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MINE SAFETY AND HEALTH ADMINISTRATION  
PUBLIC HEARING ON THE PROPOSED RULE FOR REFUGE  
ALTERNATIVES FOR UNDERGROUND COAL MINES  
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TUESDAY, JULY 29, 2008

RADISSON HOTEL  
SALT LAKE CITY, UTAH

2 July 29, 2008

3 PROCEEDINGS

4 MS. SILVEY: Good morning. My name is  
5 Patricia W. Silvey, the Director of the Mine Safety  
6 and Health Administration's Office of Standards,  
7 Regulations, and Variances. I will be the  
8 moderator of this public hearing on MSHA's Proposed  
9 Rule for Refuge Alternatives for Underground Coal  
10 Mines. On behalf of our Acting Assistant  
11 Secretary, Richard E. Stickler, I'd like to welcome  
12 all of you here today.

13 At this time, as we approach the  
14 one-year anniversary of the Crandall Canyon  
15 accident, I'd like to ask you, if you would,  
16 please, pause with me in memory of the dedicated  
17 miners and the heroic efforts of three rescuers,  
18 including one of MSHA's own, who lost their life in  
19 that unfortunate tragic accident. So if you would  
20 pause now for a moment of silence.

21 Thank you very much.

22 At this point I'd like to introduce to  
23 you the members of the MSHA panel and the MSHA  
24 staff who were primarily responsible for--and I say  
25 "responsible" in a positive way--for drafting the

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1 proposal that is before you today.

2 On my right is Howard Epperly, who is  
3 the team leader of the project, and he is with our

4 Approval & Certification Center of the technical  
5 support office, MSHA's directorate of technical  
6 support. To his right is Cherie Hutchison. Cherie  
7 is a regulatory specialist in my office. And to  
8 her right is Steve Turow. Steve Turow is with the  
9 Labor Department's Office of the Solicitor. To my  
10 left is Eric Sherer. Eric is with the Office of  
11 Coal Mine Safety and Health. And to his left is  
12 Ronald Ford, and Ron is an economist in my office.  
13 And lest I not forget, or whatever, I'd like to  
14 introduce you also to Larry Davey. Larry is in the  
15 audience and he has also helped very significantly  
16 on this project and he is actually an OSHA--some  
17 people say OSHA--an OSHA employee who has been  
18 detailed to MSHA to help us finish this in time.

19 As most of you know, this is the first  
20 of four public hearings that we will have on the  
21 proposal. The second one will be in Charleston on  
22 Thursday; and then in Lexington, Kentucky on August  
23 5th; and in Birmingham, Alabama on August 7th. The  
24 comment period will close on August 18th, and as  
25 was stated in the proposed rule, we must receive

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1 your comments by midnight Eastern Daylight Savings  
2 Time on that date.

3 You can view the comments on the  
4 Agency's website at [www.MSHA.gov](http://www.MSHA.gov) under the link for  
5 Rules and Regulations. We do have a few copies of  
6 the proposed rule in the back of the room.

7           As many of you know also, the proposal  
8 would implement the provisions of Section 13 of the  
9 Mine Improvement and New Emergency Response, or the  
10 MINER Act, of 2006 and would apply only to  
11 underground coal mines. The MINER Act requires that  
12 the National Institute for Occupational Safety and  
13 Health conduct research on refuge alternatives.  
14 NIOSH issued its report in January 2008 and MSHA's  
15 proposed rule is based on the Agency's data and  
16 experience, recommendations from the NIOSH report,  
17 research on available and developing technology,  
18 and the regulations of several states.

19           Before I start to discuss the proposal,  
20 I want to reiterate--and it seems like I've done  
21 this a number of times recently, because as many of  
22 you know, we've had several proposals recently.  
23 But I want to reiterate and underscore an important  
24 mine emergency principle embodied by both MSHA and  
25 the mining community and it is a principle of

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1           longstanding--that in the event of a mine emergency  
2 underground, the first line of defense is for the  
3 miner to try to escape. Only if escape is  
4 impossible would the protections of this rule be  
5 needed.

6           Under the proposed rule, a refuge  
7 alternative--under the proposed rule, a refuge  
8 alternative would provide a protected, secure space

9 with an isolated atmosphere that creates a  
10 life-sustaining environment to protect miners and  
11 assist them with escape in the event of a mine  
12 emergency. The proposed rule allows the use of  
13 several types of refuge alternatives and includes  
14 requirements that the manufacturer or third party  
15 test the refuge alternative and its components  
16 prior to obtaining MSHA approval.

17 Under the proposal, three types of  
18 refuge alternatives would be allowed: A  
19 pre-fabricated self-contained unit; a secure space  
20 constructed in place; and materials pre-positioned  
21 for miners to use to construct a secure space.

