

UNITED STATES OF AMERICA
US DEPARTMENT OF LABOR
MINE SAFETY & HEALTH ADMINISTRATION

+ + + + +

PUBLIC HEARING ON
EXAMINATIONS OF WORKING PLACES
IN METAL AND NONMETAL MINES

+ + + + +

Thursday, August 4, 2016

+ + + + +

Meeting Rooms N & O
Sheraton Birmingham Hotel
2101 Richard Arrington, Jr. Boulevard
Birmingham, Alabama

+ + + + +

8:30 a.m.

FACILITATOR:

SHEILA McCONNELL, Director,
Office of Standards, Regulations & Variances
Mine Safety & Health Administration

PANEL MEMBERS:

ALFRED D. DUCHARME
SAM PIERCE

ALSO PRESENT:

PAMELA KING

CONTENTS

SPEAKER	PAGE
Sheila McConnell, MSHA	3
Brian Hendrix; Husch Blackwell15
Ryan Seelke; Steelman, Gaunt & Horsefield39
Jeremy Pierce, PCS Phosphates.71
Matt Bunner, Mulzer Crushed Stone.95
Gary Wirth, Thiele Kaolin Company.	124
Roger Treece, Drummond Company	135
Daniel Hundley, UMWA	140
Daryl Dewberry, UMWA	143
James Blankenship, UMWA.	149
Jason England, Doe Run Company	164
Daniel Redetzke, Independent Salt Company	168
Brian McNamara, Bluegrass Materials.	187
Ernie Miranda, private citizen	194
Reid Bayles, Independent Salt Company	199

P R O C E E D I N G S

(8:30 a.m.)

MS. McCONNELL: Good morning. My name is Sheila McConnell; I am the director of the Office of Standards, Regulations & Variances for the Mine Safety & Health Administration. I am the moderator for the public hearing on MSHA's proposed rule on examinations of working places in metal/nonmetal mines.

The proposed rule was published in the Federal Register on June 8. And on behalf of Assistant Secretary Joe Main, I want to welcome all of you here today and thank you for your attendance and your participation.

First I'd like to introduce the members of our panel. We have on my right Samuel Pierce, Southeast District Manager for Metal and Nonmetal Mine Safety and Health; and on my left, Alfred Ducharme from the Office of the Solicitor. And in front I'd like to introduce Pamela King, who works in the Office of Standards.

This is the last of our four public

1 hearings on a proposed rule for examinations of
2 working places in metal/nonmetal mines. The
3 first three took place on July 19 on Salt Lake
4 City, Utah; July 21 in Pittsburgh, Pennsylvania;
5 and July 26 at MSHA Headquarters in Arlington,
6 Virginia.

7 Immediately following today's hearing
8 we will hold public meetings on MSHA's request
9 for information on exposure of underground miners
10 to diesel exhaust. We are holding these meetings
11 in response to requests from stakeholders, and in
12 the interest of efficiency, we decided to hold
13 the public hearings for the proposed rule and the
14 public meetings for the request for information
15 consecutively.

16 The purpose of this hearing is to
17 receive information from the public that will
18 help MSHA evaluate the proposed requirements and
19 produce a final rule that will improve safety and
20 health for miners at metal/nonmetal mines. The
21 hearing are conducted in an informal manner.
22 Formal rules of evidence do not apply.

1 The hearing panel may ask questions of
2 the speaker, and the speaker may ask questions of
3 the panel. Speakers and other attendees may
4 present information for the rulemaking record.
5 MSHA will accept comments and other information
6 for the record from any interested party,
7 including those not presenting oral statements.
8 We ask everyone to sign the attendance sheet out
9 front.

10 Before we discuss specific issues and
11 hear from you, I want to reiterate why we are
12 proposing this rule. MSHA is proposing to amend
13 to the agency's existing standards on
14 examinations of working places to ensure that
15 mine operators identify and correct adverse
16 conditions that may affect miners' safety or
17 health. The proposed rule would strengthen and
18 improve MSHA's existing requirement for working
19 place examinations of metal/nonmetal mines.

20 The proposed rule would require that:

21 A competent person designated by the
22 mine operator examine each working place at least

1 once each shift before miners begin work in that
2 place for conditions that may adversely affect
3 safety or health.

4 The mine operator promptly notify
5 miners in any affected areas of any adverse
6 conditions found that may adversely affect their
7 safety or health and promptly initiate
8 appropriate action to correct the adverse
9 conditions.

10 Conditions noted by the competent
11 person conducting the examination that may
12 present an imminent danger be brought to the
13 immediate attention of the operator, who must
14 withdraw all persons from the area affected until
15 the danger is abated. I note that this provision
16 is unchanged from the existing rule.

17 A record of the examination must be
18 made -- would be made and the competent person
19 conducting the examination sign and date the
20 record before the end of each shift for which the
21 record was made.

22 The examination record would include

1 locations of all areas examined and a description
2 of each condition found that may adversely affect
3 the safety or health of miners.

4 The examination record also include a
5 description of corrective actions taken, the date
6 that the corrective action was taken, and the
7 name of the person who made the record of the
8 corrective action, and the date the record of the
9 corrective action was taken.

10 The mine operator would maintain the
11 examination records for at least one year --
12 again, that's also unchanged from the existing
13 standard -- make the records available for
14 inspection by MSHA and the miners'
15 representatives, and provide these
16 representatives a copy upon request.

17 The proposed rule would build on
18 existing concepts and definitions and
19 responsibilities, so that the new notification
20 and recordkeeping requirements can be easily
21 adopted by mine operators. The proposed rule
22 would not change the existing definitions of

1 "competent person" and "working place" used in
2 sections 56 and 57.18002 and defined in sections
3 56 and 57.2.

4 The existing definition of a competent
5 person is a person having abilities and
6 experience that fully qualify him to perform the
7 duty to which he is assigned.

8 The existing definition of a working
9 place is any place in or about a mine where work
10 is being performed.

11 Before we discuss specific issues and
12 hear from you, I want to reiterate why we are
13 proposing this rule. Recent fatalities and
14 previous fatalities and serious accidents at
15 metal/nonmetal mines indicate that miners would
16 benefit from more rigorous working place
17 examinations conducted by a competent person.

18 From January 2010 through mid-December
19 2015, 122 miners were killed in 110 accidents in
20 metal/nonmetal mines. MSHA investigated each of
21 these 110 fatal accidents and issued 252
22 citations and orders for violations of 95

1 different mandatory safety and health standards.

2 Under MSHA's existing examination of
3 working places standards for metal/nonmetal
4 mines, a working place examination can be
5 conducted at any time during the shift. The
6 existing standards do not require that the
7 examination be conducted before miners being
8 work.

9 The existing standards also do not
10 require that the examination record include the
11 locations of the areas examined, a description of
12 the adverse conditions found, and the corrective
13 actions taken. The existing standards do not
14 require that mine operators promptly notify
15 miners when adverse conditions are found, and the
16 existing standards do not require that mine
17 operators make the examination records available
18 to miners' representatives. The existing
19 standards do require that mine operators make the
20 examination record available to MSHA.

21 Under the Mine Act, mine operators,
22 with the assistance of the miners, have the

1 primary responsibility to prevent the existence
2 of unsafe and unhealthful conditions and
3 practices.

4 MSHA's best practices include
5 describing adverse conditions in the examination
6 record to facilitate correction of the condition
7 and to alert others at the mine of an adverse
8 condition that may affect them. Making and
9 maintaining a record of adverse conditions found
10 and the corrective actions taken to correct the
11 adverse condition would help mine operators and
12 miners and their representatives become more
13 aware of dangerous and unhealthful conditions and
14 more proactive in correcting those hazards before
15 an accident, injury, or fatality occurs.

16 The proposed requirements are a
17 commonsense approach and consistent with the
18 remedial intent of the Mine Act and MSHA's
19 existing mandatory safety and health standards.

20 Over the years, MSHA has issued
21 Program Policy Letters regarding working place
22 examinations and has taken the position that a

1 meaningful record of an examination should
2 contain the following:

- 3 (1) the date the examination was made;
4 (2) the examiner's name;
5 (3) the working places examined; and
6 (4) a description of the conditions
7 found that adversely affect safety or health.

8 We are requesting comments from the
9 mining community on all aspects of the proposed
10 rule. I would now like to go over some of the
11 specific requests for comments and information we
12 included in the preamble to the proposed rule.

13 In the preamble to the proposed rule,
14 we stated that we are interested in comments on
15 whether the agency should require that
16 examinations be conducted in an area within a
17 specified time period -- for example, two
18 hours -- before miners start work in that area.

19 We are also interested in comments on
20 who should conduct the working place
21 examinations. MSHA believes that, to be
22 effective, working place examinations must be

1 conducted by a competent person designated by a
2 mine operator.

3 MSHA has emphasized that a competent
4 person is a person who should be able to
5 recognize hazards and adverse conditions that are
6 expected or known to occur in a specific work
7 area that are predictable to someone familiar
8 with the mining industry.

9 MSHA has stated in various Program
10 Policy Letters that, although a best practice is
11 for a foreman or other supervisor to conduct the
12 examination, in most cases an experienced
13 nonsupervisory person may also be competent to
14 conduct a working place examination.

15 MSHA has also stated that a competent
16 person designated by the operator must have the
17 experience and training to be able to perform the
18 examination and identify safety and health
19 hazards.

20 We request comments on whether MSHA
21 should require that a competent person conducting
22 a working place examination have a minimum level

1 of experience or particular training or knowledge
2 to identify working place hazards.

3 We also request comments on all cost
4 and benefit estimates presented in this preamble
5 and on the data and assumptions the agency used
6 to develop these estimates.

7 Please provide any other data or
8 information and the rationale with sufficient
9 detail in your comments to enable MSHA to review
10 and consider.

11 Where possible, include specific
12 examples to support your rationale, as well as
13 other relevant information, including past
14 experience, studies, articles, and standard
15 professional practices. Include any related cost
16 and benefit data with your submission.

17 As you address the proposed
18 provisions, either in your testimony or in your
19 written comments, please be specific. Specific
20 information helps us produce a final rule that is
21 responsive to the mining community's needs and
22 concerns.

1 We will make a verbatim transcript
2 available of this public hearing approximately
3 two weeks after the completion of the hearings.
4 You may review the transcripts of all public
5 hearing and comments on our website at msha.gov
6 or on regulations.gov.

7 If you have a copy of your testimony,
8 please give your submissions to the court
9 reporter so that they can be appended to the
10 hearing transcripts. Following the public
11 hearing you may submit additional comments using
12 one of the methods identified in the address
13 section of the proposed rule.

14 MSHA will issue a notice in the next
15 few days -- a notice extending the comment period
16 until about September 23. But I also need to
17 note that, you know, until that time the
18 comments -- the record will show that the
19 comments are due on September 6, but we are
20 issuing a notice, hopefully in the next -- I said
21 coming days, but I'm going to correct myself --
22 in the next week or two.

1 Again, if you haven't signed the
2 attendance sheets, please do so.

3 I'd like to start introducing our
4 speakers, and our first speaker is a company
5 representative from Husch Blackwell, LLC.

6 MR. HENDRIX: Good morning.

7 MS. McCONNELL: Good morning, sir.
8 Could you state your name for the court reporter
9 and spell it out, please.

10 MR. HENDRIX: Certainly. My name is
11 Brian Hendrix, with the law firm of Husch
12 Blackwell, LLP. And the spelling of Husch is H-
13 U-S-C-H.

14 Good morning. Thank you for the
15 opportunity to speak today.

16 MS. McCONNELL: Good morning.

17 MR. HENDRIX: My name is Brian
18 Hendrix; I'm a partner with the law firm of Husch
19 Blackwell, LLP. We represent the Mining
20 Coalition, which is a diverse coalition of mine
21 operators located throughout the company, both
22 service and underground aggregates, metal, and

1 other types of mining that MSHA regulates.

2 I grew up in a mining family, and I've
3 been representing mine operators for about 16
4 years now. I'm an evangelist for good workplace
5 examinations. Simply put, I think that a good
6 workplace examination is the basis for a good
7 safety program.

8 If a client has a compliance issue,
9 not necessarily a safety and health issue, but a
10 compliance issue, one of the first things I ask
11 is what have you done to train your folks to
12 perform workplace examinations?

13 Similarly, if you have a safety and
14 health issue, an injury and illness issue --

15 MS. McCONNELL: Can I just stop you
16 just one second. Can you hear him?

17 THE REPORTER: Yes.

18 MS. McCONNELL: Okay. Can people in
19 the back of the room hear our speaker?

20 (Pause.)

21 MS. McCONNELL: There you go.

22 MR. HENDRIX: Thank you.

1 Similarly, if there is an injury and
2 illness issue, a safety culture issue, workplace
3 examinations can address that or at least start
4 to address that. Training is the key to that, as
5 is, I believe, the follow-up, management's
6 commitment to addressing concerns that are raised
7 during a workplace examination.

8 I think that a good workplace
9 examination starts at the beginning of shift and
10 ends at the end of the shift. It's not a one-
11 time event. A miner should examine his shift
12 throughout the shift.

13 Miners aren't stationary. Mining
14 conditions, as MSHA has recognized, often
15 recognizes, are very dynamic. And a good
16 workplace examination accounts for that fact.
17 Miners move around; mining conditions change.
18 That's the reason that the current rule has the
19 flexibility written into it that it does.

20 In terms of competent persons, the
21 Mining Coalition takes the position that every
22 experienced miner that has had 24, 40 hours of

1 training should be competent to perform a good
2 workplace examination. If they're not, they need
3 additional training, period, end of story.

4 Near as I can tell, though, the
5 proposed rule is not aimed at fixing those issues
6 or addressing those issues. It's aimed at
7 assigning blame and finding fault, not improving
8 safety and health.

9 The central premise of the rule seems
10 to be that if it's not in writing, it didn't
11 happen. That is a concept that, I put to you
12 all, is not a concept the mining industry works
13 on.

14 MSHA claims the purpose of the
15 proposed rule is to ensure that mine operators
16 identify and correct hazardous conditions that
17 may adversely affect miner safety and health.

18 That's the purpose of the current
19 rule. It requires mine operators to identify and
20 correct hazardous conditions. When an
21 administrative agency revises a rule,
22 particularly a rule that it has been enforcing

1 now for 30 years, a rule that the industry is
2 fairly well comfortable with, it typically
3 identifies and explains how and why it believes
4 the current rule is deficient and how the
5 proposed rule is intended to address those
6 deficiencies.

7 MSHA hasn't done that with this proposed rule.

8 MSHA proposes a revision of the
9 current rule, so that it apparently determined
10 that the current rule is deficient, but it says
11 almost nothing about how it reached that
12 conclusion, and since we don't know how MSHA
13 determined that the current rule is deficient,
14 what metrics it used, what it determined -- what
15 it used to determine that the current rule is
16 deficient, it's impossible to evaluate MSHA's
17 claim that the proposed rule addresses the
18 deficiencies of the current rule.

19 I think that MSHA uses the phrase
20 "MSHA believes" something like 18 times in nine
21 pages. MSHA's belief is all that MSHA really
22 offers for support of their proposed rule.

1 MSHA needs more than its belief. For
2 example, one of the examples in the proposed rule
3 is the PCS Phosphate fatality, one of the
4 fatalities, at least, and two other accident
5 investigation reports. You mentioned earlier 122
6 fatalities. Three of the accident investigation
7 reports from those 122 fatalities are offered to
8 support the rule.

9 In the PCS Phosphate fatality you
10 had -- and this is according to MSHA now -- an
11 excavator operator with 35 years' experience at
12 that particular mine, who was operating an
13 excavator when it tipped into a ditch that,
14 according to MSHA -- and this is MSHA's phrase,
15 now -- "was invisible to persons working in the
16 area." It was covered by water.

17 As a result of that accident, MSHA
18 cited the operator for an unwarrantable failure
19 to comply with 18002, with the workplace
20 examination standard. If you look at that
21 accident investigation report, I don't know -- I
22 can't tell, no one can, at least from the public

1 side of things -- whether a workplace examination
2 was performed, when it was performed, or who it
3 was performed by. We just don't know; you can't
4 tell that looking at the accident investigation
5 report.

6 MSHA doesn't explain and has not
7 explained to the public why it is that MSHA's
8 concluded that a mine operator -- an individual
9 in that excavator, that fatally injured miner,
10 with 35 years' mining experience at that mine,
11 why it is that that individual did or did not
12 perform a competent -- did or did not perform a
13 workplace examination.

14 I don't know if he did or didn't. I
15 don't know who was assigned to perform that. If
16 a competent person had performed that examination
17 prior to work, would that individual have been
18 able to spot a condition that MSHA had said was
19 invisible to persons working in that area; a
20 condition that existed for three days, again,
21 according to MSHA. That's the kind of example
22 MSHA has offered to support this rule.

1 The other two fatalities that MSHA
2 uses to support this rule are similarly without
3 information. We don't know if the person was not
4 competent according to MSHA. We don't know when
5 the examination was performed or not performed.
6 We don't know if it was performed but wasn't
7 adequate.

8 We don't know any of these things that
9 would be important to use to evaluate whether or
10 not the proposed rule would actually have
11 prevented the fatality or addresses the concerns
12 that MSHA has about it.

13 From a substantive standpoint, the
14 Mining Coalition has several concerns about the
15 proposed rule, starting with the competent person
16 issue. As I said earlier, a competent person
17 should be someone with experience in the industry
18 and who has received the training. If you're a
19 miner and you're an experienced miner, you should
20 be able to perform a workplace examination.

21 One of the main concerns, though, with
22 the proposed rule is the extent to which the

1 person who is now designated as a competent
2 person will be liable under 110(c) for individual
3 civil penalties. It is difficult in the mining
4 industry to get an individual to serve as a
5 supervisor, in part because of the concern that
6 individuals have about 110(c) liability. This
7 rule will increase that concern.

8 I submit to you all that I don't know
9 how increasing that concern of individuals,
10 increasing exposure for 110(c) penalties would
11 improve safety and health in a mine. It
12 certainly makes it easier for MSHA to cite
13 individual supervisors; it makes it easier for
14 MSHA to make its case. But does it improve
15 safety and health? That should be the purpose of
16 this rule.

17 In terms of the terms used by MSHA,
18 over the years there have been several issues --
19 questions that I get fairly commonly about the
20 existing rule. This rule doesn't answer those
21 questions.

22 One question that I have is what is an

1 adverse condition? Is it a violation of a
2 standard, or is it something else? Is it both?
3 MSHA could easily explain that. I don't know why
4 it's chosen not to.

5 If an adverse condition is not a
6 violation of a standard, what standard is MSHA
7 going to use to evaluate whether or not the
8 examination itself was adequate or was effective?
9 We've covered competent person in adverse
10 conditions.

11 One of the common questions that I get
12 is, what's a workplace? What area do I need to
13 examine? When the Program Policy Letters came
14 out recently, guidance was offered by the
15 districts to all sorts of different folks about
16 what the Program Policy Letter meant.

17 In one district the question arose,
18 what's a workplace? Do we have to actually
19 examine a workplace that we don't actually visit
20 more than once a month? The answer was, It says
21 what it says -- in one district the answer was,
22 It says what it says. If you could travel there,

1 you need to examine it even if it's infrequently
2 traveled, even if it's not a working area during
3 a given shift.

4 In another district the client got
5 different advice: If you visit it -- or if you
6 could visit it for maintenance repair purposes,
7 you should examine it about once a month and,
8 then, of course, examine it whenever you're
9 visiting the area.

10 There's a lot of inconsistent advice
11 out there about when you should examine an area
12 and what is a workplace. MSHA could answer those
13 questions. I certainly hope and the Mining
14 Coalition hopes that MSHA doesn't answer that
15 question with, If it's work area ever or could be
16 a work area, you have to examine it every shift.
17 That doesn't make any sense. That is the advice
18 we've been given, or that's the interpretation
19 that some districts have applied.

20 Areas that you would have no reason to
21 visit at all but, say, once every six months,
22 once a year, or not at all, have to be examined

1 because you could visit them. That doesn't make
2 sense from a safety and health standpoint. But
3 it's a common question. I don't know why MSHA
4 chose not to answer that question.

5 The "when" issue is also of concern,
6 and particularly to our clients in the surface
7 mining, in that, as I said earlier, your
8 examinations start at the beginning of the shift
9 and end at the end. The focus should be on the
10 hazards that a miner is exposed to, not when the
11 examination occurs. It's when the miner could be
12 exposed to those hazards. Right?

13 If you say that an examination should
14 take place two hours before the -- around two
15 hours of the commencement of work, you heard in
16 D.C. that there are concerns about daylight,
17 doing examinations prior to sunrise; doing
18 examinations in the dark, things of that sort.

19 The biggest issue, though, is not
20 necessarily doing them in the dark, doing them
21 when the shift starts, it's performing a
22 workplace examination when the miner's actually

1 going to be exposed to the hazard, and that
2 happens throughout the shift. A good workplace
3 examination happens throughout the shift.

4 Finally, communication: Communication
5 is a significant issue. MSHA says that the
6 hazards need to be communicated to other miners
7 in the area. The form of that communication,
8 though, is up in the air; we don't know what that
9 means.

10 Will a barricade count? Will hazard
11 tape count? Will writing it down someplace
12 count? Do you have to inform individuals in that
13 area or the entire mine of a condition that's
14 immediately addressed? The vast majority of
15 hazards that are encountered during workplace
16 examination the miners are able to address them
17 right then and there, to abate them, to fix them.

18 For example, if you have -- I don't
19 know -- a hose on a catwalk, you roll that hose
20 up, you hang it up. That was a housekeeping
21 issue. You addressed that housekeeping issue as
22 part of your workplace examination, probably as

1 you walked up on it.

2 Now, do you write that down? And then
3 after you've addressed it, do you then go to
4 other people in that area, in that plant, at that
5 mine, and say, Hey, look, this is what I did? I
6 just addressed this hazard.

7 Now, MSHA suggests in the rule at one
8 point that that's what you need to do. And part
9 of its analysis of the burden of this rule on
10 mine operators is that because hazards are
11 corrected immediately, the communication and the
12 recordkeeping burden is de minimis; that's the
13 word that MSHA uses, suggesting that even hazards
14 that you are able to correct immediately, like
15 the example that I just gave, that even those
16 hazards you would have to communicate to miners
17 in the area, which I think would be an odd
18 occurrence. I'm not sure how your fellow miner
19 would look at it if you came to them and said,
20 Hey, I just rolled up this hose on a catwalk.
21 Okay, great.

22 You know, I can see the conversation

1 going, You should have rolled up this hose before
2 I found it. But I'm not sure how it is that
3 communicating those types of events improves
4 safety and health; I don't see how it does.

5 Most importantly, though, I think that
6 MSHA just hasn't offered any data to explain its
7 decision about the current rule, to explain the
8 decisions it's made, to help us understand why is
9 it MSHA says that something is a best practice.

10 Thank you for the opportunity to
11 speak. Do you have any questions? I'm happy to
12 answer them.

13 MS. McCONNELL: Thank you very much.
14 I do have a few --

15 MR. HENDRIX: Okay.

16 MS. McCONNELL: -- if you don't mind.

17 So just a couple of clarifications,
18 just to make sure we are on the record. MSHA,
19 under this proposed rule, would not be changing
20 the definition of a competent person; experienced
21 miner who has the knowledge, experience would
22 still continue to be the person that could do the

1 examination.

2 MR. HENDRIX: Right.

3 MS. McCONNELL: Working place: again,
4 we're not changing the definition of working
5 places. So if work is not being conducted in an
6 area, under this proposed rule, therefore an
7 examination of that working place does not need
8 to be taken, because there is no work being done
9 in that area.

10 But one thing I guess I hear from you
11 is that -- and I guess you say that you seem to
12 think that there may be improvements that could
13 be made under the existing standard but not the
14 ones that we proposed.

15 So I'm just kind of curious about
16 if -- what would you see as an improvement that
17 could be made under the existing standard to
18 enhance the quality of the working place
19 examinations currently being conducted?

20 MR. HENDRIX: Well, I think first if
21 you look at one of the issues you just raised,
22 what's a work area? That's a question.

1 MS. McCONNELL: Well, yeah. So the
2 work area, I know -- I heard you about in terms
3 of how we interpret working place as a
4 consistency, and I hear you on that one. That we
5 haven't changed, and that definition's been in
6 place for as long as -- so what would you -- if
7 you would want to change a definition of working
8 place, what would that be?

9 MR. HENDRIX: First what I would say
10 is give consistent guidance to the industry as a
11 whole about when you need to examine an area that
12 isn't frequently traveled or an area that you
13 don't work in.

14 That would be one of the first things
15 that I would do. You know, it is all over the
16 board right now. One of the things that my
17 clients want is certainty. You know, if you have
18 an area of a plant, for example, that you
19 certainly -- because there's a catwalk there, you
20 could access that area on a given shift, but you
21 don't access that area but once a week, for
22 example, to grease a piece of equipment, or once

1 every six months to do repair and maintenance
2 work.

3 On a shift, on any given shift where
4 you're not going to do that work, do you have to
5 examine that area? Now, from kind of a
6 layperson's standpoint, you would think, no, why
7 would you? You're just exposing a miner to a
8 hazard in that area when he doesn't need to
9 travel that area otherwise.

10 I can tell you from many, many
11 experiences with it that that's not how several
12 inspectors in several different districts
13 interpret that. If they go to an area -- because
14 an inspector is required to thoroughly examine --
15 or thoroughly inspect every area of a mine. And
16 he finds a lot of hazards in that mine, or in
17 that one area that is not frequently traveled
18 during that shift. It's not uncommon for the
19 inspector to actually issue a workplace
20 examination citation: You didn't examine that
21 area. No, we didn't. We only went to that area
22 because you were inspecting it, and we only go to

1 that area for repair and maintenance purposes.

2 On the competent person issue, I think
3 one of the biggest questions -- and it's somewhat
4 related to competent person, but it's more
5 related to effectiveness and adequacy.

6 The Commission just decided what an
7 adequate exam is. The Commission didn't need to
8 actually explain that, or they didn't need to
9 interpret the rule -- or wouldn't have needed to
10 do that if MSHA had done it itself -- all
11 right? -- if MSHA said, This is what an adequate
12 exam looks like.

13 The Commission has just done that;
14 that's on appeal. That's something -- that's the
15 kind of thing that I would expect the agency to
16 look at and say, These are questions that we've
17 had -- right? -- questions that have come before
18 the Commission. Whether you agree with them or
19 not, here's how we're going to answer them as
20 part of this rulemaking.

21 We all know that there are questions
22 about the current rule. Those are questions we

1 get all the time. If you talk to an inspector,
2 they can give you the top three. Workplace:
3 what's adequate, what do I have to write down.
4 The writing down of hazards. Again, there's this
5 view, I think, that if it's not in writing, it
6 didn't happen.

7 A question was asked in D.C., well, if
8 it's not written down, how do you know it
9 occurred? How do you know they're doing a good
10 workplace examination? And that question just --
11 it struck me as really odd, because if you ask an
12 inspector, how are you going to determine whether
13 a workplace examination occurred and whether it
14 was a good workplace examination, a good
15 inspector will tell you, I'm going to go talk to
16 the guy who performs it.

17 It won't take long to figure that out. Or you
18 can talk to his supervisor: What training has
19 that individual been provided?

20 Several commenters have said that one
21 of the most important things and one of the most
22 positive things about the Program Policy Letter

1 was task training. Now, MSHA's been a bit all
2 over the board on what's required, what you're
3 going to get cited for. But if MSHA had said,
4 Look, task train all your miners on workplace
5 examinations and enforced that, you would see
6 better workplace examinations, and I think that's
7 what you're seeing now.

8 I don't think there's very many
9 clients out there who would have a problem
10 providing task training on workplace examinations
11 and providing that record to MSHA. I know that
12 many of our clients have done exactly that.

13 So training I think would improve this
14 rule quite a lot.

15 MS. McCONNELL: Okay. I had something
16 else, so as I think of my next question, which I
17 lost my notes here, I'm going to turn to Al, if
18 you have anything?

19 MR. DUCHARME: No.

20 MS. McCONNELL: Sam, do you have
21 anything?

22 MR. PIERCE: No.

1 MS. McCONNELL: Okay. So I guess my
2 last point is that -- do you have a sense of --
3 and you probably already have answered this. You
4 know a real sense of like how your members -- or
5 how the mines that you represent actually conduct
6 their workplace examinations under the existing
7 rule in terms of do they -- right now under the
8 existing standard, you can conduct the
9 examination at any time during the shift.

10 Do you know that -- do they currently
11 have an examination done before workers begin --
12 miners begin work in an area? Do they currently
13 have some type of meeting prior to work begins
14 to -- sometimes we've heard miners testify, we've
15 heard operators testify that they have what is
16 called a line-out, where before assignments are
17 given out, they are given notification of -- and
18 I'm talking about under the existing standard,
19 not this proposed rule -- that they are typically
20 notified of any issues, either on a greaseboard
21 or verbally.

22 For those -- so do you have a sense of

1 if -- and I know that there have been miners'
2 representatives testify that is normal practice
3 at their mines. Do you have a sense for your
4 clients? Do they typically have similar kind of
5 workplace practices in place?

6 MR. HENDRIX: I would say that, first
7 and foremost, it's not a one-size-fits-all. Each
8 of our clients I think would say that they do
9 things slightly different than the other.

10 I would say that all of those things
11 that you've just described are common, for
12 various shifts, various operations at various
13 different times; who is doing the exam, when it's
14 being done; the types of records that are being
15 kept; line-out meetings, safety talks, that kind
16 of thing.

17 I think those are very common. In
18 terms of when the examination is being done, as I
19 said earlier, I think the proper way to approach
20 that is you start at the beginning and you end at
21 the end.

22 You don't teach a miner that it's a

1 one-time event. You don't teach a miner that you
2 think of safety in your workplace examination as
3 a box to check. Okay, we examined the workplace;
4 it's safe. Now let's do our work.

5 No, you need you examine the workplace as you
6 work.

7 I would say that -- and my
8 understanding is that the common practice is for
9 the documentation to be worked on throughout the
10 shift, to be completed at the end. I think
11 that's about how it normally goes.

12 But, again, there is no one-size-fits-
13 all. The flexibility that was written into the
14 current rule that is so important for the rule to
15 work is there for a reason, and it's there
16 because mines differ quite a lot; different types
17 of mines. You've got surface, underground, and
18 all sorts of different products being mined and
19 mining methods being used.

20 And I think that that flexibility is
21 absolutely key. So if you're looking for a this-
22 how-everyone-does-it, I don't think that's

1 something that you're going to find.

2 MS. McCONNELL: Okay. Well, I don't
3 have any more questions, and I thank you, Mr.
4 Hendrix, for your testimony today, and I
5 appreciate you coming to our hearing.

6 MR. HENDRIX: Thank you very much.

7 MS. McCONNELL: Our next speaker is
8 Mr. Ryan Seelke.

9 MR. SEELKE: Good morning, Panel, and
10 thank you. My name is Ryan Seelke, spelled, S-E-
11 E-L-K-E. And I am privileged to be an attorney
12 who represents mine operators of all various
13 shapes and sizes. I represent large underground
14 metal mining operations, as well as the small
15 mom-and-pop quarries that just have a couple
16 employees.

17 And I'm here basically on behalf of
18 all those folks, to testify regarding certain
19 concerns that, you know, different levels of the
20 industry have concerning this proposed rule.

21 I'm also coming from a different
22 perspective than several perspective than several

1 others. I actually am a -- grew up a --
2 multigeneration mining family, but also have a
3 father who works for the Mine Safety & Health
4 Administration, and he actually is a field office
5 supervisor in the Rolla, Missouri, north office.

6 So I sort of have dual perspective on,
7 you know, how MSHA operates, and I see it as an
8 asset, and I also see -- you know, growing up
9 within the industry and as well as the regulatory
10 agency, I got to know inspectors on a personal
11 basis and got a good relationship with them.

12 And as, you know, my career and
13 representing my operators has progressed, a lot
14 of conversations would come up with inspectors on
15 workplace exams and the current standard.

16 And the main thing that I have seen so
17 far is that some inspectors themselves need more
18 guidance on how to enforce the standard as
19 written, and I think that's the ultimate thing
20 that, you know, I would like to get across here
21 today, is I think before we just completely put
22 away a rule that's been in existence and what I

1 think has been doing well for over 30 years and
2 create a new rule -- before we make all these
3 other additional regulations and law and
4 standards, let's fix and train on what we already
5 have.

6 And, again, this is no disrespect to
7 the government at all, but sometimes the
8 government thinks the best thing to do is create
9 more regulations. I disagree with that, and I
10 think this is an area where more training and
11 more guidance on the current rule, which offers
12 great flexibility for the metal/nonmetal
13 industry, which is very vast, compared to coal,
14 and let's work with what we have and get it
15 perfect, as good as we can get it, before we
16 consider throwing it away and putting something
17 new.

