

TRANSCRIPT OF PROCEEDINGS

)
PUBLIC MEETING)
REGULATIONS FOR MINER)
SAFETY AND HEALTH TRAINING)
)

Pages: 1 through 152
Place: Dallas, Texas
Date: January 5, 1999

HERITAGE REPORTING CORPORATION

Official Reporters

1220 L Street, NW, Suite 600

Washington, D.C.

(202) 628-4888

BEFORE THE
DEPARTMENT OF LABOR
FEDERAL MINE SAFETY AND HEALTH ADMINISTRATION

)
PUBLIC MEETING)
REGULATIONS FOR MINER)
SAFETY AND HEALTH TRAINING)
)

Adolphus Hotel
1321 Commerce Street
Dallas, Texas

Tuesday,
January 5, 1999

The above-entitled matter came on for hearing,
pursuant to notice, at 8:00 a.m.

BEFORE: KATHY ALEJANDRO, Chairperson
ROBERT ALDRICH
RODRIC M. BRELAND
KEVIN BURNS
ROSLYN FONTAINE
ROBERT STONE

I N D E X

<u>SPEAKER</u>	<u>PAGE</u>
Chairperson Alejandro	3
David Pfile Gifford Hill & Company	9
Joe K. Kinnikin Associated Contractors of New Mexico	45
Ralph Richards Jobe Concrete Products, Inc., El Paso	63
Hector Paquian Jobe Concrete Products of El Paso	70
Ed Elliott Rogers Group, Incorporated	79
William Scarbrough Arkholo Sand & Gravel Co.	90
Peter Ward Hanson Aggregates	116
Elsa Roman James Murray The University of Texas at Austin	119
Don Summers Safety Consultant	143

1 To my left, immediate left, is Robert Stone, who
2 is with the Office of Standards, Regulations and Variances
3 for MSHA; Roslyn Fontaine who is also with the Office of
4 Standards, Regulations, and Variances; and to my far left is
5 Robert Aldrich, who is with the Office of the Solicitor.

6 Since 1979, MSHA has been guided by a rider to
7 its appropriations. The restriction currently states that
8 "none of the funds appropriated shall be obligated or
9 expended to carry out Section 115 of the Federal Mine Safety
10 and Health Act of 1977 or to carry out that portion of
11 Section 104(g)(1) of such Act relating to the enforcement of
12 any training requirements, with respect to shell dredging,
13 or with respect to any sand, gravel, surface stone, surface
14 clay, colloidal phosphate, or surface limestone mine."

15 In the Omnibus Budget passed by Congress on
16 October 21, 1998, MSHA was directed to "work with the
17 affected industries, mine operators, workers, labor
18 organizations, and other affected and interested parties to
19 promulgate final training regulations for the affected
20 industries by September 30, 1999. It is understood that
21 these regulations are to be based on a draft submitted to
22 MSHA by the Coalition for Effective Miner Training no later
23 than February 1, 1999."

24 MSHA expects to publish a proposed regulation in
25 the Federal Register sometime in early spring of this year.

1 The regulations that MSHA will be developing must
2 include minimum requirements in Section 115 of the Federal
3 Mine Safety and Health Act of 1977. And I'll give you a
4 brief summary of these requirements.

5 Section 115 provides that every mine operator
6 shall have a health and safety training program that is
7 approved by the Secretary of Labor and that complies with
8 certain requirements. Section 115 specifies that surface
9 miners are to receive no less than 24 hours of new miner
10 training, no less than 8 hours of refresher training
11 annually, and task training for new work assignments.

12 Section 115 also requires that the training cover
13 specific subject areas. It provides that training is to be
14 conducted during normal work hours at normal rates of pay.
15 It requires that miners be reimbursed for additional costs
16 they incur incidental to this training and provides that
17 mine operators must maintain miners' training certificates
18 and furnish such records to the miners.

19 In addition to these minimum requirements, MSHA
20 is looking for suggestions and comments as to how best to
21 achieve effective miner safety and health training,
22 consistent with the Mine Act, including any additional
23 requirements that should be included in the proposed rule,
24 and most importantly why.

25 Public meetings have already been held at five

1 other locations: Northbrook, Illinois; Denver, Colorado;
2 Albany, New York; Portland, Oregon; and Ontario, California.
3 One additional meeting will be held later this week in
4 Atlanta, Georgia. These meetings are intended to give as
5 many individuals and organizations as possible an
6 opportunity to present their views.

7 This meeting will be conducted in an informal
8 manner, and a court reporter is making a transcript of the
9 proceedings. Anyone who wishes to speak at this meeting and
10 has not signed up in advance should sign up on the speakers
11 list, which is currently located up here, but I will ask if
12 there is anyone who wishes to speak before we finish the
13 meeting.

14 We also ask, as I indicated earlier, that
15 everyone who is here today, whether or not you wish to
16 speak, that you sign the attendance sheet which is currently
17 located on the table at the back of the room as you enter.

18 Anyone who wishes may also submit written
19 statements and information to us, during the course of this
20 meeting, which will be included as part of the record when a
21 proposed rule is developed. You may also send us written
22 comments after the meeting, if you wish.

23 Although there is no formal deadline established
24 for this, I would encourage you to submit written comments
25 on or before February 1 of 1999, to ensure that any comments

1 that you wish to submit are fully considered by us as we
2 develop the proposed rule.

3 Although we are most interested in what you all
4 have to say to us, we will also attempt to answer any
5 questions you may have to clarify the process and the
6 purpose of this meeting.

7 We're specifically interested in comments
8 addressing certain areas, although you are encouraged to
9 comment on any issue related to miner safety and health
10 training at currently exempt mines. These issues were
11 outlined in the November 3, 1998, Federal Register notice
12 that announced the schedule of these public meetings, and I
13 will summarize those issues now.

14 Should certain terms, including "new miner" and
15 "experienced miner" be defined?

16 Which subjects should be taught before a new
17 miner is assigned work, even if the work is done under close
18 supervision?

19 Should training for inexperienced miners be given
20 all at once, or over a period of time, such as several weeks
21 or months?

22 Should supervisors be subject to the same
23 training requirements as miners?

24 Should task training be required whenever a miner
25 receives a work assignment that involves new and unfamiliar

1 tasks?

2 Should specific subject areas be covered during
3 annual refresher training? If so, what subject areas should
4 be included?

5 Can the eight hours of annual refresher training
6 required by the Mine Act be completed in segments of
7 training lasting less than 30 minutes?

8 Should the records of training be kept by the
9 mine operator at the mine site, or can they be kept at other
10 locations?

11 Should there be minimum qualifications for
12 persons who conduct miner training? If so, what type of
13 qualifications are appropriate?

14 I would now like to introduce the first speaker
15 this morning. We ask that all speakers state and spell
16 their names for the court reporter before beginning their
17 presentation. Also we have a podium set up and a table;
18 whichever is most comfortable for the speaker is fine.

19 Thank you very much. The first speaker on our
20 list is David Pfile from Gifford Hill & Company.

21 MR. PFILE: Yes.

22 CHAIRPERSON ALEJANDRO: Mr. Pfile?

23 MR. PFILE: I won't be using 25 minutes. My
24 comments will be briefer than that.

25 CHAIRPERSON ALEJANDRO: Okay. Great.

1 MR. PFILE: Good morning. I'm David Pfile. I'm
2 the safety director for Gifford Hill here in Dallas. We
3 operate in Texas, Oklahoma, Arkansas, Louisiana, New Mexico,
4 and California. We have about 700 employees right now, and
5 I want to thank you for the opportunity to comment on this.

6 I am going to respond first to the questions that
7 were published, that you outlined there briefly. The first
8 one is: Should terms be defined, such as "new miner" and
9 "experienced miner"?

10 Obviously a new employee with no training, has
11 never been on a mine site, is a new miner. Somebody that
12 has been trained and received the training would be an
13 experienced miner. I'm curious as to why this question is
14 even asked, because we have been regulated for more than 20
15 years, and we have not been able to agree on a definition of
16 "new miner" and "experienced miner"?

17 It seems to me that that should be obvious, and
18 once a person is an experienced miner, as the original Mine
19 Act showed with -- if you were a miner, I believe it was,
20 October 13 or 18 of 1978, you were forevermore an
21 experienced miner.

22 I believe that the people in the industry now
23 that have the experience should be classified in the same
24 way. They should be experienced miners, and we really ought
25 to put this issue to rest, as an industry and as the Agency.

1 Enough on that.

2 Subject matters questions and the tying of
3 things: Again, I have seen -- and I'm sure we all have --
4 training sessions that would go on all day long, an eight-
5 hour session, that the miners would be brought in once a
6 year for their annual refresher, or with new miners, they
7 would be brought in all day long.

8 I don't know if that's the most effective way. I
9 don't think it is. I think that training should include a
10 brief discussion of all the subject matters that are
11 required under the regulations, followed by walk-around
12 training or a tour, something of that nature.

13 Oftentimes, we're asking new employees, new
14 miners, to identify with the training, and yet they don't
15 even know -- they have no hands-on experience or real-life
16 experience with what we're dealing with.

17 It has happened time and time again, where after
18 the training was completed, a person was taken into the
19 operation, and the light bulb went on over their head as
20 they realized, oh, that's what they were talking about for
21 the last four hours.

22 And I don't think that the Agency should force
23 the industry to structure themselves to give all this
24 classroom training prior to going into the operation. It
25 should be a mix. The operator, of course, has to have the

1 flexibility to do that.

2 Adult learners: I wanted mention about the fact
3 that we're dealing with adult learners. Adult learners
4 typically are task-oriented. They are there to learn a task
5 or to learn information that affects their livelihood or
6 their job. They are not sitting in a classroom, like a
7 student in school, accepting the information verbatim. They
8 will challenge things.

9 They also typically do not have the attention
10 span, not because of lack of intelligence, but they have
11 other things on their mind. And to present training in long
12 blocks defeats the purpose of the training. And, again,
13 anybody that has done any training has seen it. Two hours
14 into the presentation, the eyes glaze over; people start to
15 yawn; and that's when we generally call for a break. And --
16 good morning.

17 We ought to be able to spread this training out
18 over a period of time. Again, questions will come up over
19 the course of employment, where -- the performance of people
20 can be analyzed over the course of their employment, and
21 retraining can be given when we see that the initial
22 training may not have been completely effective.

23 There are other examples of this in your sister
24 agency at OSHA. Under the fall protection standard, one of
25 the issues is when people are not performing according to

1 the way they were trained, they are to be retrained. And
2 using this approach would be more effective than just
3 putting people into a block and 8 hours of training or 24
4 hours of training, and turning them loose.

5 The other issue on this: The training should
6 take place close in time to the actual task at hand.
7 Oftentimes, as you put an employee in a probationary
8 position, they start up with simpler tasks and move on to
9 more complex tasks, the availability of promotion in job
10 functions, say, from clean-up man around the plant to an
11 operator.

12 That training for that operator should come close
13 to the time he is to perform the task, while it's fresh in
14 mind. Again, we've had examples of annual refresher
15 training, where people forget the issues at hand and the
16 issues taught in a short period of time.

17 The other part about letting employers stretch
18 out the time for training is that it places a less severe
19 economic burden on the employer or the operator, should the
20 employee not work out for one reason or another. Should he
21 leave the employ, the operator has not made a large
22 financial investment in an employee that is shortly gone,
23 maybe to another operator.

24 There is a good bit of turnover in our industry,
25 in the metal/nonmetal industries, 10 to 12 percent a year.

1 Many of them go from operator to operator, but there are
2 those that do leave the industry completely.

3 You asked about supervisors' training. I don't
4 think there's any question that supervisors should at least
5 receive the same training as the other employees.
6 Oftentimes, supervisors are called on to do task training.
7 Many supervisors are, indeed, instructors themselves, and to
8 hold them to a lesser standard than the employees in the
9 workforce, they are just as important, and they need to have
10 the same training.

11 Task training: There was a question about task
12 training. And obviously anytime you're going to start a new
13 or unfamiliar task, you should have task training. But to
14 limit the task training by time through regulation isn't
15 appropriate.

16 If I was going to train an operator to be a crane
17 operator, I may take weeks to train that person. It would
18 not be a five-minute lesson, whereas somebody in a clean-up
19 or utility position may only need 15 minutes of task
20 training. There should not be a constraint within the
21 regulation on the amount of time for task training. The
22 task training should be appropriate to the task at hand,
23 whatever that might be.

24 Annual refresher training: The -- I think the
25 subjects in annual refresher training should be appropriate

1 to the mine. We have sand and gravel operations. We never
2 discuss explosives at the sand and gravel operations,
3 because there are no explosives on the site. We never use
4 them.

5 Likewise, we do discuss explosives in a hardrock
6 situation, in a limestone mine. We may have more emphasis
7 in our sand and gravel operations around training about
8 operations near water, life jackets, boats, those types of
9 provisions. The annual refresher training should be
10 appropriate to the individual mine site. It shouldn't be a
11 canned presentation that is given universally throughout the
12 industry.

13 The other issue on annual training is, again,
14 anybody in the business has seen the eight-hour annual
15 refresher where everybody gets together for a day, and about
16 four o'clock in the afternoon, whatever the last subject is,
17 people's eyes are glazed over, and they're not paying
18 attention.

19 And how effective it is, I don't know. I don't
20 have a way of evaluating the effectiveness of it, but I
21 certainly, from my own experience and my own receiving of
22 annual training in this manner, find that I don't think it's
23 very effective.

24 I think it should be allowed to be spread out
25 throughout the year, an hour here, a half-hour there, an

1 hour a month. In many of our locations, we do one hour a
2 month, so our miners in the locations that do that are
3 receiving 12 hours a year.

4 That way, if someone's on vacation or on a
5 holiday and they miss, they still meet their minimum
6 requirements. That should be allowed. And as far as the
7 amount of time, there's a question about 30-minute segments.
8 Absolutely, they can be less than that. There are certain
9 training issues that take longer and certain training issues
10 that can be done in a short period of time. They are not
11 that lengthy.

12 Confined-space entry: If someone was going to do
13 training on that, I probably wouldn't do it any less than
14 four hours' training. Lock-out/tag-out may take longer, to
15 teach people to do those types of tasks appropriately, that
16 type of safety training.

17 But there are other issues, such as even the
18 rights of miners that are repeated annually and repeated
19 every year, that could be reviewed in a briefer session than
20 an hour segment.

21 Training certificates: Again, we have the Form
22 5023s that we're all familiar with, and we have stacks and
23 stacks and stacks of paper in files for years and years of
24 training. I believe that operators should be allowed to
25 computerize these records. They should be able to keep them

1 in an electronic database, and if the Agency would like to
2 review them, they should be able to be made available in a
3 reasonable amount of time.

4 Fax machines are commonplace, and internet access
5 is becoming more and more commonplace for operators in many
6 locations. There's -- I don't think there should be an
7 issue that an operator can keep these records in a central
8 location and distribute them as needed.

9 Again, comparing yourselves to your sister agency
10 at OSHA, OSHA allows MSDSs, material safety data sheets, to
11 be stored electronically and given out as requested. You
12 don't have to have these large, three-ringer binder,
13 voluminous volumes of MSDSs out of your workplace. It
14 should be allowed in a centralized storage system.

15 Qualifications of instructors: Several years ago
16 at the Mine Academy, at the National Mine Instructors
17 Conference, when they joined with TRAM, Training Resources
18 Applied to Mining -- I believe that was four years ago --
19 Mr. McAteer spoke, and he even discussed the issue of
20 instructors, that the database that the Agency has, there
21 are people that have been deceased for years still in the
22 database. And we all know it.

23 There are people that are retired from the
24 industry, and I believe -- I don't know what the number is,
25 but you can probably imagine that everybody in the industry

1 in numbers is a certified instructor under the Agency's blue
2 card rules.

3 The courses range from a day to two weeks. Penn
4 State runs one for, I believe, a week, four or five days.
5 There are a variety of different criteria involved. Some
6 people discuss adult learning; some people discuss training
7 techniques, preparation of lesson plans. All sorts of
8 things are discussed in these training courses, but they are
9 not consistent at all.

10 I believe that the Agency should set -- if we're
11 going to have this certified instructors, which I'm not sure
12 we need, there should be criteria; there should be a core
13 curriculum that is consistent for everybody in the industry
14 and for MSHA's own forces as well.

15 Modern -- from the time that the Mine Act was
16 passed to now, there have been great advances in technology,
17 and there are a variety of new and different ways to conduct
18 training. There is CD-ROM-based training; there is
19 interactive training; there is web-based training; there is
20 teleconferencing. All of these types of training techniques
21 are valid in certain circumstances.

22 To have an instructor sitting next to someone
23 that is working on a computer, on a self-paced training
24 program, is not a good use of resources. The flexibility
25 should be allowed. An instructor can review these things,

1 again, if indeed we are going to have certified instructors.

2 Another issue is who are the certified
3 instructors. I've never seen a list. Does the Agency
4 publish a list of who the instructors are and -- who the
5 certified instructors are? Do they?

6 CHAIRPERSON ALEJANDRO: I don't think so.

7 MR. PFILE: I've never seen one. Oh, they do?

8 MR. BRELAND: You can get it.

9 MR. PFILE: You can get it, but is it readily
10 available?

11 MR. BRELAND: It's not readily available because
12 of the size.

13 MR. PFILE: Okay. Well, my comment there is that
14 the Agency should at least make these names available, who
15 the certified instructors are, again if we're going to stay
16 with that. And they also should purge the database of the
17 individuals that are no longer either active in the
18 industry, active in training, active in education, or in
19 other ways associated with us.

20 And as far as whether we need certification, I
21 don't know. The certification process is inconsistent at
22 best, and I don't know that I've ever been followed up, in
23 my years of training. I don't know that anybody has ever
24 sat in -- from the Agency, has never sat in on one of my
25 courses, to see how I'm doing. I've never been recertified,

1 that I know of. I've been to several courses, because I'm
2 formally recertified. If we have that, then we need to
3 follow up with it.

4 I don't know that we do. There are other
5 trainers. There are organizations that are pushing for
6 certification of trainers in any subject, as a certified
7 trainer, to train adults in pass training and other things.
8 I really believe that that needs to be looked at carefully,
9 and I don't think that the certification process should
10 continue as it currently exists.

11 And now I think I answered the questions that you
12 posed. Now I have a concern about enforcement. There are
13 individuals in the Agency, compliance officers, who are
14 citation-driven, in that they pride themselves in the number
15 of citations they write, and, in fact, they even brag to
16 operators about the number of citations that they write.

17 Training records and the documentation involved
18 in it would be fertile ground for an individual that had
19 that inclination to write citations. I'm sure that errors
20 on a 5023 could immediately generate a \$55 citation, and he
21 may even try to make it S&S. I've seen that type of
22 behavior before.

23 I think that the citation issue and the
24 enforcement issue needs to be addressed by the Agency, maybe
25 administratively, but this should not be a fertile ground to

1 increase citations.

2 I'm reminded of the sign I saw in a location that
3 said, The beatings will continue until morale improves. If
4 anybody has seen that, I don't think that we should allow
5 the change in the regulations in Part 46, if you will, be
6 used as a tool to just issue citations and beat up
7 operators. We should work together, try to have this work
8 out a little bit better.

9 My thought is: The sole arbiter of what is
10 effective training is going to be a compliance officer in
11 the field at the time an inspection is being conducted,
12 because he can write the citation. And, yes, the operator
13 can conference it, and, yes, the operator can contest it.
14 But, again, that takes time and money and resources that
15 would be better spent on actually doing the training.

16 So, again, if it's going to be an enforcement
17 issue, the compliance officers need training on the same
18 issues: What is effective training; adult education;
19 examination of training plans; what to look for. We need to
20 be consistent with the operators and the Agency internally.

21 Thank you. That's all I have.

22 CHAIRPERSON ALEJANDRO: Mr. Pfile, I've got a
23 couple of questions --

24 MR. PFILE: Sure.

25 CHAIRPERSON ALEJANDRO: -- and other people on

1 the panel may also have questions.

2 MR. PFILE: Sure.

3 CHAIRPERSON ALEJANDRO: You indicated you
4 questioned why we were revisiting the issue of definitions
5 for terms such as "new miner" and "experienced miner."

6 MR. PFILE: Yes.

7 CHAIRPERSON ALEJANDRO: And, essentially, our
8 position is that, you know, the minimum requirements in
9 Section 115 obviously have to got to be incorporated into
10 any regulation that we develop.

11 That really is sort of open, as far as anything
12 else that we include, so we were interested in knowing
13 whether the -- you know, the definitions in Part 48 were
14 appropriate or whether some other definition would work
15 better for the industry that we're attempting to develop
16 training regulations for.

17 I take it from your comments that you believe
18 that the Part 48 definitions would be appropriate for a Part
19 46 regulation.

