. They don't know what  
17 they're looking for. Now, we're going to tell them to do  
18 it and we're handicapping them. There's no way they can  
19 do that.

20           On page 81171, you talked about the three-hour  
21 examination, three-hours prior shift. And ya'lls own  
22 studies said it will add in a large mine, which Jim  
23 Walter 4 is; it will add 30 minutes to their examination.  
24 That's three-and-a-half hours they don't have. MSHA  
25 needs -- part of this rule needs to be that an inspector

1 will come in prior to this rule going and travel with  
2 each and every fire boss, his route; see how long it  
3 takes them to do it; see what it has to do; and then  
4 report to management that there's no way he can do what  
5 this law says in three hours. So that puts the thing  
6 back on management to do one of two things, shorten his  
7 route or add more people.

8           And I know my brother talked about cost on  
9 people. If you add more people and we do this like it's  
10 supposed to be done, they're well trained like they're  
11 supposed to be or should be, then we are going to cut  
12 down on violations. We're going to cut down on citations  
13 and MSHA fines and we're going to save money, so it's a  
14 wash. But the hiring the extra guy, getting the mine  
15 safer, less accidents, less citations, the money's there.  
16 It washes each other out. But we've got to do that.

17           I know at Number 4, these guys have to  
18 absolutely book it to get it done in three hours. They  
19 start at 12:00 on the day shift, and they're calling  
20 their report out at 3 minutes till 3:00 because they just  
21 got finished. And that's looking for hazards, not, not  
22 violations. They can't physically do it. So we, as a  
23 group, if we're going to work on these proposals, we've  
24 got to make it work where we give them a fair chance.  
25 And if the inspector walks with them and sees what

1 they've got to do, make recommendations to management,  
2 then put the ball in their court to do what's right. And  
3 if they don't, then MSHA can take action to do what  
4 they've got to do. It talks about supplementary  
5 examinations. They only have to report it if they find  
6 the violation. I can tell you right now, the day this  
7 passes, you can go one year, two years, three years;  
8 you'll never see a supplementary examination in a fire  
9 boss book at Jim Walter 4. They won't put it in there  
10 because they won't find any violations because they do  
11 have to record it.

12           We need to make sure that if they do one,  
13 whether they find a violation or hazard or not, it's  
14 important course that that supplementary was done. That  
15 language needs to be changed, so we know somebody went in  
16 there and looked and didn't find a hazard and didn't find  
17 a violation. There's -- there's never anything about a  
18 supplementary at our mines. Never, never seen anything,  
19 never anything written down about it whatsoever. We need  
20 to make that happen. That needs to be done.

21           I guess I've probably took enough of your time.  
22 But I really want you to look hard at the training part  
23 of it. Look hard at the routes. It's -- there's no way  
24 the way this is written today that our guys can do it at  
25 Jim Walter 4. There's no way on earth. For one, they

1 don't know all -- all the things they've got to look for.  
2 They're really good at looking for hazards. That's both  
3 union and company inspectors. They find hazards real  
4 well, but violations, not.

5 I guarantee you they couldn't walk by a power  
6 center and tell me if a bolter cable or a shell car cable  
7 is plugged into the wrong side of the breaker. They  
8 don't know that. We need to make sure they do if we're  
9 going to put that responsibility on them.

10 This, this worries me about making the mines  
11 not as safe as they are now the way this thing is  
12 written. The concept of it is great; less accidents,  
13 less fatalities. That's great, but it's not going to get  
14 there the way it is. Having firsthand knowledge about  
15 the training that Beckley can give can go tremendously to  
16 making this thing work. You've got the people to do it  
17 with. Bring them to Alabama and teach our inspectors. I  
18 think -- I think we can make this thing work. Thank you  
19 for the opportunity to talk to you today.

20 MODERATOR SILVEY: Thank you.

21 I'm just going to make a comment here, hearing  
22 all this. And like everybody says, we, we do want a rule  
23 that's workable, one that leads to more health and  
24 safety.

25 I will say -- and several people have said at

1 this point -- that hazards are violations. Not all  
2 violations of mandatory health and safety standards may  
3 be a hazard. But -- and I'll add a "but" to that. You  
4 may have a violation of a mandatory health and safety  
5 standard. You may have this violation. And I'm going to  
6 put them -- put these examples all into categories of  
7 ventilation violations. And it may not in and of itself  
8 be a hazard. And then you may have a second one as a  
9 violation. It may not in and of itself be a hazard. And  
10 you may have a third one. It may not in and of itself be  
11 a hazard. But at some point along you continue, you may  
12 have the unfortunate situation where a number of -- I  
13 don't know -- five, six -- they may all happen at the  
14 same time, and together they may constitute a hazard.

15           And so it's within that context that the  
16 proposal was developed. I hear what everybody is saying,  
17 and we -- I want you to know that. And we hear what  
18 everybody has said. But MSHA's goal was that if you have  
19 -- if the operator had the unfortunate situation to have  
20 five or six or seven of the same type of violations come  
21 together at the same time, then you wouldn't have a  
22 resulting unfortunate hazardous condition.

23           So it was to be preventive and proactive that  
24 the proposal was developed in that context. But as I  
25 said, I hear -- we really do hear what everybody is

1 saying. And, and for those of, of you who have submitted  
2 specific alternatives, we'll take them into  
3 consideration. Thank you.

4 MR. WHITWORTH: What you said was the point I  
5 was trying to make. I walked with MSHA inspectors in two  
6 different states. Until I took the course that McDormick  
7 taught at the academy, he taught me to do exactly what  
8 you said. Look at the different violations and be able  
9 to assess what they are and whether, whether they make a  
10 hazard or not. One by itself probably didn't. But two  
11 or three together. That's what our examiners need. The  
12 same thing. I appreciate it.

13 MODERATOR SILVEY: Okay. Thank you.

14 Our next speaker will be Mr. Cagle, Dwight  
15 Cagle, with UMWA.

16 MR. CAGLE: First of all, I'd like to welcome  
17 ya'll down.

18 MODERATOR SILVEY: Thank you.

19 MR. CAGLE: Dwight Cagle, D-W-I-G-H-T, C-A-G-L-  
20 E, safety committee, Local 2397, United Mine Workers,  
21 Number 7 Mine, Walter Energy.

22 Just about everything has been covered that I  
23 was going to touch on this morning. And it was like  
24 Brother Blankenship was talking about the brothers from  
25 Shoal Creek, our fire bosses and examiners are going to

1 be loaded up. And the training that we did get at  
2 Beckley, like I said -- I had that privilege of being up  
3 there three or four times and we got some good training,  
4 which, if this goes through, these people will need to be  
5 trained.

6 Like he said, if you do an on shift, pre-shift  
7 or section -- we'll say this section is not running. Our  
8 people go up there and do the examining, walk by the  
9 equipment and see -- he's not trained to do it, then the  
10 Fed will go in behind him and write the violation. Would  
11 that be an inadequate examination? Just like they said  
12 about the power centers; is he certified to check it? Is  
13 he going to look at the box, the jacks, rock dust? Is he  
14 certified to check settings on breakers, ground,  
15 whatever? Is he certified? Is he qualified to do it?

16 Same way if you've got diesel equipment. If he  
17 walks by, what is he going to check? He may check the  
18 booking to see if it's not dirty or whatever. But that's  
19 a lot of checking on all this equipment.