18 Okay. So that's just my first
19 preliminary comment. Another comment I'd like
20 make is, you know, there is a recent Commission
21 case -- you know, the Sunbelt case -- that came
22 down, where the Commission says under the current

1 rule we have do an adequate examination, so
2 adequacy is the requirement. And the gentleman
3 who spoke before me briefly touched upon that.

4 Of course, that case is on appeal, but
5 what that case sort of tells me is this adequacy
6 requirement goes to training, again. I would
7 like to see MSHA put together some type of
8 presentation -- sort of like they did a few years
9 ago with the guarding -- a really in-depth,
10 PowerPoint presentation or something to industry
11 to show industry, hey, this is what is needed for
12 an adequate workplace examination.

13 These are things you need to look for,
14 this is what you need to do, and this is how you
15 need to notify; and really just rehash the
16 training and keep training on the current
17 standard we have, and I think we would see a
18 dramatic increase in safety, just based off
19 retraining and training on the standard that we
20 currently have.

21 So that's something that my clients
22 would like to see, the agency put together some

1 sort of thing, like they did a few years ago with
2 the guarding presentation, because that
3 presentation itself still gets comments on it
4 from my clients of how good it was and how it
5 really opened their eyes on what is needed for a
6 proper guard. I see no reason why that same
7 thing couldn't happen for workplace examination.

8 Another comment that I'd like to make
9 is I don't see that MSHA is producing data that
10 can really be evaluated to support the proposed
11 changes. The cases cited in the proposed rule,
12 I -- you know, there's just so much we don't
13 know, and again, I'm not going to rehash what the
14 gentleman before me just testified about, but
15 there's just so much we don't know of how a
16 workplace examination in those certain cases
17 would have either prevented those injuries or
18 fatalities or would have made things better.

19 It's just -- it's almost to the extent
20 the agency says, we had 120 fatalities this year;
21 we need a better workplace examination rule. I
22 don't see the causal relationship between -- we

1 just need more data before we can really be able
2 to comment on these proposed changes.

3 And then finally, in my preliminary
4 statements, you know, the current rule really
5 offers great flexibility. That's what it was
6 created to do 30 years ago.

7 The metal/nonmetal industry is vast.
8 It's dynamic. Of course, I represent coal as
9 well, and it's a vast and dynamic industry as
10 well, but there's so many different types of
11 metal/nonmetal operations than coal. That's why
12 we need a standard that's not a one-size-fits-
13 all, that's something that's flexible, that the
14 mom-and-pop shop that I represent with two
15 employees can use, but then the large underground
16 metal operator may have to have something totally
17 different, because they're a totally different
18 operation.

19 We need that flexibility, and I'm
20 afraid that some of these proposals is going to
21 take that flexibility away and could actually
22 detrimentally affect safety.

1 That's some of the big preliminary
2 concerns several of my clients have.

3 Now as to specific comments on the
4 rule -- the proposed rule, I got a few things I'd
5 like to talk about. The first is the comment
6 that the agency's seeking on whether there should
7 be a requirement of examinations within a
8 specified time period before shift begins or
9 before work begins. And, you know, the proposed
10 rule mentions two hours.

11 Universally, the position of my
12 clients is, no, there should not be a arbitrary
13 two-hour or hour time limit -- or time before
14 work begins to do workplace examination, rather
15 it should start immediately before the shift or
16 work on the shift begins and then continue
17 throughout the shift. That is what will offer
18 the best safety.

19 There are several reasons why the two-
20 hour rule or if you want to make it an hour or
21 three hours, depending -- you know, whatever you
22 would think about doing, could be detrimental.

1 The first, as it was testified in
2 Washington, D.C. and mentioned today, a lot of
3 these operations, especially the surface
4 operations, they start at daybreak. If you do it
5 two hours before then, it's going to be dark.
6 You cannot do an adequate, competent examination
7 of a large surface operation in the dark. I
8 mean, you have high walls that are over 100 feet.
9 You won't be able to see up there, generally, at
10 dark. So that's one big concern that that type
11 of arbitrary rule, one-size-fits-all type of rule
12 could detrimentally affect this vast industry.

13 Another one -- and this is a specific
14 example from one of my clients -- is an
15 underground metal operation. They have three
16 shifts a day, on a 24-hour period they have three
17 shifts. They blast after every shift. Okay?

18 After blasting, they allow the gases
19 to dissipate and the rock to drip for two hours
20 before they do a post-blast examination. They
21 blast, and then they wait two hours before they
22 send anybody in there to do a post-blast

1 examination.

2 Under this new proposal, they would
3 obviously still have to wait the two hours to do
4 their post-blast examination, but then they'd
5 have to do -- they'd have to then wait another
6 two hours before the shift could actually begin
7 if we adopt one of these arbitrary rules.

8 So over a 24-hour period, this
9 particular client is going to lose four to six
10 hours of production time a day, which can equate
11 to over a thousand, 1500 hours a year in lost
12 production just because of this arbitrary two-
13 hour suggestion.

14 Okay. That's something that we don't
15 think is necessary and is not something that we
16 think will further safety, again, by having this
17 arbitrary rule to do it two hours before.

18 And attaching to that is if you do an
19 examination -- I've seen this in practice. I
20 mean, our environment is dynamic, whether you're
21 a surface operation or whether you are an
22 underground operation. Things change. Rock

1 moves.

2 In my mind -- and I've seen it in
3 industry -- you want to do the examination,
4 again, immediately before you begin a shift and
5 then continue it throughout the shift. If you do
6 it two hours before, the people coming on the
7 shift -- things can change, won't they, between
8 that two hours in time that you start the shift.
9 Things can change. Rock can move, stuff can
10 fall, conditions can develop that weren't
11 initially there when that examination was
12 initially done.

13 That creates a couple of problems.
14 The first problem is, well, the folks going in
15 after the examination, they may not -- I don't
16 want to say be incentivized -- they might -- may
17 not do the typical thought process of doing a
18 workplace examination throughout the shift,
19 because it's already been done, they think in
20 their minds.

21 They won't as on guard for hazardous
22 conditions, even though the threat still may very

1 well may exist, so that's a concern that my
2 clients are stating about what some of their
3 employees could do.

4 Another concern is, well, what if we
5 have an inspection on any given day and the
6 inspector sees a hazardous condition? Is he
7 going to say that that -- you know, is he going
8 to cite me a condition for missing it during when
9 I did my examination two hours before, when
10 really that condition developed after I did my
11 examination?

12 So that's another concern that the
13 clients have, and that's just another supporting
14 fact, I believe, that the examination should be
15 done immediately before and then continue
16 throughout the shift.

17 And the final comment I have on this
18 particular request for comment is there are a lot
19 of areas within a mine, my particular clients,
20 that may not be worked in on any given day, those
21 "infrequent" areas.

22 Okay. So let's say today -- this may

1 be a day where we were not expecting to work in
2 this particular area. Well, something happens
3 midshift where I have to go in that area. Well,
4 since I didn't expect I was going to go in that
5 area before shift started, we didn't do the
6 workplace examination, because it was not a
7 "working place" under your definition.

8 Well, what do those guys got to do
9 then? Will they be cited for going into an area
10 that they have to go to because they didn't do a
11 prior workplace examination? You know --

12 MS. McCONNELL: Well, would they
13 examine the workplace now before going in? I
14 mean, what would they do now?

15 MR. SEELKE: Yes. That's exactly --
16 that's why exactly things should happen here.

17 MS. McCONNELL: So if they have to go
18 into an area that they didn't think -- midshift
19 they had to go to an area of the mine that may
20 have been idled or not used, but they had to go
21 in there and work --

22 MR. SEELKE: Yes.

1 MS. McCONNELL: -- midshift, after the
2 beginning of the shift --

3 MR. SEELKE: Yes.

4 MS. McCONNELL: -- you're saying that
5 under the existing practices, under the existing
6 standard, before they sent men in that area, they
7 would do an examination.

8 MR. SEELKE: Exactly right.

9 MS. McCONNELL: Okay.

10 MR. SEELKE: And I will be confident
11 to tell you -- again, I represent people of all
12 various sizes. We do things differently,
13 depending on the operation. But I can
14 unequivocally tell, before any of my clients send
15 folks into an area to work, they are always
16 instructed to do a workplace examination upon
17 entering the area.

18 MS. McCONNELL: Okay. And so what do
19 you see in this proposed rule that would differ
20 from what is doing -- existing practices?

21 MR. SEELKE: Well, under the
22 proposal -- I'm talking limited to the two-hour

1 requirement.

2 MS. McCONNELL: Okay.

3 MR. SEELKE: Okay.

4 MS. McCONNELL: So that was just a
5 suggestion, not -- we were looking at more as the
6 beginning of a shift, and that was just a
7 suggestion in terms of an alternative to the
8 proposed requirement, a time frame, so I hear you
9 that --

10 MR. SEELKE: Yes.

11 MS. McCONNELL: -- the time frame is
12 not something that you would support.

13 MR. SEELKE: Correct. And that's the
14 base of this.

15 MS. McCONNELL: Okay.

16 MR. SEELKE: I fully support doing the
17 examination immediately before the shift starts,
18 before the work begins, and then continuing it
19 on.

20 MS. McCONNELL: Okay.

21 MR. SEELKE: And if that's what the
22 rule will end up being, my clients will agree

1 with that type of rule.

2 MS. McCONNELL: Your clients would
3 agree with -- if immediately beginning before the
4 shift.

5 MR. SEELKE: Well, before work begins.

6 MS. McCONNELL: Before work begins.

7 MR. SEELKE: Yes.

8 MS. McCONNELL: Okay.

9 MR. SEELKE: If we're required -- I
10 mean, that's what we -- that's what I train them
11 to do anyway, because --

12 MS. McCONNELL: Okay.

13 MR. SEELKE: -- a big part of my
14 practice is doing compliance-type training, and I
15 always train them it's always from a safety
16 perspective and a regulatory safety perspective;
17 you need to do workplace exams before work
18 begins.

19 MS. McCONNELL: Okay.

20 MR. SEELKE: Okay. So that -- you
21 know, that's my comments to that particular
22 section or request.

1 My next comments deal with, you know,
2 whether a competent person should have the
3 ability, experience, knowledge, or training that
4 would enable the person to recognize conditions
5 that could adversely affect safety or health.

6 And, again, the main issue here is
7 MSHA's suggestion of whether this individual as a
8 competent person should have a requisite numbers
9 of experience, education, training, et cetera.

10 My folks are telling me -- and I fully
11 support them -- that it is the operator who needs
12 to be the person -- the entity making the
13 decision who is competent or not -- they're the
14 boots on the ground, they know who is competent
15 or not -- irregardless of someone's training.

16 You know, if somebody has one year of
17 training, they may be more competent than
18 somebody with five years of training, just
19 because of who they are. And so we should not
20 have a rule that says, you know, you're only
21 competent if you have X amount of years training
22 or X amount of education.

1 It should be an operator's decision on
2 who is competent or not. I'm happy that the
3 agency is not planning on changing the definition
4 of competent person, and I agree with that; I
5 think we should continue with that definition. I
6 think that definition works. Leave it in the
7 operator's realm of discretion or not; that's my
8 suggestion on that particular topic.

9 Next is whether the rule should
10 require the prompt notification of miners of any
11 adverse conditions that affect safety and health.
12 And, again, the gentleman before me expressed
13 some concerns about this, and I'd like to
14 reiterate some of those, because it's what my
15 clients are telling me that they have concerns
16 with.

17 To begin, we just need more
18 clarification on what this particular suggested
19 provision is going to entail. You know, what
20 will -- first off, what will MSHA consider or
21 accept as prompt notification? Does it have to
22 be immediate, or can we wait a little while? You

1 know, does it depend on the circumstances? We
2 just need more clarification on that before we
3 can really give good comment, in my opinion.

4 The same is true for what is
5 notification? Is it verbal, is it written? Is
6 there going to be some type of a standard
7 practice that the agency wants us to do? That
8 definitely needs to be fleshed out, I believe.

9 MS. McCONNELL: Agreed.

10 MR. SEELKE: So, for example, would
11 posting conditions on a bulletin board, like we
12 do citations -- you know, when we get citations,
13 we have to post them on a bulletin board. Would
14 that be sufficient?

15 Would safety meetings before the next
16 shift begins be sufficient if there's conditions
17 in these certain areas? And would it be
18 sufficient for records -- if we store records
19 that are available for miners to look at
20 voluntarily, would that be sufficient
21 notification?

22 These are just things I think needs to

1 be fleshed out more before a final rule is, you
2 know, approved.

3 And then another -- you know, I like
4 to try to give particular circumstances because I
5 think that really helps these type of hearings.

6 MS. McCONNELL: Yes.

7 MR. SEELKE: This rule -- or the
8 suggestion in this prompt notification may make
9 sense for some miners; it may make less sense for
10 others. And this is what I mean by that: Again,
11 a lot of my operators have employees who do
12 scaling work.

13 Okay. They go in -- their sole job is
14 to go in and take down hazardous ground
15 conditions. Underground you're taking off loose
16 off pillars, et cetera. Obviously there's
17 hazardous conditions there.

18 I don't think it's practical and my
19 clients don't think it's practical for them to go
20 into an area with loose ground conditions and
21 then immediately stop and go tell other people,
22 hey, don't go in this area, whenever they were

1 tasked to go into that area anyway to take these
2 conditions down.

3 You know, I think what's more
4 practical is let the scalers go in, take the
5 loose conditions down, abate the hazardous
6 condition, and if anything's remaining after the
7 shift, then notify those in the area that could
8 be exposed to it.

9 That's what my guys are telling me,
10 and I agree with that. Why delay the abatement
11 of hazardous conditions by basically notifying
12 redundancy, in my opinion. So that's something I
13 hope the agency considers, because, again -- and
14 that's why it should not be a one-size-fits-all
15 type of a rule, because, again, we're a dynamic
16 industry with different jobs entailing different
17 things.

18 Next big issue that I see with this
19 proposed rule is whether the rule should require
20 a description of adverse conditions found. Now,
21 I know from being in the hearings in D.C. and
22 just knowing what the industry's looking -- or

1 what the agency's looking for, they want
2 specifics. What are your guys doing on a
3 workplace examination?

4 And I'll tell you, at least for some.
5 I won't name names, but some of my clients --
6 most of them, they are writing down the
7 conditions found. Okay? They do workplace
8 examinations. They write down the three
9 requirements under the current rule for the
10 documentation portion of it; you know, name, date
11 they were examined, and they also write down the
12 hazardous conditions found. Okay?

13 And they give those hazardous
14 conditions found to whoever that needs to get
15 them to get the condition abated, you know,
16 pretty much as fast as they can. It's working
17 great, and that's under the current rule. Okay?

18 MS. McCONNELL: That's a policy,
19 current policy. The rule doesn't require what --
20 the rule right now -- under the existing
21 standards we don't have any specific
22 recordkeeping requirements. You're speaking to

1 the recent policy guidelines.

2 MR. SEELKE: Yes. Right. I --

3 MS. McCONNELL: Just for clarification
4 on the record.

5 MR. SEELKE: Sure. And to clarify my
6 statement, what I was saying, that is what my
7 clients are doing, even under the proposed rule.

8 MS. McCONNELL: Right. And that's
9 what I'm interested in hearing about. You
10 represent the smaller operator, and it's
11 interesting to me to hear that they are now
12 recording the hazardous conditions found.

13 Do they actually -- and then what if
14 there -- what about any corrective action? Do
15 they record that, or how do they -- how does the
16 operator -- is aware of whether or not the
17 adverse condition has been corrected or not if
18 they don't actually write it down?

19 MR. SEELKE: Well, the hazardous
20 conditions -- I'll answer that -- let me clarify.

21 MS. McCONNELL: Sure. Go ahead.

22 MR. SEELKE: When I stated that that's

1 what they do under the proposed -- or under the
2 current rule, I wasn't saying that's what the
3 rule required; I'm saying that's what my clients
4 are doing even though --

5 MS. McCONNELL: Right.

6 MR. SEELKE: -- the rule is just as it
7 is. Okay. And the best practices mentioned in
8 the policy, I understand they suggest --

9 MS. McCONNELL: Right.

10 MR. SEELKE: -- the condition found.
11 I just want to clarify that.

12 Now, to answer your question, what
13 they do, they write the conditions found. They
14 then turn that paper in to whoever it is needed,
15 whether it be a supervisor or it could be a
16 mechanic if it's one of those type of situations,
17 to get the conditions abated.

18 Now, will every one of those records
19 have a follow-up like a corrective action type of
20 a paper? No, they won't, because sometimes it's
21 not necessary.

22 MS. McCONNELL: Okay.

1 MR. SEELKE: Now, sometimes there will
2 be a purchase order or a work order made in
3 response. Yes, that happens all the time. So
4 there is sometimes, yes; it just depends on the
5 situation.

6 MS. McCONNELL: Do you have some idea
7 that you can give me in terms of how the operator
8 would ensure that those corrective actions -- I
9 mean, the corrective actions are actually taken
10 for those hazards?

11 MR. SEELKE: Well, if the -- well,
12 currently -- a specific example, again, without
13 naming names, because they're not sitting here
14 next to me --

15 MS. McCONNELL: That's okay.

16 MR. SEELKE: But a condition that is
17 found in workplace examination, it's turned in to
18 the supervisor. That supervisor will follow up
19 by the end of the shift -- or by the start of his
20 next shift, definitely, if that condition has
21 been resolved or not. That's how they plan out
22 their --

1 MS. McCONNELL: And what if it hasn't
2 been? What if the hazardous condition goes into
3 the next shift or the next day?

4 MR. SEELKE: Well, they are trained
5 then, if -- depending on the condition, but if
6 there's a -- for example, let's say if it's loose
7 ground conditions.

8 If it's loose ground conditions and
9 it's not resolved, then they're going to cone it
10 off and barricade the area until it's fixed, and
11 they will know that they need to do that based
12 off the workplace examinations that were done.

13 MS. McCONNELL: Okay.

14 MR. SEELKE: In my experience, the
15 rule is working as is. And my fear is and my
16 clients' fear is if we have to make this thing
17 that we're doing voluntarily now, this
18 workplace -- you know, the conditions found as a
19 requirement and we have to keep it for 12 months,
20 which I don't believe serves any safety purpose,
21 guys aren't going to want to start writing stuff
22 down as much as they are now, because they know,

1 as has been proven by cases, that MSHA can go
2 back and cite, for example, some hazardous
3 condition -- say you had loose ground -- you can
4 be cited for 57.3200 violation for something that
5 happened three weeks ago.

6 They're not going to want to write
7 those things -- they're not going to have the
8 incentive to write things down because they're
9 scared of receiving citations.

10 Under what our guys are doing now,
11 they don't have any disincentive to write things
12 down, because they know they're not going to get
13 in trouble for it and they're not going to be
14 held personally liable for it, and they're not
15 going to get citations for it.

16 Our fear is that the current rule will
17 reverse that trend and will not promote safety.

18 MS. McCONNELL: So right now, under
19 the existing standard, they are recording -- I
20 just want to make sure I understand this. They
21 are recording hazardous conditions per practice,
22 but they do not have concerns that you are -- in

1 terms of the outcome of the recording those
2 hazardous conditions at this time, that by
3 requiring the recording of the hazardous
4 conditions, they will be concerned that MSHA --

5 MR. SEELKE: Yes.

6 MS. McCONNELL: Okay.

7 MR. SEELKE: That's absolutely right.
8 And I think that's a fair concern, especially --
9 and here's another example of what's happening in
10 practice.

11 MS. McCONNELL: So they'd stop their
12 practice of recording, is basically what you're
13 suggesting.

14 MR. SEELKE: The fear is -- again, I
15 don't know what everybody will do, but the fear
16 is they will not be as thorough in recording,
17 because they'll have fear of having potential
18 liability. Okay?

19 And here's a case in point, again
20 without naming names, but it's a similar type
21 situation on Section 110 liability, because
22 that's what the big fear is here. I have an

1 operator who's hourly employee has just had a
2 Section 110 started against him just because he's
3 carrying a gas monitor.

4 If MSHA's going to -- because he
5 didn't pull out in time when the gas readings
6 were high, because they were trying to equate
7 that as a workplace examination. If MSHA is
8 trying to do that, my clients are really fearful
9 that if they're going after that guy for a
10 Section 110, then they're clearly going to go
11 after some of these individuals who, you know --
12 so that's the fear.

13 MS. McCONNELL: Okay.

14 MR. SEELKE: Okay. After speaking
15 with several of my clients, we think that there
16 is a good medium ground here, and that medium
17 ground is found in 56 and 57.14100, the preshift
18 on mobile equipment.

19 That -- any proposed recordkeeping
20 requirement for adverse conditions found I think
21 should mimic that rule. I think it just makes
22 sense. It's worked for that rule, there's no

1 reason it should not work for workplace
2 examinations.

3 For example, only conditions that are
4 not corrected immediately should be recorded,
5 just like under the preshift rule for mobile
6 equipment. This would resolve the scaler
7 scenario that I mentioned before, because if they
8 correct their conditions, they don't -- you know,
9 you don't have to record them.

10 Also, any records of hazardous
11 conditions found that could not be corrected
12 immediately should only be retained until the
13 conditions are corrected. Again, I don't think
14 any safety purpose is furthered by requiring
15 these conditions found to be kept for a year.

16 And it's not required to be kept for
17 a year under 57.14100, and I don't --

18 MS. McCONNELL: The year is required
19 under 56/57.18002.

20 MR. SEELKE: Correct. Under the
21 current -- but I'm talking about the conditions
22 found portions that you are now wanting as a

1 requirement. I don't think safety will be
2 promoted by keeping those conditions that have
3 been abated -- kept for a year; there's just no
4 safety purpose furthered for that.

5 And, again, the fear is the only
6 purpose furthered is MSHA can go back 12 months
7 and issue citations.

8 MS. McCONNELL: Okay.

9 MR. SEELKE: And then finally, whether
10 the proposed rule should require a description of
11 the corrective action and date the corrective
12 action was taken. My opinion is this is an
13 unnecessary recordkeeping addition to the
14 proposed rule. Okay?

15 The second sentence of the current
16 standard already mandates the operator shall
17 promptly initiate appropriate actions to correct
18 such hazardous conditions. It's already in the
19 rule as is.

20 MSHA just needs to enforce that part
21 of the rule that they currently have, and I don't
22 think any corrective action additional burden

1 paperwork should be required.

2 And, again, some of my clients are the
3 small guys; they write their stuff on a calendar,
4 the workplace exams on a calendar, which is
5 allowed under the current rule, because there's
6 no set form you have to use.

7 This new proposed rule creates all
8 types of additional burden -- paperwork burdens
9 on them that the original rule tried to get away
10 from. You know, you have the workplace exam,
11 which we already do. You're going to have to
12 keep conditions found.

13 Now you're going to have to keep these
14 corrective actions. You got all these moving
15 pieces of paper, and you got to keep it for a
16 year. That's really burdensome on some of my
17 clients, especially -- even the big ones, who do,
18 you know, hundreds of work areas a shift, the
19 amounts of space that's going to require, and
20 burden and recordkeeping that's going to require
21 is quite burdensome. And I don't it's necessary
22 to promote safety.

1 Again, and it circles back to my first
2 point. I think the best thing to do is more
3 adequate training on the part of MSHA, as well as
4 industry.

5 And the last thing I'd like to mention
6 is there is concern about the definition of
7 working place and whether travelways are working
8 places or not. Okay?

9 The proposed rule mentions basically
10 that working place are not roads not directly
11 involved in the mining process. Well, what about
12 roads that are in the mining process? Currently
13 they need to be inspected once per week under the
14 standards, you know, your typical travelways.

15 Is the agency now saying that
16 travelways are working places that must be
17 examined every shift? That's a big question that
18 a lot of my clients have, especially my larger
19 underground operations, who have travelways all
20 over, for miles underground, is the burden that
21 would create and just not knowing what the
22 requirements are.

1 And I guess that would be my question
2 to you. Is that what the agency is trying to do,
3 is make travelways a working place?

4 MS. McCONNELL: No. We're not
5 changing the definition of working places.

6 MR. SEELKE: Okay.

7 MS. McCONNELL: So, Sam, I turn to you
8 in terms of your interpretation.

9 MR. PIERCE: No. The roadways and the
10 travelways would not be considered a workplace
11 unless you're actually there doing work.

12 MS. McCONNELL: Working.

13 MR. SEELKE: Sure.

14 MR. PIERCE: However, you know, we
15 would expect those areas to be maintained in a
16 safe condition. That being said, if you're, say,
17 on a roadway and you find a berm has been washed
18 out over account of heavy rain the night before,
19 we would look at it that, you know, somebody
20 would see that and correct that before people,
21 you know, continue to work during that shift with
22 that hazard there.

1 But as far as workplace, I've been
2 with Mr. Merrifield, the administrator for metal,
3 and Joe Main, at some of our stakeholders'
4 meetings throughout the southeast -- I know in
5 four of our eight, of our eight states -- where
6 they specifically have addressed those questions
7 that said some of the comments that you've had
8 and Mr. Hendrix had about if we don't go there,
9 why do we have to examine it?

10 And exactly what they have said: If
11 you're not going there to work, then you do not
12 have to do a workplace exam there until you
13 actually do go there to do work.

14 Just because you're traveling through
15 the area doesn't require a workplace exam if
16 you're not going to be actually doing work there.
17 So that's come from Mr. Merrifield and Mr. Main.

18 MR. SEELKE: Okay. That's great. I
19 appreciate that. It's just that was a concern of
20 the proposed rule, that they thought that was
21 changing.

22 MS. McCONNELL: Okay. And that was a

1 good clarification, Sam. Thank you.

2 I don't know if you're -- are you --

3 MR. SEELKE: Yeah, that concludes
4 my -- we're going to submit formal written
5 statements by the deadline, but that's for my
6 testimony and statements.

7 MS. McCONNELL: Very good.

8 Al, do you have anything?

9 MR. DUCHARME: No.

10 MS. McCONNELL: Well, thank you, sir,
11 for your testimony.

12 MR. SEELKE: Thank you.

13 MS. McCONNELL: Our next speaker is
14 Mr. Jason England, safety director, Doe Run.

15 MR. SEELKE: Your Honor, Mr. England
16 will not be testifying.

17 MS. McCONNELL: Your Honor?

18 MR. SEELKE: I'm used to being in
19 court.

20 MS. McCONNELL: That's okay. I'll
21 take it.

22 Our next speaker, then, is --

1 Mr. DePlato, you're not speaking
2 today, are you? No? It's going to be Jeremy
3 Pierce? I'm sorry. I have you on the list; I'm
4 going to cross you off.

5 Mr. Pierce, could you just for the
6 record, for the court reporter, state your name.

7 MR. JEREMY PIERCE: My name is Jeremy
8 Pierce, J-E-R-E-M-Y P-I-E-R-C-E. I'm the manager
9 of mine operations for PCS Phosphate Company in
10 Aurora, North Carolina.

11 I'm providing comments today on behalf
12 of PCS Phosphate and our affiliate White Springs
13 Agricultural Chemicals on MSHA's proposed
14 revisions to the workplace examination rules.

15 And I do appreciate having this
16 opportunity to give these comments in person and
17 will be providing written comments as well before
18 the deadline.

19 Like many other commenters today which
20 we agree with, PCS has significant concerns with
21 the practical implications of the proposed
22 revisions, as well as some unnecessary

1 administrative burdens that would have on our
2 mining operations, and I'll be going through
3 those as we move forward.

4 If adopted, our view of -- our
5 interpretation of the particular changes will
6 require us to have significant managerial and
7 administrative changes, as well as additional
8 expense and production downtime to our mining
9 operations, and it could be up to 20 percent of
10 our operations if the proposed --

11 MS. McCONNELL: Could you say that
12 again, how much?

13 MR. JEREMY PIERCE: Up to 20 percent.

14 MS. McCONNELL: And change in your
15 operations.

16 MR. JEREMY PIERCE: Yes.

17 Despite these added burdens to the
18 cost of production, we do not see how the changes
19 would necessarily provide a tangible, material
20 safety benefit to the workplace examinations that
21 are already undertaken pursuant with the existing
22 rule and its application as it stands now.

1 Instead we believe the changes
2 themselves may actually have a negative impact on
3 the workforce's focus on safety, undermining the
4 long-term objective that I believe MSHA's
5 proposing.

6 Thus it's our position that the
7 current rule remains appropriately protective,
8 without necessarily being burdensome in real-
9 world applications.

10 So to go through the various parts,
11 the prestart examinations: Our concern is that
12 our particular mine is a 24/7 operation, so if a
13 time frame is stated that you have to have it two
14 hours work starts, that two hours beforehand or
15 even an hour or anytime before that, it would
16 require us to shut down.

17 So as we are a continuous operation
18 for mining all the way through producing of a
19 product, that time lag would carry all the way
20 through our plant. We'd actually have to shut
21 down to meet that requirement, as we understand
22 it.

1 That economic impact, as well as the
2 impact to our safety culture, is that we have
3 over 400 acres of active mining area, and
4 connecting those areas together are well over 100
5 miles of roadways, travelways. Some would be
6 defined as active, as we have haul trucks on
7 them. Others would be to service other aspects
8 of the mining operation.

9 That economic impact would be between
10 57 million and \$114 million worth of product in
11 those two to four hours of day that we'd have to
12 relate what's going on with that shutdown
13 application.

14 Also, how we do that -- how we perform
15 those duties is we do extensive training on
16 workplace examinations. We do training with
17 hazard recognition. We require all that training
18 above and beyond what -- to meet or exceed what
19 the current rule says to do.

20 At a minimum we would propose that the
21 rule would allow the ongoing shift personnel that
22 are -- that will be authorized to perform

1 preshift work for the incoming crew so that we
2 wouldn't have to shut down.

3 That routine inspections reporting
4 hazardous conditions, we have, you know, preshift
5 meetings to review what is expected, what
6 happened the previous shift, any situations that
7 did occur.

8 Like the previous speakers, we apply
9 the preshift exam rule, that for heavy equipment,
10 to our basic operation, so if we see something,
11 we correct it right then. If it can't, we
12 barricade it off or shut down that particular
13 aspect until it is corrected in a timely manner.

14 We want to look at some areas such as
15 remote inactive areas of locations, it might take
16 an entire shift to travel those areas, to see,
17 you know, for your example on berms. Active
18 roadway in North Carolina, Florida, it's pretty
19 simple to get a rainstorm every day, so saying
20 once a week that we would go in those areas is
21 not real; it's an every-shift job.

22 So if it is required for us to do

1 it -- to have a time period beforehand before
2 anyone comes into there, that will impose an
3 undue burden, in our mind.

4 As far as prompt notification goes,
5 additionally the revisions -- it's really
6 understanding what "prompt" means. Any adverse
7 conditions -- again, what is that going to mean?

8 As a logistical matter, it's overly
9 broad. You know, it's open to way too much
10 interpretation. We get various inspectors in
11 from the office; we work well with them, out of
12 the Sanford office. But even from inspector to
13 inspector we can have variations in between what
14 "adverse" is or isn't, when we should or
15 shouldn't, and even in their interpretation of
16 what could be required.

17 In this operation we have -- at any
18 given shift in our operation we have 267 to 313
19 miners working in various areas throughout our
20 mine. So it really comes down to prompt.

21 So if we encounter an area -- a
22 situation or a hazard, you know, does that

1 "prompt" mean right now, before you go fix it? --
2 which would mean -- and who do I talk to with it?
3 So it's all miners. If we don't define just the
4 areas that the people are going into, that those
5 specific miners are going into, or my entire
6 population, that may take an hour or more just to
7 get out to make contact with every operator that
8 I have on a given shift, day or night, to make
9 sure they understood what the hazard was, what
10 did we do about it, if the hazard has been
11 corrected or if it hasn't been, it's barricaded
12 off; what they're supposed to do, the work
13 instructions.

14 And that itself would have an economic
15 impact, so if it's just an hour, that's another
16 \$87,000 that we would lose in economic benefit.

17 If MSHA does proceed with such a
18 concept, there needs to be further definition on
19 what constitutes prompt notification. At a very
20 minimum, we'd prefer signage, radio
21 communications; there's various means that we're
22 already doing. Would that still be acceptable

1 under the rule?

2 MS. McCONNELL: Can I just ask a
3 question about your current practices? Do you
4 mind? Or do you want to finish first?

5 MR. JEREMY PIERCE: Go ahead.

6 MS. McCONNELL: Okay. I don't want to
7 interfere with your train of thought, but as you
8 were talking, I keep on thinking about our
9 existing standard, and I -- to understand
10 everyone's concerns, I feel like I need to know
11 what you -- what are operators doing to comply
12 with the existing standard.

13 So our existing standard says, "shall
14 examine each working place at least once per
15 shift for conditions that may adversely affect
16 safety or health. The operator shall promptly
17 initiate appropriate action to correct such
18 conditions."

19 So could you tell me, like on a normal
20 shift, what your operation would do to conduct a
21 workplace examination. Do you conduct it before
22 work begins, as work is beginning? And when you

1 do see something that may adversely affect, as
2 under the existing standard, how do you notify or
3 how do you record? Just under -- just what your
4 normal practice is, not under what we are saying
5 in the proposed rule; what happens now?

