TRANSCRIPT OF PROCEEDINGS

In the Matter of:)
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DEPARTMENT OF LABOR)
Mine Safety and Health)
Administration)
)
)
PART 46 TRAINING)

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1220 L Street, N.W., Suite 600
Washington, D.C. 20005-4018
(202) 628-4888
hrc@concentric.net

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DEPARTMENT OF LABOR	)Mine Safety and Health)
Administration	)
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Part 46 Training	)

Pittsburgh Airport Marriott
100 Aten Road
Pittsburgh, Pennsylvania

Tuesday,
May 25, 1999

The parties met at 2:00 p.m.

BEFORE: Mr. Robert Aldrich
Mr. Roderic Breland
Ms. Roslyn Fontaine
Ms. Kathy Allejandro
Mr. Kevin Burns

APPEARANCES:

Mr. Ed Elliott
Mr. Marino Franchini
Mr. James P. Lamont
Mr. Harry Tuggle

P R O C E E D I N G S

MS. ALLEJANDRO: Good morning. My name is Kathy Alejandro, and I am with the Mine Safety and Health Administration, with Metal and Nonmetal Mine Safety and Health. And on behalf of MSHA, I would like to welcome you to the third of four public hearings on MSHA's proposed regulations for miner safety and health training.

These hearings are intended to give individuals and organizations, including miners and their representatives and mine operators, both large and small, an opportunity to present the views -- their views on the proposed training regulation, which was published in the Federal Register on April 14, 1999. These regulations would apply at those nonmetal surface mines where MSHA currently cannot enforce existing training requirements.

I would like to take this opportunity to introduce the members of the MSHA panel who are here with me this morning. On my far left is Robert Aldrich, who is with the Office of the Solicitor. To my immediate left is Kevin Burns, who is also with Metal and Non-Mental Mine Safety and Health. To my immediate right is Rosalyn Fontaine, who is with MSHA's Office of Standards, Regulations and Variances. And to my far right is Rod Breland, who is the Western

Operations Manage for the newly formed Educational Field Services within MSHA.

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

In the omnibus budget passed by Congress on October 21, 1998, MSHA was directed to work with the effective industries, mine operators, workers, labor organizations and other affected and interested parties to promulgate final training regulations for the affected industries by September 30, 1999.

These hearings are intended to give as many individuals and organizations as possible an opportunity to present their views on the proposed rule. MSHA will hold one additional public hearing on the proposed rule later this week in Washington, D.C.

This hearing will be conducted in an informal

manner, and a court reporter will make a transcript of the proceedings. Anyone who wishes to speak at this hearing and has not signed up in advance should sign up on the speakers list, which is currently located up here with me, but I will make sure that anyone who wishes to speak will get an opportunity before this hearing closes.

We would also ask that everyone who is hear today, whether or not you wish to speak, sign up on the attendance sheet which is located on the small table at the back of the room as you immediately come into the room.

Anyone who wishes may also submit written statements and information to us during the course of this hearing, which will be included as part of the rulemaking record. You may also send us written comments after the hearing if you wish. The deadline for submission of written comments is June 16, 1999. If you need the address where comments should be sent, please feel free to come up to the panel during one of the breaks and we will give you that information. There are also extra copies of the proposed rule on the table in the back of the room as well if you need an extra copy.

MSHA is specifically interested in comments on certain aspects of the proposed rule, although we strongly

encourage you to comment on any of the proposed provisions. These issues were identified in the Notice of Hearing published in the Federal Register on April 14, 1999, and I will summarize them now.

Definition of Miner. Under the proposal, a person engaged in mining operations integral to extraction or production would be considered a miner. We are interested in whether this definition is appropriate. Workers who fit the definition of miner under the proposal would be required to receive comprehensive training, including new miner training or newly hired experienced miner training, as appropriate.

Plan Approval Process. The proposal would require each operator to develop and implement a written training plan that includes programs for training new miners and newly hired experienced miners, training miners for new tasks, annual refresher training and hazard training. Plans that include the minimum information specified in the proposal would be considered approved and would not be required to be submitted to MSHA for formal review. Miners and their representatives would also be given the opportunity comment on the plan before it is implemented or request MSHA to formally review and approve the plan.

We are interested in comments on whether this proposed approach is appropriate or whether any commenters believe a traditional plan approval process, similar to the process in Part 48 is needed to ensure the training plans meet minimum standards of quality.

New Miner Training. Under the proposal, no minimum number of hours of training is required for a new minor before he or she begins work under the close supervision of an experienced miner. Instead, the proposal requires instruction in four subject areas before the miner can assume work duties.

We are interested in whether commenters agree with this approach or whether the final rule should establish a minimum number of hours of training that new miners must receive before they begin work.

New Task Training. This proposed rule would require miners to be trained for new tasks and for regularly assigned tasked that have changed. The new task training requirements in the proposal are very performance oriented and do not include detailed specifications for this training. However, we are interested in comments on whether the final rule should include more detail and guidance on the elements of an effective new task training program, and

if so, what areas should be addressed?

Training Instructors. The proposal would not require a formal program for the approval or certification of instructors or establish rigid minimum qualifications for instructors. Instead, training must be provided by a competent person, which is defined in the proposal as a person designated by the operator who has the ability, training knowledge or experience to provide training to miners on a particular subject. Under this definition, the competent person must also be able to evaluate the effectiveness of the training.

We are interested in comments on whether this approach is appropriate.

Annual Refresher Training. Under the proposal, refresher training must include, at a minimum, instruction on changes at the mine that could adversely affect the miners' health or safety. The proposal includes a list of suggested topics that refresher training could cover, but these topics are not mandatory. We are interested in whether the final rule should include more detailed requirements and whether there are any other subjects the commenters believe should be required.

Effective Date and Compliance Deadlines. We are

interested in comments on how much time should be allowed for the mining community to come into compliance with the final rule. One possible approach would be phased-in compliance deadlines where some of the rule's requirements would go into effect at different stages. We understand that there will be a very large number of operations coming into compliance simultaneously, and we wish to allow a reasonable amount of time for the transition.

Costs and Benefits of the Proposed Rule. We are interested in comments on all elements, including methodology, assumptions and data of our analysis of the costs and benefits of compliance with the proposed rule.

Now I'd like to introduce the first speaker this morning. We ask that all speakers state and spell their name for the court reporter before beginning their presentation. Thank you very much.

Now, we do have one speaker who has asked -- has got commitments that he needs to get away for. And we do already have two people signed up, but I wanted to ask if it would be possible to let Harry Tuggle speak first so that he can leave early and go and take care of his business. Does anybody -- Mr. Franchini and Mr. Lamont are the other speakers who are signed up. Do you have things that you

need to get away for? Is that okay?

Okay. The first speaker will be -- thank you very much. Harry Tuggle from the United Steelworkers of America.

MR. TUGGLE: First, thank you, gentlemen and the parties for allowing me to step in like this. I've got some other commitments that came about today.

And secondly here, I certainly want to thank the agency for the opportunity to get into this proposed rule, and to the extent that the proposed rule has now moved along, and I think in a very appropriate fashion and touching on the very issues raised by a number of parties on this matter already.

And I'll also thank the mining community for all the comments that's been coming forward. And that would be including the Industry Coalition for Effective Miners' Training which has helped move this thing along.

Without getting into any of the rhetoric about this rule being long overdue, I think that issue's been brought about and discussed many times. We'll simply go right to the subject of -- our comments on the section -- somewhat a section-by-section basis.

I wish I did have a prepared document for you right now, but we're going to -- with these other

commitments which is interfering, but also want to wait and see what all comments comes out of these hearings to see if it would be necessary to amend our given comments or speak on something that may be raised that we didn't even -- haven't even touched on.

On the issue of experienced miner, and I guess if you study it fairly closely, don't have a whole lot of problem with the definition there. But it would seem to be able to read a little more clear. Talks about first, a person who is employed as a miner on April 14, 1999. And I guess -- obviously, that would be on or before. Simply states that if you're hired on that date, you're a miner, and possibly if you're not hired on that date, you're not a miner.

It goes on to explain that being hired after -- the person hired after the date, both before the effective date of the final rule and has received his miner training, it refers to under the proposed requirements published April 14, is it speaking -- and, I have to ask a question. Is it speaking to these -- this particular rule set forth?

MS. ALLEJANDRO: Right. And the reason that it reads so oddly -- I mean, I'll tell you the background is the Federal Register which publishes the document has got

pretty strict rules about what you can and cannot do as far as -- they call it incorporating by reference. And originally, we had it more clear than that in an earlier draft. But what that means is the requirements in their proposed -- and the document that was published on April 14 in the Federal Register.

So that's what we're referring to, those requirements in front of you.

MR. TUGGLE: Okay. That was under Item 2 or II. Under III, then it goes on to the miner who has completed 24 hours of training under the 46.5 of this part or 48.25 of the title and completed 12 months of surface mining. This -- and again a question. Could this, the hiring of a newly experienced miner, fit within that category?

MS. ALLEJANDRO: A newly hired experienced miner?

MR. TUGGLE: Yes, newly hired experienced miner.

MS. ALLEJANDRO: I guess I'm not sure what -- do you understand the question?

MR. BURNS: Well, under this rule and it's similar to the change that they made in Part 48.21, once you're an experienced miner, you're experienced for life. So if that person came back to work, they would fit into the category of newly hired experienced miner.

MR. TUGGLE: I simply begin to, I guess, confuse that paragraph with the discussion on the -- on new miner -- this discussed later on here in the standard as to how it was, you know, being applied.

MR. BURNS: I guess -- Harry, part of the reason why this is a little bit more confusing than it normally is. And that wasn't that clear. And that wasn't that clear, but the idea here was in the past, there was a gap between when the rule was proposed and the final rule. In the past, people were considered experienced miners if they were working on or before, you know, the date of the final rule. So that -- part of that was put in there to somehow have a mechanism so that people are being trained between now and when this final rule comes out.

So it's added some confusion, but I think -- that's -- you know, that's the idea of part of what's in there, and it has added some confusion. But I think the net benefit is that it gives some guidance to some miners out there to do some effective training between now and when the final rule comes out. But it has made a confusing definition even more confusing.

MR. TUGGLE: Yes. I guess going from II there to anyone hired after the date of the proposed rule and who has

received training under these guidelines or Part 48.

MS. ALLEJANDRO: Yes, I think the idea was that -- I mean, somebody who was hired after that date and if they get training consistent with the requirements of the proposal. Or, if they get training under Part 48, then they would be considered an experienced miner under that definition.

MR. TUGGLE: Right.

MS. ALLEJANDRO: And so, the idea is to give people an opportunity to get a jump on training before the final rules comes out. That was -- I think that's the primary reason behind that requirement is they want -- if they want to give training now --

MR. TUGGLE: I guess my problem is when you go into II --

MS. ALLEJANDRO: It started to get confusing?

MR. TUGGLE: Well, it starts to -- it's basically saying this person, you know, that's had training under 46.5 or 48.25 must also now have 12 months. I mean, it's -- I mean, where does the 12 months come from in when the two --

MS. ALLEJANDRO: Actually -- no, they don't need to have the 12 months. I mean, if they were -- if they were hired after April 14 and they have gotten new miner training

under 48 or under the requirements in the proposed rule, then they would be considered experienced. And then it says "or is" for iii, and then the 12 months of experience would kick in for miners who don't fit within any of the preceding subparagraphs.

Does that answer your -- I know -- I mean, what this conversation is telling me that this is less than clear. I mean, we need to maybe make this a little bit clearer.

MR. TUGGLE: Yes, because the iii goes -- it says the 24 hours of training under the 46.5 of this part or the 48.25 and --

MS. ALLEJANDRO: Right --

MR. TUGGLE: -- who has completed 12 months.

MS. ALLEJANDRO: Right. And that's for miners who have -- were not hired within the specified period of time. I mean, basically, this sets forth three different ways a miner --

MR. TUGGLE: Oh, would this be referring --

MS. ALLEJANDRO: -- could be experienced --

MR. TUGGLE: -- after the effective date of the rule then? I mean, that would make it clearer.

MS. ALLEJANDRO: Okay. Well, that may be

something that we should consider then.

MR. TUGGLE: Okay.

MS. ALLEJANDRO: You know, put in a date here for subparagraph iii to be clear which miners. I mean, hired on what date.

MR. TUGGLE: I was confused about where they fit.

MS. ALLEJANDRO: Yes.

MR. BURNS: It isn't clear. You're right.

MR. TUGGLE: Okay. Then, going to C(2) under the definitions, it talks about once a miner is experienced, miner of a section, they will retain that status permanently and -- I guess to most -- under most circumstances, that's appropriate and correct way of looking at it, except -- well, looking at -- what if there's a break in mining surface like three years away from the industry or five years away from the industry? I mean, when you say in here permanently, he just comes back and goes into annual refresher training?

MS. ALLEJANDRO: Well, actually, on the way the proposal is set up, a newly experienced -- newly hired experienced miner would come back and would be required to receive instruction in the four areas that a new miner would be required to receive instruction in, and then would also

be required to get annual refresher training within 90 days. So I guess the answer is not no, not exactly. I mean, when he comes back -- he or she comes back, they would be required to get some specific training before they resume work.

MR. TUGGLE: Okay. Just wanted some qualification on that.

On the definition of task, it says that a task is a component of a job that is to be performed on a regular basis. And a task -- when you get into the definition of task under -- whether you're talking about under the Act or on over when it talked about task training, task is a component of a job that may or may not be performed on a regular basis.

MR. BURNS: Okay. You're talking about maybe some sort of maintenance work where you pull somebody off to help? It could be a one time deal for that person?

MR. TUGGLE: Yes, it could be a one time for that person, or it could be -- exactly. So it may or may not be, you know, performed on a regular basis.

And to the provision on -- paragraph D, the extraction or production, and maybe I should get some of my other papers here. Specifically, looking at the last

sentence, and we would like to possibly see within that last sentence of the definition that extraction or production also includes the associated routine maintenance of equipment and haulage of these materials at the mine.

Later, in the preamble, it says that we intend the definition of miner includes those workers whose activities are related to the day to day process of "extraction or production." And maintenance around that equipment is integral to that operation and you know, the man or person may never, you know, move a piece of rock for any reason. It's just nuts and bolts around the equipment that moves the rock and material.

And in the definition of miner under G, again, it says, "Miner integral to extraction or production." And the same issue here that it would apply to the various people out there in the mining front area, for a lack of a better term at this time, or active mine area. Whether doing maintenance, whether doing labor, whether doing extraction, whether doing production, whether they're doing ditch-digging just to drain water, it has nothing to do with extraction or production, but they are in the vicinity of the hazards.