22 Some of the major provisions of the  
23 proposal are:

24 Refuge alternatives would need at least  
25 15 square feet of floor space and 60 cubic feet of

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1 volume per person;

2 The capacity of refuge alternatives near  
3 the working section would be the maximum number of  
4 persons that can be expected to work in the area.  
5 The capacity of refuge alternatives in an outby  
6 area would be the maximum number of persons  
7 assigned to work in that area;

8 Refuge alternatives would be located  
9 between 1,000 and 2,000 feet from the working face  
10 and where mechanized mining equipment is being  
11 installed or removed. For outby areas, refuge

12 alternatives would be located within one-hour  
13 travel distance; however, the operator may request,  
14 and the district manager may approve, a different  
15 location based on an assessment of risk to persons  
16 in outby areas;

17           Refuge alternatives and their components  
18 would need to sustain persons for 96 hours or 48  
19 hours, if advance arrangements are made for  
20 additional supplies from the surface;

21           Food, water, lighting, sanitation, first  
22 aid supplies and a two-way communication system  
23 would be needed;

24           Refuge alternatives approved by states  
25 or by MSHA in the Emergency Response Plan prior to

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1 promulgation of the final rule would be allowed  
2 until replaced, or 10 years maximum; and refuge  
3 alternative components approved by the state or by  
4 MSHA in the ERP would be allowed until replaced, or  
5 a 5 year maximum;

6           The location, capability, and capacity  
7 of refuge alternatives would be addressed in the  
8 written Emergency Response Plan. I might refer to  
9 it as the ERP;

10           Training of miners to locate, transport,  
11 activate, use, and maintain refuge alternatives  
12 would be integrated into existing quarterly drills  
13 and annual expectations training;

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alternatives would be required;

Refuge alternatives would need to be shown on mine maps.

MSHA has estimated the economic impact of the proposed rule and has included a discussion of the costs and benefits in the preamble to the proposal and in the Preliminary Regulatory Economic Analysis, which I might refer to as the PREA later. The PREA contains estimated supporting data on costs and benefits.

The preamble addresses the provisions in

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1 the rule and includes a complete discussion of a  
2 number of specific requests for comments and I  
3 would like now to mention some of those requests.

4 These issues, requests for comments that  
5 I'm mentioning now, I want to underscore the  
6 importance of you paying attention to these and  
7 providing us your comments before the time period  
8 ends for you to submit comments.

9 The first is MSHA requests comments on  
10 the estimated service life of pre-fabricated  
11 self-contained refuge alternatives and the  
12 estimated service life of components;

13 The proposed definition for "breathable"  
14 oxygen as 99 percent pure oxygen, with no harmful  
15 impurities; also the proposed minimum of 96 hours  
16 of breathable air;

17           The sources of heat generation within a  
18 refuge alternative, methods for mitigating heat  
19 stress and heat stroke, and methods for measuring  
20 heat stress on persons occupying refuge  
21 alternatives. The proposed rule would require that  
22 the apparent temperature within refuge alternatives  
23 in use at full capacity not exceed 95 degrees  
24 Fahrenheit. I would like to note that Footnotes 1  
25 and 2 in the preamble should have cited to the

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1 NIOSH report as the basis for the Agency's proposal  
2 on apparent temperature;

3           Whether a requirement should be added in  
4 the final rule that refuge alternatives be designed  
5 with a means for miners to signal rescuers on the  
6 surface to assure that rescuers on the surface  
7 could be contacted if a communication system  
8 becomes inoperable, and with a means for miners to  
9 signal underground rescuers with a homing device to  
10 assure that rescuers could detect the trapped  
11 miners.

12           Proposed 75.1600-3 would require that a  
13 refuge alternative provide a two-way communication  
14 facility that is part of the mine communication  
15 system which can be used from inside the refuge  
16 alternative with an additional system as defined in  
17 the operator's approved ERP.

18           At this point I'd like to clarify that

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19 proposed approval requirements in Section  
20 7.504(c)(1) should reflect the same requirements as  
21 the safety standards in proposed 75.1600-3.

22 We ask for comment on the types,  
23 sources, and magnitude of lighting needed for  
24 refuge alternatives. Footnote 3 in the preamble  
25 should have cited Pages 124 and 125 from the August

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1 23rd, 1999 revision of the Department of Defense  
2 standard.

3 And as I say all these, I'll make a few  
4 clarifications for the preamble. You will note  
5 that there will be a transcript of this hearing and  
6 so you will see that specifically in the  
7 transcript.

8 The proposed minimum space and volume  
9 requirements and the feasibility of using certain  
10 types of refuge alternatives in low coal mines;

11 The proposed minimum flow rate of 12.5  
12 cubic feet per minute of breathable air for each  
13 miner;

14 We also ask for comments on the proposed  
15 setting for pressure relief and whether a higher  
16 pressure relief should be required. The proposal  
17 would require that fans or compressors provide  
18 positive pressure and an automatic means to assure  
19 that the pressure is relieved in the refuge  
20 alternative at 0.25 psi above mine atmosphere  
21 pressure;

22           The proposed requirement for requiring  
23 carbon monoxide detectors for compressors or fans  
24 at the surface to provide automatic and visual  
25 alarms if carbon monoxide levels in supplied air

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1 exceed 10 parts per million;

2           The visual damage that would be revealed  
3 during pre-shift examinations. The Agency is  
4 concerned with the feasibility and practicality of  
5 having to visually check the status of refuge  
6 alternatives without having to enter the structure  
7 or break the tamper-evident seal;

8           The proposed requirement for locating  
9 refuge alternatives in inby areas, as well as the  
10 alternate provision discussed in the preamble that  
11 would allow that refuge alternatives in these areas  
12 be located up to 4,000 feet from the working face,  
13 depending on mine-specific conditions, if they are  
14 connected to the surface with boreholes;