6 MR. JEREMY PIERCE: First, we train
7 all of our miners in hazard recognition, so all
8 of our operators become competent people. So as
9 they go to their areas to work, before they start
10 work or before they even -- start from the very
11 beginning: They have a work area meeting with
12 the shift foreman, shift supervisor.

13 MS. McCONNELL: So the miners get
14 together, they have a meeting.

15 MR. JEREMY PIERCE: They get together.
16 We have a review what the instructions are for
17 the day, what's happened the previous shift,
18 review any particular issues, they get their work
19 assignments.

20 They go out to their --

21 MS. McCONNELL: And what would be
22 those issues that you guys would talk about?

1 MR. JEREMY PIERCE: It could range
2 from anything between, okay, we're coming into a
3 new area; here's what's been done to prepare that
4 area. Be on the lookout; we had a rainstorm come
5 through last night; you know, what other
6 precautions to take at that point.

7 That's just a discussion there to,
8 say, anticipate potential hazards that we should
9 look out for when you actually enter the area.
10 Those miners, when they go into that area --
11 before -- well, they do their standard preshifts;
12 they work on the equipment, same standard
13 applies.

14 They go all the way to their specific
15 work area. They'll do a work area inspection
16 before they start their immediate tasks.

17 We complete a job hazard analysis for
18 the tasks they're going to do, including
19 potential hazards, hazards that they see, what
20 they've done about those hazards that they see
21 right there, what they could do if something
22 should come up, what they're going to do.

1 MS. McCONNELL: And when you conduct
2 that analysis, do you record anything in terms of
3 what you found?

4 MR. JEREMY PIERCE: We do record
5 what --

6 MS. McCONNELL: And they're the
7 conditions found.

8 MR. JEREMY PIERCE: Yes.

9 MS. McCONNELL: Whether -- and they
10 are -- would you define those as hazardous
11 conditions?

12 MR. JEREMY PIERCE: They may not be
13 hazardous conditions; they just could be just to
14 look at potential for changing conditions. As
15 previous speakers have said, it's a dynamic
16 environment. We work outside. We're a surface
17 mine.

18 So we may start in the daylight, and
19 maybe a thunderstorm may come through, and we
20 look out for potential issues and what are we
21 going to -- what tasks we're going to.

22 We've also enforced and empower our

1 workforce to do stop-work assessments and stop
2 work if any condition does arise that they cannot
3 immediately correct and they need assistance
4 with.

5 They let us know as management. We
6 provide the assistance, barricade off the area
7 until it is resolved. If they can correct it,
8 they tell us that they've corrected it, what
9 they've done, and we move on.

10 MS. McCONNELL: If they -- once they
11 correct it, do you record that anywhere in terms
12 of -- because you've already mentioned that you
13 record the potential hazard. Do you go back
14 and --

15 MR. JEREMY PIERCE: If a situation
16 that couldn't be resolved immediately, yes, it's
17 recorded.

18 MS. McCONNELL: It is recorded. Okay.
19 Those that are not immediately resolved are
20 recorded. Okay.

21 MR. JEREMY PIERCE: Yeah. So if
22 they're not immediately resolved, that is

1 recorded and followed up with supervision to make
2 sure that it was done correctly.

3 MS. McCONNELL: Okay.

4 MR. JEREMY PIERCE: That is our main
5 point. So our main concern isn't so much how
6 we're applying the rule now to meet or exceed the
7 current standards. It is -- our initial concern
8 is the two-hour or one-hour or time requirement
9 before work starts.

10 MS. McCONNELL: Okay. I hear you.

11 MR. JEREMY PIERCE: Because that is
12 where we have the biggest issue.

13 MS. McCONNELL: I gotcha. I thank you
14 for those clarifying remarks. They've helped me
15 understand.

16 MR. JEREMY PIERCE: Certainly. As far
17 as recordkeeping, the administrative burden on
18 additional recordkeeping, across our sites,
19 because we have -- we are large sites between us,
20 our Aurora operation, our White Springs
21 operations, and our underground operations in the
22 Midwest, considerable areas are covered.

1 So just between Florida and North
2 Carolina, well over a thousand acres. There's
3 incredible amount of time and space that we have
4 to cover; lots of equipment.

5 We maintain the records as stated now,
6 as required now, but requiring further
7 recordkeeping, we would have to end up at hiring
8 additional people, likely six to seven more
9 people, just to make sure to aid with the
10 recordkeeping, the management of them, the
11 maintaining of those records, and communication
12 of the hazards, based on what the definition of
13 "prompt" is, to make sure that we get it out in
14 time.

15 That burden will be anywhere from 300-
16 to \$350,000 additional cost per year for having
17 additional support to make sure that
18 communication is made.

19 MS. McCONNELL: Okay. I'm confused.
20 So we have -- you're saying that you're going to
21 have to hire six to seven people to do the burden
22 that's beyond what you currently are doing.

1 MR. JEREMY PIERCE: Yeah.

2 MS. McCONNELL: Okay. Can you --

3 Did you want to say something, Sam?

4 Go ahead.

5 MR. PIERCE: I want to just ask, what
6 if that time frame was reduced to the next
7 inspection? What would that do to your --

8 MR. JEREMY PIERCE: If we're able to
9 do it from one shift or leaving the next shift,
10 that reduces the promptness of the issue, and
11 that takes out the significant part of the
12 economic burden.

13 MR. PIERCE: But what about if -- from
14 the -- like you have a MSHA inspection this week.
15 What if you had to keep those records until the
16 next MSHA inspection?

17 MR. JEREMY PIERCE: It's the amount of
18 records. So under the current rule we keep the
19 records for if there's a situation that couldn't
20 be resolved.

21 MR. PIERCE: All right.

22 MR. JEREMY PIERCE: And right then we

1 write that down and we keep those.

2 MR. PIERCE: Right.

3 MR. JEREMY PIERCE: So that's -- we've
4 already built that into our system.

5 MR. PIERCE: Okay.

6 MR. JEREMY PIERCE: But if you have to
7 maintain the record for all hazards or for all
8 situations that you write down on a particular
9 hazard, that increases the amount of paperwork
10 that we have that comes in. We're not looking at
11 one piece of paper per work area. You could have
12 10, 15 documents coming in from a particular work
13 area at a given time across the entire mine per
14 shift, so that's the recordkeeping that would
15 have to -- it's how you store it, where you store
16 it, how do you get it back to when an inspector
17 arrives and wants to review the records. That's
18 the economic impact.

19 MS. McCONNELL: But what you keep
20 right now -- because under the existing standard
21 you have to keep the working place examination
22 record for a year.

1 MR. JEREMY PIERCE: Yes.

2 MS. McCONNELL: So what do you keep
3 for a year now?

4 MR. JEREMY PIERCE: Exactly what we're
5 supposed to keep.

6 MS. McCONNELL: Just that you've
7 conducted the examination, just that the
8 examination was conducted.

9 MR. JEREMY PIERCE: Right. And if --
10 like on a piece of --

11 MS. McCONNELL: And then that --

12 MR. JEREMY PIERCE: -- heavy
13 equipment, if a situation -- if an item that
14 could not be covered or could not be corrected
15 immediately, that is kept as well.

16 MS. McCONNELL: Okay. So before you
17 said that right now you do have an assessment of
18 potential and actual hazards that you record the
19 hazard and, if it can't be immediately corrected,
20 when it is corrected. Right?

21 MR. JEREMY PIERCE: Uh-huh.

22 MS. McCONNELL: What do you do with

1 that record? How long do you keep that?

2 MR. JEREMY PIERCE: They're reviewed
3 by the next shift and then disposed of, because
4 in agreement with our workforce -- they were
5 particularly concerned with how long those
6 records -- and really it kind of relates to the
7 previous speakers, is how those records will be
8 used in the future; you know, past records that
9 can come back.

10 So if they found something or found,
11 well, you should have seen something -- how
12 well -- what is the impact of it. That's the
13 risk that they're -- right down to the miner
14 they're concerned with.

15 So they're participating in job hazard
16 analysis. They participate in active hazard
17 recognition, and our partnership with them is
18 that we review it for that immediate
19 effectiveness of it and we learn from it, and any
20 of the lessons learned that we carry forward
21 immediately into the next shift, but we're not
22 maintaining those records indefinitely or for the

1 year.

2 MS. McCONNELL: If the hazard is not
3 corrected from one shift to the next -- say, for
4 example, it takes multiple for a hazard to be
5 corrected -- what happens to the record? Do you
6 keep on transferring from one shift to the next
7 until the hazard is corrected, or you just create
8 a new one every time?

9 MR. JEREMY PIERCE: Both. We do
10 maintain that. We try to -- again, we're trying
11 to reduce redundancy, but we do maintain that
12 until it is corrected and then follow up on it to
13 make sure that it is in place and active.

14 MS. McCONNELL: Okay.

15 MR. JEREMY PIERCE: The competent
16 person question has been raised. It was asked by
17 MSHA, and while we've stated that its
18 definition's not going to be changed, our view or
19 our concern is how it's going -- so the
20 definition may not change, but it's how it's
21 applied.

22 So if there's a provision that says

1 for X amount of years that you have to be or some
2 level of training, is it above and beyond what we
3 already do?

4 Our concern is that any such change
5 would actually have a negative impact on the
6 safety culture that we're trying to foster an
7 inclusive safety culture.

8 MS. McCONNELL: What particular change
9 in -- what do you see that going to --

10 MR. JEREMY PIERCE: We want to make
11 sure that we can maintain what our current
12 practices do, is that everyone that works in the
13 mine is a competent person, and we train people
14 to that, like the previous speakers have said.

15 My personal view is that training is
16 critical, so we train -- we've done initial
17 training, and then annual training on hazard
18 recognition. We go out in the field -- every day
19 we go out in the field with management, work with
20 our operators reviewing potential -- reviewing
21 workplace exams, reviewing what we have going on,
22 and getting ideas and keeping it a joint function

1 so that every one that we have involved -- it's
2 not any one person's responsibility; it's all --
3 a responsibility for everybody.

4 MS. McCONNELL: Right.

5 MR. JEREMY PIERCE: So if the rule
6 comes into play, or application of that rule,
7 that limits that scope to a particular person or
8 particular group of people, we're afraid that it
9 will damage our cooperation.

10 MS. McCONNELL: Okay. So we're not
11 changing the definition of a competent person or
12 who could be a competent person.

13 MR. JEREMY PIERCE: Right. But it's
14 the application of that. So if it's determined
15 that it should only be -- so the definition may
16 not change of what a competent person is, but
17 it's --

18 MS. McCONNELL: How we interpret that
19 definition?

20 MR. JEREMY PIERCE: Correct.

21 MS. McCONNELL: Well, that won't
22 change.

1 MR. JEREMY PIERCE: I hope so. I hope
2 it doesn't change.

3 MS. McCONNELL: It won't.

4 MR. JEREMY PIERCE: So that concludes
5 my comments. I appreciate having the opportunity
6 to speak to you publicly.

7 MS. McCONNELL: And I appreciate you,
8 too, giving me a lot of thought, and I appreciate
9 your clarity that you've offered in terms of your
10 existing operation. That helps me understand the
11 issues that you see with this rulemaking.

12 MR. JEREMY PIERCE: Thank you.

13 MS. McCONNELL: Wait. I'm sorry.

14 Did you have anything?

15 (No response.)

16 MS. McCONNELL: Okay. You're done.

17 Okay. Thank you, sir.

18 Our next speaker is Matt Bunner,
19 Mulzer Crushed Stone.

20 MR. BUNNER: Good morning.

21 MS. McCONNELL: Good morning.

22 MR. BUNNER: My name is Matt Bunner,

1 B-U-N-N-E-R, and I'm with Mulzer Crushed Stone.
2 I'm the safety manager for them. I also am the
3 safety chairperson for the Indiana Mineral
4 Aggregates Association out of Indiana, which has
5 about 90 producer members.

6 I guess where I'd like to start is
7 with the Federal Register. One of the gentleman
8 before me talked about the word "believe" in the
9 Federal Register. But on page 36820, in the
10 third column, about halfway down, it says, "This
11 proposed rule is intended to strengthen MSHA's
12 requirements for MNM working place examinations
13 help prevent the kind of accidents discussed
14 above."

15 That word "intended" is not final. My
16 kids intend to do well, but they make changes.
17 Administrations following Mr. Main's term, what
18 is their intent of the regulation, their
19 interpretation of the definitions that we've
20 discussed already this morning?

21 To start off with, I'd like to talk
22 about the new regulation regarding the

1 start before start of shift. Everybody has
2 mentioned darkness as being a key variable, but
3 there are other variables that come into play as
4 well.

5 In southern Indiana, along the Ohio
6 River, in the spring and the fall, the
7 temperature of the water versus the temperature
8 of the air causes fog, very dense fog. And in
9 those foggy conditions we -- the mine operator,
10 the superintendent, will put an order in tells no
11 mobile equipment or equipment that rolls is
12 allowed to move, and the miners go out and do
13 other type of work, and they conduct their
14 workplace exam once the fog clears where you can
15 adequately see all areas of the mine that are to
16 be inspected.

17 Other variables that come in to play
18 with doing a start before shift inspection -- we
19 all know working in the mining industry that
20 vibration and the startup of equipment comes into
21 great play, and I feel that doing an inspection
22 prior to the start of shift will cause conditions

1 that have changed in the mine to possibly be
2 overseen or not caught with the new regulation
3 versus the current regulation.

4 To also back up what one of the
5 previous people said, our workplace exams are
6 living documents. Prior to even Part 46 being
7 implemented, our company developed a workplace
8 examiner training plan.

9 We have a program where we train all
10 the people that do workplace exams not just what
11 to look for in hazard recognition but how to look
12 for and also to look at the behavioral things of
13 the miner in the workplace, because they're not
14 just looking for the low-hanging fruit of
15 conditions but they're looking for unsafe acts,
16 and they're looking at unsafe work practices of
17 the miner working with them.

18 And we've empowered those workplace
19 examiners to correct the small things that are
20 correctable immediately and also to make comments
21 to the other miners that, hey, the way you're
22 picking up that piece of equipment is not the

1 proper way, or that's not the way we follow
2 certain policies and procedures as well.

3 So we've developed an incredible
4 workplace examination program that works
5 effectively. In fact, one of my workplace
6 examiners just retired with 43 years of mine
7 experience and never had a single first-aid or
8 above medical issue.

9 So I know that what I have developed
10 within my mining organization is successful and
11 works, and my fear is that changing that
12 regulation, for companies that do well and don't
13 have problems, do you open up the can of, oh, so
14 we've done this so well; now what's the newest
15 and latest trend?

16 MS. McCONNELL: Can I interrupt?

17 MR. BUNNER: Yes, please.

18 MS. McCONNELL: I don't mean to
19 disrupt your train of thought.

20 MR. BUNNER: That's okay.

21 MS. McCONNELL: But when you talk
22 about your -- I'm always curious about what is

1 being done, and I'm going to ask you the same
2 questions I asked Mr. Pierce, in terms of tell me
3 about your existing workplace examination program
4 that you do right now under the existing
5 standard. I'd be interested in hearing.

6 MR. BUNNER: Correct. We have people
7 that we've designated as workplace examiners, and
8 I'll use a couple of examples.

9 I've got a mine site that's got 14
10 employees, and the supervisor that's there has
11 less than a year of experience. Obviously the
12 employees, with most of them over 15 years of
13 experience, are more capable of doing a workplace
14 exam than the mine operator at that location.

15 But we bring them in -- we do
16 training. We invest in them by also -- when they
17 do workplace exams on a routine and regular
18 basis, we go out with them on the examination to
19 see what they're looking for, so we can do some
20 on-the-job training to make sure that there are
21 things that they're not missing, which obviously
22 shows up when the number of citations written at

1 the mine site are low.

2 Because of the -- you know, the Mine
3 Act and the way the regulations are written, it's
4 strict liability, and it's looking for condition,
5 not necessarily behavior.

6 So, you know, our workplace examiners
7 are evaluated, and they're checked up on. If
8 they find things that are immediately needing to
9 be fixed, they fix them before, you know, they
10 even holler at a supervisor.

11 If there are things where there are
12 parts or there are pieces that are needed to be
13 ordered, then that -- instantaneously that
14 workplace examiner goes to the plant supervisor
15 or to the superintendent of the mine site, and
16 it's immediate; it's not something that's written
17 down on paper and at the end of the day turned
18 in.

19 We also utilize what the current
20 regulation says in regards to at least once per
21 shift, which means that that's the bare minimum;
22 that's what the regulation was written for.

1 There are times where, you know,
2 throughout the whole shift that document becomes
3 a living, breathing document, and every year we
4 annually review the form that we use for our
5 workplace examiners.

6 MS. McCONNELL: Okay. Could you tell
7 me a little bit about what's on that form, what
8 you put on that form?

9 MR. BUNNER: Okay. What we do -- what
10 we have is we have a checklist of areas that
11 they're going to be inspected, and also we kind
12 of give them -- it's a toolbox checklist of the
13 things that you ought to look for when you're
14 doing a workplace exam.

15 There is an area where they note
16 things that -- hazardous conditions, and a place
17 that says, Actions Taken to Correct. Some of
18 those actions may be them physically marking
19 that they've taken care of it themselves.

20 Others may say, Went to the
21 supervisor, and work order XYZ has -- is -- has
22 that proponent or that item under review or

1 repair.

2 And then on the back side of that card
3 we have kind of the ten commandments of doing a
4 workplace examination correctly. And that gives
5 the workplace examiner subtle reminders about,
6 you know, there's more than just looking straight
7 in front of you; there's overhead, there's below
8 you. There's the other sites of smell,
9 vibration, things of that nature.

10 MS. McCONNELL: And what time is that
11 card or form being filled out?

12 MR. BUNNER: Well, as I mentioned
13 earlier, it really depends on the other variables
14 involved, but usually --

15 MS. McCONNELL: You're speaking of the
16 fog and the night.

17 MR. BUNNER: Correct. Well, as well
18 as the startup of the plant, because a lot of the
19 things, conditions change immediately after that
20 startup; vibration causing a guard to break or
21 stuff to spill onto a walkway, things of that
22 nature.

1 That's when it's caught. We empower
2 our working place examiners to use behavior as
3 well, and that's the part that the regulation
4 completely leaves out, is the -- you know, a
5 hazard existing over here in the corner, with no
6 one in the room, is it really a hazard? It's
7 that whole, you know, if a tree falls in the
8 wood --

9 MS. McCONNELL: Tree falls in the
10 wood.

11 MR. BUNNER: Right. It's the human
12 exposure that causes that to be a hazard to
13 persons, so that's why we evaluate it -- now,
14 there are some people that may start it upon
15 clocking in, and there are other people that may
16 do it at dinnertime, or they may do it in
17 conjunction with a work activity that puts them
18 throughout the entire area that they're doing
19 their examination.

20 MS. McCONNELL: So what is -- but I
21 guess, again, what is the normal practice? Is it
22 as work is beginning in that area?

1 MR. BUNNER: I would say that as a
2 whole it would be after the startup of the
3 routine processes is when that's evaluated.

4 And you had mentioned to the previous
5 speakers about prework meetings --

6 MS. McCONNELL: Yes. I was mentioning
7 that. What I've heard from other testimony is
8 that there are line-outs, greaseboards, where
9 information is given out verbally -- or on these
10 greaseboards -- to miners about the results of a
11 working place examination, whether or not there
12 was a potential hazard there.

13 MR. BUNNER: Yeah. Based on the --

14 MS. McCONNELL: Do you do the same
15 thing?

16 MR. BUNNER: Based on the culture of
17 the different mine IDs and different regions of
18 the area in which we are, some locations do that
19 at the end of the shift the day before, basically
20 saying, Tomorrow here are what our production
21 demands are, here's what areas that we're going
22 to be doing maintenance or doing repair, areas to

1 stay out of; not necessarily at the beginning of
2 the shift.

3 Now, other locations, the culture of
4 those individuals is every day, even though they
5 do the same job, day after day, year after year,
6 they stop at the lunchroom and they have a prejob
7 meeting.

8 So there are some locations that take
9 advantage of that, but there are others that
10 clearly do not.

11 MS. McCONNELL: Okay.

12 MR. BUNNER: Okay? The next thing I
13 want to talk about is within my organization we
14 have some locations that are a single shift, and
15 we have other locations that are around the
16 clock.

17 The question that has been brought up
18 by the miners, not by our department, is the fact
19 of how do we do this with overlapping shifts or
20 at shift change when someone does -- under the
21 proposed rule, has to come in prior to the shift
22 and inspect a working area that miners are

1 already existing in?

2 So you say, well, you guys have
3 already been here today, so we -- you know, I'm
4 not worried about you as much as the people who
5 are going to be coming in two hours later to
6 start their shift.

7 So the question's been brought up by
8 the miner of how's that going to affect us?

9 At shift change usually we have an
10 overlap where employees can talk to the employees
11 prior to them, and so coming in prior to that
12 would mess up the structure that has worked at
13 some of our locations since the early '70s.

14 So I feel that if they have to come in
15 and do a workplace exam two hours prior or -- it
16 could cause shift changes to occur that would
17 affect the typical or routine, which is what a
18 miner likes, you know, to have a routine as to
19 what they do. A plant operator likes to be a
20 plant operator, that type of situation.

21 Also, a lot of concerns from the
22 miners that I manage in regards to the phrase

1 "agent" and the agent of the company concerns.

2 And, again, we go to that Federal
3 Register, where it says the intent of the law.
4 I've been in this industry for 16 years and been
5 through many different assistant secretaries, and
6 been dealing with different district managers.

7 And I can tell you right now we could
8 bring in all the district managers and take a
9 test on what definitions mean, and I would assure
10 you that there would be different definitions for
11 different districts.

12 Not to say that's bad; we're human.
13 Every one of us is capable of making a judgment
14 that isn't completely accurate to what the
15 regulation or the standard states.

16 So let's talk about behavior for a
17 second. We look and we check out for -- we check
18 and we watch miners, and we correct miners'
19 conditions as well. The exam -- the regulations
20 for this is conditional physical hazards, not the
21 behavior.

22 And that's the part that -- how do you

1 document going forward where you tell other
2 shifts of, hey, we had to talk to an employee who
3 was failing to follow up policy or procedure,
4 because that is a hazardous activity. Right?

5 So how do you go to say, you know, I
6 saw Brian back here -- Sam, I saw Brian back here
7 doing this, this, and this, but it's in the area
8 in which you're working, so I'm going to convey
9 those hazards to you, because you're going to be
10 working in that area also. I think the miner has
11 problems with that terminology the way the
12 regulation is being written.

13 I had already mentioned that we've got
14 mine IDs where the supervisor has less experience
15 than the people doing the work. So I think from
16 what I understand from the previous people, that
17 the definitions of competent person are not going
18 to change.

19 MS. McCONNELL: No.

20 MR. BUNNER: And I appreciate that,
21 because I think oftentimes the most experienced
22 person is going to do the best job and know their

1 work activities more than someone who isn't out
2 there every minute of every day.

3 I think the new regulation, the way
4 it's penned or written, it constricts or controls
5 creativity of what separates my mine company from
6 any other mine company in this room.

7 MS. McCONNELL: How so?

8 MR. BUNNER: How so? Because what
9 works for Mulzer Crushed Stone may not work for
10 another company that's in here, and --

11 MS. McCONNELL: Is this the act of
12 recording the hazard, is it the act of recording
13 the corrective action? Is that what is stifling
14 creativity?

15 MR. BUNNER: Well, I look at it
16 from -- creativity, flexibility, and uniqueness
17 are the three things that I would throw out
18 there.

19 What separates exceptional from
20 average, the way this regulation is written, it
21 is a cookie-cutter, one-size-fits-all. And we've
22 talked about or have heard mentioned many a time

1 about this regulation breathes and smells of the
2 coal regulation.

3 And metal/nonmetal mining is
4 completely different, whether it's sand and
5 gravel dredging, surface mining, underground
6 mining. There's ten times more variance and
7 variables in that than what's in coal.

8 And what separates the uniqueness of
9 what works for my culture and my people may not
10 work for these people. And throwing a one-size-
11 fits-all regulation at it, I have to go back and
12 retrain or redo what we've taken generations of
13 miners to create.

14 I've got locations that go without
15 citations and without accidents, and the awards
16 that they get through our state association
17 they're proud of, and they take it personal. Our
18 miner is empowered; they're part of our family.
19 This company was established in 1935; we're a
20 third-generation family-owned business with some
21 families with four generations of that same
22 family working at the same mine site.

1 This isn't where a miner is a number.
2 These people truly care. They're members of my
3 family. And so I think the cookie-cutter
4 approach to this regulation of what makes our
5 creativity work in Indiana may be something
6 completely different than what happens here in
7 Birmingham.

8 And I can relate something that's
9 relevant to your all's heart, is sweet tea in
10 Birmingham is a lot different than sweet tea in
11 New York City.

12 Am I right, Sam?

13 MR. PIERCE: You're right.

14 MR. BUNNER: So I think that approach
15 to this regulation is very similar. It stifles
16 what is working.

17 And we all know if there's a bad apple
18 out there, the intent of 18002, that intent is
19 there. Use the current law to the legs that it's
20 given.

21 That's the problem, that we haven't --
22 we don't use what -- I mean, it's one of those --

1 we call it the Baskin-Robbins approach. It's the
2 flavor of the month. Well, this isn't working.
3 What are we going to try next?

4 The fact is you have to sell out --
5 you have to go all in in regards to that
6 regulation and how to make that regulation work.
7 Sorry to rant.

8 Current regulation allows flexibility
9 of process, it allows the different types of
10 mines to develop their program as to what fits
11 their culture, and it includes the miner; the
12 miner is part of the process.

13 If you look at the trends within our
14 industry, we've come a long way. Just last week
15 I was traveling through Atlanta, and there's a
16 big sign as you go into the state of Atlanta that
17 says something like 791 people are killed on
18 their highways.

19 Look at where we were 30 years ago, or
20 look at where we were 100 years ago. We're
21 showing vast improvements. Can we be better?
22 Absolutely. But do we go out and we create all

1 new regulations and develop all new things after
2 training guys that are seasoned to do their work?
3 It's unbelievable.

4 Couple of questions that I have for
5 you that I would like answered or from the Mine
6 Safety & Health Administration to answer, is how
7 will an inspector look at the items that are
8 found on our workplace exam from a hazard
9 standpoint when the Mine Act clearly states that
10 if a condition exists or could have existed and
11 you've documented on paper that a hazardous
12 condition existed?

13 The other one is yes or no: Could an
14 inspector write a citation for a workplace exam
15 for every citation he or she writes?

16 Under this new regulation I find an
17 electrical cover off, obviously it should have
18 been found on a workplace exam, so I'm going to
19 write you a citation for cover plate missing,
20 inadequate workplace examination, and now I'm
21 going to evaluate your task training of that
22 competent person.

1 So technically in all rights, there
2 could be three pieces of paper written for every
3 citation of a physical hazard if this new
4 regulation is written as it's penned right now.

5 Now, I'll go back to this: That's not
6 the intent, is what Mr. Main says. But we know
7 that Mr. Main's tenure is shortly coming to an
8 end. What is the person that's going to replace
9 him -- his interpretation of that regulation?

10 In regards to notifying the miner,
11 when you have multiple shifts or overlapping of
12 shifts and a condition by a workplace examiner is
13 found, what methodology is expected of the mine
14 operator to notify the people coming into that
15 work, as well as the worker that's in there now?

16 What I'm getting at is if we designate
17 someone other than the person who's doing the
18 workplace exam throughout the shift, how does he
19 convey both forward and backward the condition?

20 We're pushing -- we're throwing the
21 baby out with the bathwater rather than facing
22 the elephant in the room. I hate to use the

1 cliches, but they kind of fit here.

2 Correcting the hazard and protecting
3 the miner is our number-one perspective, and a
4 lot of people in this room -- and we're all
5 worried about the compliance from a citation. I
6 realize that the MSHA regulations are minimum. I
7 try to exceed all of them within my organization.

8 But the fact of the matter is when you
9 get to the point where you're exceeding all of
10 them and now you're changing the regulations --
11 we brought up to Mr. Main and Mr. Lichtenfeld
12 here three weeks ago a couple of the regulations
13 that really needed to be looked at.

14 They were -- one of them is the 15-
15 minute rule, which everybody has admitted there's
16 92 million phone calls that are being reported
17 that don't need to, and my answer was, it takes
18 an act of Congress because that's in the Act.

19 Well, it's amazing how the regulations
20 that MSHA wants to use and redo -- amazingly that
21 gets -- that pops up and ends up on our radar,
22 whereas the things that are grossly -- you know,

1 blacksmith shops and working on your mules is
2 probably a little bit outdated of a regulation.

3 But it's aggravating, because from a
4 safety perspective only 5 percent of the hazards
5 out there are unsafe conditions. It's the
6 behaviors and activities of what goes on between
7 the miners' ears.

8 You don't know what's going on in
9 their personal life; you don't know what's going
10 on in their work life. A lot of things come into
11 play. And we've all read, you know, on a
12 citation where it says clearly that the mine
13 operator failed -- and I don't -- most of the
14 people in the room can quote the rest of that
15 phrase.

16 But the fact of the matter is it's the
17 miner's behavior. And, again, we're focusing on
18 something that looks for hazards that are mostly
19 controlled anyway. Yeah, conditions change;
20 things need to be fixed. But there's a lot
21 bigger fish to fry when it comes to workplace
22 safety in the mining industry.

1 And I'd just like to make one more
2 comment. In the original reading that you did --
3 and I'm hoping it's just an oversight, but you
4 talked about where it was done once per shift,
5 and that is at least once per shift, for the
6 record. You can do it multiple times.

7 I think we have to use the creativity,
8 think about the culture of the people, the
9 location in which you work. What works in
10 southern Georgia may be different from Duluth,
11 Minnesota, the fact. And I think regulations
12 like this kind of stick us in a corner.

13 Questions?

14 MS. McCONNELL: I don't have any
15 further questions.

16 Al, do you have anything?

17 MR. DUCHARME: No.

18 MS. McCONNELL: Sam, do you have
19 anything?

20 MR. PIERCE: Only thing, I just -- you
21 want me to address his questions he had?

22 MS. McCONNELL: I don't know if we

1 need to address a hypothetical citation. No.

2 MR. BUNNER: Well, I mean, the
3 question becomes -- I mean, Sam's a district
4 manager. Is an inspector not taught that if he
5 believes or sees that a violation has occurred
6 that he's supposed to write a paper?

7 MR. PIERCE: Well, he is taught that,
8 because that's what the Mine Act says. It states
9 if he believes it's a violation -- but he's also
10 taught that in order for us to uphold that
11 violation, he has to have more than just that
12 belief. He only has to believe it. We have
13 to -- once it gets to our level, we have to be
14 able to prove that; the burden of proof falls to
15 us.

16 So, yes, they are taught that, because
17 that's what the Mine Act says. But we go beyond
18 that to ask -- get them to ask questions and to
19 verify, you know, why they believe that.

20 You can ask anybody that's ever been
21 to any of the meetings I have held. I've asked
22 them, if an inspector says he's going to write

1 you a violation, ask him why. Ask the question.

2 MR. BUNNER: I've heard you speak
3 multiple times, Sam, and I agree 100 percent with
4 you, and I believe what you're saying is 100
5 percent true.

6 Now, my follow-up to that is, with
7 that understanding, the workplace examination
8 18002 is already there.

9 MR. PIERCE: Right.

10 MR. BUNNER: That inspector has the
11 same opportunity to determine the burden of
12 proof. Is this new regulation not just a way to
13 get that off of the inspector as well and put the
14 burden of proof onto the mine operator?

15 Are we doing a little bit of the
16 inspector's work when we come to workplace exams?

17 MS. McCONNELL: No, no.

18 MR. PIERCE: Well, I fail to see how
19 requiring -- changing the requirement is what
20 we're talking about, from doing it sometime
21 during the shift to doing it at the beginning or
22 prior to the shift --

1 MR. BUNNER: Right.

2 MR. PIERCE: -- would change --

3 MR. BUNNER: But in regards to
4 documenting to the extent of hazards that are
5 going to be required under the new regulation,
6 that document now has to be preserved. Right?
7 And it leaves the inspector up to -- we've seen
8 what the medical and all the other things, when
9 an investigation comes up -- there is no
10 paperwork that is off limits when it comes to an
11 investigation, especially involving a fatality,
12 catastrophe, or something like that.

13 MR. PIERCE: Sure.

14 MR. BUNNER: So now you have more
15 documentation and proof that is a paper trail
16 under the new regulation. Correct?

17 MR. PIERCE: Possibly.

18 MS. McCONNELL: The recordkeeping
19 requirements are not that different than what --
20 the proposed recordkeeping requirements are not
21 that different than what you say you do right
22 now.

1 You say you have a piece of paper that
2 you record -- and I don't know if you used the
3 word --

4 MR. BUNNER: The items that they
5 cannot fix immediately. The stuff that they do
6 fix immediately, according to the new regulation,
7 all those small little nickel and dime things
8 would get listed. Correct?

