

In the Matter of:)
)
PUBLIC HEARING ON TRAINING)
AND RETRAINING OF MINERS)
ENGAGED IN SHELL DREDGING OR)
EMPLOYED AT SAND, GRAVEL,)
SURFACE STONE, SURFACE CLAY,)
COLLOIDAL PHOSPHATE, OR)
SURFACE LIMESTONE MINES;)
PROPOSED RULES)

Date: May 18, 1999

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P R O C E E D I N G S

8:20 a.m.

MS. ALEJANDRO: Good morning. My name is Kathy Alejandro. I am with the Mine Safety and Health Administration, United States Department of Labor. And on behalf of MSHA, I would like to welcome you to the first 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 their views on the proposed training regulation which was published in the Federal Register on April 14th, 1999. These regulations would apply at those non-metal surface mines where MSHA currently cannot enforce existing training requirements.

And for those of you who are interested, I do have a limited number of copies of the proposal up here if you want to come up and get one at a break. And also, we have a sign-up sheet for people who are attending this hearing on the back table, and also a speaker sign-up sheet up here. So if you change your mind and decide you want to speak, come up and sign up. But we do ask that everyone who is

1 here do sign up on the attendance sheet in the back.

2 I would like to take this opportunity to introduce
3 the members of the MSHA panel who are here with me this
4 morning. To my left is Robert Aldrich who is with the
5 Office of the Solicitor. To my right, immediate right, is
6 Robert Stone who is with MSHA's Office of Standards,
7 Regulations and Variances. To his right is Kevin Burns who
8 is also with Metal and Non-metal Mine Safety and Health.
9 And at the end of the table is Rod Breland who is with
10 MSHA's newly formed Educational Field Services Division.
11 Rod is a Western Operations Manager for EFS.

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

21 In the omnibus budget passed by Congress on
22 October 21st, 1998, MSHA was directed to work with the
23 affected industries, mine operators, workers, labor

1 organizations, and other affected and interested parties to
2 promulgate final training regulations for the affected
3 industries by September 30th, 1999.

4 These hearings are intended to give as many
5 individuals and organizations as possible an opportunity to
6 present their views on the proposed rule. MSHA will hold
7 three additional public hearings. Later this week, one will
8 be held in Sacramento, California. And next week we will
9 have two hearings; one in Pittsburgh, Pennsylvania and the
10 final hearing will be held in Washington, D.C.

11 These hearings will be conducted in an informal
12 manner and a court reporter will make a transcript of the
13 proceedings. Anyone who wishes to speak at this hearing, as
14 I mentioned earlier, and has not signed up in advance should
15 sign up on the speakers list which is located up here. But
16 we'll have a break, so you can come up and sign up later if
17 you choose.

18 Anyone who wishes may also submit written
19 statements and information to us during the course of this
20 hearing which will be included as part of the rule-making
21 record. You may also send us written comments after the
22 hearing if you wish. The deadline for submission of written
23 comments is June 16th, 1999. If you need the address where

1 comments should be sent, please feel free to come up at the
2 break and we will provide you with that information.

3 MSHA is specifically interested in comments on
4 certain aspects of the proposed rule, although we encourage
5 you to comment on any of the proposed provisions. These
6 issues were identified in the notice of hearing that was
7 published in the Federal Register on the same day as the
8 proposal, April 14th, 1999, and I will briefly summarize
9 those issues.

10 Definition of miner: Under the proposal, a person
11 engaged in mining operations integral to extraction or
12 production would be considered a miner. We are interested
13 in whether this definition is appropriate. Workers who fit
14 the definition of miner under the proposal would be required
15 to receive comprehensive training including new miner
16 training or newly hired experience miner training as
17 appropriate.

18 Plan approval process: The proposal would require
19 each operator to develop and implement a written training
20 plan that includes programs for training new miners and
21 newly hired experienced miners, training miners for new
22 tasks, annual refresher training and hazard training.

23 Plans that include the minimum information

1 specified in the proposal would be considered approved and
2 would not be required to be submitted to MSHA for formal
3 review. Miners and their representatives would also be
4 given the opportunity to comment on the plan before it is
5 implemented or request us to formally review and approve the
6 plan.

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

12 New miner training: Under the proposal, no
13 minimum number of hours of training is required for a new
14 miner before he or she begins work under the close
15 supervision of an experienced miner. Instead, the proposal
16 requires instruction in four specific subject areas before
17 the miner can assume work duties.

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

22 New task training: The proposed rule would
23 require miners to be trained for new tasks and for regularly

1 assigned tasks that have changed. The new task training
2 requirements in the proposal are very performance oriented
3 and do not include detailed specifications for this
4 training.

5 However, we are interested in comments on whether
6 the final rule should include more detail and guidance on
7 the elements of an effective new task training program and,
8 if so, what areas should be addressed.

9 Training instructors: The proposal would not
10 require a formal program for the approval or certification
11 of instructors or establish rigid minimum qualifications for
12 instructors. Instead, under the proposal, training would be
13 provided by a competent person which is defined as a person
14 designated by the operator who has the ability, training,
15 knowledge or experience to provide training to miners on a
16 particular subject.

17 Under this definition, the competent person must
18 also be able to evaluate the effectiveness of this training.
19 We are interested in comments on whether this approach is
20 appropriate.

21 Annual refresher training: Under the proposal,
22 refresher training must include at a minimum instruction on
23 changes at the mine that could adversely affect the miners'

1 health or safety. The proposal includes a list of suggested
2 topics that refresher training could cover. But these
3 topics are not mandatory.

4 We are interested in whether the final rule should
5 include more detailed requirements and whether there are any
6 other subjects that commenters believe should be required.

7 Effective date and compliance deadlines: We are
8 interested in comments on how much time should be allowed
9 for the mining community to come into compliance with the
10 final rule. One possible approach would be phased-in
11 compliance deadlines where some of the rule's requirements
12 would go into effect at different stages.

13 We understand that there will be a very large
14 number of operations coming into compliance simultaneously.
15 And we wish to allow a reasonable amount of time for the
16 transition. So any comments that you have on this
17 particular aspect, we would be very interested in because we
18 do want to get a pretty realistic idea of how much time is
19 going to be involved for everyone to get their house in
20 order as far as training is concerned.

21 Finally, costs and benefits of the proposed rule:
22 We are interested in comments on all elements, including
23 methodology, assumptions and data, or our analysis of the

1 cost and benefits of compliance with the proposed rule.

2 I would now like to introduce the first speaker
3 this morning. We ask that all speakers state and spell
4 their names for the Court Reporter before beginning their
5 presentation. Thank you very much. And also, I believe --
6 although we've got -- it's set up for the podium, if anyone
7 would be more comfortable sitting at that table, we can move
8 the mikes I believe. And if you want to sit down while you
9 speak, feel free to do so.

10 The first speaker on our list is Ben Hart from the
11 Environmental Protection Agency for the State of Florida.
12 Mr. Hart.

13 MR. HART: I would prefer to sit if that's okay.

14 MS. ALEJANDRO: Oh, sure. Do you have it?

15 MR. HART: I think so if I can do it safely.
16 Nobody walk there. That's a no-walk zone, folks. I would
17 like to commend the Court Reporter, first of all, for her
18 good job of taping over there. That was -- that was very
19 good. Most times people lay it down and go on.

20 Thank you and good morning to everybody. I
21 appreciate the opportunity to provide some input and take an
22 active part in MSHA's rule-making process. And I applaud
23 you, Kathy, and the rest of your team for tackling this big

1 job in such a timely manner and getting it out. You've done
2 a great job.

3 I would also like to thank all the Florida mines
4 who are represented here this morning. I was very pleased
5 with the turn-out and support that we're getting.

6 I'm Ben Hart, spelled H-A-R-T, Mine Safety and
7 Health Training Program Manager for the Florida Department
8 of Environmental Protection in Tallahassee. I manage the
9 Florida MSHA State Grant Program and have since 1998.

10 During that time, I've had the privilege of training
11 thousands of aggregate miners under the existing 30 CFR Part
12 48 rules without any difficulty making it applicable to all
13 mines.

14 Ladies and gentlemen, after careful study --
15 carefully studying proposed Part 46 rule, I would like to
16 offer the following comments. It is my intention to include
17 in my comments a focus on the issues published in the
18 publication, RIN 1219AB17 that Kathy just referred to, the
19 issues. And I will add additional comments or suggestions
20 where applicable.

21 Is the definition of miner is stated in 46.2(G)
22 appropriate? In comparing 46.2 with 48.22, I believe the
23 latter's definition of miner, particularly paragraphs A(1)

1 and (2), is more complete and appropriate. The final rules
2 should include persons who are regularly or frequently
3 exposed to mine hazards.

4 Owners, operators and mine superintendents are
5 killed or disabled every year in mining accidents even
6 though they do not directly participate day-in and day-out
7 in the extraction and production. Their activities are
8 integral and essential to the overall mining process
9 however.

10 You should also include construction workers in
11 Part 46.2 since many of the serious injuries and fatalities
12 in the aggregates industry involve contract construction
13 workers. So Part C of Part 48 was intended to cover this
14 class of miner, but it has never been promulgated.

15 This is an opportune time I think to include them in
16 mandatory training requirements.

17 46.2(b) defines a competent person designated by
18 the operator. I'm concerned about whether or not mine
19 operators, particularly those lacking formal instructor
20 training, can adequately evaluate the effectiveness of
21 training. A person who has the knowledge and skill of a
22 particular subject may have the ability to provide training
23 in that subject and may not.

1 Language should be included outlining assistance
2 to be provided upon request by MSHA's Educational Field
3 Service, EFS, and/or the State Grants Program. I would
4 recommend that persons provided Part 46 training should have
5 completed the same requirements as found in 48.23(h) for
6 training instructors.

7 I've got a real problem with -- with a competent
8 person. There are competent people out there who don't need
9 formal training and would do a good job training. But I
10 don't know the number and being able to evaluate the
11 effectiveness, I'm not sure that you don't need more
12 oversight than you've got in the proposed rule.

13 46.3 outlines the process for training plan
14 approval, requiring mines to develop and implement a written
15 plan, but does not require submission for approval with
16 minor exceptions. I believe this approach is inappropriate,
17 especially when compared with the requirements in Part 48.