On the definition of, I guess, simplification of

rules to read a little more plainly or clearly, I have mixed -- somewhat mixed emotions here on the "we" or "us" and "you" issue. Sometimes that can be -- appears, especially where you use "you" when it talks about two different parties. And I think it's necessary to somewhat keep those particular two parties when possible separated within the standards so they knew who it's being directed at.

Number one, I don't think production operators should be "totally responsible" for the contract miners when the contractor, you know, should be responsible. And then it says you, and then when the inspector finally gets there, they're saying, "Which of you? Which of us are you talking about here?" Well, the one that gets the citation. That's what I'm talking about is generally the way it comes down.

But I think -- it could be read like this, but certainly like you to continue to take a good look when it gets over into the areas of mine operators and the training that's required I think is where some of the confusion about the responsibility might lie. And take a somewhat close look at that.

Under Section 46.3 of the training plans, number one, we think the agency -- the agency's approach on this -- core approval is quite appropriate. Under paragraph B, I

1 think it -- because also, pursuant to the preamble, I think
2 that paragraph B could also be made even a little more clear
3 to the operators on the basis that -- it says right now that
4 a training plan is considered approved by us if it contains
5 at minimum such and such information, one through five.
6 Looking somewhat for the agency's consideration of
7 an added word, I don't know, unofficial approval or some
8 form or term there letting them know that if, you know, if
9 it hasn't been questioned early on by miners or miners'
10 representative and submitted to the agency for whatever
11 reason for comments or approval, in general. Just letting
12 it be a little more clear that they just don't simply submit
13 it into the agency, or when the agency does come by, that is
14 has to meet these criteria then and ask for the plan, be it
15 regular inspections then or whatever, versus the agency
16 being inundated with 10,000 plans here when we're trying to
17 just get off of the flight deck, as it is anyway.
18 Subparagraph 2 there under 46.3(c), let me just --
19 if you'll bear with me, just let me catch up with myself and
20 my notes here. On the paragraph (c), I guess it becomes a
21 question here again, back to the agency just for clarity for
22 our final comments on this. It says that a plan that does
23 not include the minimum information specified in (b)(1-5),

then must be approved, you know, through the regional manager and eduction department so forth. Our field service division, and so forth.

If an inspector should go out on a property and find that a plan does not meet approval, there is plan laying there, is it the agency's approach then that he simply has to -- there's no violation or citation? That he simply has to submit this to get into compliance? Is that paragraph (c) reads?

MS. ALLEJANDRO: I mean, I think the expectation is if an operator chooses to do the informal approval and puts together a plan that he or she believes meets the minimum criteria, and an inspector should go out and make a determination that it does not meet the minimum criteria, then I would say that a citation would be issued. I mean, that's my -- and then, the next step would be to either, you know, get the plan in shape where it does meet the minimum criteria or submit it for formal approval by MSHA. I mean, actually submit it. So -- I mean, that -- those would be the two options for the operator, too.

MR. TUGGLE: Well, paragraph 1 here says or paragraph A of the standard --

MS. ALLEJANDRO: Right --

MR. TUGGLE: -- says you must develop and implement a written plan.

MS. ALLEJANDRO: Right.

MR. TUGGLE: If you had nothing there, that would be --

MS. ALLEJANDRO: You would be issued a citation --

MR. TUGGLE: -- in violation.

MS. ALLEJANDRO: Right.

MR. TUGGLE: Paragraph (c) says, "A plan that does not include minimum information is simply to be approved," brought up to speed or whatever, by the division manager then.

MS. ALLEJANDRO: Well, I mean --

MR. TUGGLE: It doesn't say anything about you've violated anything.

MS. ALLEJANDRO: Well, I mean, there's a requirement that an operator have an approved plan. And there's two ways that you can get it approved. You can either have it considered approved because it meets minimum criteria, or you could submit it to MSHA for the -- you know, the traditional review and approval.

If a mine inspector should review a plan and determine that it does not meet the minimum criteria, then

essentially the operator does not have an approved plan and would be cited for that.

Does that make sense?

MR. BURNS: It -- it would. Under both scenarios you came up with, Harry, the way it's written, the operator could be cited under A, because A refers to B and C. So if it's not -- if they have no plan, then they don't comply with B or C.

MR. TUGGLE: Right.

MR. BURNS: If they have a plan that's delinquent in one of the areas, then they're still not in compliance. And so, we cite them under A, also.

And then, C -- C just requires then if -- it gives them the opportunity to submit for approval. That's a voluntary thing since we wouldn't be citing on that, but that would be -- that would be one of the ways that they would -- you know, they -- such a violation is --

MR. TUGGLE: Well, I guess --

MR. BURNS: -- draft up a plan and submit it.

MR. TUGGLE: I guess that's where -- the fashion that is put in then -- because it takes three approaches I view the written document. It's got -- you've got to develop a plan under A, or must have a plan that fits either

B or C.

MS. ALLEJANDRO: Right.

MR. BURNS: Right.

MR. TUGGLE: It would be considered approved if we come and look at it and it meets these criteria, one through five.

MS. ALLEJANDRO: That's right. Or --

MR. TUGGLE: Or, if we come and look at it and it does not include these things --

MS. ALLEJANDRO: But if you've got a letter of approval or some indication that it's been reviewed by MSHA, then that would be okay, too.

MR. TUGGLE: Okay. But it says -- then, it goes on to say that you may also, you know, voluntarily submit this plan for approval. Well, someone that has not voluntarily submitted a plan, and going directly to C, someone that found not to comply as far as having a plan that's considered approved under B -- maybe I'm making this more confusing for myself than necessary.

MR. BURNS: I guess, is your question, if someone knowingly does not comply with B, the minimum, yet they don't submit under C, what do we do with that sort of individual?

MR. TUGGLE: No. I guess my question is, in all fairness, someone that develops a plan under B and in good faith develops a plan.

MS. ALLEJANDRO: That complies --

MR. TUGGLE: That they think complies --

MS. ALLEJANDRO: With B.

MR. TUGGLE: They haven't show it to anybody, but they're training their miners.

MS. ALLEJANDRO: And they think it's a good plan?

MR. TUGGLE: And they think it's a good plan. And six months later, an inspector shows up --

MS. ALLEJANDRO: And says --

MR. TUGGLE: -- say, "I want to see your plan," and it doesn't fit the criteria. I guess not for the culprits but for the good faith effort maybe as went into a plan, I'm also wondering should we really be, you know, mashing this guy's toes because he's -- because he is, in fact, attempting to comply here. And it's only -- I guess it gets into the degree, but you know, if this guy is just a little bit out of compliance on one thing and it has to be submitted for approval, the whole plan becomes under the approval status now, and there's really only one somewhat minor item within that that needs to be changed.

MR. BURNS: Yes.

MR. TUGGLE: And should he --

MS. ALLEJANDRO: I --

MR. BURNS: One of the things we've been talking about under this rule there'd be a compliance assistance or a delay in the effective date where there would be some assistance to operate in this area to make sure -- you know, the first visit might be a compliance assistance visit to see if their plan's correct, and if they need any help in developing a proper plan. I mean, that's one of the things being considered.

It sounds like you recommend that we go ahead and do that, rather than the first being an enforcement action. That the person is trying to comply in good faith, and the first action should be to say, "You need to do this, or you need to do that." And you know, you only get one free bite the second -- you know, if it's not right the next time, then --

MR. TUGGLE: Yes. Something along those lines.

MS. ALLEJANDRO: Yes. Kevin is right. I mean, I think we understand that there's a lot of compliance assistance that's going to be important to making this new implementation of this role succeed. And as far as the

specific plan approval requirement, I mean, our thinking was, I mean, we've got some fairly basic fundamental requirements for plant content.

And I think our expectation is that our operators should be able to satisfy those if they choose to go the informal approval route fairly easily. And obviously, I mean, our people are going to have to be -- the MSHA inspectors are going to have to be trained and get proper guidance in how they go about enforcing this. But I mean, we're interested in your comments, though. I mean, if you believe that -- I mean, maybe that's something that we should address in some fashion in the preamble.

MR. TUGGLE: We'll give that some thought there. Certainly don't have a problem with good faith and fair-minded operators all across the board. The other -- various other operators out there, whatever term you want to use. Renegade on all the issues. And they would have to be handled, I would assume, in a different manner. But we'll look to maybe address or question on this issue a little more clearly in the written comments -- final comments.

46.3(b)(1-5), I guess, had been raised in MSHA's preamble questions on the issue, as to whether there should be more or less information provided or guidance in regard

to the training plan. Well, number one, I think certainly no less and clearly no less.

As far as more and what comments you might receive in more, you know, remains to be seen. I know this -- on all this information that has to be provided in the plans and so forth, can get very compounding and duplicative and everything else if you just say, "Well, we need this and this and this." But no less than what's already presented, and I guess to the degree at the agency's discretion as to comments received as far as bringing on more. Don't have a problem with more, just we don't have any specific proposals at this point in time to say, "Yes, they should be more, and they are these."

On Section 46(d), information to the miners and miners' representative on the operators' proposed plan. In some early on discussions, certainly understand from some that there will be, if not already has been comments in regard that they don't perceive the need for this information to be provided to miners' or miners' reps about the new plan, as it's coming forward here. Or the miners' or the miners' representative comments on the plans at the various operations.

Where we're attempting to agree with a number of

commenters, the coalition itself on some given issues, we would certainly separate on this issue that this information is vital to the miners. It's vital to the miners' representatives to have an input into their own training plan. I think MSHA makes that very clear its purpose within the preamble. That it's a joint effort on establishing a training plan where you -- where have -- where you have those joint relationships.

There has been conveyed to the steelworkers that there's fear here about miners or miners' representatives using the training plan, interfering, interrupting or using it as a vendetta against its operator and causing -- if they -- if you have miners doing that or miners' representatives doing that at a particular operation, they've got more problems at that operation than training plans is going to help correct one way or the other, or interfere with one way or the other. This information again, in short, is vital and necessary to at least give them the opportunity for review as the agency has already proposed.

Paragraph 46.3(h), I believe it is, says, "You must make available at the mine site a copy of the current training plan for inspection by us for examination and also a copy maintained there to be reviewed by us, the miners or

the miners' representatives." Or, the capability to provide it right away. And I think that's quite appropriate probably most every -- most every operation, especially where there' any type of a semblance of an office -- mine office around the property.

There is, I guess, some certain circumstances where you have operators that may have two or three or half a dozen mine site locations, sand gravel locations or whatever it might be scattered around the county or the state or a couple states. And all that's there is maybe a loader and a couple of trucks and a pit and so forth. No mine facility other than information that this is ID'd as a mine. No office facility, as it may be.

I would imagine there would be some -- need to be some flexibility there for the operator to be able to, you know, provide whatever written plan, you know, on a moment's notice or whatever. But if you don't have an office, you can't bring it on a computer screen. You don't have a fax machine there, you can't have it faxed over from the main office or whatever.

Maybe there should be some consideration on the basis in those remote areas. Specifically, that some consideration on the basis that could be provided, mailed

out immediately from -- they could make a phone call and tell them, "Mail this out overnight to MSHA's office. The inspector's here, wants to see it, so give it to him, or mail it to the hotel wherever the inspector's saying." Whatever approach they might want to use there.

Because as we do get into these, you know, thousands of operations, that they are -- by and large, they are small. Some of them are that remote that they don't even have office capabilities right at the sites.

MS. ALLEJANDRO: Mr. Tuggle, on that issue, one of the questions that we asked in the preamble was whether the rule should specify like a deadline for providing those documents if they're not immediately available. Do you think that -- I mean, you suggested several possibilities. Do you think a time deadline without specifying that, you know, what needs to happen except that a copy of whatever was requested needs to be provided to an MSHA representative by --

MR. TUGGLE: Yes, I do. As I mentioned, they could, you know -- surely they would have -- if not cell phones, they would have phone communications around whatever site they got going on for emergency purposes or whatever. If there is a headquarters of where that information then is

kept, that if there's a possibility to -- for that to be faxed to MSHA back to the inspector by phone call and a fax. That could be done within the day.

Short of -- short of the fax system or whatever, as an the extreme I think, overnight mail. That capability exists all over the country. And I think within the following day or the following business day, that that could be received.

MS. ALLEJANDRO: Okay.

MR. TUGGLE: There's no need to -- allowed to -- you know, be drawn out -- and clearly the proposal doesn't even go to that extreme here. It says, "Basic capability to provide." And it's up to the inspector -- says, "Well, if you ain't providing it, you know, here's the paperwork on the other end of it."

On 46.4 on the training program instructions, just briefly, training may consist -- Paragraph B, "Training may consist of classroom instructions, instructions at the mine site, other innovative training methods, alternative training technologies or any combination." And I guess -- and, I don't know where the word "might" specifically fit, or if it would be the right word -- would be "or any as appropriate combination".

There's no way just -- you know, to say a training plan instructions that your training plan is classroom only. "Now, we're taking you out, you know, on the job." There's got to be some sort of combination there, appropriate combination. If you use innovative training methods, alternative training technologies. It's got to be "in combination with instructions at the mine site." It can't be "or instructions at the mine site," I guess is the way I'm somewhat reading this.

On Paragraph E, Employee Safety Meetings, and in the preproposed hearings and in following comments and so forth, the steelworkers had made it clear at that time, they thought that a minimum of 30 minutes, you know, 30 minute segments should be spent on training in regard to annual refresher training or whatever training was being given. And that way it would be worthwhile documented and so forth as far as the timeframe.

I heard many comments that -- from various industry people in the other -- in the prehearings at five minutes, they would like to have five-minute, ten-minute tailgate meetings. Five or ten 15-minute safety sessions. This, that and the other.

And the way MSHA has addressed this it says,

"Okay. If you want to go that route, document it and go that route, and we don't have a problem with that."

Now then, to my understanding in maybe coming about is some of these -- the hearings now on the issue, is that, "Well, they don't want to keep that paperwork now for five, ten minutes and so forth. Can they keep a rolling record and then compile it and so forth?"

We, again, may not have a problem with that, but if it gets out of hand to where an inspector can't, at first glance, see that this amount of training totals eight hours for the year in simple fashion. I mean, you can't spend all morning looking at five minute records, or the compiling of five minutes to make a report for a one-hour session eventually after three months.

As liberal as these regs are attempting to be for the operators in those areas, you've also got inspectors to consider about -- about what they have to deal with out there in trying to figure out, you know, what's been happening here, or was this a training session or was it not? If a miner is not signing off on something that he received this on any particular day, whether it's five minutes or ten minutes or one-hour at a time, each and every time this information was -- for the record, was not

provided.