20 And as I said, again, if this goes through, who  
21 is going to do the training? Who is going to train these  
22 people? Who is going to be responsible for the cost? Is  
23 the owner of the company going to be responsible to send  
24 these people, or is he going to have to do it on his own  
25 in order to be an examiner? That's some of the questions

1 we need to ask on that. And, also, you're talking about  
2 can we remember past '92. I've been in it since '74. A  
3 lot of things I can remember; some, I can't. But as you  
4 all -- throughout the industry, as everyone knows, we've  
5 got a young work force coming in, supervisors, too. Some  
6 of them don't have their papers. The people with the  
7 papers have to do the examinations. Like I said, they  
8 don't know -- they haven't had the training.

9           And with this proposed the way it is, I don't  
10 know if some of these young folks is going to go get  
11 their papers. It's -- it's stuff like that that we've  
12 got to look at.

13           Date and time on stuff that's written up. It's  
14 just like the Mine Workers submitted two days in a plant.  
15 They come in and say, well, we got so much done; we're  
16 going to give you an extension. We're going to give you  
17 another extension. How many people did you use? We put  
18 five or six people on it. Over and over. They need to  
19 get it done and need to get the citations that there are  
20 corrected. And also like Mr. Blankenship said about the  
21 training at Beckley Academy; it will let you know if it  
22 was significant, substantial, by different phases of it.  
23 Say, you know, a roller, bad roller. You have air. Do  
24 you have methane? But we need these people trained if,  
25 like I, said this goes in. We need to know who's going

1 to be responsible for it. I'll say it again; I know MSHA  
2 has got a program policy manual they follow. They have  
3 to write some of this stuff, and some of them -- we need  
4 more than a presence down there of MSHA, not to put all  
5 this on the fire bosses, the examiners. That's all I  
6 have.

7 MODERATOR SILVEY: Okay. Thank you. Fair  
8 enough.

9 Our next speaker will be Steven Miller, UMWA.

10 MR. MILLER: My name is Steven Miller, Local  
11 1948, recording secretary, UMWA, also a fire boss/pumper.  
12 I do pumper admissibility at Shoal Creek Mines.

13 Some of my concerns is, which we covered a lot  
14 of them. I'm going to go -- there really hadn't been  
15 brought up a whole bunch about, is writing hazards and  
16 violations whenever a fire boss inspector -- I mean,  
17 examiner -- writes something up. They have time to take  
18 care of it. They usually put a menace sign on it. It  
19 takes time. Write it over and over, you know. The next  
20 shift will write it, what not. Takes plenty of time to  
21 do it.

22 But we don't have the authority like MSHA does,  
23 the Federals and stuff to write a D order to shut  
24 something down. Now, we do if it's an immediate danger  
25 or something like that. But, you know, with MSHA, if

1 they feel something is unsafe, they'll shut that area  
2 down. We don't have the power to do such a thing because  
3 the company may possibly retaliate against what you did  
4 when it comes to something like that.

5           Also, the training, MSHA, if I'm not mistaken,  
6 has approximately about 150 hours a year training. And  
7 to know the laws of the Federal level, the fire bosses  
8 are trained by the State, not the Federal. And the  
9 concerns is, in a proposal, the company shall, you know,  
10 give additional training. I feel that MSHA should  
11 definitely give that training for the fire bosses.

12           And also, with the routes and stuff -- I know  
13 you've heard it -- every day the mine grows more and more  
14 each time. The routes get longer and longer. MSHA has  
15 eight hours to look over a certain little area they  
16 choose to pick. It may be 20, 30 crosscuts. They go  
17 over it with a fine-toothed comb. We have a larger area  
18 to cover with, like I said, miles that were covered in a  
19 just three-hour period.

20           And, also, the concern of cutting costs, I  
21 don't know for sure, but it seems like possibly with this  
22 cutting costs may be getting rid of MSHA inspectors or  
23 something -- I don't know for sure -- and putting all  
24 the -- you know, more responsibility on the fire bosses  
25 causing them to take other jobs, which will lead to the

1 company either having management do the inspections or  
2 having contractors do it. And that's my main concerns,  
3 you know, I'm really leery about. Other than that,  
4 everything else has been covered over and over again, so  
5 I'll stop right there with that.

6 MODERATOR SILVEY: Thank you. I only have one  
7 comment, no question. And that is -- and several people  
8 have suggested that maybe the proposal was meant to get  
9 rid of MSHA inspectors, and I, I just want to disavow  
10 anybody of that thought, that the proposal was not  
11 developed with the thought of getting rid of MSHA  
12 inspectors and reiterate, again, that under the existing  
13 rules, the mine operators are responsible for compliance  
14 with mandatory health and safety standards. So that's  
15 just a statement. Thank you.

16 MR. MILLER: Thank you.

17 MODERATOR SILVEY: Our next speaker will be  
18 Harold Sickles with the UMWA.

19 MR. SICKLES: Like you said, my name is Harold  
20 Sickles. I'm Local 1948, Shoal Creek Mines.

21 I have -- I have some concerns about some  
22 wording in this proposal.

23 MR. DuCHARME: Can you spell your name for the  
24 court reporter?

25 MR. SICKLES: Harold -- H-A-R-O-L-D,

1 S-I-C-K-L-E-S.

2 Listen -- excuse me. Listening to everything  
3 that was going on, it's got me running a hundred  
4 different ways.

5 A lot of people said the same exact things that  
6 I want to say to back them up, but there's really no use  
7 beating a dead horse. But there's some things that's  
8 wrote up in here, and I want to read a little paragraph.

9 It says: "Under the proposed standards, MSHA  
10 intends that examiners who conduct on-shift examinations  
11 identify and correct hazardous conditions and violations  
12 of mandatory health or safety standards that arise during  
13 the miners' shift. MSHA also intends that weekly  
14 examiners identify and correct hazardous conditions and  
15 violations of mandatory health and safety standards  
16 during the required examinations as well."

17 And that being said, I've had my mine foreman  
18 papers for about a month now, and I'm certified with the  
19 State. The State says if I run across a hazardous  
20 condition, I'm to danger-board it on all sides so nobody  
21 can enter the area and notify my mine foreman.

22 My question is -- or my statement is, we don't  
23 have -- we don't have the training to be able to go in  
24 and take care of these hazards. I mean, with my State  
25 certification, it says I have to let the mine foreman

1 know about these hazardous conditions and he shall  
2 immediately take care of it. But in this proposal, it  
3 says "correct a hazardous condition." I mean, there's a  
4 lot of words in here -- that's what's kind of scaring a  
5 bunch of us, I think, or at least me. There's some of  
6 these words that you've got to correct it right then.

7 Well, do you stop then and take action to  
8 correct it, or do you go on through with your route, your  
9 -- you notify your mine foreman. Okay. Your mine  
10 foreman -- excuse the slang -- pencil-whips it. Men  
11 assigned actually correct it. Something happens, is it  
12 going to come back and bite me as a fire boss? I'm  
13 asking that.

14 MODERATOR SILVEY: That, that was not intended  
15 to change anything that's done right now. It's the  
16 same -- when it -- when it says "identify, correct," the  
17 responsibility is the -- is the mine operator's  
18 responsibility. So it was the, the hazardous condition  
19 is to be corrected the same way it is under the existing  
20 rule. You note it or you go out and inform the mine  
21 foreman, and the mine foreman makes arrangements for  
22 correcting it.

23 MR. SICKLES: And my other -- my other concern  
24 is -- I'm just going to put it out there on the table.  
25 I've -- I've been an underground miner now for eight

1 years. My granddaddy was a coal miner, and I've got an  
2 aunt that's a coal miner. I've always kept up with this  
3 stuff. And everything that's going on with the media  
4 with Upper Big Branch and other explosions and stuff like  
5 that, as a young man, I'm just real concerned -- not  
6 being -- I just don't feel like the laws are being  
7 enforced because of the judgment call each one of us  
8 have.