18 In order to ensure the plans meet the minimum
19 standards of quality, MSHA should maintain oversight of the
20 training plan. While not true of some mines and mining
21 contractors, many will not write a plan until they are faced
22 with a possible fine and/or closure for noncompliance.

23 As previously stated, EFS and the State Grants

1 Program could provide needed assistance through
2 informational seminars and individual consultation.

3 Paragraph (h) under 46.3 allows training plans to
4 be maintained at a place other than the mine site. I have a
5 question about that. I believe that a copy should be kept
6 at the mine site, even if it's in the glove compartment of
7 the supervisor's pick-up truck. This paragraph should be
8 amended by deleting the second sentence.

9 46.4, training program instruction, paragraph
10 (a)(2) again mentions competent person as a trainer. And I
11 refer to my previous remarks under 46.2.

12 Paragraph (c) allows substitution of equivalent
13 OSHA training or other federal or state agencies to meet
14 requirements where appropriate. After reading through this
15 several times, I find myself agreeing with the duplication
16 -- agreeing that the duplication of training will not make
17 it more meaningful and effective.

18 Paragraph (e) should include specific minimum
19 times for said training. Many coalitions of effective miner
20 trainings sent to members I've discussed Part 46 with
21 believe that, for example, 48 ten-minute toolbox sessions
22 conducted in the field could be at least as effective if not
23 more effective than one eight-hour class.

1 My belief that the accepted 30-minute minimum
2 under Part 48 should be maintained here remains strong, but
3 I will concede the ten-minute training sessions are worth a
4 try. Change is not always bad.

5 My major concern is that a typical training
6 session will be scheduled for the first ten minutes of the
7 work day, for example, from 7:00 to 7:10 a.m. But by the
8 time everyone gets their coffee, juice, fruit and pastries
9 that I know all the Florida mines provide to all their
10 people every time, then -- and the session -- two to four
11 minutes may have gone by.

12 And the session -- and if the session ends on time
13 at 7:10, then they may have only gotten five or six minutes
14 of training in that time period, meaningful and effective
15 instruction.

16 Language should be included which spells out that
17 a minimum of ten minutes of actual instruction must be
18 conducted in order to count towards the Part 46 requirement
19 training -- training requirements, not ten clock minutes.
20 That's my suggestion if -- if you don't could go with a 30-
21 minute minimum in Part 48 which I would really encourage.

22 46.5, new miner training, paragraph (a) of the
23 term close supervision of an experience miner should be

1 better spelled out. Some might get the impression that as
2 long as the miner responsible for the new miner's on-the-job
3 training was on the mine site at the same time as the new
4 miner, this rule would be satisfied.

5 Language should be added that while the new miner
6 is forming tasks that exposes him or her to mining hazards,
7 he or she will be close enough to the experienced miner that
8 they can communicate in a normal conversational tone, or
9 something to that effect.

10 Paragraph (b)(1) would be more effective if the
11 words, "and observed", were added after the word,
12 "explained". Let's see. I believe that to require less
13 than eight hours of initial new miner training at certain
14 mines based on size or complexity of operation will
15 complicate tracking the amount of training -- total training
16 hours, particularly when they may not total the mandated --
17 minimum mandated 24 hours.

18 I do believe that small aggregate mines could do
19 much of the initial eight-hour training as OJT, on-the-job,
20 with the new miner actually performing tasks to which he or
21 she will be assigned. But his or her training hat will
22 remain on all that shift. So they'll get their eight hours
23 of training while they're actually doing some work under

1 this close supervision.

2 46.6, newly employed experienced miner training:
3 Based on the definition of experience miner in 46.2, I think
4 the words, "newly employed", should be deleted from all
5 references in this part, and also because of the change that
6 took place on February the 3rd in Part 48. Once a person is
7 an experienced miner, they are always an experienced miner
8 for life. So newly employed or not wouldn't matter.

9 46.7, new task training. The final rule should
10 include requirements found in 48.27 which more completely
11 spells out what the task training shall include. I found
12 46.7 a little lacking in description.

13 Training instructors. The rules should require
14 46.5, 46.6 and 46.8 training to be conducted by an MSHA-
15 approved instructor, as does Part 48. Those miners not
16 desiring to conduct their own training can receive Part 46
17 and/or Part 48 training through the MSHA State Grants
18 Program, perhaps to a limited degree through the EFS program
19 or through an MSHA-approved instructor -- contract
20 instructor, excuse me.

21 Part 48.23(g) and (h) state that, "Except for task
22 and hazard training, all training shall be conducted by
23 MSHA-approved instructors." I think this language should

1 also be included in Part 46.

2 46.8, annual refresher training. How can a mine,
3 particularly a small mine, spend a minimum of eight hours of
4 training its miners and contractors on changes at the mine
5 that could adversely affect miners' health and safety? If
6 it's a little small, sandy gravel, little mom-and-pop
7 operation like we have many here in Florida and throughout
8 the country, I think that the burden of eight hours to do
9 that would -- if -- if that's all they did, would be --
10 would be tremendous.

11 The final rule should include the same list of
12 courses of instruction as Part 48 with the addition of the
13 phrase, "where applicable", added to each one. If it's not
14 applicable to that operation, then they could spend more
15 time on something else.

16 And I pause here to say that -- that the Part
17 48.28 requirement for prevention of accidents is one of the
18 -- one of the courses. That could cover two days in some
19 cases or a week. I mean, it's not a problem to fill up
20 eight hours with discussion and prevention of accidents
21 because that's what the whole problem is all about.

22 The word, "may", in 46.8(b) should be changed to
23 "shall". "Other courses may be added as needed." I think

1 that needs to be added, also, to give them the flexibility
2 that they may need.

3 Section (d) under 46.8 could be amended by
4 changing 30 to ten if that's what most people in the
5 aggregate industry believe would best suit them, as long as
6 it is specified that the clock starts when the training
7 begins and stops when the training ends, not when the hours
8 approaches -- or when you reach a certain hour and reach a
9 certain time limit after that.

10 Effective date and compliance deadlines. I
11 believe that with the assistance of EFS and the State Grants
12 Program, affected mines can be in compliance within six
13 months after the date of publication of the final rule. The
14 mines which are currently in compliance with Part 48 will
15 automatically be in compliance with Part 46 as I read it.

16 Across the country, a great many small aggregate
17 mines are in compliance through their partnership with the
18 MSHA State Grant Program already. Phased-in deadlines would
19 only serve to confuse the issue and should not be included
20 in the final rule.

21 However, I think that perhaps partial compliance
22 with Part 48 might be realistic. I read that in your
23 comment section. If mines are in compliance with Part 48,

1 they should automatically be in compliance with Part 46.
2 Perhaps partial compliance with 48 would work while phasing
3 in Part 46 if they need -- particularly if they need more
4 time.

5 Several state grantees that I've talked with about
6 this plan to continue doing Part 48 training for all the
7 industries because, as I read it, Part 48, if you're
8 compliant with Part 48, you're automatically in compliance
9 with Part 46 which is more encompassing at this time.

10 Okay. Records of training. Paragraph (b)(1)
11 under 46.9 should be modified to read, "the printed name,
12 the first name usually used by the miner, and may include a
13 nickname and last name." The requirement for first, middle
14 and last name is counter-productive and potentially
15 disruptive to training. I've run into that in several
16 instances where people will print their first name and
17 middle initial, but they never go by their first name and
18 nobody knew their first name was Aloishus or whatever it is,
19 Gertrude.

20 And my -- my -- no offense to anybody names
21 Aloishus or Gertrude. But I think it would be nice if it
22 just says a common name such as a first name or given name
23 or nickname or usually used name, something like that.

1 That's a minor point. But nevertheless, I think it needs to
2 be taken -- if you take the 5023 form literally, then you
3 need to print, "William Benjamin Hart", as the full name.

4 46.11, hazard training. I would like to commend
5 MSHA for paragraph (b) where, for example, electrical
6 contractors performing electrical maintenance need only
7 site-specific hazard training. I think that's something
8 we've been needing for a long time. And I think Part 48
9 needs to be amended that way, too, at some future point.

10 46.12, responsibility for training. Commendations
11 again to MSHA for identifying who is responsible for which
12 training, particularly as it applies to independent
13 contractors. Also, MSHA was right on target in paragraph
14 (b), requiring the independent contractor to inform the
15 production operator of any known hazards that may be created
16 by the contractor's work performance.

17 Too many times, I think, the contractors and the
18 operators don't communicate enough about safety. So I
19 commend you for that.

20 There is a question about what percentage of
21 compliance do we hope we will get. Florida's goal, at least
22 from my department's perspective, is a hundred percent. Why
23 have a regulation you can't enforce? We've had one of those

1 for almost 20 years already.

2 I don't think that this is something that -- it
3 needs some minor tweaking I think. But I don't think it's
4 something that is unenforceable and un-doable or difficult
5 to do with the assistance of these other programs.

6 Lastly, my main reason for being here today is to
7 discuss and to urge again that if this is going to work in
8 Florida and I think all the other states, state grant
9 funding needs to be greatly increased. I have seen an
10 increased demand, probably 50 to 60 percent over this time
11 last year, for Part 48 training or for training of any kind.
12 And I think the Part 46 proposed has a big -- has had a big
13 impact on that.

14 Personally, I'm happy. I'm like the other
15 repairman other than Maytag because I've got things to do.
16 It pleases me to say, "No, I can't do it this month; but
17 I'll put you in this month or the month thereafter." But at
18 least I've got some job security.

19 But we do need more funding. And I know that the
20 Coalition is making that in their proposal. I mentioned in
21 the January public hearing and I'm going to continue to
22 mention it -- and I know that in conversations with Mr.
23 McAteer, that is an issue that he is looking at and he is

1 pushing forward, and I realize that he only has a limited
2 control over what happens. All he can do is ask for it.

3 But we hope that Congress will see fit to give us
4 the moneys that -- to implement this program and to help the
5 mines implement the program. Those are all the prepared
6 remarks I have. I will be glad to entertain any questions.

7 MS. ALEJANDRO: Yes, thank you very much, Mr.
8 Hart. I've got a couple of questions and a couple of
9 comments. And some of the other panel members may actually
10 also have questions, as well.

11 You indicated that as far as the definition of
12 miner is concerned, that you favored the current definition
13 under Part 48 and that persons regularly exposed to mine
14 hazards would be considered miners. Is that correct?