9 MS. McCONNELL: So would your concerns
10 be diminished if they were not -- if you fixed
11 the -- if it was only recording those corrective
12 actions that had lasted more than a shift and
13 that were not immediately corrected? Would your
14 concerns be diminished?

15 MR. BUNNER: That's kind of a
16 hypothetical. It depends on the situation.

17 MS. McCONNELL: Well, you gave me a
18 hypothetical.

19 MR. BUNNER: Yeah.

20 MS. McCONNELL: I'm throwing it right
21 back at you.

22 MR. BUNNER: Yeah. It depends on the

1 situation. In some instances, yes. But I think
2 most of the people in the room here would agree
3 that in the event of a -- you know, knock on
4 wood -- fatality or something that happens
5 because of poor human behavior, things change.

6 One last item that I'd like to throw
7 out there to you is the three fatal ground bases
8 that are added to this. The one in March of '11,
9 it says that the tool-over was removed from the
10 machine eight days prior to the accident. Would
11 not the current workplace examination, if done
12 right, have caught that in the previous seven
13 days?

14 The next one, in January of '15, it
15 says three days prior to it, heavy rains
16 occurred. Would not the gentleman who was killed
17 at the phosphate mine, under the current
18 workplace examination regulation, if done
19 adequately, have been caught by the person doing
20 that examination?

21 So just for the record, two of the
22 three instances that we've listed, the current

1 regulation would have worked and should have been
2 held accountable when the investigation was done.

3 Thank you.

4 MS. McCONNELL: Thank you.

5 Our next speaker is Tim Agner,
6 Satellite Company.

7 MR. AGNER: Stalite Company will
8 defer.

9 MS. McCONNELL: You're deferring.
10 Sorry.

11 Our next speaker is Gary Wirth -- and
12 I'm not going to pronounce this correctly --
13 Thiele Kaolin.

14 If you could just repeat that for the
15 court reporter.

16 MR. WIRTH: Yes. My name is Gary
17 Wirth, spelled with one R and W-I-R-T-H. And I
18 am with Thiele,
19 T-H-I-E-L-E, Kaolin Company, and I am also here
20 on behalf of the Georgia Mining Association.

21 MS. McCONNELL: Good morning.

22 MR. WIRTH: Good morning. A lot of my

1 comments have already been addressed, but I would
2 like to maybe re-emphasize a couple of them and
3 then add a few things.

4 First of all, I just want to say I
5 think that workplace examinations are extremely
6 important for our industry. There's no question
7 about that. However, I do think the current
8 regulation that's in place is adequate to address
9 what we need to achieve as far as workplace
10 examinations.

11 Many of the mines in Georgia, which is
12 where my company is located, have very large
13 plants that would require many people, many
14 competent persons to do workplace examinations
15 prior to the start of the shift.

16 Many of our ID numbers encompass many
17 of different pits that are up to 50 miles apart
18 from each other, which would normally require one
19 competent person to examine all of those pits
20 prior to the start of work. That's unreasonable.

21 That would encompass quite a bit of
22 overtime. That would mean that we would be

1 working people, instead of possibly 10 hours a
2 day, 12 to 15 hours a day. That affects safety
3 for persons that come to work at 5:00 in the
4 morning and leave at eight o'clock at night.
5 That's a safety issue.

6 In addition, one of our current
7 regulations says that persons can't work alone.
8 So if we have to have a person to go into a plant
9 or into a pit to do an examination, they can't do
10 it by themselves, because they would be working
11 alone. That would require two persons, which is
12 increasingly burdensome.

13 My background has been a lot of coal.
14 I've been in the metal/nonmetal industry for the
15 past 10 years, but my background is coal. The
16 coal regulation states you can do your preshift
17 examination within three hours. We're talking
18 about two hours here.

19 I guess my question would be -- and
20 the regulation doesn't state this -- can that
21 examination be done by the previous shift? --
22 because many of our plants and some of our mines

1 work 24/7.

2 If that regulation were to be enacted
3 and it could be done by the previous -- the
4 examination could be done by the previous shift
5 and recorded and that information conveyed to the
6 oncoming shift, as it is done in coal, that would
7 be a much better benefit, but that's not the way
8 the regulation is written right now.

9 That pretty much covers the workplace
10 exam before miners begin, because there's been
11 plenty of other comments that I don't need to re-
12 emphasize.

13 MS. McCONNELL: Well, before you move
14 on, I'm going to ask you the same kind of
15 questions I've asked others in terms of giving me
16 a sense of how you currently conduct the
17 workplace examination under the existing
18 standard.

19 Could you give me a sense of the
20 timing of what you do now.

21 MR. WIRTH: What we currently do is
22 within the first couple hours of the shift, a

1 competent person will go through, and we have a
2 form that we fill out, and it's a checklist.

3 And it's different for each
4 different -- regarding the different locations of
5 the plant or the pits, so the checklist is
6 different.

7 MS. McCONNELL: Right.

8 MR. WIRTH: They'll check off
9 equipment is okay, equipment's not okay; high
10 wall stability is okay, high wall stability is
11 not. If there is an adverse condition, that is
12 noted on the back of the form.

13 If it can be corrected immediately,
14 they just put "corrected." If it can't be
15 corrected immediately, it's either caution-taped
16 off or barricaded, and a work order is issued.
17 And then --

18 MS. McCONNELL: How long do you retain
19 that record?

20 MR. WIRTH: The record is retained by
21 the work order.

22 MS. McCONNELL: Okay.

1 MR. WIRTH: If there's a work order --
2 well, the actual examination record is retained
3 for a year, but the way we follow up on it is by
4 the work order, because the work order is
5 reviewed by maintenance every morning. So that's
6 how we keep track of whether it's been corrected
7 or not.

8 And when the work order is corrected,
9 that's entered into our system also, so then we
10 know it's complete.

11 MS. McCONNELL: Okay. So when you do
12 find -- if there is a hazardous condition that
13 you noted on your checklist form, do you -- how
14 do you -- do you try to communicate to the guys
15 in the working area? And if you do so, how do
16 you do it?

17 MR. WIRTH: Yes. If it can -- if it's
18 corrected immediately, we don't communicate it.
19 I mean, if someone finds it and they correct it
20 immediately, it's not communicated, because the
21 condition is corrected.

22 If it's not corrected immediately,

1 like I said, it's barricaded off, and that's how
2 they know.

3 MS. McCONNELL: Okay.

4 MR. WIRTH: Okay. It's not verbally
5 communicated to everybody, and that goes to the
6 next topic of notify miners of any conditions
7 prior to them entering the area. We do that by
8 barricading and by caution tape, and that's how
9 they're notified.

10 So I guess my question would be --

11 MS. McCONNELL: Are there any kind of
12 conditions that you've found that barricade,
13 caution tapes wouldn't suffice as a way of
14 notification?

15 MR. WIRTH: No, ma'am.

16 MS. McCONNELL: Okay.

17 MR. WIRTH: So I guess my question is
18 that -- my question to you is that the
19 notification process, is it going to be required
20 to be verbally, or is caution tape and
21 barricading going to be sufficient? And that's
22 not really specified.

1 MS. McCONNELL: No. You're -- we hear
2 you on that one.

3 MR. WIRTH: Okay. The other thing is
4 that as far as the recordkeeping goes, I don't
5 have a problem with the recordkeeping issue. I
6 think the current recordkeeping requirements are
7 adequate.

8 By adding a name and a date, that's
9 going to further lead to 110(c) penalties.

10 MS. McCONNELL: Is it the name or the
11 signature?

12 MR. WIRTH: The signature.

13 MS. McCONNELL: Because is there a
14 name on your existing -- do you have a name of
15 the person who conducted the examination on your
16 existing form?

17 MR. WIRTH: No, not always.

18 MS. McCONNELL: No.

19 MR. WIRTH: Sometimes, but not always.

20 MS. McCONNELL: You don't print the
21 name out, Joe Smith?

22 MR. WIRTH: No.

1 MS. McCONNELL: Okay.

2 MR. WIRTH: There's a date and the
3 shift time.

4 MS. McCONNELL: So are you ever -- do
5 you ever need to know who conducted examination,
6 if you had any follow-up questions?

7 MR. WIRTH: If I had follow-up
8 questions, I would ask who did it.

9 MS. McCONNELL: Right. And who would
10 know who did it?

11 MR. WIRTH: The foreman for that area,
12 which may or may not have been the competent
13 person.

14 MS. McCONNELL: Okay.

15 MR. WIRTH: And I guess, again, a lot
16 of my comments have already been previously said,
17 but one of the things I'd like to talk about --
18 and I know Sam knows this. I don't know if you
19 do, Ms. McConnell, but I'm an ex-20-year MSHA
20 employee, and I left 10 years ago.

21 I'd like to talk about regulations
22 versus safety, and I'd like to ask you a

1 question. When was the last time you were on an
2 MSHA inspection?

3 MS. McCONNELL: I have -- it's true;
4 I have not been on an MSHA inspection.

5 MR. WIRTH: Okay. Well, I can tell
6 you how MSHA inspections go.

7 MS. McCONNELL: Okay.

8 MR. WIRTH: Okay. An inspector shows
9 up at the mine site, and he wants to look at your
10 examination records, and then he immediately goes
11 out to the work area, to the workplace, starts
12 looking for violations, and rarely do they talk
13 about safety, rarely.

14 I don't know if you've ever seen an
15 MSHA inspectors performance management plan. The
16 number-one item on it is issue citations and
17 orders. That's the number-one item on their
18 performance management plan, and I know this
19 because I was a district manager at times, and I
20 had to sign off on those.

21 MSHA does not truly recognize company
22 safety programs. The industry has evolved over

1 the last 25 years, and you've heard it earlier
2 today. The companies have promoted safety and
3 put more emphasis on safety and put more money
4 into safety than ever before, and that's why MSHA
5 fatalities are down.

6 It's not because they write citations.
7 It's because the companies have recognized the
8 importance of safety programs.

9 This regulation is not going to
10 promote any additional safety, and it's possible,
11 like you've heard before, it may hinder safety,
12 because if a competent person has to sign his or
13 her name, they may not report as many items,
14 whereas right now that is the case that they're
15 willing to do that.

16 But if they have the fear of a 110
17 penalty against them, they not be willing to do
18 that so much. And I currently have an individual
19 at my mine site who's not a management person who
20 has a 110 issued against him, and he's not even a
21 management person.

22 And that's truly unfortunate. But

1 even if it was a management person -- and I've
2 got a couple of those, too -- it makes people
3 scared; it really does make people scared.

4 And the fact that the regulation right
5 now -- 18002 suffices to do what the industry --
6 what MSHA and the industry combined need to do to
7 promote adequate workplace examinations and
8 safety.

9 That's all I have.

10 MS. McCONNELL: Thank you for your
11 testimony.

12 I'm going to turn to Al. Al, do you
13 have anything?

14 MR. DUCHARME: Nothing.

15 MS. McCONNELL: Sam?

16 MR. PIERCE: Nothing.

17 MS. McCONNELL: Thank you, sir.

18 MR. WIRTH: Thank you.

19 MS. McCONNELL: Our next speaker is
20 Roger Treece, Drummond.

21 Good morning.

22 MR. TREECE: Good morning, Panel. My

1 name is Roger Treece, T-R-E-E-C-E; I'm Drummond's
2 employee.

3 I've been a fire boss, a mine examiner
4 for the last 12 years. A lot of this here is not
5 new to me, but what I've seen and heard is a lot
6 of miscommunication with the workers and the
7 company.

8 A lot of it's got to do with attitude,
9 but on my trips, on my examinations that I've
10 conducted as a fire boss and mine examiner, two
11 hours, sometimes okay; three hours, sometimes
12 okay.

13 If I run upon hazards, I may have to
14 call on help through communication through
15 managers. I get the help. Sometimes I may have
16 to get help preshifting the mines.

17 And as our books have, we have a on-
18 shift examination, which the three hours prior to
19 the next shift coming on, we can examine the
20 mines anytime during shift, but it is noted, put
21 in the book, signed. A competent person follows
22 up. If it is not completed, it's continued to

1 the next shift, which is completed, dated by a
2 certified person.

3 But I think three hours or maybe
4 more -- but three hours is more than enough from
5 a competent person.

6 MS. McCONNELL: To conduct the
7 examination.

8 MR. TREECE: Right, because in adverse
9 conditions, mines or on surface, no telling
10 what's happening that you may get help or may
11 not. It may take longer than three hours. Some
12 of my examinations takes a hour and 45 minutes;
13 sometimes it takes longer than that.
14 I'm on the next shift still doing my hazard,
15 taking care of where it's safe for everybody
16 else.

17 MS. McCONNELL: Any thoughts on if the
18 examination was conducted as work was beginning
19 in the area?

20 MR. TREECE: We have a policy with the
21 company, management, and our people, we have
22 safety meetings prior the oncoming shift as we

1 enter the mines from the pre-existing shift: the
2 hazards they wrote up, what they have corrected,
3 what we're to look forward to, what we're to
4 continue on to make it safe.

5 MS. McCONNELL: Okay.

6 MR. TREECE: This is every shift.
7 Then when we get to the section foreman, he also
8 checks out to make sure it's safe for everyone as
9 to the travelways. We're on shift constantly
10 watching, taking care of hazards.

11 MS. McCONNELL: What kind of commodity
12 is the mine that you work at?

13 MR. TREECE: Coal mines underground.

14 MS. McCONNELL: Oh, you're talking
15 about coal mines underground.

16 MR. TREECE: Yes, ma'am.

17 MS. McCONNELL: Okay. So you know
18 that this is -- doesn't --

19 MR. TREECE: Yes.

20 MS. McCONNELL: Okay. So you're
21 speaking in behalf -- as a coal miner and the
22 benefit of --

1 MR. TREECE: Yes.

2 MS. McCONNELL: I understand now. I'm
3 with you now. Okay.

4 MR. TREECE: I'm sorry.

5 MS. McCONNELL: How long have you been
6 a coal miner?

7 MR. TREECE: Forty-one years, so I
8 seen a lot of incidents, a lot of hazards; took a
9 lot of training and talked to a lot of MSHA
10 people, other people, company people. I've seen
11 a lot with my own eyes.

12 MS. McCONNELL: Okay.

13 MR. TREECE: And time, attitudes,
14 things like that. That's probably about all I
15 have to say.

16 MS. McCONNELL: Well, I appreciate
17 your testimony and your support of the
18 metal/nonmetal miners.

19 MR. TREECE: Yes. Thank you.

20 MS. McCONNELL: Thank you.

21 We have three speakers from the UMWA,
22 and I'm going to call them as they came signed.

1 Daniel Hundley.

2 MR. HUNDLEY: Good morning.

3 MS. McCONNELL: Good morning.

4 MR. HUNDLEY: Yes, ma'am. My name's
5 Daniel Hundley; that's H-U-N-D-L-E-Y.

6 I just have a brief statement
7 concerning the examiners. It would be -- I feel
8 to guarantee you the most efficient and adequate
9 inspection that would give the employees the
10 safest workplace to work is to require a person
11 to do the inspection to have a state mine foreman
12 certification.

13 Inspection -- an inspector would have
14 at least four years' experience on the job and
15 training and experience in recognizing hazards
16 that has passed the state certification test
17 showing that ability.

18 If there are states that don't have
19 state certifications, MSHA could put in
20 regulations an MSHA certification test that would
21 require the same abilities.
22 The regulations also would require at least eight

1 hours' retraining each year on identifying
2 workplace hazards.

3 And I was an inspector myself. I know
4 that training is important. Not just anybody can
5 in and do an examination for hazardous conditions
6 anywhere, really.

7 Like I said, just a brief statement.
8 If you have questions --

9 MS. McCONNELL: Does the UMWA
10 represent any workers in metal/nonmetal mines?

11 MR. HUNDLEY: Yes, ma'am. They have
12 a -- I'm not sure of the name of it, a clay mine
13 in south Alabama.

14 MS. McCONNELL: Okay. Do you have any
15 experience in how the workplace and being part of
16 as a miner representative -- how workplace
17 examinations are conducted at that clay mine?

18 MR. HUNDLEY: No, ma'am. I've never
19 visited.

20 MS. McCONNELL: All right. I don't
21 have any further questions?

22 Al?

1 (Pause.)

2 MS. McCONNELL: Al has brought up a
3 really good point. He's asking if you support
4 all the -- if you've had a chance to read the
5 proposed rule, do you support the provisions of
6 the proposed rule?

7 MR. HUNDLEY: Yes, ma'am, we do.

8 MS. McCONNELL: So you do support the
9 provisions of the proposed rule?

10 MR. HUNDLEY: I do, but a competent
11 person, I think we need to go farther than that
12 definition.

13 MS. McCONNELL: I gotcha.

14 MR. HUNDLEY: Because a competent
15 person could be somebody that can clock in and
16 find his place under the workplace by himself. I
17 know operators would use that type people.

18 If you have a certified person, then
19 he has at least completed some training and
20 passed the test and competency that the normal
21 person wouldn't have.

22 MS. McCONNELL: Okay. Thank you very

1 much.

2 Do you have anything, Sam?

3 MR. PIERCE: No.

4 MS. McCONNELL: Okay. Thank you.

5 MR. HUNDLEY: Thank you.

6 MS. McCONNELL: Darrell Dewberry,
7 UMWA.

8 Good morning, Mr. Dewberry.

9 MR. DEWBERRY: Good morning. My name
10 is Daryl, D-A-R-Y-L, Dewberry, D-E-W-B-E-R-R-Y.

11 I'm a 41-year experienced coal miner,
12 certified, competent miner with the State of
13 Alabama; been to the academy for training,
14 predominantly in coal; however, I'm also the
15 international vice president for United Mine
16 Workers; had the pleasure to serve on the
17 international executive board when Joe Main was
18 the director of health and safety for the Mine
19 Workers. He's doing an excellent right now, and
20 I commend and support these changes. I think
21 they're absolutely necessary.

22 If you'll look back, as stated, we've

1 had over 110 accidents since January of 2010; 252
2 citations.

3 Why is it important that we be
4 accountable for the findings, for the -- to
5 protect the most precious resource, and that's
6 the miner? My personal opinion is somebody who
7 makes these examinations should record it. They
8 should be accountable for their findings.

9 If not, they will haphazardly just
10 say, I'm not going to put that in the book. And
11 if there's repetitious violations or situations
12 which may cause injury or death, you've got a
13 tangible record that you can go back to. I think
14 that's only reasonable.

15 I've heard a lot of testimony today
16 about Section 110 charges. You know, 110 charges
17 are for people -- of course, MSHA has the burden
18 of proof. The '77 Act or the Mine Act was there
19 to protect the coal miners as a result of
20 incompetence of negligence on behalf of the
21 operators back then.

22 My personal opinion, we can't allow

1 the operators to guard the henhouse like the fox,
2 I guess. If they -- if things were, I guess,
3 aboveboard and proper, I don't have any problem;
4 I fill out reports every two weeks. Labor
5 Department looks at them. I know I better put
6 what's on those reports or I could be held
7 accountable for it.

8 I've had the pleasure to work hardrock
9 mining. I represent and have inspected the metal
10 and nonmetal American Colloid coal mine in -- or
11 clay mine in Letohatchee, Alabama.

12 As a result, I also arbitrate the
13 cases, been international officer for 32 years.
14 As a result of not promptly going down and
15 preshifting, is what we call it, or inspecting an
16 area so that an oncoming operator was brought
17 down, dropped out of the truck, went down and got
18 on the dozer, and it should have been roped off.
19 There wasn't any berms; he was removing some
20 overburden.

21 As a result, he got into some soft
22 spot, and when he tried to pull out, the dozer

1 pitched up over to the right. Well, he got out
2 and jumped off to get some other equipment to try
3 to pull hisself out, and he was probably maybe
4 two and a half miles from the area as a result of
5 the investigation.

6 When he got back, that dozer was on
7 its top with the track sticking straight up.
8 They fired him for that. I arbitrated it, we
9 won. We prevailed.

10 As a result, you know, I think that
11 everybody -- if you're going to have a business,
12 if you're going to have people's lives within
13 your grasp and hands to protect them, that you
14 should make -- and I hear so much about a paper
15 trail and it's going to have to hire six or seven
16 people.

17 What we do is we call out the on-shift
18 supervisor at least three hours -- and this is in
19 coal -- calls out and says, I've made the
20 preshift examination for the oncoming shift.
21 Here are the hazards I've found.

22 When he comes out, he puts those

1 hazards in the fire boss books, is what we call
2 them, the examination books; those books are kept
3 for a year. He puts in there the corrective
4 action taken. He puts in there the --
5 certifies -- it's a sworn documentation -- that
6 all the above is true and factual.

7 Now, I'm not going to put anything in
8 a book, and I am a certified competent mine
9 foreman since 1981. And, you know, I can't
10 understand why somebody wants to avoid something
11 that they're already doing. The majority of the
12 testimony that I've heard today, people's already
13 doing it. They just don't want to be accountable
14 for it and selectively be able to take out -- or
15 not apply whatever they -- they don't want to
16 keep it for a year. They don't want a paper
17 trail in the event that if we got -- ignored
18 repetitious accidents or something of that nature
19 where somebody is -- there is a fatality. And
20 Lord knows we've had plenty.

21 And as a result of being international
22 officer, I was local union president at Jim

1 Walters 7. I sunk the shafts down 2350 foot down
2 as a hardrock miner before I went to Jim Walters.

3 And I've investigated every fatality
4 at Jim Walters 7 since 1981. I have investigated
5 every fatality in Alabama since 1985,
6 accompanying the State of Alabama Department of
7 Safety and Inspections, as well as the MSHA
8 inspectors.

9 We rise in support of this. I think
10 it's only prudent that we try to protect the most
11 precious resource. There's too many fatalities,
12 even in metal and nonmetal.

13 That concludes my statements, and I
14 will answer any questions.

15 MS. McCONNELL: Well, I thank you for
16 your testimony.

17 I turn to Sam. Do you have any
18 questions?

19 MR. PIERCE: No.

20 MS. McCONNELL: Al?

21 MR. DUCHARME: No.

22 MS. McCONNELL: I don't have any

1 questions, sir, but I do appreciate your coming
2 here in support of the metal/nonmetal miners with
3 your testimony.

4 MR. DEWBERRY: Thank you. Bye.

5 MS. McCONNELL: Thank you.

6 James Blankenship. Good morning, Mr.
7 Blankenship.

8 MR. BLANKENSHIP: Good morning. How
9 are y'all doing?

10 MS. McCONNELL: We're doing well. How
11 about yourself?

12 MR. BLANKENSHIP: Pretty good. James
13 Blankenship, B-L-A-N-K-E-N-S-H-I-P, United Mine
14 Workers international safety representative,
15 District 20 representative, 42 years' mine
16 experience; certified mine foreman, certified
17 shop foreman, certified electrician, first-class
18 diesel mechanic.

19 I've done a lot of examinations in my
20 42 years. Thank y'all for coming to Birmingham,
21 by the way.

22 MS. McCONNELL: I like having a

1 hearing in Birmingham. I'm just going to say
2 that for the record. I haven't done a whole lot
3 in my career here for MSHA, but I have to say
4 it's one of my favorite places to come.

5 MR. BLANKENSHIP: It's a good place.

6 MS. McCONNELL: It is a good place.

7 MR. BLANKENSHIP: I want to make a few
8 comments before I get started. First, I can't
9 speak for any district but District 11
10 inspectors. I've walked with every one of them
11 through my career. They are professionals. They
12 represent MSHA to the top. They do talk safety
13 here in Alabama. They'll talk to the miners
14 about stuff they're doing wrong, stuff they need
15 to be doing. And I would hope that every
16 district does that. If they don't, they need to
17 be talked to, because that really helps.

18 I did want to say that for District
19 11, because like I said, I've walked with every
20 one of them, and they do a great job.

21 I want to address a couple of things.
22 Some of the speakers earlier said that they were

1 afraid the miners would be taken out of the
2 process. I couldn't find anywhere in the regs
3 where it said the miners were taken out of the
4 process.

5 I think it could bring them in more,
6 because there'll be more communication with them.
7 As a fire boss or certified mine foreman, when
8 I'd examine a place and I'd find a hazard I
9 couldn't correct myself, I'd get on the radio and
10 call out to the mine office and tell them what I
11 had, that I'd dangered it off and what they need
12 to do to correct it.

13 And they would communicate to the next
14 shift coming in what they needed and where it was
15 at and what the condition was so they didn't walk
16 into it blindly. And they'd bring whatever they
17 had to have to do it. It kept everybody
18 involved.

19 I'm a firm believer in training
20 everybody, but I also believe that the competent
21 person needs to have a little more training. He
22 needs to have a little more than just a normal

1 miner, and that's why he should be at least a
2 certified individual.

3 And I've heard speakers today talk
4 about the two hours, having to stop production.
5 I must be reading it wrong. In the mining
6 industry it's three hours before the end of the
7 shift.

8 We do our exam and call out our -- if
9 we had a hazard, we'd call it out that we fixed
10 it or we couldn't fix it, and the next shift come
11 in at the start of the shift. They didn't have
12 to miss any work. No work stopped.

13 We'd use the radios or the mine
14 phones. And I'm sure all these operations have
15 radios; they don't have to go back to the office
16 and tell somebody. They can get on the radio and
17 radio that I've got this problem; I can't correct
18 it. I got this hazard; I've dangered it off,
19 I've barricaded it.

20 The next shift coming in can be told,
21 James Blankenship found this. Here's what he
22 done. Here's what you got to have to correct it.

1 They shouldn't have to miss work or stop work to
2 do that. Maybe I'm missing something, but I
3 don't read that in the regulations, in the
4 proposed rule.

5 In preparation for today, I went back
6 to the MSHA website and read some of the comments
7 that was sent in earlier, trying to get an idea
8 of what was going on in the metal/nonmetal world,
9 because like Mr. Dewberry said, we only have --
10 represent one mine, the Clay mines in
11 Letohatchee.

12 And I read some comments, and I
13 understood where they all come from, except one
14 individual. And I could not -- I went away, and
15 I kept going back to it. I just couldn't get it
16 out of my mind.

17 He sent it anonymously; didn't have
18 the courage to put his name on it. But he
19 compared mining to -- mining fatalities to
20 California realtor fatalities, said there was
21 more fatalities in California realtors than there
22 was in metal/nonmetal in 2014.

1 Well, I just happened to look up about
2 the California realtors, and four of them were
3 murders, three of them were slips, falls, and
4 trips, which he also didn't say that the
5 California realtors also tried to put in some
6 guidelines to stop this, which is what we're
7 doing here today, trying to put in some
8 guidelines to stop fatalities.

9 He didn't tell you that part. And he
10 also said that 200 people a year get killed by
11 deer. He also didn't tell you you saw a sign
12 that says Deer Crossing; did you slow down or did
13 you just keep running 80 mile an hour?

14 I don't know where his mind was. I
15 know he didn't have the guts to put his name on
16 it, but he didn't compare apples to apples. And
17 I just couldn't let that go without making a
18 comment.

19 It just kept eating at me that he
20 wanted to compare realtors and stuff to mining
21 industry and the mining industry is not as
22 dangerous as that, because it is a dangerous

1 occupation. It's a lot better than it used to
2 be, but it's still dangerous.

3 And one other gentleman made a
4 comment, Mr. Terry Jones, and it said that his
5 organization knows the limitation of the current
6 standard, and although the bar is set low, it is
7 not interested in exceeding or setting
8 expectations above the minimum standard.

9 That is to say meeting the standard is
10 acceptable and doing more is not welcome if it
11 means more head count or more money spent.
12 That's what we got. The bar is low with the regs
13 in place now, and that's where we're at.

14 If we don't set the bar high, we're
15 still going to get what we've always got. If you
16 eat the same thing, you're on a diet, you going
17 to weigh the same thing. You got to change
18 something to get different results.

19 There's 10 fatalities this year in
20 metal/nonmetal. I set down and went through and
21 looked at them, each one of them, to try to
22 figure out what happened.

1 Fatality number one: It happened in
2 Texas. Gentleman was unloading pipe; pipe rolled
3 off and killed him. I got to looking at it, and
4 I thought, you know, what could happen?

5 So I pulled up MSHA's fatalgram.
6 First thing is inspection: Identify the hazards.
7 Could an examination save that gentleman's life?
8 I think so. Is one life worth saving? Yes, it
9 is. Yes, it is, completely.

10 Fatality number two: It happened in
11 Utah. A truck driver dumping over the hill.
12 Found out the berm wasn't high enough. If they'd
13 have done a preshift examination, that examiner
14 could have saw that berm wasn't high enough and
15 done one of two things -- one of several things,
16 actually.

17 Could have got the berm fixed, made it
18 high enough where the truck couldn't have backed
19 over it. Could have told the driver, you know,
20 don't back up there. Stop. Said, this is far as
21 you back up. You stop and dump right here.
22 Don't go no further. Saved that man's life. I

1 mean, again, it's a life. Can't never get it
2 back.

3 Fatalgram number four happened in
4 Arizona. Electrical. Looking at it, reading it,
5 a preshift examination could have told that
6 gentleman going there to work, we recognize
7 there's some electrical hazards in there. Here's
8 what they are. Watch what you're doing.

9 Don't -- and I've been an electrician almost 40
10 years. I was thankful somebody would tell me
11 when I was going into a place to work: I looked
12 at this; there's some stuff you might want to
13 watch out for, because electricity doesn't care
14 who you are or what; it will get you.

15 I think that man's life could have
16 been saved with a preshift examination. Somebody
17 could have warned him what to look for, made him
18 aware that there's problems; you know, keep an
19 eye out for it.

20 He might have been doing -- he might
21 have done that job 15, 20 times his career; he
22 takes it for granted. It's repetition to him; he

1 goes in there and just does it. He don't see the
2 hazards; another pair of eyes could see the
3 hazard and bring it back to his attention, make
4 him aware of what's going on around him again,
5 because we're human. We do the same thing over
6 and over, just kind of gets spelled to us; we
7 don't really look at what's around us sometimes.

8 Fatalgram number six happened in
9 Texas. There was a three-by-four-foot opening in
10 a grate a gentleman fell through. With a
11 preshift examination, that could have definitely
12 been prevented. That could have been danger'd
13 off, could have been covered up, could have put
14 danger tape around -- anything to let him know
15 that that was there instead of him walking off in
16 that hole.

17 And you wanted documentation, you
18 wanted facts of how this regulation can help.
19 You're looking at them. I think eight of these
20 ten fatalities that just a layman like myself
21 could look through and see that those lives could
22 have been saved.

1 Seven and eight, Mississippi, two
2 fatalities. A gentleman was working, one of them
3 with nine months' experience, one with 56. They
4 were working next to a road and a settling pond.
5 The water built up. They got a little bit too
6 close, and the berm broke and the water rushed in
7 on them.

8 Somebody else could have looked at
9 that and maybe saw something they didn't see and
10 could have stopped them from getting closer to
11 that; said, Don't get -- this is as far as you go.
12 It's not very thick there; don't get -- don't
13 take no more of it down. A second pair of eyes
14 always helps.

15 Number nine happened in Arizona. He
16 was dumping, and he didn't maintain the distance
17 and backed the truck off the high wall and got
18 killed.

19 Was the berm right? Was the berm big
20 enough? We don't know. But if there'd been an
21 examination, we'd have known; they could have
22 found out what was wrong and made sure that he

1 didn't get close enough to back off, made sure
2 that everything was right where he could have
3 backed that truck up there safely and dumped,
4 with an examination.

5 And number 10 didn't have a fatalgram
6 out yet, but when you read it, it says victim had
7 been loading material into a truck he was
8 operating at the pit and was struck by falling
9 rock.

10 If somebody had done a preshift
11 examination, they might could have seen loose
12 material above him and could have said, Hey, we
13 got loose material; we got to get it down before
14 you go in there and start going. All that goes
15 to the regulations.

16 Like I said, I've worked in coal; only
17 metal/nonmetal I've been around is the clay mines
18 in Letohatchee.

19 MS. McCONNELL: Have you ever served
20 as a miner's representative for anyone at that
21 mine?

22 MR. BLANKENSHIP: No. My partner in

1 the office is their representative. Yeah. He
2 had a doctor's appointment. I wanted him to come
3 today to speak on that, but he had a doctor's
4 appointment he couldn't get out of, and I told
5 him that was fine.

6 But, you know, we're all miners, and
7 lives matter. Anything we can do to save a life,
8 we need to do it. The paperwork is not going to
9 be what they think it's going to be when they do
10 this.

11 At the mines we have one book that
12 when I call out, I say, I found a hazard; I've
13 corrected it. Here's what I did. They'd write
14 it in the book. At the end of my shift I'd go by
15 and sign it, I'd take my shower and go home.
16 That's it.

17 Or if it's something I couldn't
18 correct, I'd call out and say, I couldn't correct
19 this; here's what it is. I've got it danger'd
20 off. Here's what you're going to have to have to
21 fix it.

22 They'd catch the next shift coming in,

1 they'd tell them what I had, what I found.