15           The proposed approach to the capacity of  
16 refuge alternatives in inby and outby areas and the  
17 proposed approach to locating refuge alternatives  
18 in outby areas, including a minimum and maximum  
19 distances;

20           Whether the final rule should contain a  
21 requirement that advance arrangements specified in  
22 the ERP include a method for assuring that there  
23 will be a suitable means to connect the drilled

24 hole to the refuge alternative and that the  
25 connection be made within 10 minutes;

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1 The proposed training requirements for  
2 persons assigned to examine, transport, and  
3 maintain and repair refuge alternatives and  
4 components and whether it would be more appropriate  
5 to include this training under the training  
6 provisions of Part 48;

7 And finally, the proposed approach to  
8 annual expectations training for miners in the  
9 construction, where applicable; the activation; and  
10 use of refuge alternatives and components.  
11 Comments should address the proposed strategy and  
12 the proposed elements of the training.

13 The Agency is also soliciting comments  
14 on the proposed information collection  
15 requirements. Please provide comments on all data  
16 and assumptions the Agency used to develop  
17 estimates of information collection burdens, as  
18 well as estimates of costs and benefits.

19 As you address these provisions--and I  
20 cannot underscore the importance of this--either in  
21 your testimony to us today or in your written  
22 comments, please be as specific as possible,  
23 including: alternatives, rationale, safety and  
24 health benefits to miners, technological and  
25 economic feasibility, and data to support your

1 comments. The Agency will use this information to  
2 help evaluate the requirements in the proposal and  
3 produce a final rule that will improve safe and  
4 health for underground coal miners in the event of  
5 a mine emergency in a manner that is responsive to  
6 the needs and concerns of the mining public.

7 This hearing, as many of you know, will  
8 be conducted in an informal manner and formal rules  
9 of evidence will not apply. The panel may ask  
10 questions of the witnesses and the witnesses may  
11 ask questions of the panel. MSHA will make a  
12 transcript of the hearing available on the Agency's  
13 website within one week of the hearing. And I  
14 underscore that we will make that transcript  
15 available. As most of you know, time is of the  
16 essence in developing the final rule, which must be  
17 finalized by December 31, 2008.

18 If you wish to present written  
19 statements or information today, please clearly  
20 identify your material and give it to the court  
21 reporter. You may also submit comments following  
22 this hearing by any other methods identified in the  
23 proposal. We ask that everyone in attendance sign  
24 the attendance sheet, and I would ask that if we  
25 have people here who are prepared to speak, if you

1 have a hard copy or electronic version of your  
2 presentation, we would appreciate it if you would  
3 provide it to the court reporter.

4 Please begin by clearly stating your  
5 name and organization and spelling your name for  
6 the court reporter. This will help assure that we  
7 have an accurate record.

8 At this point we will take our first  
9 speaker, assuming that we have one. So does  
10 anybody wish to speak? Anybody wish to speak.

11 Okay. If nobody wishes to speak, then,  
12 I'm going to call a recess for about--until 10:00  
13 o'clock. But if somebody comes in before 10:00  
14 o'clock, then we will go back on the record.  
15 Recess until 10:00 o'clock.

16 (A recess was taken from 9:21 a.m. to 10:00 a.m.)

17 MS. SILVEY: At this point we will  
18 reconvene the Mine Safety and Health  
19 Administration's public hearing on the Agency's  
20 Proposed Rule on Refuge Alternatives for  
21 Underground Coal Mines.

22 Inadvertently, I did not introduce Leah  
23 Davis in the back of the room, and so I should  
24 introduce Leah. Leah is here today and she is in  
25 our rulemaking docket office back in Arlington and

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1 has been very instrumental in helping us set up  
2 these hearings and also when your comments come in,

3 doing all the things that have to be done with the  
4 comments and the transcript. So I'm sorry, Leah.

5 Okay. Now, before we ask our first  
6 person to comment, if you want to refer to them as  
7 informal comments/questions or whatever, I would  
8 like to state that--and I stated this in my opening  
9 statement, that we are dealing with, in some ways,  
10 a developing technology. And when you are dealing  
11 with a developing technology, that's kind of the  
12 way I think I would refer to refuge alternatives/  
13 refuge changes, and with that oftentimes you will  
14 have questions, you'll have comments, questions,  
15 concerns, and that's to be expected. But I want to  
16 underscore to everybody here today--we've had sort  
17 of off-the-record comments and people have had  
18 questions that they've asked, if you would please--  
19 because we won't know your comments or your  
20 questions or your concerns if you don't include  
21 them in formal comments to us and send them to us  
22 in Washington so that we can include them in the  
23 record. I mean, that's the whole purpose of a  
24 rulemaking process, for everybody to see, for other  
25 people to see your concerns, that's why we are

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1 having this hearing today.

2 So if you would make sure you send all  
3 your comments in to us. I mean, if you have a  
4 question about how we're going to interpret

5 something, then send us in your recommendation, "We  
6 thought you said this. But I recommend"--"we think  
7 you said this and our recommendation is that you  
8 should have said this." I mean, if I can help  
9 translate into what--but make sure you include--if  
10 you disagree with us, you include your  
11 recommendation to us in your comment, so we get  
12 that and we have that to react to.