20 MR. PFILE: It would be.

21 CHAIRPERSON ALEJANDRO: Okay.

22 MR. PFILE: And I believe that once you are an
23 experienced miner, that forevermore you should be. I read
24 some literature about an acronym called ANEEM, a newly
25 employed, experienced miner, and it seemed to me that we

1 were getting into minor details that I didn't know needed to
2 be addressed, that we ought to keep it as simple and
3 straightforward and clear as it can be, so that we don't
4 follow up with 25 pages added to the program policy manual
5 on how to interpret the regulations.

6 CHAIRPERSON ALEJANDRO: Okay. I'd like to go
7 back to the issue of qualifications for instructors.

8 MR. PFILE: Yes.

9 CHAIRPERSON ALEJANDRO: Are you taking the
10 position that you're not sure whether qualifications for
11 instructors are appropriate in this regulation? Has it
12 been -- I mean, what has your experience been?

13 MR. PFILE: I am not sure that the Agency
14 certifying instructors is even an appropriate role for the
15 Agency, that there are other standards that could be used.
16 I'm not exactly sure what they are.

17 For example, I'm an OSHA instructor for the OSHA
18 500 courses, and teach the OSHA construction outreach, 10-
19 hour and 30-hour courses. That was a one-week course, and
20 even at that, it wasn't long enough. And they have
21 recertification from that, from time to time. And they keep
22 a closer track on who their instructors are and what they're
23 doing.

24 CHAIRPERSON ALEJANDRO: I see.

25 MR. PFILE: I'm not saying that you're not doing

1 a good job and OSHA knows everything, because I don't
2 believe that either. But I don't know if the Agency's role
3 is certifying instructors. In the past, I don't think it
4 was --

5 I think the history of it is that it was done the
6 way it was done, in order to get enough certified
7 instructors into the field and into the operations, in order
8 to comply with the law, I think is what really happened
9 years ago. And that has been continued, and I don't know
10 that it has been followed up effectively.

11 CHAIRPERSON ALEJANDRO: Okay. We've just gotten
12 a lot of comments on that particular issue, I mean, some who
13 advocate maintaining the Part 48 status quo as far as how
14 instructors are, you know, deemed to be approved or
15 qualified, and others who say there should not be any type
16 of requirements at all, and that, you know, people who've
17 got the hands-on experience at the mine sites are frequently
18 in the best position to give --

19 MR. PFILE: And frequently they can be
20 appropriate instructors as well for certain tasks. I don't
21 think it's clear that, you know, you can have -- I don't
22 think some operators are even clear that you can have a,
23 quote, noncertified people conduct the training, while the
24 certified instructor, quote --

25 CHAIRPERSON ALEJANDRO: Overseeing?

1 MR. PFILE: -- present or overseeing it. I'm not
2 sure that everybody's even clear that they can do that.

3 CHAIRPERSON ALEJANDRO: Okay.

4 MR. PFILE: And it needs to be clear. Again, I
5 don't know that if some colleagues of mine and friends that
6 are doctorate in mining engineering do some training of
7 their own, I think that they would certainly meet any
8 criteria or qualification that the Agency would have.

9 There should be a mechanism for saying, if a
10 person has this, that they meet the requirements as well,
11 whether it's a professional recognition, professional
12 certification, certified safety professional. I don't know.
13 Whatever they are, there should be a mechanism to allow
14 others to conduct training as well, but particularly if it's
15 in their field or it's an appropriate training.

16 CHAIRPERSON ALEJANDRO: Okay.

17 MR. PFILE: I don't know that the Agency needs to
18 be the sole certification unit. There should be some
19 flexibility there.

20 CHAIRPERSON ALEJANDRO: Okay. One issue that you
21 did not address that I'd like to ask you, and if you don't
22 feel like you want to comment on it, that's fine. I don't
23 want to put you on the spot.

24 But the Section 115 requires that the operator
25 develop a training program that's approved by the Secretary.

1 Do you have --

2 MR. PFILE: Yes.

3 CHAIRPERSON ALEJANDRO: -- opinion on what that
4 approval should look like?

5 MR. PFILE: Again, it has -- and I'm not exactly
6 sure in history how it happened. It seems to have
7 degenerated to a certification program. We haven't had one,
8 because you're not allowed to expend any money on approving
9 our plans. We have the plans, but they have not been
10 revised or updated in a good while, because the only
11 approved ones we have are the ones that were approved prior
12 to the rider being put on the Agency.

13 Again, I don't know that the Agency needs to --
14 even though it's in the Act, there has to be a way to
15 approve an operator's plan without creating a barrage of
16 paper. And I'm not exactly sure how that mechanism would
17 work.

18 I know you've seen enough -- I'm sure you've seen
19 enough training plans to know that -- and how will the
20 instructor know that the student got the message? Oral
21 response and -- you know, they're rather poorly written in
22 many cases, and I don't know that, again, the Agency should
23 be the one to approve or disapprove these.

24 The Act says we have to do it; there has to be
25 some sort of approval mechanism. I'm not sure that shoving

1 paper back and forth to district managers and district
2 offices, and then when an operator makes a change, such as
3 the approved instructor listed leaves and goes to work
4 someplace else, then back to recertifying or reapproving the
5 training plan. I don't know if that's an effective use of
6 anybody's resources.

7 And I think it would tie Rod down and his staff
8 with approving plans and not actually being able to get out
9 and do any effective training. I don't think -- there has
10 to be a mechanism.

11 I don't know what it is, whether it's a blanket
12 approval of a generic plan and the operator is allowed to
13 customize it, to fit his operation, or if the Agency would
14 even write up the plans using a cafeteria-type thing, that
15 could be selected for the appropriate subjects for the
16 individual mine site, that this is the approved training
17 plan for sand and gravel operations or for limestone mining
18 or for shell dredging or whatever the case may be.

19 And one of the exempted industries is the Agency
20 might prepare a plan and then the operators could choose the
21 appropriate subjects, just like a cafeteria-type system.
22 And that may be the answer, because then it would be an
23 approved plan, follow the Act, and reduce the paperwork
24 burden tremendously.

25 And, again, that could be an issue of

1 enforcement. Your approved instructor left last week, and
2 you haven't had your plan reapproved.

3 And you may think I'm being reactionary in my
4 concern about enforcement. In some cases, zealous
5 compliance officers -- I know of one case that I have
6 personal knowledge of, that the compliance officer attempted
7 to write a citation because the operator had built a new
8 office building 200 yards from the old office building, and
9 he had not submitted a new legal ID, giving new directions.

10 And I think that's stretching it, and I don't
11 think those types of citations help health and safety or
12 protect the miners in any way, so I'm speaking from
13 experience. I'm not speaking from something imaginary in
14 this case.

15 CHAIRPERSON ALEJANDRO: I just have one final
16 question, and, again, I don't want to put you on the spot.

17 MR. PFILE: Oh, go ahead.

18 CHAIRPERSON ALEJANDRO: Okay. We're under an
19 obligation to develop a final rule on or before September
20 30, 1999, and that will be published in the Federal
21 Register, and at some point after the date of publication,
22 the rule will go into effect. And one of the things that we
23 have to do is figure out when the effective date on this
24 rule should be.

25 And I just was wondering whether you had any

1 sense for what kind of a deadline, compliance deadline,
2 would be appropriate, whether the rule -- I mean, obviously
3 it's going to depend to a large extent on what's in the
4 rule, but nonetheless, I mean, do you have any sense for how
5 long the affected industries are going to need to come up to
6 speed with a training regulation?

7 I know that there's a lot of operators,
8 obviously, who are already giving good, comprehensive
9 training and complying with Part 48, but there are others
10 who may not be.

11 MR. PFILE: Again, I believe the major operators,
12 the larger operators, are probably very close to compliance
13 right now, if not completely in compliance.

14 CHAIRPERSON ALEJANDRO: Right.

15 MR. PFILE: And I believe that it would probably
16 be more difficult to get to the smaller operators.

17 CHAIRPERSON ALEJANDRO: Right.

18 MR. PFILE: As we all know, there are still
19 operators, as discovered from time to time, that don't even
20 know that they're regulated by the Agency.

21 CHAIRPERSON ALEJANDRO: That's right.

22 MR. PFILE: And I don't have a feel for what is
23 going on with them, other than occasional outrage when they
24 do get visited. I would not think that any less than a year
25 would be -- with the Agency working with the industry to try

1 to address some of the questions that come up during
2 hearings like this.

3 What are we going to do about approved training
4 plans? What are we going to do about the certification of
5 instructors?

6 We're only talking 21 months from now. If we set
7 a year from September, that would be 21 months from now, and
8 that is not a long time to build a consensus, particularly
9 between the Agency and, say, the coalition, to address these
10 issues. Most things in industry and government don't
11 operate that quickly, so --

12 CHAIRPERSON ALEJANDRO: Do you see any value
13 in -- rather than having all the requirements of the
14 regulation go into effect at once, to some kind of phase-in?
15 I mean, for example --

16 MR. PFILE: Phased in, stepped enforcement as
17 well.

18 CHAIRPERSON ALEJANDRO: You know, a plan has to
19 be developed by date X and miners trained by date Y or --

20 MR. PFILE: And that would probably assist the
21 smaller operators, to give them a chance to get up to speed,
22 so to speak. Again, the larger operators typically have
23 larger staffs and more resources available to them and
24 can -- although it may be burdensome, they can get
25 completely in compliance rather quickly.

1 And there also ought to be some sort of provision
2 for stepped enforcement, to give people that for some reason
3 did not get the message, did not hear of these things going
4 on, did not know about the regulation, and the first time
5 they're visited, then they ought to have the opportunity to
6 come in to compliance, rather than immediately facing
7 citations. There ought to be --

8 CHAIRPERSON ALEJANDRO: You're talking about at
9 the initial stages of --

10 MR. PFILE: Yes. The initial stages.

11 CHAIRPERSON ALEJANDRO: -- when this rule goes
12 into effect?

13 MR. PFILE: To allow those individual operators
14 that are not in compliance, to give them, so to speak, a
15 warning. Okay. This is what you need to do; here are the
16 resources that you can avail yourself of from the Agency.
17 Give Rod a call, and he'll send you a bunch of stuff, so you
18 can get in compliance.

19 I might -- is that okay with you, Rod?

20 MR. BRELAND: Sure.

21 MR. PFILE: That's how I would see a rational
22 approach to the compliance issues and the enforcement
23 issues.

24 CHAIRPERSON ALEJANDRO: Okay.

25 MR. PFILE: Rather than immediately -- again, it

1 creates for a contentious environment, and particularly if
2 it's a smaller operator that for some reason has not stayed
3 up with what is going on. His resources are limited. They
4 might not have access to all these things I talk about, like
5 fax machines and computers and CD-ROMs. They're out there;
6 they exist.

7 And it is not fair to them -- they are business
8 men, as well -- to immediately whack them with high fines
9 and citations, due to their inability to stay current.

10 CHAIRPERSON ALEJANDRO: Okay. Do you have --

11 MR. BURNS: Thank you. Kathy covered most of the
12 questions I have, but one of the things you mentioned,
13 David, was the -- you mentioned the OSHA fall protection
14 standard --

15 MR. PFILE: Yes.

16 MR. BURNS: -- and the retraining after
17 observation of unsafe acts.

18 MR. PFILE: Yes.

19 MR. BURNS: I take it that, in your operations,
20 new employees, you generally observe or have someone observe
21 their work.

22 MR. PFILE: Yes.

23 MR. BURNS: And then based on those observations,
24 either retrain them or continue the 24-hour training in
25 certain areas, if that wasn't completed at that point.

1 MR. PFILE: Exactly. They would be watched; they
2 would be observed under close supervision, and their work
3 activities would be observed. And there are people that, in
4 the past anyhow, that have not taken well to training. And
5 generally they are helped to find alternative employment
6 through a step discipline system that we have in place.

7 MR. BURNS: Now, this would be more like one-on-
8 one training, I take it.

9 MR. PFILE: Yes.

10 MR. BURNS: Okay.

11 MR. PFILE: A lot of it is one on one. Some of
12 it would be in groups. An example of groups might be a
13 group of utility men, car cleaners, somebody like that, a
14 group of individuals doing things like that. There might be
15 three or four of them working together, one supervisor.

16 MR. BURNS: Would you see counting that towards
17 the eight hours' annual refresher training or --

18 MR. PFILE: I don't see that so much --

19 MR. BURNS: -- do you see that as being an option
20 or --

21 MR. PFILE: I don't see that. It's more like
22 task training --

23 MR. BURNS: Okay.

24 MR. PFILE: -- that could apply towards the 24
25 hours. I don't see that type of hands-on, one-on-one

1 training on task activities necessarily applying to 24-hour
2 new miner training. It could; it would depend on the
3 subject material and the tasks at hand.

4 If we were dealing with hazardous chemicals and
5 the personal protective equipment involved in that, yes.
6 That might apply towards it. I think it would depend on the
7 task and the subject matter at hand. Again, there should be
8 flexibility for the operator to apply that training in the
9 manner that he feels is appropriate.

10 MR. BURNS: The other issue was task training.
11 Now, the current Part 48 is silent on this, concerning the
12 time frames.

13 MR. PFILE: Right.

14 MR. BURNS: So --

15 MR. PFILE: I wouldn't want to see a time frame
16 put in there.

17 MR. BURNS: Right. Of course, you'd mentioned
18 it's appropriate to the task, but I guess you'd also agree
19 that it's appropriate to the experience of the individual.

20 MR. PFILE: Absolutely.

21 MR. BURNS: So, I mean, there's a lot of factors
22 that play into how much time it takes.

23 MR. PFILE: Absolutely.

24 MR. BURNS: Okay.

25 MR. PFILE: I don't think the regulations should

1 put any time constraints on that, and, in fact, I have not
2 read the Part 46. I don't remember what it says, the Part
3 46 issue, on task training. It escapes me right now.

4 MR. BURNS: Okay. I think it's very similar to
5 what's in 48, except less wording. I guess the only other
6 thing: One of the things we've been hearing at other
7 meetings is the issue of experienced workers versus
8 experienced miners, particularly in the aggregates industry.

9 MR. PFILE: Yes.

10 MR. BURNS: It's an issue where -- it's not so
11 common in some of the other mining industries, like coal or
12 something like that, but you do have -- people have raised
13 the issue where they have experienced equipment operators
14 from construction industry coming in to their industry, and
15 maybe they'll be a truck driver and that's what they've been
16 doing for 20 years, and that person somehow seems a little
17 bit different than, you know, the young person that right
18 out of high school has no experience.

19 MR. PFILE: Right.

20 MR. BURNS: We're not sure how to address this,
21 but their suggestion is that they should not be treated
22 equally, as new miners.

23 MR. PFILE: I agree. I agree with that. There
24 are many operators in the United States that are, if you so
25 want to call it, double-breasted. They have construction

1 operations and mining operations both, and the equipment is
2 interchangeable. And in many cases, the tasks are
3 interchangeable, and in many cases, the individuals, the
4 people, are interchangeable.

5 When the construction activity would be slowed
6 down, some of them might go into the mining operation to
7 work, and vice versa. There should be a way of addressing
8 people that have life experience, and maybe we ought to
9 treat them somewhat differently than any new miner right out
10 of high school, somebody trying to get into the industry in
11 general.

12 MR. BURNS: Okay. I have no other questions.
13 May Rod does.

14 MR. BRELAND: Yes. I have a couple. You had
15 talked about the initial -- the training, being allowed to
16 stretch it out, some initial indoctrination, and then --

17 MR. PFILE: Right.

18 MR. BRELAND: -- maybe some walk-around, and then
19 more specific. But you didn't mention -- what did you have
20 in mind for some time frame to complete initial training?

21 MR. PFILE: The initial 24-hour training?

22 MR. BRELAND: Yes.

23 MR. PFILE: I would not think that you should --
24 you probably could stretch that out over six months max. I
25 wouldn't think you'd want to exceed six months for the first

1 go-round.

2 MR. BRELAND: Okay. And then you --

3 MR. PFILE: And you may even have it at four
4 hours of initial training, before you start working, maybe
5 two. I don't know exactly what the right amount of time is
6 before you start work, but I do believe that you need to
7 stretch it out. You could do -- and six months is kind of
8 arbitrary, but I'm thinking something like 24 weeks.

9 If you did an hour a week on a different subject,
10 again, the -- my experience with training people is doing it
11 in small bites like that and giving them the opportunity to
12 go back to whatever they happen to have on their mind,
13 whether it's last night's ball game or back to work, keeps
14 their attention span up and keeps things fresh.

15 And the other thing it does is allows them to
16 take the training that they have had into the workplace and
17 come back for the following session, say, another week
18 later, and they have questions that are legitimate questions
19 about what they have been trained in. Gee, you told us
20 this, and this is what we saw here. Let's see what's going
21 on here.

22 MR. BRELAND: In some of the earlier meetings,
23 you know, we presently have 8-16 split that, by policy, has
24 been allowed anyway, and some have suggested 5 to 6 hours,
25 and a number have been at 8. But the time frame for that is

1 60 days for completion. You feel that's too restrictive?

2 MR. PFILE: I think we ought to be able to have
3 more time to do that. And there's nothing to say that an
4 operator can't exceed the numbers of hours as well.

5 MR. BRELAND: Okay. Also you mentioned the 10 to
6 12 percent turnover. Actually, I thought that might be
7 higher. Are you talking as an industry-wide, or some mine
8 sites are pretty seasonal. And a lot of theirs are probably
9 higher.

10 MR. PFILE: I'm not sure what the industry is.
11 I'm just kind of thinking about what happens to us.

12 MR. BRELAND: That's mostly yours. Okay.

13 MR. PFILE: Some plants are lower and some plants
14 are higher.

15 MR. BRELAND: Recordkeeping is a big concern that
16 we have as well. You've suggested the short bites of time,
17 both for initial training and annual refresher. How do you
18 see tracking that for an individual's purposes? You say you
19 get 12 hours; they might miss a month, but if you have the
20 mandatory subjects that must be covered --

21 MR. PFILE: Yes.

22 MR. BRELAND: -- that are appropriate to the
23 site, do you see that as a burden for the operator for
24 tracking?

25 MR. PFILE: In its current form, yes. The 5023

1 doesn't lend itself to doing what we do. The instructor has
2 to carry basically a book of 5023s, partially filled out,
3 checking off subject matter, until the eight hours are
4 completed, and then signs off on it and distributes it to
5 the operators or to the individuals, the employees, and they
6 may not get their 5023 until September.

7 And then the following year, they get it in June
8 or whenever the eight hours is achieved, so it's an ongoing
9 process. Yes. The way it exists right now, it is a bit of
10 a burden. We deal with it.

11 MR. BRELAND: So your main suggestion, though, is
12 allow flexibility for the operator's system, whatever it
13 might be --

14 MR. PFILE: Right.

15 MR. BRELAND: -- for tracking purposes.

16 MR. PFILE: Absolutely. Put it into a computer,
17 on a spreadsheet or a database. With the things that you
18 have now, if someone's missed a certain subject, an alert
19 could come up and you'd know it.

20 MR. BRELAND: As long as the operator's able to
21 track it and make it available.

22 MR. PFILE: Right. But I don't think that,
23 again -- in my case, I don't have a problem because of fax
24 machines and computers. It's not an issue with me. Again,
25 with a smaller operator, it may be an issue, to keep it in a

1 central location.

2 There are other operators that may not have that
3 technology available to them at this time, but there needs
4 to be the flexibility to allow electronic recordkeeping and
5 computer-based databases, to again be efficient, keep
6 better -- actually, it would be a better recordkeeping
7 system than it is now.

8 MR. BRELAND: Okay. As far as making the record
9 available, you talked about the fax machines and what have
10 you. Did you have some time frame in mind that you might
11 think reasonable, because you've got to remember, there will
12 be a lot of operators may, if you allow flexibility where
13 they keep it or the type of records they have, if an
14 inspector was on site and asked for it or a training
15 person --

16 MR. PFILE: You know, I --

17 MR. BRELAND: -- what's a reasonable time to make
18 it available?

19 MR. PFILE: I don't know what a reasonable time
20 is. I really don't, because I recently had something show
21 up in the mail that was 13 months old, and that wasn't
22 reasonable to me, but somebody else thinks that it is, so I
23 don't know what --

24 From the date of a citation to date of assessment
25 was 13 months, two weeks, so I don't think that's

1 reasonable, but I've been told different, that that's a
2 reasonable amount of time. So I don't know. I don't know
3 what -- I'm being flippant, but I don't know what reasonable
4 is.

5 MR. BRELAND: Well, it's a consideration we'd
6 have to have --

7 MR. PFILE: Yes.

8 MR. BRELAND: -- you know, because if you have --

9 MR. PFILE: Generally inspectors are at a site at
10 least a day and oftentimes two. I don't think that having
11 the records available the following day would be
12 unreasonable.