2 They're not walking into something blind.

3 Everybody's told to do a workplace
4 check anyway when they get there, even though
5 it's been preshift. Everybody's been taught,
6 although it's been preshift, although it's been
7 examed, you still look at your work area, you
8 still check your work area out.

9 But they don't walk into a place
10 that's hazard. They know there's a hazard there
11 to start with already. They know that's there;
12 they can look for it, and then they look for
13 anything else. They're not walking into a hazard
14 unaware.

15 This book right here, we know how this
16 book started. Every word on every page, somebody
17 lost their life or somebody lost blood or bones
18 because of it. There's nothing in there that is
19 because an individual sat at the table someday
20 and says, Oh, I want to put a law in there. I
21 want to do this.

22 Something happened to a human being,

1 and it gets in here so it doesn't happen to
2 another human being. There's -- I know at least
3 eight human beings that lost their life that I
4 think could have been prevented with a little bit
5 more examinations.

6 And I will answer any questions you
7 have, and I appreciate you taking the time to
8 listen to me today.

9 MS. McCONNELL: Well, thank you very
10 much for coming and testifying and testifying in
11 support of the miners you represent as well as
12 other metal/nonmetal miners.

13 I turn to Sam. Do you have any
14 questions?

15 MR. PIERCE: No.

16 MS. McCONNELL: Al, do you have
17 anything?

18 MR. DUCHARME: I don't.

19 MS. McCONNELL: Thank you, Mr.
20 Blankenship, for your testimony.

21 MR. BLANKENSHIP: Thank you.

22 MS. McCONNELL: Mr. Blankenship was

1 our last speaker, but that does not preclude
2 anyone else who has been listening to testimony
3 and would like to add something for the record
4 while we're here and the microphones are running.

5 Come on down.

6 Please state your name for the court
7 reporter.

8 MR. ENGLAND: Jason England, with the
9 Doe Run Company.

10 MS. McCONNELL: Mr. England, weren't
11 you already signed up?

12 MR. ENGLAND: I was, and --

13 MS. McCONNELL: You changed your mind.

14 MR. ENGLAND: Changed my mind.

15 MS. McCONNELL: There you go.

16 MR. ENGLAND: I just wanted to clarify
17 something on the time frame. You know, we just
18 heard the UMW talk about the time frame
19 situation. They don't understand how that would
20 cost time.

21 The issue that we've got -- and I'm
22 not an expert on coal by any means, not been in a

1 coal mine, so I don't claim to have any knowledge
2 of how it works, but as far as metal/nonmetal
3 goes and our situation with room-and-pillar
4 mining, if you do an examination three hours
5 prior to the end of the shift, we use high-
6 explosive room-and-pillar mining. You cannot do
7 an inspection three hours prior to the end of
8 shift, then blast and expect the conditions to
9 not be considerably different than what they
10 were.

11 So it's not an apples-to-apples
12 comparison. You know, in our industry that work
13 area inspection should absolutely be done prior
14 to the beginning of work starting in whatever
15 heading they're going to. And that's what we do;
16 that's what our company policy is. So I just
17 wanted to clarify that.

18 The only other thing that I've heard
19 that I've kind of got issue with -- and it just
20 may be me, but, you know, we've heard from a lot
21 of people, a lot of companies that have some
22 really good safety programs, it sounds like,

1 doing a lot of good things.

2 The last three speakers that we've
3 heard have made a lot of good points as well.
4 What frustrates me is at the end of each one of
5 their talks, you guys expressed your appreciation
6 for what they're doing supporting the
7 metal/nonmetal workers.

8 Not one time have I heard that come
9 any time somebody from our industry has talked.
10 You know, there's not a person in this room that
11 doesn't want people to go to work and come home
12 safe. Everybody in here is in this business
13 because that is what is a priority at our
14 facilities.

15 And I think we should get the same
16 recognition that the last three speakers have
17 gotten.

18 MS. McCONNELL: Okay.

19 MR. ENGLAND: Anyway.

20 MS. McCONNELL: Well, I thank you for
21 your testimony, and I was the one that was
22 actually thanking them for supporting their

1 metal/nonmetal workers, and I did that because
2 they were coming from a different industry and
3 coming to testify.

4 That was not to say that I was
5 insinuating that any of the mine operators that
6 come here today were not also doing the same for
7 the workers that they represent in terms of their
8 operations.

9 Your presence here today talks about
10 the seriousness that you take not only this
11 proposed rule but the relationship between MSHA
12 and the operators, and let the record show.

13 MR. ENGLAND: Thank you.

14 MS. McCONNELL: Sam, do you have
15 anything?

16 MR. PIERCE: No.

17 MS. McCONNELL: Al, do you have
18 anything?

19 MR. DUCHARME: No.

20 MS. McCONNELL: Thank you, Mr.
21 England.

22 We had one other speaker.

1 MR. REDETZKE: Good morning.

2 MS. McCONNELL: Good morning. Please
3 state your name for the record.

4 MR. REDETZKE: My name is Daniel
5 Redetzke. I work for the Independent Salt
6 Company. We're an underground room-and-pillar
7 mine, and I don't see a lot of mines really here;
8 it looks like there's more attorneys than
9 anybody, but anyway. They represent a lot of
10 different people; we represent our own single
11 company. We're a privately owned small mine.

12 The new rule -- I guess the biggest
13 problem I have with it is that conditions
14 continually change, so if you do a preshift
15 examination like they're talking about, basically
16 it's similar to what coal is, and I worked four
17 years in coal as well, so I know a little bit
18 about it, not a lot.

19 But conditions continually change
20 underground. As they're cleaning out a room with
21 a loader, conditions are changing in that room.
22 They could hit something, knock something loose.

1 So that preshift examination, I think
2 it goes back to the accountability issue that I
3 think everybody in this room is concerned about.
4 If something changes after that exam is done and,
5 God forbid, a fatality occurs, who's to say that
6 that person wasn't competent and when they
7 inspected that at that time it was safe and later
8 on in the shift it became unsafe. That happens.

9 And I know of one particular instance
10 where that actually happened and there was a
11 fatality. Conditions were inspected, they were
12 safe. Conditions changed during the shift,
13 became unsafe, and a man lost his life. And
14 that's unfortunate.

15 So I think it -- I think the old rule
16 is actually -- would have done a better job in
17 covering that, because it's a continuous process;
18 it's not just you go in and inspect before the
19 shift and then leave.

20 The other issue I had kind of goes
21 along with what he was talking about with regard
22 to blasting, because we also blast. In the

1 wintertime, if we're busy -- that's usually our
2 busy time -- sometimes we'll run two ten-hour
3 shifts.

4 Well, it's virtually impossible to get
5 someone underground without a miner rescue
6 apparatus on to do the inspection because the
7 gases would be too -- the levels would be too
8 high; they'd be unsafe.

9 So it would affect our -- with regard
10 to time, it would affect our operation in those
11 cases, and that happens for several months
12 throughout the year quite often, depending on the
13 year and the weather, of course, and how busy we
14 are.

15 I wanted to address some of the things
16 that were brought up earlier by some individuals
17 about some of the fatalities and how they could
18 be prevented.

19 None of us in this room want anybody
20 to lose their life ever. That's -- everybody --
21 I agree everybody's goal here is to send
22 everybody home at the end of the day; that's my

1 number-one value, I guess. It's not really a
2 priority, because priorities change. I'll call
3 it a value.

4 To sit here and read a fatalgram and
5 assume that a preshift inspection would have
6 saved that man's life, I think that's a little
7 bit over the top; I don't agree with that.

8 There are so many factors -- as I
9 said, conditions continually change. A rainstorm
10 could have come through during the shift and
11 filled that ditch that we talked about earlier
12 with water. It said it was invisible. Well, how
13 do you inspect -- how do you report it if you
14 can't see it?

15 When we're talking about our mine
16 underground, there's millions of square feet of
17 ground exposed that these miners travel through
18 and work in every day. So to rely on a human,
19 who could make an error, to inspect that whole
20 area and sign off on that I think is also a
21 bit -- expecting a bit much.

22 Every miner -- we train every miner to

1 inspect continually; keep your eyes open. Keep
2 looking at the roof, every time you go into a
3 room with the loader, every time you come out,
4 every time you go back in. You look at it every
5 single time; you look at it. And that's the way
6 we train our people.

7 And hopefully everybody's doing that.
8 So to put that burden on one individual who's
9 signing that paper I think is unjust, I guess
10 would be a good word for it.

11 The other thing I want to say about
12 records -- and this will be my final statement --
13 I once sent a mine map to the Denver office in
14 AutoCAD format. That was a huge mistake. That
15 map has been passed on -- and AutoCAD has been
16 around for, I don't know, 30 years or something
17 like that -- and a previous mine engineer had
18 made a layer on that map. AutoCAD has different
19 layers; I don't know if you're familiar with how
20 it works, but there's layers that you can turn
21 off and on in the view.

22 Well, there were some layers that were

1 turned off, and at the Denver office they turned
2 on a layer that was -- the guy labeled it "roof
3 fall." And I had emailed this map -- years and
4 years later -- this was probably 10 or 15 years
5 prior to my arrival.

6 I had mailed this to Denver, and they
7 turned this layer on, and they said there were
8 50-some areas that showed that they were roof
9 falls. They weren't roof falls, it was areas --
10 the guy just mislabeled. He called it roof
11 falls; that was his term for it.

12 I had an inspector call me, and he
13 wanted to come out and write me 50-some citations
14 for these unreported roof falls. First of all,
15 they didn't affect travel, they didn't affect
16 ventilation, so they weren't reportable anyway.

17 But he actually was considering
18 writing 50 citations, and I said, Now, wait a
19 minute. You guys are taking something that came
20 from somebody before me and trying to come back
21 on it.

22 So with regard to the liability as far

1 as the records go, I think they're right, I think
2 you're correct, this law is going to hinder that
3 process, because I would -- no one would have
4 ever put that layer on the map to record that.

5 What they were looking for was a
6 pattern in roof conditions to see if there was an
7 overall pattern with -- related to topography or
8 geology or whatever, and so that was, I felt
9 like, an attempt to use that against us.

10 So, you know, I guess I don't like the
11 recording fact from a liability standpoint and,
12 as these guys were talking about, the 110(c)
13 liabilities, I guess.

14 So that's all I have. You guys have
15 any questions?

16 MS. McCONNELL: Just a couple -- well,
17 Sam, do you have anything?

18 MR. PIERCE: Yeah.

19 MS. McCONNELL: Go ahead.

20 MR. PIERCE: One thing I wanted to get
21 you to help me understand. Maybe I'm
22 misunderstanding. I've heard a lot of people

1 here today talk about this rule is going to take
2 away -- or maybe I misunderstood, but it seems
3 like everybody's thinking that once we do a
4 workplace exam, then nobody has to look for
5 hazards for the rest of the shift.

6 And that's not what this rule says.
7 This rule -- the only change is actually from the
8 time you do the exam. Now, all that exam is
9 doing is that somebody's assuring that the
10 conditions found have been either corrected or
11 identified so that we can limit the exposure to
12 our miners before you start the work.

13 That don't exclude you from continuing
14 as the shift goes on, because you're right,
15 everybody's 100 percent right. Mining conditions
16 change throughout the day; they change minute by
17 minute.

18 I came from a mining background,
19 metal, 30 years in metal before I came to work
20 with MSHA. I was around when the first MSHA
21 inspector came on site in 1977. I was in a metal
22 mine. So I've seen a lot of changes.

1 This exam rule is only going to
2 require a person to do it at the beginning of the
3 shift, before your workers actually go in to that
4 area. It's not going to change the way that your
5 miners -- that -- we all train them to look for
6 hazards throughout the day, in the event
7 conditions change. We all do that.

8 I think Mr. Bunner said that they
9 check it on their examiners. Why do they check
10 their examiners? They want to make sure that
11 they are finding hazards and correcting them.
12 That's the way you identify the competent person,
13 and we make sure that that person is competent.

14 You know, somebody made the comment
15 that we don't know what's going on in a person's
16 life. We don't know what's going on. That's
17 absolutely right. That person could be the most
18 competent person that you got on your site, but
19 he could have a lot of things going on in his
20 life that he overlooks things.

21 So that's why we have checks and
22 balances in things, because people make mistakes,

1 people overlook things. This rule is not going
2 to change that. This rule is going to change the
3 time that you go in and make an exam before you
4 allow your people to go to work. That's all it's
5 changing.

6 Under the current rule, you can do
7 that anytime during the day, and you can wait
8 till 15 minutes before the shift's over and do
9 that exam. Did that eliminate the hazards that
10 people were exposed to during that shift? No, it
11 didn't.

12 That's what this rule is for, is to
13 make sure before we go to work we do eliminate as
14 many as possible or either limit the exposure to
15 them. That's all this rule is changing.

16 It's not changing what our duties are
17 throughout the day, so maybe I'm misunderstanding
18 what I'm hearing.

19 MS. McCONNELL: No. I've heard the
20 same thing, and you've clarified -- you spoke my
21 thoughts and concerns about misunderstanding of
22 terms and --

1 MR. PIERCE: Yeah, we want your
2 comments, and we do appreciate everybody's
3 comments, but we want to make sure everybody
4 understands what the rule is, too.

5 MS. McCONNELL: No, that's correct.

6 So I guess -- and following up with
7 Sam to our speaker -- and that's one of the
8 reasons I've been asking the types of questions
9 I've been asking, is trying to get a sense of
10 this particular concern, is how does it compare
11 to what you're doing now.

12 And I guess following Sam's
13 clarification, in your current -- in your
14 operation in your current capacity, how is it
15 that you conduct the working place examinations
16 under the existing standard?

17 MR. REDETZKE: Well, typically the
18 foreman goes in ahead of the guys; like, for
19 example, at our mine he'll go in and check the
20 rooms to make sure that there's no obvious safety
21 hazards.

22 Obviously there's things that he can't

1 see that are hidden underneath the pile. There's
2 areas that he can't physically get to because the
3 pile is too deep or whatever to actually examine.

4 So it has to happen -- the process has
5 to happen concurrently with what's going on, so I
6 mean, I think what the rule is asking is going to
7 be, in some cases, actually impossible to do,
8 because you cannot physically get to a certain
9 area to see it because there's too much NO2 in
10 the air; he can't physically go in there and
11 inspect that area yet.

12 MS. McCONNELL: But would there be
13 work -- if you can't inspect, would there be work
14 being conducted?

15 MR. REDETZKE: He can inspect the area
16 physically, I guess, exactly where they're
17 working, but he's going to have to keep an eye on
18 that throughout the day.

19 As they clean a room out, that pile of
20 material might be 30 feet wide where he can't
21 physically travel into -- beyond that to see
22 what's in there. So there may be -- I mean, I'm

1 just saying this would be an unlikely situation,
2 but --

3 MR. PIERCE: If he can't because of
4 NO2, you don't want the miners to either. Right?

5 MR. REDETZKE: You're right.

6 MR. PIERCE: Yeah.

7 MR. REDETZKE: But there's certain
8 instances like --

9 MS. McCONNELL: So that wouldn't be
10 the definition -- that wouldn't fall within the
11 definition of a working place.

12 MR. REDETZKE: Right.

13 MS. McCONNELL: Because work will not
14 be conducted in that area, so an examination
15 would not need to be done.

16 MR. REDETZKE: I guess that's what I'm
17 referring to when I spoke about the changing
18 conditions, because as they go in and clean out a
19 room, you know, they may go in and scrape a piece
20 of rib that wasn't loose before, but now they've
21 hit it with a loader and they've knocked it
22 loose, where, you know, had they not done that,

1 that would --

2 MR. PIERCE: That would fall in
3 changing conditions throughout the day.

4 MR. REDETZKE: So how is the liability
5 going to fall onto that individual who inspects
6 that area as they're loading?

7 MR. PIERCE: Well --

8 MR. REDETZKE: Because the loader
9 operator is really the guy -- he's competent.

10 MR. PIERCE: Sure.

11 MR. REDETZKE: He's the guy that's
12 going to be inspecting it, but he's not going to
13 record that. It's going to be recorded by the
14 shift foreman.

15 MR. PIERCE: That's -- you're going
16 way beyond what this says. This rule is for to
17 inspect the work areas at the beginning of the
18 shift, and somebody's going to inspect it and
19 sign it and sign it, say, I inspected this area,
20 and either I didn't observe any hazards or I
21 observed hazards, and here's what they are, and
22 here's what we're doing to get them corrected or

1 eliminated.

2 Once the shift starts and conditions
3 change, this rule -- that don't come into play,
4 or that person don't into play anymore.

5 MR. REDETZKE: I think that's our
6 concern, is that the inspector is not going to
7 know that, so if I have an inspector show up that
8 day and this guy signed off and said he's
9 inspected this area, and the loaders come in and
10 they hit something and knock it loose and he's
11 already been through and done his inspection and
12 he signs that paper, now I got an inspector
13 standing here looking it saying, Hey, there's a
14 piece of rib right there that's loose; that's a
15 citation.

16 I mean, this rule is going to take
17 that liability back to that person, the way I see
18 it. I mean, maybe I'm misunderstanding again,
19 but --

20 MR. PIERCE: Well, there's always that
21 possibility, because just remember, we have -- I
22 know in the Southeast we have 58 inspectors.

1 Now, we train them, we teach them, we discuss
2 things, but they still have 58 individual
3 interpretations of how things are.

4 So I can't 100 percent say that's not
5 going to happen.

6 MR. REDETZKE: Consistency was also
7 mentioned today. That is a big issue.

8 MR. PIERCE: It is a big issue, but at
9 the same -- that's in life. We have several
10 attorneys in here. There's good attorneys,
11 there's bad attorneys, just like there's good
12 inspectors and bad inspectors. There's good
13 operators, there's bad operators.

14 So we can't just say everybody's good
15 or everybody's bad. Life is -- yes, that
16 possibility could happen, but, again, that line
17 of communication has to be open so that he can go
18 back to that person that did that exam and say,
19 Hey, did you see that when you -- and he said,
20 No, that hadn't been uncovered when I come
21 through this morning.

22 That communication's got to be there

1 in order for that not to happen. Does it always
2 happen? No, but that's got to work towards,
3 making sure we do communicate that.

4 The examiner is only going to sign off
5 on what he examined -- the work areas he
6 examined, and he observed either no conditions or
7 either he did find some conditions and he
8 notified this person and this is what happened.

9 Once work begins, as we've heard
10 several people say, mine conditions change. Then
11 this no longer is in play. This only says when
12 the shift started, when I examined it, I didn't
13 observe any conditions.

14 As the existing rule is, you don't
15 have to until the -- you can wait till the end of
16 the shift and do it. And then how did that
17 protect our miners throughout the day? That's
18 the biggest difference you have to understand and
19 realize what this rule is for.

20 Under the current rule you have till
21 to the end of the shift to actually do the exam.
22 And is that really being beneficial to protect

1 our miners?

2 Some people -- I would say in the
3 Southeast, in metal in the Southeast, I would
4 say 90 percent of our operators are already doing
5 exactly what we're talking about. They may not
6 be recording like this talks about, but they're
7 already making their exams before their people go
8 to work.

9 MR. REDETZKE: I guess I would just
10 say that if he's done it at the end of the shift,
11 hopefully that will protect the next shift? I
12 mean, that's the way it should work.

13 MR. PIERCE: Well, yeah.

14 MR. REDETZKE: I mean, as one
15 gentleman said, you know, can the previous shift
16 do it? I guess maybe that should be considered
17 as far as the rule, and that would be the end of
18 the shift for that operator, because a lot of
19 operations are 24 hours a day.

20 We can't do that because we have to
21 give it time to clear the blasting fumes.

22 MR. PIERCE: We have a lot of

1 operators also only works one shift.

2 MR. REDETZKE: Yeah, if it's a one-
3 shift operation, I understand. I can see it.

4 MR. PIERCE: It's not very beneficial
5 as far as eliminating hazards. And that's what
6 we're trying to do.

7 MR. REDETZKE: And that's where the
8 cookie-cutter thing came into play earlier that
9 the other gentleman talked about. It doesn't fit
10 all operations.

11 MR. PIERCE: Exactly.

12 MR. REDETZKE: Because a one-shift
13 operation, yeah, maybe it makes sense. Multi-
14 shift operations it might not be --

15 MR. PIERCE: Right.

16 MR. REDETZKE: -- the best.

17 MS. McCONNELL: Al, did you have
18 anything?

19 MR. DUCHARME: You guys have covered
20 it well.

21 MS. McCONNELL: Okay. Thank you. I
22 don't have any other questions.

1 MR. REDETZKE: Thank you for your
2 time.

3 MS. McCONNELL: Thank you very much.

4 MR. PIERCE: Thank you.

5 MS. McCONNELL: Is there anyone else
6 who would like to -- come on down.

7 Please state your name and
8 organization for the court reporter.

9 MR. McNAMARA: My name is Brian
10 McNamara. I'm the safety and health manager for
11 Bluegrass Materials. I also serve as the safety
12 committee chairman for the National Stone, Sand,
13 and Gravel Association.

14 MS. McCONNELL: You know, Mr.
15 McNamara, I would like to apologize. I actually
16 had you on my list, and I think I may have
17 skipped you as I was going -- did I not call your
18 name?

19 MR. McNAMARA: No, ma'am.

20 MS. McCONNELL: I apologize. I'm
21 just -- I lost my train -- I think it's because
22 people were coming and going and -- I apologize.

1 MR. McNAMARA: That's fine. You know,
2 we've plowed a lot of ground this morning. We've
3 talked about several different topics.

4 And I think in a couple of areas we've
5 actually approached the gate but not opened it.
6 I think the representatives that are here today
7 represent companies that care about miners. I
8 think that it's unspoken truth. At the end of
9 the day we want our guys to go home -- our guys
10 and gals to go home safe as they came in.

11 Sam, I appreciate your comment that
12 there are good operators, and we know that there
13 are bad operators. As well we know that there
14 are good inspectors and that in my career I've
15 seen a couple of renegades.

16 And so I'm going to ask the question
17 that nobody's asked out loud. As I followed this
18 through, I've noticed the progression of this
19 proposed rule. The original rule under 18002
20 required documentation includes areas inspected,
21 the date it was inspected, and the person that
22 made the inspection.

1 In the Program Policy Letter that was
2 issued in 2015, it held the original mandates and
3 added best practices. And those best practices
4 were that the competent person be a supervisor
5 and that the defects found would be listed and
6 made -- or given to the inspector.

7 And so now when we look at the
8 proposed rule, we see that the proposed rule now
9 mandates that the documents -- mandates the
10 documentation of the area inspected, the date
11 that it was inspected, and who conducted it, as
12 it did before, but now we're seeing that it adds
13 to the original rule the adverse condition found,
14 the location of the adverse condition, and the
15 corrective actions, and a signature of the person
16 that -- it has to be signed before the end of the
17 shift.

18 The proposed rule also includes record
19 retention of one year and that the records be
20 made available to the representative of the
21 miners and to the authorized representative.

22 We walked up to this a couple of

1 times, but nobody's come out and asked the
2 specific question, so I'll ask it now. If the
3 proposed rule is enacted as written, how would
4 the authorized representatives be told to treat
5 historical documentation on past hazards found
6 and presumably corrected or fixed?

7 MS. McCONNELL: Well, because we
8 haven't gone -- this is a proposed rule, though,
9 so there hasn't been any communication, to my
10 knowledge, to any of the field people in terms
11 of -- because you're not -- you can't enforce a
12 proposed rule; it is a proposed rule.

13 MR. McNAMARA: Right.

14 MR. PIERCE: Can I ask?

15 MS. McCONNELL: You may. Go ahead.

16 MR. PIERCE: The way -- I can only
17 speak for the Southeast, and it's like she said.
18 We haven't been given any guidance on that,
19 because it's only a proposed rule. But everybody
20 knows a 7001 on an accident has to be reported.
21 Right?

22 MR. McNAMARA: Uh-huh.

1 MR. PIERCE: The way we tell people --
2 and this is the guidance I got from Headquarters
3 in the Southeast. If we see a 7001 where there
4 was an accident and it shows an accident happened
5 because of a condition was there, then we don't
6 immediately send somebody out and write a
7 violation.

8 We get those 7001s in all the time,
9 but what we do is our inspectors get a copy of
10 that 7001, and upon their next inspection, they
11 look at -- so you had a accident here; here's
12 what happened.

13 Now, lot of times people have asked,
14 I don't want to report because you're going to
15 come out here and write me a citation. The only
16 time we're going to write a citation is when we
17 look and see what happened -- and on your 7001
18 you state, Here's what happened; here's the
19 condition. We're going to look and see if you
20 corrected that condition.

21 If that condition has been corrected,
22 good job. Thanks a lot for reporting, so you

1 took care of it. If that condition still exists,
2 then we are going to write violations.

3 And that's the way we would look at
4 this. I don't see any difference. We haven't
5 been given any guidance, but that's the way I
6 would look at it, is when I come in and you've
7 reported on this day you found this condition and
8 this condition, but here's what we did, then why
9 is that a violation?

10 The Mine Act says we have to observe
11 it. Right? So if we don't observe it and you've
12 already corrected it, where there's a
13 violation -- I mean, there's several attorneys in
14 here; they'd be jumping to take that to court and
15 win that. That would be a slam-dunk.

16 So what we would do is if you have a
17 condition that you wrote down, we're going to
18 look and see, number one, did you correct it? If
19 you didn't correct it, what did you do to limit
20 the exposure to the miners until it could be
21 corrected?

22 And that's how I would look at it,

1 from my district.

2 MR. McNAMARA: Okay. Thanks, Sam.

3 MS. McCONNELL: But they're not going
4 to -- I guess the question is this is not going
5 to be a resource that they go to first.

6 MR. PIERCE: No.

7 MR. McNAMARA: I think part of the
8 fear is the strict liability nature of the Mine
9 Act with the inspector; there's evidence, you're
10 guilty, as opposed to the OSHA safe harbor.

11 MS. McCONNELL: Right.

12 MR. PIERCE: I don't see it a problem
13 unless the condition is still allowed to exist
14 and still there, exposing miners to the hazard.
15 That's the only time I see it would be a problem.

16 MS. McCONNELL: I concur with Sam. I
17 don't have any other questions.

18 Al, did you have anything?

19 MR. DUCHARME: No.

20 MS. McCONNELL: And again, I want to
21 apologize, because you -- I actually remember
22 receiving your name in an email, and I made sure

1 your name was on the list, and then I come here
2 and I forget it, so I feel doubly guilty.

3 MR. McNAMARA: No worries.

4 MS. McCONNELL: So I'm glad you came
5 forward, because I would not -- it would not have
6 registered to me that you didn't speak.

7 MR. McNAMARA: Well, thank you very
8 much.

9 MS. McCONNELL: Okay. Thank you.

10 Anyone else?

11 MS. McCONNELL: I'm going to go
12 through this list one more time.

13 MR. PIERCE: Got one more.

14 MS. McCONNELL: Oh, we got one more.
15 Come on down.

16 MR. MIRANDA: I won't take long, I
17 promise.

18 MS. McCONNELL: No, that's okay. Just
19 state your name and your organization for the
20 court reporter.

21 MR. MIRANDA: My name's Ernie Miranda,
22 and I don't have an organization. I just left a

1 position as health and safety manager with a
2 mining organization, metal/nonmetal.

3 And I've been involved in health and
4 safety for over 20 years, and you are seeking the
5 comments on should an established time frame be
6 set up.

7 And my response to that would be, no,
8 I believe the current regulations addresses it
9 adequately, and the reason being is because if
10 you define, for example, two hours before a
11 shift, one of things that you made mention of is
12 that the definition of a competent person would
13 not change.

14 But if you, say, for example, make it
15 two hours before the shift commences, you could
16 force an operator to change the definition of the
17 competent person to being a salaried person,
18 because they would be under a salary, able to
19 come in earlier and conduct that examination and
20 not wanting an hourly person to have to stack on
21 overtime.

22 If a proposed or a prescribed time

1 frame is established, my concern is that with --
2 for example, if an operator does have to make
3 that change, you could have complacency on behalf
4 of the miners start to occur, because they have
5 now been notified and informed that, for example,
6 the shifter, the foreman, will conducting the
7 workplace examinations.

8 We've heard a lot of discussion about
9 this morning about fatalities and such. One of
10 the things that really hasn't been touched on is
11 the improvements in health and safety.

12 I'm third-generation miner, and I've
13 seen a lot of changes. One of the successes I
14 truly believe that has come out health and safety
15 is the fact that operators now are empowering the
16 workforce to have more say in health and safety.

17 And they are being given and being
18 held responsible to conduct stop-work activities.
19 If they see an unsafe condition, they are to
20 immediately stop what they're doing, notify their
21 supervisor so the situation can be addressed.

22 And my fear is that if we do in fact

1 enact a prescribed time frame and the workers now
2 see that this person is being responsible for
3 conducting the workplace examination, that they
4 may become lax and saying, well, if this has
5 already been done, I don't need to worry about
6 it.

7 As Mr. Blankenship commented, you
8 know, I will refer to the one incident he
9 responded to or talked to, and that was the
10 individual -- the electrician who was
11 electrocuted in Arizona. And I don't disagree
12 with him. If a proper workplace examination had
13 been conducted, it could have been prevented.

14 What if that person was relying on the
15 workplace examination prior to the shift and, as
16 we've all heard and discussed, conditions change.
17 Now all of a sudden there's a water puddle that's
18 there, and he himself does not do the workplace
19 exam before he starts to work.

20 So it's a mixed bag. We're talking
21 about not changing the definition of the
22 competent person, but it could be affected if in

1 fact we do enact a certain time frame on which
2 the examination is to be conducted prior to.

3 And I think the way it's proposed,
4 that as it states in the registry, that the
5 examinations start before work begins in the
6 area -- I believe that's pretty much as it is
7 now -- is very, very good and adequate, because
8 right before that work it to commence, the
9 workplace examination begins, not prior to a
10 shift, because a person may get a new job
11 assignment, last minute and that wasn't
12 originally on that plan for the day; that area
13 may not have been covered in a workplace exam.

14 So a workplace examination prior to
15 commencing the work I think is adequate.

16 MS. McCONNELL: Thank you very much.
17 I don't have any questions?

18 Al?

19 MR. DUCHARME: No.

20 MS. McCONNELL: Sam?

21 MR. PIERCE: No.

22 MS. McCONNELL: Thank you.

1 MR. MIRANDA: Thank you.

2 MS. McCONNELL: Anyone else? Come on
3 down.

4 Your name and organization for the
5 court reporter.

6 MR. BAYLES: My name's Reid Bayles.
7 I'm with the Independent Salt Company. Spell my
8 name B-A-Y-L-E-S, for my last name.

9 I just -- reading the proposed law,
10 there's a lot of unclear things in there, like,
11 for instance, justifying that you're -- proving
12 that you were in an area.

13 I mean, there's nothing in there -- to
14 me an inspector come behind you and you're
15 telling your exam's been done and he could come
16 along behind you and say, Has this been examined?
17 You say, Yeah. Well, he could write you for not
18 doing it if he sees something, for an inadequate
19 or whatever.

20 I've got 18 years in coal mining also,
21 so I understand; I'm a certified mine foreman in
22 coal, so I understand how the exam processes,

1 and, you know, you don't look at the -- I never
2 looked at the records as a tattle-tale system
3 necessarily; I looked at them as covering my
4 tail.

5 As long as what I noted in there was
6 taken care of, I never had had a problem with it.
7 Only time that I've ever seen it become a problem
8 was if there was a hazard noted and no action was
9 taken on it. Then they come through with a
10 citation on it and it's linked to the exam at
11 that point.

12 Now, I have seen inadequate -- not
13 proving you were in areas, and that's one thing
14 I'd like to see in this proposed rule, is a way
15 to prove that you were in areas or that's
16 designated so you know that this guy was here,
17 because things do change.

18 Like everybody in here said, they
19 change, and the last thing you want to do is hang
20 an examiner out if he hasn't been in an area
21 because somebody wandered off the beaten path
22 over in an area, you don't want to hold him

1 accountable because this guy hasn't got a brain
2 and he goes over by himself.

3 And as far as -- the current regs, if
4 you read them, are adequate. If you read them to
5 the point where before work in a working place
6 happens, you got to go in and examine it anyway.
7 I mean, that's good practice. That's what
8 everybody in here said they do. That's good
9 practice.

10 Where we fail sometimes is maybe
11 making sure that the off areas, before somebody
12 goes into them, somebody qualified or whatever
13 goes into that area and looks at it.

14 So I think the -- it's a cookie-cutter
15 shape, like everybody said, and there should be
16 something in there for multi-shift operations,
17 single-shift operations, to signify the different
18 operations, because if we're running days and --
19 we run days and night shift at our mine.

20 So there's no reason the day shift guy
21 could not do the exam prior to the night shift
22 getting there. The only time it's a problem is

1 leading into the start of it.

2 Now, if I read it right, it's two
3 hours prior to or whatever that's proposed. Now,
4 to me you drive your roads into a working
5 place -- correct me if I'm wrong, please. In the
6 working place you got one section you're working.
7 We got three sections, but we work one at a time
8 and we move to the next one.