And how you come about with a rolling amount of time, and "We'll remind the miner. Remember when we talked about this, this and this and this on those days. So here now, sign here. That's what we done all last week or last month, we talked about those." And here, we need our -- bring us up to speed our two-hour session or eventually, our eight-hour session or whatever.

So it's going to be -- it's going to be something we feel that the agency needs to really, really review before turning this loose on a final rule and consider a little more detail about how it might be approached by other commenters. As it stands, don't have a problem with it.

On the new miner training under 46.5 --

MR. BURNS: Harry, could I ask you a question before you --

MR. TUGGLE: Yes.

MR. BURNS: On the -- under Paragraph D where you were talking about training may consist of classroom construction?

MR. TUGGLE: Yes.

MR. BURNS: Was your comment that you believe some of the training must be at the mine site, or were you

just --

MR. TUGGLE: Yes, yes.

MR. BURNS: Okay. That's what I thought. I wanted to be clear. Okay.

MR. TUGGLE: You can use the classroom. You can use virtual reality and show them a mine, whatever you want to do.

MR. BURNS: But certainly they should see the mine.

MR. TUGGLE: But you certainly got to -- it's got to be in combination with mine site, not just oral.

MR. BURNS: Okay. I wanted to be clear on that. I thought for sure you said that. Thank you.

MR. TUGGLE: Under Section 46.5, it's proposed -- Paragraph (c), (2) -- I guess, basically two comments on this -- on this provision here. Number one is, practice under close supervision of a competent person, maybe used to fulfill the requirements and so forth.

Within this area, and I think it's also raised in another area under 46.7(b), the practice under close supervision of a competent person may be used to fulfill these requirements. And plainly and simply, we're looking for the agency's use of a different term here versus the

term "supervision."

The supervision brings it -- with it connotations of the operator, brings with it overlapping of rank and file versus supervision. Don't have a problem with the competent person being a rank and file person, but a different terminology just would simply seem more appropriate in those areas.

MS. ALLEJANDRO: So what you're saying is you don't have a problem with the concept, but you're afraid the term "supervision" may give some suggestion that the competent person is super -- you know, acting in a supervisory, management capacity. Okay.

MR. TUGGLE: Yes. The context, yes. No problem.

MS. ALLEJANDRO: Okay.

MR. BURNS: And that's not the intent. So I mean, I think we can clear that up.

MR. TUGGLE: And there's also -- and, I'm sure there's going to be some issues raised by other commenters at some point, if not already in regard to the close oversight of these new miners, whatever. That we -- you know, we would like to at least turn them loose to work here. You know, we might provide immediate oversight or continuous oversight for a certain period of time. But at

some point in time, to my understanding, they want to release them, you know, fairly early on to go ahead and, you know, do the work.

We don't have a great problem with that as long as it doesn't get into the area of working alone. If they've got -- if you've got experienced miners in the immediate general area where in case of emergency or calls for help or whatever might come about, just general questions and answers about the operations. But if there's people generally area -- we don't want to get it -- into the area whatsoever about working alone standards, you know, where a guy can't be seen, heard. Cries for help cannot be detected, this, that and the other. This guy is not to be put, you know, on an island and made so remote here.

If the agency has any tendency on any comments received about backing away from the term "close and continuously" for his whole 24 hours or whatever, just want to -- you to maintain the contention, we'll back -- we may consider backing away if that's what you do, but not so far that this individual's working alone any time within that training period.

Also, in regard to -- further, in regard to Paragraph D, says, "within 60 days each new miner begins

work, must provide training." A lot of comments here are based on some previous discussions and things heard about the direction wanting to go, one thing or another. And there may be emphasis. I haven't seen it in writing yet today, but of wanting to stretch that 60 days out to possibly 90 days.

We begin to have a problem with it being stretched out. Not going to stand in front of the -- interfere with the proposal and drag on comments and arguments and one thing or another in opposition to it. We'd like to see the proposal move along versus arguing about whether it should be 60 days or 90 days. But like the agency, just give it good -- the issue good, thorough thought on the comments. We're not going to be coming back and saying, "No, 90 days is ridiculous. Back off of it. You know, we'll take it to court after the final rule comes out, or this, that or the other." It's just a matter that needs some detailed review and your comments and you've been well doing.

If it should go into that area, whether it should go, stay after 60 days or go to even potential for 90 days to phase in the 24 hours of training at a particular operation, the annual refresher date -- annual refresher training date should still remain within one year of that

individual's hiring date. It's not one year after he's finally trained on these things. So therefore, the guy is -- you know, now been there, you know, a year and three months and so forth. And what date are we supposed to implement here as far as his annual refresher? That needs to begin as of his hiring date.

Also, on the initial training, and I think many -- much discussion has been brought about on the -- how to approach the 24 hour training at the various sized mines. And many of them say, "You know, well, we can't give the whole 24 hours. We need to -- we can give some of this particular work and phase it in and so forth."

It's going to remain the steelworkers' contention that at small mine operations, a minimum no work application would apply -- a minimum of eight hours of training to be applied with no work indications in there except for the training. That first day on the job, the guy don't need to be -- he needs to become familiar with the training regs that he's going to be surrounded with, the mine site, whatever or however small it might be or whatever, what's going on, and familiarity with just the general conditions as he's going to be dealing with.

If you wanted a phase-in situation then and

possibly looking at a number of what would be called intermediate or a moderate sized mine, then you may look at -- maybe should look at 16 hours, minimum training there before going on the job. You get into the large mines, and that number is subjective. Then, it would be the -- 24 hours may very well be appropriate for he receives his whole miners' training issue before going on the job.

46.7 New Task Training, as I mentioned before, is in regard to close supervision. And simply again just simply you need to review some terminology there.

On 46.10, Normal Working Hours Training or Compensation for Training, and, there again, this has been one of the issues that's been kind of inside discussions, debate, concerns, one thing and another. And again, I think it's appropriate as written. And when I say I, please bear with me. This is not in vain. This is the steelworkers speaking on the issue.

There's been contentions that given the training -- give an individual -- leave it open to give an individual training any time the operator believes he thinks he has time to give him training. And if that is evenings when they don't normally work evenings, if that is bring him in on Saturdays and Sundays, and they don't never work

Saturdays and Sundays on these particular jobs, and what comes about is the fact that, "Jesus, what do I got to come in Saturday for?" "For this training. I got to give you some MSHA training."

And he starts -- and, the miner starts raising hell about it. "Don't blame me. It's the law." And it pits the miner against the law for which the standard was developed for in the first place. And we don't need to be going that direction at this late date.

MR. BURNS: Harry, just to put your mind at ease, I mean, we could -- we wouldn't change that even if we were inclined to because it's statutory. Okay?

MS. ALLEJANDRO: Yes, the harder --

MR. BURNS: Maybe we can make that more clear.

MS. ALLEJANDRO: Yes. I mean, the harder question is, what exactly are normal working hours? But the normal working hours requirement is in Section 115 of the Act.

MR. TUGGLE: Okay. Just so there's no questions about it.

MS. ALLEJANDRO: Yes.

MR. BURNS: We'll make it more clear in the final rule so that it doesn't pit, you know, a miner against an operator. It is the law, and it's the Act. We don't even

have the authority. I mean, we can't change that, so we all have to live by this. We'll make that clearer.

MR. TUGGLE: I must not have read that provision or must have scanned over it too quickly. I know it refers -- you know, that the training will be required during normal working hours. And that question of what's normal around here is what gets out of context.

MS. ALLEJANDRO: That's the hard question.

MR. TUGGLE: Yes. In conclusion, I guess only on one final point here, I don't know if we can respond today on phasing in -- if you have any questions on phasing in this rule. We've thought about this quite frequently and how this might be best to be approached.

Let me put it to you in this context. We've heard from sand gravel stone associations or sand association, stone associations and various given industries, you know, in numerous meetings, hearings, and even seen those operators for those industries participate, and there's been contentions that we provide training, and it nearly fits as well as we can make it fit. The Part 48 criteria. We follow right along with that and so forth.

So for those -- all those -- not just those that was in attendance and speaking on that basis, but there's

been contentions by the associations that thousands of these operations are doing -- are doing training in some good form or fashion. And to that degree, those good faith operators are already in compliance. I mean, when this thing hits the ground running, there's no phase-in thing for them. They're already there or had been there for all these years.

For those that really could care -- could have cared less about training rules or training regs or following suit with what would be appropriate in the safety and health area for these miners, we're having a problem about saying, "Should this be stretched out for these people?" That really, you know, that's just been sitting in the back and say, "It don't apply to me, and I'm not going to do it. And you stay out of my face, and the government's got no interest here. And you, miners, you're my people when you're here eight hours a day. You, miners' representative, I don't have to listen to you."

We're seriously, seriously wondering about what should they be given this privilege now. Let's phase it in for you and, you know, make it easier for you, this, that and the other. And not all of them are in that category. Let me make that clear. Even those that have not provided "Part 48 training" or followed Part 48, but did -- you know,

they do training to the extent and have tailgate meetings with their people or whatever because there is some good miners out there and good operators out there, even in that field.

But we're having a problem with what the steelworkers have always referred to, the bastard operators. And how liberal should you be with those?

Based on the comments you receive and the pursuit of the necessity for stretching this somewhat out, I don't think we're going to step in again, in one of those areas and say, "You know, this is ridiculous. Forget it. You know, we're going to take the issue to our Congressman, and this, that and the other." That's not going to help put a rule across the table. We just want you to seriously consider that this is not -- should not be stretched out in too long a phase.

MS. ALLEJANDRO: Do you have any recommendations for what an appropriate compliance deadline would be? I mean, I don't want to put you on the spot. I mean, if you would prefer to submit that in written comments or --

MR. TUGGLE: I -- it may -- subject to change, at a point, number one, there'll be effective date of this rule and as I mentioned, there would be operators hit this -- you

know, hit the ground running on this without breaking stride whatsoever with what they've been doing.

With the agency's -- with the overwhelming amount of operations within this particular segment of the industry -- of the mining industry, and the agency's potential to be, you know, overwhelmed with training plans and this, that and the other or assistance to those mines as you talked about in providing some guidance and so forth, that there's a potential for, I think, a phase-in period subject to review and further comments of within one year.

MS. ALLEJANDRO: Okay.

MR. TUGGLE: And that's at first glance.

MS. ALLEJANDRO: Okay. Thank you.

MR. TUGGLE: Again, thank you very much, and certainly, thank the people that allowed me to make these comments so I can go back and get beat up somewhere else now.

MS. ALLEJANDRO: I don't have any questions for you, Mr. Tuggle, but some of the other panel members may. I mean, do you have a couple minutes?

MR. TUGGLE: Oh, yes, yes. I have time here -- plenty of time here, that's for sure.

MS. ALLEJANDRO: Do you have any questions?

MR. BURNS: No, just -- I -- just a statement, I guess, as far as on the phase-in. I mean, the whole idea as part of the phase-in is to allow people to come into compliance, and I appreciate that you're willing to -- you conceded there should be some flexibility there.

I guess basically, I view people the same way as you do, and operators are people. And there are people that can do things and they are already doing the training. And there's, I think, a huge group that will do it if they have some help and if they have a little bit of help getting started. And then there's this other group that won't. And they're the ones that we're concerned about.

So I think that's what we want to do with this phase-in period, is to weed out the good faith ones that will do it from the ones that won't. And so, they're not treated the same, because that won't help things if we treat them the same. And I think you appreciate that.

MR. TUGGLE: Yes, I do. Also recognizing that, I think, one of the very early-on sections there was talking about, was where a training plan was technically unofficially approved if you meet these particular guidelines. And if an inspector finds that at a inspection visit that it doesn't meet these, that you were saying, you

know, there's a potential for citation there.

I think that possible one year would allow for that not to be a citation, but that operator has to get it, submit it on in, has to get it approved. But as of that phase-in date and thereafter, and a training plan that does not meet that criteria is flat out in violation.

MR. BURNS: That's right. That'll be the one.

MR. TUGGLE: Okay.

MS. ALLEJANDRO: Thank you. Robert, do you have any questions?

MR. ALDRICH: No questions.

MS. ALLEJANDRO: Rosalyn?

MS. FONTAINE: No questions.

MS. ALLEJANDRO: Rod?

MR. BRELAND: Harry, just a couple for clarification. You talked some about the definition of miner, wanting more clarification. Are you talking about a different -- totally different definition than what's in there, or more like what's in existing Part 48 in policy guidelines? I wanted to make sure I understood.

MR. TUGGLE: No, just as a definition along the lines that's in there. And I --

MR. BRELAND: You were talking about the

contractor like the maintenance service worker that it's not clear that it's in -- that that's included as a miner. Was that what your concern was?

MR. TUGGLE: Well, somewhat. Not a -- well, a contractor would even come out if he's into the mine cycle area of extraction and production. And I always add on the maintenance in that general area. The training, yes, should be -- I think is fairly direct already in regard to -- that these individuals have to -- have to be trained under -- for -- under the 24-hour system, 24 hours of mining -- miners' training or whatever might be applied there.

I was also referring to that apply -- even though they may -- an individual, whether contractor or operator/employee, if they're out there in that mine cycle area or mine front area, and they're on labor duty that has nothing to do with extraction or production, I mean, they don't -- they're not handling the conveyer systems. They're not handling the drilling machines or cutting machines or shovels or anything else, the loader shovels and that. But they're simply out there on janitorial, utility work, or the maintenance guy that's changing tires on that equipment out there in that area.

And I'm glad you brought it up, but you don't have

to be in the mine site area, I think, to be necessary -- necessarily fit this criteria of training. If you -- if you have -- say, if you have a mine office. Right behind that mine office is a change room and a parts room and so forth. Parts for mine equipment and the various maintenance equipment around there. And then you have your yard and conveyers and crushers or this, that and the other.

Even though -- say, the supply room person that's still within this office building, but it's all on the back side and where the garages are for some of the equipment to be repaired, this, that and the other, but the -- if you have a situation where you had -- was a big enough business. You had a supply room operator, whatever you want to call him, clerk, attendant.

And he has all the operations of a forklift or whatever around there or little hand forklift, whatever it may be, stacks materials around. I mean, that's his -- he's stacking mining materials, equipment around and so forth, keeping it in order, bins, this, that and the other, and something topples over because it was stacked incorrectly or whatever.

Injures or kills the guy. And MSHA comes out to investigate this. Because he's not out there in the

extraction and production area, is MSHA saying, "We don't have to look at any training records for this guy here?"

I think that -- now, we need to be looking in those areas that -- if you're in the mine cycle system here, if you're not in the office punching a typewriter, computer or whatever and doing filing or whatever within the office system, you are in the mines -- you are in the mine cycle. Even though you may not go directly into the pit. Maybe you may not operate the equipment or whatever. If you're in the garage repairing the equipment brought in or have to run out from time to time to bring it in, you're in the cycle.