15 MR. HART: Right.

16 MS. ALEJANDRO: One of the questions I have -- I
17 mean, and this is one of the reasons we put a new definition
18 in Part 46 -- was the difficulty of defining "regularly".
19 Do you have any suggestions for how we might do that? I
20 know -- I mean, we do have a definition currently under
21 policy for "regularly" under Part 48. Do you favor that
22 definition or do you have -- I mean have a better one,
23 because it has caused us some difficulty?

1 MR. HART: Right. I think that Part 48 is
2 adequate. It could be improved. The problem I've run into
3 is mine superintendents, for example, in a large operation
4 and even mine managers who don't -- who spend a lot of time
5 planning and in meetings and strategy sessions and budgetary
6 sessions who go out what they consider on an infrequent or
7 an irregular basis, not a regular basis.

8 But maybe once a week, they'll be out and exposed
9 to mine hazards. But if they go out once a week, there's 50
10 exposures -- well, maybe 48 exposures a year at least. And
11 the thing about it is, it won't take but one accident
12 involving them to perhaps end their life. And again, I
13 think that if you're going to err in favor -- if you're
14 going to err concerning training -- concerning comprehensive
15 training versus hazard training, err in favor of
16 comprehensive training.

17 And I -- I did encourage some mine managers -- in
18 fact, I got a ruling from MSHA that in fact supervisors, if
19 they are exposed to mine hazards on some type of recurring
20 basis, need to have the annual refresher training. They
21 were under the impression they did not. So we got that
22 cleared up.

23 But I do like what's in Part 48. I'm comfortable

1 with Part 48. I think it can be adjusted a little bit or
2 here's an opportunity to copy that, but make it more -- a
3 little more stringent. But I think anybody that goes in the
4 mien more than just for a few days, I think the short-term
5 maintenance workers that are described and defined in the
6 48.22, I think that if you give them a comprehensive hazard
7 training, not just something about, "Well, there's the mine;
8 be careful" -- you need to give them site-specific hazard
9 training. And I think that that would be adequate.

10 MS. ALEJANDRO: One thing I would like to mention
11 is you raised the issue of coverage of construction workers.
12 And although the rule itself does not explicitly state that
13 construction workers are covered, in the preamble to the
14 proposal, we do indicate that our intention is to cover
15 construction workers with Part 46. And, you know, whether
16 or not they are miners, whether they get comprehensive
17 training or site-specific hazard training would, like for
18 anyone, be dependent on what their activities are at the
19 mine site.

20 MR. HART: Right. Good.

21 MS. ALEJANDRO: So just for anybody who is here
22 who is wondering about the status of construction workers,
23 that's what our intention is.

1 MR. HART: Okay. Thank you.

2 MS. ALEJANDRO: Let's see. I think I have one or
3 two more. Also, as far as annual refresher training is
4 concerned, you indicated your concern that eight hours spent
5 on changes at the mine that affected miners' health and
6 safety was a little bit excessive.

7 The intention ion the proposal was that that would
8 be the minimum -- I mean a subject that must be covered.
9 But the expectation is that the mine operator will tailor
10 the subjects to be covered in annual refresher training
11 appropriate to the mine site.

12 So we weren't expecting that people were going to spend
13 eight hours on new hazards.

14 MR. HART: Right. No, I understand that.

15 MS. ALEJANDRO: Okay.

16 MR. HART: But it says --

17 MS. ALEJANDRO: It's not very --

18 MR. HART: -- "Should or could include or might
19 include" -- "may include".

20 MS. ALEJANDRO: Yes.

21 MR. HART: I think if it says, "Shall include
22 those subjects and other courses as necessary."

23 MS. ALEJANDRO: Yes, some of the -- some of the

1 written comments we've gotten already indicate a lack of
2 clarity in that section. So we'll take a close look at it.

3 MR. HART: Right.

4 MS. ALEJANDRO: Okay. I think that's all I have.
5 Does anyone else have questions? Rod?

6 MR. BRELAND: Maybe a couple. One, you had
7 mentioned that the initial eight hours, including much of
8 it, could be OJT. Did you have a feel for that?

9 MR. HART: Yes. In -- depending on the conditions
10 of the mine. Also, depending on mine size. I last week
11 visited several mines as I told you last night. I visited
12 several mines who are smaller than five employees, little
13 sandy gravel operations up in the Florida panhandle.

14 And the -- to cover the whole operation very
15 slowly, to walk all the way around the whole property line,
16 everything, would take less than an hour; maybe even less
17 than 15 minutes. So to require them to -- to get into a
18 classroom situation, that's one of the complaints I've
19 heard; is, you know, we hire a person. We need to get them
20 on-line and get them out there.

21 And I think as long as the close supervision is
22 better defined, that somebody is going to be right there
23 with them when they're actually performing tasks -- that

1 doesn't mean they can't say, you know, "Take a break and
2 I'll be back in a few minutes or something; I've got to run
3 over here. Just don't do anything. Go back up to the break
4 room", whatever.

5 In the case of the mines I visited last week, the
6 break room might also be the scale house or it might be the
7 pick-up truck sitting there in case it rains. But I believe
8 that if they -- the flexibility is allowed for on-the-job
9 training, even though they're going to wear their training
10 hat and the person that -- the experienced miner that's
11 giving them this close supervision is going to be able to
12 train them and they're going to be able to talk about safety
13 issues as they work.

14 MR. BRELAND: Okay. And also you talked about you
15 had a concern on the competent person versus approved
16 instructors. Are you advocating something similar to what
17 Part 48 is for approving instructors?

18 MR. HART: Yes, sir. I've mentioned that a couple
19 of times and I'll say it again. I am -- I am comfortable
20 with the Part 48 requirement for instructors. I think if a
21 person has adequate knowledge in the subject matter to be
22 taught, and the same would be true here for Part 46, and
23 also has the ability to train, has the experience from

1 training of some type, or if they don't have that, they can
2 take a formal class in that.

3 I think that -- that the people doing the Part 46
4 training should be like Part 48 instructors; they should be
5 MSHA approved. And they should receive some formal
6 training.

7 MR. BRELAND: Yes, but the rule is actually
8 requiring that they be competent, have those abilities and
9 skills. Is that --

10 MR. HART: All right. Who is going to determine
11 competent? And it says the operator will determine the
12 competent -- or pick a competent person. And the operator
13 will evaluate the effectiveness of the trainer. And I'm not
14 trying to offend any operators, any mine operators, by
15 saying that they don't have the ability to determine what's
16 effective and what's not.

17 But I'm not sure that just as across the board,
18 around the country, that we can say that they all do and
19 assume that they all do.

20 MS. ALEJANDRO: Actually, the rule I believe says
21 that the person -- I mean the competent person is the one
22 who is supposed to be evaluating the effectiveness of the
23 training. Are you saying because the mine operator selects

1 the competent person, that the operator is not in a position
2 to determine whether the competent person can evaluate the
3 training?

4 MR. HART: I can't -- I don't think I can say that
5 as a blanket statement in every situation. I've found that
6 in situations where the operator needs to select someone to
7 do something -- and I've run into this in training
8 instructors. If somebody comes because the boss told them
9 to, they didn't really want to be there.

10 But they pick a person that they feel like they
11 could count on and who has probably already got 15 other
12 hats to where already depending on the size of the
13 operation. I must have misread it because I thought it did
14 say the operator would be -- would determine the
15 effectiveness of the training. Maybe I misread it.

16 MS. ALEJANDRO: Yes, well, the -- I mean, I'm
17 saying -- I'm pretty sure it says that the competent person
18 should.

19 MR. HART: Sure.

20 MS. ALEJANDRO: But I'm not a hundred percent.

21 MR. HART: Okay.

22 MS. ALEJANDRO: But that was the intention in any
23 case.

1 MR. HART: Okay.

2 MS. ALEJANDRO: Okay.

3 MR. HART: All right.

4 MR. BURNS: Yes. I think it says the competent
5 person. That's part of his competence, that he must be
6 capable of evaluating the effectiveness of the training.
7 But, I mean --

8 MR. HART: And that's what all training should do
9 anyway.

10 MR. BURNS: But the operator by -- the operator by
11 designating the competent person --

12 MS. ALEJANDRO: Right.

13 MR. BURNS: -- is also --

14 MS. ALEJANDRO: Making a determination.

15 MR. BURNS: -- making a determination that it's
16 effective -- that that person can do that.

17 MS. ALEJANDRO: Yes.

18 MR. HART: Sure.

19 MR. BRELAND: That's all I have. Thanks.

20 MS. ALEJANDRO: Kevin?

21 MR. BURNS: Yes. I guess on the -- just on the
22 annual refresher training, you're suggesting a ten-minute
23 minimum as far as -- or that there should be some minimum, a

1 number of minutes.

2 MR. HART: I think there should be some minimum.
3 I think I stated that I favor the 30-minute minimum as
4 stated in Part 48.

5 MR. BURNS: Okay.

6 MR. HART: However, in discussions with CEMT
7 members and other people around the country over the last
8 couple -- several months, I've been approached by people who
9 believe that ten minutes would be effective, the little
10 toolbox training given in the field or given at -- in the
11 office before they start at the mine.

12 And the one person in particular that I talked
13 with said that he had -- he had 48 ten-minute toolbox
14 sessions or 50 maybe with different topics that were -- the
15 outline was there. And this is good and I don't need to
16 tell you that this is one of the larger mines and larger
17 mining companies in the country.

18 The little small mom-and-pop I really believe is
19 going to be very dependent on EFS for help. It's going to
20 be dependent on state grants for help. And so, again, I
21 think that gives us job security.

22 But I said that I would at least accept the ten
23 minutes if that was -- if that was what the majority of the

1 people wanted to try. And if it needs to be changed, we
2 find out it's not working, then we will go back. But
3 hopefully, if -- if it will work and if it will make more
4 training done and make it more effective for the people,
5 then that's fine.

6 I just think it's very hard to get something
7 across and to be effective in -- in a very short period of
8 time I think. Even in a 30-minute class, it takes -- you've
9 got a core of 15 minutes in there where you really get some
10 interaction and you've got to get them going, pull them out
11 in the -- particularly if it's an early morning class. And
12 then you've got to wrap it up.