13 MR. BRELAND: Okay. That's --

14 MR. PFILE: Again, it depends on the technology
15 available to the operator, whether they do, indeed, have fax
16 machines and central recordkeeping. If they don't, they
17 probably ought to keep the records on site. But, again,
18 they ought to have the flexibility to make that choice.

19 MR. BRELAND: Okay. And then you suggested the
20 Agency should establish criteria for the instructor-
21 approval process.

22 MR. PFILE: Yes. A core curriculum.

23 MR. BRELAND: For canned curriculum? And Kathy
24 Alejandro will address that again, but any of these kinds of
25 suggestions, if you have some ideas, it would be helpful if

1 you'd submit those, if you have some criteria in mind, you
2 know, yourself.

3 MR. PFILE: Yes.

4 MR. BRELAND: Does your company use criteria when
5 they select trainers?

6 MR. PFILE: We follow the Agency's -- if you've
7 got a blue card, you're a trainer.

8 MR. BRELAND: Okay.

9 MR. PFILE: That's what we have done. We do try
10 and do some innovative things and develop some training
11 programs that -- we haven't submitted them for approval, but
12 they're certainly fun and different, and they get the point
13 across. And we will do training on other subjects that
14 aren't even addressed in any of the standards, as more of a
15 philosophical type of training.

16 So -- and I shared those with Beckley [phonetic]
17 as well.

18 MR. BRELAND: Okay. Thanks, David. That's all I
19 have.

20 MR. PFILE: Okay. Thank you.

21 CHAIRPERSON ALEJANDRO: I think we may still have
22 some more questions.

23 MR. STONE: I'd like to ask you just a couple of
24 questions, and I don't want to put you on the spot either,
25 and you may not want to answer --

1 MR. PFILE: Go ahead.

2 MR. STONE: You may not want to answer them at
3 all, or you may want to submit them perhaps at a later time
4 in writing. They really have to do with costs.

5 MR. PFILE: Yes.

6 MR. STONE: I don't know if you have any sense of
7 what it currently costs you to provide training and for
8 recordkeeping associated with the training under Part 48.

9 MR. PFILE: Okay. Well, we have approximately,
10 at all of our locations right now, 700 employees. It
11 doesn't take much to figure out 700 employees at eight hours
12 annually, at whatever average wage you want to plug in
13 there, to see what investment that we're already making,
14 just in annual refresher training.

15 MR. STONE: Right.

16 MR. PFILE: And with recordkeeping and clerks and
17 other administrative staff, we have a substantial
18 investment.

19 MR. STONE: Right.

20 MR. PFILE: And we do it, because
21 philosophically, we believe it's the right thing to do. We
22 do training for all our plant managers and supervisors
23 that -- basically they get a week annually of nothing but
24 the program policy manual, the Mine Act, and the regulations
25 for their initial. They get a week for the initial training

1 on that, and we continue with updates on that.

2 So we've made substantial financial investments
3 in training, not only safety training, but just in training.
4 I don't know what -- I can't address what other people do,
5 but I do know that the investment is substantial. The truth
6 of the matter is the payback is substantial as well.

7 MR. STONE: No question.

8 MR. PFILE: But I won't tell you what those
9 figures are.

10 MR. STONE: Are there elements that you could
11 envision in the new Part 46 that could be designed in a way
12 that would save you costs over what you're currently paying?
13 It could be in terms of flexibility that you described,
14 could be in terms of ease of recordkeeping over what you
15 have to do now, or --

16 MR. PFILE: Certainly all of those things would
17 assist. Oftentimes, particularly for the smaller operators,
18 I can use hypothetical examples.

19 They'll have to go out, and they'll rent the
20 local VFW or fire hall or American Legion Hall or something
21 on that order, and they'll provide a meal, and they'll
22 provide all this for their eight-hour training, and they'll
23 have their employees there, and they'll pay them for that
24 day;

25 Whereas technologies like I had mentioned, such

1 as computer-based training, interactive video, things like
2 that, can be done one on one or with small groups in the
3 mine office or in the back room of the mine office, and
4 those expenses wouldn't be incurred there.

5 It doesn't seem like much, but if you take the
6 number of small operators that there are in the United
7 States, there's a substantial investment in doing these
8 types of things. There should be the flexibility to conduct
9 training in small groups, do it with some of these other
10 technologies. I think all of that could help allay some of
11 the investment, the cost involved in this, and still have
12 effective training.

13 MR. STONE: What about for recordkeeping?

14 MR. PFILE: Again, I think the -- I know that we
15 have file drawers and boxes packed away and stored at plants
16 that have training records going back to day one. And we
17 keep them because we never know when we're going to be asked
18 to produce them.

19 MR. STONE: Okay. That's it.

20 MR. PFILE: So there should be -- the other thing
21 is with the new reorganization of the Agency, with the
22 education arm, perhaps some of the Agency's budget in the
23 education arm could be directed more towards these affected
24 folks, to assist them in that way.

25 MR. STONE: Okay. Thank you very much.

1 MR. PFILE: Anything else?

2 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
3 Pfile.

4 MR. PFILE: Thank you.

5 CHAIRPERSON ALEJANDRO: The next speaker on our
6 list is Joe K. -- and I apologize for the pronunciation --
7 Kinnikin.

8 MR. KINNIKIN: You did just fine.

9 CHAIRPERSON ALEJANDRO: And I'm afraid you're
10 going to have to indicate what your organization is. I
11 can't tell from the --

12 MR. KINNIKIN: I'm director of training and
13 safety for the Associated Contractors of New Mexico, which
14 is the highway-heavy branch of the Associated General
15 Contractors of America in New Mexico.

16 CHAIRPERSON ALEJANDRO: Could you also spell your
17 name for the record, please.

18 MR. KINNIKIN: K-I-N-N-I-K-I-N.

19 CHAIRPERSON ALEJANDRO: Thank you.

20 MR. KINNIKIN: Thank you for the opportunity to
21 be here to address the group. We do have some concerns, and
22 I'll start off, first of all, with the written program.

23 As was stated by the previous speaker, many of us
24 have written programs that were approved back when Part 48
25 was coming on board. And the Association or the AGC in

1 Texas and New Mexico both have a program that was written
2 and approved by the Department back with Texas A&M.

3 These programs or the canned programs, then, are
4 site-specific or contractor-specific, but nevertheless it is
5 a quite voluminous thing. It's about like an inch and a
6 half or two inches thick, but it gives the contractor or the
7 operator the opportunity to take that program and tailor it
8 to fit or customize it to fit his operation.

9 One of my main concerns is that I represent
10 highway-heavy contractors who may have a permanent plant, or
11 they more in likely, in the West, will have portable plants.
12 And our concern is with our portable plants which move from
13 site to site, and they may be there for three months, and
14 then they go somewhere else for three months.

15 Our turnover is quite high. That's one of our
16 main concerns, is the turnover rate of the employees that
17 would be working at the mine site.

18 We don't necessarily have a problem with the
19 initial eight hours up front. We think that we're capable
20 of producing that. What we'll have to do and what we are
21 currently doing is taking these individuals into the nearest
22 location or town, renting the town hall or going to a motel
23 and providing the training there, and then taking them back
24 to the site.

25 Keep in mind that in New Mexico, these sites

1 could be as far as 90 to 100 miles from the nearest town, so
2 this becomes quite burdensome, as you might well imagine.
3 And being mobile, we probably would not have anything at the
4 site, other than a bolt-house in most cases, very limited in
5 the way of facilities.

6 We do have and can convert our own generator
7 electricity. One of the things that I'm quite excited about
8 in being able to provide is CD-ROM and interactive training.
9 We think that that's one way to go, to alleviate the problem
10 and the pressure of getting individuals into town.

11 We would like to see the remaining 16 hours
12 spread over 90 days, as opposed to 60. Somewhere between 60
13 and 90 days, we think we can do that; 90 days might fit us a
14 little better, in that an individual's not going to be with
15 us more than three or four months. They're gone anyway, so
16 we won't have that expense.

17 We would like to see the eight-hour refresher
18 spread over the year, and as the previous speaker indicated,
19 we feel that 30 minutes or, in some cases, particular
20 subject matter, it could be less than 30 minutes, and that
21 ought to be accountable.

22 We have a problem with records at site. As I
23 said, a lot of times, the only place to keep a record and
24 keep it presentable is probably in the supervisor's pickup
25 or in the back of his tool box. That's a problem with us.

1 We'd like to be able to keep those records at a central site
2 and then provide those to MSHA as needed.

3 And talking about instructors, back when Part 48
4 came out, we did certify instructors, again through Texas
5 A&M. That was a 40-hour program, and then we proceeded then
6 to do a train-the-trainer. Through my organization, we
7 trained trainers for contractors, and then as was stated, a
8 lot of people don't understand that then that trainer can
9 have a sub-trainer underneath him, as long as he's
10 overseeing that training.

11 Again, I'm here more to listen, to see what MSHA
12 is going to be providing. I don't know what deals have
13 already been cut. I think some deals have already been cut.
14 We'd like to know what those deals are, because we haven't
15 heard them. We'd like to hear that from you.

16 CHAIRPERSON ALEJANDRO: Well, I mean, as far
17 as -- I would say that no deals have been cut. However, I
18 mean, the way that this whole training initiative came about
19 was Congress was involved and directed MSHA to develop a
20 regulation, and our proposal is to be based on a draft
21 that's going to be provided to us before February 1 of this
22 year by the Coalition for Effective Miner Training.

23 So, I mean, if you want to call that a deal -- I
24 mean, I don't know whether it's a deal or not, but --

25 MR. KINNIKIN: I'm talking about the relationship

1 that now exists or some interactions taking place between
2 MSHA and other organizations, as to what this training might
3 look like or what might be the requirements for it.

4 CHAIRPERSON ALEJANDRO: Well, I mean, that's why
5 we're here today and that's why we have been, you know --
6 we're going to be at six other locations, is to find out --
7 obviously, I mean, we're going to be getting input from the
8 coalition, which is a group of industry companies that have
9 come together to give the Agency recommendations for what
10 ought to be in a proposed rule.

11 But in an effort to get as broad a spectrum of
12 opinion as possible, I mean, we're holding meetings here and
13 other locations, to find out what people like you and other
14 individuals and organizations feel ought to be included in
15 any rule that we promulgate. So, I mean, that's all I can
16 say. I mean, that's really all that's involved at this
17 stage.

18 So, I mean, any suggestions that you have today
19 or if you want to submit something in writing in the next
20 month or so, we would really appreciate it, and we're giving
21 serious consideration to all comments and suggestions given
22 by everyone.

23 MR. KINNIKIN: I will be making some written
24 comments. You said by February 1, 1999.

25 CHAIRPERSON ALEJANDRO: Yes. I mean, I would

1 heavily encourage you to submit it by then. I mean, if it
2 comes in later, I mean, we're not going to throw it away,
3 but we are under a pretty tight time deadline to develop
4 this proposed rule in. If you get it in before February 1,
5 that would make it easier for us to incorporate it in our
6 thinking.

7 MR. KINNIKIN: As far as the instructor and
8 train-the-training, I would like to see that involve the
9 actual aspects of how do you put together your lesson plans;
10 how do you actually train; how do you actually teach; what
11 are some of the teaching fundamentals, as opposed to some of
12 the courses that I have been to.

13 CHAIRPERSON ALEJANDRO: Okay. And that's really
14 more along the lines of implementation. I mean, I think
15 that that's one thing that we've been hearing as we move
16 across the country is developing the rule is one part of it,
17 but probably as important, if not more important, is what
18 the Agency and state grantees and other people who are
19 involved do to facilitate implementation of requirements
20 that are going to be in any final rule. So --

21 MR. KINNIKIN: Probably the contractors or the
22 employers that I represent would have fewer than ten
23 employees at the site.

24 CHAIRPERSON ALEJANDRO: Okay.

25 MR. KINNIKIN: And they would probably have

1 equipment operators, probably front-end loader operators,
2 bulldozer operators, and then laborers, you know, people
3 working at the crusher.

4 One of the big problems that has been brought up
5 is truck drivers. How do we handle our truck drivers who
6 are coming in? All they're doing is loading up with crushed
7 material, and then hauling it off the site. How do we treat
8 those people? You know, they're there, and as long as they
9 stay in the truck, what's their exposure?

10 CHAIRPERSON ALEJANDRO: Do you have any
11 recommendations for how those individuals should be treated,
12 I mean, because that's an issue that does come up, is
13 there's different categories of people on the mine site.
14 Not necessarily all of them are to be considered to be
15 miners and therefore required to have 24 hours of initial
16 training or 8 hours of annual refresher.

17 Who gets, you know, site-specific hazard
18 training, but maybe not comprehensive training? And are
19 there categories of employees who may not need -- who come
20 on -- any kind of training at all? I mean, those are the
21 kind of suggestions that we're looking for, and if you've
22 got specific recommendations, we would certainly like to
23 hear them.

24 MR. KINNIKIN: I would think that the truck
25 drivers coming onto the site should be, as far as site-

1 specific hazards that they might encounter, and that should
2 be probably the extent of the training that they would be
3 required.

4 CHAIRPERSON ALEJANDRO: Now, are these truck
5 drivers employed by your --

6 MR. KINNIKIN: By the contractor.

7 CHAIRPERSON ALEJANDRO: By the contractors.

8 MR. KINNIKIN: Or they may be an independent
9 contractor, somebody that's been hired or leased to the
10 contractor to haul materials.

11 CHAIRPERSON ALEJANDRO: I mean, what's their
12 presence on the mine site, I mean, as far as duration?
13 You're saying they typically wouldn't even get out of their
14 truck.

15 MR. KINNIKIN: They wouldn't get out of their
16 truck. They'd probably come in; they'd be loaded, say, five
17 minutes, and they'd drive off the site. They have a way in
18 and a way out but they might make 15, 20 trips a day to the
19 site, hauling materials to the roadway.

20 CHAIRPERSON ALEJANDRO: And you think for those
21 categories of employees, site-specific hazard training would
22 be sufficient.

23 MR. KINNIKIN: Yes, ma'am.

24 CHAIRPERSON ALEJANDRO: They don't need the eight
25 hours of annual refresher or --

1 MR. KINNIKIN: No.

2 CHAIRPERSON ALEJANDRO: -- the 24 hours of
3 initial new miner training.

4 MR. KINNIKIN: Not at all.

5 CHAIRPERSON ALEJANDRO: Okay.

6 MR. KINNIKIN: I'll stand for questions.

7 CHAIRPERSON ALEJANDRO: Okay. One of the
8 questions that I had, one of the issues that has come up,
9 is, you know, the responsibility for training, comprehensive
10 training or site-specific hazard training between the
11 production operator and contractors who come on to the mine
12 site.

13 A number of people have -- a number of operators
14 have indicated that they think it is appropriate for
15 contractors to ensure that their employees, the contractor
16 employees, receive the 24 hours of initial new miner
17 training and the 8 hours of annual refresher training, and
18 that the production operator should be responsible for site-
19 specific hazard training for those employees when they come
20 onto the mine site.

21 Do you have any opinions as far as whether that
22 division of responsibility is appropriate? Or do you have
23 other suggestions for how that ought to be handled?

24 MR. KINNIKIN: The way it's being handled now, if
25 a contractor goes onto a mine site -- and you have to keep

1 in mind, I'm talking about a contractor who might be a mine-
2 site operator, as opposed to a contractor going to a big
3 mine.

4 And what the big mines are requiring the
5 contractor to do now is to have his 24 hours of training
6 before his people ever goes on site.

7 CHAIRPERSON ALEJANDRO: Okay.

8 MR. KINNIKIN: But where my contractor has his
9 own portable plant --

10 CHAIRPERSON ALEJANDRO: Right.

11 MR. KINNIKIN: -- he is the operator; he is the
12 production operator. He's responsible for the employees
13 going there.

14 CHAIRPERSON ALEJANDRO: Okay. So there really
15 isn't a production operator per se.

16 MR. KINNIKIN: Not unless that would be an
17 independent contractor at a big mine site.

18 CHAIRPERSON ALEJANDRO: Okay. I have one other
19 question. Do you experience a situation where your
20 operations are regulated by OSHA, depending on the kind of
21 activity that you're engaged in? I mean, do you flip in and
22 out of regulation by MSHA and by OSHA?

23 MR. KINNIKIN: The highway-heavy contractor would
24 be regulated by both, and a lot of times, what might
25 separate OSHA from MSHA would be nothing more than a barbed-

1 wire fence or an imaginary line drawn through the pit, and
2 he'd have a hot plant sitting here and a crusher sitting
3 over here.

4 On one side would be OSHA; on the other side of
5 this imaginary line would be MSHA. But the highway-heavy
6 contractor would be regulated by both.

7 CHAIRPERSON ALEJANDRO: Do you have situations
8 where employees kind of cross over that imaginary line?

9 MR. KINNIKIN: They do it all the time.

10 CHAIRPERSON ALEJANDRO: Uh-huh. Do you have any
11 suggestions for -- I mean, as far as, you know, OSHA
12 training versus MSHA training?

13 MR. KINNIKIN: That training -- as far as I'm
14 concerned, if an employee has had OSHA training, say, task
15 training or training, safety training related to the task
16 he's doing, it should be allowed, both by OSHA or MSHA.
17 There's no difference in the operation of the piece of
18 equipment.

19 CHAIRPERSON ALEJANDRO: Uh-huh. Do you have any
20 opinion as far as how long the Agency should allow after the
21 publication of a final rule for compliance?

22 MR. KINNIKIN: I would think a year would be
23 plenty.

24 CHAIRPERSON ALEJANDRO: Okay. Do you have any
25 opinion as to whether we ought to phase in the requirements,

1 or should everything go into effect at the same time?

2 MR. KINNIKIN: Well, you will allow a year for
3 the person to get into compliance, full compliance --

4 CHAIRPERSON ALEJANDRO: Okay.

5 MR. KINNIKIN: -- I think you could go ahead and
6 set the initial requirements, and then let the people start
7 working into it.

8 CHAIRPERSON ALEJANDRO: Okay. Do you have any
9 questions?

10 MR. BRELAND: The portable plants you talked
11 about, I would assume that generally they have a core group
12 of people that travel with that portable plant. What
13 percentage of that group would be regular, year-round
14 employees, if you will?

15 MR. KINNIKIN: Probably would be your equipment
16 operators, probably the plant operator. Everybody else
17 would probably be hired at the new location, laborers.

18 MR. BRELAND: Mostly laborers, so you typically
19 would have four or five laborers maybe.

20 MR. KINNIKIN: Probably three, four at the most.

21 MR. BRELAND: Okay. And then you talked about
22 some phased-in training for them, do an initial eight hours,
23 but, you know, flexibility, whether it be at the site or CD-
24 ROM interactive type training, or in town. And you were
25 proposing up to 90 days --

1 MR. KINNIKIN: Yes, sir.

2 MR. BRELAND: -- to complete that. Do you try to
3 hire -- I mean, are a lot of these portable plants coming
4 back in the same area, and if you had a good employee, try
5 to rehire that person, or is it basically going to be a
6 brand new person?

7 MR. KINNIKIN: That depends. You can have a
8 mine -- call it a mine site that has been opened and closed
9 down, no longer active. It might be three, four years
10 before the contractor will get back to the same pit.

11 MR. BRELAND: Uh-huh.

12 MR. KINNIKIN: As far as trying to -- what you're
13 trying to say is that as we build these individuals and we
14 leave, but the individual doesn't leave with us, then that
15 individual, when we come back, would come back to work for
16 the contractor. I'm not sure that's the case.

17 MR. BRELAND: Okay.

18 MR. KINNIKIN: One of the things that we find
19 that with the highway-heavy and the portable plants is that
20 the laborer's job is not a very glamorous job. Most of the
21 times, these individuals, once they start working there and
22 they find out how hard the work is, how dirty it is, you
23 know, they tend to leave on their own, fairly quickly.

24 MR. BRELAND: Well, if you had 90 days and most
25 of those plants are only there for two to three months, most

1 of these would not get any additional training. Are you --

2 MR. KINNIKIN: They would get the initial eight.

3 MR. BRELAND: They'd get the eight. Would you
4 propose some like weekly training to be working on it,
5 because it looks like you could have nothing but eight hours
6 of training.

7 MR. KINNIKIN: We get the eight hours, and then
8 what we're doing now is an OJT, the walk-around, the hazard
9 recognition. And we do a weekly, every Monday, have a
10 weekly meeting where they get together and do the safety
11 meetings.

12 MR. BRELAND: And then you mentioned about the
13 records and the problems with making them available at the
14 mine site. Do you have some reasonable time in mind to make
15 them available upon request or --

16 MR. KINNIKIN: I would think that you ought to be
17 able -- like the previous speaker, you ought to be able to
18 get those the next day or within two days, I would think you
19 ought to be able to get those records.