That's our concept. And that training to that degree has to apply. And you may not have to be trained on slope and wall stability. You don't have to be trained on explosives. You don't have to be trained in given areas because it's not -- you know, it's not specific to your job.

But you've got to have some sort of training that fits a criteria of the jobs you have outside that office, because beyond that office door, as you start to change room -- in your opinion, as you start to change room or the parts room or the garage and move out into the yard, the pit, the quarry, or whatever the circumstances, when you leave the office door and you say you got to have a hard-hat on,

you're a miner at that point.

MR. BRELAND: What about the contract truck driver that comes on site to haul materials away over the road?

MR. TUGGLE: Those, in my opinion, is site-specific hazard training. If he doesn't -- if it's not his job to drive all over that mining roads and properties or whatever. If he's coming, you go down here Road A and turn left, and you back under the chute, and you load your truck and get out, you go through a certain site-specific review, and that should be sufficient.

MR. BRELAND: Okay, thank you. Then earlier you talked about the training plan, and you sounded like you were talking about maybe some grace period. I wanted to make sure I understood what you were talking about. Somebody may have a plan that's on first review, they didn't have to submit it, but at some point in time when first review by MSHA may find some deficiency. And I thought you were saying that they should be allowed some time to correct that.

Was that beyond this one-year-phase-in period, possibly?

MR. TUGGLE: No. That's what we was -- I was just coming back to that if that approach was used there -- in

some cases, I find it a little harsh that on that first review, you would find that we're going to right you citations here. And here's a whole new program out of the box for some operators, whatever.

But as the questions came forward on this issue about an expansion of time or phase-in -- potential phase-in time or whatever, I think those could possibly go just hand and glove that this phase-in time -- this is -- there's two problems here. And one of them is a fact -- pardon the gender condensation -- but, MSHA's manpower.

To go out there in that first year and look at 10,000 mines and see if they've got a training plan and see if it complies, and then get to the rest of the metal, nonmetal industry and do their regular inspections throughout, it's going to be hard to chase down. But there -- you have to have a cutoff time at some point in time. And I think that one-year, phase-in period hopefully, many, many training plans will get reviewed and be -- meet the compliance.

And within that review period, if they should be found deficient, that operator has the -- should have the opportunity to correct that deficiency once that phase-in year -- because we're talking now almost two years down the

road, and surely, these operators knows what's going on today. If they don't, shame on them.

But once you get this -- hit that phase-in period, we've got -- we simply have to have a cutoff date of all sympathy set aside after that and go forward.

MR. BRELAND: Just one quick one was when you're talking about working alone in the training phase, were you asking that that be specifically addressed in the reg that during this initial training?

MR. TUGGLE: Yes.

MR. BRELAND: That there be -- not to work alone or --

MR. TUGGLE: You could address it on the basis of clearly saying, you know, the -- this new employee, you know, shall not work alone -- alone whatsoever, in accordance to the other standards. But in a -- not only not work alone, but work -- if he doesn't work in -- under close oversight, that he works in close proximity to other experienced miners or to his supervisor.

MR. BRELAND: Okay.

MR. TUGGLE: As it may be.

MR. BRELAND: Thank you. That's all I have. Appreciate it.

MR. TUGGLE: In discussions -- I'm sorry. I just have one other comment.

MS. ALLEJANDRO: Sure.

MR. TUGGLE: In regard to the -- I think the question was asked about any specific -- jobs with specific interest of training on -- where training should be, you know, emphasized, versus just the generic approach here. I believe MSHA had questions.

MS. ALLEJANDRO: Are you talking about annual refresher training subjects or task training?

MR. TUGGLE: Yes -- no. It was annual -- during the annual refresher, you know -- the current regs -- you know, they read about half a dozen particular jobs on heavy equipment, explosives, and overhead crane operations. A number of -- about four or five different jobs that begin to come targeted that you're going to spend -- oh, excuse me. It was on task training.

MS. ALLEJANDRO: Okay.

MR. TUGGLE: Yes. I'm sorry. It was on task training. And is there any particular jobs that you spend any more particular time on then just the generic approach that you've taken here? And I would think that two areas of heavy-duty -- I'm talking heavy -- I'm not talking light

trucks or maybe small dump trucks, this, that and the other. I'm talking about any large heavy-duty equipment, mobile equipment there and mobile or stationary-type cranes and explosives. These are -- the tasks there is, I think, should be a little more directed towards the real hazards within those handling jobs than the run-of-the-mill small dump truck, little loaders, one thing or another.

With that, I thank you.

MS. ALLEJANDRO: Thank you very much, Mr. Tuggle.

MR. BURNS: Thank you, Harry.

MR. TUGGLE: Thank you, gentlemen.

MS. ALLEJANDRO: The next speaker on the list is Marino Franchini from the New York State Department of Labor.

MR. FRANCHINI: Good morning. The Department of Labor of New York would like to submit the following comments in response to the proposed rules issued by the Mine Safety and Health Administration on Wednesday, April 14, in regard to the training and retraining of miners in the affected industries.

The agency should be commended on a job well done sorting out the tremendous numbers of comments that were made at the hearings conducted at the onset of the process.

The agency has also provided the industry with a proposed rule that adequately addresses and invites comment so as to solidify the opportunity to develop a new rule that meets the needs of the mine operator and provides safety and health training for our most precious resource, the miner.

I believe the flexibility to provide training in a variety of ways proposed can only increase the chance that training will be implemented by the affected employers. This flexibility will help employers deal with the issue of the cost of implementation of training. And it is here that I would like to focus my comments.

Under Section 3, the agency provided a description of the economic analysis required under the Regulatory Flexibility Act and determined that the proposed rule is not an economically significant regulatory action. The issue of the agency's use of a definition of a small miner -- small mine employer is an important one. The agency has used its own definition for years, and it's been very useful in providing an accurate profile of where the mine fatalities often occur.

Since most of the affected mines fall within the definition, I believe the agency should approach the Small Business Administration and establish a definition that more

1 properly meets the characteristics of the mine operators and
2 the affected industries. Having to use the current Small
3 Business Administration definition provides no further
4 insight into the employment characteristics of the industry
5 and may affect the projected costs that are associated with
6 the implementation of training.
7 Under Section 4, the agency provided information
8 on the enhancing of intergovernmental partnership and the
9 reduction of unfunded mandates on state, local and tribal
10 governments. In the second paragraph, the agency states:
11 "There are 152 sand and gravel, surface limestone and stone
12 operations that are run by state, local and tribal
13 governments for the construction or repair of highways and
14 roads." We believe that all of these state-owned mines are
15 in compliance with the proposed rule's provision.
16 The agency then asked for comment or any data to
17 support or refute this assumption. In New York State, using
18 the agency's data from 1998, we have at least 84 mine
19 operations that are run by state, local or tribal
20 governments. There are countless others that are not
21 inspected by MSHA, and for the record, I can tell you that
22 many of these operations are not in compliance with the
23 proposed rules. Many still do not know of the MSHA

regulations, let alone the proposed training under Part 46.

Sheer numbers across the nation would have to lead one to believe that the total increase expenditure may exceed the $100 million, and that the proposed rule does affect these entities under the Unfunded Mandates Reform Act of 1995. I urge the agency to revisit this calculation and seek to identify the many operations that are run by state, local and tribal governments and will be affected by the law.

I also urge the agency to develop a more specific policy in identifying the hundreds of part time sand and gravel operations that are run by state, local and tribal governments but not identified by MSHA. A significant portion of the highway and road construction funded under TEA-21 will be provided by these entities.

Under Section 10, specifically the summary of proposed rule, the agency requests comment on whether operators should have the option of complying with the requirements of Part 48 in lieu of Part 46. I believe that this defeats the purpose for developing a consistency approach by all the affected parties. Mine operators may choose to apply one option in complying with new miner training, while applying another option for any refresher

for task training. Enforcement by the agency will be more difficult and personnel will have to take a closer look at each individual option to determine compliance.

State grantees who provide such training and consultation may have to develop two tracks of training and implement the appropriate training only after identifying that one operator may apply Part 48 training, while another wants to comply with Part 46. I believe this sends an inappropriate message to the industry, and one may question the need for regulation if significant portions of the industry are already in compliance with Part 48.

The issue on how to define a miner and at what point does an employee become an experienced miner is obviously of concern to the agency and to its affected employers. The definition of a miner should include language so the employees exposed to the hazards of a mine operation, regardless of whether they are engaged in the primary extraction or production process is included.

Examples should be included as to job title or responsibility so as to give operators a clear picture of who is included -- to be included in their mine training programs. This will greatly benefit the seasonal and part time operations who may employ people to perform several

jobs based upon seasonal need.

Towns and counties who run a sand and gravel operation fall into this category. Private operators who have both haul truck drivers, who operate only in their quarry and those exposed to the hazards of mining will need to have a clear picture of who is to be trained.

It has been my experience that in many cases operators move drivers back and forth within their operations based on workload. If at the time training is conducted, the driver is not working or is hauling material to a construction site, the chances are that he or she will not receive mine safety training. Upon inspection, these same drivers may then be onsite, and the determination of whether or not they should be trained will be difficult and time consuming.

I also believe language should be inserted to the definition so that a miner would have been considered an experienced miner if he or she had been employed on the date of publication. Then, they would not be subject to the Part 46 requirements in regard to new miner training. This would allow mine operators to provide experienced miner training and ensure that employees in this category were properly trained in any new procedure that had been put in place

since their reemployment.

I would also like to see a list of areas that could be used to make the determination on how much an experienced miner -- how much training an experienced miner should have and a list of suggested areas for those operators who choose to count equivalent experience in the nontraditional mining areas such as construction or public utility work. This would also give operators some direction to determine experience and in turn develop consistency within the rule and a workforce that has been adequately trained.

Annual refresher training should include training in the use and maintenance of mobile mining equipment and specific power haulage. Many accidents can be attributed to the lack of preshift inspection of equipment and the daily examination of haulage conveyers.

The agency spends much time in enforcing these applicable sections of the law, and not including specific language requiring training in these areas only serves to increase the injury and the severity of accidents. And although these areas may be addressed under the mandatory health and safety standards, the data presented by the agency suggest that these accidents in this category remain

the number-one fatality classification.

This gives the agency the opportunity to reinforce their initiate to lower fatal rates by directing affected operators to provide training in an area that has been proven historically to be dangerous.

Task training is also an issue where mine operators should be encouraged to provide training and specific tasks. One way to encourage this would be to provide more detail into what constitutes task training for specific jobs. The Mine Safety and Health Academy has provided a tremendous amount of information in this area.

In addition, I believe certain programs that train workers in specific jobs, such as those provided by the operating engineers and other programs established under a state apprentice program could provide the mine industry with trained workers. Proof that an employee had completed such a program would provide enforcement personnel with clear documentation that a mine operator had complied with the law.

Determination of a competent person who must be designated by the operator to conduct training is also a critical part of the rule. And absence of requiring a formal MSHA certification to conduct training, I would like

to see language inserted in the definition of a competent person that includes a reference to mining and specific hazards that mine employees face. My concern is that there are many competent persons who have received their training and other safety and health areas that qualify them as compete, yet have absolutely no experience in mining.

These people should be required to have mining experience. It would certainly be better to have them certified as MSHA instructors, thus increasing the chance that they have been given direction in specific mine hazards. It is obvious to me that the more formal training that an instructor can be given in the specific hazards of the mining industry, the better and certainly, the more effective training will be.

MSHA has developed many courses that new instructors can take. Many state grantees have also developed instructor certification programs that are widely available to the industries affected by the proposed rule. Requiring MSHA certification validates the work that has been done by MSHA and that which MSHA has funded since the inception of the state grants program.

The need for Part 46 training greatly outweighs the cost of its implementation. I believe the final rule

should become effective on January 1, 2000 so that the training of all miners affected by the regulation may begin with the start of the calendar year.

The requirement for an approved plan may be better off being effective as of April 1, 2000. Miners should be given an opportunity to develop these plans, but encouraged to put it in place before the production season starts. Delaying compliance for a longer period of time will only serve to increase the chances that an accident, prevented -- preventable by training, results in another miner losing his or her life. Thank you.

MS. ALLEJANDRO: Thank you very much, Mr. Franchini. I have got a couple questions and others may, as well, on the panel.

You indicated that -- and I -- I'm not sure I have this is exactly correct, but in the State of New York alone, you're aware of 84 mine operations that are operated by state, local or tribal governments. Is that correct?

MR. FRANCHINI: There are 84 operations that have mine -- Federal mine ID numbers that are operated by state, local --

MS. ALLEJANDRO: And you're saying there are many more besides that that are not on MSHA's books, as far as

you know?

MR. FRANCHINI: I'm saying there's a tremendous number more.

MS. ALLEJANDRO: Okay. These are sand and gravel operations?

MR. FRANCHINI: Small mine -- small mine employers historically reporting maybe two or three employees, especially in the western part of New York where the town or the county runs a gravel operation because of the seasonal nature. Those employees are in that pit for maybe three to six months. They may be feeding material to blacktop operation or maybe working in conjunction with that. But many of the places go uninspected because they obviously haven't been given federal mine IDs.

MS. ALLEJANDRO: Okay. You say many more. Do you have any estimate of how many there might be?

MR. FRANCHINI: The State of New York requires through the Department of Environmental Conservation a permit for reclamation. And historically, there's approximately 2,500 permits issued on a yearly basis, of which in New York, I think the current number of mine IDs is somewhere about 620, 650 maybe. So there has to be, you know, at least another 1,500 operations that have been given

permits that are processing sand and gravel in some way, shape, or form that have -- do not come under the inspection by MSHA, and other than reclamation, do not come under regular inspection by the State of New York.

MS. ALLEJANDRO: Okay. And I am assuming that these operations currently aren't providing their employees with training under Part 48, or is that not entirely correct?

MR. FRANCHINI: I would say the vast majority do not provide training under Part 48. They may provide some type of training depending on other regulations, other federal regulations that they're required to provide training. Specifically, there may be some OSHA training going on.

MS. ALLEJANDRO: Okay.

MR. FRANCHINI: We don't track that in New York.

MS. ALLEJANDRO: Okay. I have one other question about your remarks regarding the effective date. You indicated that you believe that the final rule should go into effect on January 1 of the year 2000. When you say "go into effect," do you mean that provisions are enforceable at that point or it supersedes Part 48 at that point? And the reason I ask is you also indicated that you believe that

April 1, 2000 would be an appropriate deadline for plans to be brought into compliance. And it seems to me -- I mean, the plan development would precede giving training.