13 I'm glad that you all are here and  
14 you're discussing some of these things, because if  
15 we don't hear it, then we won't be able to go back  
16 and react to it. Some of the things we will be  
17 able to respond to you today affirmatively or  
18 negatively in a clear-cut way, some of the things  
19 we may not be able to. But we will promise you  
20 that before the rulemaking process is over you will  
21 get a response from us. And I know to some people  
22 that may not be the best response, because--what  
23 I'm talking about is in the final rule that we  
24 publish on December the 31st. But to the extent  
25 that, you know, people have a need to know things,

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1 this is just what happens sometimes when you have a  
2 rulemaking that you've got to do and you still have  
3 people yet in the process of developing certain  
4 things and sometimes you run up on this and we're  
5 going to do--as an agency, we're going to do the  
6 best we can with telling you our expectations and  
7 at the same time informing you where you do have

8 questions, but asking you to do likewise with us  
9 and to get your recommendations and your concerns  
10 to us.

11 At this point I think we have somebody  
12 who wanted to testify, to come forward. So would  
13 you do so, let me see, Mr. Tom Daily?

14 MR. McKENNA: Tom's not here.

15 MS. SILVEY: Okay. Well, the other  
16 gentleman.

17 MR. McKENNA: I guess we've submitted  
18 our questions formally already, made comments. Do  
19 we need to re-ask them here?

20 MS. SILVEY: Well, I just wondered,  
21 because somebody said they wanted to ask us some  
22 questions, and I said, "Would you come and do it on  
23 the record?" I mean, we can't answer it--if you  
24 have any questions that you want to ask us, we  
25 can't answer those questions short of doing it in a

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1 public forum. So if you do have questions that you  
2 want to ask us, please come forward.

3 MR. McKENNA: Okay. Sure.

4 MS. SILVEY: Let me say at the outset  
5 that I'm not trying to put anybody on the spot at  
6 all. I mean, I recognize that, you know, a lot of  
7 times people are not--some people may not feel  
8 comfortable in these forums, but I think all we  
9 want to do is to get the best record that we can.

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MR. McKENNA: Sure.

MS. SILVEY: Thank you.

MR. McKENNA: My name is Tom McKenna,  
M-c-K-e-n-n-a. I'm with Micropore, Inc.,  
M-i-c-r-o-p-o-r-e.

I guess the question--I understand that  
you have tested the components and via NIOSH MSHA  
has come up with the rule that you've made,  
proposed rule, and are grandfathering all those  
products that were tested. There are a lot of new  
specifications in the proposed rule. Are those  
grandfathered products able to be sold against the  
new standards is the question?

MS. SILVEY: Yeah, that's sort of a  
general question.

MR. McKENNA: You bet.

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MS. SILVEY: I'd like you to be more  
specific. At that point, though, let me just say  
what I said in the opening statement, and I will  
say that now, I said that refuge alternatives that  
were approved by the states--and I think, and  
somebody correct me if I'm wrong, I think the only  
states that have approved--the only state that has  
approved refuge chambers is West Virginia. Refuge  
chambers that are approved by the state or approved  
by MSHA in the Emergency Response Plan prior to the  
promulgation of this rule would be accepted under  
the new rule for the time period of the 10 years

13 for refuge alternatives and 5 years for components.

14 Now, if you have a more specific  
15 question, I'd like--I'm not quite following where  
16 you're going.

17 MR. McKENNA: Okay. Sure.

18 MS. SILVEY: Yes, please.

19 MR. McKENNA: We manufacture CO2  
20 absorbant and the previous tests were done to a .5  
21 percent maximum standard. The new proposed  
22 regulation goes up to 2 and a half percent with a  
23 1 percent time-weighted average. That creates an  
24 entirely different scenario for the use of the CO2  
25 absorbant, and so my question specifically would

20

1 be--well, there's two questions actually.

2 You've done cost estimates, I think,  
3 based on--I don't know whether it was the old  
4 standard or the new standard, but the cost will  
5 change dramatically in the lower direction based on  
6 the new specification.

7 MS. SILVEY: We did the cost estimates  
8 on the new standards.

9 MR. McKENNA: Is that right? Okay.  
10 Okay.

11 MS. SILVEY: Yeah, yeah. Okay.

12 MR. McKENNA: Okay. That's a good  
13 thing to know.

14 Okay. So now there's an ability to use

15 the same products that are already in mines that  
16 have been sold and installed, use them to a new  
17 higher CO2 level standard. Is it possible to sell  
18 those same products with a new use instruction as  
19 opposed to the old .5 percent use instruction?

20 MS. SILVEY: Quite honestly, I'm not  
21 sure we can give you a yes or no answer on that  
22 today. I think what's more important is that we  
23 get your specific recommendation for what you would  
24 recommend that we do with respect to the very  
25 question that you asked me.

21

1 MR. McKENNA: Okay.

2 MS. SILVEY: If you would send that to  
3 us.

4 MR. McKENNA: Okay.

5 MS. SILVEY: Excuse me a minute.

6 MR. McKENNA: Sure.

7 (Off-the-record discussion.)