20 MR. BRELAND: Okay. That -- on the OSHA
21 training, do you keep records of that now?

22 MR. KINNIKIN: Yes, we do.

23 MR. BRELAND: Okay. That's all I have.

24 MR. STONE: Do you have a sense -- I think we
25 probably need to take a step back. About how many

1 operations do you cover in your association? Do you have a
2 rough idea about the size of the operations, how large?

3 MR. KINNIKIN: I have -- currently in New Mexico,
4 I have 59 contractors. Each one of those contractors
5 probably have anywhere from two to four portable plants, and
6 some of them may have some permanent sand and gravel
7 operations, say, 150 or so.

8 MR. STONE: Okay.

9 MR. KINNIKIN: Bald figure guess.

10 MR. STONE: Do you have any rough idea about how
11 many of these operations would currently be in compliance
12 with Part 48?

13 MR. KINNIKIN: I'm going to -- my larger
14 contractors are now currently in compliance with Part 48. I
15 have -- I'm not going to try to tell you falsely here,
16 because it's like anything else. I've always said that,
17 with an employer, when push comes to shove, it'll get done.
18 So we have some individuals out there that are not doing it.
19 I know that.

20 MR. STONE: And do you have a sense of what the
21 costs might be for miner, per worker, that's being spent
22 today for training? And just give me an idea if the cost is
23 basically just the eight hours of initial training or what
24 it averages to.

25 MR. KINNIKIN: Well, like the previous speaker,

1 you just plug in the costs, and then if you go into town,
2 you know, you have to rent a room. And if you have one
3 person, maybe, as safety director, his salary, plus
4 individuals working under him who might be trainers. So,
5 you know, these are costs that you plug into it.

6 But I don't have an overall cost figure for you.

7 MR. STONE: Okay. Do you envision changes
8 through Part 46 that would make it less expensive? I think
9 you may have alluded to a couple just now. One might be to
10 allow some training, using CDs or other technologies that
11 wouldn't require travel to specific sites, things like that.

12 MR. KINNIKIN: That would help. The other thing
13 that would help was with the flexibility. Any flexibility
14 that you can give us. Say, on the remaining 16 hours, if we
15 can go 90 days, the individuals that we're going to be
16 training, if they're there 90 days, they're going to stay
17 with us.

18 MR. STONE: Okay. And for recordkeeping, do you
19 think that currently, that records are being maintained at
20 some expense to the operators, or --

21 MR. KINNIKIN: Yes. And I'm sure that most of
22 the MSHA inspectors would tell you whatever records they
23 find on site, they can hardly read because of the grease and
24 the dirt and the grime.

25 MR. STONE: Okay.

1 MR. KINNIKIN: But records are being kept.

2 MR. STONE: Okay. Thank you.

3 MR. BURNS: I just had a question on the
4 crossover of employees from OSHA to MSHA sites. As far as
5 the OSHA training, I don't think there's any real specific
6 requirement that you keep records of the training. Is that
7 a -- would that be a problem for some of the operators?

8 MR. KINNIKIN: You're saying --

9 MR. BURNS: Under OSHA, are they required to keep
10 records of training?

11 MR. KINNIKIN: Yes, we are. We have to -- just
12 like with MSHA, we have to prove that they've been trained.
13 So, you know, if you train them, then you have to have
14 documentation of the fact that they have been in training.

15 MR. BURNS: Okay. So most people are already
16 doing that on the OSHA side.

17 MR. KINNIKIN: Yes. Or at least we are.

18 MR. BURNS: Okay. That's really all I had.

19 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
20 Kinnikin.

21 MR. BURNS: I guess David wanted to clarify
22 something.

23 CHAIRPERSON ALEJANDRO: I think you need to come
24 up to the mike, if you could, just so the court reporter can
25 get everything on the record.

1 MR. PFILE: Briefly, when the construction
2 outreach that the heavy and highway contractors do, when an
3 instructor does that class, the OSHA class, those records
4 are sent to the OSHA Institute in Des Plains, and they keep
5 the records. They have the records. Cards are issued;
6 individual wallet cards are issued for the attendees, so
7 those records are maintained someplace. OSHA has them.

8 MR. BURNS: That's when they complete the eight
9 hours or ten hours.

10 MR. PFILE: It's ten hour, ten hour and thirty
11 hour. When you complete, the instructor sends the course
12 agenda, the attendees, all the information that's required
13 to the OSHA Institute, and they, in turn, issue the cards
14 back to the instructor for distribution to the attendees.
15 So they have a record of it, of anybody that's been through
16 that course.

17 MR. KINNIKIN: There are also some specific
18 regulations within OSHA that requires task training and
19 hazard association with the task being performed, and those
20 have to be documented as well.

21 CHAIRPERSON ALEJANDRO: Okay. We've reached the
22 end of our speakers who have signed up, but what we're going
23 to do is have about a 15-minute break and come back. I
24 encourage any of you who have not spoken to consider
25 speaking after the break.

1 But in any case, what I will do when we come back
2 is if there are no further speakers, is give you a summary
3 of some of the comments that we've gotten at some of the
4 other meetings up until now, just to give you some idea of
5 what's been going on.

6 And the speakers list is up here, if you'd like
7 to come and sign up, and I encourage you to do so. And also
8 there's an attendance list in the back that I would ask
9 everyone who is here to sign up on.

10 (Whereupon, a short recess was taken.)

11 CHAIRPERSON ALEJANDRO: The next speaker that we
12 have signed up is Ralph Richards.

13 MR. RICHARDS: Good morning. My name is Ralph
14 Richards. I'm with Jobe Concrete out of El Paso, Texas.

15 CHAIRPERSON ALEJANDRO: Could you spell -- get
16 your last name, the spelling.

17 MR. RICHARDS: R-I-C-H-A-R-D-S.

18 CHAIRPERSON ALEJANDRO: And you company is --

19 MR. RICHARDS: Jobe, J-O-B-E, Concrete Products,
20 Inc. of El Paso, Texas.

21 CHAIRPERSON ALEJANDRO: Thank you.

22 MR. RICHARDS: I'd like to support what the first
23 two speakers stated. I think they did a good job. I have
24 just a couple of things that we see in our business that we
25 would like for you to consider in addition.

1 One of the things is in developing the training
2 materials and your criteria and requirements, to take into
3 account employers who have workforces whose primary language
4 is not English. We have a substantial amount of our mine
5 workforce that does not speak English. Some of them are
6 bilingual; some of them speak only Spanish.

7 And what we're interested in is what is going to
8 be the requirements in that regard, with regard to our
9 materials, our plants, this type of thing. If we're going
10 to be using them in Spanish, do we need to submit also the
11 Spanish version as well as the English version, and take
12 into account how we deal with those issues.

13 We've had instances before in which there were
14 questions as to whether or not we should receive citations,
15 because warning signs, for example, were not in Spanish;
16 they were only in English; and this type of thing, such as
17 seatbelt signs.

18 And so in developing a training program, the
19 plan, the materials that must be submitted for approval, we
20 would like you to take into account and give us some
21 direction as to what a reasonable method of dealing with a
22 labor force who does not have their primary language being
23 English and may not speak English at all.

24 A couple of other points -- that's the main new
25 point that we have that we have not heard addressed here

1 this morning, that issue. A couple other points:

2 Where to keep the records? We strongly agree
3 with the prior speakers. There should be some central site
4 and a time for presenting them. Within a 30-mile radius of
5 our headquarters, we operate nine or ten sites, I believe.
6 Some of those, as one of the prior speakers indicated, are
7 not going to have offices; they're not going to have
8 facilities. You're going to have a tool box on a foreman's
9 truck.

10 Also our employee force is mobile. We may have
11 employees go to one specific site because we're operating
12 there, producing materials, and this is, I think, fairly
13 common in the sand and gravel business, for a specific job
14 from that site, and once those materials to meet those
15 qualifications are produced, we may go to another site. So
16 the employees are not at the same site every day.

17 Some of ours are, but many of ours go to
18 different sites on different days, depending upon which
19 facilities are operating, what materials we're trying to
20 produce that day. So having a central source for the
21 records, we think, makes sense. We don't think there'd be
22 any problem producing them within 24 hours.

23 Another issue: We have -- and we think there are
24 other people in the industry who have a lot of side-by-side
25 operations, as you've discussed this morning, regulated some

1 by OSHA, some by MSHA. We would like to see clear
2 provisions where there is OSHA training required.

3 For example, a loader operator is the easiest
4 example. A loader operator at a concrete batch plant is
5 going to be under OSHA rather than MSHA. That same loader
6 operator may be moved elsewhere on the facility, and in the
7 afternoon be working under MSHA, working piles, coming out
8 of a crusher.

9 We would like to see some consideration of that
10 in the rules. We would also, to the extent that there is
11 training required for OSHA, like to see reciprocal credit
12 for MSHA for that training and vice versa.

13 I can give you an example. We have a site that
14 is -- has a hardrock quarry, has several crushers, two
15 asphalt plants, two concrete batch plants, all operating
16 within one large site or facility. You can imagine from
17 that the crossover that we have back and forth.

18 Another item that came up this morning, the
19 gentleman from the New Mexico Associated Contractors was
20 talking about your truck drivers. In a quarry such as ours,
21 for example, base material -- we're making base material at
22 a quarry. We may have numerous independent truckers.

23 These are individuals or companies that may own
24 two or three dump trucks, who are coming into the site,
25 regularly hauling out base. They are going into a quarry,

1 an MSHA-regulated facility. What is going to be imposed
2 upon us as far as training obligations or assurance from
3 those people?

4 We're not talking about an independent contractor
5 who goes into a large facility and sets up a crusher and
6 takes in a crew of 50, 60 people. We're talking like the
7 gentleman who spoke before, truckers who may never get out
8 of their truck. They're given a ticket when they go through
9 the scale, as to what they're going to load. They go -- the
10 loader operator loads them. They go back and weigh out on
11 the scale. They never got out of their truck until they get
12 ready to leave the quarry and have to cover their load.

13 So we're not even sure whether those people
14 should be defined as miners, and we'd like some
15 consideration of that.

16 And those -- to keep those brief, those are the
17 principal issues that I have. I would try to answer any
18 questions, but those were points that we hear addressed this
19 morning that affect our industry that we would like you to
20 consider. Thank you.

21 CHAIRPERSON ALEJANDRO: Thank you, Mr. Richards.
22 I do have a couple of questions, and others on the panel may
23 as well. You indicated that in developing a rule, we need
24 to address the issue of the bilingual workforce and
25 requirements associated with that. Do you have any specific

1 suggestions for what we might include in a rule or specific
2 issues that you believe that we need to consider?

3 MR. RICHARDS: Well, first, we have to find
4 instructors who are bilingual and can speak Spanish.

5 CHAIRPERSON ALEJANDRO: Okay.

6 MR. RICHARDS: It is not -- when you're looking
7 at the certification program, that imposes another level
8 that we have to meet, and we would like you to take that
9 into account. We think that we have people that we're
10 developing within our company. Our own safety director's
11 bilingual, and we're working at it from that standpoint
12 ourselves.

13 If you require us to have specifically trained,
14 certified instructors who've been to some school, et cetera,
15 we may not -- we may have great difficulty finding the
16 people who can actually deliver the issue.

17 CHAIRPERSON ALEJANDRO: Who are bilingual.

18 MR. RICHARDS: Bilingual.

19 CHAIRPERSON ALEJANDRO: Okay.

20 MR. RICHARDS: So we lean more toward being able
21 to train our own, to, as you discussed this morning, have
22 credit for the supervised training in which you have a
23 certified trainer who supervises someone who provides the
24 training, this type of thing.

25 CHAIRPERSON ALEJANDRO: Okay.

1 MR. RICHARDS: And I don't have an answer for it,
2 other than I can envision regulations that could be written
3 that would not take that into account, that would create
4 real hurdles for us to get over.

5 CHAIRPERSON ALEJANDRO: Okay. I have one other
6 question. You raised the issue of individuals coming on
7 site such as truck drivers and whether or not they should
8 even be considered miners. Do you have a recommendation for
9 how truck drivers like that should be handled in the
10 training regulation?

11 MR. RICHARDS: I can tell you what some of our
12 experience is. We require the truck drivers to have hard
13 hats; we require, you know, the basic obvious hazards, that
14 if they're going to get out of their truck, they have to
15 have hard hats, this type of thing.

16 I don't have a true answer for it, other than
17 those personnel need to be aware of the obvious hazards
18 around them, but don't create a recordkeeping nightmare for
19 us, trying to certify that each driver for the independent
20 truckers has had certain amounts of safety training with
21 regard to mining operations that may not be applicable to
22 their task.

23 CHAIRPERSON ALEJANDRO: But you're saying site-
24 specific hazard training would --

25 MR. RICHARDS: Site-specific hazard training, I

1 don't think would be a problem. Our safety director's here.
2 I could ask him how he addresses it.

3 CHAIRPERSON ALEJANDRO: Yes. If he could come up
4 to the microphone and -- if you could, state your name.

5 MR. PAQUIAN: My name's Hector. First name is
6 H-E-C-T-O-R; last name is Paquian, P-A-Q-U-I-A-N.

7 CHAIRPERSON ALEJANDRO: Thank you.

8 MR. PAQUIAN: You asked a question?

9 CHAIRPERSON ALEJANDRO: Yes. I think the
10 question was as far as truck drivers, whether site-specific
11 hazard training would be appropriate for truck drivers who
12 come onto the property but don't actually get out of the
13 truck and are exposed to limited hazards on the mine site.

14 MR. RICHARDS: That's our general approach at
15 this time.

16 MR. PAQUIAN: Our approach, as Mr. Richards
17 indicated, is it is site-specific, and we would actually
18 have the hazard recognition for that site in itself, and
19 have the general contractors know about the premises itself,
20 but solely to that extent only.

21 CHAIRPERSON ALEJANDRO: Okay. Do you give that
22 kind of training to the individual truck drivers or just to
23 the contractor who employs them?

24 MR. PAQUIAN: No. This is to both.

25 CHAIRPERSON ALEJANDRO: Okay. And how much time

1 does that generally involve, to give them that?

2 MR. RICHARDS: On independent truckers -- let's
3 say we order 15 trucks.

4 CHAIRPERSON ALEJANDRO: Okay.

5 MR. RICHARDS: We may get those from six
6 different sources.

7 CHAIRPERSON ALEJANDRO: Okay.

8 MR. RICHARDS: We have no way at this time -- and
9 I don't think should have the burden imposed upon us -- that
10 each one of those 15 drivers that's going to show up that
11 morning is going to have site-specific training.

12 CHAIRPERSON ALEJANDRO: Okay.

13 MR. RICHARDS: If we're going to do that, that's
14 going to have to be a qualification that we would have to
15 know and have defined, so that we can impose it when we
16 qualify the truckers, because we qualify truckers before
17 they're allowed to enter our quarry.

18 Otherwise, if a trucker has four trucks and they
19 want to haul for us, before they are allowed to start
20 hauling for us or go on our call list, they have to meet
21 certain qualifications. That would be the point at which we
22 have to deal with that.

23 CHAIRPERSON ALEJANDRO: Okay. You're not
24 currently doing that now, I take it.

25 MR. RICHARDS: No. We deal with certain

1 qualifications when they come on. They are told, for
2 example, they must have insurance; they must have various
3 thing.

4 CHAIRPERSON ALEJANDRO: Right.

5 MR. RICHARDS: The drivers must have hard hats.
6 But as far as getting any certification from the owner of
7 the trucks that the driver that he's going to send that day
8 has had site-specific training for our quarry, we're not
9 doing that, that I'm aware of.

10 MR. PAQUIAN: That's correct. At this point,
11 we're not, but we need to further get some recommendations
12 on that.

13 MR. RICHARDS: And in our industry, that would be
14 difficult, because when they send that truck, it's not
15 always clear whether that truck is going to go into the area
16 regulated by MSHA or the area regulated by OSHA.

17 CHAIRPERSON ALEJANDRO: Well, then, how do you
18 propose that that be handled then? I mean, as far as, I
19 mean, truck drivers who come onto a mine site, do they need
20 site-specific hazard training? And if so, at what point
21 should that be required to be given?

22 MR. RICHARDS: My personal view is -- and I don't
23 know that the industry would agree. My personal view is
24 that if they are not going to get out of their truck, other
25 than to cover their load, that they shouldn't even have to

1 have the site-specific.

2 CHAIRPERSON ALEJANDRO: Should they have
3 anything?

4 MR. RICHARDS: As far as MSHA?

5 CHAIRPERSON ALEJANDRO: Right. I mean, I guess
6 that's what I'm asking is: Should this rule require that
7 truck drivers who never get out of their trucks have
8 anything in the way of training?

9 MR. RICHARDS: I don't think so. Now, let me
10 state: We have employee truck drivers who drive mine
11 trucks, who haul within our quarries, et cetera. We expect
12 that we are going to train those, and we would like the
13 rules to distinguish between your independent outside hauler
14 who are just picking up and leaving the site, and the truck
15 drivers who are working within the quarry, the people who
16 haul out of our pit to the crushers and this type of thing.
17 We're not asking for exemption for those.

18 CHAIRPERSON ALEJANDRO: And those people get out
19 of their trucks and --

20 MR. RICHARDS: Yes.

21 CHAIRPERSON ALEJANDRO: -- are on the mine site
22 for some period of time.

23 MR. RICHARDS: Yes. Their job is within the mine
24 site all day or all shift. What we're wanting a distinction
25 on is the independent truckers who, like the gentleman from

1 the New Mexico Associated Contractors was talking about, who
2 come in to pick up, and what they're coming in to pick up is
3 just what I was describing. More than likely, they're
4 coming in to pick up base.

5 They may haul three loads of base, and they may
6 haul three loads of asphalt. They're not going to be
7 required to get out of their truck, other than to cover
8 their truck, their load, if they don't have the automatic
9 covers, before they leave, go onto the highway.

10 CHAIRPERSON ALEJANDRO: Okay. If, in fact, we
11 were to decide to require some kind of site-specific hazard
12 training for those truckers who don't get out of their
13 trucks, do you have any recommendations or suggestions -- I
14 mean, you indicated that that would be very difficult to --
15 you know, that kind of a requirement would be difficult.

16 But assume for the moment that we are going to
17 require something along those lines. Do you have any
18 suggestions for how we might go about requiring something
19 like that, that would impose the least burden on you?

20 MR. RICHARDS: Well, I think first you could do
21 it two ways. One, you would have regulations which would
22 define the criteria in which they maintained their exempt
23 status, if they're going to have an exempt status or their
24 status as an independent, which is they stay on specific
25 marked roadways; they go to specific designated loading

1 areas; and this type of thing.

2 Someone whispered in the back, They stay on the
3 yellow brick road, but it's not really that ridiculous. You
4 know, if they had specific loading areas, specific routes,
5 cross the scale to the specific loading area, et cetera,
6 those type of things, definitions put upon the operator of
7 how they keep these people separate and distinct.

8 If you're going to impose something on the
9 drivers, then it would be site-specifically that in order
10 for them to qualify to come in, they have to know that the
11 driver has to have a hard hat and know that if they do get
12 out for some reason, even if it's just to bump the tires on
13 their truck, they have to have their hard hat on, this type
14 of thing, rules that they are not to leave the immediate
15 vicinity of their truck, rules that they're not to get off
16 of their truck.

17 CHAIRPERSON ALEJANDRO: Uh-huh.

18 MR. RICHARDS: This type of thing. But well-
19 defined rules, so that we know where our responsibility ends
20 and we know what we have to do to qualify drivers and
21 independents to come in, that doesn't create a burden in
22 which they can't meet, and then a recordkeeping requirement
23 to go with it that is reasonable to track; for example, that
24 if we qualify to put on our call list an independent with
25 six trucks, that they're told that their drivers must

1 have -- you know, be informed of this, and we can rely upon
2 the owner of the trucks to train their people.

3 CHAIRPERSON ALEJANDRO: Do you have --

4 MR. BRELAND: Just to follow up on that a little
5 bit, I guess about the yellow brick road, we've had a lot of
6 truck driver fatalities, customers and what have you, and a
7 lot of times that could be tied to lack of information, like
8 traffic patterns, where they may mix with other mine site
9 haul trucks and what have you.

10 So I think what we were trying to get at is that
11 there's some minimum type of information that would need to
12 be relayed to those types of customer truck drivers, if you
13 will, that come on. Do you see that as something that you
14 do now typically at your sites, that you inform drivers
15 where to go and where to pick up their loads and stay in
16 their trucks? Do you do some of that already?

17 MR. RICHARDS: Yes. Absolutely.

18 MR. BRELAND: So you really -- maybe we're not
19 talking about anything different much than what you're
20 doing. And if that's the case, if you have some process
21 that you require your sites to do, it might be worthwhile if
22 you submitted that as a suggestion of how you handle these
23 truck drivers and the qualification beforehand, as well as
24 when they come to sites.