13 So I'm willing to -- to try ten minutes. And I'll
14 do whatever the rule requires. As I mentioned also, several
15 State Grant Programs that I've talked to are leaning toward
16 not doing Part 46 training, but doing Part 48 training; yet
17 Part 46 covered operations which would -- which would meet
18 the requirements of Part 46.

19 That's -- that's not cut in stone. Don't -- but
20 nevertheless, that's something we are discussing and looking
21 at including here in Florida; that, you know, we've got
22 something that works, we believe. And if ain't broke, don't
23 fix it. But --

1 MR. BURNS: Yes. We didn't specify minimum. But
2 I guess part of that was from the standpoint that, you know,
3 if it's -- if it's not long -- if it's too short, then it
4 really becomes a record-keeping nightmare for an operator.

5 And you are right, that people -- the toolbox
6 training that I've seen, people that -- that schedule it for
7 15 minutes, when they do a good job, it usually lasts 20 or
8 25 minutes because it just takes that long to get started
9 and stopped and people have questions. So a lot of the
10 toolbox training that's even scheduled for ten minutes
11 really lasts 20 minutes or 25 minutes just because that's
12 the nature of -- if you want people to interact, a lot of
13 times, it will take longer than what it's scheduled.

14 MR. HART: Absolutely. If you don't have any
15 interaction, you don't know how effective it was.

16 MR. BURNS: And the other thing is, you know,
17 we'll have to, you know, evaluate the effectiveness of this
18 training because part of -- the original idea behind the 30
19 minutes or one of -- part of the rationale behind the 30
20 minutes was to prevent, you know, the operator from just
21 telling everybody to work safety that day and that being
22 part of their training.

23 I guess there was some history of that with some

1 operators, that, you know, that was their five-minute safety
2 training. Every day, the supervisor and the superintendent
3 telling everybody to work safe and -- and, you know, that
4 certainly is not -- is not going to be effective training
5 and that wouldn't comply with what we're talking about here
6 either.

7 MR. HART: Right. I think the word, "minimum", is
8 a key there. I think we need to -- you need to specify a
9 time limit and you need to emphasize the word, "minimum",
10 because as you said, a ten-minute scheduled training may
11 turn into 20, 25 or 30 minutes.

12 As far as record-keeping is concerned, the other -
13 - since you brought that up, I forgot to mention that. The
14 fear I have is that people will say, "Well, we're going to
15 do this every week, so we'll fill out a 5023 when we get
16 through", rather than keeping records as they go along.

17 And I've -- I've got a little saying when people
18 ask me, "When should I fill out a 5023", I said, "Every time
19 you complete a course." And a course would be individual
20 parts of Part 46, for example, or parts of 46.8, annual
21 refresher -- or 48.28. When in doubt, fill it out. It
22 doesn't take that long to fill one out.

23 Now, if you've got a large operation, you're

1 probably not going to go to these ten-minute meetings
2 anyway. You're probably going to do one day of training and
3 get it over with. I don't know that, but a lot of them do.

4 But from a record-keeping standpoint, I'm afraid
5 that people are going to say, "Well, we'll fill them out
6 once a month", or something, "We'll do one for May of '99."
7 And maybe one person misses one of those sessions. That's
8 going to be a big nightmare.

9 Suppose the person gets killed off property and
10 you don't have any -- don't have any forms filled out and
11 signed, but -- or gets killed on property, God forbid. You
12 don't have a record of training.

13 Now, I understand, too, that there is talk about
14 allowing a sign-up sheet and maybe an attached lesson plan
15 for what was taught as counting towards records of training.
16 And I think that's good because that would have proof if the
17 person signed it that they were present that day.

18 MR. BURNS: Yes, and I guess the other -- the
19 other issue was the competent person versus the qualified.
20 Right now, I mean, the competent person is somewhat based on
21 what OSHA does. I mean, most of their training is based
22 upon the competent person selected by the operator, that
23 it's -- that can do the training understands what they're

1 supposed to be trained about, versus the qualified which is
2 in Part 48 which I imagine, I'm sure you know, is sort of
3 all over the board.

4 Some people -- some people are qualified through
5 trainer-to-trainer type courses. Others -- others are --
6 are considered qualified trainers just based on a resume or
7 a letter they've sent in. So it's -- it's -- that sort of
8 qualification is really -- to me is equivalent to a
9 competent person type determination.

10 And we already have a lot of -- a lot of people by
11 the very definition that are really competent -- competent
12 persons. I think they're almost inter-exchangeable terms
13 from that -- from that standpoint on a lot of the people
14 that are on that list of qualified trainers.

15 MR. HART: Okay. I'll agree with that; that the
16 people on the list of qualified trainers are competent.
17 Most -- well, you can't say that across the board either.

18 MR. BURNS: Right.

19 MR. HART: But I believe that most of them are. I
20 know that looking at the list a few years ago, some of them
21 were dead. I'm sure how competent they were at that time.
22 But that list is hard to purge.

23 I will say that there is a move now. I believe

1 Judy Tate out in Dallas is heading up a committee to look at
2 MSHA instructor training requirements under Part 48, looking
3 at suggestions, looking at standardizing across the country;
4 what's required and how a person can be approved.

5 I agree that a person doesn't need to attend a
6 training class, a formal instructor training class if
7 they've been a classroom teacher, for example, for 20 years
8 or ten years. That -- that would be duplication.

9 But if they have documentation of that and proof
10 of that, as I read this right now, Part 46, there is going
11 to be no official submission of any resume or any letter or
12 any verification or anything. It's just going to be the
13 operator says, "Okay, you're it."

14 Now, I assume that the MSHA inspector can inspect
15 the qualifications of that person or the EFS people who go
16 out could check the paperwork and check the background of
17 the individual.

18 I think if you -- if you set hard and fast
19 requirements for a person, what would designate a competent
20 person; rather than just say a competent person, be a little
21 more descriptive in your definition and itemize some things
22 that that person must possess other than just ability;
23 ability through experience, training, a combination of both

1 which is very similar to what Part 48 says, 48.23(h) I
2 believe.

3 I'm not opposed, Kevin, to -- to a person who can
4 provide the training whether they've got any formal
5 instructor training or not. If they have that ability, they
6 have the knowledge in the subject matter -- in reading this
7 it appeared to me that this was going to be more for an
8 electrician, for example, with a lot of years of experience
9 talking about electrical safety, something they're
10 comfortable with; not talking about power haulage that they
11 may or may not be familiar with.

12 MS. ALEJANDRO: That's right. I mean, this --
13 that provision I think was in response to a lot of comments
14 we got that there are a lot of people out there with
15 specialized expertise who can be very effective in providing
16 training in their narrow area of expertise.

17 But you're right. I mean, the expectation is not
18 that someone who is qualified in one particular area will be
19 trained in another -- I mean, that's what that definition is
20 intended to provide. Now, if you've got some suggestions
21 for how we might tighten it out, I mean, we certainly are
22 very receptive to -- to that.

23 MR. HART: Right. Again, I refer to 48.23

1 paragraph (h), at least as a guideline. I think it does
2 give a little more definition to it. Kevin, as far as -- as
3 far as copying OSHA --

4 MR. BURNS: That's not what we're doing. I'm just
5 saying that --

6 MR. HART: Not copying it?

7 MR. BURNS: -- that is what OSHA's --

8 MR. HART: I understand.

9 MR. BURNS: -- OSHA does just from looking at
10 their regulations.

11 MR. HART: Right, right. I'm not opposed if the
12 person is competent -- a competent person providing
13 training. But I think there needs to be some kind of
14 oversight as to who is deemed competent. Maybe I'm having
15 overkill here. I'm not meaning to. But at the same time
16 I'm thinking about some mines that I'm familiar with that
17 only got two people on their staff to consider.

18 And maybe their expertise is not in training.
19 We've had instances where inspectors have gone out and given
20 training, little mini walk-and-talks and things like that.
21 Just some of the comments I've heard was the person is a
22 good inspector, but he's not a good trainer.

23 Now, I'm not calling any names and don't know any

1 names in particular. But I wouldn't -- at this particular
2 point, I wouldn't make a good MSHA inspector. I feel like
3 I'm a good trainer. That's what I want to do. That's what
4 I've been trained to do and what I -- what I do.

5 But I'm not saying do away with "competent
6 person". But you want comments. And my comment is, again,
7 Part 48 ain't real broke. And maybe -- maybe it should be
8 used as a guide.

9 MR. BRELAND: I think, as you mention, the small
10 committee Judy Tate is on is a result of a lot of differing
11 approaches to approving instructors with state programs,
12 cooperative instructors and so forth and MSHA themselves
13 within the districts.

14 MR. HART: Right.

15 MR. BRELAND: And that essentially has some of the
16 same issues you're talking about with the competent person
17 definition, that some people have been approved maybe as
18 instructors that aren't necessarily the best teachers. But
19 they have the qualifications and background.

20 And I think that this rule was intended, or
21 proposal, was more to be the performance oriented to look at
22 maybe the quality of the training and so forth. And maybe
23 your concern really is more with the monitoring and

1 evaluation process than it is the designation of competent
2 person.

3 MR. HART: Yes. I'm afraid, Rod, that one of the
4 measures of the effectiveness of this training is going to
5 be fatality rates and serious injuries, disabling injuries.
6 And I pray that that doesn't go up. It will go the other
7 way, which it should.

8 But if a person is not doing effective training,
9 then it very well could shoot up. And if it does, then for
10 the people who remain and if the training is adjusted to
11 make sure they get an effective training.

12 But for the ones that lost their lives or became
13 disabled -- I don't have a problem with performance-based
14 anything, evaluation of anything. But I think we need to
15 take all the safeguards we can to make sure the people
16 providing the training know what they're doing.

17 And I know a lot of people who are competent in
18 their field, even experts perhaps, very knowledgeable in
19 their field -- let's use that term. But they can't
20 communicate it to another individual. They can do the job,
21 but they can't talk about it. They can't teach it to
22 somebody else.

23 MS. ALEJANDRO: Do you think that the present Part

1 48 instructor approval scheme is effective in assuring a
2 level of competence in communication? I mean, that's really
3 what we're trying to get at, is, you know, imposed
4 requirements where there is going to be value added to the
5 results.