9 Now, as long as that first section's
10 examined prior to going to work in that section,
11 the other two do not have to be done --

12 MR. PIERCE: That's right.

13 MR. BAYLES: -- until you're planning
14 on going in that area.

15 MS. McCONNELL: Exactly.

16 MR. BAYLES: It's not -- you don't
17 have 6:00 a.m. to 8:00 a.m. to get this done;
18 it's just prior to work.

19 MR. PIERCE: Right.

20 MS. McCONNELL: Correct.

21 MR. BAYLES: I think there's a lot of
22 unclear things in the proposed rule that, maybe

1 being from a coal background, I kind of see it
2 different because I understand the coal regs, but
3 they are a lot more clear on the requirements,
4 also. And this proposed rule is pretty vague on
5 a lot of things, and I'd like to see some -- I'll
6 type up a letter. I'm unprepared; I wasn't
7 planning on talking. But I will type up a deal
8 and the deficiencies I see in it.

9 MR. PIERCE: All right.

10 MR. BAYLES: And thoughts.

11 MS. McCONNELL: If we -- considering
12 a day shift into a night shift kind of
13 examination, how would a -- if hazards were found
14 and were not immediately corrected, how would the
15 night shift be -- how would, in your mind, the
16 night shift be notified of the --

17 MR. BAYLES: Notified of the problem?
18 Every day the -- they may not overlap -- we don't
19 have an overlap, but every day my day shift
20 foreman and my night shift foreman FaceTime; they
21 talk to each other. Nobody goes to work till
22 after they talk to each other.

1 So there's verbal communications there
2 today. If they got a rib somewhere that's bad,
3 they talk about it, they fix it on night shift.
4 I mean, it's stuff we're taking care of anyway;
5 it's just the way the -- nobody likes laws and
6 regulations stuffed down their throat, and that's
7 part of the problem.

8 MS. McCONNELL: Well, sir, thank you
9 for testifying. And I look forward to your
10 written comments. I don't have any additional
11 questions.

12 Sam?

13 MR. PIERCE: No.

14 MS. McCONNELL: Al?

15 MR. DUCHARME: No.

16 MS. McCONNELL: Okay. Thank you.

17 MR. BAYLES: One more thing. It's
18 been --

19 MS. McCONNELL: Oh, I'm sorry.

20 MR. BAYLES: I'm sorry. I just
21 thought of it. I'm unprepared, like I said.

22 The -- as far as they're saying it

1 takes -- if the two-hour deal, the guy signing
2 off on it, it does take responsibility -- people
3 view it as responsibility. People are -- this
4 day and time are eager to shirk responsibility,
5 so they got a guy that -- he's designated as the
6 mine examiner or whatever.

7 The other guy thinks he's got no
8 liability. In a union situation, if he's acting
9 like an examiner, then he may get a grievance
10 filed against him; you don't know. But -- and
11 then all the recent fatalities, most of them were
12 behaviors.

13 If you look at -- the guy walked
14 around the backside of the pipe trailer, that
15 wasn't an examination; it was a behavior of a
16 person. I mean, that's more training on the
17 truck driver's fault, because any truck driver --
18 there's been numerous notices go out, don't get
19 on the offside of a load when you unload it. But
20 people still choose to not listen to the notices.

21 So leaving the cover off where the guy
22 fell through the grating, that was behavior; a

1 guy didn't finish his job. By finish the job, he
2 should have put the grating back or he should
3 have guarded it.

4 I mean, so we can't address -- we
5 can't just hammer operators on everything; it's
6 got to go back to the people doing the work at
7 the same time. That's our job as operators, to
8 ensure that that happens, you know, by training
9 and make sure jobs are completed, follow-ups and
10 stuff like that.

11 So I don't think you can just go
12 blaming exams on every fatality we've had in the
13 industry. I'm sorry.

14 MS. McCONNELL: That's okay.

15 MR. PIERCE: Along that lines, what
16 you're saying, if the guy didn't finish his job
17 and he left the grating off, then does this next
18 shift is fixing to start, and a examiner comes
19 through and he finds that grating had been left
20 off. Then he can get it put back on.

21 But also by writing that down and
22 taking that back to somebody in management, they

1 can follow up --

2 MR. BAYLES: Correct.

3 MR. PIERCE: -- and find out why they
4 left the grating off.

5 MR. BAYLES: Exactly. Then you
6 know -- yeah, puts accountability back on --

7 MR. PIERCE: Puts accountability, but
8 also it's training and you're addressing the
9 behavior of that employee.

10 MR. BAYLES: Yes.

11 MR. PIERCE: So it's all got to tie in
12 together.

13 MR. BAYLES: Everything -- it all
14 does. It's all for the main goal of getting
15 people home safe every day.

16 MR. PIERCE: Right.

17 MR. BAYLES: So it's no different,
18 really, on a maintenance job like that than it is
19 a lock-and-tag on electrical.

20 MR. PIERCE: Right.

21 MR. BAYLES: I mean, if you -- if I
22 got my lock on it and somebody's coming in to the

1 do the work, he needs to replace my lock with
2 his, or the keys get handed right to the guy
3 doing the work directly. You got to have your
4 personal walk-on.

5 Every maintenance job where there's a
6 potential for fatality should be treated the same
7 way.

8 MR. PIERCE: Sure.

9 MS. McCONNELL: Okay. Thank you very
10 much.

11 MR. PIERCE: Thank you.

12 MR. BAYLES: Thank you.

13 MS. McCONNELL: Anyone else?

14 (No response.)

15 MS. McCONNELL: I'm just going to
16 pause here as everyone collects their thoughts to
17 think about whether or not they want to come down
18 and speak regarding the proposed rule.

19 (Pause.)

20 MS. McCONNELL: Okay. Since I see no
21 one wishes to make a presentation, I'm going to
22 conclude this hearing. I thank everyone for

1 coming forward and making a presentation.

2 I also thank everyone who has attended
3 the hearing. It shows your interest in this
4 rulemaking, and I appreciate all the
5 participation.

6 I want to note that MSHA will issue a
7 notice extending the comment period until
8 September 23. That notice should be coming out
9 in a week or two.

10 We will make all your comments and
11 concerns into -- we will take all your comments
12 and concerns into consideration as we develop a
13 final rule, and I continue to encourage you to
14 participate and provide your comments during this
15 rulemaking process.

16 So thank you very much, and our public
17 hearing is concluded.

18 (Whereupon, at 11:51 a.m., the public
19 hearing was concluded.)
20
21
22

A			
<p>a.m. 1:12 3:2 202:17,17 209:18</p> <p>abate 27:17 58:5</p> <p>abated 6:15 59:15 61:17 68:3</p> <p>abatement 58:10</p> <p>abilities 8:5 140:21</p> <p>ability 54:3 140:17</p> <p>able 12:4,17 21:18 22:20 27:16 28:14 44:1 46:9 88:8 119:14 147:14 195:18</p> <p>aboveboard 145:3</p> <p>absolutely 38:21 65:7 113:22 143:21 165:13 176:17</p> <p>academy 143:13</p> <p>accept 5:5 55:21</p> <p>acceptable 80:22 155:10</p> <p>access 31:20,21</p> <p>accident 10:15 20:4,6 20:17,21 21:4 123:10 190:20 191:4,4,11</p> <p>accidents 8:14,19,21 96:13 111:15 144:1 147:18</p> <p>accompanying 148:6</p> <p>account 71:18</p> <p>accountability 169:2 207:6,7</p> <p>accountable 124:2 144:4,8 145:7 147:13 201:1</p> <p>accounts 17:16</p> <p>accurate 108:14</p> <p>achieve 125:9</p> <p>acres 77:3 87:2</p> <p>act 9:21 10:18 101:3 110:11,12 114:9 116:18,18 119:8,17 144:18,18 192:10 193:9</p> <p>acting 205:8</p> <p>action 6:8 7:6,8,9 60:14 61:19 68:11,12,22 81:17 110:13 147:4 200:8</p> <p>actions 7:5 9:13 10:10 62:8,9 68:17 69:14 102:17,18 122:12 189:15</p> <p>active 77:3,6 78:17 91:16 92:13</p> <p>activities 110:1 117:6 196:18</p> <p>activity 104:17 109:4</p>	<p>acts 98:15</p> <p>actual 90:18 129:2</p> <p>add 125:3 164:3</p> <p>added 75:17 123:8 189:3</p> <p>adding 131:8</p> <p>addition 68:13 126:6</p> <p>additional 14:11 18:3 41:3 68:22 69:8 75:7 86:18 87:8,16,17 134:10 204:10</p> <p>additionally 79:5</p> <p>address 13:17 14:12 17:3,4 19:5 27:16 118:21 119:1 125:8 150:21 170:15 206:4</p> <p>addressed 27:14,21 28:3,6 72:6 125:1 196:21</p> <p>addresses 19:17 22:11 195:8</p> <p>addressing 17:6 18:6 207:8</p> <p>adds 189:12</p> <p>adequacy 33:5 42:2,5</p> <p>adequate 22:7 24:8 33:7,11 34:3 42:1,12 46:6 70:3 125:8 131:7 135:7 140:8 198:7,15 201:4</p> <p>adequately 97:15 123:19 195:9</p> <p>Administration 1:2,15 3:6 40:4 114:6</p> <p>Administrations 96:17</p> <p>administrative 18:21 75:1,7 86:17</p> <p>administrator 72:2</p> <p>admitted 116:15</p> <p>adopt 47:7</p> <p>adopted 7:21 75:4</p> <p>advantage 106:9</p> <p>adverse 5:15 6:5,8 9:12 9:15 10:5,7,9,11 12:5 24:1,5,9 55:11 58:20 60:17 66:20 79:6,14 128:11 137:8 189:13 189:14</p> <p>adversely 6:2,6 7:2 11:7 18:17 54:5 81:15 82:1</p> <p>advice 25:5,10,17</p> <p>affect 5:16 6:2,6 7:2 10:8 11:7 18:17 44:22 46:12 54:5 55:11 81:15 82:1 107:8,17 170:9,10 173:15,15</p> <p>affiliate 74:12</p>	<p>afraid 44:20 94:8 151:1</p> <p>agency 11:15 13:5 18:21 33:15 40:10 42:22 43:20 55:3 56:7 58:13 70:15 71:2</p> <p>agency's 5:13 45:6 59:1</p> <p>agent 108:1,1</p> <p>aggravating 117:3</p> <p>aggregates 15:22 96:4</p> <p>Agner 124:5,7</p> <p>ago 42:9 43:1 44:6 64:5 113:19,20 116:12 132:20</p> <p>agree 33:18 52:22 53:3 55:4 58:10 74:20 120:3 123:2 170:21 171:7</p> <p>Agreed 56:9</p> <p>agreement 91:4</p> <p>Agricultural 74:13</p> <p>ahead 60:21 81:5 88:4 174:19 178:18 190:15</p> <p>aid 87:9</p> <p>aimed 18:5,6</p> <p>air 27:8 97:8 179:10</p> <p>AI 35:17 73:8 118:16 135:12,12 141:22 142:2 148:20 163:16 167:17 186:17 193:18 198:18 204:14</p> <p>Alabama 1:10 141:13 143:13 145:11 148:5 148:6 150:13</p> <p>alert 10:7</p> <p>Alfred 1:17 3:19</p> <p>all's 112:9</p> <p>allow 46:18 77:21 144:22 177:4</p> <p>allowed 69:5 97:12 193:13</p> <p>allows 113:8,9</p> <p>alternative 52:7</p> <p>amazing 116:19</p> <p>amazingly 116:20</p> <p>amend 5:12</p> <p>AMERICA 1:1</p> <p>American 145:10</p> <p>amount 54:21,22 87:3 88:17 89:9 93:1</p> <p>amounts 69:19</p> <p>analysis 28:9 83:17 84:2 91:16</p> <p>annual 93:17</p> <p>annually 102:4</p> <p>anonymously 153:17</p> <p>answer 23:20 24:20,21 25:12,14 26:4 29:12 33:19 60:20 61:12</p>	<p>114:6 116:17 148:14 163:6</p> <p>answered 36:3 114:5</p> <p>anticipate 83:8</p> <p>anybody 46:22 119:20 141:4 168:9 170:19</p> <p>anymore 182:4</p> <p>anything's 58:6</p> <p>anytime 76:15 136:20 177:7</p> <p>anyway 53:11 58:1 117:19 162:4 166:19 168:9 173:16 201:6 204:4</p> <p>apart 125:17</p> <p>apologize 187:15,20,22 193:21</p> <p>apparatus 170:6</p> <p>apparently 19:9</p> <p>appeal 33:14 42:4</p> <p>appended 14:9</p> <p>apple 112:17</p> <p>apples 154:16,16</p> <p>apples-to-apples 165:11</p> <p>application 75:22 77:13 94:6,14</p> <p>applications 76:9</p> <p>applied 25:19 92:21</p> <p>applies 83:13</p> <p>apply 4:22 78:8 147:15</p> <p>applying 86:6</p> <p>appointment 161:2,4</p> <p>appreciate 39:5 72:19 74:15 95:5,7,8 109:20 139:16 149:1 163:7 178:2 188:11 209:4</p> <p>appreciation 166:5</p> <p>approach 10:17 37:19 112:4,14 113:1</p> <p>approached 188:5</p> <p>appropriate 6:8 68:17 81:17</p> <p>appropriately 76:7</p> <p>approved 57:2</p> <p>approximately 14:2</p> <p>arbitrary 45:12 46:11 47:7,12,17</p> <p>arbitrate 145:12</p> <p>arbitrated 146:8</p> <p>area 6:14 11:16,18 12:7 20:16 21:19 24:12 25:2,9,11,15,16 27:7 27:13 28:4,17 30:6,9 30:22 31:2,11,12,18 31:20,21 32:5,8,9,13 32:15,17,21,21 33:1 36:12 41:10 50:2,3,5</p>

50:9,18,19 51:6,15,17
57:20,22 58:1,7 63:10
72:15 77:3 79:21
82:11 83:3,4,9,10,15
83:15 85:6 89:11,13
102:15 104:18,22
105:18 106:22 109:7
109:10 129:15 130:7
132:11 133:11 137:19
145:16 146:4 162:7,8
165:13 171:20 176:4
179:9,11,15 180:14
181:6,19 182:9
189:10 198:6,12
199:12 200:20,22
201:13 202:14
areas 6:5 7:1 9:11
25:20 49:19,21 56:17
69:18 71:15 77:4
78:14,15,16,20 79:19
80:4 82:9 86:22 97:15
102:10 105:21,22
173:8,9 179:2 181:17
184:5 188:4,20
200:13,15 201:11
Arizona 157:4 159:15
197:11
Arlington 4:5
arose 24:17
Arrington 1:10
arrival 173:5
arrives 89:17
articles 13:14
asked 34:7 92:16 100:2
119:21 127:15 188:17
190:1 191:13
asking 142:3 178:8,9
179:6
aspect 78:13
aspects 11:9 77:7
assessment 90:17
assessments 85:1
asset 40:8
assigned 8:7 21:15
assigning 18:7
assignment 198:11
assignments 36:16
82:19
assistance 9:22 85:3,6
assistant 3:12 108:5
association 96:4
111:16 124:20 187:13
assume 171:5
assumptions 13:5
assure 108:9
assuring 175:9
Atlanta 113:15,16
attaching 47:18

attempt 174:9
attendance 3:14 5:8
15:2
attended 209:2
attendees 5:3
attention 6:13 158:3
attitude 136:8
attitudes 139:13
attorney 39:11
attorneys 168:8 183:10
183:10,11 192:13
August 1:7
Aurora 74:10 86:20
authorized 77:22
189:21 190:4
AutoCAD 172:14,15,18
available 7:13 9:17,20
14:2 56:19 189:20
average 110:20
avoid 147:10
awards 111:15
aware 10:13 60:16
157:18 158:4

B

B-A-Y-L-E-S 199:8
B-L-A-N-K-E-N-S-H-I-P
149:13
B-U-N-N-E-R 96:1
baby 115:21
back 16:19 64:2 68:6
70:1 85:13 89:16 91:9
98:4 103:2 109:6,6
111:11 115:5 122:21
128:12 143:22 144:13
144:21 146:6 152:15
153:5,15 156:20,21
157:2 158:3 160:1
169:2 172:4 173:20
182:17 183:18 206:2
206:6,20,22 207:6
backed 156:18 159:17
160:3
background 126:13,15
175:18 203:1
backside 205:14
backward 115:19
bad 108:12 112:17
183:11,12,13,15
188:13 204:2
bag 197:20
balances 176:22
bar 155:6,12,14
bare 101:21
barricade 27:10 63:10
78:12 85:6 130:12
barricaded 80:11
128:16 130:1 152:19

barricading 130:8,21
base 52:14
based 42:18 63:11
87:12 105:13,16
bases 123:7
basic 78:10
basically 39:17 58:11
65:12 70:9 105:19
168:15
basis 16:6 40:11 100:18
Baskin-Robbins 113:1
bathwater 115:21
Bayles 2:20 199:6,6
202:13,16,21 203:10
203:17 204:17,20
207:2,5,10,13,17,21
208:12
beaten 200:21
beginning 17:9 26:8
37:20 51:2 52:6 53:3
81:22 82:11 104:22
106:1 120:21 137:18
165:14 176:2 181:17
begins 36:13 45:8,9,14
45:16 52:18 53:5,6,18
56:16 81:22 184:9
198:5,9
behalf 3:11 39:17 74:11
124:20 138:21 144:20
196:3
behavior 101:5 104:2
108:16,21 117:17
123:5 205:15,22
207:9
behavioral 98:12
behaviors 117:6 205:12
beings 163:3
belief 19:21 20:1
119:12
believe 17:5 49:14 56:8
63:20 76:1,4 96:8
119:12,19 120:4
151:20 195:8 196:14
198:6
believer 151:19
believes 11:21 19:3,20
119:5,9
beneficial 184:22 186:4
benefit 8:16 13:4,16
75:20 80:16 127:7
138:22
berm 71:17 156:12,14
156:17 159:6,19,19
berms 78:17 145:19
best 10:4 12:10 29:9
41:8 45:18 61:7 70:2
109:22 186:16 189:3
189:3

better 35:6 43:18,21
113:21 127:7 145:5
155:1 169:16
beyond 77:18 87:22
93:2 119:17 179:21
181:16
big 45:1 46:10 53:13
58:18 65:22 69:17
70:17 113:16 159:19
183:7,8
bigger 117:21
biggest 26:19 33:3
86:12 168:12 184:18
Birmingham 1:9,10
112:7,10 149:20
150:1
bit 35:1 102:7 117:2
120:15 125:21 159:5
163:4 168:17 171:7
171:21,21
blacksmith 117:1
Blackwell 2:5 15:5,12
15:19
blame 18:7
blaming 206:12
Blankenship 2:14
149:6,7,8,12,13 150:5
150:7 152:21 160:22
163:20,21,22 197:7
blast 46:17,21 165:8
169:22
blasting 46:18 169:22
185:21
blind 162:2
blindly 151:16
blood 162:17
Bluegrass 2:18 187:11
board 31:16 35:2 56:11
56:13 143:17
bones 162:17
book 136:21 144:10
147:8 161:11,14
162:15,16
books 136:17 147:1,2,2
boots 54:14
boss 136:3,10 147:1
151:7
Boulevard 1:10
box 38:3
brain 201:1
break 103:20
breathes 111:1
breathing 102:3
Brian 2:5,18 15:11,17
109:6,6 187:9
brief 140:6 141:7
briefly 42:3
bring 100:15 108:8

151:5,16 158:3
broad 79:9
broke 159:6
brought 6:12 106:17
 107:7 116:11 142:2
 145:16 170:16
build 7:17
built 89:4 159:5
bulletin 56:11,13
Bunner 2:9 95:18,20,22
 95:22 99:17,20 100:6
 102:9 103:12,17
 104:11 105:1,13,16
 106:12 109:20 110:8
 110:15 112:14 119:2
 120:2,10 121:1,3,14
 122:4,15,19,22 176:8
burden 28:9,12 68:22
 69:8,20 70:20 79:3
 86:17 87:15,21 88:12
 119:14 120:11,14
 144:17 172:8
burdens 69:8 75:1,17
burdensome 69:16,21
 76:8 126:12
business 111:20
 146:11 166:12
busy 170:1,2,13
Bye 149:4

C

C 3:1
calendar 69:3,4
California 153:20,21
 154:2,5
call 113:1 136:14
 139:22 145:15 146:17
 147:1 151:10 152:8,9
 161:12,18 171:2
 173:12 187:17
called 36:16 173:10
calls 116:16 146:19
capable 100:13 108:13
capacity 178:14
card 103:2,11
care 102:19 112:2
 137:15 138:10 157:13
 188:7 192:1 200:6
 204:4
career 40:12 150:3,11
 157:21 188:14
Carolina 74:10 78:18
 87:2
carry 76:19 91:20
carrying 66:3
case 23:14 41:21,21
 42:4,5 65:19 134:14
cases 12:12 43:11,16

64:1 145:13 170:11
 179:7
catastrophe 121:12
catch 161:22
catwalk 27:19 28:20
 31:19
caught 98:2 104:1
 123:12,19
causal 43:22
cause 97:22 107:16
 144:12
causes 97:8 104:12
causing 103:20
caution 130:8,13,20
caution-taped 128:15
central 18:9
certain 39:18 43:16
 56:17 99:2 179:8
 180:7 198:1
certainly 15:10 23:12
 25:13 31:19 86:16
certainty 31:17
certification 140:12,16
 140:20
certifications 140:19
certified 137:2 142:18
 143:12 147:8 149:16
 149:16,17 151:7
 152:2 199:21
certifies 147:5
cetera 54:9 57:16
chairman 187:12
chairperson 96:3
chance 142:4
change 7:22 17:17 31:7
 47:22 48:7,9 75:14
 92:20 93:4,8 94:16,22
 95:2 103:19 106:20
 107:9 109:18 117:19
 121:2 123:5 155:17
 168:14,19 171:2,9
 175:7,16,16 176:4,7
 177:2,2 182:3 184:10
 195:13,16 196:3
 197:16 200:17,19
changed 31:5 92:18
 98:1 164:13,14
 169:12
changes 43:11 44:2
 75:5,7,18 76:1 96:16
 107:16 143:20 169:4
 175:22 196:13
changing 29:19 30:4
 55:3 71:5 72:21 84:14
 94:11 99:11 116:10
 120:19 168:21 177:5
 177:15,16 180:17
 181:3 197:21

charges 144:16,16
check 38:3 108:17,17
 128:8 162:4,8 176:9,9
 178:19
checked 101:7
checklist 102:10,12
 128:2,5 129:13
checks 138:8 176:21
Chemicals 74:13
choose 205:20
chose 26:4
chosen 24:4
circles 70:1
circumstances 56:1
 57:4
citation 32:20 114:14
 114:15,19 115:3
 116:5 117:12 119:1
 182:15 191:15,16
 200:10
citations 8:22 56:12,12
 64:9,15 68:7 100:22
 111:15 133:16 134:6
 144:2 173:13,18
cite 23:12 49:8 64:2
cited 20:18 35:3 43:11
 50:9 64:4
citizen 2:19
City 4:4 112:11
civil 23:3
claim 19:17 165:1
claims 18:14
clarification 55:18 56:2
 60:3 73:1 178:13
clarifications 29:17
clarified 177:20
clarify 60:5,20 61:11
 164:16 165:17
clarifying 86:14
clarity 95:9
clay 141:12,17 145:11
 153:10 160:17
clean 179:19 180:18
cleaning 168:20
clear 185:21 203:3
clearly 66:10 106:10
 114:9 117:12
clears 97:14
cliches 116:1
client 16:8 25:4 47:9
clients 26:6 31:17 35:9
 35:12 37:4,8 42:21
 43:4 45:2,12 46:14
 49:2,13,19 51:14
 52:22 53:2 55:15
 57:19 59:5 60:7 61:3
 66:8,15 69:2,17 70:18
clients' 63:16

clock 106:16 142:15
clocking 104:15
close 159:6 160:1
closer 159:10
coal 41:13 44:8,11
 111:2,7 126:13,15,16
 127:6 138:13,15,21
 139:6 143:11,14
 144:19 145:10 146:19
 160:16 164:22 165:1
 168:16,17 199:20,22
 203:1,2
coalition 15:20,20
 17:21 22:14 25:14
collects 208:16
Colloid 145:10
column 96:10
combined 135:6
come 33:17 40:14
 72:17 83:4,22 84:19
 91:9 97:3,17 106:21
 107:14 113:14 117:10
 120:16 126:3 150:4
 152:10 153:13 161:2
 164:5 166:8,11 167:6
 171:10 172:3 173:13
 173:20 182:3,9
 183:20 187:6 190:1
 191:15 192:6 194:1
 194:15 195:19 196:14
 199:2,14,15 200:9
 208:17
comes 79:2,20 89:10
 94:6 97:20 117:21
 121:9,10 146:22
 206:18
comfortable 19:2
coming 14:21 39:5,21
 48:6 83:2 89:12 107:5
 107:11 115:7,14
 136:19 149:1,20
 151:14 152:20 161:22
 163:10 167:2,3
 187:22 207:22 209:1
 209:8
commandments 103:3
commence 198:8
commencement 26:15
commences 195:15
commencing 198:15
commend 143:20
comment 14:15 41:19
 41:19 43:8 44:2 45:5
 49:17,18 56:3 118:2
 154:18 155:4 176:14
 188:11 209:7
commented 197:7
commenters 34:20

74:19
comments 5:5 11:8,11
 11:14,19 12:20 13:3,9
 13:19 14:5,11,18,19
 43:3 45:3 53:21 54:1
 72:7 74:11,16,17 95:5
 98:20 125:1 127:11
 132:16 150:8 153:6
 153:12 178:2,3 195:5
 204:10 209:10,11,14
Commission 33:6,7,13
 33:18 41:20,22
commitment 17:6
committee 187:12
commonality 138:11
common 24:11 26:3
 37:11,17 38:8
commonly 23:19
commonsense 10:17
communicate 28:16
 129:14,18 151:13
 184:3
communicated 27:6
 129:20 130:5
communicating 29:3
communication 27:4,4
 27:7 28:11 87:11,18
 136:14 151:6 183:17
 190:9
communication's
 183:22
communications 80:21
 204:1
community 11:9
community's 13:21
companies 99:12 134:2
 134:7 165:21 188:7
company 2:10,11,15,17
 2:21 15:4,21 74:9
 98:7 108:1 110:5,6,10
 111:19 124:6,7,19
 125:12 133:21 136:7
 137:21 139:10 164:9
 165:16 168:6,11
 199:7
compare 154:16,20
 178:10
compared 41:13 153:19
comparison 165:12
competency 142:20
competent 5:21 6:10,18
 8:1,4,17 12:1,3,13,15
 12:21 17:20 18:1
 21:12,16 22:4,15,16
 23:1 24:9 29:20 33:2
 33:4 46:6 54:2,8,13
 54:14,17,21 55:2,4
 82:8 92:15 93:13

94:11,12,16 109:17
 114:22 125:14,19
 128:1 132:12 134:12
 136:21 137:5 142:10
 142:14 143:12 147:8
 151:20 169:6 176:12
 176:13,18 181:9
 189:4 195:12,17
 197:22
complacency 196:3
complete 83:17 129:10
completed 38:10
 136:22 137:1 142:19
 206:9
completely 40:21 104:4
 108:14 111:4 112:6
 156:9
completion 14:3
compliance 16:8,10
 116:5
compliance-type 53:14
comply 20:19 81:11
concept 18:11,12 80:18
concepts 7:18
concern 23:5,7,9 26:5
 46:10 49:1,4,12 65:8
 70:6 72:19 76:11 86:5
 86:7 92:19 93:4
 178:10 182:6 196:1
concerned 65:4 91:5,14
 169:3
concerning 39:20
 140:7
concerns 13:22 17:6
 22:11,14,21 26:16
 39:19 45:2 55:13,15
 64:22 74:20 81:10
 107:21 108:1 122:9
 122:14 177:21 209:11
 209:12
conclude 208:22
concluded 21:8 209:17
 209:19
concludes 73:3 95:4
 148:13
conclusion 19:12
concur 193:16
concurrently 179:5
condition 7:2 10:6,8,11
 21:18,20 24:1,5 27:13
 49:6,8,10 58:6 59:15
 60:17 61:10 62:16,20
 63:2,5 64:3 71:16
 85:2 101:4 114:10,12
 115:12,19 128:11
 129:12,21 151:15
 189:13,14 191:5,19
 191:20,21 192:1,7,8

192:17 193:13 196:19
conditional 108:20
conditions 5:16 6:2,6,9
 6:10 9:12,15 10:2,5,9
 10:13 11:6 12:5 17:14
 17:17 18:16,20 24:10
 48:10,22 54:4 55:11
 56:11,16 57:15,17,20
 58:2,5,11,20 59:7,12
 59:14 60:12,20 61:13
 61:17 63:7,8,18 64:21
 65:2,4 66:20 67:3,8
 67:11,13,15,21 68:2
 68:18 69:12 78:4 79:7
 81:15,18 84:7,11,13
 84:14 97:9,22 98:15
 102:16 103:19 108:19
 117:5,19 130:6,12
 137:9 141:5 165:8
 168:13,19,21 169:11
 169:12 171:9 174:6
 175:10,15 176:7
 180:18 181:3 182:2
 184:6,7,10,13 197:16
conduct 11:20 12:11,14
 36:5,8 81:20,21 84:1
 97:13 127:16 137:6
 178:15 195:19 196:18
conducted 4:21 8:17
 9:5,7 11:16 12:1 30:5
 30:19 90:7,8 131:15
 132:5 136:10 137:18
 141:17 179:14 180:14
 189:11 197:13 198:2
conducting 6:11,19
 12:21 196:6 197:3
cone 63:9
confident 51:10
confused 87:19
Congress 116:18
conjunction 104:17
connecting 77:4
consecutively 4:15
consider 13:10 41:16
 55:20
considerable 86:22
considerably 165:9
consideration 209:12
considered 71:10
 185:16
considering 173:17
 203:11
considers 58:13
consistency 31:4 183:6
consistent 10:17 31:10
constantly 138:9
constitutes 80:19
constricts 110:4

contact 80:7
contain 11:2
CONTENTS 2:1
continually 168:14,19
 171:9 172:1
continue 29:22 45:16
 48:5 49:15 55:5 71:21
 138:4 209:13
continued 136:22
continuing 52:18
 175:13
continuous 76:17
 169:17
controlled 117:19
controls 110:4
conversation 28:22
conversations 40:14
convey 109:8 115:19
conveyed 127:5
cookie-cutter 110:21
 112:3 186:8 201:14
cooperation 94:9
copy 7:16 14:7 191:9
corner 104:5 118:12
correct 5:15 6:8 10:10
 14:21 18:16,20 28:14
 52:13 67:8,20 68:17
 71:20 78:11 81:17
 85:3,7,11 94:20 98:19
 100:6 102:17 103:17
 108:18 121:16 122:8
 129:19 151:9,12
 152:17,22 161:18,18
 174:2 178:5 192:18
 192:19 202:5,20
 207:2
correctable 98:20
corrected 28:11 60:17
 67:4,11,13 78:13
 80:11 85:8 90:14,19
 90:20 92:3,5,7,12
 122:13 128:13,14,15
 129:6,8,18,21,22
 138:2 161:13 175:10
 181:22 190:6 191:20
 191:21 192:12,21
 203:14
correcting 10:14 116:2
 176:11
correction 10:6
corrective 7:5,6,8,9
 9:12 10:10 60:14
 61:19 62:8,9 68:11,11
 68:22 69:14 110:13
 122:11 147:3 189:15
correctly 86:2 103:4
 124:12
cost 13:3,15 75:18

87:16 164:20
count 27:10,11,12
 155:11
couple 29:17 39:15
 48:13 100:8 114:4
 116:12 125:2 127:22
 135:2 150:21 174:16
 188:4,15 189:22
courage 153:18
course 25:8 42:4 44:8
 144:17 170:13
court 14:8 15:8 73:19
 74:6 124:15 164:6
 187:8 192:14 194:20
 199:5
cover 87:4 114:17,19
 205:21
covered 20:16 24:9
 86:22 90:14 158:13
 186:19 198:13
covering 169:17 200:3
covers 127:9
create 41:2,8 70:21
 92:7 111:13 113:22
created 44:6
creates 48:13 69:7
creativity 110:5,14,16
 112:5 118:7
crew 78:1
critical 93:16
cross 74:4
Crossing 154:12
Crushed 2:9 95:19 96:1
 110:9
culture 17:2 77:2 93:6,7
 105:16 106:3 111:9
 113:11 118:8
curious 30:15 99:22
current 17:18 18:18
 19:4,9,10,13,15,18
 29:7 33:22 38:14
 40:15 41:11,22 42:16
 44:4 59:9,17,19 61:2
 64:16 67:21 68:15
 69:5 76:7 77:19 81:3
 86:7 88:18 93:11 98:3
 101:19 112:19 113:8
 123:11,17,22 125:7
 126:6 131:6 155:5
 177:6 178:13,14
 184:20 195:8 201:3
currently 30:19 36:10
 36:12 42:20 62:12
 68:21 70:12 87:22
 127:16,21 134:18