9           When I go through on a fire boss route, I have  
10 a judgment call to make whether it's a hazard or not a  
11 hazard. I understand it's a broad brush. Every one of  
12 us can walk the same route and it will probably be 50/50,  
13 if we run across the same thing, which is a hazard or not  
14 a hazard.

15           I wish I had the answer to be able to tell you  
16 to put in this to fix that, but I, I believe we do need  
17 to narrow it down. You've got enough statistics. You've  
18 been keeping up with statistics since coalmining started.  
19 We ought to be able to narrow it down and get an  
20 effective -- you know, the mandatory health and safety,  
21 instead of being a hazard, because it all leads up if you  
22 don't rock dust, if you don't have proper ventilation, it  
23 all -- the end result, people get killed. I just -- I'm  
24 -- I'm hoping that you're getting what I'm saying, that  
25 ya'll combine something and get the broad brush down to a

1 fine pen enough that we can more or less quit getting  
2 people killed.

3           And I just -- I'm real afraid that this, this  
4 is going to come back and run a lot of people off;  
5 because don't think I haven't thought about trying to  
6 find the paperwork to get my mine foreman certification  
7 turned back in. Because I went underground to work for  
8 my family, to support my family. I'm not going to turn  
9 around, if somewhere down the road, let's say, well,  
10 we're going to start fining the fire boss as well as the  
11 company. This old boy can't take licks like that.

12           I come to make money, you know, not spend  
13 money. I don't want to lose my house and my family over  
14 something that on my judgment call was not a violation --  
15 or not -- not a hazard because I don't have the training  
16 of violations, a Federal man come in behind me and say  
17 you missed this. That's my concern. I don't want the  
18 judgment call of a Federal inspector against me, his  
19 judgment call is that's a hazard. Well, I didn't  
20 consider that a hazard, but I'd still get an inadequate.  
21 I'm going to bring up an example of my judgment against  
22 another -- an inspector's.

23           We got a citation at the mines for man-door  
24 reflectors, not having the man-door reflectors up. All  
25 right. My judgment is out of 180 crosscuts, 40 percent

1 of those crosscuts, you didn't have the -- an adequate  
2 walkway in and out of the man door. My judgment is, that  
3 reflector is bad. If I can find the door -- which it's  
4 my mines. I know where all the doors are. I understand  
5 it's not nice to have a reflector, but if you've got  
6 smoke and you're down and you find the door and you're  
7 having to drag a man on a stretcher and you can't get him  
8 out because the doors are blocked up. See my judgment?  
9 I'm talking about the judgment.

10 The same crosscuts that he wrote up for the  
11 reflective man-door signs, 40 percent of those doors was  
12 blocked, more or less inaccessible. And that's where my  
13 fear is, is another man's judgment against mine and then  
14 I end up losing everything. That's what I don't want to  
15 happen.

16 And what I'm asking for ya'll is, is to get --  
17 pull the broad brush down just a little bit so we -- so  
18 we can all get on the same page. Won't nobody get  
19 killed. Operators make money. We make money. Because  
20 without those two things, I'm not going to work for them,  
21 and they ain't going to keep spending money underground.  
22 That's all I've got to say. There's so much said. Thank  
23 you for ya'll time and ya'll having this hearing.

24 MODERATOR SILVEY: Thank you.

25 Our next speaker is Donna -- is it *S. Malley*?

1

2 MS. SMALLEY: Oh, *Smalley*.3 MODERATOR SILVEY: Oh, *Smalley*. Thank you --  
4 who is an attorney.5 MS. SMALLEY: Yes, ma'am. I appreciate the  
6 presence of MSHA here today listening to the concerns of  
7 these good Alabama workers. And I'm basically here in  
8 support of them and to ask that there be --9 MODERATOR SILVEY: Excuse me. I'm so sorry.  
10 Would you just spell your last name for the  
11 reporter?

12 MS. SMALLEY: S-M-A-L-L-E-Y.

13 MODERATOR SILVEY: All right. Thank you.

14 MS. SMALLEY: I appreciate the concern of MSHA  
15 being here today and looking into these additional safety  
16 regulations that concern, of course, the most important  
17 duty of MSHA, which is the safety of the mine workers.18 As an attorney, though, I also have represented  
19 numerous owners of property adjoining the mining in the  
20 State of Alabama and would like to take this opportunity  
21 to draw to the attention of this board the fact that the  
22 Bureau of Mine Report 8507, frequently referred to as the  
23 Siskind Report, is used as the measure of safety for  
24 persons adjoining mines, both who are residents and/or  
25 persons who may be on businesses that adjoin the mine

1 sites. And there are flaws within this study that is  
2 still being relied upon from 30 or 40 years ago.

3 I would urge the committee to consider having  
4 updated reports done so that safer standards can be  
5 created for scale visit formulas and to help regulate the  
6 strength of shots as they affect the adjoining property  
7 owners.

8 Some of the adjoining property owners' health  
9 issues that are involved are not only the annoyance and  
10 aggravation from the shaking and rattling of their homes,  
11 and the loss and destruction of the value of those homes  
12 over time. The effect on the nerves and nervous system,  
13 stress levels, dust from time to time, there are those  
14 types of issues that certainly deserve to be investigated  
15 at some point.

16 I'm respectful of the fact that the primary  
17 focus today is the safety of the mineworkers, and I  
18 certainly support that. But I wanted to draw this  
19 committee's attention to the inappropriate or flawed  
20 studies that are being relied upon by the mine -- mine  
21 owners and the negative effect that has on the health and  
22 welfare of the adjoining population. Thank you.

23 MODERATOR SILVEY: Thank you.

24 I would -- before you leave, I'd like to make  
25 one comment, and that is that -- and thank you for your

1 testimony.

2 But I would like for the record to state that  
3 this testimony is beyond the scope -- and you actually  
4 gave me the segue into that, that this testimony is  
5 beyond the scope of this ruling so that everybody will  
6 know that and the record will show that.

7 Thank you.

8 Is there -- oh, I'm sorry. Okay.

9 Otis Gibson, United Mine Workers.

10 MR. GIBSON: Please bear with me. This is the  
11 first time I've ever got in front of one of these.

12 MODERATOR SILVEY: Thank you.

13 MR. GIBSON: But I'm -- my name is Otis Gibson,  
14 O-T-I-S, G-I-B-S-O-N. I'm currently an employee at  
15 Cliff's Natural Resources, Local 2133. I'm the Safety  
16 Chairman at the mine.

17 I started in the mine back in '92 working for  
18 Calvin and then got into working at Jim Walter Number 7  
19 mine. I got my mine foreman papers. Right now, I have  
20 electrical papers, dust papers, and training papers.

21 And I do believe the best way to go with all  
22 this that's been wrote up is more training because I  
23 could not find the things that I find underground if it  
24 wasn't for the training I had and the people that work at  
25 Jim Walter, like Keith Plyars [phonetic]. I bugged him

1 like all get out asking him questions after questions.  
2 And Tom Wilson, I'd call him up on the phone. Now I  
3 don't call him very often.

4           If we didn't have people with the right kind of  
5 training in to examine these mines -- we've got right now  
6 at Oak Grove Mine -- probably 80 percent of them got less  
7 than seven years with mine foremen papers that's fire  
8 bossing at the mine. And one, one of the fire bosses  
9 just got elected as a safety committeeman and got in an  
10 argument with him. He's saying that a hose through a  
11 brattice door is not a violation. It's not a hazard.  
12 No, it's not a hazard, but it's a violation. And  
13 according to the books that I fill out at work, the top  
14 part of that book says *Hazards and Violations*. But a lot  
15 of them ain't putting violations in there.

16           So I understand where ya'll are coming from,  
17 but it's part of the book for them to do that. And the  
18 part in the "Comment" part is not for making roller lists  
19 or something like that. It's for something that's  
20 starting to be a violation and get them aware of it and  
21 give them a day or two before it becomes a violation.