25 Also, if you have some sort of clear definition

1 of the different type of contractor you're talking about,
2 this visitor type that would come in and pick up loads, that
3 would be good to offer up your suggestions for that.

4 On the bilingual issue, do you presently have or
5 use some bilingual posters, safety stickers, et cetera?

6 MR. PAQUIAN: If I may interject, we mostly
7 translate the English posters into Spanish. That's one way
8 that they can actually tell exactly, you know, what occurred
9 in each situation.

10 And I do appreciate also the fact that some of
11 the videotapes that you all provide through the catalog, at
12 the prices that you all provide them for, are extremely
13 attractive, and I wish we could find a vendor or anybody
14 that, you know, could translate those into Spanish. That
15 would be extremely helpful.

16 MR. BRELAND: We are looking --

17 MR. RICHARDS: To answer your question, yes, we
18 do have. For example, at the entrance to our quarries, our
19 seatbelt signs are bilingual. You have bilingual safety
20 stickers posted in our loaders, trucks, some of our
21 vehicles.

22 MR. PAQUIAN: Their hard hats, they've got
23 stickers -- we use the universal sign, and we use the
24 English and the Spanish. We just try to cover every single
25 base.

1 MR. BRELAND: Okay. And then just on the
2 crossover training issue a little bit, where you talk about
3 some of these sites, where you may have a couple of batch
4 plants, asphalt plants, and crushers, in general, are you
5 using some of the same people to run like the plant
6 operations themselves, or mostly is it the heavy equipment?

7 MR. RICHARDS: It's mostly going to be heavy
8 equipment.

9 MR. BRELAND: Okay. That really is all I had.
10 Thank you.

11 MR. STONE: Let me ask you just a couple of
12 questions. First of all, about how large is your operation?
13 About how many employees?

14 MR. RICHARDS: Total we have between 550 and 600
15 employees, but keep in mind that we are a concrete supplier,
16 an asphalt supplier, as well as an aggregate producer. And
17 we do some of our own trucking, as far as the aggregate. As
18 far as our mine operators, 150 --

19 MR. PAQUIAN: About 150, 180 tops.

20 MR. STONE: Okay. And in terms of the training
21 you currently provide, to what extent are you training your
22 workers, your miners, in Spanish, and are you doing it -- do
23 you have group training now that is in Spanish?

24 MR. PAQUIAN: We actually -- our trainings take a
25 little longer than usual, because we start first in English,

1 and then after that, we flipflop back and forth in English
2 and in Spanish.

3 MR. STONE: Okay.

4 MR. RICHARDS: We have some sites in which
5 they're predominantly Spanish, also taking into account to
6 make up the workforce. I mean, if we have a group of
7 workers who all speak Spanish, some of which speak Spanish
8 and English, and some who speak only Spanish, the training
9 will generally be done only in Spanish.

10 MR. STONE: Correct. Okay. And your
11 recordkeeping now, is it -- do you find it to be fairly
12 cumbersome under Part 48 requirements? Or is it really not
13 so bad, because you're already providing those records for
14 OSHA?

15 MR. PAQUIAN: I don't I see a problem with that.

16 MR. STONE: It's not currently a major issue.

17 MR. PAQUIAN: It's not a major issue.

18 MR. STONE: That's it.

19 CHAIRPERSON ALEJANDRO: Anything else?

20 (No response.)

21 CHAIRPERSON ALEJANDRO: Thank you very much.

22 MR. RICHARDS: Thank you.

23 CHAIRPERSON ALEJANDRO: The next speaker is Ed
24 Elliott from the Rogers Group.

25 MR. ELLIOTT: Hello. My name is Ed Elliott.

1 That's spelled E-D, E-L-L-I-O-T-T. I'm a safety manager for
2 Rogers Group, Incorporated. Our headquarters is in
3 Nashville, Tennessee, but we do have operations which would
4 fall within this district in Arkansas.

5 I just wanted to -- I gave a presentation at the
6 Northbrook meeting, so I'm not going to go back and answer
7 those questions again, but I would like to make some comment
8 concerning some points that were raised this morning.

9 The first, I would like to talk a little bit
10 about enforcement. Obviously this will be an important
11 factor that you must consider. I think the basics of
12 enforcement can be covered by inspectors, verifying that
13 training has taken place and that a plan has been approved.

14 This could be done by the employee carrying some
15 form or card with the necessary information, and it doesn't
16 necessarily have to be a government-approved form. This
17 would help. And then the operator should be able to provide
18 the information that that training has been done and that
19 they have a training plan.

20 But I think the most important part of making
21 training a significant -- making it significant in the fight
22 against accidents is MSHA's help. And to some, this is a
23 contradiction in terms, by some of the comments we've had
24 this morning, which I agree with.

25 But in particular, the Government can and must

1 help the small operator to comply with the new rule. This
2 cannot be done by the inspector and enforcement. MSHA must
3 support training and education as much as enforcement.

4 Second, I would like to speak to instructor
5 certification. This should be done, I believe, by the
6 operator certifying that training according to their plan
7 has been completed, and the plan itself would identify how
8 instructors would be selected.

9 Another point was raised about how much training
10 should be required before being assigned or assigning a new
11 miner to work. I think this would depend upon the
12 experience and demonstrated knowledge of the individual, but
13 through my years of training that I have been an instructor
14 as well as taking different classes, that the most effective
15 training is where the employee is actively involved in the
16 training process, not just sitting in a classroom and
17 listening to someone give information to them, but actually
18 having them involved.

19 And I think they could accomplish -- of course,
20 to accomplish this, the best way would be one-on-one
21 training, both in the classroom and on the work site, and I
22 think that flexibility needs to be there, where the operator
23 can do some one-on-one training and maybe, according to
24 their plan, there may be some done in the classroom; there
25 may be some done actively as they are standing, watching an

1 operation take place.

2 But the training plan should explain how the
3 operator will train, which must include where the training
4 would be conducted.

5 As far as the cost, I've heard -- I think, Mr.
6 Stone, you've mentioned several times talking about that,
7 and I do not at this time have anything that I can give you
8 our costs as such, but I will commit that either at the
9 meeting -- I plan on attending the meeting in Atlanta. I
10 will either have some cost numbers for you in Atlanta, or I
11 will submit them in writing for the cost of our current
12 compliance with Part 48.

13 MR. STONE: Thank you.

14 MR. ELLIOTT: Which I would say, if followed in
15 its most restricted form, is very costly, and I could -- and
16 I'll go into a little bit more of that at a later time, but
17 I will get you that information.

18 I think I heard something mentioned this morning
19 about post -- or an assessment of some form or instructor
20 evaluation. I think this is a very novel idea that could
21 certainly be something that a company would include in their
22 training plan, some form of assessment that can be used to
23 determine if the instructor was getting the information
24 across to the individual and how effective it was.

25 And we've had circumstances -- and I use the

1 words very carefully about assessment. I think a test, a
2 lot of people freeze up with a test. I venture to guess
3 most of us in here, if somebody put down and gave us a test
4 on what we heard this morning, we might be in trouble. But
5 there are a number of ways that you can assess the
6 effectiveness of training, and that should be, I think, an
7 element that would be looked for in the training plan.

8 About truckers and hazard training: Within the
9 Rogers Group, we try to do this as much as possible with
10 signage. We, too, will have periodically a driver come in,
11 and there are clearly marked roads and directions that
12 they're given to follow.

13 And to me, that would be sufficient. If they're
14 not involved with mining or extraction process or the
15 milling process, I think the necessary safety hazard
16 training could be given by signage.

17 And it still puts the operators -- you mentioned
18 customers and fatalities. I think there was one, a
19 Fatalgram, that I saw when a customer backed under a pile
20 that had basically been left with an open face, and it fell
21 and covered the person. I think this is not something that
22 has to be covered by hazard training, as much as it is the
23 operator's responsibility to see that there is a safe
24 workplace.

25 And I don't believe, even though they may have

1 taken some form of training, it wouldn't really have covered
2 that circumstance, I don't believe.

3 I want to mention about bilingualism and the
4 bilingual training, and I respect the problem that some
5 operators would have with this. But I think you would also
6 run into the problem that if you started developing Spanish
7 versions, where would it stop.

8 I think you would, therefore, have to consider
9 other versions of training, when it would be requested. And
10 I think that would be something that we would try to -- I
11 think the state grants programs should be in a position to
12 work in that direction, where they could help in dealing
13 with the bilingualism issue.

14 But I want to say again about the training that
15 the state grants program does a great job. In some states,
16 it is more effective than others, and I believe coordination
17 of the state grants program, with active MSHA oversight,
18 could be the most effective at implementing any new rule you
19 come up with.

20 But it would take that oversight and seeing that
21 that money was efficiently being used. And as I say, there
22 are so many excellent examples of that, that I don't need to
23 go into that.

24 The last thing I want to say is that I think it
25 will be a mistake to believe that promulgating new rules or

1 allowing enforcement alone will have a dramatic effect on
2 safety in the mining industry. People are going to get out
3 of this directly in proportion to what they put into it, and
4 there's going to be a burden upon the industry itself to
5 make a difference when this new rule comes about.

6 And we are within the Rogers Group supportive of
7 training. We've done it for years. We more than comply
8 with Part 48, and most of this is done because our
9 superintendents have found that it's good business.

10 We may have an employee come in -- haulage is a
11 very serious issue. We may have an employee come in, and we
12 will give them the basic training, both in the classroom, on
13 the work site, but then again, before that superintendent
14 would release that person to do independent work, they may
15 have someone ride with them in that truck as many as three
16 days, before they will release that person to begin doing
17 some independent work within a haulage truck.

18 So the people that are doing the training now
19 are, I think, doing a good job with it. They see the
20 benefits from it, but if the rules are seen as being too
21 restrictive, voluminous, more descriptive of exactly how the
22 training would be done, I think there will be a great deal
23 of resistance. So the flexibility of that training and the
24 simplicity of it, I believe, will be very important.

25 And I want to say again: I thank you for having

1 these public meetings and allowing people to give input.
2 And that's all I have.

3 CHAIRPERSON ALEJANDRO: Thank you, Mr. Elliott.
4 I just have one follow-up question. I just want to clarify.
5 As far as instructor qualifications and instructor
6 assessment, your recommendation is that the rule provide
7 that the plan address how those issues would be handled
8 without specifying how they should be handled, that they
9 need to be addressed in the plan, but not to set any
10 parameters or criteria for --

11 MR. ELLIOTT: Yes. That is correct.

12 CHAIRPERSON ALEJANDRO: Okay.

13 MR. ELLIOTT: I would see MSHA as giving classes
14 similar to what they do now and saying, We have a program
15 that we can put your employees through, that will give them
16 the fundamentals necessary to go out and develop an
17 instructor certification, if you want to call it, or
18 whatever. But I wouldn't say to eliminate those things, but
19 just give them as options.

20 I think there's some people that come in -- I was
21 very fortunate. When I went to school, I came out with a
22 bachelor's in education, and I had a teaching certificate in
23 two states. I felt I understood the techniques and
24 fundamentals of instruction, but I didn't have the rules and
25 regulations as far as guards and so forth.

1 I didn't feel I needed to go through a class to
2 prepare me to be an instructor, so being restrictive and
3 saying it has to be that certification, I think doesn't
4 always -- it still is not going to make a difference. There
5 are people that have degrees in education, and they're still
6 not good instructors. So there's not going to be the magic
7 bullet to say, If you have this, you're going to do a good
8 job out there.

9 So the less restrictive -- I think the more you
10 put on the performance of the operator to demonstrate that
11 the training is going to be effective, and that's what we
12 need to do. There are a lot of ways to do it and a lot of
13 great ideas out there that we may not even consider here.

14 CHAIRPERSON ALEJANDRO: Okay.

15 MR. BRELAND: Well, just to follow up on that
16 same idea, an assessment by the operator of the
17 effectiveness of the training, if you have some ideas, it
18 would be good to put those suggestions down and submit them
19 on the effectiveness of that. Would you be -- by monitoring
20 their training or interviewing the employees some or --

21 MR. ELLIOTT: I think what I do in the training
22 that I'll use an assessment, particularly if I'm in an area
23 where I know there are some people that have a problem with
24 literacy, I may put them in small groups and have a game.
25 I'll ask questions, based on what I've covered. And then

1 I'll give a little prize to the winning team. And I'll
2 direct verbal -- I'll make a verbal assessment.

3 Then as far as first aid is concerned, we will do
4 it in writing. I will give a test in that case. So there
5 are many ways that you could do it, and I would say the most
6 important thing is to find a method that the operator can
7 assure that the knowledge is being imparted to the employee,
8 and how they do that would be up to them, but they should be
9 able to show that in their training plan, to assure that the
10 training is effective.

11 MR. BRELAND: Okay. And then also you said like
12 the hazard training for truck drivers, you try to do
13 primarily with signage. Do you have some examples of that?

14 MR. ELLIOTT: I think you could -- speed limits,
15 truckers staying in their vehicles. You would have traffic
16 patterns; you would have signs on where they would go to,
17 the different piles.

18 What we do at some of our operations, we'll
19 actually have a sign that says it's number 8 or 57, and we
20 have communication with the -- most of the truckers -- well,
21 today, I guess, forever have had -- seemed like the CB was
22 invented by truck drivers. But we communicate with the
23 truckers through the CB, and some method to make sure that
24 they are restricted to an area which limits their exposure.

25 Anything, any traffic signage that would do that

1 or give them specific directions, I think, would be
2 sufficient.

3 MR. BRELAND: And what do you do as far as like
4 follow-up? Do you monitor that some? I mean, are your
5 regular employees instructed to take some sort of action if
6 they see them not following signs or getting out of trucks
7 or --

8 MR. ELLIOTT: Yes. If we have a problem with a
9 customer that comes in, then our loader operators, who are
10 actually loading the customer vehicles, are given, are
11 empowered to talk with that customer. If we find it's a
12 problem --

13 Just in the last couple of months, we had a
14 problem at one of our facilities where the drivers were
15 coming through; they were driving too fast. The loader
16 operator had mentioned it to them, couldn't do anything
17 about it.

18 The loader operator then instructed or told the
19 superintendent of the problem, and the superintendent
20 contacted the supervisor, and told them, Either you obey the
21 speed limits or we're not going to load you.

22 We have to be careful about customers. If you
23 put things that are too restrictive, then they're going to
24 find somewhere that's not as restrictive. So it's an area
25 that we need to limit their exposure as much as possible as

1 the operator. I think that's our responsibility.

2 MR. BRELAND: Okay. That's all I have. Thanks,
3 Ed.

4 CHAIRPERSON ALEJANDRO: Kevin?

5 MR. BURNS: Your experience with the state
6 grants, do you think that they're sufficiently staffed at
7 this time to handle the bilingual needs of the industry?

8 MR. ELLIOTT: No. I don't believe they will be
9 sufficiently staffed once the new rule comes about. And I
10 think from an efficiency perspective, I wonder how -- you
11 all would know more about the process of how one goes about
12 receiving state grant.

13 But I think the Educational Field Services, the
14 new unit that's being developed and if training rule is
15 going to be enforced, I think it vitally important that that
16 area, they be more active in what goes on in those state
17 grants. I'm sure they will be. But that is critical.

18 MR. BURNS: That's all I have right now. Thanks,
19 Ed.

20 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
21 Elliott.

22 MR. ELLIOTT: Thank you.

23 CHAIRPERSON ALEJANDRO: The next speaker on the
24 list is Bill Scarbrough.

25 MR. SCARBROUGH: My name is Bill Scarbrough,

1 S-C-A-R-B-R-O-U-G-H. And I want to thank you guys for
2 the -- being able to sign up late, come up here and talk,
3 because I didn't really want to talk, but I thought, well,
4 you know, if you don't say anything now, you know, forever
5 hold your peace.

6 I'm the safety director and also the H&S director
7 for Arkhola, which is a subsidiary of APAC-Arkansas, which
8 is a subsidiary of APAC, Incorporated, and we have various
9 companies throughout the South and the Southeast. Our
10 particular operation is located in Fort Smith. We have two
11 sand operations and three rock quarries in the area, in
12 Arkansas and Oklahoma.

13 And thanks to MSHA, I have my job. In 1978, I
14 was hired strictly to do the training part. When the
15 regulations came on board, why, they hired me as the
16 training person, and I was going to do all this, develop the
17 plan and the training. So in that regard, I have MSHA, you
18 know, to thank for that, because from there on, I moved on
19 up in the company.

20 But a couple of the comments that I'd like to
21 make: First of all, the gentleman, the first gentleman, I
22 think pretty well mirrors the way we think on it, as APAC as
23 a whole. The last gentleman made a couple of good comments.

24 But I'll just go down this little list here that
25 I made a couple of comments on. The newly employed,

1 experienced miner, I do think those are going to have be
2 well defined. Bringing a guy in -- I can remember back when
3 I first developed plans, as trying to figure out, you know,
4 who's going to be the newly employed, experienced miner;
5 some guy from a construction outfit with two years'
6 experience.

7 Well, if you do that, you're going to have to go
8 back and make sure he's had that. If he puts it on his
9 application and you don't verify it, you're not going to
10 know. And this is the hardest thing you have when you hire
11 DOT truck drivers, is going back and checking the
12 recordkeeping on them, if anybody's ever done that, so
13 you're going to have to verify his experience.

14 So I feel like if a guy comes in and he's got a
15 certificate, that he should be a miner. But also you're
16 going to have to look at, Well, what kind of training did he
17 get? Was it good or bad? So you don't know what kind of
18 training that man had. So, you know, that puts you in
19 another position. But I believe that coming on board, he
20 should have some sort of acclimation to your operation,
21 which we do that now.

22 But also, you know, what do you call these guys?
23 I mean, how many years does it take to be a newly employed,
24 experienced miner, if you allow someone to cross over, so I
25 think that's going to have to be well identified, and there

1 also has to be some way of checking up, to make sure that
2 that's verified that that guy, in fact, had that.

3 The second thing I had on task training: I think
4 task training should be performance-oriented. You may get a
5 guy that he can operate a front-end loader. Well, how much
6 time do you spend on him? As soon as you determine that he
7 meets the qualifications, you can certify him.

8 To what extent do you go in task training? I
9 know one of the biggest problems I had was figuring out who
10 gets task-trained for what. Does a guy that runs an
11 electric drill get task training? Obviously equipment
12 operators, plant operators, do have to have specific
13 training. Where do you end it? I mean, do you go down to a
14 pencil?

15 I've had an MSHA inspector recently that
16 probably, if he was enforcing these, if you had a hand
17 screwdriver, he would have wrote you a citation if you
18 didn't have task training on it. So I think we need to have
19 some well-defined limits. You guys laugh about that; now,
20 this is true.

21 I'm going to have to mirror the first man's deal
22 there. We do have some over-zealous inspectors, and I've
23 had -- I've been there 20 years, and I've had a lot of good
24 ones and a lot of bad ones, but to me, when you're running a
25 really good, clean mine site and the guy comes in there just

1 to write citations, in order to keep up with another
2 inspector, and he tells your men this, that's a big problem,
3 you know.

4 So I think we're going to have to address this
5 thing, and I'll get on down to enforcement here in a minute,
6 in a little different manner.

7 Refresher training, I believe that 15 minutes
8 ought to be the minimum. We have some things that can be
9 covered in 15 minutes, and you have some that may be two to
10 four hours, such as first aid training.

11 So you could cover rights of the miners in 15
12 minutes easily on refresher basis. Most of the men know
13 that. You don't need to sit there 30 minutes and go over
14 it, because anybody that's ever done any training knows you
15 can cover a lot of ground in 15 minutes.

16 You know, I talked to my preacher one time and I
17 says, You know, when they teach you when you're going to
18 seminary how long to make a sermon, what do they tell you.
19 And he says, Well, five to six minutes, and then they're
20 asleep. Well, how many in here has ever been to a five- or
21 six-minute sermon? My guy now is about 20 minutes to 30
22 minutes, and the Assembly of God up the street is an hour,
23 hour and a half.

24 And I know for a fact that once you get over that
25 six or eight minutes, you're gone, because then I get my

1 little book out, and I'm checking my appointments for this
2 week. And you guys know that, too.

3 So you can cover more ground in 15 minutes,
4 unless you have a good video or something, than you can with
5 anything else. So I think you need to have at least a 15-
6 minute minimum, and it may take a little keeping up with,
7 but you're going to get more out of your training.

8 I think the first gentleman's deal there about
9 the more you can stretch this out and the more you can
10 repeat your training to that guy, the better off it's going
11 to be, because back years ago, I used to sit in here, and I
12 was teaching this stuff, just like you guys had in there,
13 and I would look over in the corner. Joe Blow's asleep; you
14 know, this guy over here, you can tell his eyes are glazed
15 over. You're not getting there.