Do you then see then the requirements -- the training be provided as coming some point after April 1?

MR. FRANCHINI: No, I actually think that the law outside of the requirement for an approval -- approved plan should be effective. Violations should be issued as of January 1.

MS. ALLEJANDRO: Okay. Even though --

MR. FRANCHINI: Yes. Even though the plan -- the approved plans, you know, may not be --

MS. ALLEJANDRO: Formal. I mean --

MR. FRANCHINI: -- formal until April 1.

MS. ALLEJANDRO: Okay.

MR. FRANCHINI: My thought is that most of the places we do in New York are already providing the training. They're not going to have a problem with compliance.

MS. ALLEJANDRO: Okay.

MR. FRANCHINI: It's the additional, possible burden of getting a training approval back from MSHA that may need those extra couple of months. By April 1 of that year, I can't believe that based upon what's going to be

required in this plan, that that couldn't be submitted and that most operators public or private wouldn't have something already in the works.

MS. ALLEJANDRO: Okay.

MR. FRANCHINI: I think that if you delay it, you know, much more than that, they're going to -- the operators, public and private, are going to wait to the last minute to get approval, and I think it's going to be a nightmare.

MS. ALLEJANDRO: Okay.

MR. FRANCHINI: I think everyone is pretty much aware of the regulation if they have a federal I.D. MSHA's done a pretty good job getting the word out. And the requirement for the approved plan, there's some basic information in there that they should be able to handle.

MS. ALLEJANDRO: Okay. And I just have one more question back on the issue of the sand and -- primarily, sand and gravel operations that are not in the loop, so to speak. I mean, don't have a federal I.D.

Are those primarily municipal? I mean, county run operations that you're talking about?

MR. FRANCHINI: If you're looking for a percentage, I don't have a percentage.

MS. ALLEJANDRO: Okay.

MR. FRANCHINI: My gut reaction is that they are primarily municipal.

MS. ALLEJANDRO: Okay.

MR. FRANCHINI: However, we'd have a rash of small operations pop up left and right on the private side. An example might be where all of sudden someone who's run a farm is now in the gravel business and has all kinds of large-scale heavy equipment moving it.

MS. ALLEJANDRO: Is this as the result of the infusion of money from TEA-21 or --

MR. FRANCHINI: Well, I think that's projected. I think just in general that they see opportunities and based just on supply and demand and what's been going on with, you know, the current road repair in New York, that a lot of the private operations that were maybe construction sites or construction operations or maybe agriculture, now all of a sudden see the opportunity to be able to get into the gravel side of the business.

MS. ALLEJANDRO: Okay. That's all the questions I have. Robert, do you have any questions?

MR. ALDRICH: I do not, no.

MS. ALLEJANDRO: Kevin?

MR. BURNS: I just had a question on the -- you said there's 2,500 permits --

MR. FRANCHINI: Approximately.

MR. BURNS: I want to clarify how many mines there might be out there that we're not aware of. The permits, do they expire if there's no mining going on?

MR. FRANCHINI: The permit is --

MR. BURNS: This has always been part of the problem with trying to identify mines based on state permits because many of the permits are issued and sometimes the mines aren't even operated. They get a permit for whatever reason.

MR. FRANCHINI: I believe the permits are issued based on the reclamation plan. You have to remember that many of the operations shut down. Now, you know, unfortunately, when MSHA's able to get to them if they're not in operation, I'm told that, you know, those are closed out. And over the last maybe year or so, we lost a lot of places because these places have never been reopened. And a lot of the small, especially the municipalities, don't realize they have to notify MSHA when they reopen.

MR. BURNS: Okay.

MR. FRANCHINI: So we have this contest going on,

you know. Are they going to get caught? You know, how much material am I going to be able to get out within the month or two that I might need it? Should I bother to notify MSHA? Obviously a very difficult situation.

MR. BURNS: This is a -- this is a whole other issue for us trying to identify these mining companies. Is there someone with the state that --

MR. FRANCHINI: The department -- yes, there is people at the Department of Environmental Conservation. There's a mineral resources group that tracks, and I believe their permit system is on some type of database. I think in the past they've made that data available to the local MSHA office.

MR. BURNS: Okay. Thank you.

MS. ALLEJANDRO: Roslyn?

MS. FONTAINE: Yes, a couple questions. You said that you expect the rule to result in costs over $100 million. You stated that you would expect the rule to result in costs over $100 million. Could you submit some data to substantiate that?

MR. FRANCHINI: I'm basing my assumption on the fact that if what's going on in New York, if the agencies have the same problem identifying these part-time sand and

gravel operations, that, you know, just based on our numbers, there can't be 152 properties across the nation. I mean, I can't even begin to guess how many more properties there are. Even if there were the difference between 84 and 52 times 50 states, you still have a substantial number of places that may be out there that would be affected.

And I guess in my comments, I was urging the agency to recalculate and come up with a -- I don't know if the word is more appropriate or more realistic number of the number of sand and gravel operations that are out there. There just cannot be 152.

MS. FONTAINE: Okay. And of the 84 that are state, local, tribal government in New York, how many are in compliance?

MR. FRANCHINI: Well, we are training on the public side. We train about 200 mine operators. They each have approximately three to four -- mine employees that they report. The problem with compliance is that a lot of these operations, especially at the county level, may only be reporting two or three, but they have people -- maybe their whole crew going in and out of their operation all year.

So we've been trying to get solid numbers to give us a more realistic picture that if a county has 75 people

employed, and over a couple of days, 50 of those people show up at training, and we look at the MSHA data and only three or four reported, that there is something seriously wrong with the numbers. And we've been encouraging, especially at the county level, the superintendents to adequately report the number of people that are working in that operation.

I think there's an awful lot of underreporting going on with municipalities. Some of the smaller private sector construction-type places, they probably only had two or three people to begin with. But municipalities, especially at the county level, usually have 50, 60, could have 75 people spread out all over the county. And those people, in season, are in and out of that gravel pit daily and are exposed to the hazards.

So it's hard to tell exactly how many are not in compliance because we are training so many. We probably, over the course of the season, train as many public sector employees in annual refresher as we do private sector. We basically have two different seasons, one for the private sector, one for the public sector.

And since MSHA put out this proposed rule, we're getting a tremendous number of inquiries by municipalities who didn't understand regulations. One call just the other

day, "When did this program start?" You know, and I had to take him back in the early 1980s.

MS. ALLEJANDRO: Are these operations that don't have MSHA I.D.'s?

MR. FRANCHINI: This particular operation had an MSHA I.D.

MS. ALLEJANDRO: Okay.

MR. FRANCHINI: And was not aware. We've had a good number of inquiries by contractors who now, after dealing with the private sector crushed stone operation or sand and gravel operation have been told that they may have to provide training, and then they're coming to us. So I mean, obviously, the numbers are going to swell.

MS. ALLEJANDRO: Right.

MR. FRANCHINI: But again, just based on MSHA's data and historically what I believe to be a lot of underreported -- underreporting by the municipalities, there has to be much more than 152 sand and gravel operations.

MS. ALLEJANDRO: Okay. Well, we need to look into that obviously.

MS. FONTAINE: Thank you.

MR. FRANCHINI: You're welcome.

MS. ALLEJANDRO: Rod?

MR. BRELAND: Yes. I just wanted to follow up on those 2,400 or 2,500 properties again. But Kevin had asked you about the permit if they expire, and I'm not sure I heard you answer if you knew.

MR. FRANCHINI: I think the permit is good for the life of the reclamation project. I don't think it's affected by whether or not they're in business for the entire season or whether or not, you know, they're closed down.

The DEC people go out and have inspectors in each of the regions and keep a pretty good handle of what operations are active.

MR. BRELAND: Do they have to report any like tonnage or any kind of production numbers?

MR. FRANCHINI: I think they grant a permit after a thousand tons.

MR. BRELAND: So if I understand that, they don't have to have a permit for the first thousand tons? If they're going into more than a thousand tons, they have to?

MR. FRANCHINI: I believe that's the regulation, but you really should check with someone from DEC that would have a better handle on that. We rarely get involved in the reclamation side.

MR. BRELAND: Okay. Well, the numbers sound a bit staggering to us, so that's why we have the interest in it.

MR. FRANCHINI: They sound staggering to me, too.

MR. BRELAND: The other thing is, you talked about three definitions that you had some concern with like miner and competent person and so forth. Are you submitting written suggestions as to what ought to be clarified in those?

MR. FRANCHINI: Well, I think in the comments at least for a miner when I read it -- read the proposal, the problem with being a miner employed as of a date -- well, if the person again -- if it's a seasonal operation, that's not going to work. Well, why not go to a definition that if the miner had been employed as of that date, then that person would qualify as an experienced miner? So that was my only suggestion there.

The competent person? Well, I think it's a great idea to use, you know, the term competent person, and OSHA's had a lot of success with competent person training. But I'm -- but, my fear is that unless you include specific language that the person has mining experience, you're going to get a lot of people very competent in their areas of expertise who really may be coming in -- may be hired by the

mine operators and assume that they're competent because there is a definition out there -- a working definition that OSHA uses that could come in and do the training.

And some of them, maybe even the majority of them be very effective. But without that mining knowledge, it may not actually affect the outcome in terms of number of fatalities, number of accidents.

So I guess I'm suggesting we find a way to make it clear that the competent person has to have some specific mining experience. And I'm not sure there's a certain number that you can use. And maybe it should be up to each individual operator to know better. But the fear is if all of a sudden third-party, private-sector consultants want to come in and start hanging their shingles up that they're competent persons designated by another federal agency, you might be creating something that honestly is not good for the mining industry.

MR. BRELAND: Well, the -- there is a requirement about the -- having knowledge of the subject matter. You know, say, first aid, for example, would not necessarily require mining experience to have a lot of knowledge in that area. Some might say electrical when you begin to teach some of the same subjects.

MR. FRANCHINI: You can make that case. You can also make the case that if you're never on a mine site, how may you instruct employees in an emergency situation? If you've never had to deal with the confined spaces that may be in a mine operation, how could tell them just to, you know, secure the area and then call 911?

So I still think that having some mine experience in some way, shape or form makes it better for the industry. And I think that carries through all the subjects, electrical and anything else. How to deal with equipment that is there, as opposed to bringing someone in the classroom and handing out booklets in some generic fashion. I've seen a lot of trainers try to do that, and I just don't believe that it's effective mine training. It may be effective training, it just doesn't seem to work in general for the mining industry. I think that's maybe why we're where we are with fatality rates in some respects when they have spiked, been done too quickly.

MR. BRELAND: Okay. Then, I guess to put you on the spot a little bit if you think they need mine experience, how much and what kind?

MR. FRANCHINI: A good question. At some of the meetings that I've attended, there's been some talk about,

you know, creating a course, either at the academy or something that we can get involved with at state grants that would create a competent person under MSHA. It may actually follow the same outline that OSHA has with some 40 hour course or some 10-hour version. That would at least give us direction. And I have plans in New York to create such a course and offer it to mine operators. And it would cover obviously, the subjects and the regulations under MSHA.

MR. BRELAND: So in lieu of experience, you're saying maybe training in the subject matter as it relates to a mine?

MR. FRANCHINI: Training experience -- in recent item or recent -- you have to call it an advertisement of sort, we put a notice out asking people if they were interested in instructor training. And this year in lieu of Part 46 and this competent person issue, in the announcement I strongly recommended that if the person had less than five years, experience in the mining industry -- full-time experience, that they take such a course or consider taking a course before they request instructor training from the State of New York. And I felt that that was a fair way to balance some of the inexperience that seems to be filtering through.

MR. BRELAND: Okay. Thank you very much.

MR. FRANCHINI: You're welcome.

MS. ALLEJANDRO: Thank you very much, Mr. Franchini. I think we're going to take a 10-minute break now. I would ask that anyone who has not signed up on the attendance sheet in the back of the room, do so. And also, anyone who would like to speak who has not signed up on the speakers list, it's right up here. So come on up and sign up.

We'll get back together about 20 after 10.

(Whereupon, upon a short recess was taken.)

MS. ALLEJANDRO: The next speaker on our list is Jim Lamont from the United Mineworkers of America. And the court reporter would like me to remind speakers to state and spell their name for the record. Thank you.

MR. LAMONT: James P. Lamont. L-A-M-O-N-T for the United Mineworkers.

I'd like to read more of a statement in reference to the proposed rule than a comment form. I do, however, reserve the right to submit our written comments at a later date.

MS. ALLEJANDRO: Okay.

MR. LAMONT: Prior to the deadline. The proposal

which amends Part 48 provides is called more flexible and more performance oriented than Part 48. The rule is such that it would severely undercut current Part 48 and could erode those standards. It does, in fact, reduce protections that miners have under Part 48 of 30 C.F.R.

Miners and surface operations covered currently by Part 48 would be less protected.

While one may argue that since MSHA did not have enforcement authority at specific mining operations during the period of the rider, those miners would not suffer a diminishment of protection, which Part 46 rule proposed. However, one cannot successfully argue that the standards don't diminish those covered by Part 48 of 30 C.F.R.

With regard to the first point, one could argue that miners working at mining sites where the prohibition was in effect still had those standards applied by law regardless of MSHA's authority to enforce the standard. For instance, if a miner was not trained as required by Part 48, and as a result was injured, that miner could file suit citing the requirements of Part 48 was a legal standard.

MSHA, in their commentary has failed to explain their legal position as to exactly why the miners' protections would not be diminished by Part 46. Comments

1 were noted in the preamble that some suggested that any plan
2 which complied with the minimum requirements of Section 115
3 of the Mine Act be considered approved by the Secretary. We
4 do not support this view.
5 First, Part 48 carries as much legal weight as
6 does the Mine Act. Secondly, training plans should be of
7 more substance than just mere paper compliance. One has to
8 ask, exactly what is attempted to be accomplished regarding
9 quality training to protect miners?
10 Part 46 would not require training plans to be
11 submitted to, or to be approved by MSHA. It contains
12 generalized plan requirements and somewhat changes the
13 miners, the miners' representative role. This is a major
14 departure from the current Part 48 rule. A plan submitted
15 to and approved by the agency is not required under Part
16 46.3(c). The miner and miners' representative process is
17 different under Part 46. Miners and their representatives
18 can trigger an MSHA approval of the plan by filing notice
19 with MSHA.
20 While Part 48 requires a copy of the approved
21 training plan to be at the mine site available to miners and
22 their representatives for examination, Part 46 does not. It
23 only requires to be available upon request, and there is no

timeframe for producing the plan. This will reduce the availability of the plan to miners and thus, their ability to know its contents.