22           People need to be trained in this area to be  
23 able to examine the mine better. And this is not going  
24 on at none of the mines I've been at, not the Jim Walter  
25 and not at Cliff's.

1           We're trying right now at Cliff's -- two  
2   company men are here right now, Brad Berry and Eric  
3   Tennent, and we're getting with fire bosses and start  
4   going over this stuff, but -- because a lot of them don't  
5   know the C.F.R. 30, Parts 75, 77, 18. They don't know  
6   none of it because none of them have the training like  
7   the UMWA sent me up there to Beckley four years in a row.  
8   So I think the way to go with all of this is more  
9   training. That's all I have.

10           MODERATOR SILVEY: Thank you.

11           At this point, is there anybody else who wishes  
12   to comment?

13           Mark -- I'm sorry -- Mark Eslinger.

14           MR. ESLINGER: My name is Mark Eslinger --  
15   M-A-R-K, E-S-L-I-N-G-E-R. I'm the General Safety Manager  
16   for Five Star Mining, Inc., and Black Panther Mining,  
17   LLC. I have mine foreman papers in the State of Indiana.

18           The first thing I want to do is comment on the  
19   requirement to check for violations during pre-shift  
20   whether you're a pumper or whether you're a pre-shift  
21   examiner.

22           The 1992 Safety Standards for Underground Coal  
23   Mine Ventilation Rule, third column on page 20894,  
24   states: "However, as proposed, the final rule does not  
25   include a provision for authorizing the expansion of the

1 pre-shift examination to include examination of  
2 violations of mandatory standards. Most hazards are  
3 violations of mandatory standards. MSHA believes that  
4 authorizing the District Managers to require pre-shift  
5 examinations to include examination for other hazard  
6 ensures that pre-shift examinations are tailored to  
7 provide the necessary protection for the miners. Also  
8 requiring the pre-shift examiner to look for all  
9 violations, regardless of whether they involve a hazard,  
10 could distract the examiner from the more important  
11 aspect of the examination. The pre-shift examination is  
12 the time to concentrate the examiner's efforts in those  
13 areas where they are most suitably applied."

14 I was on the committee that wrote the 1992  
15 rule. We did this taking -- looking for violations out  
16 of the rule specifically so that the examiner would not  
17 be put in a gotcha situation. I inspected in the mines  
18 prior to 1992. There is a series of violations that are  
19 really not hazards. They are technical violations, such  
20 as a tag on a fire extinguisher. If the tag is missing  
21 or if the tag's out of date, it's a violation. If the  
22 proposed rule goes through as it is, it would be required  
23 that an examiner would have to look at that.

24 As brought up before, the settings on breakers,  
25 so on and so forth, there would be a lot of additional

1 work. So the 1992 rule removed the requirement from the  
2 pre-shift examiners to look for violations for a good  
3 reason. The pre-shift examiner is not the safety and  
4 health department for the mine. His or her job should  
5 not be compliance assistance. It should be checking for  
6 hazards. And like I said, we didn't make -- we discussed  
7 this long and hard, and we decided to take the aspect of  
8 looking for violations out of the rule so that the mine  
9 examiner would not be put in a gotcha situation.

10 And as has been mentioned now, the mines are  
11 producing more and are larger in expansion. One of the  
12 things I'll point out is a piece of diesel equipment.  
13 The first time I rode in a piece of diesel equipment was  
14 in 1985, when I was out helping with the Wilberg fire  
15 situation. Many mines now have diesel equipment. There's  
16 a whole series of regulations that require different  
17 aspects for diesel regulations.

18 Also, you know, the 1996 rule, Safety Standards  
19 for Underground Coal Mines, page 9793, first column  
20 states: "A number of commenters recommending deletion of  
21 the requirement to identify and report noncompliance of  
22 mandatory safety and health standards that could result  
23 in hazard conditions. Various commenters stated in the  
24 proposed requirement would distract the examiner from the  
25 most important aspect of the pre-shift examination, would

1 require predictions and/or is designed only to facilitate  
2 enforcement actions. Commenters also suggested the  
3 proposed would result in a shift in the focus of the pre-  
4 shift examination from the true hazards to noncompliance.  
5 Other commenters objected that the proposed requirement  
6 to examine for noncompliance of mandatory safety or  
7 health standards that could result in hazardous  
8 conditions is so vague that it could detract from the  
9 miners' safety.

10 "One commenter suggested that the examiners  
11 would spend their time performing admissibility checks,  
12 roof holes, measuring roof holes, basing and similar  
13 tasks which represents a significant departure from the  
14 examiner's traditional duties."

15 If the rule goes forward as it is and requires  
16 to look for more than hazard conditions, to look for  
17 violations, there will be a significant cost increase. I  
18 mentioned pumpers. A pumper can do his own examination  
19 before he begins work in an area. But if he has to look  
20 for violations in the area, then part of his time will be  
21 spent doing just that, looking for violations. So a  
22 pumper that works, for example, eight hours a day, I  
23 estimate that it will take another hour of examination  
24 work. And, therefore, his duties won't be done that he  
25 is assigned to do when he's pumping. So, thereby, there

1 is a significant cost increase.

2           And I have included in my written comments that  
3 are already submitted to MSHA the different estimations  
4 on the cost.

5           The same thing goes with the pre-shift  
6 examiners making working sections. I estimate that it  
7 will be another 30 minutes of examination on the section  
8 alone. That is if you do not open boxes and so on and so  
9 forth as the Preamble says.

10           And by the way, the Preamble is not the rule,  
11 and it could end up that it could be enforced that way,  
12 that you failed to make a proper examination.

13           And before 1992, I seldom saw citations/orders  
14 issued for inadequate examinations. Now, it's common  
15 practice. In fact, the new MSHA inspectors are being  
16 taught to look at writing a second violation for failure  
17 to do a proper examination. Mine operators are getting  
18 double-barreled. They're getting two violations on the  
19 same infraction. And, again, that puts whoever was doing  
20 the examination in a gotcha situation.

21           I wish to comment on the fact that it says that  
22 the rule: "The District Manager may require a certified  
23 person to examine other areas of the mine or examine for  
24 other hazards and violations of mandatory health or  
25 safety standards during his pre-shift examination. This

1 regulation permits the District Manager to have broad  
2 power to direct additional areas to be examined, other  
3 hazards to be examined for or violations to be examined  
4 for."

5           This places a huge burden on the mine operator.  
6 This is something he can't plan for, so when the District  
7 Manager decides that he needs to expand the scope of the  
8 pre-shift examination, it can be expanded. I have seen  
9 this done, and I have seen this abused. Sometimes an  
10 operator will have to greatly expand his pre-shift  
11 examination.

12           I wish to make some comments about the pre-  
13 shift and the eight-hour period. Currently, and as the  
14 proposed rule is written, the pre-shift has to be done  
15 three hours before any eight-hour time frame. It's not  
16 necessarily a pre-shift examination. You've got to  
17 examine for any eight hours. The shift could start at  
18 any time. Prior to -- back under the old rule, even the  
19 1992 rule, a pre-shift examination was required prior to  
20 the start of a shift. I think that the Agency needs to  
21 go back to requiring an examination prior to the start of  
22 the shift, and not prior to any eight-hour period.  
23 That's caused a lot of confusion.

24           As mentioned previously, the shifts are no  
25 longer eight hours. They hot-seat. Shifts are nine

1 hours, ten hours. Some shifts overlap. I think you  
2 would get better safety if you would do it three hours  
3 prior to the start of the shift.