8 MS. SILVEY: I think I'm back where I  
9 was before. If you would put your comment in to  
10 us with exactly what you said, the conditions under  
11 which your--the conditions under which your product  
12 was approved by the specific parameters and your  
13 recommendation.

14 And I'll say this to everybody here  
15 today: That's why we're here today. This is a  
16 proposed rule and we are--it kind of goes along  
17 what I said before about this, the state of the art

18 of refuge alternatives, we are looking for comments  
19 and looking for whatever we can do to make this the  
20 best rule that we can do and the best in terms of  
21 for miners' health and safety and also the best in  
22 terms of the best rule to be implemented. So if  
23 you would do that, I think we would be very  
24 grateful, because I think I do have your comments  
25 in front of me now.

22

1 MS. McKENNA: Yeah, they should be  
2 there.

3 MS. SILVEY: What you just said to me  
4 right now, I'm not sure--

5 MR. McKENNA: We left that one out.

6 MS. SILVEY: I was going to say: I  
7 can't get that one out of these comments. I've  
8 been looking back and forth, and I said, "Is that  
9 in here somewhere or what?"

10 MR. McKENNA: No, no, we left that one  
11 out.

12 MS. SILVEY: Yeah, I got the others.  
13 And so I will--for example, I'll look at them and  
14 I'll do one that you didn't even ask about, but the  
15 one that you asked--and I say this to everybody,  
16 the one that you asked about, the time maximum, we  
17 expressed it in the public hearing statement that  
18 we asked for comments on the maximum life of the  
19 refuge alternative and the components and you asked

20 us a question on that, and you said, "Can the  
21 component life be extended to 10 years if a  
22 manufacturer can demonstrate acceptability through  
23 past experience," which is a good comment.

24 I will say to you on that: You provide  
25 your recommendation on the service life, everybody.

23

1 What I'm saying to Mr. McKenna I say to everybody.  
2 You provide your recommendation to us and why.  
3 Remember when I gave my opening statement, I said  
4 to everybody, "Please include your rationale"? So  
5 provide us your recommendation and why and then we  
6 will take that and try to craft the best rule we  
7 can.

8 MR. EPPERLY: When those numbers were  
9 put together, the 10 and 5, it was based on, like  
10 Pat mentioned in the opening remarks, based on some  
11 of the limited history--there's not a lot of  
12 history with these new alternatives--and based on  
13 research and some of the information provided by  
14 the manufacturers. As Pat mentioned, if you can  
15 demonstrate and tell us something you think is  
16 different, then we'll certainly look at that. We  
17 welcome those kind of comments.

18 MR. McKENNA: Okay. We'll go ahead and  
19 submit that.

20 I do have one followup question also.  
21 Will MSHA be providing approval numbers or  
22 information on the grandfathered products?

23 MS. SILVEY: I'm not sure we have  
24 thought about that.

25 MR. SHERER: That's a good question.

24

1 MS. SILVEY: It is. As you can see--  
2 people don't usually catch me too much off guard.  
3 I'm not sure on the grandfathered products. Well,  
4 we will be accepting them, we said that. Put that  
5 in your comment, too, about how the procedure for  
6 getting--

7 MR. McKENNA: The process.

8 MS. SILVEY: Right. For getting  
9 grandfathered products into the stream of whatever.

10 MR. McKENNA: Okay. Great.

11 MS. SILVEY: All right. Thank you.

12 MR. McKENNA: Thank you.

13 MS. SILVEY: Okay. Thank you very  
14 much.

15 Okay. Thanks. Anybody else wishes to  
16 ask questions, comment? Yes, please.

17 MR. SHOFF: Good morning. My name's  
18 Wesley Shoff, I'm with Strata Safety Products. And  
19 that's spelled S-h-o-f-f. Okay.

20 Strata will be submitting written  
21 comments before the deadline, of course. But in  
22 order to help prepare those, I'd like to ask a  
23 couple of questions maybe just for clarification,  
24 if you would.

1 that is approved by a state or in an operator's ERP  
2 is approved under the proposed--or is an approved  
3 chamber until such time that its end of its service  
4 life is recommended by the manufacturer.

5 MS. SILVEY: I didn't say--what did you  
6 ask me about; a component or refuge alternative?

7 MR. SHOFF: Well, that may be my next  
8 question.

9 MS. SILVEY: Let's take the first one.

10 MR. SHOFF: The refuge alternative.

11 MS. SILVEY: Okay. What you heard me  
12 say was--you were right up until you got to the  
13 last phrase, but I'll just try to repeat it here.  
14 That a refuge alternative that was approved by the  
15 state or in an operator's approved ERP--by MSHA in  
16 an operator's approved ERP would be accepted for  
17 the maximum--for the estimated service life or a  
18 maximum of 10 years. I think you said for the  
19 life as recommended by the manufacturer, we didn't  
20 say that. We said for the estimated service life  
21 or a maximum period of 10 years.

22 MR. SHOFF: Okay. And that is defined  
23 as the alternative, am I correct, and not the  
24 component?

25 MS. SILVEY: That's the alternative,

1 right.

2 MR. SHOFF: Okay. So that leads to my  
3 next question. Would the interpretation of what is  
4 a component and what is the alternative--for  
5 instance, from a pre-fabrication-type unit on an  
6 alternative, the box itself is part of the  
7 alternative as a group, but is that a component?