Part 48.23(f) should be required -- as it reads: "The operator shall make a copy of the MSHA approved training plan available at the mine site for MSHA inspection and examination by the miners and their representatives." In the proposed rule, MSHA stated that although they expect miners and their representatives to be given a copy of the proposed plan, it does not specifically require it. It should be stipulated in the rule, the miners along with the miners' representatives be given a copy of the plan.

Under Part 46.3, if the operator has certain criteria in its plan, it does not have to be approved by MSHA. The proposed rule basically lets the operator decide.

The training topics under Part 46 only have to be generalized unlike Part 48.23, which requires and spells out more specifics. The training required in Part 46 is also confusing. Part 46.5 seems to require specific subjects be taught such as miners and their representatives rights, recognition and avoidance of hazards, mandatory standards and et cetera. Part 46.4(c) proposes, however, to allow operators to substitute Part 46 training programs with

others.

The commentary on the rule supports this notion. Substituting an OSHA, state or other federal training program for Part 46 training would create serious problems. Those problems likely do not cover miners and their representatives' rights under the Mine Act, nor would they cover federal mining, health and safety standards. These would also deviate greatly from the Part 48 standards on course requirements.

With the generalized approached of the training plans, one would have to question if miners found the training implemented to be ineffective, how would they go about getting it changed? By the way the standards are designed, it would be impossible to figure out what the training would consist of or its quality until well after it was implemented.

Training of new miners, experienced miners, retraining of miners, task training and hazard training standards has stipulations under Part 48, giving MSHA the right to require additional training topics to be added. Part 46 lacks these requirements. Those are important to miners.

At a mine where specific hazards exist and where

there is a potential for injury, illness or death to miners where training is not provided, such a mechanism is needed to require it. If a miner suffers injury, illness or death, this demonstrates the need for more training. This is an important tool for MSHA so as to have the required additional training.

The proposal would eliminate the 30-minute training sessions and allow inexperienced miners to be placed in the mine with minimal training. The preamble contains discussions on the rule regarding the 30-minute minimum training sessions required under Part 48, and notes that Part 46 does not require that.

There has always been a fear if set times were not required, mine operators would abuse the training requirements citing any event they could to be applied to paper compliance on the standard. It has been stated that the training of miners in the United States is unimportant. Elimination of the ever-so-minimal, 30-minute timeframe for structured training supports that view. There is a need for quality time and structured training for miners, and it should be increased, not decreased.

MSHA notes that in the preamble, that Part 48 requires new miners to have a full 24 hours of training

before miners enter the hazardous workplace of a mine. In the proposed rule in Part 46.5, miners are not required to have the full 24 hours of training before beginning work. They need only certain subject training, which may be different in Part 46.4(c) if applied and can work for 60 days before receiving the remaining training.

One should worry about the comments MSHA referred to in the preamble about the initial training for new miners being conducted in two hours. Well, some suggest that miners can be too overwhelmed by too much training at one time, it is tragically true that inexperienced miners can be overwhelmed by too many hazards at one time.

The Part 48 standards are there for a reason. The standard is designed to prepare a miner for the most hazard occupation in this country before they're cast into it. The standard proposed by MSHA has all the earmarks of using inexperienced workers to facilitate production expediency. It makes no difference if it's a large or small mine. It is a far less protection than Part 48.

The proposal would not mandate a formal instructor approval program. A competent person selected by the mine operator, as opposed to the approved MSHA instructors can be utilized. MSHA will lose control over a part of the

program. Part 48 needs to be exercised here to ensure quality and accountability.

The proposal will not require formal hazard training and invites increase of less trained contractor employees. The hazard training provisions under Part 46 are much different than those under Part 48. The flexibility is endless. By design of the rule, hazard training could be accomplished by a mere use of warning signs or posters under Section 46.11(d). If accompanied by an experienced miner under 46.11(e), no hazard training is required.

As noted by MSHA in the preamble, these standards are less stringent than the hazard training standards under Part 48. Contractors working at mines that would be covered by Part 46, appear to need only hazard training. By design of the rule, if a contractor employees -- if the contractor employees do not have new employed experienced miner training, they need only hazard training. Operators may be more inclined to hire contractors to avoid more extensive training -- retraining.

The preamble makes it clear. That unlike Part 48, Part 46 does not require mandatory retraining topics. While one may urge some need for flexibility, the flexibility built into this standard is endless. The training would no

longer require the minimum 30-minute sessions for training. This would be subject -- this would subject the retraining miners received through a tremendous abuse. Thank you.

MS. ALLEJANDRO: Mr. Lamont, you indicated that if any questions we had would be addressed in the United Mineworkers written comments after the hearing.

MR. LAMONT: Yes.

MS. ALLEJANDRO: The one question I have is just -- I guess I would like some clarification on the statement about providing -- the operator providing miners or their representatives with a copy of the plan. I think you indicated the proposal did not require a copy of the proposed plan to be provided to miners and their representatives, but I think it does. Although I don't believe it specifically provides that the final plan be provided, but it does allow access by the miners and their representatives.

If you could in your written remarks, clarify what -- you know, take a close look at the rule language and clarify what plan you're referring to because it's not clear to me where you're comment goes to.

That's the only question I have. Robert, do you have any questions?

MR. ALDRICH: I just had one question. And that is, is it your comments -- and, I think this is a rhetorical question -- that Part 48 should be adopted instead of Part 46 in its entirety?

MR. LAMONT: I can personally answer that, but I prefer to reserve the right at a later date to comment on it.

MS. ALLEJANDRO: Okay. Yes, that's fine. Kevin?

MR. BURNS: I don't have anything right now. You said you'd like to respond to any questions in your formal comments?

MR. LAMONT: Yes.

MR. BURNS: I mean, you raised a lot of issues pretty quickly, so would you be available to -- I mean, if we send some sort of follow-up, how would we do this if we can't figure out questions at this point?

MS. ALLEJANDRO: I don't think there's really a mechanism. But the UMWA is going to be submitting written comments?

MR. LAMONT: Yes.

MS. ALLEJANDRO: Okay. Then, we'll just have to rely on those.

MR. BURNS: Okay.

MS. ALLEJANDRO: Unless you've got a specific question?

MR. BURNS: Not right now, but I know -- I mean, after particularly -- you know, after I review the transcript, I think there'll be some other questions, because there were a lot of issues raised.

I'll try to pull out a few.

MR. LAMONT: Yes. Please feel free to submit any questions to me.

MR. BURNS: Well, I'm not sure that there's a mechanism for that. That's the problem.

MS. ALLEJANDRO: Yes. I don't think there is. We're in the rulemaking process. I mean, the way that it works is things come in on the record, I mean, either through testimony at the public hearings or submitted into the record in writing.

And there's not really a mechanism for a back and forth, because I think the idea is that everyone who is interested in this has got the opportunity to know what's going on. And so, you know, we can't really have these -- what they call ex parte contacts with commenters. And I don't think there's really a mechanism for that today.

So I mean, we're in a situation where I mean, if

we can think of questions now, we will ask them. And otherwise we'll just, you know, rely on your testimony and your written comments.

MR. LAMONT: For clarification purposes, we'll go into more detail as per the statements made --

MS. ALLEJANDRO: Section by section --

MR. LAMONT: -- in the written comments.

MS. ALLEJANDRO: Okay. I think that would be very helpful.

MR. BURNS: Do you know is there going to be someone from the UMWA, the hearing in Washington on Thursday?

MR. LAMONT: I would believe.

MR. BURNS: Okay. Anything we miss --

MS. ALLEJANDRO: You know, if we think of something in between now and then, we can put it to that speaker. Rosalyn, do you have questions?

MS. FONTAINE: No.

MS. ALLEJANDRO: Rod?

MR. BRELAND: Just a couple. One, you had talked, Mr. Lamont, about the 24 hours of training. Were you saying that you believe they should have that before they start any commencement of any work, in lieu of the 8/16 split that a

lot of them have done in the past now? The 8/16 allows 60 days to finish the 16 hours?

MR. LAMONT: That would personally be my belief, yes, to have the full training prior to any commencement of work because of the just -- by mere version of the hazard of the industry. As underground miners, we need to receive a full 40 hours prior to starting the work. Twenty-four to me seems very minimal.

So I mean, this mechanism has been in place for so many years in all, and it's just -- you know -- we're at the point now where I believe it should be implemented and the full 24 hours should be received in my belief, personally, prior to the start of any work.

MR. BRELAND: Okay. The other thing on the instructor approval, are you advocating something similar to Part 48 where somebody either had to take training, be monitored or submit some qualifications for review?

MR. LAMONT: There again, in my belief, yes, I would say be molded more toward Part 48 because, I have a question in my mind -- competent person, I'm not clear on what that is, who that is, who designates it, whether it be the agency's or whether it be the operator.

I see a lot of places out there. For example, we

have -- for underground coal mines the surface facilities of underground coal mines to have a competent person on the surface, that could be a security guard. And he doesn't necessarily have to have any type of training, other than perhaps just a hazard training. There is a few instances it just happened in the near past year that is going to end up mandating that they have somebody trained.

There was a fire at one of our operations. The only person out in the surface was the security guard. And all he knew how to react was to call 911. He was not trained in any other function on putting a fire out. The fire was close to the mine mouth, which could have been disastrous at some point. Thankfully, there was somebody -- a foreman outside who acted promptly and the men were withdrawn from the mine.

But yes, I would say more in line with Part 48 as far as having a trained instructor certified by the MSHA.

MR. BRELAND: Or, maybe a better clarification and definition of competent person? Is that some of the concern the way it reads competent person by definition itself in the proposed rule, and that essentially, an operator could choose a competent person without some second review? Is that --

MR. LAMONT: There again, I can only personally remark, and this does not necessarily reflect the Mineworkers, position or my boss. But I personally would rather see the instructor certified by MSHA.

MR. BRELAND: Okay. Thank you.

MS. ALLEJANDRO: Anybody? Kevin, you have any more questions?

MR. BURNS: I guess just -- you referred to the annual refresher training and you support keeping a 30-minute requirement. Is that accurate?

MR. LAMONT: Yes.

MR. BURNS: Okay. I guess the only -- in my review of what went on in Part 48, you know, that 30 minutes was -- there was a problem in the past with people just saying, you know, work safe today and wanting to count that as their safety talk for the day. And if you do that every day, you know, count five minutes, it adds up. I mean, that did go on.

But as far as the 30 minutes, I've never seen any documentation that there's any basis for that number. And that's really what we're looking at here. It has to be effective training, and they can't just have -- I can't see somebody having a 10-minute safety talk meeting when

actually they talked about a minute because everybody's getting their coffee and doing this -- doing all kinds of things and bullshitting for nine minutes.

So I think there has to be an effective time period. What that period is, I'm not really sure -- I've never seen any support for any set number that's really necessary to be effective on a subject matter. If you're aware of something, I'd appreciate that.

MR. LAMONT: I think what basically I was making reference to we'd not like to see anything less than a 30-minute standard simply for some of the reasons you're saying. Go over a quick safety topic and use that to account for part of the training. But you know, I'd rather see it done in increments so I can -- eight hours, bang, bang, but nothing less than the 30.

MR. BURNS: Okay. The other thing was the issue of I guess giving credit for OSHA-type training or something like that. I mean, at least in the discussion of that part of the rule, I mean, there'd have to be relevant training. And there are areas where it seems at least it was suggested that some of the training would be relevant.

If you have a truck driver that's received quite a bit of training in the construction area or a loader, in the

construction area, he -- that person has received quite a bit of training on how to operate that equipment, how to safely inspect and those sort of things. That sort of training seems to be -- seems like it'd be relevant for the mining environment. Certainly they're still going to have to get the miners' rights and the various things that the person would not have gotten.

The idea is just not to require, you know, redundant training of that sort. I mean, you -- we're told we'd have situations where you'd have someone at the mine with a couple years experience on a loader training somebody that's run a loader for 20 years. That doesn't seem to be quite effective, and it actually could have a negative impact on that new person from the standpoint that he feels like all of his other experience was irrelevant.

MR. LAMONT: I think what our concern was is they would not receive the MSHA federal training requirements, as opposed to bringing in the MSHA rule. That would be basically our concern.

MR. BURNS: Okay.

MR. LAMONT: The training be more consistent with everybody else on the site.

MR. BURNS: Right. And I agree with you there. I

mean, if someone had 40 hours of training, say, under OSHA for a forklift or something, that 40 hours shouldn't cancel out the 24 because he didn't get all the other things that are required that you're talking about. So I agree with you. I think we're all in agreement on that.

That's all I have right now.

MS. ALLEJANDRO: Anyone else? Thank you very much, Mr. Lamont.

MR. LAMONT: Thank you.

MR. BURNS: Good luck on your trip.

MR. LAMONT: Thanks.

MS. ALLEJANDRO: The next speaker on the list is Ed Elliott from the Rogers Group.

MR. ELLIOTT: I'm Ed Elliott. That last name spelled, E-L-L-I-O-T-T. I'm safety manager with Rogers Group, Incorporated, headquarters in Nashville, Tennessee.

I'd like to first say that I think the Part 46 rule that you have proposed does fulfil the requirements under the Mine Act. And Part 48 followed the same process as this in the development and promulgation of rules pursuant to the Mine Act. And I think at that time, they were probably very effective and very, you know, appropriate for the mining situations at that time.

But there are things that have changed. I believe that the Part 46 takes into account a lot of the changes and educational philosophy also in the increased amount of education that is available to miners, both in reading and now the Internet. I mean, there's a lot of ways to gather information. And I think the miners today can -- or just would receive the Part 46 training, would allow the flexibility to really tailor that training to fit the needs in operation.

And I have worked and done instruction under Part 48 and am a certified instructor by MSHA. And that is very beneficial training to have in that certification. But I believe today again with the flexibility that Part 46 provides us, that we can produce much more dynamic training, plus it's going to be put a different responsibility upon MSHA and the Educational Field Services. I think even MSHA recognizes the change in approach will be beneficial and will have a greater positive impact on training to the miner.

With that said, I'd just like to go through some of the questions that you put out in the public solicitation for comments for these hearings. One, dealing with a competent person. I've heard the suggestion about a

competent person needs to have mining experience. I think there's a place to where that mining experience is going to be important. When that activity is occurring at the mine site, there needs to be people experienced in mining at the time giving that training.

But there can be people that would not necessarily have mining experience that could be very competent in explaining and educating people and communication to them the necessary safety subjects that would have to be covered. So I think there would need to be a combination, but it would not necessarily be a prerequisite that anyone doing training would automatically have to have mining experience. And I think that's important.

