

UNITED STATES COURT OF FEDERAL CLAIMS

TRAINING AND RETRAINING OF MINERS)
ENGAGED IN SHELL DREDGING OR)
EMPLOYED AT SAND, GRAVEL, SURFACE)
STONE, SURFACE CLAY, COLLOIDAL) Public Hearing
PHOSPHATE OR SURFACE LIMESTONE)
MINES.)
)

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UNITED STATES DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION

TRAINING AND RETRAINING OF MINERS)
ENGAGED IN SHELL DREDGING OR)
EMPLOYED AT SAND, GRAVEL, SURFACE)
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1400 J Street, Room 309

Sacramento, CA

Thursday,

May 20, 1999

The hearing commenced, pursuant to notice,
at 8:30 a.m.

APPEARANCES:

Panel Members:

Mary K. Alejandro, Chairperson, Special Assistant,
Metal and Nonmetal Mine Safety and Health, Mine
Safety and Health Administration, Department of
Labor

Robert Aldrich, Office of the Solicitor, Mine
Safety and Health Administration, Department of
Labor

Roderic Breland, Educational Field Services
Division, Mine Safety and Health Administration,
Department of Labor

Kevin Burns, Metal and Nonmetal Mine Safety and
Health, Mine Safety and Health Administration,
Department of Labor

Mario Fernandez, Office of Standards Regulations
and Variances, Mine Safety and Health
Administration, Department of Labor

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P R O C E E D I N G S

(8:30 a.m.)

CHAIRPERSON ALEJANDRO: Good morning. My name is Kathy Alejandro, and on behalf of the Mine Safety and Health Administration I would like to welcome you to the second of four public hearings on MSHA's proposed regulations for mine 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 14, 1999.

These regulations would apply at those nonmetal surface mines where MSHA currently cannot enforce existing training requirements.

I would like to take this opportunity to introduce the members of the MSHA panel who are here with me this morning. To my far left is Robert Aldrich from the Office of the Solicitor. Next is Rod Breland who is with the Educational Field Services Division of MSHA, and he is the Western Operations Manager.

To my immediate left is Kevin Burns, who is with Metal and Nonmetal Mine Safety and Health. And to my right

1 is Mario Fernandez with the Office of Standards Regulations
2 and Variances.

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

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

18 These hearings are intended to give as many
19 individuals and organizations as possible an opportunity to
20 present their views on the proposed rule. MSHA will hold
21 two additional public hearings on the proposed rule next
22 week. One will be held in Pittsburgh, Pennsylvania, and the
23 fourth and final hearing will be held in Washington, D.C.

24 This hearing will be conducted in an informal

1 manner and a court reporter will make a transcript of the
2 proceedings. Anyone who wishes to speak at this hearing and
3 has not signed up in advance should sign up on the speakers'
4 list, which is currently located up here on this table.

5 Anyone who wishes to may also submit written
6 statements and information to us during the course of this
7 hearing, which will be included as part of the rule-making
8 record. You may also send us written comments after the
9 hearing if you wish. The deadline for submission of written
10 comments is June 16, 1999.

11 If you need the address where comments should be
12 sent, please feel free to come up to the panel and we will
13 give you that information. We also have extra copies of the
14 proposed rule, if you need one.

15 MSHA is specifically interested in comments on
16 certain aspects of the proposed rule, although we encourage
17 commenters to address any of the proposed provisions. These
18 issues were identified in the notice of hearing published in
19 the Federal Register on April 14, 1999, and I will summarize
20 those issues.

21 Definition of miner. Under the proposal a person
22 engaged in mining operations integral to extraction or
23 production would be considered a miner. We are interested
24 in whether this definition is appropriate. Workers who fit

1 the definition of miner under the proposal would be required
2 to receive comprehensive training, including new-miner
3 training or newly hired experienced-miner training as
4 appropriate.

5 Plan approval process. The proposal would require
6 each operator to develop and implement a written training
7 plan that includes programs for training new miners and
8 newly hired experienced miners, training miners for new
9 tasks, annual refresher training and hazard training. Plans
10 that include the minimum information specified in the
11 proposal would be considered approved and would not be
12 required to be submitted to MSHA for formal review and
13 approval.

14 Miners and their representatives would also be
15 given the opportunity to comment on the plan before it is
16 implemented, or request us to formally review and approve
17 the plan. We are interested in comments on whether the
18 proposed approach is appropriate, or whether any commenters
19 believe the traditional plan approval process, similar to
20 the process in Part 48, is needed to insure that training
21 plans meet minimum standards of quality.

22 New-miner training. Under the proposal no minimum
23 number of hours of training is required for a new miner
24 before he or she begins work under the close supervision of

1 an experienced miner. Instead, the proposal requires
2 instruction in four specific subject areas before the miner
3 can assume work duties. We are interested in whether
4 commenters agree with this approach or whether the final
5 rule should establish a minimum number of hours of training
6 that new miners must receive before they begin work.

7 New-task training. This proposed rule will
8 require miners to be trained for new tasks and for regularly
9 assigned tasks that have changed. The new-task training
10 requirements in the proposal are very performance oriented
11 and do not include detailed specifications for this
12 training. However, we are interested in comments on whether
13 the final rule should include more detail and guidance on
14 the elements of an effective new-task training program. And
15 if so, what areas should be addressed.

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

1 the training. We are interested in comments on whether this
2 approach is appropriate.

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

12 Effective date and compliance deadlines. We are
13 interested in comments on how much time should be allowed
14 for the mining community to come into compliance with the
15 final rule. One possible approach would be a phased-in
16 compliance deadline, where some of the rules requirements
17 would go into effect at different stages. We understand
18 that there will be a very large number of operations coming
19 into compliance simultaneously, and we wish to allow a
20 reasonable amount of time for the transition.

21 Costs and benefits of the proposed rule. We are
22 interested in comments on all elements, including
23 methodology, assumptions and data of our analysis of the
24 costs and benefits of compliance with the proposed rule.

1 I would introduce our first speaker this morning
2 if we have anyone signed up. And at this point I would like
3 to ask if there is anyone who would like to make comments on
4 the record.

5 Yes, sir, if you could, you may either sit at the
6 table or use the podium. And after you sit down or stand
7 up, could you state your name and also spell it for the
8 court reporter?

9 MR. REA: My name is Charlie Rea. My last name is
10 spelled R-E-A. I'm the Assistant Executive Director for the
11 Construction Materials Association of California. We are a
12 -- our Executive Director is Linda Falasco. She was not
13 able to be here today.