6 MR. HART: I think it is more effective than what
7 46 proposes. It needs some change, too. And that's what
8 Judy's committee -- I'm a part of that committee and that's
9 what we're looking at, and also standardization around the
10 country. As Rod mentioned, in different districts around
11 the country, they're doing instructor approval different
12 ways.

13 And even the ones doing the instructor training
14 classes are teaching different things. So we want to get
15 that standardized so that if you're trained in California
16 and you come to Florida and somebody in Florida goes to
17 California, they've had basically the same training. But I
18 think that's what the goal is and I think here we can do the
19 same thing.

20 MR. BRELAND: Well, one of the points I was making
21 on the Part 48 is that the present guidelines that you're
22 talking about for approved instructors, many people would
23 qualify based on the present guidelines to at least

1 initially be approved.

2 And I think this is what Kathy Alejandro was
3 talking about, too; that that's not necessarily consistent
4 with making sure that's a good -- a good instructor. It's
5 what they do at the site or what they do with their training
6 program that's important.

7 MR. HART: Well, understanding, too, that your
8 program, Education Field Services, is going to do some field
9 monitoring of the training.

10 MR. BRELAND: You know, we -- we hope to do that.

11 MR. HART: Okay. Okay.

12 MR. BURNS: Yes, I guess just on that same
13 subject, I mean, if -- I mean, a big part, no matter what
14 this rule looks like, is evaluation and making sure that the
15 training works. And -- and that's a big -- I think that's
16 one of the key issues in -- in the competent person or if we
17 go for qualified trainer. It should be somebody that's able
18 to evaluate the effectiveness of that training.

19 And I think that's the most important part of
20 this, is -- is that if -- if you -- if you're a competent
21 person or a qualified person, whatever we come up, that
22 person needs to be able to go out there and observe the
23 workers.

1 And if that worker is doing things, working around
2 the conveyor belts in an unsafe manner, contrary to what he
3 was taught, then part of this whole training and safety
4 program is that that person would be taken aside and
5 explained that that's not what he was trained to do and
6 maybe re-trained.

7 I mean, if -- if -- I don't see this ending up
8 being just, you know, you do eight hours of training and
9 then they're out -- they're gone and you bring them back in
10 eight hours -- you know, eight hours the following year
11 because that's not going to be effective.

12 And people that really do have effective training
13 programs, it's not a separate program from everything else.
14 It's integrated into the thing. So if that competent person
15 is doing good training and they're also able to go out there
16 and observe the workers and make sure that they're working
17 as they were trained and if they're not, they reinforce it
18 with more training, I mean, that's -- that's what we want.

19 And however we come up with the definition of what
20 that -- who that person is and how he's qualified, I mean,
21 that's the end result that I think we want. I think that's
22 what you want, too.

23 MR. HART: I agree with you.

1 MR. BURNS: The other issue was the eight hours
2 annual refresher training. Like Kathy said, we had some
3 comments on that. And maybe it's -- maybe it wasn't clear
4 enough in what we stated.

5 But -- but the whole idea of the eight hours,
6 making it a little bit more flexible was to get away from
7 the complaint that we have from operators on both sides
8 throughout the industry, not just the aggregates and the
9 exempt industry, is that people feel like they're required
10 to do compliance training because they have to complete all
11 these various subjects.

12 Then they do their safety training. They train on
13 the things that they know they have a problem with. And the
14 idea here was -- was to -- to try to streamline this so that
15 -- so that if somebody has problems with conveyor belts,
16 they can spend four hours on that and not have to worry
17 about covering some of these other issues that may be listed
18 that they're required that aren't necessarily a problem.
19 That was the idea behind that. And --

20 MR. HART: I understand. And I -- in my comments,
21 I said --

22 MR. BURNS: Maybe we need to be more clear on
23 that.

1 MR. HART: -- I said that I think that the ten, I
2 believe it is, subject matter courses required under 48.28
3 should be --

4 MR. BURNS: May if appropriate.

5 MR. HART: -- should be "must be included" or
6 "shall be included", but where appropriate or where
7 applicable. It could be added at the end of each one of
8 those. And if there is not a -- an electrical problem.
9 Some of these small sandy gravel operations, probably the
10 only electricity they've got may come from a portable
11 generator that runs the conveyor --

12 MR. BURNS: Right.

13 MR. HART: -- and the classifier and the screen
14 and all that, and a small conveyor belt. Electrical safety
15 is -- they can solve their problem by cutting -- shutting
16 down the generator. But if it's not applicable, they don't
17 need to talk about it. But also, other courses as needed.
18 Other courses may be added as needed. That gives them that
19 flexibility. If they need a four-hour conveyor safety
20 course, then they can get it. So I'm -- I'm in agreement
21 with you there.

22 MR. BURNS: Yes, okay.

23 MR. HART: But I just think you need to be a

1 little more definitive. I don't think you're going to hurt
2 anybody if you give them the leeway by saying, "where
3 applicable", or "where" -- if it doesn't apply, don't worry
4 about it.

5 MR. BURNS: Yes, I think we're in agreement on
6 that.

7 MR. HART: Yes.

8 MR. BURNS: We just need to clarify that.

9 MR. HART: Sure. Another question?

10 MS. ALEJANDRO: Do you have anything else, Kevin?

11 MR. BURNS: No. Did you have anything, Rod?

12 MR. BRELAND: No.

13 MS. ALEJANDRO: Robert? Thank you very much, Mr.
14 Hart.

15 MR. HART: Thank you, Kathy. I appreciate it.

16 MR. BURNS: Thank you, Ben.

17 MR. BRELAND: Thanks, Ben.

18 MS. ALEJANDRO: The next speaker on the list is
19 Mark Klinepeter from Florida Rock Industries and also, the
20 Coalition.

21 MR. KLINEPETER: Good morning. My name is Mark
22 Klinepeter. That's K-L-I-N-E-P-E-T-E-R. I'm the Director
23 of Safety and Training for Florida Rock Industries. And I

1 am based out of Jacksonville, Florida.

2 I am here representing not only Florida Rock, but
3 also the Coalition for Effective Miner Training which is
4 comprised of 18 members and represents the overwhelming
5 majority of the miners in industries affected by MSHA's
6 proposed rule.

7 The Coalition consists of two companies that are
8 production operators, 14 trade associations of both large
9 and small production operators, and two labor unions. No
10 other organization speaks on behalf of more exempt miners
11 and their employees than the Coalition.

12 MSHA deserves credit for bringing forward a
13 proposal that promises to provide effective training for
14 miners. In addition, the proposed rule is performance-
15 oriented and offers production operators, particular small
16 ones, broad flexibility for complying with training
17 requirements.

18 The Coalition does have a number of
19 recommendations that we feel are needed to improve
20 provisions of the proposed rule. The recommendations
21 include modifications to streamline further the training
22 plan approval process; an implementation time table of one
23 year to permit an orderly and effective transition; and

1 recognition that contractors and production operators must
2 be responsible for training their respective employees.

3 The Coalition believes that MSHA should recommend
4 and advocate strongly that the Congress authorize and
5 appropriate full funding of the State Grants Program to
6 enable state grants personnel to effectively assist
7 operators to comply with the new rule in a timely manner.

8 MSHA's proposal would extent to both hazard and
9 task training, the same requirements for documentation and
10 training plans as other types of training, statement of
11 objectives, description of how training is conducted and
12 evaluated, designation of who will do training, their
13 subject areas of competence and other information.

14 Operators need flexibility to offer such training
15 by the most qualified person available at the time training
16 is to be conducted. Similarly, evaluation of training
17 effectiveness, particularly hazard training with vendors or
18 visitors, would be difficult to accomplish without this
19 needed flexibility.

20 The Coalition recommends that the required
21 documentation of hazard and task training and training plans
22 be limited to a statement of objectives and method of
23 instruction. The MSHA proposal goes a long way to meeting

1 the Coalition recommendation concerning who should be
2 responsible for training miners and other persons at the
3 mine site.

4 The Coalition had recommended that responsibility
5 for training should rest with the employer, the production
6 operator for its employees and contractor for contractor
7 employees. MSHA followed that approach generally throughout
8 its proposal. But for the site-specific hazard training
9 that would be required by Section 46.11, decided to propose
10 making the production operator responsible for training of
11 both production operator employees and contractor employees
12 at the production operator mine sites.

13 The Coalition continues to urge MSHA to adopt the
14 approach it originally advocated. Each employer should be
15 responsible for all aspects of training for its employees
16 irrespective of where those employees may be working. The
17 Coalition agrees that the production operator must have --
18 must maintain the responsibility for informing contractors
19 of site-specific hazards since it is the production operator
20 who is in the best position to know what site-specific
21 hazards exist.

22 However, the Coalition believes the contractor
23 then must include this information as a part of this

1 training of its employees. This approach does to preclude
2 the contractor from asking the production operator to
3 communicate with the contractors' employees about site-
4 specific hazards; nor does it prevent the production
5 operator from initiating a communication directly to the
6 contractor employee about site-specific hazards.

7 The Coalition recommendation would, however,
8 provide necessary consistency and clarity about who is
9 ultimately responsible for all training. This consistency
10 and clarity are essential to the safety of all people
11 working at the mine site.

12 MSHA's insistence that a competent person must
13 accomplish training unduly limits the flexibility of small
14 operators to offer instruction by other than traditional
15 types of instruction. As an example, it should be fully
16 acceptable for a miner to receive training by means of a CD
17 ROM in a classroom setting administered by someone other
18 than a competent person.

19 The Coalition recommends the proposed rule be
20 changed to require that training be done under the direction
21 of a competent person. The Coalition strongly supports
22 MSHA's proposal that it will accept OSHA and other
23 equivalent training where appropriate. The Coalition does

1 believe, however, that MSHA should clarify its statement
2 that such equivalent training must be safety and health
3 training that is relevant to the mining environment.

4 MSHA should make it clear that this does not mean
5 that the training in question must have been directed to the
6 mine environment; but rather the training be relevant to the
7 work and/or health and safety risks that the worker will
8 experience in the mine environment.

9 MSHA states in its proposal that it views close
10 supervision to mean that a competent person must be
11 physically near the miner and give him or her the competent
12 person's undivided attention. The Coalition objects to
13 MSHA's proposed requirement that miners work under close
14 supervision as that term is defined until their new miner
15 training is completed.