One of the questions concerning an experienced miner and what provision should be included in the final rule to deal with that issue, and I think the -- what you have said, having 24 hours of new miner training and who has at least 12 months of surface mining or equivalent experience would be an experienced miner. I'm a little bit concerned about the necessity to have both. I think if a person has had the 12 months of mining experience, then they are -- will have received the training, and therefore, would be an experienced miner.

I don't think they would necessarily have to have 24 hours of experience and 12 -- excuse me -- 24 hours of training and 12 months of experience. It could be either or.

Concerning equivalent experience, I think that's important that we have provisions for equivalent experience, but I think it needs to be documented and fully defined what that experience is. If someone comes in, "Yeah, I had a course, and somebody taught me how to run a loader." I don't think that's sufficient. There needs to be come documentation that any reasonable person could evaluate and determine that's it going to be equivalent and applicable training.

Talking about the definition of the term miner and including persons engaged in extractions or production, and being defined as mining, removal, milling, crushing, screening or sizing of minerals at a mine, I think that does cover what should be classified as a miner. I think we run the risk if we're not careful of including people in that definition of a miner.

It could be, as we say, if it's not clearly defined, the person may be coming into the office to do some repair on the water fountain, someone could all of a sudden

start bringing that person in. Maybe they have to drive down an entry road to get to this office. And then they could say, "Well, they're actually related. There's materials -- mining activity that's going up and down that road, then they should be included as a miner." And I think keeping a very specific definition is important, and I believe the one that we have is adequate.

Concerning the situation where you may have a person infrequently that would come to the mine, as I mentioned, it may be someone drives along a haul road and comes to the office, works on the water fountain. I believe it's covered sufficiently in hazard training to where we don't have to worry about the situation where that individual would be exposed unnecessarily to mining activity and would not have any training. I think the operator clearly has an obligation under the regulations to provide the training, which is commensurate with the exposure of that person. And I believe that Part 46 covers it sufficiently.

The one area that is still going to create some questions in the future, and that's dealing with construction workers. And let me first say that whether it be Part 46 or Part 48, in my opinion, there needs to be a

separate standard that covers construction work that is not in the category of mining, as we would look at a miner. There are a lot of things that go in that kind of environment, in the construction environment. And I'm speaking of when a -- I'm not talking about a construction company that would be contracted to come in and extract the mineral. I think that's clear. We've got their miners. They have to have the training.

But it's the people that come in and do the building of a wash plant. It may be in a separate area totally away from any mining activity. But they're going to build a new wash plant that the mine is going to use in three months.

Even Part 46 and Part 48, in my opinion, do not effectively address the hazards and the risks that these people would face. And developing a program -- maybe it doesn't need to be a new rule. I don't know. There are smarter people than I am that could come up with that. But at the least, there needs to be come recognition by MSHA that a -- maybe the Educational Field Service can develop a training program, so to speak, that would more specifically address these activities and the risks and hazards that one would face in the activity that would really not encompass

mining, as I would call it.

I question in one comment in the record where it was mentioned that construction workers building a new crusher in an active quarry would be considered miners. All other construction workers at mine sites would be required to receive site-specific hazard training.

In my opinion, this is where you get into that gray area. I think you could be constructing or building a crusher and in actuality, it's not directly related to the mining, milling or screening necessarily other than -- I think the risks are different. When that crusher is running and producing the mineral, acting on the mineral, you have different risks and hazards that are associated with that versus when a company comes in and they are constructing that apparatus.

And again, it's gray. I don't think there's any easy answer to it. But I think if you -- if there is some point to where that is clarified by regulation where you almost look at it as it is encompassed in the regulation, but it's handled in a different manner, then those construction operators that come in and do the erection of equipment and so forth, they would have clear guidelines. I think it would help them, as well.

Talked about normal working hours, and I think that is covered. Mr. Tuggle, earlier this morning, I think, was a little bit concerned about the people that might do the training and say, "Well, come in tonight at midnight. I'm going to do the training from midnight to four in the morning." And they don't ever work at night.

I think that's clear. The intent is during the normal work hours. And that can be determined by looking at the previous schedule for a period of time. I don't really think that would be an issue.

I do believe that the process that you have developed in having a training plan that has to have a minimum number of requirements to be approved is the proper way to approach it. I think the flexibility in the training plans will be determined through the time period that given to comply with the regulation, the Educational Field Services, along with inspectors that will come out and make contact with the mining entities will help guide them in the direction, giving examples.

I spoke the other day with Mr. Terry Phillips who is the new training specialist for the southeast district there in Birmingham. And he was quite excited about some of the changes and making contacts with miners and companies.

And he sent me a model training plan as an example. And I saw some very good things in there that we would want to incorporate.

So I see some really great opportunities in the future to have a training plan that truly would be owned by the mine operator. It wouldn't be something that's so prescriptive and say, "Well, I'll just write down whatever the law says and we'll do that." Now, it says, "Okay, listen. You need to do the training. It clearly will help. You need to develop something that's good for you."

And you kind of put the responsibility back on the operator. They can't use the crutch of going in and the list of the things in Part 48 and say, "Well, I covered this. You know, now I've done my training." I think they've got to think a little bit, and that's -- it's time that that should occur.

The aspect of the inspection when you talk about in the proposed rule to where a miner could request a traditional form of approval. In my estimation, this is really unnecessary and could be abused. I don't know that it necessarily would be. I do think that the inspection process would uncover any issues like that, plus the miner always has the right to contact MSHA and to say, "XYZ

Company did not post the training plan. I think it screwed up. It doesn't address this or that." And then MSHA, I think, is obligated by law to come out and determine that.

So having the process to where it's automatic that if a miner or miners' representative wanted to go through the regular approval process, that all they would have to do is say, "I want this approved," I think it could be unnecessarily burdensome and may not even -- may not really gain anything. It may slow the process down.

So I think there are mechanisms in place to protect the miner from being subjected to a training plan that is improper or doesn't meet the regulation, without having to put something this prescriptive in the Part 46.

I think your proposal of providing when requested the training plan within one business day is very reasonable and gives the operator and the inspector guidelines that they can go by. And the way it is today, I don't know. I'm sure there is some places where there are mines that may be -- if an office was separate that couldn't get overnight in mail in one day. I mean, whether they have a fax or a computer. You know, you see the commercials on TV. They say they can send anything overnight and get it to the other place. So I don't -- I think that's a good guideline.

The question you had was whether the government should include examples of model training plans in an appendix at the end of the regulation. Honestly, no. I believe that there should be an indication of where they can contact people wherever the available resource are to get help with this. But maybe I'm thinking in a negative term this way.

But some people might take that and just put their name at the top of it and say, "This is it. You know, this is my training plan." And that's not the intent. They need to think about it. They need to contact the representatives.

And this is, I think, a perfect example of where the state grants program can go through an evolution in its process of providing the services intended to the mine operators. They -- they can go -- the operator can go to the state grants provider and say, "Help me with this to develop my program." Not just provide the training, but also provide the development assistance for training plans.

Concerning minimum qualifications for persons who conduct training, I do not believe we should have certification as Part 48. I think there have been wide discrepancies in both quality and quantity of training in

order to get certification. I do believe we should -- the government and the state grants provider should continue to provide training for instructors to assist them in developing new techniques, new methods of training.

Providing for opportunities to use equivalent training, I think this is something that is progressive. It's taking the approach that training does not necessarily have to be MSHA approved to be good training. It can be approved by other agencies, and there can be good cross-pollenization and ideas and techniques with training, and recognizing that training.

But I think it's still again, it's not somebody just says they've had training. I think they need to be able to clearly document the training, and that it should be referenced appropriately to whatever regulatory agency, if that be the case, or whatever it may be. There has to be appropriate documentation.

Concerning the minimum time limits for training, 30 minutes has been, I guess, in practice for a number of years. I do think you look at -- at a point, a guideline for minimum training is appropriate. And I do not have any information to support the number I'm going to throw out here before you ask that. But I think 15 minutes would be a

minimum. And the reason I say -- and, part of that when you review or the inspector reviews the training plan, if you have a training session with 75 people that last 15 minutes, it's kind of ridiculous. It's -- they're not going to give opportunity for any kind of feedback or depending on the methods that you have for that training.

But if you have an operation that has three people, 15 minutes can be a long time, can be a long time. So I think that's where the flexibility and Educational Field Services and the state grant providers and the inspectors have to look at that training plan and see if it fits the circumstances. But I would say 15 minutes would be what I would classify as the shortest time period.

Newly hired experienced miners and talking about having the refresher training within 90 days, I would propose that that should be extended to 120 days. And it says clearly that this -- this individual, even though experienced, must have minimum training requirements before they would -- to be a worker at that mine. It determines that.

But to say to them that in short a period of time as 90 days, that they would have to have then refresher training, there might be quite a bit of redundancy, plus the

120 days would give a greater opportunity to catch the normal cycle of work. It's not going to always catch it, but it may give a greater opportunity. Plus, it gives a greater opportunity to the operator if they so desire to give the training in small segments. It would give them a little more time to cover the refresher training with that person in smaller segments. And that's the reason just for the extended period of time.

Another aspect of the regulation that I think is important that maybe there needs to be further clarification, and that's concerning the operator's responsibility to give training to a contractor's employees. We have a situation coming up at one of our operations here in the next few months that we have talked quite a bit about this issue.

We're going to have part of a new plant that's going to be built. We are going to bring in a subcontractor because they're experienced in building this and so forth. And we are going to give them hazard training. We're going to do this in a very formal session, bring in, as a matter of fact, all their employees at that time. And we're going to say in the contract that the sub must provide all the necessary training for all their employees.

What we run into the problem with, though, is that if they hire someone midway through that project after we have given hazard training, then for us, there are times we may or may not be aware that they bring this person in. But we are telling them by contract, and we are going to show the regulations to them that they must comply with these regulations. And we will provide them, both in a written form and in a narrative to them what the hazard training should be and what they need to make sure their employees are educated and have to comply with.

But I think the way the proposed rule is now, it forces that operator to say, "Well, oh. There's somebody I don't recognize them. I've got to go run and give them hazard training." And that may not be practical. That's the thing.

I can see -- the operator needs to assure that anyone coming on that property has the hazard training. But the subcontractor could do that hazard training just as well after we have given them appropriate instruction and guidelines that they would provide that to their employees.

The last couple of things. I think one year for implementation is appropriate. One comment earlier mentioned about the starting in January 1. I would -- I

would say that the citations that would be written would be -- I just -- I don't think it would be appropriate or fair to do it in that short a time period, because there are a lot of people out there that don't comply with any regulation dealing with training right now and maybe don't even know a lot about -- I find it hard to believe -- but may not know a lot about the process that's going on now.

So there would need to be an appropriate amount of time given. And I think one year is appropriate.

And I would like to say lastly that I believe that state grant program should be fully funded. That doesn't mean that there can't be guidelines and that they would be an extension of Educational Field Services and support the goals and objectives, but I -- their role is going to be increased dramatically in the next few years. And many of those providers do a great job.

And I think with the new reorganization with the Educational Field Services, that there's some great opportunities there to enhance training in all areas of mining, not just in those coming under Part 46, but I think Part 48 and even, you know, taking us to greater heights in how we train miners.

That's really all I have other than to say thank

each one of you for the efforts that you've put out. I think this is a great example of how miners, companies, government, we can all work together to come up with something that will fit and will work and will get the job done. And I think this process is a great example that other regulatory agencies can use, and I thank you for that.

MS. ALLEJANDRO: Thank you very much, Mr. Elliott. I have a couple questions for you.

I guess I'm looking for some clarification on your comment on the definition of experienced miner. It seems to me you were making the point that requiring 24 hours of training and 12 months of experience was I guess duplicative, because by virtue of the fact that a miner may have 12 months of experience, he or she is already going to have the training? If you could expand on that.

MR. ELLIOTT: I think you're correct in both your assumptions. It would seem to me to be a duplication. If the person has the 12 months of mining experience, they will have had training. Part of it may have been training under Part 48, or it will be training under Part 46. And the -- if not, then they would have had 12 months of mining experience, which would have, I think, covered all the necessary -- the necessary training that would be -- let me

think how I want to word this. I want to -- what I want to say, if you hire -- let's say, the person's had 12 months of mining experience and no training, hypothetically.

MS. ALLEJANDRO: Right.

MR. ELLIOTT: If you hire them, and you have documentation, clear evidence that they have 12 months of training or excuse me. Twelve months of experience.

MS. ALLEJANDRO: Right.

MR. ELLIOTT: Then you are going to have to give them a certain amount of training before they go to work for you. I do not think it would be necessary to continue on to the additional training that they then would have really received through experience at that point. I just don't think the 24 hours criteria would be critical there if they'd have the 12 months of mining experience.

MS. ALLEJANDRO: Okay. I mean, the -- just the thinking and pulling this definition together was that -- I mean, a number of people are going to be grandfathered, I mean, under the proposed scheme anyway. A number of people working at mines would be grandfathered and would be considered experienced miners without 24 hours of training and 12 months of experience. And then once all those people are grandfathered in, then future hires would need to have

the 12 months of experience and the 24 hours of training in order to be considered experienced.

MR. ELLIOTT: I know there have been some questions concerning those people that might be laid off, the April 14. If you said 24 hours mining experience or 24 hours of miners training -- I'll get it right.

MS. ALLEJANDRO: I know. I keep mixing it up, too.

MR. ELLIOTT: Or, 12 months of mining experience, it would cover those people. Anybody that you hired after April 14, they are going to be required to have the training as to Part 46. So if they didn't have it at that time, then they would be -- you know, they would be getting the training under Part 46. It would be applicable. Whereas, you would get those people that had the 12 months of mining that were not -- you know, that were not given the training maybe beforehand, that couldn't be grandfathered in because they weren't on the job that day.

That's another consideration. But I just -- you know, I'm not sure. I hadn't had a chance really to think that through. That just came to my mind at that point.

MS. ALLEJANDRO: Okay. We need to take a look at that. I have another question on the division of

responsibility or primary responsibility for production operators and for independent contractors who employ workers at the mine site.

You indicated, I guess, a concern in situations where the production operator may not be, you know, acutely aware of new people who are coming on to the operation. And would it not be appropriate to allow the production operator, I guess, to provide the independent contractor with the necessary information, the site-specific hazard training information, and then place responsibility on the contractor to provide site-specific hazard training to any employees who may be coming on to the mine site?

I think our intention was to allow a scheme like that. I mean, in the preamble, I think we talk about situations where, for example, the contractor would be responsible or could be made responsible for site-specific hazard training, and similarly, that the production operator might choose to take responsibility for comprehensive training for contractor employees. But that the primary responsibility would be on the production operator for site-specific hazard training because the production operator has got -- obviously, is in the best position to have information about the hazards at the mine site.