4           Additionally, some State regulations still  
5 require an examination prior to the start of the shift,  
6 so it makes it a hardship trying to comply with two  
7 different sets of rules. Even if a miner works 12-hour  
8 shifts, I think 2 pre-shift examinations prior to a 12-  
9 hour shift would be better than a pre-shift examination  
10 into any 8-hour period. I'm sorry. I was trying to look  
11 in my notes where I had the thing about the on-shift and  
12 pre-shift to be done at the same time.

13           And, basically, in the rule right now and in  
14 the proposed rule, it talks about you can do the on-shift  
15 and the pre-shift at the same time as long as it's within  
16 three hours prior to the start of the shift. Well,  
17 that's an error because it's three hours prior to any  
18 eight-hour period, and the operator has to designate  
19 those eight-hour periods. So there's a mistake in the  
20 present regulations and there's a mistake in the proposed  
21 regulations if the regulations stay like they are.  
22 Okay.

23           Review of citations and orders. "The proposed  
24 rule requires that the mine operator shall review the  
25 mine with the mine examiners on a quarterly basis.

1 Citations and orders issued in areas where pre-shift,  
2 supplemental, and on-shift and weekly examinations are  
3 required." Since pre-shift examinations, supplemental  
4 examinations, and on-shift examinations cover the area  
5 where persons normally work or travel, almost every  
6 violation in Parts 70 or 75 would be covered by this  
7 requirement. And in the fact that the weekly  
8 examinations cover such areas as air courses, escapeways  
9 travel, pumps, seals and so on and so forth, basically  
10 the entire mine is covered in every citation and every  
11 order would be required.

12           This is going to put a burden on the mine  
13 operator to do this. I suggest that if this needs to be  
14 done, that MSHA, as part of their EO1 closeout, put on  
15 this training for the examiners and put it on every shift  
16 for -- since they are the best trained and best qualified  
17 to identify violations, if this needs to be done, then  
18 MSHA should provide the training to all the examiners and  
19 go over all the violations.

20           And I'd like to point out one thing. A lot of  
21 weekly examiners don't ever go on to the working section.  
22 Their work is outby, blocking air courses, escapeways,  
23 bleeders, and so on and so forth. So when you go over  
24 violations on the unit, which could be permissibility,  
25 could be violations of health things -- of health

1 parameters and so on and so forth, it won't apply to  
2 them.

3           So to say that you're going to teach all the  
4 things, all the violations to all of the work force -- I  
5 mean, by "work force" I mean, all your examiners -- I  
6 think this is a bit of overkill.

7           Under *Weekly Examinations*, 364D, the first  
8 statement in paragraph D states: "Hazardous conditions  
9 shall be corrected immediately." Correct, 75.363A and  
10 proposed 75.363A states: "A hazardous condition shall be  
11 corrected immediately or the area shall remain posted  
12 until the hazardous condition is corrected. Hazardous  
13 conditions found during pre-shift and on-shift  
14 examinations and supplemental examinations can be  
15 corrected immediately or the area can be posted until the  
16 hazardous condition is corrected.

17           "Hazardous conditions found during weekly  
18 examinations must be corrected immediately. The  
19 hazardous condition found during weekly examinations  
20 could have existed for up to seven days; yet, they must  
21 be corrected immediately." There seems to a  
22 contradiction here between pre-shift and weekly  
23 examinations. And I think that hazardous conditions  
24 found during the weekly examination should also be  
25 permitted to be posted and not have to be corrected

1 immediately. I think they have to be corrected, but I  
2 think it should be the same language as the pre-shift,  
3 on-shift and supplemental examinations.

4           Also, pointing on the weekly, weekly examiners  
5 cover a tremendous amount of area. When they're walking  
6 air courses or they're doing bleeders and so on and so  
7 forth, they're covering a tremendous amount of area. So  
8 when you require a weekly examiner to look for  
9 violations, it will distract that examiner from looking  
10 for the hazards that exist.

11           Again, some violations are technical in nature  
12 and are not hazards. And as I said about the pre-shift  
13 examiner and the on-shift examiner, the weekly examiner  
14 is not the safety and health department for the mine.  
15 Their jobs should not be compliance assistance. The  
16 proposed rule, page 81168, first column states: "MSHA  
17 reviewed all of the accident investigation reports  
18 involved with fatalities from 2003 to 2009 where an  
19 inadequate examination of the underground work area was  
20 determined to have contributed to the accident.

21           "In addition, the agents that have reviewed  
22 citations and orders for non-fatal accidents and for the  
23 same period for an inadequate examination of the  
24 underground work area contributed to the accident. MSHA  
25 determined that in 20 of these accidents, although the

1 examiner did not identify a hazardous condition, the  
2 condition involved a violation of the mandatory standard.  
3 Had the examiner identified these conditions and  
4 corrected the violations, the accident could have been  
5 prevented." And that's the end of the quote.

6 First, when MSHA investigators investigate an  
7 accident where somebody is fatally injured or seriously  
8 injured, MSHA tends to write a failure to do a proper  
9 examination. However, it's not always that an improper  
10 examination was not done. Examinations are done during a  
11 period of time, and conditions can change and can change  
12 quickly. And so there may have been an adequate  
13 examination.

14 I mean, it's easy to point the finger when an  
15 accident occurs. But what we need to be doing is  
16 preventing the accidents, working with examiners and  
17 working towards making a safe and healthful work  
18 practice.

19 The proposed rule, page 81168, middle column  
20 states: "MSHA solicits comments on other alternatives  
21 for assuring that the operator is examined for violations  
22 of mandatory standards." That's the end of the quote.  
23 I think that there should be some times that MSHA  
24 personnel should accompany each examiner in the course of  
25 the examiner's duty and help that examiner. I think that

1 sometimes the MSHA person needs to get out of wearing a  
2 badge mode and get into compliance assistance mode and  
3 help the people out. I'm not saying doing away with the  
4 requirements of doing inspections and so on and so forth.  
5 But if MSHA wants the examiner to do a better job, then I  
6 think he -- MSHA needs to help teach and train that  
7 examiner in the duties of what needs to be looked for.

8 MSHA inspectors travel almost exclusively with  
9 the Health and Safety Department and mine management, and  
10 I think that more time should be spent traveling with the  
11 examiners.

12 That's all the comments I have at this time.

13 MODERATOR SILVEY: Okay. Thank you, Mark.

14 I have a couple of comments and a couple of  
15 questions.

16 First of all, I'm going to do this because I've  
17 got it pointed out and I -- and I -- so I'll do this  
18 first.

19 Your comment on the fact that the District  
20 Manager may require the certified person to examine other  
21 areas of the mine or examine for other hazards -- and  
22 we've -- we've taken testimony on that at other hearings  
23 and how that gives the District Manager increased  
24 authority.

25 But just so everybody knows, that is a

1 provision in the existing rule, but under the pre-shift  
2 provision. And granted, we -- it would be an expansion.  
3 But I guess I would tend to ask people, in terms of their  
4 familiarity with what happened -- and I can ask you in  
5 terms of it because you, you do have the field  
6 experience.

7           And I'll ask you to go back in time, whether  
8 you like to or not, and put yourself where you were  
9 before you retired from MSHA. In your district, did you  
10 all have a lot of issues or problems with requiring  
11 operators to examine -- doing the pre-shift exams for  
12 other areas or other hazards? Did ya'll do it a lot? I  
13 guess that's the first question.

14           MR. ESLINGER: It was done at times. It was  
15 not done a lot.

16           MODERATOR SILVEY: That's what I thought.

17           MR. ESLINGER: When it was done, the operators  
18 squealed like crazy, didn't like it. There's no  
19 recourse. There's nothing he can do. He's got to do the  
20 examinations.