8 MS. SILVEY: The box itself is--

9 MR. SHOFF: The pre-fabricated box that  
10 houses, if you will, all the components.

11 MS. SILVEY: No, I follow you. I do  
12 follow you, yes.

13 MR. SHOFF: Okay. You know, if one  
14 thinks about a steel box in comparison to a  
15 continuous miner, it has a rebuildable, you know,  
16 undefined life. Would that box be considered a  
17 component of the alternative? And if such, then  
18 you're limiting that to a 5-year life span.

19 MS. SILVEY: I saw where you were  
20 going.

21 As a point of clarity, I think we have  
22 four components in the proposal. One was the  
23 structural component; the harmful gas removal  
24 component; and the air monitoring component; and  
25 breathable air, those were the--well, those were

1 the four components. Those were the four  
2 components. Now, I say that as a point of  
3 clarification about the four components. So I'll  
4 let Howard answer you. I'll let Howard answer that  
5 other part of your question.

6 MR. EPPERLY: The 10 years--the 10 years  
7 referred to the alternative itself, which would  
8 encompass that shell or part of that chamber. We  
9 refer to them as alternatives. When you say 10  
10 years, that was the main alternative and then any  
11 component inside or part of that.

12 MR. SHOFF: So even though you say that  
13 the--one could interpret the steel box the  
14 structural component, but you're inferring that  
15 that is part of the alternative and it would indeed  
16 have a 10-year--at this time a 10-year life.

17 MR. EPPERLY: Right, yeah.

18 MS. SILVEY: But we appreciate your  
19 comment on that. See, that's why it is important  
20 to have this, and so everybody's comments--I mean,  
21 we'll make sure that we try to make sure all of  
22 this is clarified in the final rule.

23 MR. SHOFF: Next I would like to see if  
24 you all could give us some reasoning on why the  
25 airlock in a unit is excluded from the space

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1 calculations. And the reason I question that is in  
2 the design of an enclosure, be it an inflatable  
3 unit or a steel unit, the airlock size is maximized

4 in order to get the total occupancy in as quickly  
5 as possible. So in many cases, that airlock space  
6 takes up a large portion of the available area. If  
7 we're going to exclude that, then it gives some  
8 limitations to what is defined as "usable area" in  
9 the tent or in the steel chamber. I think in many  
10 cases the standard operating procedure is to leave  
11 that airlock area open when you reach maximum  
12 occupancy and nobody else is going in and out for a  
13 cooling or a heat dissipation purpose, you need  
14 that--you know, that area is calculated or included  
15 in those calculations. So I guess my question, so  
16 that we can further prepare comment, is: What is  
17 the consideration for excluding the airlock?

18 MS. SILVEY: Okay. Let me answer that  
19 before Howard or Eric do.

20 You have given me part of your comment  
21 right now, I believe. I think part of what I hear  
22 you saying is your recommendation as to what--even  
23 though we proposed a certain thing relative to the  
24 space requirement, your recommendation is that the  
25 determination of the space requirement be

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1 different, and so that's what you should include in  
2 your comments; i.e., the airlock be included in the  
3 space requirement.

4 I think in terms of what we can  
5 answer--you asked, "Why was it excluded?" I can

6 put that in another way and say, "Why did we  
7 propose the space requirement that we did?" I  
8 think we stated that we proposed the space and  
9 volume requirement that we did, we took into  
10 consideration the recommendations of NIOSH.  
11 Although we were not--we'd like to say we were  
12 consistent with NIOSH, but not the same as NIOSH.  
13 We asked the question about whether these space and  
14 volume requirements were, you know, practical, for  
15 an example, in low coal in low seam height, and we  
16 asked for overall comment on the space and volume  
17 requirements to determine, you know, where we  
18 should go in the final rule.

19 So I think in terms of where we are  
20 today, that's how we can--that's what we can answer  
21 in terms of your question, but not exactly why the  
22 airlock was excluded. Although I think we all  
23 probably understand your point there.

24 MR. SHOFF: And last, when we talk  
25 about new units or expanding mines or new mines,

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1 understanding what you've said about the  
2 grandfathering clause for existing units, what is  
3 anticipated is the timeline for--say an operator  
4 needs additional units, what is he going to be, I  
5 guess, allowed to purchase by the rule after the  
6 effective date? Just as an example--I know I'm  
7 having a difficult time explaining it--but if it  
8 comes next September and an operator needs four

9 units--

10 MS. SILVEY: September '08?

11 MR. SHOFF: No. It's September of '09  
12 or middle part of '09, we'll say.

13 MS. SILVEY: Okay.

14 MR. SHOFF: And an operator needs new  
15 units, if existing units as we have today that fall  
16 under the grandfather clause are available for  
17 immediate purchase, are they going to be acceptable  
18 to use or will chambers, then, under the new  
19 approved rule be required?

20 MS. SILVEY: That's sort of an easy  
21 one. Yes. That's sort of an easy one, because  
22 you've given me August of '09, the grandfather is  
23 acceptable until the date of the new rule, which  
24 would be December--if I'm lucky--if we're lucky, it  
25 will be December of '08, so then any new units

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1 would have to meet the requirements of the new  
2 rule.