But it doesn't preclude shifting that responsibility in some fashion. I mean, whether by contractor or other kind of agreement. And I didn't know whether you're looking for some change in the regulatory language or where your major area of concern might be.

MR. ELLIOTT: If what you have stated is the intent and how that will be interpreted, I agree with what you said 100 percent. I guess maybe in my reading of it, I didn't -- I didn't quite see it exactly that way.

MS. ALLEJANDRO: Maybe we need to, you know, explain it a little bit more clearly. But I mean, as a practice matter, though, how the -- you know, should there be a violation, and should required training not be provided? How the citations sort themselves, obviously, is going to depend on the peculiar circumstances in each situation.

So you know, as far as whether -- you know, who is primarily responsible, whether it's joint citations or not, I mean, obviously, would depend on the particular circumstances.

MR. ELLIOTT: There are situations that I've seen I think through the last few months, interpretations by inspectors that if you give the hazard training and you have

a signature or some documentation indicating that they've had hazard training, then citations have been written directly to that subcontractor. And so, it may be that they are adopting this basic approach already, but making sure that there's an understanding of the intent of Part 46 when it comes into position, whether it be in notes or the inspection manual or whatever, clarifying that part of it.

And that's our concern about having someone that -- a large contractor who is over here working on something that has nothing to do with the mining process. Then, they'd come on the -- they'd bring somebody else in because somebody was absent. And we say to them, "You've got to give them training. You know, we've told you, you have to comply with the regulation." But they come in and we don't -- you know, we don't know it, or it's a small operation and maybe they're off mining over here, a quarter mile or half mile away and didn't -- didn't even -- you know, maybe didn't see them come in, a different person.

I just don't want to be in the position to where the inspectors says, "Hey. You didn't get so and so here that came in today," and then cite the operator. If there's a clear definition of responsibilities, whether by contract or some other means. That's the only part that I'm bringing

up. And based on what you've said the intent is to allow that.

MS. ALLEJANDRO: Well, I mean, that was -- that's the intent. I mean, we'll need to take a look at that, along with everything else in the proposal as we develop a final rule. And obviously, I mean, getting the word our to our enforcement personnel is going to be a key part of the successful implementation of this regulation. I mean, regardless of what's in the final rule. So thank you.

Those are all the questions I have. Robert, do you have any questions?

MR. ALDRICH: No questions.

MS. ALLEJANDRO: Kevin?

MR. BURNS: I just had a question on the plan process in submitting the plan to the miners for comment. You stated you didn't think that that was necessary. Is that accurate?

MR. ELLIOTT: As far as comments are concerned, I don't think there's any problem with doing that. I think they should be included in the process and so forth.

The part that I was talking about that I think -- and, I don't remember the specific point in the proposed rule where if a miner wanted the operator to use the

approval --

MS. ALLEJANDRO: Formal approval process --

MR. ELLIOTT: -- the formal approval process, all they would have to say is, "do it." And I see that as unnecessary for this reason. Already in the regulation, if a miner sees or has any knowledge of a hazard or a violation of the regulation, they have the right to contact MSHA and to request an inspection or whatever -- ever what they would want to do. And then MSHA has an obligation to address that request.

So I think if the miner saw the circumstances to where Part 46 and the approval process and how the operator was supposed to be following the regulation, then all they would have to do is contact MSHA, not put in the situation where someone comes in and might say, "Well, hey. I want you to -- you know, I looked at this. I don't like the way you -- you're doing this or did that. I want you to send it in for formal approval." Then all that could do is delay and cause increased burden, both on the operator and the Government unnecessarily, when there's already a system in place to where they could address that.

It's prescriptive in the things that are required in the plan. And when the inspector comes out in the first

inspection, and they look at it and it's not right, then they're in violation, the operator. Or the inspector comes in and says to the -- inspector talks to the miner or miners' representative. The miners' rep says, "This wasn't done, or that's not done according to the regulation." Then the inspector has to address that.

So I think there's a mechanism in place. I don't like the open-ended thing where somebody could come in and just because they might be upset because of -- it may not even be anything related to the training. They might be upset about something else and say this might be a way to -- "You know, I'm going to cause you trouble." I'm not saying that would be the case, but it opens that up when there's already a mechanism in place for the miners or the miners' rep to address any deficiencies.

I don't mean change anything as far as the requirements of posting or giving it to the employees. I think that's important to do. I just think that a miner being in a position to just say they want to go through the formal process is unnecessary.

MR. BURNS: I mean, as it's written, it gives the miners -- I mean, what you're talking about requires an affirmative action by miners basically.

MR. ELLIOTT: Right.

MR. BURNS: To contact MSHA. But the way it's written, it more or less encourages dialogue because they can submit their comments or talk to the operator directly. They may never submit something to MSHA. So it's sort of facilitates communication in that area where they have that opportunity and that right to comment to the operator on the training plan. Whereas, if they don't have that right, they're basically stuck with taking an affirmative action and contain MSHA, which sort of starts an adversarial relationship.

So I see your point, but I think that's the intent of this rule is to create this opportunity for miners to be able to communicate and have dialogue. And if they see an area where they have concerns, that can all be worked out where it belongs, you know, at the mine where they know they'll be specific problems.

MR. ELLIOTT: And it may should -- maybe it should speak to more specifically to that fact requiring the operator to have interaction versus -- it's kind of like -- I think that's -- what you're saying is what we -- I mean, we support -- the Rogers Group supports that kind of interaction. But the idea of someone being able to just

say, "I want MSHA to approve this," that can be adversarial, also.

But if we say that the operator needs to have interaction with the miners, then I think that's the intent of what you're saying. And then if that interaction is not occurring, and the operator can't demonstrate that that's occurred, then in some ways they're in violation of Part 46.

So the inspector could hypothetically cite them for that. So maybe there's a way to get that without kind of holding that stick over -- it almost appears like it's holding the stick over the head of the operator. If you don't talk to them and deal with all this stuff, then all they have to say is send it to MSHA, and that's how you're going to be punished.

And I'm not saying it's not something that we can't live with. I mean, we don't mind doing that or wouldn't mind doing that. But it's -- I just see that it just doesn't -- it doesn't come across to me personally anyway of what you've intended for it to do.

MR. BURNS: Yes. I've never seen any numbers, but I don't know how often that really happens. Sometimes I'm wondering if this is just another bogeyman. You know, how many times do people actually --

MR. ELLIOTT: Yes, right, exactly. It could very well be that. It's not a -- you know, it's not a big deal, but I just wanted to share that comment.

MR. BURNS: Okay, thanks. I just wanted more clarification. That's all I have.

MS. ALLEJANDRO: Roslyn?

MS. FONTAINE: No questions.

MS. ALLEJANDRO: Rod?

MR. BRELAND: Yes, a couple of clarifications. One, when you talked about the experienced miner, 12 months of experience and the 24 hours of training. If they have 12 months of experience and no previous training documented, you weren't saying that you wouldn't expect them to have the required subject material covered. You were saying to do that in addition.

MR. ELLIOTT: Right.

MR. BRELAND: When they come on site.

MR. ELLIOTT: Right.

MR. BRELAND: I thought that's what you said. I just wanted to make sure.

MR. ELLIOTT: Yes.

MR. BRELAND: Also, when you talked about hiring somebody with equivalent -- I think you said equivalent

experience and defining that. You said something about documenting it. Are you talking about the operator? If you hired an experienced person, that you would expect them to provide some proof of documentation as to their qualifications, or that you would have something documented? I wasn't clear what you meant.

MR. ELLIOTT: Yes. That's exactly right. And it's not that they might be totally honest, but they may not explain to you sufficient -- in a sufficient way that you would trust they had equivalent training.

MR. BRELAND: Okay.

MR. ELLIOTT: That's -- and, it may be through -- they -- you could contact their previous employer. There may be methods to do that, to document it, that wouldn't necessarily be they have to hand you a diploma. But I think it's important that the operator would need to verify, because somebody could just come off the street and say, "Well, man, I've been doing this for 20 years." I mean, you're not going to call them -- it almost appears that you -- you know, you call them a liar if you check it, but really you should check it.

I mean, Ronald Reagan, I thought, had a good statement where he said -- dealing with the Russians, he

said, "Trust, but verify." And I just think that's what I'm talking about.

MR. BRELAND: Yes, okay. Then you talked about the definition of miner needing to be clearly defined, but then you went on to say you thought the proposal was adequate. I got a little confused there, and then I wondered what you thought about, say, the service and maintenance person that was in the pit area or something.

MR. ELLIOTT: Right. Well, I think you had it in one comment in the -- in the record that you had said the person putting up the crusher would be a miner. Well, to me, that person is not a miner. And that's the part where I'm saying is that I believe the definition that you have, would in actuality, preclude that person that was out there constructing the crusher.

And that's why I said it's important to have a clear definition of a miner, because right now when we take some of these construction people, and we tell them that "You need to have, under Part 48, comprehensive miners training," they look at us, "What do you mean? Not doing anything that has to do with mining. I'm putting steel together." And that's what I was saying.

MR. BRELAND: Okay. Then, along the lines with

the earlier discussion Kevin had and Kathy on the training plan and the participation of the miners, in essence what you were saying they still have the right to I guess contact MSHA if they have a concern. That really would put it more in an adversarial relationship, wouldn't it than saying that you know, that they really should have a right to development of the plan clearly up front.

I mean, there could be some interpretation if that wasn't spelled out how a miner had a right to review and so forth -- that some operators, without really intending to, might not even involve them in the process of developing a written plan.

MR. ELLIOTT: I think it's important that I clarify as I was -- I try to do with Kevin also, that I think the requirement of them being involved in the process is important. The only -- the only situation I see is that you put a write in if they don't like the process, then all they have to do is say, "Send it to MSHA for approval. I'll trust them to do it the right way."

I just -- I think that injects an adversarial perspective that is kind of like a hammer, whereas if you -- if you're talking about the process should include, you know, the mine operator, the miners, the miners'

representative, MSHA, the state grant providers. It should be a team really working together to develop the best program.

MR. BRELAND: Right.

MR. ELLIOTT: And I think having that as part of the process in the regulation is very good. It's only that one little part to where someone -- I see it's open for abuse and unnecessary use, whereas, they have a process that if the operator becomes adversarial with them and says, "Look. I'm not going to let you get involved with this. This is my own thing. We're just going to do this, and you just go back to work." Then, I think that's where they clearly have a route to take. It's adversarial then with the operator, so they can take that route to go. It's already provided. It doesn't have to be included in the Part 46.

MR. BRELAND: Well, I might just go along with what Kevin said about the bogeyman. I had some 23 years involved in enforcement, and yet have to see a complaint come from a miners' rep directly that somebody refused to work with a plan. It's not that it hasn't happened or couldn't, but I don't think it's common.

MR. ELLIOTT: Well, I would reverse it back to you

then. Why put it in there?

MR. BRELAND: Again, I think that the intent was to make sure there was inclusion -- they have a right to have inclusion in the development of it. I don't think it was -- I think the way you read it -- I understand the way you read it there is different then the way it was intended.

MR. ELLIOTT: Right.

MR. BRELAND: Or at least that's my feeling. You also talked about the 15 minutes for our time to count as a training session. And some might argue that that's quite enough time for two to three people. But are you proposing that if we -- if you had a 100, that's not enough time. There should be some more clarification. In the minimum amount of time, if you say it's less than 30 minutes, it should be restricted to certain size group or, I'm not sure I understood what you were --

MR. ELLIOTT: Well, I -- I guess it needs to be. I think the 15 minutes should be the minimum. The operators should be able to within their training plan, they're going to have to give specific guidelines how they're going to accomplish the training if they do it in shorter sessions. If they can -- my personal opinion is a large number of people, the shorter the session, the more difficult it would

be to accomplish what you're looking for. That's not to say there isn't somebody out there smart enough to do that.

I just say the guidelines should say in any training plan, there shouldn't be less than any 15-minute session. There shouldn't be a five-minute -- I mean, you've got to draw the line somewhere. But I do think there can be constructive dialogue in a 15-minute session. Less than that, you're kidding yourself. You know, we're going to be seeing plans one minute, two minutes, fives minutes, I think, given that guideline. I think 30 minutes is longer than necessary.

MR. BRELAND: Okay. And just one other question on the operators responsibility to train contractors. You're talking about doing initial hazard training for a company you've hired, and then essentially, not being responsible after that for subsequent employees of a contractor to come on.

MR. ELLIOTT: I think you continue having a responsibility, and particular if any changes might occur, you would have to notify that contractor and assure that they recognize that they have to train their employees if there's going to be different exposures. And I just think defining, as we said earlier, just defining the options of

how to accomplish that training. And I think the intent fulfills that.

MR. BRELAND: That's all I have. Thank you.

MS. ALLEJANDRO: Thank you very much, Mr. Elliott. We have reached the end of the list of people who have signed up to speak.

I'd like to ask now, is there anyone in the audience who has not spoken who would like to have the opportunity to speak? Or, is there anyone who has already spoken who has additional remarks they would like to offer. All right, then. I think we have probably come to the end of this hearing.

I'd just like to give you a little bit of a description, explanation, summary of what comes next. As I indicated earlier, we have one final public hearing, which will be held in Washington, D.C. this Thursday. The record -- the rulemaking record will remain open until June 16, and you are free to submit written comments until that deadline. Then, we will begin to develop the final rule and preamble. And we fully expect to have it published in the Federal Register on or before the September 30 deadline.

For your information, MSHA does have an Internet World Wide Web home page at www.msha.gov. And we have a

button on the main page for what's going on on Part 46. So if you want to check in every so often and see if there's anything new, I encourage you to do so.

We will have the transcripts of the public hearings up on the Web before too long, so if you want to dip in there and see what happened, to refresh your recollection of what happened here or interested in what may have happened at some of the other hearings, please do so.

And if there is nothing else, I think we're done here. And if you've got any questions or need any information, please feel free to come up and ask us at the end. Thank you very much.

(Whereupon, at 11:41 a.m., the hearing concluded.)

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1 REPORTER'S CERTIFICATE

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3 DOCKET NO.: N/A

4 CASE TITLE: PART 46 TRAINING

5 HEARING DATE: May 25, 1999

6 LOCATION: Pittsburgh, Pennsylvania

7

8 I hereby certify that the proceedings and evidence are

9 contained fully and accurately on the tapes and notes

10 reported by me at the hearing in the above case before the

11 United States Department of Labor.

12

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14 Date: May 25, 1999

15

16 Joel Rosenthal

17 Official Reporter

18 Heritage Reporting Corporation

19 Suite 600

20 1220 L Street, N. W.

21 Washington, D. C. 20005

22

23

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