16 Should, for example, a competent person be
17 standing at an untrained miner's side giving him or her
18 complete attention while the miner is sweeping out a
19 maintenance shop, the Coalition recommends the definition of
20 close supervision be redefined to reflect appropriate
21 attention commensurate with the risk of the supervised
22 activity.

23 The Coalition favors a working day criterion as

1 opposed to a calendar day criterion for completion of new
2 miner training. A miner may work for several weeks, then be
3 laid off, only to be rehired again at a later time. Under
4 such a scenario, training received before or during lay-off
5 may be largely forgotten before he or she returns to work.

6 Therefore, it would be far more effective to train
7 when the miner is working and can immediately apply what he
8 or she has learned.

9 MSHA does not specifically provide for the use of
10 practice to count towards satisfaction of the health and
11 safety aspects of assigned tasks for newly hired experienced
12 miners. The Coalition thinks the agency should.

13 If the miner can demonstrate through practice to
14 the satisfaction of a competent person that he is familiar
15 with the health and safety aspect of assigned tasks, then
16 what justification is there to require more?

17 The objective of assuring the miner is properly
18 schooled would be satisfied. And those are my comments.

19 MS. ALEJANDRO: Mr. Klinepeter, I've got a couple
20 of questions.

21 MR. KLINEPETER: Sure.

22 MS. ALEJANDRO: I'm not sure I understood the
23 point that you were making about hazard training and task

1 training. I -- what I understand is that you indicated that
2 the paperwork requirements in the proposal for hazard and
3 task training presented some obstacle or were unduly
4 restrictive, or did I misunderstand that?

5 MR. KLINEPETER: No. My -- my point there was the
6 documentation of training plans that would be required for
7 both hazardous training and task training.

8 MS. ALEJANDRO: Okay. In the plans themselves.

9 MR. KLINEPETER: That's correct.

10 MS. ALEJANDRO: Okay. So the itemized information
11 that is required you're saying is not appropriate --

12 MR. KLINEPETER: That's correct.

13 MS. ALEJANDRO: -- for hazard and task training.

14 MR. KLINEPETER: That's correct.

15 MS. ALEJANDRO: And you would instead suggest that
16 --

17 MR. KLINEPETER: That it be limited to a statement
18 of objectives and method of instruction.

19 MS. ALEJANDRO: Okay. All right. Let's see. I
20 had some other questions. And as far as responsibility for
21 training, you -- your position is that production operators
22 should be responsible for all aspects of training for their
23 employees and independent contractors should be responsible

1 for all required training for their employees.

2 MR. KLINEPETER: The production operator would be
3 responsible for the hazardous training of all --

4 MS. ALEJANDRO: Site-specific hazard training.

5 MR. KLINEPETER: Site-specific hazardous training
6 for all independent contractors.

7 MS. ALEJANDRO: Okay. And you support that or you
8 don't support that?

9 MR. KLINEPETER: I support that, yes.

10 MS. ALEJANDRO: Oh, okay. I guess -- I guess I'm
11 having a little bit of a hard time. Under the proposal,
12 independent contractors who have employees who fit the
13 definition of miner would be primarily responsible for
14 ensuring that their employees have required training.

15 Similarly, production operators would be primarily
16 responsible for ensuring that they have site-specific hazard
17 training. Now, what -- what part of that is it that you
18 disagree with? Is it that it's not the primarily
19 responsible; you're saying that they should be exclusively
20 responsible for that training?

21 MR. KLINEPETER: Exclusively, that's correct.

22 MS. ALEJANDRO: Okay. So you're saying in those
23 situations, I mean, it wouldn't be an opportunity for MSHA

1 to issue citations to both; I mean, one or the other and
2 exclusive responsibility for ensuring that that training
3 is --

4 MR. KLINEPETER: That's correct.

5 MS. ALEJANDRO: Okay.

6 MR. KLINEPETER: And my viewpoint there goes to
7 the legal definition that businesses are contending with in
8 today's environment where dual citations can and have been
9 issued --

10 MS. ALEJANDRO: Okay

11 MR. KLINEPETER: -- the legal definition of an
12 independent contractor.

13 MS. ALEJANDRO: Okay. All right. I think that's
14 all I have. Rod, do you have any questions?

15 MR. BRELAND: Yes, maybe a couple, Kathy. The --
16 the working day criteria -- I want to make sure I understood
17 -- you were talking about in lieu of some calendar clock
18 running I assume.

19 MR. KLINEPETER: That's correct.

20 MR. BRELAND: What -- what if you had the
21 proposal, the 60-day requirement to complete the 24 --
22 initial 24 hours. Are you saying that could be -- under
23 your -- your -- your suggestion maybe dragged out over

1 several years if somebody is only working intermittently?

2 MR. KLINEPETER: No. And my comment there was the
3 person -- and maybe this doesn't really apply obviously to
4 the southeast area of the country. But in those regions
5 where short-term lay-offs are -- are reoccurring and maybe
6 lay-offs for a very short period of time. I'm not talking
7 about an extended period of time or an economic down-turn of
8 a longer duration.

9 MR. BRELAND: Well, could you give me an example
10 what you meant then in one of your situations you're
11 familiar with where the working day criteria would be an
12 appropriate fit for --

13 MR. KLINEPETER: Well -- and maybe I'm confusing
14 the issue here. And I -- I apologize for that. But the
15 point I'm really trying to make there is it's effective --
16 it's far more effective to train the person when they are
17 actually working than to have the person being trained where
18 they're not --

19 MR. BRELAND: Oh, okay.

20 MR. KLINEPETER: -- where they can apply their
21 skills in the immediate -- in the immediate environment.

22 MR. BRELAND: I must have misunderstood you then.
23 And then also, you talked about the documentation being

1 burdensome I guess for the assigned task training and
2 hazard. Now, is that the only two places where you were
3 concerned about the documentation being burdensome?

4 MR. KLINEPETER: I don't believe I made the
5 comment that the documentation was --

6 MR. BRELAND: You -- you were suggesting that it
7 just be a statement of fact of what you --

8 MR. KLINEPETER: Oh, the documentation --
9 documentation in terms of the training plan, the written
10 training plan. I'm not talking specifically --

11 MS. ALEJANDRO: You're not talking about record-
12 keeping.

13 MR. KLINEPETER: I'm not --

14 MS. ALEJANDRO: You're talking about --

15 MR. KLINEPETER: I'm not talking about record-
16 keeping.

17 MS. ALEJANDRO: -- what needs to be in the
18 training plan with regard to the outline or what -- what's
19 going to be addressed in the --

20 MR. BRELAND: Okay.

21 MS. ALEJANDRO: -- site-specific hazard training
22 and the task training.

23 MR. KLINEPETER: That is correct.

1 MS. ALEJANDRO: Okay.

2 MR. BRELAND: Okay. And then I wanted to make
3 sure I understood what you meant by competent person. Are
4 you talking about that if you had some program set up where
5 you could have some interactive CD ROM-type of program, you
6 could get somebody started basically or assign them to
7 review that and --

8 MR. KLINEPETER: Yes, that is correct. And I
9 agree with Kevin's comments during Mr. Hart's presentation
10 about being OSHA-based. And certainly, it is our -- our
11 goal, at least at Florida Rock, that -- that everyone be
12 considered a competent person.

13 I think we're all -- ultimately we're all
14 responsible for training and training of a new employee that
15 we certainly teach our people to look out for one another,
16 not only -- and to take responsibility not only for their
17 own actions, but responsibility for the actions of people
18 working next to them.

19 And my approach is really just very -- is very
20 practically oriented. And again, we talk about the
21 commentaries of a small operation, a five person or less
22 operation in Crossroads, Florida. To be able to get
23 training available to that person and to have effective

1 training, I think you've got to have quite a bit of
2 flexibility and the ability not only to -- to provide
3 various media forms of training, but also to make that
4 training available in the local areas where those -- those
5 operators exist.

6 MR. BRELAND: Okay. And then one other thing.
7 You started talking in the beginning about streamlining the
8 training plan approval process. What did you mean by that?

9 MR. KLINEPETER: That's -- again, that's where I
10 mean as far as the requirements for the hazard -- hazard and
11 task training, the documentation of hazardous and task
12 training.

13 MR. BRELAND: Okay. All right. Thanks, that's
14 all I have.

15 MS. ALEJANDRO: Kevin?

16 MR. BURNS: Yes, I just -- I'm still not clear on
17 the -- on the site-specific hazard training concerning
18 contractors or -- is the point that you're making that
19 operators should be able to supply contractors with that
20 site-specific information and with the idea that the
21 contractors would train their employees concerning those
22 site-specific hazards?

23 MR. KLINEPETER: That they include -- that's

1 correct. That's essentially --

2 MR. BURNS: Or -- or they can do it -- or the
3 operator can give that training themselves to the --

4 MR. KLINEPETER: That's correct. We provide that
5 initial site-specific hazardous training which then becomes
6 a part of their -- of their training regimen, the
7 contractor's training regimen.

8 MR. BURNS: Okay. And then your comment
9 concerning how close supervision is going to be defined, I
10 guess basically you're -- you're stating that that should be
11 somewhat performance based --

12 MR. KLINEPETER: On the --

13 MR. BURNS: -- depending on what that person is
14 doing --

15 MR. KLINEPETER: On the specific hazards of the
16 job being performed, that's correct.

17 MR. BURNS: Okay. How -- would -- I guess it
18 would be helpful if we could come up with, you know, more
19 examples of what you're suggesting there. I mean, you did
20 give one example. But -- but I mean this is -- this is sort
21 of getting into an area of one of the things that we're
22 trying to -- trying to get out of before with this "regular"
23 and "frequent".

1 I mean, those are terms that -- that can be
2 interpreted in so many different ways. And every factual
3 situation sort of changes the determination. So if you
4 could, you know, put your heads together with some of the
5 other people and try to come up with some more examples of
6 how that should be applied, that would be helpful.

7 MR. KLINEPETER: Okay.

8 MR. BURNS: Yes. The other thing was you
9 mentioned the competent person. It should be the training
10 should be done under the direction of a competent person.
11 And I guess that's consistent with what Ben was talking
12 about where you might bring in an electrical person that is
13 competent to talk about electrical, but may not be the best
14 trainer in the world, but can answer questions and make
15 people feel a little bit more comfortable that they're
16 getting good electrical training rather than someone off the
17 street.