14 CMAC, as we're known, is a trade association
15 representing aggregate and ready-mix producers in the
16 northern two-thirds of California, roughly an area from the
17 Tehachapi Mountains to the Oregon border.

18 And today I'm here actually on behalf of the
19 Coalition for Effective Miner Training, the CEMT Group,
20 which you're probably familiar with. CEMT represents a
21 number of aggregate producers and statewide associations
22 throughout the country.

23 And as you know, CEMT has been working on this,
24 developing a Part 46 proposal they submitted, I think,

1 February 1st, and they've been actively following MSHA's
2 proposal, too. And I think I'm really just here to confine
3 my remarks to one area today regarding the responsibility
4 for training.

5 I think in general that CEMT and MSHA's proposals
6 are similar in their approach; they're flexible, performance
7 oriented. I know there's a few areas where we want one of
8 our provisions put in, or here and there.

9 I think today primarily I'd want to clarify the
10 record on the issue of responsibility for training. I
11 believe at your last hearing that Mark Kleinpeter with the
12 Florida Rock Industries may have incorrectly stated that
13 producers should be responsible for teaching contractor
14 employees site-specific hazard training.

15 And I just want to clarify that the CEMT position
16 is that the contract supervisors should be responsible for
17 their employees' site-specific hazard training. So CEMT
18 does not favor MSHA's proposal on that provision at this
19 point, and we prefer the CEMT provision.

20 I think CEMT is going to give you more detailed
21 comments, broader comments at their Washington, D.C.,
22 hearing. And CMAC will probably also submit comments before
23 the record closes.

24 If you have any comments or questions on that

1 provision or clarification I'd be happy to answer that.

2 CHAIRPERSON ALEJANDRO: Actually, I do have a
3 question. So the Coalition position is that the final rule
4 should provide that production operators are responsible for
5 training their employees and contractors are responsible for
6 training their own employees, whether you're talking about
7 comprehensive training or site-specific hazard training, is
8 that correct?

9 MR. REA: Correct, yes.

10 CHAIRPERSON ALEJANDRO: All right. So, to the
11 extent that the proposal provides that production operators
12 are primarily responsible for providing site-specific hazard
13 training to contractor employees, the Coalition does not
14 agree with that provision?

15 MR. REA: Correct.

16 CHAIRPERSON ALEJANDRO: Okay. As a practical
17 matter, though, -- I mean obviously the production operator
18 would be in the best position to give site-specific hazard
19 training, -- how does the Coalition see, I mean, the
20 information about the work site being conveyed to the
21 contractor's supervisor, who you say should be the one who
22 is the, I guess, the primarily responsible person for giving
23 this training?

24 MR. REA: I think, you know, one issue is the

1 liability issue. That's why we want the contractor to be
2 responsible for their employees.

3 But I think as far as -- and certainly the
4 producer is going to be responsible for providing the
5 information on the site-specific hazards. And I think we
6 think a lot of that information is pretty clear-cut, that
7 it's almost in the form of a checklist -- do this, don't do
8 that -- and that that information can be conveyed pretty
9 clearly. And as I say, we believe it's usually in the form
10 of a checklist.

11 I think, you know, certainly the contractor is
12 still going to be responsible for coming to us and, you
13 know, making sure they have all the information, and will be
14 responsible for providing that information.

15 CHAIRPERSON ALEJANDRO: Well, just as a practical
16 matter, as is indicated in the proposal's preamble, you
17 know, the provisions regarding who's responsible for what
18 type of training is not meant to change in any way MSHA's
19 position as far as allocating responsibility between
20 contractors and production operators, and who gets cited.
21 And in appropriate cases, I mean we may choose to cite both
22 the production operator and the contractor for a training
23 violation if it's appropriate.

24 So, I mean, you know, regardless of what, you

1 know, is included in the role, I mean the intention is not
2 to change that basic outlook as far as contractor
3 enforcement is concerned.

4 MR. BURNS: Yeah, I think in response to some
5 questions, Mr. Kleinpeter described what you're talking
6 about in this way, that the operator should be able to take
7 all that site-specific hazard information and training
8 materials, give that information to the contractor, say,
9 "here's the information you need about this particular mine,
10 and you train your employees."

11 Or, if they choose to, they could give that to the
12 contractor's employees themselves, when they come on
13 property. Is that the CEMT position?

14 MR. REA: Yes, that's correct. And I think in the
15 CEMT proposal, which we would like to see codified, that
16 would not preclude the producer from, you know, taking
17 whatever role they wanted to. It would give them the
18 option, I guess, of flexibility.

19 MR. BURNS: So, I mean, really your concern about
20 liability is not the MSHA liability, it's other liability?

21 MR. REA: Yeah, it would be our members.
22 Producers.

23 MR. BURNS: Okay.

24 CHAIRPERSON ALEJANDRO: I don't mean to put you on

1 the spot, but I'm going to go ahead and ask this question.
2 Do you have a position as far as compliance deadlines or
3 effective date?

4 MR. REA: We would like the full year of
5 implementation.

6 CHAIRPERSON ALEJANDRO: Okay.

7 MR. REA: Yeah, we don't favor the phase-in
8 approach.

9 CHAIRPERSON ALEJANDRO: Okay. I don't have any
10 more questions. Robert Aldrich, do you have any questions?

11 MR. ALDRICH: I do not.

12 CHAIRPERSON ALEJANDRO: Rod?

13 MR. BRELAND: Just one. I want to make sure I'm
14 absolutely clear on the training. What you're saying, the
15 position that CEMT would have is that they wouldn't be
16 obligated to do any training for contractors, period?

17 MR. REA: Correct.

18 MR. BRELAND: Okay. I just wanted to make sure I
19 understood that that was the position you were actually
20 saying -- any site-specific hazard or whatever, only that
21 you be obligated to relay information to at least some
22 representative that would, in turn --

23 MR. REA: Correct. We'd provide information and
24 they'd provide the training.

1 MR. BRELAND: How would you see, as a production
2 operator dealing with a contractor that wasn't relaying the
3 information possibly, and they're in your -- at your
4 operation, and you're aware of that, you're seeing that?