D

D 1:17 3:1

D-A-R-Y-L 143:10
D-E-W-B-E-R-R-Y
 143:10
D.C 26:16 34:7 46:2
 58:21
damage 94:9
danger 6:12,15 158:14
danger'd 158:12 161:19
dangered 151:11
 152:18
dangerous 10:13
 154:22,22 155:2
Daniel 2:12,16 140:1,5
 168:4
dark 26:18,20 46:5,7,10
darkness 97:2
Darrell 143:6
Daryl 2:13 143:10
data 13:5,7,16 29:6
 43:9 44:1
date 6:19 7:5,8 11:3
 59:10 68:11 131:8
 132:2 188:21 189:10
dated 137:1
day 46:16 47:10 49:5,20
 50:1 63:3 77:11 78:19
 80:8 82:17 93:18
 101:17 105:19 106:4
 106:5,5 110:2 126:2,2
 170:22 171:18 175:16
 176:6 177:7,17
 179:18 181:3 182:8
 184:17 185:19 188:9
 192:7 198:12 201:20
 203:12,18,19,19
 205:4 207:15
daybreak 46:4
daylight 26:16 84:18
days 14:15,21 21:20
 123:10,13,15 201:18
 201:19
de 28:12
deadline 73:5 74:18
deal 54:1 203:7 205:1
dealing 108:6
death 144:12
decided 4:12 33:6
decision 29:7 54:13
 55:1
decisions 29:8
deep 179:3
deer 154:11,12
defects 189:5
defer 124:8
deferring 124:9
deficiencies 19:6,18
 203:8
deficient 19:4,10,13,16

define 80:3 84:10
 195:10
defined 8:2 77:6
definitely 56:8 62:20
 158:11
definition 8:4,8 29:20
 30:4 31:7 50:7 55:3,5
 55:6 70:6 71:5 80:18
 87:12 92:20 94:11,15
 94:19 142:12 180:10
 180:11 195:12,16
 197:21
definition's 31:5 92:18
definitions 7:18,22
 96:19 108:9,10
 109:17
delay 58:10
demands 105:21
dense 97:8
Denver 172:13 173:1,6
department 1:1 106:18
 145:5 148:6
depend 56:1
depending 45:21 51:13
 63:5 170:12
depends 62:4 103:13
 122:16,22
DePlato 74:1
described 37:11
describing 10:5
description 7:1,5 9:11
 11:6 58:20 68:10
designate 115:16
designated 5:21 12:1
 12:16 23:1 100:7
 200:16 205:5
Despite 75:17
detail 13:9
determine 19:15 34:12
 120:11
determined 19:9,13,14
 94:14
detrimental 45:22
detrimentally 44:22
 46:12
develop 13:6 48:10
 113:10 114:1 209:12
developed 49:10 98:7
 99:3,9
Dewberry 2:13 143:6,8
 143:9,10 149:4 153:9
diesel 4:10 149:18
diet 155:16
differ 38:16 51:19
difference 184:18 192:4
different 9:1 24:15 25:5
 32:12 37:9,13 38:16
 38:18 39:19,21 44:10

44:17,17 58:16,16
 105:17,17 108:5,6,10
 108:11 111:4 112:6
 112:10 113:9 118:10
 121:19,21 125:17
 128:3,4,4,6 155:18
 165:9 167:2 168:10
 172:18 188:3 201:17
 203:2 207:17
differently 51:12
difficult 23:3
dime 122:7
diminished 122:10,14
dinnertime 104:16
directly 70:10 208:3
director 1:14 3:4 73:14
 143:18
disagree 41:9 197:11
discretion 55:7
discuss 5:10 8:11
 183:1
discussed 96:13,20
 197:16
discussion 83:7 196:8
disincentive 64:11
disposed 91:3
disrespect 41:6
disrupt 99:19
dissipate 46:19
distance 159:16
district 3:17 24:17,21
 25:4 108:6,8 119:3
 133:19 149:15 150:9
 150:9,16,18 193:1
districts 24:15 25:19
 32:12 108:11
ditch 20:13 171:11
diverse 15:20
doctor's 161:2,3
document 102:2,3
 109:1 121:6
documentation 38:9
 59:10 121:15 147:5
 158:17 188:20 189:10
 190:5
documented 114:11
documenting 121:4
documents 89:12 98:6
 189:9
Doe 2:15 73:14 164:9
doing 26:17,17,20,20
 34:9 37:13 41:1 45:22
 48:17 51:20 52:16
 53:14 59:2 60:7 61:4
 63:17 64:10 71:11
 72:16 80:22 81:11
 87:22 97:18,21
 100:13 102:14 103:3

104:18 105:22,22
 109:7,15 115:17
 120:15,20,21 123:19
 137:14 143:19 147:11
 147:13 149:9,10
 150:14,15 154:7
 155:10 157:8,20
 166:1,6 167:6 172:7
 175:9 178:11 181:22
 185:4 196:20 199:18
 206:6 208:3
doubly 194:2
downtime 75:8
dozer 145:18,22 146:6
dramatic 42:18
dredging 111:5
drip 46:19
drive 202:4
driver 156:11,19 205:17
driver's 205:17
dropped 145:17
Drummond 2:11 135:20
Drummond's 136:1
dual 40:6
Ducharme 1:17 3:19
 35:19 73:9 118:17
 135:14 148:21 163:18
 167:19 186:19 193:19
 198:19 204:15
due 14:19
Duluth 118:10
dump 156:21
dumped 160:3
dumping 156:11 159:16
duties 77:15 177:16
duty 8:7
dynamic 17:15 44:8,9
 47:20 58:15 84:15

E

E 3:1,1
E-L-K-E 39:11
eager 205:4
earlier 20:5 22:16 26:7
 37:19 103:13 134:1
 150:22 153:7 170:16
 171:11 186:8 195:19
early 107:13
ears 117:7
easier 23:12,13
easily 7:20 24:3
eat 155:16
eating 154:19
economic 77:1,9 80:14
 80:16 88:12 89:18
education 54:9,22
effective 11:22 24:8
effectively 99:5

effectiveness 33:5
 91:19
efficiency 4:12
efficient 140:8
eight 72:5,5 123:10
 126:4 140:22 158:19
 159:1 163:3
either 13:18 36:20
 43:17 128:15 175:10
 177:14 180:4 181:20
 184:6,7
electrical 114:17 157:4
 157:7 207:19
electrician 149:17
 157:9 197:10
electricity 157:13
electrocuted 197:11
elephant 115:22
eliminate 177:9,13
eliminated 182:1
eliminating 186:5
email 193:22
emailed 173:3
emphasis 134:3
emphasize 127:12
emphasized 12:3
employee 66:1 109:2
 132:20 136:2 207:9
employees 39:16 44:15
 49:3 57:11 100:10,12
 107:10,10 140:9
empower 84:22 104:1
empowered 98:18
 111:18
empowering 196:15
enable 13:9 54:4
enact 197:1 198:1
enacted 127:2 190:3
encompass 125:16,21
encounter 79:21
encountered 27:15
encourage 209:13
ends 17:10 116:21
enforce 40:18 68:20
 190:11
enforced 35:5 84:22
enforcing 18:22
engineer 172:17
England 2:15 73:14,15
 164:8,8,10,12,14,16
 166:19 167:13,21
enhance 30:18
ensure 5:14 18:15 62:8
 206:8
entail 55:19
entailing 58:16
enter 83:9 138:1
entered 129:9

entering 51:17 130:7
entire 27:13 78:16 80:5
 89:13 104:18
entity 54:12
environment 47:20
 84:16
equate 47:10 66:6
equipment 31:22 66:18
 67:6 78:9 83:12 87:4
 90:13 97:11,11,20
 98:22 128:9 146:2
equipment's 128:9
Ernie 2:19 194:21
error 171:19
especially 46:3 65:8
 69:17 70:18 121:11
established 111:19
 195:5 196:1
estimates 13:4,6
et 54:9 57:16
evaluate 4:18 19:16
 22:9 24:7 104:13
 114:21
evaluated 43:10 101:7
 105:3
evangelist 16:4
event 17:11 38:1 123:3
 147:17 176:6
events 29:3
every-shift 78:21
everybody 65:15 94:3
 97:1 116:15 130:5
 137:15 146:11 151:17
 151:20 166:12 169:3
 170:20,22 178:3
 190:19 200:18 201:8
 201:15
everybody's 162:3,5
 170:21 172:7 175:3
 175:15 178:2 183:14
 183:15
everyone's 81:10
evidence 4:22 193:9
evolved 133:22
ex-20-year 132:19
exactly 35:12 50:15,16
 51:8 72:10 90:4
 179:16 185:5 186:11
 202:15 207:5
exam 33:7,12 37:13
 69:10 72:12,15 78:9
 97:14 100:14 102:14
 107:15 108:19 114:8
 114:14,18 115:18
 127:10 152:8 169:4
 175:4,8,8 176:1 177:3
 177:9 183:18 184:21
 197:19 198:13 199:22

200:10 201:21
exam's 199:15
examined 162:7
examination 6:11,17,19
 6:22 7:4,11 9:2,4,7,10
 9:17,20 10:5 11:1,3
 12:12,14,18,22 16:6
 17:7,9,16 18:2 20:20
 21:1,13,16 22:5,20
 24:8 26:11,13,22 27:3
 27:16,22 30:1,7 32:20
 34:10,13,14 36:9,11
 37:18 38:2 42:1,12
 43:7,16,21 45:14 46:6
 46:20 47:1,4,19 48:3
 48:11,15,18 49:9,11
 49:14 50:6,11 51:7,16
 52:17 59:3 62:17 66:7
 74:14 81:21 89:21
 90:7,8 99:4 100:3,18
 103:4 104:19 105:11
 114:20 120:7 123:11
 123:18,20 126:9,17
 126:21 127:4,17
 129:2 131:15 132:5
 133:10 136:18 137:7
 137:18 141:5 146:20
 147:2 156:7,13 157:5
 157:16 158:11 159:21
 160:4,11 165:4
 168:15 169:1 180:14
 195:19 197:3,12,15
 198:2,9,14 203:13
 205:15
examinations 1:4 3:8
 4:1 5:14,19 8:17
 10:22 11:16,21,22
 16:5,12 17:3 26:8,17
 26:18 30:19 35:5,6,10
 36:6 45:7 59:8 63:12
 67:2 75:20 76:11
 77:16 96:12 125:5,10
 125:14 135:7 136:9
 137:12 141:17 144:7
 149:19 163:5 178:15
 196:7 198:5
examine 5:22 17:11
 24:13,19 25:1,7,8,11
 25:16 31:11 32:5,14
 32:20 38:5 50:13 72:9
 81:14 125:19 136:19
 151:8 179:3 201:6
examined 7:1 9:11 11:5
 25:22 38:3 59:11
 70:17 184:5,6,12
 199:16 202:10
examiner 98:8 101:14
 103:5 115:12 136:3

136:10 156:13 184:4
200:20 205:6,9
206:18
examiner's 11:4
examiners 98:19 99:6
100:7 101:6 102:5
104:2 140:7 176:9,10
example 11:17 20:2
21:21 27:18 28:15
31:18,22 46:14 56:10
62:12 63:6 64:2 65:9
67:3 78:17 92:4
178:19 195:10,14
196:2,5
examples 13:12 20:2
100:8
exams 40:15 53:17 69:4
93:21 98:5,10 100:17
120:16 185:7 206:12
excavator 20:11,13
21:9
exceed 77:18 86:6
116:7
exceeding 116:9 155:7
excellent 143:19
exceptional 110:19
exclude 175:13
executive 143:17
exhaust 4:10
exist 49:1 193:13
existed 21:20 114:10
114:12
existence 10:1 40:22
existing 5:13,18 6:16
7:12,18,22 8:4,8 9:2,6
9:9,13,16,18 10:19
23:20 30:13,17 36:6,8
36:18 51:5,5,20 59:20
64:19 75:21 81:9,12
81:13 82:2 89:20
95:10 100:3,4 104:5
107:1 127:17 131:14
131:16 178:16 184:14
exists 114:10 192:1
expect 33:15 50:4
71:15 165:8
expectations 155:8
expected 12:6 78:5
115:13
expecting 50:1 171:21
expense 75:8
experience 8:6 12:17
13:1,14 20:11 21:10
22:17 29:21 54:3,9
63:14 99:7 100:11,13
109:14 140:14,15
141:15 149:16 159:3
experienced 12:12

17:22 22:19 29:20
109:21 143:11
experiences 32:11
expert 164:22
explain 21:6 24:3 29:6
29:7 33:8
explained 21:7
explains 19:3
explosive 165:6
exposed 26:10,12 27:1
58:8 171:17 177:10
exposing 32:7 193:14
exposure 4:9 23:10
104:12 175:11 177:14
192:20
expressed 55:12 166:5
extending 14:15 209:7
extensive 77:15
extent 22:22 43:19
121:4
extremely 125:5
eye 157:19 179:17
eyes 43:5 139:11 158:2
159:13 172:1

F

FaceTime 203:20
facilitate 10:6
FACILITATOR 1:13
facilities 166:14
facing 115:21
fact 17:16 49:14 99:5
106:18 113:4 116:8
117:16 118:11 135:4
174:11 196:15,22
198:1
factors 171:8
facts 158:18
factual 147:6
fail 120:18 201:10
failed 117:13
failing 109:3
failure 20:18
fair 65:8
fairly 19:2 23:19
fall 48:10 97:6 173:3
180:10 181:2,5
falling 160:8
falls 104:7,9 119:14
154:3 173:9,9,11,14
familiar 12:7 172:19
families 111:21
family 16:2 40:2 111:18
111:22 112:3
family-owned 111:20
far 40:17 72:1 79:4
86:16 125:9 131:4
156:20 159:11 165:2

173:22 185:17 186:5
201:3 204:22
farther 142:11
fast 59:16
fatal 8:21 123:7
fatalgram 156:5 157:3
158:8 160:5 171:4
fatalities 8:13,14 20:4,6
20:7 22:1 43:18,20
134:5 148:11 153:19
153:20,21 154:8
155:19 158:20 159:2
170:17 196:9 205:11
fatality 10:15 20:3,9
22:11 121:11 123:4
147:19 148:3,5 156:1
156:10 169:5,11
206:12 208:6
fatally 21:9
father 40:3
fault 18:7 205:17
favorite 150:4
fear 63:15,16 64:16
65:14,15,17,22 66:12
68:5 99:11 134:16
193:8 196:22
fearful 66:8
Federal 3:11 96:7,9
108:2
feel 81:10 97:21 107:14
140:7 194:2
feet 46:8 171:16 179:20
fell 158:10 205:22
fellow 28:18
felt 174:8
field 40:4 93:18,19
190:10
figure 34:17 155:22
filed 205:10
fill 128:2 145:4
filled 103:11 171:11
final 4:19 13:20 49:17
57:1 96:15 172:12
209:13
finally 27:4 44:3 68:9
find 39:1 71:17 101:8
114:16 129:12 142:16
151:2,8 184:7 207:3
finding 18:7 176:11
findings 144:4,8
finds 32:16 129:19
206:19
fine 161:5 188:1
finish 81:4 206:1,1,16
fire 136:3,10 147:1
151:7
fired 146:8
firm 15:11,18 151:19

first 3:15 4:3 15:4 16:10
30:20 31:9,14 37:6
41:18 45:5 46:1 48:14
55:20 70:1 81:4 82:6
125:4 127:22 150:8
156:6 173:14 175:20
193:5 202:9
first-aid 99:7
first-class 149:17
fish 117:21
fit 116:1 186:9
fits 113:10
fits-all 111:11
five 54:18
fix 27:17 41:4 80:1
101:9 122:5,6 152:10
161:21 204:3
fixed 63:10 101:9
117:20 122:10 152:9
156:17 190:6
fixing 18:5 206:18
flavor 113:2
fleshed 56:8 57:1
flexibility 17:19 38:13
38:20 41:12 44:5,19
44:21 110:16 113:8
flexible 44:13
Florida 78:18 87:1
focus 26:9 76:3
focusing 117:17
fog 97:8,8,14 103:16
foggy 97:9
folks 16:11 24:15 39:18
48:14 51:15 54:10
follow 62:18 92:12 99:1
109:3 129:3 207:1
follow-up 17:5 61:19
120:6 132:6,7
follow-ups 206:9
followed 86:1 188:17
following 4:7 11:2
14:10 96:17 178:6,12
follows 136:21
foot 148:1
forbid 169:5
force 195:16
foreman 12:11 82:12
132:11 138:7 140:11
147:9 149:16,17
151:7 178:18 181:14
196:6 199:21 203:20
203:20
foremost 37:7
forget 194:2
form 27:7 69:6 102:4,7
102:8 103:11 128:2
128:12 129:13 131:16
formal 4:22 73:4

format 172:14
Forty-one 139:7
forward 75:3 91:20
 109:1 115:19 138:3
 194:5 204:9 209:1
foster 93:6
found 6:6 7:2 9:12,15
 10:9 11:7 29:2 58:20
 59:7,12,14 60:12
 61:10,13 62:17 63:18
 66:17,20 67:11,15,22
 69:12 84:3,7 91:10,10
 114:8,18 115:13
 130:12 146:21 152:21
 156:12 159:22 161:12
 162:1 175:10 189:5
 189:13 190:5 192:7
 203:13
four 3:22 47:9 72:5
 77:11 111:21 140:14
 154:2 157:3 168:16
fox 145:1
frame 52:8,11 76:13
 88:6 164:17,18 195:5
 196:1 197:1 198:1
frequently 31:12 32:17
front 3:20 5:9 103:7
fruit 98:14
frustrates 166:4
fry 117:21
fully 8:6 52:16 54:10
fumes 185:21
function 93:22
further 47:16 80:18
 87:6 118:15 131:9
 141:21 156:22
furthered 67:14 68:4,6
future 91:8

G

G 3:1
gals 188:10
Gary 2:10 124:11,16
gas 66:3,5
gases 46:18 170:7
gate 188:5
Gaunt 2:6
generally 46:9
generations 111:12,21
gentleman 42:2 43:14
 55:12 96:7 123:16
 155:3 156:2 157:6
 158:10 159:2 185:15
 186:9
gentleman's 156:7
geology 174:8
Georgia 118:10 124:20
 125:11

getting 93:22 115:16
 159:10 201:22 207:14
give 14:8 31:10 34:2
 56:3 57:4 59:13 62:7
 74:16 102:12 127:19
 140:9 185:21
given 25:3,18 31:20
 32:3 36:17,17 49:5,20
 79:18 80:8 89:13
 105:9 112:20 189:6
 190:18 192:5 196:17
gives 103:4
giving 95:8 127:15
glad 194:4
go 11:10 16:21 28:3
 32:13,22 34:15 50:3,4
 50:10,17,19,20 57:13
 57:14,19,21,22 58:1,4
 60:21 64:1 66:10 68:6
 72:8,13 76:10 78:20
 80:1 81:5 82:9,20
 83:10,14 85:13 88:4
 93:18,19 97:12
 100:18 108:2 109:5
 111:11,14 113:5,16
 113:22 115:5 119:17
 126:8 128:1 133:6
 142:11 144:13 152:15
 154:17 156:22 159:11
 160:14 161:14,15
 164:15 166:11 169:18
 172:2,4 174:1,19
 176:3 177:3,4,13
 178:19 179:10 180:18
 180:19 183:17 185:7
 188:9,10 190:15
 193:5 194:11 201:6
 205:18 206:6,11
goal 170:21 207:14
God 169:5
goes 38:11 42:6 63:2
 79:4 101:14 117:6
 130:5 131:4 133:10
 158:1 160:14 165:3
 169:2,20 175:14
 178:18 201:2,12,13
 203:21
going 14:21 24:7 27:1
 29:1 32:4 33:19 34:12
 34:15 35:3,17 39:1
 43:13 44:20 46:5 47:9
 48:14 49:7,7 50:4,9
 50:13 55:19 56:6 63:9
 63:21 64:6,7,12,13,15
 66:4,9,10 69:11,13,19
 69:20 72:11,16 73:4
 74:2,4 75:2 77:12
 79:7 80:4,5 83:18,22

84:21,21 87:20 92:18
 92:19 93:9,21 100:1
 102:11 105:21 107:5
 107:8 109:1,8,9,17,22
 113:3 114:18,21
 115:8 117:8,9 119:22
 121:5 124:12 127:14
 130:19,21 131:9
 134:9 135:12 139:22
 144:10 145:14 146:11
 146:12,15 147:7
 150:1 153:8,15
 155:15,16 157:6,11
 158:4 160:14 161:8,9
 161:20 165:15 174:2
 175:1 176:1,4,15,16
 176:19 177:1,2 179:5
 179:6,17 181:5,12,12
 181:13,15,18 182:6
 182:16 183:5 184:4
 187:17,22 188:16
 191:14,16,19 192:2
 192:17 193:3,4
 194:11 202:10,14
 208:15,21
good 3:3 15:6,7,14,16
 16:4,5,6 17:8,15 18:1
 27:2 34:9,14,14 39:9
 40:11 41:15 43:4 56:3
 66:16 73:1,7 95:20,21
 124:21,22 135:21,22
 140:2,3 142:3 143:8,9
 149:6,8,12 150:5,6
 165:22 166:1,3 168:1
 168:2 172:10 183:10
 183:11,12,14 188:12
 188:14 191:22 198:7
 201:7,8
gotcha 86:13 142:13
gotten 166:17
government 41:7,8
granted 157:22
grasp 146:13
grate 158:10
grating 205:22 206:2,17
 206:19 207:4
gravel 111:5 187:13
grease 31:22
greaseboard 36:20
greaseboards 105:8,10
great 28:21 41:12 44:5
 59:17 72:18 97:21
 150:20
grew 16:2 40:1
grievance 205:9
grossly 116:22
ground 54:14 57:14,20
 63:7,8 64:3 66:16,17

123:7 171:17 188:2
group 94:8
growing 40:8
guarantee 140:8
guard 43:6 48:21
 103:20 145:1
guarded 206:3
guarding 42:9 43:2
guess 30:10,11 36:1
 71:1 96:6 104:21
 126:19 130:10,17
 132:15 145:2,2
 168:12 171:1 172:9
 174:10,13 178:6,12
 179:16 180:16 185:9
 185:16 193:4
guidance 24:14 31:10
 40:18 41:11 190:18
 191:2 192:5
guidelines 60:1 154:6,8
guilty 193:10 194:2
guts 154:15
guy 34:16 66:9 173:2
 173:10 181:9,11
 182:8 200:16 201:1
 201:20 205:1,5,7,13
 205:21 206:1,16
 208:2
guys 50:8 58:9 59:2
 63:21 64:10 69:3
 82:22 107:2 114:2
 129:14 166:5 173:19
 174:12,14 178:18
 186:19 188:9,9

H

H- 15:12
H-U-N-D-L-E-Y 140:5
half 146:4
halfway 96:10
hammer 206:5
handed 208:2
hands 146:13
hang 27:20 200:19
haphazardly 144:9
happen 18:11 34:6 43:7
 50:16 156:4 163:1
 179:4,5 183:5,16
 184:1,2
happened 64:5 78:6
 82:17 154:1 155:22
 156:1,10 157:3 158:8
 159:15 162:22 169:10
 184:8 191:4,12,17,18
happening 65:9 137:10
happens 27:2,3 50:2
 62:3 82:5 92:5 112:6
 123:4 169:8 170:11

201:6 206:8
happy 29:11 55:2
harbor 193:10
hardrock 145:8 148:2
hate 115:22
haul 77:6
hazard 27:1,10 28:6
 32:8 71:22 77:17
 79:22 80:9,10 82:7
 83:17 85:13 89:9
 90:19 91:15,16 92:2,4
 92:7 93:17 98:11
 104:5,6,12 105:12
 110:12 114:8 115:3
 116:2 137:14 151:8
 152:9,18 158:3
 161:12 162:10,10,13
 193:14 200:8
hazardous 18:16,20
 48:21 49:6 57:14,17
 58:5,11 59:12,13
 60:12,19 63:2 64:2,21
 65:2,3 67:10 68:18
 78:4 84:10,13 102:16
 109:4 114:11 129:12
 141:5
hazards 10:14 12:5,19
 13:2 26:10,12 27:6,15
 28:10,13,16 32:16
 34:4 62:10 83:8,19,19
 83:20 87:12 89:7
 90:18 108:20 109:9
 117:4,18 121:4
 136:13 138:2,10
 139:8 140:15 141:2
 146:21 147:1 156:6
 157:7 158:2 175:5
 176:6,11 177:9
 178:21 181:20,21
 186:5 190:5 203:13
he'll 178:19
head 155:11
heading 165:15
Headquarters 4:5 191:2
health 1:2,15 3:6,18
 4:20 5:17 6:3,7 7:3
 9:1 10:19 11:7 12:18
 16:9,14 18:8,17 23:11
 23:15 26:2 29:4 40:3
 54:5 55:11 81:16
 114:6 143:18 187:10
 195:1,3 196:11,14,16
hear 5:11 8:12 16:16,19
 30:10 31:4 52:8 60:11
 86:10 131:1 146:14
heard 26:15 31:2 36:14
 36:15 105:7 110:22
 120:2 134:1,11 136:5

144:15 147:12 152:3
 164:18 165:18,20
 166:3,8 174:22
 177:19 184:9 196:8
 197:16
hearing 1:4 3:7 4:7,16
 4:21 5:1 14:2,5,10,11
 39:5 60:9 100:5 150:1
 177:18 208:22 209:3
 209:17,19
hearings 4:1,13 14:3
 57:5 58:21
heart 112:9
heavy 71:18 78:9 90:12
 123:15
held 64:14 119:21
 124:2 145:6 189:2
 196:18
help 4:18 10:11 29:8
 96:13 136:14,15,16
 137:10 158:18 174:21
helped 86:14
helps 13:20 57:5 95:10
 150:17 159:14
Hendrix 2:5 15:6,10,11
 15:17,18 16:22 29:15
 30:2,20 31:9 37:6
 39:4,6 72:8
henhouse 145:1
hey 28:5,20 42:11 57:22
 98:21 109:2 160:12
 182:13 183:19
hidden 179:1
high 46:8 66:6 128:9,10
 155:14 156:12,14,18
 159:17 170:8
high- 165:5
highways 113:18
hill 156:11
hinder 134:11 174:2
hire 87:21 146:15
hiring 87:7
hissful 142:16 146:3
historical 190:5
hit 168:22 180:21
 182:10
hold 4:8,12 200:22
holding 4:10
hole 158:16
holler 101:10
home 161:15 166:11
 170:22 188:9,10
 207:15
Honor 73:15,17
hope 25:13 58:13 95:1
 95:1 150:15
hopefully 14:20 172:7
 185:11

hopes 25:14
hoping 118:3
Horsefield 2:7
hose 27:19,19 28:20
 29:1
Hotel 1:9
hour 45:13,20,20 47:13
 76:15 80:6,15 137:12
 154:13
hourly 66:1 195:20
hours 11:18 17:22
 26:14,15 45:10,21
 46:5,19,21 47:3,6,10
 47:11,17 48:6,8 49:9
 76:14,14 77:11 107:5
 107:15 126:1,2,17,18
 127:22 136:11,11,18
 137:3,4,11 146:18
 152:4,6 165:4,7
 185:19 195:10,15
 202:3
hours' 141:1
housekeeping 27:20,21
how's 107:8
how-everyone-does-it
 38:22
huge 172:14
human 104:11 108:12
 123:5 158:5 162:22
 163:2,3 171:18
Hundley 2:12 140:1,2,4
 140:5 141:11,18
 142:7,10,14 143:5
hundreds 69:18
Husch 2:5 15:5,11,12
 15:18
hypothetical 119:1
 122:16,18

I

ID 125:16
idea 62:6 153:7
ideas 93:22
identified 14:12 175:11
identifies 19:3
identify 5:15 12:18 13:2
 18:16,19 156:6
 176:12
identifying 141:1
idled 50:20
IDs 105:17 109:14
ignored 147:17
illness 16:14 17:2
immediate 6:13 55:22
 83:16 91:18 101:16
immediately 4:7 27:14
 28:11,14 45:15 48:4
 49:15 52:17 53:3

57:21 67:4,12 85:3,16
 85:19,22 90:15,19
 91:21 98:20 101:8
 103:19 122:5,6,13
 128:13,15 129:18,20
 129:22 133:10 191:6
 196:20 203:14
imminent 6:12
impact 76:2 77:1,2,9
 80:15 89:18 91:12
 93:5
implemented 98:7
implications 74:21
importance 134:8
important 22:9 34:21
 38:14 125:6 141:4
 144:3
importantly 29:5
impose 79:2
impossible 19:16 170:4
 179:7
improve 4:19 5:18
 23:11,14 35:13
improvement 30:16
improvements 30:12
 113:21 196:11
improves 29:3
improving 18:7
in-depth 42:9
inactive 78:15
inadequate 114:20
 199:18 200:12
incentive 64:8
incentivized 48:16
incident 197:8
incidents 139:8
include 6:22 7:4 9:10
 10:4 13:11,15
included 11:12
includes 113:11 188:20
 189:18
including 5:7 13:13
 83:18
inclusive 93:7
incoming 78:1
incompetence 144:20
inconsistent 25:10
increase 23:7 42:18
increases 89:9
increasing 23:9,10
increasingly 126:12
incredible 87:3 99:3
indefinitely 91:22
Independent 2:16,20
 168:5 199:7
Indiana 96:3,4 97:5
 112:5
indicate 8:15

individual 21:8,11,17
23:2,4,13 34:19 54:7
134:18 152:2 153:14
162:19 172:8 181:5
183:2 197:10
individuals 23:6,9
27:12 66:11 106:4
170:16
industry 12:8 18:12
19:1 22:17 23:4 31:10
39:20 40:9 41:13
42:10,11 44:7,9 46:12
48:3 58:16 70:4 97:19
108:4 113:14 117:22
125:6 126:14 133:22
135:5,6 152:6 154:21
154:21 165:12 166:9
167:2 206:13
industry's 58:22
inform 27:12
informal 4:21
information 4:9,14,17
5:4,5 11:11 13:8,13
13:20 22:3 105:9
127:5
informed 196:5
infrequent 49:21
infrequently 25:1
initial 86:7 93:16
initially 48:11,12
initiate 6:7 68:17 81:17
injured 21:9
injuries 43:17
injury 10:15 16:14 17:1
144:12
insinuating 167:5
inspect 32:15 106:22
169:18 171:13,19
172:1 179:11,13,15
181:17,18
inspected 70:13 97:16
102:11 145:9 169:7
169:11 181:19 182:9
188:20,21 189:10,11
inspecting 32:22
145:15 181:12
inspection 7:14 49:5
83:15 88:7,14,16
97:18,21 133:2,4
140:9,11,13 156:6
165:7,13 170:6 171:5
182:11 188:22 191:10
inspections 78:3 133:6
148:7
inspector 32:14,19 34:1
34:12,15 49:6 79:12
79:13 89:16 114:7,14
119:4,22 120:10,13

121:7 133:8 140:13
141:3 173:12 175:21
182:6,7,12 189:6
193:9 199:14
inspector's 120:16
inspectors 32:12 40:10
40:14,17 79:10
133:15 148:8 150:10
182:22 183:12,12
188:14 191:9
inspects 181:5
instance 169:9 199:11
instances 123:1,22
180:8
instantaneously 101:13
instructed 51:16
instructions 80:13
82:16
intend 96:16
intended 19:5 96:11,15
intent 10:18 96:18
108:3 112:18,18
115:6
interest 4:12 209:3
interested 5:6 11:14,19
60:9 100:5 155:7
interesting 60:11
interfere 81:7
international 143:15,17
145:13 147:21 149:14
interpret 31:3 32:13
33:9 94:18
interpretation 25:18
71:8 75:5 79:10,15
96:19 115:9
interpretations 183:3
interrupt 99:16
introduce 3:15,20
introducing 15:3
invest 100:16
investigated 8:20 148:3
148:4
investigation 20:5,6,21
21:4 121:9,11 124:2
146:5
invisible 20:15 21:19
171:12
involved 70:11 94:1
103:14 151:18 195:3
involving 121:11
irregardless 54:15
issue 14:14 16:8,9,10
16:14,14 17:2,2 22:16
26:5,19 27:5,21,21
32:19 33:2 54:6 58:18
68:7 86:12 88:10 99:8
126:5 131:5 133:16
164:21 165:19 169:2

169:20 183:7,8 209:6
issued 8:21 10:20
128:16 134:20 189:2
issues 5:10 8:11 18:5,6
23:18 30:21 36:20
82:18,22 84:20 95:11
issuing 14:20
item 90:13 102:22
123:6 133:16,17
items 114:7 122:4
134:13