16 You can't sit there eight hours with these kind
17 of people and get what you want. What you want is as much
18 hands-on training. You've got to get in there with that
19 guy, get him out there on it, because you're going to lose
20 them, you know.

21 And if you guys remember back -- and I can
22 remember, because we were active in MSHA and the National
23 Stone Association when you guys got pulled out of that
24 training. Had you guys implemented this right in the first
25 place, we wouldn't be sitting here, and you guys know it.

1 I mean, obviously -- and if it's not done right
2 the second time, we're going to be sitting here 20 years
3 from now again, you know. And I am for the training. We
4 are doing most of the training, although it may not be
5 perfectly documented, you know, and I think that the
6 training is fantastic, but it's got to be put out in a
7 logical manner, where the supervisors can understand it and
8 can document this thing with ease, because once you get it
9 complicated, you're going to have a nightmare, and this is
10 what the current standard is in my opinion, a paperwork
11 nightmare.

12 Going down to the training certifications, the
13 5023s, that was my biggest problem, keeping up with those.
14 We do still keep up with them. We don't do it by the book
15 like you guys say. But I still make those guys sign them.
16 We still use those 5023s.

17 I'm negligent on the task training. I don't keep
18 up with that, not like I should, and I've got to admit it.
19 But we are doing it. I mean, I make sure we're doing it at
20 our places. We do not put people on pieces of equipment
21 unless they're trained.

22 Qualifications of instructors: I went through
23 the school in Oklahoma, in Krebs, back in December of 1978.
24 A guy by the name of Ron Avner was the instructor, now
25 deceased, and it was a real good school.

1 The problem is: Who went to the school? Well,
2 you had guys in there that didn't give a care about what was
3 going on. They were up there killing three days. You had
4 guys like me. I'd just been hired, and I was really
5 anxious, and I really enjoyed it, and I got a lot out of the
6 class, but yet you turned out people that weren't very good
7 instructors. There was no way of saying, You're
8 disqualified.

9 You can't put somebody out there teaching unless
10 you have somebody evaluating that person before you certify
11 them, and I think I can certify the people at my mine site,
12 because I have an assistant working for me, and I monitor
13 him. Not everybody else can do that.

14 But I think that you should put some minimums in
15 there, like if you've got two years of college; you've taken
16 speech; you've also taken some other things; if you've got a
17 four-year degree, you should almost be an automatic teacher.
18 But what you need is a follow-up, to make sure you're a good
19 teacher. You need some kind of follow-up.

20 I've got guys -- back when this first came out,
21 we all had to have certified instructors, and MSHA came out
22 and said, Well, if you'll send in that they've got these
23 qualifications and this and that, then we'll make them an
24 instructor. So I still have a whole bunch of guys, old
25 employees, that are instructors.

1 Well, how many of those guys are good
2 instructors? Well, none of them probably today. You know,
3 they're good for equipment instruction, to take a guy on a
4 piece of equipment, but to get up here and do this, they'd
5 be worthless.

6 So, you know, back then, there was a lot of guys
7 certified to be an instructor that probably shouldn't be
8 today, and I know this for a fact.

9 I do think, though, that there ought to be
10 something in place to make sure that the quality of
11 instruction is good, and you're going to have to have
12 somebody going out and checking on it.

13 The enforcement, I think -- I think an MSHA
14 instructor can do the basics. He can determine whether your
15 man has had the training or he's got his certificates, but I
16 think you're going to get down to the little details of it;
17 you're going to have problems if he's allowed to go in there
18 and write a citation for each little paperwork thing,
19 because just like the first gentleman said, it's going to be
20 a field there for him to write you 20, 30 citations on
21 little minor things; that's going to get you back in these
22 meetings again.

23 You can't make these operators mad by doing stuff
24 like that. They're all going to get together and put you
25 back in that same position. I think if it's done right,

1 maybe if you had -- if MSHA had an education enforcer that
2 goes out to the quarries or wherever, and he checks the
3 records, and he says, Okay, you've got these errors here.
4 He says, I'm going to help you correct them; you guys get
5 them all corrected; I'm going to come back again in two or
6 three months.

7 He checks you, and if you're not doing it right,
8 then he takes some kind of enforcement action, and then that
9 takes off these little bitty citation deals -- okay? --
10 because that's what going to make everybody mad. Nobody's
11 going to say anything if you come in and say, Okay, you
12 know, you're deficient here and there; you need to correct
13 this.

14 Give them a chance; you know, don't come in there
15 and start writing those things. You know, have some way of
16 working with these operators, and then if they don't comply,
17 you come back and it's a blatant disregard, write them up.
18 I have no sympathy for somebody that doesn't take your
19 advice the first time. They need to learn.

20 But I think if you open it up where these MSHA
21 inspectors come in here writing, you're going to have a
22 whole lot of stuff in the courts to take, because you're
23 probably going to find that your MSHA inspector made some
24 mistakes, and you're going to have to eat them, you know,
25 because they do make mistakes, too, just like I do and most

1 of the people in this room.

2 The hazard training for customers, you know,
3 that's one of our biggest problems. Back when I first did
4 my plan, Bart Benedetti [phonetic] -- I don't know if
5 anybody in the room remembers him, and he had a lady working
6 with him called Billie, and I can't remember her last name.

7 But then he said, Okay, for the hazard training
8 on customers, you have the sheet, and you have the hazards
9 inherent to your mine, and you have the truck drivers come
10 in and sign these. Okay. Your truck drivers come in, and
11 as I was sitting there, I was thinking, Well, why couldn't
12 we have the sign-in sheet, with a carbon copy. The guy
13 comes in; you sit them there; they sign the sheet. He keeps
14 a copy, and you keep a copy for yours.

15 You need this for your one-time customers,
16 because you can't make your customers mad. When you do,
17 you're not going to be in business, and those miners out
18 there working are not going to be there.

19 We have people coming in for a pickup load of
20 sand, a pickup load of gravel, you know. For the most part,
21 our mines are well marked. We have the signage up. You
22 know, If you get out of your truck, you're not loaded. You
23 must stay in your vehicle at all times.

24 However, if you're loading a pickup, you may make
25 that man get out and stand in front of that pickup, because

1 you don't want to accidentally knock something on top of his
2 cab. I'm not familiar with how those guys do that, but our
3 loaders, our loader operators have instructions not to load
4 anybody that's not in their truck. I mean, that's a
5 standard deal, and they don't do it.

6 But you have a problem with the occasional guy,
7 which is the one-time guy. You have a problem with the
8 occasional customers that come in, and we have contract
9 truckers that work for us. That's not a problem. We can
10 handle those. They sign the subcontract with us every year
11 that they'll abide by the safety laws. Most of them are
12 stable enough, where we can have them sign the sheets and
13 everything, and that's not a problem.

14 It's your one-time customers, and you can't
15 afford to make those people mad. You know, they're also a
16 big part of your business.

17 Contract welders and those kind of guys, I think
18 there needs to be a well-defined limit of how long does that
19 guy stay on your mine property in order have complete
20 training. If he's coming in for a day or two, maybe hazard
21 training is sufficient, if he stays in one place.

22 However, I have contract welders that literally
23 work with us at all five locations, and I probably feel like
24 they probably should have maybe the 24-hour training, which
25 I would be glad to comply and probably pay them. That's me,

1 because I know I have some.

2 However, I have other guys, like an electrician,
3 that in a certain area, if you required him to do that, he's
4 going to thumb his nose, and you're not going to get your
5 work done.

6 So we have big problems with that, and I don't
7 think most of those electricians would mind hazard training
8 with site-specific stuff. You stay in this area, and that's
9 it. You've got to wear your hard hat; you've got to do this
10 and that. I don't think they would mind that.

11 Now, if they get out into the plant area, you
12 know, I think that they should have more. I think that's
13 something that should be required. And I think that's
14 pretty much it.

15 And I think the main thing I see is trying to
16 eliminate a paperwork nightmare like we had before, and I
17 think this is one of the items that -- the reason why we're
18 here today, is that everybody looked at that and they saw
19 it.

20 I know from my dealings with it, it was -- I
21 spent hours and hours and hours, putting stuff together and
22 working with it, going out to the plants and working, trying
23 to get task training oriented, you know, and it's a big job.

24 And to have someone come in and write you a
25 citation on each little bitty thing is not going to cut it.

1 I mean, it's going to get you right back there.

2 And thank you. That's all I have.

3 CHAIRPERSON ALEJANDRO: Mr. Scarbrough, I've got
4 a couple of questions. I wasn't clear on what your point
5 was on the newly employed, experienced miner. You indicated
6 that somebody had to verify the experience that the
7 individual had. I didn't know whether you were talking
8 about the operator verifying that employment or MSHA
9 verifying that employment or the rule providing that that
10 employment be verified.

11 If you could, you know, maybe address that --

12 MR. SCARBROUGH: Well, as I understand it and
13 back when I was dealing with this, if a guy came from a
14 construction industry -- say, he was a hauling unit operator
15 for a construction outfit and he had been that for seven
16 years, you could bring this guy in as a newly employed,
17 experienced miner, and then give him X amount of hours of
18 training, and then certify him.

19 So if we're allowed to do that, if you don't
20 verify that guy's training or verify where you worked
21 somehow, then you're going to have a problem there, because
22 then you'll have guys coming in and saying, well, they got
23 two or three years here, and they really didn't. And then
24 maybe they can operate it, but they don't have the
25 experience and background they really need.

1 CHAIRPERSON ALEJANDRO: So you're talking about
2 somehow the rule provided that experience, alleged
3 experience, be verified.

4 MR. SCARBROUGH: Right. If I remember right --
5 and somebody in this room can correct me -- back then you
6 could do that. It was allowed, to call that person a newly
7 employed, experienced miner, if he came from another
8 industry, doing almost the same thing. All you had to do
9 was like an eight-hour task training or whatever.

10 CHAIRPERSON ALEJANDRO: Refresher training.

11 MR. SCARBROUGH: Refresher-type thing and get him
12 oriented, and I did that. I'm not saying it was right, but
13 I was told at the time it was okay, and we did that. And I
14 don't know if any other gentlemen in this room have also --
15 or ladies have done that, but at the time it was allowed.

16 I think that, you know, you need to have some
17 real black and white definitions on this, because if you
18 don't, the inspector's going to come in and he's going to --
19 you know, he's going to say, well, They're not this or that,
20 and you're going to get a citation. The more black and
21 white you can have these requirements, the easier it will
22 be, you know, to implement.

23 CHAIRPERSON ALEJANDRO: Okay. One of your
24 recommendations was that refresher training be allowed in as
25 little as 15-minute increments, and I was just curious as to

1 why 15 minutes was what you selected as a minimum.

2 MR. SCARBROUGH: Well, I think you could do some
3 in ten, but I think to make it legitimate, you're going to
4 have to go 15 minutes. I don't think you can do anything
5 less. I like 30 minutes, too, but I think with 15, you
6 could do a session every week and hit an hour a month.

7 Basically we do that now with five-minute safety
8 talks every week, and we're covering more than five minutes.
9 We use the Fatalgrams religiously. Every five-minute talk
10 that I send out to my quarries and sand plants has a
11 Fatalgram with it, which I think is one of the best tools
12 that you have to give these guys.

13 So I think it can be done that way. I think you
14 get better results with a little bit all along, rather than,
15 you know, one eight hours in a year and they forgot it. I
16 can give a guy training for a lock-out, and next month go
17 back out there and he may not remember everything.

18 But if you went over it a little at a time and
19 you had 15 minutes of lock-out here, after you've had
20 initial training -- you can't do initial lock-out training
21 in 15 minutes. But you could do some follow-up. You could
22 do -- in 15 minutes, you could do lock-out of certain
23 things; next week cover a lock-out of something else; and by
24 the end of the month, you've reinforced this over and over,
25 because I know the attention span of those guys, and it is

1 not sometimes 30 minutes or an hour. And these guys in here
2 know it, too.

3 If you've got a good lock-out video, which we do,
4 30, 45 minutes, they'll pay attention to that pretty good,
5 you know, but it's hard to sit there for an hour or 30
6 minutes and me talk and get it by them. You know, you've
7 got to have some tools, and you guys have good tools. Those
8 MSHA films and stuff you put out, we use those.

9 Every plant that I have has a TV video deal, and
10 we have all of those -- we took the liberty of copying all
11 those MSHA tapes like on one or two tapes, so they've got
12 everything right there, and every one of my plants has those
13 tapes on site, so they can use those for their refresher
14 training. So --

15 But you can't do first aid, maybe, in 15, 20
16 minutes. You might could that in hour increments. You
17 cover shock, breathing -- I mean, however you want to do it.
18 Some of the stuff can be covered that way, and I think that
19 would be an effective way of doing it.

20 And also the same way with the 24-hour deal. I
21 agreed with the first gentleman that up to six months
22 allowed, you know. You might even could say, Well, okay,
23 they get eight hours the first month before hire; they get
24 eight hours again; and then so many hours scattered out.

25 But the more you can scatter that training out

1 during that newly employed's training phase there, the
2 better he's going to be, because most of these guys get
3 hurt, at least in my company, in the first year. So the
4 more you can enforce that as you go along, the better.

5 If you give it to him all in the first week, he
6 won't even know where he's at. I mean, you know, a month
7 from now, he won't know that. But if you start him out
8 good, give him some basics, and then later on, keep
9 reinforcing it, you're going to do better.

10 And I think anybody in here that's done training
11 or teaches knows that. My wife's a school teacher, and
12 that's what she does. She doesn't teach them WordPerfect
13 all in one day. You know, she teaches it to them every day
14 for so long, and at the end of six months, they know it, you
15 know. And that's true with most things, you know.

16 So that's my opinion on that.

17 CHAIRPERSON ALEJANDRO: Okay. I just have one
18 other question. You were talking about, as far as
19 enforcement, that the best thing for MSHA to do is to come
20 in and point out, you know, areas where maybe the operator's
21 falling short in the training and give them an opportunity
22 to do what he needs to do, and then issue citations at some
23 later point.

24 Are you talking about the initial stages of this
25 rule going into effect, or as a general --

1 MR. SCARBROUGH: I think as a general rule, that
2 every so often you should have one of your people come in
3 that's real experienced with training, that knows what's
4 being done and kind of go through the books and look. And
5 it won't take them long to tell. But he can get into the
6 intricate parts, whoever does this, and tell whether you're
7 doing it right.

8 And just because they find a few little paperwork
9 errors, they don't feel like they've got to write you up.
10 They say, Okay, I found these paperwork errors; you're going
11 to have to correct this stuff, because under the current
12 standard now, every violation that an inspector sees, he has
13 to write.

14 CHAIRPERSON ALEJANDRO: Well, that's actually in
15 the Mine Act.

16 MR. SCARBROUGH: I know it is. I've been there
17 for 20 years. But, anyway, if you have those and they find
18 an error here on that -- the guy didn't mark a past
19 training -- that's a citation. Correct? Is that correct?
20 If he sees that, that is a citation.

21 CHAIRPERSON ALEJANDRO: Well, the Act says that
22 if an inspector finds a violation, he has to write a
23 citation.

24 MR. SCARBROUGH: That's correct. So if he finds
25 ten of these things that your supervisors made, that's ten

1 citations right there.

2 Okay. If he comes in, he's probably going to
3 find more than ten, because my supervisors don't keep
4 perfect records. And, you know, I can't be everywhere with
5 them, and I have a system, and I can't be there with them.
6 Also, you know, it's going to happen.

7 If you have a good general way of checking
8 people's book and making sure they're in compliance and
9 they're doing what they're supposed to be doing, I think
10 that's what you need to do. I think you're going to really
11 make people mad.

12 If you open it up for an inspector to come in
13 there and write 20, 30 citations at a time on this training
14 deal, you're going to be right back here -- I can guarantee
15 it -- in 20 years, because they're not going to get --
16 they're going to take away your funding again, because
17 you're going to make everybody mad, you know.

18 If you're going to do it, do it right. Go in
19 that thing and get something that works, and that way, you
20 know, you're not going to have this trouble, because
21 everybody wants the training and they need it. But if you
22 make it like this, it ain't going to work. I've seen it.
23 I've seen what happens.

24 The biggest problem that most of the operators
25 have are these inspectors coming in and writing little bitty

1 nitpicky things, because they can't find any big stuff. And
2 I've been there, and I've seen it. Not all of them are that
3 way, but you have a few, you know.

4 And I know you can't help who works for you.
5 Sometimes you can't change those people. I have guys that
6 work for me that aren't the greatest, too. You're going to
7 have that in any big organization. But you've got limit
8 maybe the ability on some things, and if you want to make
9 this training thing work, that's what you need to do.

10 CHAIRPERSON ALEJANDRO: Okay. Thank you.

11 Rod?

12 MR. BRELAND: Well, just to follow up on that a
13 little bit, the flexibility thing, I think everybody's got a
14 lot of interest in. We've heard that at every meeting and
15 certainly MSHA has interest in that.

16 But one of the troubling things about the short
17 increment blocks is the tracking. You said you do -- if you
18 were going to track that and demonstrate you'd done the
19 training or even keep track of who's gotten the training for
20 your own purposes, you're talking about these 15-minute
21 blocks, and you have problems with the 5023, and I can
22 understand that.

23 But have you got some ideas of how you would
24 monitor that for yourself, for your own plant?

25 MR. SCARBROUGH: I think it's fairly easy. You

1 have a blotter there, and you have your training here, and
2 the meetings that those guys are at, they X, and they also
3 sign for them. Then you go back and you're keeping track of
4 the times of the meeting. I don't think that's too hard.

5 I'm not going to be able to computerize that, but
6 for me, it's not going to involve that much more on that
7 part. I think it's pretty easy. You could have a chart
8 here, have all your training for the year lined out
9 practically, and have those Xs. And if a guy at the end of
10 the year falls short, you make it up, you know.

11 MR. BRELAND: Okay. So it would be simple for
12 you to do a manual tracking system, and --

13 MR. SCARBROUGH: I'm not saying it's simple. I
14 mean, if I'm going to have to do it that way, I will do it
15 that -- I mean, there's nothing about this thing that's
16 going to be simple, I can tell you.

17 MR. BRELAND: Well, I mean, for your own
18 purposes, wouldn't you want -- I would think, even outside
19 of a requirement, you'd want to know what training people
20 had had, so you'd have sort of tracking.

21 MR. SCARBROUGH: That's correct.

22 MR. BRELAND: I assume you have some in place
23 now, so it really wouldn't be an additional requirement if
24 you were allowed flexibility to use whatever it is you're
25 doing now.

1 MR. SCARBROUGH: I think if we had the
2 flexibility, the paperwork would fall in place. I think our
3 guys would rather have the flexibility. And I'm not saying
4 we would do 15 minutes. We might only do that with two of
5 those.

6 MR. BRELAND: Right.

7 MR. SCARBROUGH: The rest of them might be an
8 hour or two, but we still have to keep up with it, you know,
9 and I think we're better suited, by those incremental
10 training, rather than coming in in the wintertime and eight
11 hours. You know, everybody shuts down on a bad-weather day
12 and you give the eight-hour training. Well, is that any way
13 to train, you know? Most of them would rather be home that
14 day.

15 So you've got a couple of guys in the back that
16 are mad. They want to be deer hunting or something, you
17 know. So those incremental deals are the way, and the 15-
18 minute deal, allowing people to do that, is just another
19 tool, not saying we have to do that, but at least having the
20 ability to do it. That's their problem if they don't want
21 the paperwork. If they don't want it, they can do eight
22 hours in a year.

23 I personally like that idea. I think I can
24 really sell this to my supervisors better if every Monday --
25 because we're doing it anyway. We're giving those five-

1 minute safety talks, and they're not lasting just five
2 minutes. They're probably 15 minutes in the morning, and so
3 that would make it. At the end of the year, they're getting
4 more than eight hours' training. Figure it up, you know.

5 MR. BRELAND: I think we're all on the same page,
6 agreeing that the quality of training what's important to
7 everybody.

8 MR. SCARBROUGH: Absolutely.

9 MR. BRELAND: The -- you had a couple of sand
10 plants and a couple of quarries. Do you have a different,
11 like, training plan for each, or do you have like a company
12 standard process --

13 MR. SCARBROUGH: No. I still use my plans that
14 were approved back in 1979 and probably would go in and look
15 at those, and depending on what you guys come out with, make
16 some alterations to them. We pretty much use the standard
17 same thing. At the sand plants, we use the same thing, and
18 at the quarries, we use the same, because obviously you
19 don't have explosives at the sand plants, you know.

20 So pretty much, you know, those plants are all
21 almost identical in what they do, with the exception of the
22 Arkansas River. There we have a dredging operation which
23 the Coast Guard is over the tow boats, and so you guys have
24 no jurisdiction over them or the barges at the time.

25 But basically what they do is essentially the

1 same. And you just have various small things at each
2 location that may be different, you know, such emergency
3 numbers or location of some first aid equipment or something
4 like that, but essentially they're the same.