5 MR. REA: You know, again, I think the contractor
6 would be responsible, but you're saying we see a situation
7 that the training is not occurring. I don't know if there's
8 a reporting mechanism or something like that that would --
9 or --

10 MR. BRELAND: Well, I just see that -- I mean
11 there's potentially a problem where an operator could say '
12 here's information that should be relayed, and you're
13 driving right by, if you will, just for an example, driving
14 right by routinely, and it's obvious that information is not
15 being relayed, and it may be affecting production operator's
16 employees as well, if there's some issue of safety that's
17 not being paid attention to. It could be traffic controls,
18 it could be a lot of things occurring, if they're just
19 simply not -- I wouldn't say willfully not complying with
20 the company rules, but maybe not been made aware.

21 How do you see dealing with that as a production
22 operator?

23 MR. REA: You know, possibly just wouldn't want to
24 use that contractor if you don't feel comfortable with them,

1 if they're not providing adequate, you know, they're a
2 hazard to the worksite.

3 MR. BRELAND: How would you see MSHA dealing with
4 that issue, if they came on site and the production operator
5 hadn't done something about it? How would you expect them
6 to deal with it?

7 MR. REA: If the production operator had not dealt
8 with the situation, you're saying?

9 MR. BRELAND: Yeah.

10 MR. REA: That's a good question. I'm sure they'd
11 want to, you know, whatever your enforcement role normally
12 is --

13 MR. BRELAND: You know, we're -- if you have a
14 process for insuring that miners get trained and for some
15 reason they're not, certainly MSHA could, if you had a rule
16 there that the contractor was responsible, you could cite
17 the contractor. But it could be that your production
18 operator's employees are subject to risk because of lack of
19 training. And you know, so I guess the dilemma is what do
20 you do to protect all miners that are at the site?

21 MR. REA: I guess I would just think that if it's
22 the contractor's responsibility, then MSHA should go after
23 the contractor. If it's employees of the producer, then the
24 producer should be responsible. Direct your efforts there.

1 MR. BRELAND: Yeah.

2 MR. BURNS: Well, we would, I'm sure that we would
3 follow our current policy on that, under his scenario where
4 the mine employees were at risk. I mean that fits under the
5 current policy that both could be cited for that, because
6 your people are at risk, also. And you do have total
7 responsibility for your own employees.

8 So, you know, what we're talking about is
9 separating out. I mean, if you want to separate out the
10 responsibility for training, that doesn't necessarily
11 separate out responsibility for violations, including
12 violations of not doing training, okay? They may not be,
13 you know, mutually exclusive concepts, because you still
14 have, you know, the responsibility of making -- the mine
15 operator has the responsibility of making the mine site safe
16 for their miners. So even if you do carve out this training
17 issue, there's still some responsibility left there.

18 MR. REA: Yeah, certainly I --

19 MR. BURNS: And it's not within this rule even to
20 change that.

21 MR. REA: Okay.

22 MR. BURNS: I mean that's in the Mine Act.

23 MR. REA: Okay. Well, I don't think we're trying
24 to change the underlying Act or anything.

1 MR. BURNS: Right, yeah.

2 MR. REA: Yeah, there may be some issues there
3 that need some further discussion, and that's something I
4 can certainly take back to the group and let them know
5 about.

6 MR. BRELAND: Yeah, the thing I was trying to get
7 at is, if you have a proposal you're making, you need to
8 also consider what are the remedies if there's a problem
9 with the desired result. Because that's what MSHA would be
10 responsible for, making sure that all miners are receiving
11 appropriate training.

12 MR. REA: Okay.

13 MR. BURNS: Essentially some sort of, I'm just
14 thinking out loud, but perhaps some sort of good-faith
15 effort to insure that the contractor's employees are being
16 trained.

17 MR. REA: Okay, I can certainly take that back to
18 the CEMT group.

19 MR. BURNS: Does that make sense?

20 MR. BRELAND: Yeah, that was the only question I
21 had. I wanted to make sure I understood that.

22 CHAIRPERSON ALEJANDRO: Kevin, do you have any
23 questions?

24 MR. BURNS: No.

1 CHAIRPERSON ALEJANDRO: Mario?

2 MR. FERNANDEZ: None.

3 CHAIRPERSON ALEJANDRO: Thank you very much,
4 Mr. Rea.

5 MR. REA: Okay, thank you.

6 MR. BRELAND: Thank you.

7 MR. BURNS: Thank you.

8 CHAIRPERSON ALEJANDRO: Do we have anyone else in
9 the audience who would like to make a statement? Yes, sir?

10 MR. NIESEN: My name is first initial C, Duane,
11 D-U-A-N-E, Niesen, N-I-E-S-E-N. And I'm currently a Senior
12 Engineer for Cal/OSHA's Mining and Tunneling Unit. And one
13 of my primary jobs is to supervise the MSHA training grant
14 whereby my employees provide actual MSHA-required training,
15 mostly under part 48.

16 I made some statements in Ontario in December, and
17 I'm going to sort of rehash some of that, and address some
18 of the issues here.

19 But first, I'd like to make sort of a general
20 statement. First of all, I feel very old, because 39 years
21 10 months ago today, on this very site, I reported for work
22 for the State of California. It looked a lot different
23 then. A lot of things have changed, and a lot of things
24 have not.

1 About 35 of those years of my experience have been
2 involved with industries that are what I call rough trades,
3 heavy industry, heavy construction, mining, logging. I've
4 been working for Cal/OSHA for the past 26 years, since its
5 inception in 1973. And I've sort of learned by osmosis two
6 general principles: First of all, that safety is an
7 absolute survival essential and that safety training is part
8 and parcel of that. And effective safety training is just
9 as important a piece of personal protective equipment as any
10 physical piece. And I'm quite prejudiced, I guess, toward
11 that opinion.

12 The second thing that I've learned over the years
13 is that industry -- I'm going to get hit in the back by
14 several people here -- left to their own devices, have not
15 shown a great inclination to self-regulate.

16 I was Compliance District Manager for Cal/OSHA
17 here in Sacramento for 12 years, and I worked in the field
18 as a compliance inspector for 10 before that. And history
19 has at least taught me that without some sort of guideline
20 or structure, industry tends to lag when it comes to what I
21 call self enforcement.

22 In my mind I believe that led in the late sixties
23 to the passage of the federal OSHA Act; in 1970, in the
24 early seventies it led to the passage of California's

1 Cal/OSHA Act; and I believe in the mining industry it led to
2 the passage of the Mine Act of 1977 -- some legislation,
3 some structure, some regulations necessary to make sure that
4 the right thing gets done.

5 And what I see in the proposal of part 46 is quite
6 loose. It leaves a great deal to the discretion of
7 operators. And for good operators that's fine. For
8 marginal operators, for operators who are struggling to make
9 ends meet, it's not so fine.