3 MR. SHOFF: So anything purchased after  
4 that effective date?

5 Now, the proposed rule has a statement  
6 that they expect the effective date of the rule to  
7 be delayed to allow operators to develop new ERPs  
8 and training plans.

9 MS. SILVEY: Probably there would be  
10 some--I don't know. We did say that? We're good.

11 There probably would be some delayed effective date  
12 to allow that to happen, right, but I don't know  
13 what it would be. And you know, people--

14 MR. SHERER: That's something you can  
15 comment on.

16 MS. SILVEY: Yeah, you can comment on  
17 that.

18 MR. SHOFF: All right. Thank you very  
19 much.

20 MS. SILVEY: Thank you. Anything else?  
21 We said that in the proposal. But if  
22 anybody has any comment on--and Eric said that--on  
23 what a delay--the suggestion for a delayed  
24 effective date, you know, we would welcome your  
25 comment, recognizing that a delayed effective date

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1 can't be forever. That was a little humor.

2 MR. SHOFF: May I ask one more?

3 MS. SILVEY: Yes.

4 MR. SHOFF: I'm sorry.

5 MS. SILVEY: No, no, don't be sorry.

6 MR. SHOFF: On that same lines--

7 MS. SILVEY: Can you come up just for  
8 the reporter?

9 MR. SHOFF: Sorry.

10 Along those same lines, would there be  
11 any affect on units that are yet undelivered that  
12 were purchased or ordered before the effective date  
13 of the new rule?

14 MS. SILVEY: Well, I mean, they would  
15 be treated--any undelivered as of December 31st,  
16 but ordered, they would be treated as under the  
17 grandfather. I mean, because, look, I can ask you--  
18 when you say any purchase, but not delivered,  
19 because, for an example, if I were to ask everybody  
20 in here today, I'm sure that for the most part  
21 there aren't a lot of them in the mines today, but  
22 a lot of them are on order. Is that a fair--

23 MR. SHOFF: I would assume so, yes,  
24 ma'am.

25 MS. SILVEY: Okay. That's my point.

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1 Okay. Yes. Okay.

2 MR. SHERER: There is a reasonable  
3 component, so we expect that people don't--

4 THE REPORTER: I'm sorry. I can't hear  
5 you.

6 MR. SHERER: What's that?

7 THE REPORTER: I can't hear you.

8 MR. SHERER: There is a reasonableness  
9 expectation. So we would want valid uses. For  
10 example, if you're going to build a mine 10 years  
11 from now, we wouldn't accept the purchase order for  
12 that.

13 MR. SHOFF: Okay. I understand. Thank  
14 you very much.

15 MS. SILVEY: I think I cleared up,

16           though, when you asked me about a new mine, that  
17           the new mine would be covered by the new rule.  
18           Yeah, okay.

19                     Anybody else? Any more comments or  
20           questions? If you would just go off the record for  
21           a minute.

22                     (Off-the-record discussion.)

23                     MS. SILVEY: Any more? Any more  
24           comments, questions? Well, I think that we will  
25           recess now until --why don't we say 11:00 o'clock.

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1           Yeah, about 11:00 o'clock, and then we'll determine  
2           where we'll proceed at that point. We'll recess  
3           until 11:00 o'clock.

4                     (A recess was taken from 10:28 a.m. to 11:00 a.m.)

5                     MS. SILVEY: At this point I would like  
6           to reconvene the Mine Safety and Health  
7           Administration's public hearing on the Agency's  
8           Proposed Rule on Refuge Alternatives for  
9           Underground Coal Mines. At this point I would like  
10          to ask if there's anybody here that would like to  
11          make a comment, ask a question or otherwise. Yes,  
12          sir. Mr. Tatton.

13                     MR. TATTON: Thank you for the  
14          opportunity. I'm Randy Tatton and I represent  
15          Modern Mine Safety Supply. And, actually, some of  
16          the questions that Mr. Shoff asked have kind of  
17          prompted me to maybe want to expand just a little  
18          bit further with another question.

19                   We go back and we talk about a metal  
20 chamber, or the alternative, being something that  
21 would be okay for the 10 years, I think that's what  
22 I heard the committee say. But if that particular  
23 structure is of such nature that it meets all the  
24 requirements of the current, or at that time the  
25 newly proposed rule which at that time would be

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1           final, does that become a throwaway at 10 years or  
2 if it can be refurbished or it doesn't have any  
3 problems structurally, can it be used for a time  
4 beyond that? We don't see any reason why it  
5 wouldn't be. I mean, it's simply a metal box.

6                   MS. SILVEY: Okay. That's a good  
7 question. In the proposed rule, which would relate  
8 to new alternatives, we proposed an estimated  
9 service life of 10 years for the alternative and 5  
10 years for the components. And now I'm talking about  
11 new ones, not the grandfathered ones. At the same  
12 time, we asked for comment on the estimated service  
13 life that we included in the proposal. So I would  
14 suggest to you, Randy, the same thing I did to--I  
15 know him. I'm almost 60. Anyway, that Wesley--

16                   MR. SHOFF: I'm almost 50 and I can't  
17 remember it either.

18                   MS. SILVEY: I was trying to think of  
19 the first name.

20                   The same thing that I suggested, because

21 I hear in your comments some of what you're saying,  
22 and what I would suggest is that if you have  
23 alternatives, if you have recommendations that are  
24 alternatives to the estimated service life that we  
25 included in the proposal, either for the estimated

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1 service life of the alternative or of the  
2 components, that you include that in your comments,  
3 your recommendations, your rationale, your  
4 suggestions. Some of what you were saying to me  
5 now, I mean, I hear some of what you're saying, and  
6 that--so that if you think that the estimated  
7 service life could be extended beyond the 10 years.