21           MODERATOR SILVEY: But it wasn't done a lot.

22           MR. ESLINGER: Well, it was -- it was done -- I  
23 can remember one incident where we had them pre-shift a  
24 bleeder system. And it takes several hours to walk  
25 around that bleeder system.

1           And so one examiner had to do a whole pre-shift  
2 just doing a bleeder system. You know, so it -- it's  
3 just -- it's just broad scope.

4           MODERATOR SILVEY: I don't want to put you on  
5 the spot.

6           MR. ESLINGER: Okay.

7           MODERATOR SILVEY: But you were the ventilation  
8 person in that district, right?

9           MR. ESLINGER: Yes.

10          MODERATOR SILVEY: So was that -- was that  
11 requirement -- did you ask them to do that?

12          MR. ESLINGER: No. That was done above me.

13          MODERATOR SILVEY: Okay. A few more comments.

14          You stated that you inspected prior to the 1992  
15 rule where the provision for violations of mandatory  
16 health and safety standards were in several of the  
17 examination requirements.

18          Can you tell me what happened, what kind of --  
19 what you experienced prior to the 1992 --

20          MR. ESLINGER: Well, prior to 1992 -- and like  
21 I said, I was on a committee --

22          MODERATOR SILVEY: No, I understand that. I'm  
23 going to get to that part.

24          MR. ESLINGER: Okay.

25          MODERATOR SILVEY: Because everybody who -- and

1 I've had -- at every hearing, I've had people tell --  
2 read that part of the Preamble to me, the part of the  
3 1992 rule, the '94 rule, and the '96 rule.

4 And just so -- I might be a lot older now, but  
5 I do remember it. I was the head of the standards office  
6 then. So that's a little bit of humor.

7 So okay, Mark, go on.

8 MR. ESLINGER: Well, I think prior to the 1992,  
9 I really don't think that the examiners looked for  
10 violations or regulations that were not hazards.

11 Like I said, to me, the regulatory climate was  
12 starting to change, and the thing about inadequate  
13 examination was coming up. And I was one of the  
14 proponents of saying, Hey, let's not take the examiner  
15 and put him in that position.

16 I mean, I started in 1971, so there was 21  
17 years there where they were supposed to look for  
18 violations of the -- of the standards. And it's been  
19 said many times, you know, most, most violations are  
20 hazards. And I really don't think that a lot of  
21 attention was paid to technical violations, violations  
22 that were, were not hazards.

23 You know, like I mentioned, the fire  
24 extinguisher tags or failure to have an updated escapeway  
25 map. Those are all important things, but the focus of

1 the examiner should be the hazards. Is the roof good?  
2 Is there gas? Does he get enough air, so on and so  
3 forth, those kind of things. Like I said, diesel was  
4 coming into being. I mean, if you said you had to  
5 examine for violations, it takes another person to look  
6 at a piece of diesel equipment to determine whether that  
7 diesel equipment is in compliance or not. And it wasn't  
8 the focus of the examination, you know, to look at pieces  
9 of equipment.

10 I mean, there's a weekly requirement for  
11 electrical examinations. Pre-shift examiners and on-  
12 shift examiners shouldn't be looking at permissibilities  
13 and looking at those kind of things. Not that they  
14 aren't important, but there is a regulation in force that  
15 that be done. So I guess the answer you had, prior to  
16 '92, I don't know if there was a lot of attention paid to  
17 looking at the violations that are not hazards.

18 MODERATOR SILVEY: Well, as I have stated  
19 earlier and as I've stated in other hearings, mine  
20 operators are responsible for fixing or compliance with  
21 mandatory health and safety standards. So I'm going to  
22 ask you, aside from the hazards, which as you all point  
23 out to me, examiners are responsible for examining for  
24 hazards now, when -- at the mines you worked for, when do  
25 the operators find and fix violations of mandatory safety

1 and health standards that are not hazards?

2 MR. ESLINGER: Okay.

3 We have -- we have a safety department at each  
4 mine, okay. When MSHA shows up, one person will go with  
5 the MSHA inspector. And we average more than one a day.  
6 So we may have one or two or three, four, five on day  
7 shift. Not much on evening shift or not much on night  
8 shift. We have our safety department work all the  
9 shifts. When they're not accompanying MSHA, it's their  
10 duty to go in and look for violations of the mandatory  
11 standards, to do what we call "compliance assistance."

12 We have -- in our safety department, we have  
13 people that have been mechanics, have been electricians,  
14 and they go in and look for -- you know, for problems  
15 with permissibility, with electrical -- with electrical  
16 problems, so on and so forth.

17 Also, our electrical people each week do  
18 permissibility checks, and we -- as part of that, we go  
19 through and have them look for problems with the  
20 machinery, whether it's -- you know, whether the thing is  
21 up to snuff, so to speak. That's done. And we also have  
22 preoperational checks with our machinery so that every --  
23 at the start of every shift, we go through the equipment  
24 and make sure that the basic components of the machine  
25 are working properly. So it's our -- basically, our

1 safety department has got the main focus of doing that.  
2 And we have -- we don't right now -- at Five Star, as  
3 many as nine in the department, and that's basically what  
4 their function was.

5 MODERATOR SILVEY: Well, that, that really was  
6 the answer that I thought because this came up in other  
7 hearings, too. And it was -- it would be my assumption  
8 that any operator in this room wouldn't really want to  
9 wait until the MSHA inspector got there and, and found a  
10 violation of a Mandatory Health and Safety Standard and  
11 then to issue a citation for that violation. I would be  
12 of the assumption that any operator would -- and I said  
13 this at another hearing -- that the optimum situation  
14 would be if the inspector came and there were no  
15 violations.

16 And that -- and that is truly the preventive  
17 aspect of the Mine Act and of the law -- of the standards  
18 and regulations that are indeed of this -- was of this  
19 proposal.

20 Now, as I said, we've gotten specific comments  
21 from you all and specific alternatives, and, and we  
22 clearly will review those. I just have one more -- it's  
23 more of a comment, Mark, than a question.

24 Your, your comment on the provisions that said  
25 that require -- would require mine operators to review

1 with the mine examiners. From -- at least at one other  
2 hearing -- I know that -- we got testimony from people  
3 who thought that was a good proposal. But I do want to  
4 clarify because you said that would require the operator  
5 to review all the -- this is Part 75 here -- to review  
6 all the citations in Part 75. Well, that -- the proposed  
7 provision says mine operators are to review with the mine  
8 examiners on a quarterly basis citations and orders  
9 issued.

10 So that -- their thinking was that the mine  
11 operators would review the ones, which had been issued at  
12 that mine. And so that mine might be having a particular  
13 problem with roof control violations, but may have gotten  
14 no ventilation violations during that quarter or  
15 electrical or, or combustible material. That's probably  
16 more like it, combustible material violations. So the  
17 proposal would require the operator to review with the  
18 mine examiner citations in that -- whatever citations  
19 were issued for that mine during that period.

20 MR. ESLINGER: And I'm saying that that --

21 MODERATOR SILVEY: Not -- I got from your  
22 comment that you said it would require knowing all  
23 these --

24 MR. ESLINGER: No, I'm just talking about the  
25 citations and orders that were issued.

1           MODERATOR SILVEY: Issued, okay.

2           MR. ESLINGER: So management people would have  
3 to sit down and prepare a program to put together, okay,  
4 and then you have to put the training on. And since  
5 you've got examiners on all three shifts, it has to be  
6 done on all three shifts.

7           To me, MSHA issued the -- issued the citation,  
8 so all -- all the persons from MSHA that worked on EO1  
9 and EO2, I mean, they have to put together a close-up.