18 MR. KLINEPETER: That is correct, Kevin. It
19 equally applies, say, for example, in Ben's case to a -- to
20 a State Grant Program and being able to present some
21 training being done by a competent instructor who is not an
22 employee or direct employee of the operator.

23 MR. BURNS: Okay. I don't have any more

1 questions. Anybody else?

2 MS. ALEJANDRO: Robert? Robert? Thank you very
3 much, Mr. Klinepeter.

4 MR. KLINEPETER: Thank you.

5 MS. ALEJANDRO: Do you want to take a short break?

6 MR. BRELAND: I guess we can ask people if they
7 want to come up.

8 MS. ALEJANDRO: Yes. We -- we're going to take
9 about a ten minute break. And in that ten minutes, I would
10 encourage people who have not signed up to speak to come up
11 to the podium here or to the desk I guess and sign up to
12 speak. And I also have got extra copies of the proposal.
13 And if you need any information, feel free in the break.
14 We'll start again in about ten minutes.

15 (Whereupon, a brief recess was taken.)

16 MS. ALEJANDRO: The next speaker that we have is -
17 - and I apologize in advance for the pronunciation -- David
18 Mihalik from Florida Minerals Association.

19 MR. MIHALIK: Mihalik.

20 MS. ALEJANDRO: Mihalik.

21 MR. MIHALIK: You did well. Good morning. I
22 appreciate the opportunity to come before this group. As I
23 said, I'm representing the Florida Minerals Association.

1 It's an industry group of mining and minerals
2 processing industry companies. It was formed in 1997 with
3 the purpose effectively addressing legislative and
4 regulatory issues impacting the common issues.

5 FMA currently contains 26 member companies from
6 the mining and minerals processing industry throughout
7 Florida.

8 Again, like I said, I appreciate the opportunity
9 to present some views on this particular regulatory
10 language. I didn't -- I didn't do what I was supposed to do
11 as far as my name yet either. So my name is David Mihalik.
12 It's M-I-H-A-L-I-K. And I work for Engelhart Corporation in
13 Quincy, Florida. I am here representing the Florida
14 Minerals Association.

15 While we in the mining industry do strive to
16 provide the training necessary to provide a safe environment
17 in which to work -- and I believe that most, if not all, our
18 member companies are striving to meet what is currently
19 existing in Part 48 -- we do have some concerns about what
20 is being proposed.

21 We generally support the guidance and the
22 training. It's something that's been lacking from OSHA --
23 or from MSHA. What we want to do is avoid getting vague

1 guidance -- and we've seen some of that with some of the
2 regulatory language in the past -- that can be used as an
3 enforcement tool.

4 There are a couple of areas that we wanted to
5 address as far as clarification. On the subject of "miner",
6 I do think what's in there -- what's in the language is more
7 appropriate than what's in Part 48 for the industries that
8 are involved. There are some examples in the preamble
9 language.

10 I think it may be even better to give some more
11 examples in the -- in the language. For example, areas that
12 we struggled with as far as what training to give people if
13 we have people come in, we contract grass-cutting services.
14 And if it is in particular a dam for a containment pond on
15 our facility, how far do you go as far as, you know, do you
16 -- do they require 24 hours? Probably not.

17 Site-specific hazards, yes. And you addressed the
18 issue with water and things like that. But looking at the
19 language that's in the current proposal, I think that puts a
20 lot of -- a lot of onus on the -- the inspector when he
21 comes in to decide what really is appropriate and what isn't
22 appropriate. And that's where we have some concerns there,
23 is where the -- what -- what is a miner and what really

1 isn't a miner.

2 The other aspect there -- and I appreciate the
3 opportunity that this does present as far as the flexibility
4 with the training and all that are involved. In our
5 facility -- I'm out in Florida -- we have probably 30 people
6 who are involved directly in the mining operation, the
7 actual extraction of the material from the ground. We have
8 a total of 176 people though within our facility. The rest
9 of those people are involved in the milling and grinding and
10 packaging aspects.

11 I would like the opportunity to have the
12 flexibility to do different training for those people.
13 Obviously, if you follow Part 48, I have to do some of the
14 things as far as berms and things like that for everybody
15 right now if you follow the specific language of what it
16 says.

17 I've got people who have worked at my milling
18 operation for 30 to 35 years who, except for the MSHA
19 training, probably couldn't tell you what a berm is because
20 they don't get out in the field where the mines are. But
21 they are still yet an MSHA site.

22 Their training we would like to gear more towards
23 things like guarding, lock-tag try, things like that that

1 are more pertinent to the job they do.

2 Concerning the written training program, I think
3 it's a great idea to require it. I'm a little unclear on
4 the -- on -- on why we would -- on why you would want to
5 submit it for approval and what value that has to MSHA or to
6 the site. I'm not sure whether it's to address smaller
7 sites --

8 MS. ALEJANDRO: Well, I think the -- what we got
9 in comments was a concern on some people's part that they --
10 I mean, it's like the good housekeeping seal of approval;
11 that it would have gone through MSHA approval and therefore
12 there's not going to be an inspector who follows up and
13 comes and says that the plan is inadequate. I mean, if they
14 get formal approval, then they have eliminated --

15 MR. MIHALIK: Is that to say that if you got
16 formal approval, the inspector won't look at it or --

17 MS. ALEJANDRO: Well, no. The inspector won't
18 come and say, "This falls short. This doesn't meet the
19 requirements." I mean, that -- that was the impression we
20 got from the comments. So it was that some people may
21 choose or would like to have the opportunity to exercise
22 that option, but that it not be required.

23 MR. MIHALIK: Okay.

1 MS. ALEJANDRO: That was the thinking anyway.

2 MR. MIHALIK: Okay. Thank you. Concerning new
3 miner training, you had asked for some comments concerning
4 whether or not we ought to specify hours. Looking at the
5 different type of mining operations, in particular, in the
6 panhandle, I think Ben addressed this a little bit.

7 I'm not convinced that you need to specify a
8 minimum number of hours, say eight hours or six hours or
9 four hours, or even try to split it up based on mine sites
10 because when you look at different things, Ben -- I think
11 Ben stated that you could -- some of the facilities you can
12 walk around in an hour and others it may take you days.

13 And to specify hours of training, I think we would
14 end up in a lot of cases of putting people in training that
15 really wouldn't be necessary and wouldn't be necessary just
16 because you have to do -- fulfill the eight hours. I think
17 the -- the 24-hour commitment, that specifies what you have
18 to do. And I think to require something just to have
19 someone come on site is not necessary.

20 As far as training instructors, no formal
21 certification I strongly believe should be required. I'm
22 probably a good -- I'll use myself as an example. I've been
23 in the mining industry for nearly two years now. My

1 background, however, is OSHA. I implemented a VPP program
2 in a facility under OSHA, a 2000 person facility. I've been
3 doing safety training for approximately 12 years of the 15
4 that I've been there. I think I'm certified.

5 However, under the Part 48, I have not gone to
6 that two-week course or submitted to get done, and therefore
7 I'm not a training -- certified trainer under Part 48. And
8 so we use Ben and that's fine. Ben does a good job. But --
9 but I think that's -- that's a good example of what it is.

10 The other thing I would address -- and I think
11 Mark touched on it a little bit concerning computer --
12 computer-based training. And that's something that we've
13 been starting some information on. And we do that in
14 addition to other training that we do. We do the annual
15 refresher training and such there.

16 But computer-based training is probably the -- you
17 know, the effort of the future. And I think this regulation
18 should address that issue somehow whether you say that
19 computer-based training can be administered under a
20 competent person. That's fine. But I think that the lack
21 of having it may be interpreted at some future date as not
22 being allowed.

23 MS. ALEJANDRO: Yes. No, I mean, I think the

1 intention clearly in the proposal was to allow not only
2 existing technology for training, but also to have the
3 flexibility to allow things that may be developed in the
4 future. And I think that's a good point that's been raised,
5 is how does a competent person fit in when you've got some
6 kind of an interactive, computerized system. So that's -- I
7 mean, that's something that we will certainly take a look
8 at.

9 MR. KLINEPETER: Great. And by the way, there is
10 some really good computer-based training out there. So it's
11 just like instructors. So it's not -- it's not
12 inconsistent.

13 MR. MIHALIK: The other comment that I wanted to
14 make was concerning phasing in versus a time frame to
15 administer this. I definitely support the time frame
16 aspect. I think phasing in would only add confusion. Most
17 of us are -- I think most of the mining industry in Florida
18 is already doing the training anyway.

19 But I think there are some aspects as far as
20 contractors that -- that may take some time. I would
21 recommend the one-year basis as opposed to the six-month
22 just because it gives time. And with the support of the --
23 or in Ben's case, the lack of support of -- monetary-wise, I

1 think to get some of those things done for some of the
2 contractors could be very difficult.

3 One of the aspects which I didn't hear addressed,
4 finally, that I wanted to address was -- and you mentioned
5 with construction workers. And this is kind of a question
6 for the panel from me is -- is we struggled a lot. We had a
7 construction project at our facility about a year and a half
8 ago. And we had a company come in and do the training.

9 We -- we had them -- they were not familiar with
10 the MSHA requirements because they did a lot of OSHA. We
11 did a lot of work with them on making sure they had all
12 their people trained and met the qualifications even though
13 we were an exempt facility. We believe in safety.

14 However, their comment back to us was, "You're
15 repeating a lot of what we already have to do under OSHA.
16 But because it's not allowed under OSHA, that OSHA training
17 does not transfer to MSHA, we're having to re-do this." And
18 we feel like we paid extra money because of that and really
19 got very little results out of that.

20 So I'm curious from the panel's perspective, is
21 there some way that we can cross-reference, if you will, the
22 training that they receive under OSHA versus -- and maybe
23 the competent person does address that.

1 MS. ALEJANDRO: Well, yes. There is -- there is a
2 specific provision. I think it's in 46. Where is it --
3 46.4 --

4 MR. MIHALIK: Okay.

5 MS. ALEJANDRO: -- that provides that, "Equivalent
6 training required by OSHA or other federal or state agencies
7 may be substituted to meet the requirements under Part 46
8 where appropriate."