10 The concern generated in the past several years by
11 mine fatality and accident statistics, I think, pretty much
12 show where the problems lie, and that is with small
13 operators and with contractors. And these are the two
14 groups that, without some sort of structural guidance, are
15 going to be the groups that have their people most at risk.

16 Small operators are struggling for survival
17 possibly, and given a whole lot of discretion in their
18 training programs, I'm afraid they're going to neglect
19 their, to the expense of their employees.

20 Contractors may not be familiar with mining
21 operations in all cases. A lot of them are not. We deal
22 with them every day. We train about 2,500 people in
23 California a year with MSHA-48-style training, with
24 contractors and miners. And we find a great deal of

1 ignorance on the part of contractors. They're not familiar
2 with the situations which they go into, and they are looking
3 for some sort of guidance.

4 I'm also an enforcer at heart, although I don't do
5 that anymore. And I find that performance-oriented
6 standards are a nightmare to enforce. I would not want to
7 be an MSHA inspector and go to every new mine and have to
8 make a judgment on every new training plan and every new
9 instructor, whether or not they're competent and whether or
10 not the intent of part 46 is being carried out.

11 I would like to see a little bit more structure
12 and a little bit more regularized procedure for safety
13 training, which I believe is literally life and death.

14 I want to address some of the issues that are here
15 that MSHA has expressed interest in. First of all, the
16 definition of a miner, that is, who should be subject to
17 various types of training.

18 And it's my opinion, based on my Cal/OSHA
19 experience and similar safety regulation that went into
20 effect for us in 1991, that any employee exposed to the
21 hazards should be equally protected by the training to
22 protect them from that hazard. If you want to call them a
23 miner or a contractor or an experienced miner, or whatever
24 terminology you'd like to use, the essence of the question

1 is whether or not the employee's exposed to the hazard, and
2 whether or not that person should be prepared to deal with
3 the hazard. His or her title really doesn't make much
4 difference.

5 So I'd like to have that training expanded to
6 cover all those people who regularly work, or who work on a
7 regular intermittent fashion, and are exposed to the hazards
8 of mine operation.

9 The second issue, I think, is the plan approval
10 process, and I happen to agree with this one, strangely
11 enough. The MSHA submittal process has gotten a little bit
12 sticky in the last few years, at least that's what I hear
13 from a lot of operators where changes to plan approvals or
14 changes of plans must be approved by the local office. And
15 that involves a lot of, perhaps, excess paperwork,
16 especially when you just change instructors.

17 And so I really have no problem with the proposal
18 here. If you have a plan on site that can be examined by
19 authorized people, that's fine. Now, there should be, as I
20 said before, a few more guidelines and a little more
21 rigidity to the style of plan and what it covers.

22 New miner training. This is something that I feel
23 rather strongly about, and I think it's based on my Cal/OSHA
24 experience. As I said before, safety training is just as

1 important a piece of personal protective equipment as is any
2 physical piece. And none of us here probably would allow a
3 miner to walk on a mine site without a hardhat, and I
4 believe that a miner should not be allowed to get into a
5 mine operation without proper basic training, which is a
6 part of the personal protective equipment.

7 Therefore, I think there should be some basic
8 orientation. If you want to put a number of hours on it, I
9 suppose, in my training experience I don't think you can
10 communicate much even on a small simple mine site in less
11 than half a day, because that's just not enough time to
12 acquaint especially a new person with the situation, the
13 site-specific conditions and the general hazards that exist
14 in a mining operation.

15 And so I think there should be some minimum
16 requirement for training of all new miners before they're
17 allowed to be exposed to the hazards. Just as you would not
18 appear without a hardhat, that person should not be able to
19 appear without the proper training.

20 I, also, over my last three and a half years
21 experience since I've been involved in MSHA training, tend
22 to favor the structure of part 48 or some move in that
23 direction as part of that basic training.

24 As I stated, I think, in December, there really

1 isn't any secret about what kills miners. It's been
2 researched, rehashed, sliced and diced. MSHA puts out
3 beautiful colored charts on every aspect of what injures and
4 kills miners in the United States.

5 Therefore, the basic training should be pretty
6 clear. And there really isn't that much tremendous
7 variation between one site and another as far as the very
8 basics are concerned. Powered haulage, electrical hazards,
9 ground conditions, things like that are basic almost
10 everywhere you go, any kind of a mine.

11 And if you're going to put in a basic plan before
12 you let a miner go to work, I think those subjects should be
13 covered by regulation.

14 To allow an operator to have total discretion
15 about where and when and what he trains his people in, I
16 think, would leave a lot of miners unprepared, especially
17 with small operators and especially with contractors who
18 weren't really familiar with the mine site or mine
19 operations. And those are the people who are mostly at risk
20 according to statistics.

21 New-task training. I tend to feel strongly about
22 that too, because Cal/OSHA has a similar regulation.
23 Anytime you change an operation or anytime you adopt a new
24 material or a new machine, the employees exposed to that

1 particular condition must be trained beforehand. It can be
2 done very informal. It's usually on the job. Shouldn't
3 present much of a problem I don't think.

4 Training instructors. I feel extremely strongly
5 about this. I've dealt with the term "competent person" for
6 about 20 years in Cal/OSHA, and I find that to be to me a
7 very odious term as an enforcer. It's almost impossible to
8 define, and I've been in many many court hearings where we
9 harangued all day with varying results. It's very difficult
10 to define what a competent person is.

11 Here it is decided by the operator who, in his or
12 her own wisdom and experience, has to decide on several
13 factors: ability, training, knowledge and experience. And
14 also on judgment of the effectiveness. That's a very great
15 thing to ask of a person who is not trained in that area.
16 How are you going to evaluate an effective instructor if
17 you're not at least acquainted with instructional technology
18 and all the other things that go into effective training?

19 Part 48 requires certified instructors. There's
20 been a lot of criticism of the certification program. But
21 actually, it's better than nothing and could be improved.
22 Right now it's left up to training specialists, I believe,
23 to approve accredited instructors. And in general, with the
24 offices that I've worked with, they go on about four

1 parameters. And one is mining experience, mine safety
2 training, instructional experience and instructional
3 training. I think those four things are very valuable.

4 Some judgment should be made about the quality of
5 the instructors who prepare miners in this life-and-death
6 situation to face the hazards they are going to do. If you
7 pick a foreman or a good laborer, or somebody who looks like
8 somebody's grandpa to do the training, it's the luck of the
9 draw whether or not that miner is really effectively
10 trained.