10          To me, they can expand that and sit down with  
11 the examiners in all three shifts and provide the  
12 training. I mean, some of the UMWA members here talked  
13 about getting training from MSHA and how, how valuable  
14 that was to them. I think it would be better if MSHA put  
15 that training --

16          MODERATOR SILVEY: But you don't think it's a  
17 good idea for the operator to go out -- the thinking was  
18 that the operator would go over with the examiner --  
19 maybe we're having ventilation issues; maybe we're having  
20 roof control issues; maybe we're having no issues in  
21 combustible materials. I --

22          MR. ESLINGER: I'm not saying -- I don't  
23 necessarily say it's a bad idea. But you talk about all  
24 the violations found during that quarter. And like I  
25 said, a weekly examiner may spend all his time outby.

1 And, therefore, if you talk about the citations that are  
2 issued on the working section, that doesn't apply to what  
3 he's looking at, okay? And if you -- you know, if you  
4 are a belt walker, a belt examiner, then you may not be  
5 looking at other regulations. So I think it's just a --  
6 I think it's some overkill to it.

7 MODERATOR SILVEY: Okay. Thank you.

8 Is there anybody else who wishes to make  
9 comments?

10 MR. WHITLOW: I'd like to welcome ya'll to  
11 Alabama this morning.

12 MODERATOR SILVEY: Thank you.

13 MR. WHITLOW: My name is Phillip -- P-H-I-L-L-  
14 I-P -- Whitlow -- W-H-I-T-L-O-W. I have a little over  
15 six years in the underground mine, North River and Berry,  
16 now owned by Walter Energy.

17 I'd just like to start off saying I'm not going  
18 to restate everything my union brothers did this morning.  
19 We back them 100 percent on their comments. I believe  
20 it's my responsibility, it's the responsibility to  
21 everybody that drops in that elevator every day to look  
22 for violations in or throughout that mine, whether the  
23 company, union man, inspector, what have you.  
24 Examinations by fire bosses. They have a lot on their  
25 plate already.

1 I feel like at the end of the day, the company  
2 or the operator -- owners and operators at the mine, it's  
3 his duty, responsibility and liability to know what's  
4 going on in that mine, where in that mine, and how in  
5 that mine. And each mine here is represented, Number 4,  
6 7, North River, Shoal Creek. They have safety  
7 departments with an overwhelming amount of knowledge in  
8 that safety department. I feel like they should share  
9 part of that burden looking for violations.

10 I mean, at the end of the day, it would save  
11 them money. And at the end of the day, it might have  
12 even paid for some of them's salaries if they found and  
13 corrected the violations throughout the mine. And I  
14 truly believe they should share part of this. It  
15 shouldn't all be thrown on the fire bosses.

16 I'm running a little blank, but that's the  
17 point of what I wanted to say, and I appreciate ya'll's  
18 time.

19 MODERATOR SILVEY: Thank you. Anybody else who  
20 wishes to make comments?

21 MR. WILSON: Good morning.

22 MODERATOR SILVEY: Good morning.

23 MR. WILSON: My name is Thomas Wilson, UMWA  
24 Health and Safety Representative. Welcome ya'll to  
25 Alabama.

1                   MODERATOR SILVEY: Thank you.

2                   MR. WILSON: I want to thank ya'll for revising  
3 or proposing to revise a regulation that currently I  
4 believe is broken in our system.

5                   I do rise in support of revising the current  
6 regulations. There's many things I'd like to just cover  
7 that -- I believe these items need to be addressed to, to  
8 properly create a new system that provides health and  
9 safety for the coalmines.

10                  The regulations -- the time for the examination  
11 is fixed in the regulations. And when you combine that  
12 with the operator determining the distance that the  
13 examiner must travel, those two items create a -- what  
14 could be an impossible task for an examiner to complete  
15 in a timely fashion, a quality examination. That  
16 currently exists with the current rule, and unless this  
17 panel addresses that, it will continue to take away from  
18 health and safety in any future rule.

19                  Currently, in many locations in Alabama,  
20 there's currently two sets of books. There's your  
21 examination books, and then there's also a second set not  
22 covered by regulations where other items are, are  
23 recorded. This was identified by the Mine Health and  
24 Safety Administration after the Jim Walter Resources  
25 Number 5 mine disaster. Deficiencies was -- were found

1 with having those two sets of books, things that should  
2 have been -- in the Agency's determination, should have  
3 been in the main examination books were not and were  
4 found in the second set.

5           Unfortunately, following the post-MSHA  
6 investigation of that disaster, corrective actions did  
7 not follow through, and we still to this day have two  
8 sets of books. I believe MSHA must address this and  
9 prohibit two sets of books being utilized.

10           I believe MSHA must address the design of the  
11 book itself. To put emphasis on the importance of an  
12 examination, but then have only three or four lines in a  
13 book to record hazards and violations is not practical.  
14 That in itself is a deterrent for the examiners not to  
15 record. If, if we're asking examiners -- and I know we  
16 are -- to identify and record hazards, to identify and  
17 record violations, the examination book should complement  
18 that with adequate space for that recording.

19           I would ask that MSHA address through, through  
20 this regulation where management cannot require an  
21 examiner to use their papers. We've had numerous  
22 situations where examiners have moved to a surface job  
23 and management finds themselves short of -- short-handed,  
24 and they require that person to give up that surface  
25 position to go back to examining. A person should be

1 able to hold their certification but not -- but choose  
2 not to use that certification. That currently is not the  
3 case.

4 One of the things that's currently occurring  
5 that's causing this system to be broken is when you have  
6 an examiner that will identify hazards and will report  
7 them in the books. We've had instances where the  
8 supervisors then go underground and just declare it a  
9 nonhazard. So we don't ever get corrective action. The  
10 work that the examiner originally did and his efforts to  
11 originally get something corrected is circumvented by an  
12 operator who just re-examines the area. Again, I believe  
13 that this proposal must address that shortcoming.

14 Also, it is quite common that examiners record  
15 hazards, record the conditions, and then you have a  
16 situation where operators just simply outlast them. They  
17 don't take the corrective action until the point that the  
18 examiner quits recording it, and then the burden shifts  
19 back to the examiner, that he didn't just continue to  
20 record it.

21 MSHA needs to be prompt and needs to be  
22 examining those corrective actions and ensure that  
23 corrective actions are taken.

24 Also, addressing corrective actions, we often  
25 see in the "Corrective Action" column "Men assigned."

1 But it never says -- and that may go on for 365 days a  
2 year, men assigned. You know, "Accumulations on the  
3 conveyor belt," "Men assigned," without ever having any  
4 knowledge whether the accumulations or the hazards have  
5 been abated. Again, that's another deficiency that's  
6 causing this system to be broken.

7           One commenter discussed inadequate examinations  
8 being written against the mine examiners. And that is  
9 true that we have seen a rash of inadequate examinations  
10 written. For these proposed regulations to bring safety  
11 to the coalmines, MSHA must step up and support the  
12 examiners with enforcement on a daily basis. Sadly, I  
13 believe areas exist in Alabama mines today that are the  
14 worst that they've been in the last ten years. Hazards  
15 exist in Alabama mines that are obvious and extensive.

16           I want to submit a packet that represents 19  
17 inspection shifts that clearly -- that should clearly  
18 indicate to you that extreme hazardous conditions and  
19 obvious and extensive violations exist daily in Alabama  
20 coalmines. It should clearly indicate to you that the  
21 operators at the locations of these 19 inspections did  
22 not take corrective actions seriously and did not follow  
23 up on these reported hazards. You will see the same area  
24 inspected at various times over, over a calendar where  
25 the exact same things were written repeatedly.