5 MR. BRELAND: That's all I had. Thank you.

6 MR. STONE: I just had a couple of questions.
7 First of all, about how large is your operation?

8 MR. SCARBROUGH: Our operation is 350 people with
9 about 125 miners, maybe 130.

10 MR. STONE: And you currently provide a great
11 deal of 15-minute increments and training. Is that
12 accurate?

13 MR. SCARBROUGH: Correct.

14 MR. STONE: And do you maintain records of that
15 now on the Form 5023, or are you not doing that --

16 MR. SCARBROUGH: I do that for refresher
17 training, and our refresher training is conducted different
18 from the 15-minute or five-minute safety talks. And every
19 month, I put out -- or timely, I put out, like, This is time
20 for first aid training, and the supervisors conduct that.

21 And at the end of the year, I send out the final
22 training, along with the 5023s. All of my supervisors are
23 certified instructors, so they can do that. I'm not
24 required by law to do this, but I do this. And that's been
25 done ever since time began, because I realized the value of

1 that back then.

2 I did not like the extensive paperwork you guys
3 had, is what I didn't like, and I don't think that's what
4 most of these gentlemen really like.

5 MR. STONE: Right. Well, that's certainly
6 something that we're trying to consider alleviating and do
7 some more flexible --

8 MR. SCARBROUGH: I think that's what cost you
9 your deal was your paperwork.

10 MR. STONE: Do you have any sense of what the
11 paperwork time is currently per miner, that this Form 5023
12 is costing you?

13 MR. SCARBROUGH: I don't think it's very much for
14 me. I mean, I'd have to say the way I'm doing my training
15 now, it's training that I would want them to have anyway.

16 MR. STONE: Right.

17 MR. SCARBROUGH: I'm not sure that you could say
18 that it's costing. I would say if this goes in effect, I'll
19 probably have to hire somebody to go and monitor my mines
20 and do a whole of this, somebody like myself in 1978,
21 because I see it's going to take a lot more work that I
22 don't have time to do. And right now, I just monitor it,
23 and I'm not as careful as I should be, to be perfect in it.

24 Like I see today, if there's no change in it,
25 where he can come in and write 20, 30 citations on it, I'm

1 going to have to hire somebody, and the cost will be
2 substantially more.

3 MR. STONE: Okay. Thank you.

4 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
5 Scarbrough.

6 The next speaker on our list is Peter Ward from
7 Hanson Aggregates.

8 MR. WARD: Good morning. My name is Peter Ward,
9 P-E-T-E-R, W-A-R-D. I am on record from the Ontario meeting
10 point by point. I did want to address something that came
11 up twice this morning, and that's the cost of training.

12 If you have minimum compliance, I don't
13 believe -- you should be proud, but if you have minimum
14 compliance, I don't believe the cost would exceed 5 cents an
15 hour. And what I don't want this process to be hung up on
16 is the cost of training.

17 Education and training is a cost of doing
18 business, and we just have to accept that. If we have
19 people talking about the burden of training at 5 cents an
20 hour, or if we have a Cadillac program at 10 cents an hour,
21 what is that compared with the operating cost, say, of a 988
22 that guy operates at \$80 an hour? I think we get
23 sidetracked on the cost. The cost is minimal.

24 And whether you have a huge organization like
25 ours with over 100 million tons, when you -- if we look at

1 our total cost and give you a lump sum, for argument's sake,
2 three-quarters of a million dollars, whatever it may be,
3 that would frighten the small operators.

4 If you're looking for a cost of training -- and
5 my friend and competitor, Ed Elliott, has offered to put in
6 costs -- I would request that Ed do it in a cost-per-ton
7 basis or cost-per-hour, not lump sum, because it's the small
8 operator that's going to say, It cost them half a million
9 dollars; we can't afford that.

10 If you get it down to the 5 or 10 cents an hour,
11 as a labor burden, they should be able to absorb that. If
12 they cannot absorb that, then they are under-capitalized and
13 shouldn't be in business. I mean, it's as simple as that.

14 I just didn't want this meeting to get hung up on
15 cost. It is minimal, and we don't want to load the gun for
16 you, the payback side is so huge. At a very minimum,
17 effective training will give you a ten-to-one payback. But
18 I didn't want to go too far into that. We know it to be a
19 case; we have it documented. We are submitting that. We
20 have permission now to let you have those five-year records,
21 and we will submit those.

22 But nobody should be allowed to say they can't
23 afford to train. If they can't afford to train, they can't
24 afford to be in business. That's my five minutes.

25 MR. STONE: No. I'm sure I would agree with you.

1 Are you going to be submitting any other materials in
2 writing related to costs?

3 MR. WARD: Yes. I needed -- I was asked this at
4 Ontario, and I needed to get authority to release numbers.
5 But we have a four-year history that we will be submitting.

6 MR. STONE: Okay. Because one thing that we
7 would welcome would be any documentation you provide, not
8 only on what the costs are, but if you had any evidence to
9 support the paybacks. We certainly believe that they exist,
10 but quantifying them would be a tremendous asset for us.

11 MR. WARD: We can do the payback more than the
12 costs, because so often people like myself have multiple
13 responsibilities, and depending what spin I'm trying to put
14 on it, I can either add the secretary and add the company
15 cars, but you have these other responsibilities. That would
16 be -- I can make the number wherever you want it to be.

17 On the other -- it's the truth. I can make it
18 high; I can make it low, just by padding it and putting
19 overhead in there, part of the president's salary.

20 But if you get it down to the costs that we were
21 incurring through unplanned events and the costs we are now
22 incurring through unplanned events, and all we have done is
23 had an aggressive training program, which was as simple as
24 teaching the people the laws that govern their trade and
25 holding them accountable, we can show you the reduction

1 there.

2 If you want to get into costs, I can just say
3 that if you get eight hours at 10 bucks an hour, allow \$10
4 documentation for documentation, you can come up with about
5 5 cents an hour to be in minimal compliance. And I go back
6 to my first statement: If they can't afford that, they
7 really shouldn't be in business.

8 MR. STONE: Thank you.

9 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
10 Ward.

11 The next speaker on the list, or speakers, is
12 Elsa Roman and Jim Murray from University of Texas at
13 Austin.

14 MS. ROMAN: Yes. My name's Elsa Roman,
15 R-O-M-A-N.

16 MR. MURRAY: James Murray, M-U-R-R-A-Y.

17 MS. ROMAN: We represent The University of Texas
18 at Austin. We are part of the state grants program here in
19 the state of Texas, and the reason we decided to attend this
20 meeting is because we want to be prepared to effectively
21 assist the operators here in the state to comply with
22 whatever requirements are effected in the future.

23 There are three basic points that I would like to
24 address, the first one being with whatever the requirements
25 end up -- or result to be. We would like to suggest that

1 they be as similar to Part 48 as possible.

2 We have received quite a bit of feedback from
3 operators on this issue, the Part 56 issue, and much of the
4 feedback we have received is how much of a change is it
5 going to be; how much of a change am I going to have to
6 make, in order to stay in compliance with the requirements
7 that are going to be effected. So we would really like to
8 see them remain as similar to Part 48 as possible.

9 We have worked throughout the years with many of
10 the operators who are here in the room, and most of them are
11 in -- most of them, of not all of them, are in compliance
12 already, because they have been providing the training as
13 required by Part 48. So whatever changes are made, if they
14 can be as little as possible, that would mean having to make
15 as few changes as possible.

16 Would you like to add anything?

17 MR. MURRAY: I was making note of some of the
18 comments, and I would like to raise more questions that I
19 would like not only you but all of the people to think
20 about.

21 Certainly this issue of, for instance, the truck
22 drivers coming on the property or other visitors, short-term
23 contractors that don't come on a regular and frequent basis,
24 how to handle that has always been one of the biggest
25 problems that we've seen when addressing training plans,

1 when addressing training.

2 A lot of plants handle it with signage. I think
3 in some cases, when you look at smaller sites where there is
4 no gate guard, there is no gate, and it's two or three miles
5 into the office, they're already exposed to the hazards
6 before, you know, they've had an opportunity to get any
7 training, so maybe signage might be the way we want to go on
8 those rather minimal requirements.

9 But it's not clear in the regulations exactly
10 what that requirement is. You can read in Part 48 what
11 hazard training must consist of, but, of course, there's no
12 way to test the effectiveness or if a person even sees a
13 sign driving in. So I think that has to be amplified in the
14 regulations, to make sure everybody is meeting the spirit as
15 well as the letter of the law on that particular issue.

16 The training plan issue that was raised early
17 this morning, I think it would be a good idea for MSHA to
18 give -- if not a form type program with a cafeteria style,
19 like was mentioned this morning, some better guidance. I
20 know in Part 48, it names the issues of information that
21 must be provided, but these guys aren't in the business of
22 putting together long federal required documents.

23 We came up with one that we've used here in
24 Texas, and with minor modifications, it's been generally
25 accepted by MSHA as being a good basis. Well, if we can do

1 it here in Texas, then I think it might be something that
2 certainly could be done on a federal level, where you could
3 have them kind of fill in the blanks.

4 You're not asking for lesson plans. I don't know
5 whether you want to do that or not, but for a training plan
6 addressing the issue or the courses to be taught, how
7 they're going to be taught, the course objectives or subject
8 objectives, and the evaluation methods and the training
9 methods, fine. That could be done on a federal basis.

10 When it gets down to individual lesson plans for
11 teaching those courses, that would be, you know, something I
12 don't think anybody wants to get into right now, as far as
13 having any regulation over that. But a general training
14 plan on how they should approach it, with options that they
15 could pick from, I think might be a good idea.

16 The issue always comes up, especially from those
17 of us in the federal grants program: How can you
18 effectively and cost efficiently train people when you're
19 hiring one or two at a time and doing this 24-hour training?
20 That has always been a problem for us.

21 Even going to a small mine site in Amarillo when
22 we're based out of Austin, to do two or three people, would
23 not be very cost-effective to the state grants program.

24 The issue wa raised this morning about a form of
25 criteria-referenced instruction through interactive CD-ROM-

1 based computers. That, I think, might be something that has
2 to be considered in lieu of the mandatory minimum hours of
3 instruction.

4 Under that, you set the criteria in the program
5 that the men must be tested on, and they don't even realize
6 that they are being tested on it, the way some of these
7 programs are designed. OSHA's been using a lot of those
8 programs.

9 And if the person can get through and has the
10 knowledge, minimum knowledge required by the regulations,
11 then if he can do it in four hours rather than eight hours,
12 so be it. Make it responsive to the subjects he must know,
13 the knowledge he must have, rather than some arbitrary
14 eight-hour thing.

15 We've already eliminated the requirement that
16 each subject have an hour assessment to it, and say, Well,
17 the training in total for all those 12 or 10 subjects must
18 be 24 hours for new miners and 8 hours for annual refresher,
19 but we don't say that you have to spend 30 minutes on
20 explosives, two hours on this or that, even within the
21 training plan anymore.

22 So why do we carry that further into the entire
23 minimum requirement for annual refreshers, if we set up some
24 criteria to judge whether they have the knowledge, which
25 could be for those companies that have the technology, the

1 ability to apply this interactive criteria-based training.

2 MS. ROMAN: On the instructors' training course,
3 that issue has also been raised. We would strongly like to
4 emphasize consistency. We would very much appreciate
5 guidance dealing with consistency.

6 What the instructors' training course should be,
7 what it should include, the subject matter, the curriculum
8 has been addressed several times. There are many programs
9 out there.

10 They are all different, so what each person gets
11 in terms of preparation is not consistent, and we have
12 experienced how that consistency -- how that lack of
13 consistency has affected via training.

14 And other people have already commented on how
15 ineffective some of the training has been, either training
16 they have received or training they have done, where people
17 are falling asleep, where people don't care.

18 Because of these comments that have already been
19 made, we strongly believe a curricula developed by MSHA is
20 strongly needed, so that people out there doing the training
21 are not just out there to fulfill a requirement. They
22 are -- the whole purpose of training is effectiveness in
23 terms of keeping people safe.

24 And popping a video in a TV for 15 minutes or 45
25 minutes is not going to cut it. It's just not going to cut

1 it, if we're talking about effectiveness. And several
2 people have raised the issue of effectiveness.

3 So because of that issue, we strongly feel the
4 ITC course has to be something which gives the industry
5 guidance on how to be an effective trainer for the purpose
6 of reducing safety and health problems.

7 MR. MURRAY: There is another issue I'd like to
8 bring up, and that is we get calls virtually weekly, two or
9 three calls a week. The contractor -- and it was mentioned
10 this morning -- calls an operator who's asking for bids from
11 contractors to come on their property and do some sort of
12 work.

13 And he says, the operator says, We've got to have
14 this 24 hours of training or this 8 hours of training.
15 They're not really sure. And they say, They gave us your
16 name, and they want us to do the training for them.

17 We have to go back and say, Well, are your people
18 experienced in heavy industry and so forth? Well, yes;
19 they've been doing whatever they do for a number of years.
20 Well, under the criteria, as I understand it, in the CFR, it
21 is basically up to the operator to decide whether they are
22 newly hired, experienced miners, or must go through the 24-
23 hour training as new miners.

24 And the criteria is not clear to the mine
25 operators how to make that decision. And basically if they

1 call us and ask us, from what I've gathered over the years,
2 we have to say it's based on an individual basis, but that's
3 not a very satisfactory answer, when they might be sending
4 different crews out during different periods of their
5 contract. And that makes for an extreme burden on the
6 contractor.

7 They tell them that, You've got to do the
8 training. Well, obviously if it's site-specific training,
9 they have to get involved with the mine operator, if they're
10 a contractor, to get that site-specific training. How do
11 they do that?

12 Well, we tell them, either they have to have
13 their people sit in on training being done by the mine
14 operator, or they have to get a certified trainer, which
15 means they have to come to us and get one of their
16 contractor people certified as an MSHA trainer, and, again,
17 they don't have true mining experience, only in their
18 contractor field.

19 Then they have to go back, file their own
20 training plan, and do training under that training plan, but
21 then it's an aborted or a truncated form of training plan,
22 because they still cannot do the site-specific for the mine
23 operator that they've contracted with.

24 Now, they can send their certified trainer to
25 that miner operator and get that person trained under their

1 plan and then go back and do it, but that gets pretty
2 complex, too.

3 So this whole issue for contractors becomes
4 rather confusing. I've got contractors out there. Every
5 one of their employees has a pocketful of 5023s. They have
6 one 5023 from the contractor himself, who's filed a plan
7 with MSHA and got it approved and they do generic training,
8 the new miner, you know, up to the point of site-specific
9 and the annual refresher up to the point of site-specific.

10 But then every time that contractor sends one of
11 his people to one of several mines that they might be
12 working with, they have to go through site-specific
13 training. Well, if you look carefully at the regulation,
14 that word "site-specific" is not clarified at all. So what
15 is site-specific? You can give training on fire and
16 evacuation in generic terms, or you want to get into it very
17 specific on certain mine sites.

18 And I know deep in my heart it's not being done.
19 Basically what's happening, I think, in a lot of cases is
20 when they show up, they're given what is essentially hazard
21 training, to implement the contractor's plan in order to
22 give them the full coverage.

23 But I think it is necessary that the issues for
24 contractors be clarified. That is one of the areas where
25 we're having a lot of accidents, where people are getting

1 hurt, and I think there's things falling through the
2 regulatory cracks on how that training must be conducted and
3 what falls into that training.

4 MS. ROMAN: One other issue I'd like to bring up
5 is the training in Spanish, which has been -- or bilingual
6 training. We at the State of Texas, our program, we have
7 been providing training in Spanish since we have been part
8 of the program. We translate the Fatalgrams into Spanish.
9 We translate our material that we develop or the material
10 that we receive from the Mine Academy into Spanish.

11 So in preparation to meet or to help operators
12 meet this requirement, because many of the operators that we
13 deal with have primarily Spanish-speaking employees. We
14 would like to see more material, primarily videos, because
15 the video in Spanish really does assist in the training. We
16 would like to see more material, primarily videos, being
17 offered by the Academy or by MSHA, in the language -- in
18 Spanish language.

19 We do a lot of translation ourselves. We do all
20 of the training or most of the training in the state of
21 Texas in Spanish, but we do need more assistance, especially
22 with these new requirements, because the mom-and-pops out
23 there who are not fulfilling the requirement currently and
24 who are the ones who have the Spanish-speaking employees are
25 going to be the ones who need the most help.

1 MR. MURRAY: The Academy role as far as providing
2 training materials, I think, is very important and should be
3 much more publicized and incorporated into the regulations
4 than it is now, so that they know where to get certain
5 material.

6 I would also like to say with regard to the
7 training certification for MSHA instructors, MSHA does
8 provide a basic lesson plan for doing the instructor
9 training course, which involves basically teaching people
10 how to teach. It does not address specific issues of what
11 is going to be taught.

12 But even there, it does not dictate how quickly
13 that course can be done. We do it on a three-day basis, and
14 as a method of evaluation, we videotape a presentation that
15 is required for them to become certified. But that's
16 certainly not in any form of regulation, and it's given to
17 the individual student at the end, to do with as he or she
18 desires. So it's not evaluated by anyone else.

19 There is no set regulatory criteria to say what's
20 pass or fail in this course, so everybody makes mistakes
21 when they're taking a how-to-train-the-trainer course, when
22 they get up, especially some of the people that are sent
23 that are not used to public speaking at all. And so we
24 can't say that they're not going to do better when they're
25 among their own people, so we're not looking for perfection.

1 But there is no minimum standard addressed.
2 Right now the criteria is primarily based on whether we feel
3 they met certain basic criteria from the lesson plan, as far
4 as coming up with performance objectives, giving overviews
5 and doing an evaluation, and addressing the points generally
6 that they have given in their overview and lesson plan.

7 But there is no criteria there, and as to whether
8 the course could be one day or a week -- I heard somebody
9 say that they have one course that's a 40-hour course on how
10 to do, you know, the training course. That's not
11 established yet either, so that might want to be addressed.

12 That's all I have.

13 CHAIRPERSON ALEJANDRO: Okay. I've got a couple
14 of questions. It wasn't clear to me in your earlier
15 statement, Ms. Roman, what percentage of operators you think
16 are in compliance right now with Part 48. I thought I heard
17 you say that you thought that most of them were, but --

18 MS. ROMAN: Most of the operators in this room,
19 if not all of them in this room.

20 CHAIRPERSON ALEJANDRO: Oh, okay. I guess that's
21 what I'm looking for, is to get some sense for what the
22 breakdown is of operators who are in compliance, you know,
23 for the most part with Part 48 requirements, and what
24 percentage of operators may not be anywhere near to being in
25 compliance.

1 MS. ROMAN: Well, in the state of Texas, 80
2 percent, more than 80 percent of the mine sites are less
3 than ten employees.

4 CHAIRPERSON ALEJANDRO: Right.

5 MS. ROMAN: So if I had to just pick a figure out
6 of the air, I'm going to say at least 60 percent of the
7 operators in the state of Texas are not in compliance.

8 CHAIRPERSON ALEJANDRO: Okay. Not even close to
9 being in compliance; I mean, are not providing any training
10 at all or providing minimal training?

11 MS. ROMAN: Right.

12 CHAIRPERSON ALEJANDRO: Okay. You also
13 mentioned, I guess, a generic training plan, to provide
14 assistance to particularly small operators in developing
15 their program. Now, did you say that you have got something
16 along those lines, because if you do --

17 MR. MURRAY: Yes, ma'am. We developed a plan
18 that we use in the instructor training course, to give them
19 a clue --

20 CHAIRPERSON ALEJANDRO: As to what --

21 MR. MURRAY: -- as to what they have to do --

22 CHAIRPERSON ALEJANDRO: -- a plan should look
23 like --

24 MR. MURRAY: -- and it's cross-referenced to the
25 regulations, so they know why they're doing it.

1 CHAIRPERSON ALEJANDRO: Could we get a copy of
2 that?

3 MR. MURRAY: Sure.

4 CHAIRPERSON ALEJANDRO: Okay. I mean, you can
5 either give it to us today or send it in by mail later on,
6 whatever is most convenient for you. Yes. We would
7 appreciate having a copy of that.

8 Let's see.

9 MS. ROMAN: If I can make another comment
10 regarding the instructors' training course, some of the
11 feedback we have received from operators is the need or the
12 desire for a refresher.

13 We have explored the possibility of offering a
14 refresher ITC, like a one-day or something along those
15 lines, because people do recognize that it's been five years
16 or ten years or fifteen years since they have gone through
17 the course, and things have changed.

18 So maybe addressing or thinking about the
19 possibility of, within the ITC requirements or standards or
20 whatever it is you decide upon, to have some type of
21 requirement for a refresher.