11 You need somebody who's acquainted with
12 methodology, subject matter, and understands how to get the
13 message across, or that miner will not be adequately
14 prepared to meet the hazards.

15 I prefer, then, certifying instructors for part
16 46, as well as part 48. And if you want to complain about
17 the certification process, then fix it. Don't throw it out.
18 Otherwise you're going to have all manner of persons
19 attempting to train with all manner of methods, and their
20 own favorite subject matters and all that, with no structure
21 whatsoever.

22 To me, part 46 also creates another problem in
23 that when one miner moves from one mine to another, it puts
24 the onus on the second operator to completely retrain that

1 person, because he has no standard to compare that basic
2 miner's training. He has to inquire or do it over again
3 before he starts out at a new mine.

4 That's one advantage, I think, to part 48, where
5 you have at least a certificate which gives you a base level
6 of understanding of what that miner has been trained in.
7 Part 46 does not allow for that.

8 So I'm very opinionated. I think that training
9 instructors allowed to do this training should be certified.

10 Another problem with annual refresher training is
11 that apparently, according to what I see here, you will
12 allow a cumulative amount of that with, as I can read it, no
13 minimum. Tailgate sessions or casual discussions will be
14 able to add up to refresher training.

15 In the original proposal I think that I read with
16 CEMT back in August, there was a comment in one of the
17 magazine articles that the attention span of miners isn't
18 very long. As a trainer I take exception to that, because
19 one of the differences between pedagogy and androgogy,
20 that's the teaching of children and the teaching of adults,
21 is that children have very short attention spans, but adults
22 tend to have longer attention spans. We're shortchanging
23 our miners by not allowing them to sit through sessions that
24 may be more than five minutes or 15 minutes long. They can

1 learn.

2 The annual refresher training, now, according to
3 part 46, supposes the opposite, that they can accumulate all
4 these five-minute sessions into a composite that will
5 refresh them. I think that's a misdirection as far as
6 training theory goes.

7 There should be a minimum amount of time to get
8 any subject matter across. I've given several thousand
9 tailgate sessions and I've sat in on several thousand more.
10 And you cannot really get one single subject across in less
11 than about 15 minutes. You just can't do it. You've got to
12 get people's attention, you have to deliver, you have to
13 make a presentation that's going to stick in their minds.
14 And if you allow a five-minute session or a casual
15 conversation to substitute for this vital information, that
16 would be a mistake.

17 Also, I don't know how you're going to keep
18 records of this. That's going to be a real nightmare for
19 the enforcers, too. Fortunately, I'm not one, so that's
20 good.

21 The effective date, in my opinion, is about six
22 months. A lot of the responsible sand and gravel people in
23 California who are going to be most affected by this have
24 already got a jump-start and have complied with part 48 for

1 a long time. So, the great stampede to comply with part 46
2 I don't think is going to be quite as great as we
3 anticipate, because a lot of responsible operators have
4 already got a great start.

5 The transition will not be that great. In fact,
6 for some of them it will be a downgrade from what they've
7 already complied with. So I don't think you really need a
8 year.

9 I really don't have any expertise in cost
10 benefits. I would only like to reiterate one thing that I
11 heard in a meeting here not long ago, the last meeting of
12 this sort, from an aggregate producer. And he said when
13 he's asked what training costs him, he says, nothing. It's
14 lack of training that costs. And I believe that from my
15 experience that's true.

16 The bottom line is directly affected by safety
17 performance, which is, in turn, directly affected by safety
18 training. It's going to show up in the bottom line. It's
19 really going to be a plus, not a minus. I believe that
20 strongly, as an enforcer and as a trainer.

21 The more enlightened producers in California, even
22 though they were so-called exempt, have already seen that.
23 We do a great deal of training for part 48 on sand and
24 gravel producers, and have for years in California. And to

1 them this is going to be a relaxation of the requirements.
2 And so it's not going to be that odious a thing.

3 That's about all I have to say, I suppose, except
4 that because of the lack of structure, because of the
5 discretion given to operators in almost all parts of this
6 proposal, I believe that it's going to do a disservice to
7 miners in the first place.

8 The good operators will comply and go above it.
9 The people who are pressed, or who can't, who are the group
10 at risk here, the small employers, contractors, will not,
11 and therefore expose their people unnecessarily to hazards
12 for which they're not adequately trained to cope with.

13 You're going to do a disservice to the miners
14 themselves, you're also going to do a disservice to those
15 progressive people in the aggregate industry in California
16 who have already lived up to a higher standard, I suppose,
17 in training their people according to part 48.

18 So I would like to see more structure, a
19 requirement for certification, and a minimum requirement for
20 subject matter and new miner training.

21 Thank you.

22 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
23 Niesen. I have got a couple questions, and others may, as
24 well.

1 You indicated that you generally agreed with the
2 approach taken in the proposal for plan approval, but you
3 indicated that you believed that it should have more
4 guidelines and more rigidity.

5 Could I ask you, do you have any specific
6 suggestions as far as what those guidelines or, you know,
7 rigid requirements might include?

8 MR. NIESEN: The subject matters that I think are
9 outlined in part 46 proposed now are pretty general. The
10 ones in part 48 are quite specific.

11 Because of the availability of statistics and the
12 relative certainty about what hurts and kills miners, I
13 think there should be a basic, a little bit more detailed,
14 perhaps halfway between part 46 proposal and part 48, on
15 basic subjects that are common to most mines as a
16 curriculum.

17 You can still leave it up to the operator to
18 decide how much of what, depending on his own mining
19 operation.

20 I would like to see a requirement in there also
21 for certified instructors. I've already expressed myself on
22 that. And I would also like to see some measure of time.
23 As it stands, as it's written here, I see that there'd be
24 all kinds of room to make it very informal, very short, and

1 in my opinion, very ineffective.

2 There should be some baseline in there somewhere
3 about how much time should be spent on a training or to
4 execute a training plan. And it can depend on the mine
5 size, but it should cover those subject matters, and it
6 should be a basic four-hour or a one-day or whatever
7 specific number of hours or number of days to prepare them
8 before they go out there in the first place, based on those
9 basic subject materials.

10 That's about the only thing --

11 CHAIRPERSON ALEJANDRO: Okay, that was sort of my
12 next question. You indicated that as far as new miner
13 training is concerned that you believe that it was important
14 to have some kind of initial training before the miner
15 actually goes to the worksite and is exposed to hazards.