1           This panel has the ability -- and I ask that  
2 you check -- that many of these inspections took place  
3 following MSHA inspections, a MSHA inspection where these  
4 hazards and/or violations were not cited. I ask that  
5 this panel take a hard look at this -- at these  
6 inadequacies. And, again, I believe MSHA -- for this to  
7 work, MSHA must step up and support the examiners. MSHA  
8 cannot pick and choose when to write citations. They  
9 cannot implement quotas on their citations. They must  
10 come to the mine; they must be straightforward.

11           If you're asking a mine examiner to step up and  
12 cite things in their entirety, MSHA must be willing to do  
13 the same thing.

14           MODERATOR SILVEY: Just to be clear, Tom, were  
15 those -- those, I take it, are not MSHA inspections?

16           MR. WILSON: No, those are 19 inspections they  
17 completed.

18           MODERATOR SILVEY: I thought so, but I just  
19 wanted to be sure. Because -- we will definitely look at  
20 those because at the -- at them because, I mean -- so I  
21 just want to make sure that you said many took place  
22 following an MSHA inspection.

23           And when you say "following," you -- I mean,  
24 what do you mean in terms of in point of time? You know,  
25 right after --

1 MR. WILSON: The next shift.

2 MODERATOR SILVEY: The next shift? Okay.

3 MR. WILSON: The MSHA inspection would have  
4 been on day shift, and these would have been done on  
5 evening shift.

6 MODERATOR SILVEY: Okay. Is the date on there?

7 MR. WILSON: Yes, ma'am.

8 MODERATOR SILVEY: Okay, okay.

9 MR. WILSON: I want to make some references to  
10 some items that are more individually pointed in those 19  
11 inspection shifts.

12 On February the 19th, 2011 -- this was on the  
13 East B belt -- I wrote up the following write-up:

14 "Additional guarding is necessary across the top of the  
15 tail roller of the East A tail piece. The pinch point  
16 created by the tail roller and frame measured 26 inches  
17 from the walkway. This pinch point was easily accessible  
18 to touch. The side guard measured 74 inches, whereas the  
19 back guard only measured 54 inches, which exposed this  
20 pinch point."

21 This was written on February the 2nd, 2011, and  
22 has not been corrected in 17 days.

23 MR. DuCHARME: Just to be clear, that was  
24 written by an examiner?

25 MR. WILSON: That was written by myself on

1 February the 2nd, and also again on February the 19th.  
2 The examinations and the MSHA inspections in between that  
3 time did not record that hazard.

4 I've heard a lot of discussion about -- and  
5 I'll make this comment -- a lot of discussion on what  
6 type -- what constitutes all violations, what an examiner  
7 ought to be looking at. And if MSHA does go back to  
8 clarify and to refine those violations, I want to state  
9 for the record that guarding should be one of those  
10 requirements.

11 One of the inspection shifts that's contained  
12 in the 19 was February the 8th, 2011. Not to read the  
13 whole report, but to emphasize some items I believe to be  
14 very important. "All rock-dusted surfaces are heavy with  
15 float coal dust accumulation. Also large areas exist  
16 that are black and adequate dust does not exist for  
17 mixing. This area must be dusted." This was on the  
18 North B belt.

19 Another write-up: "Accumulations on the  
20 walkway side of the North B belt starting at the tail and  
21 extending 20 feet out by the East A header has increased  
22 dramatically. Rollers were engulfed in heavy  
23 accumulations. This belt was also running on 18 inches  
24 of packed coal. Starting at crosscut Number 82 and  
25 extending to outby the overcast at Number 81; the bottom

1 belt is cutting hard into the bottom belt hangers. Also,  
2 the bottom belt has almost cut the support chains in two  
3 that hold the crossover. Additionally, the bottom belt  
4 is still hard into the hangers on top of the overcast.  
5 Flagging was hung in this area. Accumulations still need  
6 cleaned on the top of the overcast at Number 81 between  
7 the bottom belt and the top of the overcast. 40 feet  
8 outby, crosscut Number 78, the bottom belt is cutting  
9 hard into the bottom hangers. Additionally, attached  
10 please find an earlier report which indicates items that  
11 have not been addressed."

12           Again, this was on February the 8th. The  
13 earlier report was written on February the 3rd. Items  
14 that were not addressed listed as being worse in  
15 condition. "Accumulations need cleaned on the walkway  
16 side of the North B belt starting at the tail and  
17 extending 20 feet outby the East A header a distance of  
18 approximately 60 feet." Not corrected. "At Crosscut  
19 Number 92, the offside stopping and immediate crosscut is  
20 black from float coal dust accumulations." Not  
21 corrected.

22           "All rock-dusted surfaces are black with float  
23 coal dust accumulations starting at Crosscut Number 92  
24 and extending inby to the tail." Item not corrected.  
25 "The belt side of the following stoppings need sealant

1 applied across the top and sides. Exposed wood was  
2 visible in Stopping Number 90, Stopping Number 89,  
3 Stopping Number 86, Stopping Number 80, and Stopping  
4 Number 78." Not corrected. "The bottom belt is  
5 consistently running against the two middle belt hangers  
6 on top of the overcast at Crosscut Number 81."

7           Also, I think today's transcript is a clear  
8 example of why MSHA should do all they can to remove  
9 subjective opinion from the examination process. One  
10 speaker used, I believe, holes in stopping as an example  
11 of a violation that could be used as something as being  
12 nonhazardous.

13           Speaking frankly, I want examiners identifying  
14 and recording all deficiencies in ventilation controls.  
15 The subjective opinions, I believe, is one of the items  
16 that's gotten us to where everybody is not deeming things  
17 hazardous that history has shown us ultimately can cost  
18 lives. I'm --

19           Ms. Silvey, I believe the example you gave of  
20 the cumulative effect of violations all coming together  
21 at one time can create a hazard, but even worse, we all  
22 know that's what creates disasters. Those rubbing of the  
23 belts in itself in an entry full of water may not be  
24 hazardous. But when that entry dries out and now you've  
25 got the coal accumulation, all of a sudden, it does

1 become hazardous.

2           So I applaud the Agency's efforts to improve  
3 the conditions for the mineworkers in this country. I  
4 urge you to weigh the comments that you've heard and to  
5 refine this proposal to where it does bring forth health  
6 and safety for the coal miners.

7           And with that said, I also want to rise in  
8 support of the comments, which I know were previously on  
9 the record from the United Mine Workers of America  
10 International Union. Thank you very much.

11           MODERATOR SILVEY: Okay. Thank you, Mr.  
12 Wilson. I don't have any questions.

13           Is there anybody else who wishes to provide  
14 testimony? Anybody else?

15           If not, then if nobody else wishes to provide  
16 comment or testimony, I again want to state that the Mine  
17 Safety and Health Administration appreciates your  
18 participation at this public hearing.

19           Particularly, I would want to thank everybody  
20 who made presentations and provided comments, and I also  
21 want to thank those of you who may not have made a  
22 presentation but that -- but you attended this hearing  
23 because that states to us that you have an interest in  
24 this ruling. And we appreciate that.

25           I want to emphasize that all comments must be

1 received or postmarked by June 30th. MSHA will take your  
2 comments -- and we have heard you. MSHA will take your  
3 comments and your concerns into consideration as we  
4 develop a final rule.

5 I want to encourage your continued  
6 participation in this rulemaking and any other MSHA  
7 rulemaking.

8 This public hearing is now concluded. Thank  
9 you very much.

10 (Whereupon, at 11:46 a.m., the hearing in the  
11 above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

CASE TITLE: Examinations of Work Areas  
HEARING DATE: June 9, 2011  
LOCATION: Birmingham, Alabama

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

Date: June 9, 2011

ANTHONY & ASSOCIATES, INC.

  
LISA BAILEY  
(Official Reporter)