8 MR. TATTON: Okay. And we'll certainly  
9 do that. But, you know, while I'm on the record  
10 here, I'll also just expand and say--for example, a  
11 carbon dioxide scrubber, which would certainly be a  
12 component, and at least the way I understand the  
13 proposal now, that may be something that would only  
14 be good for 5 years, but it's nothing more than a  
15 metal box, solid, hard components. And, again, that  
16 may be another one that there's really no reason to  
17 limit the life of that to 10 years.

18 Now, certainly materials that are in  
19 that may be susceptible to deterioration, some of  
20 those things may need to be refurbished and  
21 changed, but I just don't see any sense in throwing  
22 away a solid metal carbon dioxide scrubber just  
23 because it happens to be 5 years old. And so

24 we'll make those comments, they'll be reflected as  
25 well.

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1 MS. SILVEY: Okay. For people in here  
2 who are manufacturers, all people in here who are  
3 manufacturers or represent manufacturers, I'm sure  
4 as--I mean, I know that you can buy a toaster and  
5 see it on there. I'm sure that you put in a  
6 recommended service life for your units, either the  
7 units or the components, and I assume that you've  
8 done that after some use, some experience, some  
9 testing or all of the above. So, you know, your  
10 comments could be reflective of what your  
11 experience is.

12 MR. TATTON: Okay. Thank you for the  
13 opportunity.

14 MS. SILVEY: Thank you.

15 Anybody else? Any more questions or  
16 comments?

17 At this time, then, I'm going to--we  
18 will stop the hearing until 1:30, we will come back  
19 at 1:30, and depending on whether somebody--what  
20 happens at 1:30, then we'll proceed then. But at  
21 this point I will go off the record until 1:30.  
22 Thank you.

23 (A recess was taken from 11:04 a.m. to 1:32 p.m.)

24 MS. SILVEY: At this time we will  
25 reconvene the Mine Safety and Health

1 Administration's public hearing on the Proposed  
2 Rule on Refuge Alternatives for Underground Coal  
3 Mines.

4 At this point is there anybody else who  
5 wishes to make a comment? Anybody in the audience  
6 who wishes to make a comment?

7 Before I conclude this hearing I--and  
8 you know, as I said when I made the opening  
9 statement, that we will post the comments on MSHA's  
10 website and so please if you--we've gotten a couple  
11 of comments so far and I thought that--one of the  
12 issues raised in one of the comments, I'd like to  
13 bring to your attention, and if you care to comment  
14 on it before the comment period closes, please do  
15 so. It was a comment from a manufacturer and he  
16 noted that while we had included a proposed  
17 requirement for an internal apparent temperature of  
18 95 degree Fahrenheit, we didn't include anything in  
19 the proposal on an external ambient temperature in  
20 the mine, and this commenter thought that that was  
21 an important element--would be an important element  
22 in the proposed rule. So I would ask you to read  
23 the comment in detail and then if you have any  
24 recommendations, any comments, any further concerns  
25 that you might want to provide to us on that issue,

1 then I would ask you to do so. If I'm not  
2 mistaken, that particular commenter said that he  
3 would be at the public hearing in Birmingham and he  
4 would make a public statement at that hearing.

5 So with that, anybody else?

6 I want to say on behalf of MSHA that I  
7 do appreciate everybody who came to this hearing  
8 today. You know it's important. I appreciate the  
9 people who spoke. But it's also important to us  
10 that you felt the importance of the rulemaking that  
11 you attended today. Although you may not have  
12 spoken. And I know some of you because you've been  
13 in many MSHA's rulemakings before, and I know that  
14 before this comment period is over we will be  
15 getting comments from many of you today. So I  
16 encourage you to provide further comment on any and  
17 all the issues that may affect you or that you may  
18 have an interest in. As I said earlier, it is  
19 only with your full participation and listening and  
20 hearing from you on all the issues raised in the  
21 rulemaking that we can craft the best rule that we  
22 can.

23 With that, then, as you know, we will  
24 have another hearing in Charleston on Thursday; the  
25 third one in Lexington on the following Tuesday;

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1 and the fourth and final hearing in Birmingham on

2 the following Thursday. So, again, we appreciate  
3 your participation.

4 One final thing: I cannot underscore  
5 the importance of timing with this rule. As I said  
6 earlier, we must deliver a final rule by December  
7 31st, '08. We're going to do our best to try to do  
8 that, but knowing that, then, you all know for us  
9 to be able to do that, time is going to be of the  
10 essence with this rule.

11 With that, then, the Mine Safety and  
12 Health Administration's public hearing on the  
13 Agency's Proposed Rule on Refuge Alternatives is  
14 concluded. Thank you very much.

15 (Proceedings concluded at 1:37 p.m.)

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