16 Now, the way that it is currently in the proposal
17 is there is four specific subject areas that must be covered
18 in training before a new miner can be exposed to mine
19 hazards, you know, begin his work duties.

20 Now, I guess I'm interested in knowing what your
21 recommendations are for how we might do that differently?
22 Are you saying that there should be a minimum number of
23 hours of training that should be given to a new miner before
24 he begins work, or specific subject areas, which is kind of

1 the approach that we have taken in the proposal?

2 I'm just trying to get a little bit more detail as
3 far as what it is that you're recommending.

4 MR. NIESEN: Well, it should depend on the size
5 and the complexity of the operations, and that's already
6 written here. However, there are certain subjects that are
7 pretty common, and those are the subjects that kill most
8 miners.

9 And I think that maybe there could be something
10 written that if those particular basic standards or basic
11 subject matters are pertinent to a mine site, that those
12 thing should be covered.

13 Now, maybe powered haulage would be a significant
14 one. That's the biggest killer we have. It's also present
15 on a lot of mine sites. And I think that should be included
16 in basic curriculum.

17 CHAIRPERSON ALEJANDRO: Okay.

18 MR. NIESEN: Traffic patterns, traffic control and
19 all that stuff is also part and parcel of that. That's
20 present on any mine site. If there are certain machinery
21 like conveyors, first aid certainly should be covered.

22 Perhaps there could be a list made up that would
23 cover most, similar to part 48, and an operator could be
24 given the discretion to pick those subject matters which are

1 pertinent on his mine site, or her mine site, and train in
2 his plan to meet those things which are particularized to
3 his site, out of a standard list.

4 And maybe that could be a criteria for judging his
5 plan whenever he's inspected.

6 I don't want to force people to train in
7 underground rescue when they don't have any underground.
8 That would be foolish, a waste of time. But maybe a certain
9 set of subject matters from which an operator could pick,
10 according to his operation.

11 CHAIRPERSON ALEJANDRO: Okay. Now, I have one
12 final question. You indicated that you did not agree with
13 the approach taken as far as "competent person" in the
14 proposal. And you indicated that a part 48 type approval
15 scheme would be more appropriate. But you also indicated
16 that you know, to the extent that there were problems with
17 the current part 48 scheme, that that should be fixed.

18 Do you have any suggestions, I mean,
19 hypothetically, if we were to take a more part 48 type
20 approach, what would be your recommendations for how to make
21 that scheme better?

22 MR. NIESEN: Well, it's been my experience that
23 MSHA certificates have been handed out at the complete
24 discretion of the training specialist. Sometimes that's

1 pretty loose.

2 I'll have to compliment the people that are in the
3 positions that I deal with now, Mr. Tobin and Mr. Salois and
4 those people that I've met at the Academy. Their opinions,
5 as expressed to me, seem to set certain areas where they
6 look into the matter. And I enumerated four.

7 Perhaps that should be -- something like that
8 should be formalized and a potential instructor should have
9 some experience or training in those areas, as a minimum,
10 and still leave it up to the training specialist to evaluate
11 that, so that there would be at least a baseline competence
12 of subject matter or experience that would qualify an
13 instructor to go forth and do the training.

14 I train instructors, and I use the MSHA format.
15 There's been a tremendous demand, especially since part 46
16 was rumored. And I get all kinds of people. I get some
17 which are going to make very good instructors, sometimes
18 from the rank and file. I get other people who are going to
19 make lousy instructors.

20 There's really no way to tell, but the best thing
21 you can do is to prepare them in certain areas that at least
22 ground them in the principles and the techniques to be able
23 to get the message across, as well as either train them or
24 have experience in mining processes, because that's

1 important, also, if they're going to teach them. And the
2 training specialist can still decide that.

3 But perhaps a little bit more delineation, I
4 suppose, of the areas that they need to be reasonably
5 acquainted with, would be valuable.

6 CHAIRPERSON ALEJANDRO: Okay. I think that's all
7 I have. Robert Aldrich, do you --

8 MR. ALDRICH: No questions.

9 CHAIRPERSON ALEJANDRO: Rod Breland?

10 MR. BRELAND: Maybe a couple of clarifications,
11 and maybe a request, too, Duane. You had some real good
12 comments you made, concerns about definition of miner, for
13 example and the new miner training. And you've listed some
14 potential subject matter.

15 Are you intending to submit comments along the
16 lines for clarification of maybe what you're suggesting as
17 definitions?

18 MR. NIESEN: Yes, I'd like to. You know, I've got
19 the usual bureaucrat's excuse of no time, but, yeah, I want
20 to do that.

21 MR. BRELAND: Yeah, I think it's an important
22 thing for you to do.

23 If you're comparing similarities to part 48
24 structure that you like, versus the looseness you don't

1 like, I think it would be good to show what you think would
2 fit more appropriately.

3 The "competent person" issue, particular you
4 talked about -- you're saying, for instructors, if you have
5 a list of some of the minimum experience and training, or
6 thoughts on that, that would be good that that's included in
7 that, as well.

8 You talked about the approval process, I don't
9 know if you're working well out here, but if there's areas
10 in the present approval process that we have in part 48 for
11 instructors that you think need fixing, or you said that
12 there --and there obviously is some disparity around the
13 country there, but again, if you have suggestions there we
14 wouldn't want to even remotely consider going forward with a
15 new rule that would adopt problems we've had from the past.

16 MR. NIESEN: Yeah, we had quite a meeting back at
17 the Academy in April on that particular subject, and I had
18 about 20 people from that many states. And the only thing
19 we did not have at all is a consensus of opinion about part
20 48 or part 46, so it's a wide open thing.

21 MR. BRELAND: Okay. That's all I have, just more
22 of a request than questions.

23 CHAIRPERSON ALEJANDRO: Kevin?

24 MR. BURNS: The only thing that hasn't been asked

1 and I'm not clear on is, you mentioned the problem with the
2 record keeping and certification of training may not be
3 clear enough so that one operator would know what a miner
4 was trained in?

5 MR. NIESEN: Yeah. I have a concern in two areas,
6 actually. First of all, training given by a mine operator
7 under part 46 seems to be highly individualized, and part of
8 that's good, but when a miner transfers to another mine or
9 wants to go to work somewhere else, the new employer is
10 going to be saddled with an extra burden of trying to
11 determine what that miner has been trained in and whether or
12 not it applies at his mine, and possibly retraining. To me
13 that's harder than accepting a basic certificate.