22 MR. MURRAY: That might go along with what was
23 raised earlier, where you've got dead people on the rolls as
24 certified trainers, that would check out -- I don't know how
25 MSHA would say that a trainer is qualified or not qualified

1 today, because inspectors don't have time to sit in on
2 classes, as you know.

3 They're shorthanded enough, so to send them out
4 on a special mission to watch one trainer at one mine site
5 do training is a little unrealistic. But maybe some follow-
6 up -- and most of them are asking for it -- I will say
7 this -- and they would like a more content-based refresher
8 than so much going over the fundamentals of teaching.

9 They want to say, Well, what's a better way to
10 teach accident prevention. They want to get more specific
11 sometimes in a follow-up type training.

12 CHAIRPERSON ALEJANDRO: Okay. I just have one
13 other question. You indicated that some guidance or some
14 specificity on what site-specific hazard training might be.

15 MR. MURRAY: Exactly.

16 CHAIRPERSON ALEJANDRO: Do you have any
17 suggestions for how we might define that or what we might
18 require?

19 MR. MURRAY: I would prefer to defer to the mine
20 operators themselves on that issue. I could come up with
21 some, but I don't think I'm prepared at this point to give
22 any details. Obviously there are some generic portions,
23 most of the topics that are addressed under annual
24 refresher, but I think I could very easily, based on the
25 questions I've heard over the years, determine what type of

1 site-specific questions. I'd be glad to provide that.

2 CHAIRPERSON ALEJANDRO: Rod?

3 MR. BRELAND: I want to follow up on a couple of
4 things. One, Ms. Roman, you talked about in general people
5 want us to stay as much like Part 48 or similar as possible.
6 I assume that's in the training requirement, not in the
7 recordkeeping area.

8 MS. ROMAN: Both.

9 MR. BRELAND: Both?

10 MS. ROMAN: Uh-huh.

11 MR. BRELAND: Okay. In using the same kind of
12 format, the 5023s and stuff? That's the feedback you have?

13 MS. ROMAN: I didn't get too much specific
14 feedback, specifically on 5023s, but the comments we've
15 received are, I want to make as little change as possible to
16 what I'm doing already.

17 MR. BRELAND: Okay.

18 MR. MURRAY: One thing I would add: Back in
19 1985, '86, the Mining Academy came up with a computer-based
20 5023 form, and it was not Windows-based. It doesn't work on
21 most computers today, and the man that designed it has been
22 transferred somewhere else, so they don't claim to know
23 anything about it now.

24 I still have one copy left, and I would loan
25 that, up until a few years ago, and I never heard back from

1 people, saying it wasn't working on some of the newer
2 computers. But that should be a basis. Like the man said,
3 MSDSs now can be put on computers; why not the 5023. And
4 that would certainly, especially for the larger operations,
5 where it really becomes a burden, keeping all those
6 individual booklets, would be a real godsend.

7 MR. BRELAND: You talked about the time related
8 for training not being hours but the subject.

9 MR. MURRAY: Competency rather than minimum
10 hours, if you will.

11 MR. BRELAND: You know, some of the comments
12 earlier, you're talking about that have to relate to tasks
13 and maybe the person's capability or their prior knowledge
14 to some of it, or are you talking about in all subjects,
15 even the general --

16 MS. ROMAN: Well, for instance, any subject that
17 you're going to teach, you've got to come up with certain
18 performance objective that you're trying to get across to
19 the student. Those can be built into some form of
20 assessment in a computer-based training, to see if that
21 person is being trained through that, knows that
22 information, and that meets question that most people are
23 asking: How do we test the effectiveness?

24 I'm not proposing that we get into pre- and post-
25 testing, you know, after we do platform training. But most

1 students I've heard from that have taken tests on these
2 interactive computers, they don't really feel like they're
3 being tested, because if they miss the question, it runs
4 them back through the program again, until they get the
5 answer right.

6 And that's why sometimes they can get through it,
7 especially on annual refresher. Some of those guys, it's
8 not a question of the information that they have. They've
9 been trained; they know it. When there's a noncompliance,
10 in many cases, you and I both know what the reason is. It's
11 non-enforcement by the operator themselves.

12 And so if they've got the knowledge, why waste
13 the money having them sit in a classroom for eight hours, if
14 it's not a training problem? And that's why I say
15 criterion-based training would be much more effective, where
16 the minimum criteria of information that they have could be
17 assessed.

18 MR. BRELAND: Okay.

19 MR. MURRAY: If they meet that assessment, then
20 they can go back to work.

21 MR. BRELAND: Do you have some suggestions on
22 development of that minimum criterion? Is that something
23 you're doing?

24 MR. MURRAY: Yes. It would take almost something
25 like this, where the professionals in the field that are

1 doing a lot of the training could sit down very easily --
2 and the Academy people -- and develop criteria on each one
3 of those subjects that we're talking about.

4 MR. BRELAND: If you had some ideas or examples,
5 that would probably be good to submit.

6 MR. MURRAY: Okay.

7 MR. BRELAND: If you have ideas also for the
8 requirement for -- you mentioned the refresher training, I
9 think, Elsa, of the trainers themselves. There's a two-part
10 issue or question on that. One, you say there's this
11 multiple of types of instructor training courses that are
12 going on.

13 If you have a more favored one, you should make
14 that known, what it is. And if you have a means that you
15 think is effective for assuring that trainers are staying
16 current or doing effective training, those suggestions would
17 be of interest to us as well.

18 The other thing, on the bilingual training, you
19 said that you do most of the bilingual training in Texas.
20 You mean, most of the training you provide is bilingual, or
21 you do most of the bilingual training that is done in the
22 state of Texas?

23 MS. ROMAN: I would say that we do most of the
24 bilingual training that is done in the state of Texas.

25 MR. BRELAND: Okay. So you spend a great deal of

1 your time doing that, your work group themselves.

2 MS. ROMAN: Yes.

3 MR. BRELAND: Okay.

4 MS. ROMAN: And we have noticed over the years,
5 as people have become more familiar with who we are and with
6 what the requirements are, the percent of training we are
7 doing in Spanish has steadily increased.

8 MR. BRELAND: Okay. How about the materials?
9 You say you do some translation, and I was aware of that,
10 with Fatalgrams and some other things.

11 MS. ROMAN: Uh-huh.

12 MR. BRELAND: But are you sharing that back with
13 the Academy now?

14 MR. MURRAY: In fact, in the Academy's products
15 catalog, they have listed some of the videos that we've
16 translated into Spanish. They're basically the same video
17 with just voice-over in Spanish.

18 MR. BRELAND: That's all I had. Thank you.

19 MS. ROMAN: And we do provide Fatalgrams free of
20 charge to anyone in the state of Texas, and we also provide
21 them to other state grants programs, so that they can share
22 them as they wish.

23 MR. BURNS: Have you had discussions with the
24 Academy about producing the videos in Spanish and English,
25 you know, when they start, because it's not the same -- I

1 mean, I've done that myself, gone from English to Spanish,
2 and it's not the same thing as developing it originally in
3 Spanish.

4 MR. MURRAY: We certainly are not in --

5 MR. BURNS: Sometimes you have to stop the
6 video --

7 MR. MURRAY: -- the, you know, production of
8 videos. What we did was offer a while back to do the voice-
9 over for that, and that's as far as we've gone on that
10 issue. But it would be something that the Academy certainly
11 has the facilities to do. Whether they have the personnel
12 to do it, I'm not sure.

13 MS. ROMAN: The latest videos in Spanish from the
14 Academy really have impressed me in the quality of both the
15 video and the translation, because we take a look at
16 hundreds of videos in Spanish, and I'll tell you that the
17 vast majority of them are really not that great.

18 So obviously the Academy has found a resource to
19 do that for the industry, and if they would continue to do
20 that, it would be really great.

21 CHAIRPERSON ALEJANDRO: That's been recently,
22 that the quality has improved?

23 MS. ROMAN: The last year or so. Yes.

24 MR. BURNS: Okay. I guess the only other
25 question I had for you was the issue of the contractors. Is

1 that an issue that is brought to your attention pretty
2 regularly?

3 MR. MURRAY: Very regularly. I would say there's
4 hardly a week goes by that I don't receive at least one call
5 from a contractor who has just applied to work on a mine
6 site, and he wants to know what he has to do to comply, and
7 the regulations are very confusing.

8 MR. BURNS: Yes. Okay. That's what I wanted to
9 find out, how big of an issue that really is.

10 MR. MURRAY: And, of course, we don't know how
11 many contractors are out there, because of the way the
12 system works. If you ever apply and get a number, then
13 you're on the list forever.

14 MR. STONE: I just have a couple of questions
15 really of clarifications of previous questions. One has to
16 do with your statement concerning Part 48 and the requests
17 of operators that the new regulation be as similar to Part
18 48 as possible.

19 At the same time, we are hearing requests for
20 more flexibility in the rules, and you also expressed a
21 desire to have the regulations themselves clarified, so that
22 the language is clear, so that, for example, for contractor
23 training, it becomes easier for them to understand what they
24 must do to be effectively trained.

25 It seems to me that these are not necessarily in

1 conflict. The greater flexibility is not necessarily in
2 conflict with being as close to Part 48. The fact that
3 someone might be able to comply with Part 46, the same way
4 they comply with 48, doesn't mean that they couldn't comply
5 through some other means that might be more flexible or
6 easier.

7 MR. MURRAY: I think we are saying that they'd
8 like it easier, not harder, so they'd like less subjects
9 rather than more, at least the same subjects.

10 MR. STONE: Right. Okay.

11 MR. MURRAY: That's what, I think, we're saying.

12 MR. STONE: Okay. But the point was that the
13 fact that you're requesting it be similar to 48 doesn't mean
14 that you want the language to be identical. You want it to
15 be clearer or more flexible, but still effective.

16 The other question -- maybe I just didn't
17 understand what you said earlier. You said that you believe
18 about 60 percent of the small mines in -- aggregate
19 operations in Texas currently provide -- don't comply or
20 provide no training at all. I didn't understand which
21 one --

22 MS. ROMAN: Don't comply with the Part 48
23 training parts.

24 MR. STONE: Don't comply. Okay.

25 CHAIRPERSON ALEJANDRO: Substantially don't

1 comply?

2 MS. ROMAN: Substantially don't --

3 MR. MURRAY: I would have to say so. I've made
4 calls to a lot of them -- and they're mom-and-pop
5 operations -- and a lot of the families are the employees,
6 and they just don't see the need. It's --

7 CHAIRPERSON ALEJANDRO: They're really not doing
8 any kind of training at all.

9 MR. MURRAY: Basically they say they know how
10 to -- they've been working around here, haven't been hurt
11 since '73, so -- that's when he lost his leg.

12 MR. STONE: And a related question: One of the
13 first things that you said, I thought, was that most are
14 already in compliance with Part 48. Is the "most" -- I
15 didn't understand --

16 MS. ROMAN: Most of the people in this room.

17 MR. STONE: That was your response. I'm sorry.
18 Okay. That's it. That was my only other question.

19 CHAIRPERSON ALEJANDRO: Anything else?

20 (No response.)

21 CHAIRPERSON ALEJANDRO: Thank you very much.

22 We have reached the end of the individuals who
23 have signed up to speak, and I would like to ask now if
24 there is anyone in the room who has not spoken, who would
25 like an opportunity to come up here and make some -- yes.

1 MR. SUMMERS: My name's Don Summers, on-site
2 safety and safety consultant. I've had the privilege of
3 being on both sides of the fence with MSHA, as well as the
4 independent contractor. I guess my first question: Are we
5 going to change the Mine Act to comply with Part 46 and Part
6 48?

7 We was talking about the inspectors coming out
8 and advising. I don't think the Mine Act allows the
9 inspector to do this.

10 As working with contractors, I think the training
11 plans should be submitted, should be individually for that
12 particular contractor. We go on Part 48, and we talk about
13 explosives and the eight subjects or nine subjects that's
14 required by law to be covered under Part 48 training.

15 For instance, an Anthony Crane or a small
16 operator might not have the explosives; they might not have
17 the high walls to contend with.

18 We have a certain amount of subjects that's
19 required by law to cover, and it doesn't apply. It's not a
20 rubber stamp. It doesn't apply to everyone. So we need
21 flexibility for each contractor. We can't have just a
22 stamped plan and everybody falls into the die. That doesn't
23 happen.

24 I've had the fortune of going to about 22 states,
25 all the way from Washington State to Florida, from Minnesota

1 down in Texas. Each district we go through, whether it be
2 metal/nonmetal or coal is a different interpretation.

3 That's a problem with people throughout the United States.

4 How are we going to correct that? I don't have
5 any idea. But it's something that you guys ought to be
6 aware of. That's all I have.

7 MR. BRELAND: I don't have any questions, just a
8 comment. You know, the Educational Field Service group is
9 going to be working with trying to make that more
10 consistent, as far as the differences across district lines,
11 on how we've applied training the past.

12 When you talk about plans that exist, that's
13 something different than the Part 46, but it's all being
14 kept in mind as this is going forward.

15 MR. BURNS: I guess your first statement, you
16 know, we don't have the authority to change the Mine Act,
17 and we're not going to be doing that. But certainly working
18 within the Mine Act, I think there may be some ability to
19 deal with some of the people we're talking about here, to
20 evaluate plans and evaluate what's going on and not
21 necessarily write citations.

22 That could either be done by the Educational
23 Field Service group, who will not be conducting inspections
24 or investigations, and those are the cases where the
25 authorized representative is required to write a citation.

1 So there may be some flexibility within the Mine Act.

2 This is really the first meeting where this has
3 really been raised as an issue, so we haven't had a real
4 chance to evaluate it, according to the Mine Act, but I
5 think there may be some flexibility there, to do that sort
6 of thing, to help the smaller operators or even a larger
7 operator that may not have a complete plan, but is still
8 effectively training people, but there are areas that they
9 are somewhat deficient, to make corrections and improve
10 their plan and not have to be faced with heavy enforcement.

11 So I think certainly Rod's group can do that, and
12 there may be some other opportunities similar to the CAV
13 program, where maybe that can be done, too.

14 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
15 Summers.

16 MR. SUMMERS: Thank you.

17 CHAIRPERSON ALEJANDRO: I'd like to ask again: Is
18 there anyone else in the room who would like an opportunity
19 to speak?

20 (No response.)

21 CHAIRPERSON ALEJANDRO: Is there anyone in the
22 room who's already spoken who would like to come up and
23 address some of the issues that have been raised today?

24 (No response.)

25 CHAIRPERSON ALEJANDRO: Okay. What I'm going to

1 do now is just give you a real short summary of some of the
2 comments we've gotten at some of the other meetings, and
3 also give you an idea of what comes after this, as far as
4 the rule-making process is concerned.

5 As far as MSHA approval of training plans, we
6 have gotten some comments that plans should be submitted to
7 MSHA for approval as they are currently under Part 48,
8 whereas other commenters have suggested, as was suggested
9 here today, that minimum criteria be set in the rule or in
10 some other fashion, and that if operators meet these minimum
11 criteria, that the plans would be considered to be approved.

12 As far as minimum training increments for --
13 particularly for refresher training, we got a lot of
14 comments, suggesting that the 30-minute or more restriction
15 that's currently in Part 48 not be adopted in Part 46, and
16 that short periods of training should be allowed to be put
17 towards compliance with the eight-hour annual refresher
18 training.

19 As far as independent contractors, I mean, we got
20 a lot of comments today, as we have at some of the other
21 meetings, talking about responsibilities of contractors
22 versus production operators for training for employees of
23 contractors.

24 And we have had a lot of production operators or
25 operators state that independent contractors should be

1 responsible for the comprehensive training for contractor
2 employees while the production operator would be responsible
3 for site-specific hazard training for those employees.

4 And, again, the whole issue of categories of
5 various types of employee: Who is a miner, for purposes of
6 training, and who must receive the 24 hours of new miner
7 training or the 8 hours of annual refresher training? Who
8 should get site-specific hazard training? We've gotten a
9 lot of comments indicating that those categories of
10 employees should be specifically set out in any rule that we
11 develop, and that it is clear who needs to get what kind of
12 training.

13 We've gotten a lot of comments, saying that the 8
14 hours of initial training of the 24 hours of new miner
15 training, which is required in Part 48, should not be
16 adopted into the Part 46 training requirements.

17 A lot of people have pointed out that some of the
18 mine sites that will be affected by this rule are very
19 small, and that it is really not necessary to require 8
20 hours of the comprehensive, initial new miner training
21 before a miner is allowed to begin work, and that it should
22 either be a lesser period of time, such as 4 hours or 2
23 hours, or cast in terms of specific areas that need to be
24 covered before a miner can begin work.

25 I would say we've had pretty unanimous agreement

1 that supervisors should receive the similar training to what
2 miners are currently required to receive under Part 48, and
3 as many of you probably know, I mean, there has been a
4 change to Part 48 recently, which brings supervisors under
5 the same requirements as miners.

6 As far as training instructor qualifications,
7 we've gotten a broad spectrum of comments all across the
8 board on this issue. Some commenters have advocated that
9 the rule establish no specific requirements for instructors,
10 that mine operators should have the discretion to determine
11 who is qualified to give miner training, whereas other
12 individuals have advocated that the Part 48 type instructor
13 qualification system be adopted in Part 46.

14 There have been a number of individuals who have
15 indicated that they believe people with the hands-on
16 experience at mine sites can provide very good training,
17 although they may not really satisfy, you know, the Part 48
18 type instructor requirements that are in effect currently
19 under Part 48.

20 We still are taking a look at how we distinguish
21 between new miners and experienced miners. We've gotten
22 some comments today and at some of the other meetings that
23 whatever we put into Part 46, whoever is currently in
24 compliance with Part 48, should not have to alter
25 significantly what they're doing under Part 48 to comply

1 with anything under Part 46. And I think that that
2 consideration will probably have a lot of bearing on how we
3 determine what definitions we develop for new miners versus
4 experienced miners.

5 And we have also gotten a lot of comments that
6 whatever we put together in Part 46 should recognize OSHA
7 training, because you have a lot of crossover of employees
8 and a lot of individuals, miners as well as others, receive
9 training under OSHA, and that we should accept that in some
10 fashion if it's appropriate, as compliance with MSHA miner
11 training requirements.

12 As far as effective date and compliance
13 deadlines, some people have advocated that we give six
14 months after the publication date for compliance with new
15 Part 46 requirements. I would say we have probably gotten
16 more suggestions that the deadline, the compliance deadline,
17 looked more like a year, to allow the industry and affected
18 individuals to come up to speed with what we may require.

19 I think that that probably pretty much summarizes
20 the main areas, the main issues that we've gotten comments.

21 As far as what happens next, as I indicated in my
22 opening statement, we're intending to develop a proposed
23 rule that will be published in the Federal Register sometime
24 in the early spring of this year.

25 We've got a very short time deadline, so the

1 sooner the better, but obviously it's going to take some
2 time to develop the rule and the preamble that goes with it,
3 and to get the necessary clearances, bureaucratic
4 clearances, within the Department and also within -- you
5 know, from the Office of Management and Budget, which also
6 has got to review the rule.

7 After the rule is published, there is what's
8 called a comment period after that, during which we will
9 hold, I would expect, at least two public hearings, which
10 would be similar in format to the meetings that we're
11 holding now.

12 Written comments will be received during the
13 comment period. Everyone here is encouraged to participate
14 at that time, and after the comment period closes, which
15 will be several months after the publication of the proposed
16 rule, we will then go into the development of the final
17 rule, which, as I indicated, we are expected to develop and
18 publish on or before September 30 of 1999.

19 So that will give you some idea of what our
20 schedule is going to be. You know, keep your eye on the
21 Federal Register, on whatever other means you have of
22 getting information about what is going on in MSHA, for, you
23 know, times and dates and deadlines and things like that.

24 Again, I encourage you, if you've got anything
25 else that you would like us to consider, to submit it to us

1 on or before February 1 in writing, additional comments,
2 suggestions. If you need to know what address to send that
3 to, you can come up to the front. But basically it's the
4 Office of Standards, Regulations, and Variances in MSHA, at
5 the Arlington address, which is 4015 Wilson Boulevard,
6 Arlington, Virginia 22203.

7 If there's anything else, speak now or forever
8 hold your peace. If you have any questions, you know, any
9 additional things that you'd like to discuss with us, please
10 feel free to come to the front at the end of the meeting,
11 which is right now.

12 So thank you very much.

13 (Whereupon, at 12:00 noon, the meeting in the
14 above-entitled matter was concluded.)

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

1
2
3
4
5
6
7
8
9
10

REPORTER'S CERTIFICATE

IN RE: Public Meeting on Mine Safety and Health
DATE: January 5, 1999
LOCATION: Dallas, Texas

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

Date: January 7, 1999

Barbara Wall
Official Reporter
Heritage Reporting Corporation
1220 L Street, N.W.
Washington, D.C. 20005