9 MR. MIHALIK: But --

10 MS. ALEJANDRO: So the intention was to --

11 MR. MIHALIK: As long as you -- as long as you
12 leave the "competent" language there, that would apply. But
13 if you went back to the certified language, would that
14 still --

15 MS. ALEJANDRO: I -- well, I mean, I think the
16 idea was there was a lot of effective, relevant training
17 that people were receiving under OSHA. And either because
18 they had experience outside of the mining industry and came
19 into the mining industry with experience which this training
20 would be credited, or because they switched back and forth
21 between OSHA-regulated facilities and MSHA-regulated
22 facilities.

23 I mean, the intention was that relevant OSHA

1 training and training provided by other agencies, that we
2 were intending to provide that you would get credit for that
3 and you not have to repeat training that's already been
4 given.

5 MR. MIHALIK: Okay.

6 MS. ALEJANDRO: But I guess what your question is,
7 is that hypothetically if under the final rule we should
8 impose, you know, more restrictive instructor requirements,
9 then how does that fit in --

10 MR. MIHALIK: Yes, that's correct.

11 MS. ALEJANDRO: -- with the -- and that's a good
12 question. I mean, and that's something that we obviously
13 would like to keep in mind.

14 MR. MIHALIK: I would support you not going back
15 that route --

16 MS. ALEJANDRO: Okay.

17 MR. MIHALIK: -- I guess is what I would say.

18 MS. ALEJANDRO: All right. Thank you.

19 MR. MIHALIK: And that's all the comments I have,
20 if you have any questions.

21 MS. ALEJANDRO: Okay. I don't have any -- any
22 questions. Rod or Kevin or Robert?

23 MR. BRELAND: I had a couple. One, you talk about

1 you would like to see more guidance in the area that's vague
2 up there on -- what -- what did you have in mind exactly?
3 Are you --

4 MR. MIHALIK: Well, I believe in the preamble,
5 there was some -- some reference given about electricians
6 coming on site, that type of -- that type of reference.
7 That was one point I guess that was made. And I don't know
8 whether it would be appropriate -- I'm not suggesting it
9 would be appropriate to list these type of -- clerical
10 workers and that type of thing.

11 But -- but in some of the discussions we've had in
12 the sidebar, if you will, here, one of the issues that came
13 up is I have, let's say, an accounting manager who we have
14 go out in the facility to do STOP which I guess is Dupont's
15 Safety Training Observation Program. That's what STOP
16 stands for.

17 And he goes out and we require him to go out once
18 a week to do that. Does that mean because I've required him
19 to go out and make observations that he would be required to
20 go through a full eight-hour annual refresher, or do I just
21 do him site-specific? And --

22 MS. ALEJANDRO: So you're saying that specific
23 examples in the preamble to the final rule --

1 MR. MIHALIK: It may be appropriate, something
2 that we could reference --

3 MS. ALEJANDRO: More examples to give a better
4 idea of what it is that we intend --

5 MR. MIHALIK: Yes.

6 MS. ALEJANDRO: -- or are you suggesting that
7 maybe we need more clarifying language in the rule itself?

8 MR. MIHALIK: I think it would appropriate in the
9 preamble, not in the rule.

10 MS. ALEJANDRO: Okay.

11 MR. MIHALIK: I don't think -- I don't think -- if
12 you put it in the rule, it's going to be hard and fast.

13 MS. ALEJANDRO: Well, I mean, and that's -- you
14 know, that's the problem that you run into when you start to
15 use, you know, specific terminology, that it can be
16 ambiguous.

17 MR. MIHALIK: You know, and --

18 MS. ALEJANDRO: All right.

19 MR. MIHALIK: -- and if nothing else across the
20 mining industry, terminology is not --

21 MS. ALEJANDRO: Okay.

22 MR. MIHALIK: -- standard.

23 MS. ALEJANDRO: More examples.

1 MR. MIHALIK: Yes.

2 MS. ALEJANDRO: Okay.

3 MR. BRELAND: Yes. I would suggest that if you
4 have in your sidebar discussions some of those examples,
5 those would be good to submit as comments, that these are
6 the kinds of reoccurring kinds of --

7 MS. ALEJANDRO: Yes.

8 MR. BRELAND: -- situations that ought to be
9 considered because inspectors will no doubt run into those,
10 just like you said, where they have to make a decision. So
11 if early in there is discussion in the preamble, it would be
12 good to have those examples if you have some concern, at
13 least --

14 MR. MIHALIK: Yes. Think about things like air --
15 people doing air conditioning; people -- delivery people who
16 -- even Fed. Ex. and things like that. Those are examples
17 of --

18 MS. ALEJANDRO: And I would say -- I mean, that's
19 true for all aspects of the proposal. I mean, and this
20 applies to everyone here. If you have got, you know, a
21 specific situation that you don't think is clearly addressed
22 by the language either in the rule itself or in the preamble
23 and you want, you know, some -- some light shed on how the

1 proposal was going to affect a particular situation, I mean,
2 it would be very helpful if you could, you know, send that
3 in in writing to us.

4 And then we can consider including it in the
5 proposal or even addressing it to some degree in the rule to
6 clear it up. Because obviously, I mean, it's not going to
7 do us or you any good if the provisions in the rule are
8 unclear.

9 MR. BRELAND: The same thing on the -- where you
10 brought up, following up on that, the milling versus the
11 mining. And the difference in the milling aspect would be a
12 lot more like your OSHA background and probably industry
13 kinds of --

14 MR. MIHALIK: Correct.

15 MR. BRELAND: -- experience versus an extraction-
16 mining kind of process. But I would do the same thing. If
17 you see clear areas that are of more benefit in the milling
18 area than it would be in the mining, you might want to give
19 examples that make that break, how you would tailor your
20 program --

21 MR. MIHALIK: Right.

22 MR. BRELAND: -- within the same mine property if
23 you will or the same ID.

1 MR. MIHALIK: And I like what was done in the
2 proposed rule as far as this more specific areas you have to
3 give training on. I think that's -- that was well stated
4 and very appropriate what was done there. So --

5 MR. BRELAND: And the OSHA duplication of training
6 OSHA has has come up with four. But do you have some
7 examples when you say, "We were doing some training with
8 this construction company", and you said, "Gee, we had this
9 already; it's kind of" -- are you talking -- was it a task
10 training phase of it or --

11 MR. MIHALIK: Well, I think about things like
12 lock-tag and try, fall protection --

13 MR. BRELAND: Those kinds of things.

14 MR. MIHALIK: -- those type -- those type issues.
15 In fact, some of those, OSHA has stronger guidance, I guess,
16 would be the appropriate term. Forklift operation is
17 another good example. There is some strong specifics on
18 forklift operation that OSHA has that don't necessary apply
19 to what we do and you don't think as mining as being
20 forklift operation. But unfortunately, we use a lot of
21 forklifts.

22 MR. BRELAND: That's all I have.

23 MR. BURNS: I think most of them are covered. The

1 only -- I mean, your concern about the -- the acceptance of
2 OSHA -- relevant OSHA safety and health training and that
3 being tied to the definition of the person that's doing the
4 training --

5 MR. MIHALIK: Right.

6 MR. BURNS: -- that is part of the problem now,
7 that, you know, under 48, the training has to be done by a
8 qualified trainer. And if you have people that were trained
9 under OSHA and they weren't -- they weren't qualified
10 through our process, then it wouldn't count.

11 But we wouldn't necessarily have to treat those
12 two things as being, you know, one issue in this rule
13 because, you know, we're aware of that concern now. So, I
14 mean, certainly, we wouldn't have to tie those two issues
15 together.

16 MR. MIHALIK: Okay.

17 MR. BURNS: But I don't think we would. I think
18 back when 48 was promulgated, that, you know, there wasn't -
19 - that wasn't recognized as a problem. Yes, for -- you
20 know, to have someone -- other people raised examples of,
21 you know, having a -- having a paving contractor come on
22 your property that maybe does the majority of the paving in
23 the state and complies with all kinds of DOT training

1 requirements and OSHA requirements.

2 How are you going to tell them how to -- how to
3 protect their workers, you know, putting in a parking lot
4 for you better than what they've already -- already done?
5 It's pretty tough. But in many cases, people have had to
6 require them to have 24 hours of training.

7 MS. ALEJANDRO: All right.

8 MR. BURNS: Anybody else?

9 MS. ALEJANDRO: Robert? Robert? Thank you very
10 much.

11 MR. MIHALIK: Thank you.

12 MS. ALEJANDRO: We have reached the end of the
13 people who have -- list of people who have signed up to
14 speak. And at this point, I would like to ask if there is
15 anyone here who has not spoken who would like to speak or
16 who has already spoken who has additional comments they
17 would like to make. Okay.

18 I will give you just a little short summary of
19 what comes next. As I mentioned earlier, we're going to
20 have three additional public hearings this week and next
21 week. The record will close on June 16th. So if you would
22 like to send in written comments, I encourage you to do so
23 by that deadline. And then we will work to develop a final

1 rule from all of the comments that we have received on the
2 proposal.

3 And also, as I have indicated earlier, our
4 deadline -- Congressional deadline is to come up with a
5 final rule on or before September 30th of 1999. And we are
6 intending to do everything that we can to meet that
7 deadline.

8 If you need a copy of the proposal, I have extra
9 copies up here. Also, for those of you who have internet
10 access, I encourage you to visit the MSHA website at
11 www.msha.gov. We have a button on the home page for what's
12 going on on the Part 46 rule-making. Among other things, we
13 will be posting the transcripts of these hearings and any
14 other documents that are relevant.

15 That is pretty much all I have to say. If anybody
16 has any additional questions, please feel free to come up
17 here at the termination of the hearing. Otherwise, I thank
18 everyone who came. I specifically thank the people who came
19 and spoke. And I look forward to finishing this project.
20 Thank you very much.

21 (Whereupon, at 10:10 a.m. on Tuesday, May 18,
22 1999, the hearing was concluded.)
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REPORTER'S CERTIFICATE

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DOCKET NO.: N/A
CASE TITLE: TRAINING AND RETRAINING OF MINERS
HEARING DATE: May 18, 1999
LOCATION: Orlando, Florida

I hereby certify that the proceedings and evidence are
contained fully and accurately on the tapes and notes
reported by me at the hearing in the above case before the
United States Department of Labor.

Date: May 18, 1999

Bonnie Niemann

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