14 The second thing is on the refresher training,
15 which apparently will be allowed to be an aggregate of
16 several small, short sessions, I don't see any guidelines in
17 here for an operator to decide when he's finished. What
18 constitutes, how many 15-minute tailgate sessions does it
19 take to make up an eight-hour day, what subject matter, and
20 how is he going to prove that to MSHA or anybody else who is
21 examining whether or not he's met his annual refresher
22 commitment?

23 MR. BURNS: The annual refresher would fit into
24 the same requirements, you know, for records of training.

1 And even though this doesn't specify that they have to use
2 the 5023, they could if they wanted to.

3 But it still requires that it indicate the type of
4 training completed, the duration of the training. So a lot
5 of that information should be on these records if they're
6 complying with the standard.

7 MR. NIESEN: He gets to make up his own record
8 form, is that correct?

9 MR. BURNS: Yes, --

10 MR. NIESEN: So he could have a --

11 MR. BURNS: -- or they could do a spreadsheet or
12 something like that. That's what they suggested.

13 CHAIRPERSON ALEJANDRO: With certain minimum
14 information, of course --

15 MR. BURNS: Yeah.

16 CHAIRPERSON ALEJANDRO: -- included. But the
17 thinking behind that was we were getting a lot of comments
18 from people who indicated they wanted flexibility in format,
19 particularly given, you know, the computerization of so much
20 of the record keeping.

21 And so rather than rigidly requiring that records
22 be kept on a 5023 or some other type of specific MSHA-
23 approved form, we were intending to give them flexibility.
24 But there are minimum informational requirements for those

1 records that would need to be followed.

2 MR. BURNS: Yes, if they weren't able to pull out
3 of those records what sort of subjects this person had
4 training on, then it wouldn't be in compliance with the
5 rule. Because it does state the type of training completed
6 in there.

7 And, you know, I don't think we can necessarily
8 eliminate the problem you're talking about with a new
9 employer. I mean, there are mine operators out there now
10 that retrain miners, even though they have 5023s, because
11 you know, you fill out that form you still don't know what
12 they're trained on.

13 So, you know, we can't get rid of that problem. I
14 mean that's, no matter what this rule says there will be
15 some operators, and you know, they're very conscientious
16 operators, they're going to retrain new employees because
17 they want them trained in their way.

18 MR. NIESEN: Well, they should. Some will and --

19 MR. BURNS: Yeah.

20 MR. NIESEN: -- of course, the other side won't.

21 MR. BURNS: But I don't see any way that the
22 documentation could rule that out, you know, for a new
23 employer, that they would totally know exactly what that
24 person had. Unless they were familiar with the other

1 company, you know, that way they might know.

2 MR. NIESEN: That's going to put a burden on them
3 to determine what -- and or start over again, one or the
4 other, that's what I figure --

5 MR. BURNS: Yeah, they should be able to determine
6 that the person had training in explosives. Say this miner
7 came from sand and gravel and they didn't use explosives.
8 And he's gone to a quarry and he's going to be exposed to
9 explosives. And they should be able to determine that he
10 didn't have that, you know, based on the records.

11 I think that's all I had that wasn't already
12 asked.

13 CHAIRPERSON ALEJANDRO: Mario?

14 MR. FERNANDEZ: No questions.

15 CHAIRPERSON ALEJANDRO: Thank you very much, Mr.
16 Niesen.

17 MR. NIESEN: Thank you.

18 CHAIRPERSON ALEJANDRO: Is there anyone else here
19 who has not spoken who would like to speak? Yes, please
20 come up to the podium and state your name and spell it for
21 the court reporter, if you could.

22 MS. MOORHOUSE: Nancy M-O-O-R-H-O-U-S-E, Safety
23 and Environmental Director for A. Teichert & Son. We're a
24 major sand and gravel operator in California, with close to

1 300 miners.

2 CHAIRPERSON ALEJANDRO: Excuse me, could you spell
3 the name of your company?

4 MS. MOORHOUSE: Yes. That's A. T, as in Tom, E-I-
5 C-H-E-R-T. We've been in business since 1887, so we
6 appreciate health and safety training for our people,
7 because the last thing we want is fatalities.

8 We've been doing part 48 training ever since I've
9 been in the department, and found it effective, although
10 somewhat cumbersome with the requirements of certain aspects
11 that we just don't get involved in, in sand and gravel
12 operations, i.e., explosives, self rescue, et cetera.

13 And I will submit written comments. I just wanted
14 to get on the record today.

15 The challenge that we always face as mine
16 operators is the coming and going of people on and off the
17 site for delivery, et cetera. And under your part 46
18 requirements, where the production operator is responsible
19 for the hazard awareness training and the documentation of
20 those people, delivery personnel, et cetera, it can pose a
21 problem. And I'm looking at it from the enforcement side.

22 When we do get visited from MSHA inspectors -- and
23 I have to comment, they do do a good job, but we still have
24 frustrations with them in terms of interpretations of what

1 is so. I think in some degree we're opening a Pandora's Box
2 in terms of the level of citations that could be issued for
3 some nuances that maybe are outside of our control as a
4 production operator.

5 In my written comments I'll propose some
6 suggestions to that. I appreciate signage and verbiage such
7 as that as adequate training, but invariably we'll find that
8 enforcement officer that will be somewhat of a zealot and
9 you know, we've got our hands tied in some situations,
10 because we just don't always have control of those people
11 that come on and off site.

12 Other than that, I think the flexibility that
13 you're proposing in part 46 is acceptable. I think we've
14 already incorporated that under the part 48 anyway.

15 I think it is important that new miners receive
16 eight hours of training before they hit the mine site.
17 Because they do need to understand the challenge does come
18 in the fact when you inherit someone else's miner, whether
19 they come from another company or whatever, making sure that
20 they've got adequate training. We just take the position
21 we're going to train them all because we can't trust what
22 somebody else did. I'm not saying that's a negative, but we
23 want to make sure they understand the uniqueness of our
24 plants.

1 So, with that, I'll submit written comments. But
2 I just wanted to get on the record such far.

3 CHAIRPERSON ALEJANDRO: Could I just ask a couple
4 questions? And I don't want to put you on the spot. But,
5 as far as, you know, site-specific hazard training is
6 concerned, do you have any specific suggestions for how the
7 proposal, or the final rule could address the concerns that
8 you have about inconsistent enforcement and our
9 interpretation, or whatever?

10 MS. MOORHOUSE: Not off the top of my head, but
11 I'd be glad to submit that in written comments.

12 CHAIRPERSON ALEJANDRO: Yeah, I mean we are always
13 interested in, you know, specific recommendations for how we
14 might address, you know, specific problems. So if you, you
15 know, if in your written comments you could give us that, we
16 would really appreciate it.

17 MS. MOORHOUSE: Sure.

18 MR. BURNS: When you're talking about that you
19 don't have control over who's coming on your property,
20 you're talking about like where you -- well, you may not
21 even contract with these truckers, your customer will. And
22 then they might even have subcontracts.

23 So is that what you're talking about that you
24 can't -- you have a hard time keeping track of who the truck

1 drivers are that are new to the mine, and which ones have
2 been there before? Because it's -- that can be changed on a
3 daily basis almost?

4 MS. MOORHOUSE: Absolutely, because we use outside
5 haulers for trucking. I mean you can take it to the nth
6 degree that even, you know, when the post office delivers
7 your mail whatsoever, I mean it's a new person every day.
8 And to what degree do we go on some of that?

9 I mean I don't want to nit-pick some of this, but
10 to the same effect, I mean, yeah, we want to provide a safe
11 work environment. We have an obligation as an employer to
12 our employees primarily, and that's why that independent
13 contractor relationship is so vital. You know, that they
14 make sure their people are trained. Otherwise, we become
15 the watch dog for everybody, and at some point you reach
16 critical mass and it's not effective anymore.

17 MR. BURNS: Okay, I'm not sure if you were here
18 when this was raised before, but you know, the issue is how
19 do we determine, perhaps, that the operator made a, for lack
20 of a better term, a good faith effort to determine that
21 contractors are taking the information that you provide them
22 and providing it to their employees.

23 You don't have to answer it here, but I think
24 that's really what we're looking for in this area, that

1 there should be some -- there's not a total disconnect, that
2 there has to be some mechanism that there's some sort of
3 good faith effort made to make sure that this training is
4 being provided and not put in the circular file somewhere.

5 MS. MOORHOUSE: I appreciate that.

6 CHAIRPERSON ALEJANDRO: Rod.

7 MR. BRELAND: Yeah, a couple. The examples of
8 inconsistency, I think you just touched on like you could
9 have verbiage or signage, and you're representing a multiple
10 of operations, I assume? Are you consistent at those
11 operations with the type of indoctrination you do, or hazard
12 training you do for your truck drivers and signage and so
13 forth? Is that consistent from one place to another?

14 MS. MOORHOUSE: As best we can be, yeah.

15 MR. BRELAND: And have you found that that's been
16 misinterpreted, or interpreted differently from one place to
17 another by enforcement, is that what you're talking about,
18 as being adequate?

19 MS. MOORHOUSE: Well, you've got a couple of
20 things. You've got the enforcement side that's trying to
21 find things wrong. It's their job.

22 But then even when you have independent people
23 visiting your mine site, they're not always in compliance
24 with the requests that you make, such as personal protection

1 equipment, or hardhats, or et cetera.

2 And that gets a little tenuous as a producer in
3 making sure that, you know, we've got our own people to take
4 care of. And you get 200, 300 truckers a day and they're
5 running around without hardhats, it's a very onerous
6 situation.

7 We do the absolutely best we can, but you've got
8 language barriers and some other issues there societal-wise
9 that we have to take on. And you just do the best you can.

10 MR. BRELAND: Do you have some sort of -- and
11 I've heard this brought up, matter of fact it was brought up
12 in Orlando, that they thought they were going to have to go
13 to bilingual for scalehouse people or something, to --

14 MS. MOORHOUSE: We're even going to pictures to
15 make sure that we're more universal. I mean it is a
16 challenge. It is a challenge.

17 MR. BRELAND: Are you presently doing some sort of
18 checklist, or is it mostly a signage thing or inspections to
19 a contract company when you hire them for haulage and stuff?

20 MS. MOORHOUSE: We do checklists. We also make
21 sure contractually that it's in the contract that they sign
22 to make sure that it's very clear that they have to follow
23 part 48 training requirements when they come onto our job
24 sites, so that we have some venue to go back.

1 MR. BRELAND: That's for the hazard training.
2 Then you mentioned you thought the eight hours was probably
3 a minimum before, if you had new employees for your own
4 operation I assume.

5 What kinds of things -- do you have a list,
6 yourself, or an outline of the eight-hour training you do
7 for new employees?

8 MS. MOORHOUSE: Um-hum.

9 MR. BRELAND: That would probably be good to
10 submit with your comments.

11 MS. MOORHOUSE: Okay.

12 MR. BRELAND: If you have that. That's all I
13 have, thank you.

14 MS. MOORHOUSE: Thank you.

15 CHAIRPERSON ALEJANDRO: Kevin, do you have
16 anything else?

17 MR. BURNS: No.

18 CHAIRPERSON ALEJANDRO: Mario?

19 MR. FERNANDEZ: No.

20 CHAIRPERSON ALEJANDRO: Thank you very much.

21 MS. MOORHOUSE: Thank you.

22 MR. BURNS: Thank you very much.

23 CHAIRPERSON ALEJANDRO: Is there anyone else who
24 would like to speak. Either someone who has already spoken

1 or someone who has not yet spoken, before we close the
2 hearing?

3 At the back of the room on the table in the corner
4 is an attendance sheet, and we would appreciate it if anyone
5 who is here who has not signed up would, before they leave,
6 sign up on the sheet so that we have a good idea of who was
7 at the hearing.

8 I'll give you a little bit of an idea of what
9 comes next.

10 As I mentioned earlier, we have two more public
11 hearings next week on part 46. The record will remain open
12 for submission of written comments until June 16th. And
13 after the record closes, MSHA will then work diligently to
14 prepare a final rule for publication in the Federal Register
15 on or before September 30th of 1999.

16 And obviously, depending on the decisions that we
17 make, as far as effective dates and compliance deadlines,
18 sometime in the coming months or year the industry will need
19 to begin to comply with the requirements in the final rule.

20 I thank everyone who came to the hearing today. I
21 particularly appreciate the speakers.

22 And without anything further, this hearing is
23 closed. Thank you very much.

24 (Whereupon, at 9:35 a.m., the hearing was closed.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, do hereby certify that I am a disinterested person herein; that I recorded the foregoing hearing on a tape recorder; that thereafter the tape recording was transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of May, 1999.

Peter Petty
Official Reporter