J

J-E-R-E-M-Y 74:8
James 2:14 149:6,12
152:21
January 8:18 123:14
144:1
Jason 2:15 73:14 164:8
Jeremy 2:8 74:2,7,7
75:13,16 81:5 82:6,15
83:1 84:4,8,12 85:15
85:21 86:4,11,16 88:1
88:8,17,22 89:3,6
90:1,4,9,12,21 91:2
92:9,15 93:10 94:5,13
94:20 95:1,4,12
Jim 147:22 148:2,4
job 57:13 78:21 83:17
91:15 106:5 109:22
140:14 150:20 157:21
169:16 191:22 198:10
206:1,1,7,16 207:18
208:5
jobs 58:16 206:9
Joe 3:12 72:3 131:21
143:17
joint 93:22
Jones 155:4
Jr 1:10
judgment 108:13
July 4:3,4,5
jumped 146:2
jumping 192:14
June 3:11
justifying 199:11

K

Kaolin 2:10 124:13,19
keep 42:16 63:19 69:12
69:13,15 81:8 88:15
88:18 89:1,19,21 90:2
90:5 91:1 92:6 129:6
147:16 154:13 157:18
172:1,1 179:17
keeping 68:2 93:22
kept 37:15 67:15,16
68:3 90:15 147:2

151:17 153:15 154:19
key 17:4 38:21 97:2
keys 208:2
kids 96:16
killed 8:19 113:17
123:16 154:10 156:3
159:18
kind 21:21 30:15 32:5
33:15 37:4,15 91:6
96:13 102:11 103:3
116:1 118:12 122:15
127:14 130:11 138:11
158:6 165:19 169:20
203:1,12
King 1:22 3:20
knock 123:3 168:22
182:10
knocked 180:21
know 14:17 19:12 20:21
21:3,14,15 22:3,4,6,8
23:8 24:3 26:3 27:8
27:19 28:22 31:2,15
31:17 33:21 34:8,9
35:11 36:4,10 37:1
39:19 40:7,8,10,12,20
41:20,21 43:12,13,15
44:4 45:9,21 49:7
50:11 53:21 54:1,14
54:16,20 55:19 56:1
56:12 57:2,3 58:3,21
59:10,15 63:11,18,22
64:12 65:15 66:11
67:8 69:10,18 70:14
71:14,19,21 72:4 73:2
78:4,17 79:9,22 81:10
83:5 85:5 91:8 97:19
99:9 101:2,6,9 102:1
103:6 104:4,7 107:3
107:18 109:5,22
112:17 115:6 116:22
117:8,9,11 118:22
119:19 122:2 123:3
129:10 130:2 132:5
132:10,18,18 133:14
133:18 138:17 141:3
142:17 144:16 145:5
146:10 147:9 154:14
154:15 156:4,19
157:18 158:14 159:20
161:6 162:10,11,15
163:2 164:17 165:12
165:20 166:10 168:17
169:9 172:16,19
174:10 176:14,15,16
180:19,22 182:7,22
185:15 187:14 188:1
188:12,13 197:8
200:1,16 205:10

206:8 207:6
knowing 58:22 70:21
knowledge 13:1 29:21
 54:3 165:1 190:10
known 12:6 159:21
knows 132:18 147:20
 155:5 190:20

L

labeled 173:2
Labor 1:1 145:4
lag 76:19
Lake 4:3
large 39:13 44:15 46:7
 86:19 125:12
larger 70:18
lasted 122:12
latest 99:15
law 15:11,18 41:3 108:3
 112:19 162:20 174:2
 199:9
laws 204:5
lax 197:4
layer 172:18 173:2,7
 174:4
layers 172:19,20,22
layman 158:20
layperson's 32:6
lead 131:9
leading 202:1
learn 91:19
learned 91:20
leave 55:6 126:4 169:19
leaves 104:4 121:7
leaving 88:9 205:21
left 3:18 132:20 194:22
 206:17,19 207:4
legs 112:19
lessons 91:20
let's 38:4 41:4,14 49:22
 63:6 108:16
Letohatchee 145:11
 153:11 160:18
letter 24:16 34:22 189:1
 203:6
Letters 10:21 12:10
 24:13
level 12:22 93:2 119:13
levels 39:19 170:7
liabilities 174:13
liability 23:6 65:18,21
 101:4 173:22 174:11
 181:4 182:17 193:8
 205:8
liable 23:2 64:14
Lichtenfeld 116:11
life 117:9,10 156:7,8,22
 157:1,15 161:7

162:17 163:3 169:13
 170:20 171:6 176:16
 176:20 183:9,15
likes 107:18,19 204:5
limit 45:13 175:11
 177:14 192:19
limitation 155:5
limited 51:22
limits 94:7 121:10
line 183:16
line-out 36:16 37:15
line-outs 105:8
lines 206:15
linked 200:10
list 74:3 187:16 194:1
 194:12
listed 122:8 123:22
 189:5
listen 163:8 205:20
listening 164:2
little 55:22 102:7 117:2
 120:15 122:7 151:21
 151:22 159:5 163:4
 168:17 171:6
lives 146:12 158:21
 161:7
living 98:6 102:3
LLC 15:5
LLP 15:12,19
load 205:19
loader 168:21 172:3
 180:21 181:8
loaders 182:9
loading 160:7 181:6
local 147:22
located 15:21 125:12
location 100:14 118:9
 189:14
locations 7:1 9:11
 78:15 105:18 106:3,8
 106:14,15 107:13
 111:14 128:4
lock 207:22 208:1
lock-and-tag 207:19
logistical 79:8
long 31:6 34:17 91:1,5
 113:14 128:18 139:5
 194:16 200:5 202:9
long-term 76:4
longer 137:11,13
 184:11
look 20:20 28:5,19
 30:21 33:16 35:4
 42:13 56:19 71:19
 78:14 83:9 84:14,20
 98:11,11,12 102:13
 108:17 110:15 113:13
 113:19,20 114:7

133:9 138:3 143:22
 154:1 157:17 158:7
 158:21 162:7,12,12
 172:4,5 175:4 176:5
 189:7 191:11,17,19
 192:3,6,18,22 200:1
 204:9 205:13
looked 116:13 155:21
 157:11 159:8 200:2,3
looking 21:4 38:21 52:5
 58:22 59:1 89:10
 98:14,15,16 100:19
 101:4 103:6 133:12
 156:3 157:4 158:19
 172:2 174:5 182:13
lookout 83:4
looks 33:12 117:18
 145:5 168:8 201:13
loose 57:15,20 58:5
 63:6,8 64:3 160:11,13
 168:22 180:20,22
 182:10,14
Lord 147:20
lose 47:9 80:16 170:20
lost 35:17 47:11 162:17
 162:17 163:3 169:13
 187:21
lot 25:10 32:16 35:14
 38:16 40:13 46:2
 49:18 57:11 70:18
 95:8 103:18 107:21
 112:10 116:4 117:10
 117:20 124:22 126:13
 132:15 136:4,5,8
 139:8,8,9,9,11 144:15
 149:19 150:2 155:1
 165:20,21 166:1,3
 168:7,9,18 174:22
 175:22 176:19 185:18
 185:22 188:2 191:13
 191:22 196:8,13
 199:10 202:21 203:3
 203:5
lots 87:4
loud 188:17
low 101:1 155:6,12
low-hanging 98:14
lunchroom 106:6

M

ma'am 130:15 138:16
 140:4 141:11,18
 142:7 187:19
machine 123:10
mailed 173:6
main 3:12 22:21 40:16
 54:6 72:3,17 86:4,5
 115:6 116:11 143:17

207:14
Main's 96:17 115:7
maintain 7:10 87:5 89:7
 92:10,11 93:11
 159:16
maintained 71:15
maintaining 10:9 87:11
 91:22
maintenance 25:6 32:1
 33:1 105:22 129:5
 207:18 208:5
majority 27:14 147:11
making 10:8 54:12
 108:13 154:17 184:3
 185:7 201:11 209:1
man 169:13
man's 156:22 157:15
 171:6
manage 107:22
management 85:5
 87:10 93:19 133:15
 133:18 134:19,21
 135:1 137:21 206:22
management's 17:5
manager 3:17 74:8 96:2
 119:4 133:19 187:10
 195:1
managerial 75:6
managers 108:6,8
 136:15
mandates 68:16 189:2
 189:9,9
mandatory 9:1 10:19
manner 4:21 78:13
map 172:13,15,18
 173:3 174:4
March 123:8
marking 102:18
material 75:19 160:7,12
 160:13 179:20
Materials 2:18 187:11
Matt 2:9 95:18,22
matter 79:8 116:8
 117:16 161:7
McCONNELL 1:14 2:4
 3:3,4 15:7,16 16:15
 16:18,21 29:13,16
 30:3 31:1 35:15,20
 36:1 39:2,7 50:12,17
 51:1,4,9,18 52:2,4,11
 52:15,20 53:2,6,8,12
 53:19 56:9 57:6 59:18
 60:3,8,21 61:5,9,22
 62:6,15 63:1,13 64:18
 65:6,11 66:13 67:18
 68:8 71:4,7,12 72:22
 73:7,10,13,17,20
 75:11,14 81:2,6 82:13

82:21 84:1,6,9 85:10
 85:18 86:3,10,13
 87:19 88:2 89:19 90:2
 90:6,11,16,22 92:2,14
 93:8 94:4,10,18,21
 95:3,7,13,16,21 99:16
 99:18,21 102:6
 103:10,15 104:9,20
 105:6,14 106:11
 109:19 110:7,11
 118:14,18,22 120:17
 121:18 122:9,17,20
 124:4,9,21 127:13
 128:7,18,22 129:11
 130:3,11,16 131:1,10
 131:13,18,20 132:1,4
 132:9,14,19 133:3,7
 135:10,15,17,19
 137:6,17 138:5,11,14
 138:17,20 139:2,5,12
 139:16,20 140:3
 141:9,14,20 142:2,8
 142:13,22 143:4,6
 148:15,20,22 149:5
 149:10,22 150:6
 160:19 163:9,16,19
 163:22 164:10,13,15
 166:18,20 167:14,17
 167:20 168:2 174:16
 174:19 177:19 178:5
 179:12 180:9,13
 186:17,21 187:3,5,14
 187:20 190:7,15
 193:3,11,16,20 194:4
 194:9,11,14,18
 198:16,20,22 199:2
 202:15,20 203:11
 204:8,14,16,19
 206:14 208:9,13,15
 208:20
McNamara 2:18 187:9
 187:10,15,19 188:1
 190:13,22 193:2,7
 194:3,7
mean 46:8 47:20 50:14
 53:10 57:10 62:9 79:7
 80:1,2 99:18 108:9
 112:22 119:2,3
 125:22 129:19 157:1
 179:6,22 182:16,18
 185:12,14 192:13
 199:13 201:7 204:4
 205:16 206:4 207:21
meaningful 11:1
means 27:9 79:6 80:21
 101:21 155:11 164:22
meant 24:16
mechanic 61:16 149:18

medical 99:8 121:8
medium 66:16,16
meet 76:21 77:18 86:6
meeting 1:9 36:13
 82:11,14 106:7 155:9
meetings 4:8,10,14
 37:15 56:15 72:4 78:5
 105:5 119:21 137:22
members 1:16 3:16
 36:4 96:5 112:2
men 51:6
mention 70:5 195:11
mentioned 20:5 46:2
 61:7 67:7 85:12 97:2
 103:12 105:4 109:13
 110:22 183:7
mentioning 105:6
mentions 45:10 70:9
Merrifield 72:2,17
mess 107:12
metal 1:5 3:17 15:22
 39:14 44:16 46:15
 72:2 145:9 148:12
 175:19,19,21 185:3
metal/nonmetal 3:9 4:2
 4:20 5:19 8:15,20 9:3
 41:12 44:7,11 111:3
 126:14 139:18 141:10
 149:2 153:8,22
 155:20 160:17 163:12
 165:2 166:7 167:1
 195:2
methodology 115:13
methods 14:12 38:19
metrics 19:14
microphones 164:4
mid-December 8:18
midshift 50:3,18 51:1
Midwest 86:22
mile 154:13
miles 70:20 77:5 125:17
 146:4
million 77:10,10 116:16
millions 171:16
mimic 66:21
mind 29:16 48:2 79:3
 81:4 153:16 154:14
 164:13,14 203:15
minds 48:20
mine 1:2,15 3:6,18 5:15
 5:22 6:4 7:10,21 8:9
 9:14,16,19,21,21 10:7
 10:11,18 12:2 15:20
 16:3 18:15,19 20:12
 21:8,10 23:11 27:13
 28:5,10 32:15,16
 39:12 40:3 49:19
 50:19 74:9 76:12

79:20 84:17 89:13
 93:13 97:9,15 98:1
 99:6 100:9,14 101:1,2
 101:15 105:17 109:14
 110:5,6 111:22 114:5
 114:9 115:13 117:12
 119:8,17 120:14
 123:17 133:9 134:19
 136:3,10 138:12
 140:11 141:12,17
 143:15,18 144:18
 145:10,11 147:8
 149:13,15,16 151:7
 151:10 152:13 153:10
 160:21 165:1 167:5
 168:7,11 171:15
 172:13,17 175:22
 178:19 184:10 192:10
 193:8 199:21 201:19
 205:6
mined 38:18
miner 17:11,22 18:17
 21:9 22:19,19 26:10
 26:11 28:18 29:21
 32:7 37:22 38:1 91:13
 98:13,17 107:8,18
 109:10 111:18 112:1
 113:11,12 115:10
 116:3 138:21 139:6
 141:16 143:11,12
 144:6 148:2 152:1
 170:5 171:22,22
 196:12
miner's 26:22 117:17
 160:20
Mineral 96:3
miners 4:9,20 6:1,5 7:3
 8:15,19 9:7,15,22
 10:12 11:18 17:13,17
 27:6,16 28:16 35:4
 36:12,14 55:10 56:19
 57:9 79:19 80:3,5
 82:7,13 83:10 97:12
 98:21 105:10 106:18
 106:22 107:22 108:18
 111:13 127:10 130:6
 139:18 144:19 149:2
 150:13 151:1,3 161:6
 163:11,12 171:17
 175:12 176:5 180:4
 184:17 185:1 188:7
 189:21 192:20 193:14
 196:4
miners' 5:16 7:14 9:18
 37:1 108:18 117:7
mines 1:5 3:9 4:2,20
 5:19 8:15,20 9:4 36:5
 37:3 38:16,17 113:10

125:11 126:22 136:16
 136:20 137:9 138:1
 138:13,15 141:10
 153:10 160:17 161:11
 168:7
minimis 28:12
minimum 12:22 77:20
 80:20 101:21 116:6
 155:8
mining 11:9 12:8 13:21
 15:19 16:1,2 17:13,17
 17:21 18:12 21:10
 22:14 23:3 25:13 26:7
 38:19 39:14 40:2
 70:11,12 75:2,8 76:18
 77:3,8 97:19 99:10
 111:3,5,6 117:22
 124:20 145:9 152:5
 153:19,19 154:20,21
 165:4,6 175:15,18
 195:2 199:20
Minnesota 118:11
minute 110:2 116:15
 173:19 175:16,17
 198:11
minutes 137:12 177:8
Miranda 2:19 194:16,21
 194:21 199:1
miscommunication
 136:6
misabeled 173:10
missing 49:8 100:21
 114:19 153:2
Mississippi 159:1
Missouri 40:5
mistake 172:14
mistakes 176:22
misunderstanding
 174:22 177:17,21
 182:18
misunderstood 175:2
mixed 197:20
MNM 96:12
mobile 66:18 67:5
 97:11
moderator 3:7
mom-and-pop 39:15
 44:14
money 134:3 155:11
monitor 66:3
month 24:20 25:7 113:2
months 25:21 32:1
 63:19 68:6 170:11
months' 159:3
morning 3:3 15:6,7,14
 15:16 39:9 95:20,21
 96:20 124:21,22
 126:4 129:5 135:21

135:22 140:2,3 143:8
 143:9 149:6,8 168:1,2
 183:21 188:2 196:9
move 17:17 48:9 75:3
 85:9 97:12 127:13
 202:8
moves 48:1
moving 69:14
MSHA 2:4 4:5,18 5:5,12
 7:14 8:20 9:20 10:20
 11:21 12:3,9,15,20
 13:9 14:14 16:1 17:14
 18:14 19:7,8,12,19,20
 19:21 20:1,10,14,17
 21:6,18,21,22 22:1,4
 22:12 23:12,14,17
 24:3,6 25:12,14 26:3
 27:5 28:7,13 29:6,9
 29:18 33:10,11 35:3
 35:11 40:7 42:7 43:9
 55:20 64:1 65:4 66:7
 68:6,20 70:3 80:17
 88:14,16 92:17 116:6
 116:20 132:19 133:2
 133:4,6,15,21 134:4
 135:6 139:9 140:19
 140:20 144:17 148:7
 150:3,12 153:6
 167:11 175:20,20
 209:6
MSHA's 3:7 4:8 5:18
 9:2 10:4,18 19:16,21
 20:14 21:7 35:1 54:7
 66:4 74:13 76:4 96:11
 156:5
msha.gov 14:5
mules 117:1
Multi- 186:13
multi-shift 201:16
multigeneration 40:2
multiple 92:4 115:11
 118:6 120:3
Mulzer 2:9 95:19 96:1
 110:9
murders 154:3

N

N 1:9 3:1
name 3:3 7:7 11:4 15:8
 15:10,17 39:10 59:5
 59:10 74:6,7 95:22
 124:16 131:8,10,14
 131:14,21 134:13
 136:1 141:12 143:9
 153:18 154:15 164:6
 168:3,4 187:7,9,18
 193:22 194:1,19
 199:4,8,8

name's 140:4 194:21
 199:6
names 59:5 62:13
 65:20
naming 62:13 65:20
National 187:12
nature 103:9,22 147:18
 193:8
Near 18:4
necessarily 16:9 26:20
 75:19 76:8 101:5
 106:1 200:3
necessary 47:15 61:21
 69:21 143:21
need 14:16 18:2 24:12
 25:1 27:6 28:8 30:7
 31:11 32:8 33:7,8
 38:5 40:17 42:13,14
 42:15 43:21 44:1,12
 44:19 53:17 55:17
 56:2 63:11 70:13
 81:10 85:3 116:17
 117:20 119:1 125:9
 127:11 132:5 135:6
 142:11 150:14,16
 151:11 161:8 180:15
 197:5
needed 33:9 42:11 43:5
 61:14 101:12 116:13
 151:14
needing 101:8
needs 13:21 20:1 54:11
 56:8,22 59:14 68:20
 80:18 151:21,22
 208:1
negative 76:2 93:5
negligence 144:20
never 99:7 141:18
 157:1 200:1,6
new 7:19 41:2,17 47:2
 69:7 83:3 92:8 96:22
 98:2 110:3 112:11
 114:1,1,16 115:3
 120:12 121:5,16
 122:6 136:5 168:12
 198:10
newest 99:14
nickel 122:7
night 71:18 80:8 83:5
 103:16 126:4 201:19
 201:21 203:12,15,16
 203:20 204:3
nine 19:20 159:3,15
NO2 179:9 180:4
nobody's 188:17 190:1
nonmetal 1:5 3:18
 145:10 194:12
nonsupervisory 12:13

normal 37:2 81:19 82:4
 104:21 142:20 151:22
normally 38:11 125:18
north 40:5 74:10 78:18
 87:1
note 6:15 14:17 102:15
 209:6
noted 6:10 128:12
 129:13 136:20 200:5
 200:8
notes 35:17
notice 14:14,15,20
 209:7,8
noticed 188:18
notices 205:18,20
notification 7:19 36:17
 55:10,21 56:5,21 57:8
 79:4 80:19 130:14,19
notified 36:20 130:9
 184:8 196:5 203:16
 203:17
notify 6:4 9:14 42:15
 58:7 82:2 115:14
 130:6 196:20
notifying 58:11 115:10
number 100:22 112:1
 156:1,10 157:3 158:8
 159:15 160:5 192:18
number-one 116:3
 133:16,17 171:1
numbers 54:8 125:16
numerous 205:18

O

O 1:9 3:1
o'clock 126:4
objective 76:4
observe 181:20 184:13
 192:10,11
observed 181:21 184:6
obvious 178:20
obviously 47:3 57:16
 100:11,21 114:17
 178:22
occupation 155:1
occur 12:6 78:7 107:16
 196:4
occurred 34:9,13 119:5
 123:16
occurrence 28:18
occurs 10:15 26:11
 169:5
odd 28:17 34:11
offer 45:17
offered 20:7 21:22
 24:14 29:6 95:9
offers 19:22 41:11 44:5
office 1:15 3:5,19,21

40:4,5 79:11,12
 151:10 152:15 161:1
 172:13 173:1
officer 145:13 147:22
offside 205:19
oftentimes 109:21
oh 99:13 138:14 162:20
 194:14 204:19
Ohio 97:5
okay 16:18 28:21 29:15
 35:15 36:1 38:3 39:2
 41:18 46:17 47:14
 49:22 51:9,18 52:2,3
 52:15,20 53:8,12,19
 53:20 57:13 59:7,12
 59:17 61:7,22 62:15
 63:13 65:6,18 66:13
 66:14 68:8,14 70:8
 71:6 72:18,22 73:20
 81:6 83:2 85:18,20
 86:3,10 87:19 88:2
 89:5 90:16 92:14
 94:10 95:16,17 99:20
 102:6,9 106:11,12
 128:9,9,10,22 129:11
 130:3,4,16 131:3
 132:1,14 133:5,7,8
 136:11,12 138:5,17
 138:20 139:3,12
 141:14 142:22 143:4
 166:18 186:21 193:2
 194:9,18 204:16
 206:14 208:9,20
old 169:15
on- 136:17
on-shift 146:17
on-the-job 100:20
once 6:1 24:20 25:7,21
 25:22 31:21,22 70:13
 78:20 81:14 85:10
 97:14 101:20 118:4,5
 119:13 172:13 175:3
 182:2 184:9
oncoming 127:6 137:22
 145:16 146:20
one- 17:10 186:2
one-hour 86:8
one-shift 186:12
one-size- 111:10
one-size-fits- 38:12
 44:12
one-size-fits-all 37:7
 46:11 58:14 110:21
one-time 38:1
ones 30:14 69:17
ongoing 77:21
open 79:9 99:13 172:1
 183:17

opened 43:5 188:5
opening 158:9
operates 40:7
operating 20:12 160:8
operation 44:18 46:7
 46:15 47:21,22 51:13
 76:12,17 77:8 78:10
 79:17,18 81:20 86:20
 95:10 170:10 178:14
 186:3,13
operations 37:12 39:14
 44:11 46:3,4 70:19
 74:9 75:2,9,10,15
 86:21,21 152:14
 167:8 185:19 186:10
 186:14 201:16,17,18
operator 5:22 6:4,13
 7:10 12:2,16 20:11,18
 21:8 44:16 54:11
 60:10,16 62:7 66:1
 68:16 80:7 81:16 97:9
 100:14 107:19,20
 115:14 117:13 120:14
 145:16 181:9 185:18
 195:16 196:2
operator's 55:1,7
operators 5:15 7:21
 9:14,17,19,21 10:11
 15:21 16:3 18:15,19
 28:10 36:15 39:12
 40:13 57:11 81:11
 82:8 93:20 142:17
 144:21 145:1 167:5
 167:12 183:13,13
 185:4 186:1 188:12
 188:13 196:15 206:5
 206:7
opinion 56:3 58:12
 68:12 144:6,22
opportunity 15:15
 29:10 74:16 95:5
 120:11
opposed 193:10
oral 5:7
order 62:2,2 97:10
 102:21 119:10 128:16
 128:21 129:1,4,4,8
 184:1
ordered 101:13
orders 8:22 133:17
organization 99:10
 106:13 116:7 155:5
 187:8 194:19,22
 195:2 199:4
original 69:9 118:2
 188:19 189:2,13
originally 198:12
OSHA 193:10

ought 102:13
outcome 65:1
outdated 117:2
outside 84:16
overall 174:7
overburden 145:20
overhead 103:7
overlap 107:10 203:18
 203:19
overlapping 106:19
 115:11
overlook 177:1
overlooks 176:20
overly 79:8
overseen 98:2
oversight 118:3
overtime 125:22 195:21
owned 168:11

P

P 3:1
P-I-E-R-C-E 74:8
page 2:2 96:9 162:16
pages 19:21
pair 158:2 159:13
Pamela 1:22 3:20
panel 1:16 3:16 5:1,3
 39:9 135:22
paper 61:14,20 69:15
 89:11 101:17 114:11
 115:2 119:6 121:15
 122:1 146:14 147:16
 172:9 182:12
paperwork 69:1,8 89:9
 121:10 161:8
part 23:5 27:22 28:8
 33:20 53:13 68:20
 70:3 88:11 98:6 104:3
 108:22 111:18 113:12
 141:15 154:9 193:7
 204:7
participate 91:16
 209:14
participating 91:15
participation 3:14
 209:5
particular 13:1 20:12
 47:9 49:18,19 50:2
 53:21 55:8,18 57:4
 75:5 76:12 78:12
 82:18 89:8,12 93:8
 94:7,8 169:9 178:10
particularly 18:22 26:6
 91:5
partner 15:18 160:22
partnership 91:17
parts 76:10 101:12
party 5:6

passed 140:16 142:20
 172:15
path 200:21
pattern 174:6,7
pause 16:20 142:1
 208:16,19
PCS 2:8 20:3,9 74:9,12
 74:20
penalties 23:3,10 131:9
penalty 134:17
penned 110:4 115:4
Pennsylvania 4:4
people 16:18 28:4 48:6
 51:11 57:21 71:20
 80:4 82:8 87:8,9,21
 93:13 94:8 98:5,10
 100:6 104:14,15
 107:4 109:15,16
 111:9,10 112:2
 113:17 115:14 116:4
 117:14 118:8 123:2
 125:13 126:1 135:2,3
 137:21 139:10,10,10
 142:17 144:17 146:16
 154:10 165:21 166:11
 168:10 172:6 174:22
 176:22 177:1,4,10
 184:10 185:2,7
 187:22 190:10 191:1
 191:13 205:2,3,20
 206:6 207:15
people's 146:12 147:12
percent 75:9,13 117:4
 120:3,5 175:15 183:4
 185:4
perfect 41:15
perform 8:6 12:17
 16:12 18:1 21:12,12
 21:15 22:20 77:14,22
performance 133:15,18
performed 8:10 21:2,2
 21:3,16 22:5,5,6
performing 26:21
performs 34:16
period 11:17 14:15 18:3
 45:8 46:16 47:8 79:1
 209:7
person 5:21 6:11,18 7:7
 8:1,5,5,17 12:1,4,4,13
 12:16,21 21:16 22:3
 22:15,16 23:1,2 24:9
 29:20,22 33:2,4 54:2
 54:4,8,12 55:4 74:16
 92:16 93:13 94:7,11
 94:12,16 109:17,22
 114:22 115:8,17
 123:19 125:19 126:8
 128:1 131:15 132:13

134:12,19,21 135:1
 136:21 137:2,5
 140:10 142:11,15,18
 142:21 151:21 166:10
 169:6 176:2,12,13,17
 176:18 182:4,17
 183:18 184:8 188:21
 189:4,15 195:12,17
 195:17,20 197:2,14
 197:22 198:10 205:16
person's 94:2 176:15
personal 40:10 93:15
 111:17 117:9 144:6
 144:22 208:4
personally 64:14
personnel 77:21
persons 6:14 17:20
 20:15 21:19 104:13
 125:14 126:3,7,11
perspective 39:22,22
 40:6 53:16,16 116:3
 117:4
phone 116:16
phones 152:14
phosphate 20:3,9 74:9
 74:12 123:17
Phosphates 2:8
phrase 19:19 20:14
 107:22 117:15
physical 108:20 115:3
physically 102:18 179:2
 179:8,10,16,21
picking 98:22
piece 31:22 89:11 90:10
 98:22 122:1 180:19
 182:14
pieces 69:15 101:12
 115:2
Pierce 1:18 2:8 3:17
 35:22 71:9,14 74:3,5
 74:7,8 75:13,16 81:5
 82:6,15 83:1 84:4,8
 84:12 85:15,21 86:4
 86:11,16 88:1,5,8,13
 88:17,21,22 89:2,3,5
 89:6 90:1,4,9,12,21
 91:2 92:9,15 93:10
 94:5,13,20 95:1,4,12
 100:2 112:13 118:20
 119:7 120:9,18 121:2
 121:13,17 135:16
 143:3 148:19 163:15
 167:16 174:18,20
 178:1 180:3,6 181:2,7
 181:10,15 182:20
 183:8 185:13,22
 186:4,11,15 187:4
 190:14,16 191:1

193:6,12 194:13
 198:21 202:12,19
 203:9 204:13 206:15
 207:3,7,11,16,20
 208:8,11
pile 179:1,3,19
pillars 57:16
pipe 156:2,2 205:14
pit 126:9 160:8
pitched 146:1
pits 125:17,19 128:5
Pittsburgh 4:4
place 4:3 5:19,22 6:2
 8:1,9,9,16 9:4 10:21
 11:20,22 12:14,22
 13:2 26:14 30:3,7,18
 31:3,6,8 37:5 50:7
 70:7,10 71:3 81:14
 89:21 92:13 96:12
 102:16 104:2 105:11
 125:8 142:16 150:5,6
 151:8 155:13 157:11
 162:9 178:15 180:11
 201:5 202:5,6
places 1:4 3:8 4:2 5:14
 9:3 11:5 30:5 70:8,16
 71:5 150:4
plan 62:21 98:8 133:15
 133:18 198:12
planning 55:3 202:13
 203:7
plant 28:4 31:18 76:20
 101:14 103:18 107:19
 107:20 126:8 128:5
plants 125:13 126:22
plate 114:19
play 94:6 97:3,17,21
 117:11 182:3,4
 184:11 186:8
please 13:7,19 14:8
 15:2,9 99:17 164:6
 168:2 187:7 202:5
pleasure 143:16 145:8
plenty 127:11 147:20
plowed 188:2
point 28:8 36:2 65:19
 70:2 83:6 86:5 116:9
 142:3 200:11 201:5
points 166:3
policies 99:2
policy 10:21 12:10
 24:13,16 34:22 59:18
 59:19 60:1 61:8 109:3
 137:20 165:16 189:1
pond 159:4
poor 123:5
pops 116:21
population 80:6

portion 59:10
portions 67:22
position 10:22 17:21
 45:11 76:6 195:1
positive 34:22
possibility 182:21
 183:16
possible 13:11 134:10
 177:14
possibly 98:1 121:17
 126:1
post 56:13
post-blast 46:20,22
 47:4
posting 56:11
potential 65:17 83:8,19
 84:14,20 85:13 90:18
 93:20 105:12 208:6
PowerPoint 42:10
practical 57:18,19 58:4
 74:21
practice 12:10 29:9
 37:2 38:8 47:19 53:14
 56:7 64:21 65:10,12
 82:4 104:21 201:7,9
practices 10:3,4 13:15
 37:5 51:5,20 61:7
 81:3 93:12 98:16
 189:3,3
pre-existing 138:1
preamble 11:12,13 13:4
precautions 83:6
precious 144:5 148:11
preclude 164:1
predictable 12:7
predominantly 143:14
prefer 80:20
prejob 106:6
preliminary 41:19 44:3
 45:1
premise 18:9
preparation 153:5
prepare 83:3
prescribed 195:22
 197:1
presence 167:9
present 1:20 5:4 6:12
presentation 42:8,10
 43:2,3 208:21 209:1
presented 13:4
presenting 5:7
preserved 121:6
preshift 66:17 67:5 78:1
 78:4,9 126:16 146:20
 156:13 157:5,16
 158:11 160:10 162:5
 162:6 168:14 169:1
 171:5

preshifting 136:16
 145:15
preshifts 83:11
president 143:15
 147:22
prestart 76:11
presumably 190:6
pretty 59:16 78:18
 127:9 149:12 198:6
 203:4
prevailed 146:9
prevent 10:1 96:13
prevented 22:11 43:17
 158:12 163:4 170:18
 197:13
previous 8:14 78:6,8
 82:17 84:15 91:7
 93:14 98:5 105:4
 109:16 123:12 126:21
 127:3,4 172:17
 185:15
previously 132:16
prework 105:5
primary 10:1
print 131:20
prior 21:17 26:17 36:13
 50:11 97:22 98:6
 106:21 107:11,11,15
 120:22 123:10,15
 125:15,20 130:7
 136:18 137:22 165:5
 165:7,13 173:5
 197:15 198:2,9,14
 201:21 202:3,10,18
priorities 171:2
priority 166:13 171:2
private 2:19
privately 168:11
privileged 39:11
proactive 10:14
probably 27:22 36:3
 117:2 139:14 146:3
 173:4
problem 35:9 48:14
 112:21 131:5 145:3
 152:17 168:13 193:12
 193:15 200:6,7
 201:22 203:17 204:7
problems 48:13 99:13
 109:11 157:18
procedure 109:3
procedures 99:2
proceed 80:17
process 48:17 70:11,12
 113:9,12 130:19
 151:2,4 169:17 174:3
 179:4 209:15
processes 105:3

199:22
produce 4:19 13:20
producer 96:5
producing 43:9 76:18
product 76:19 77:10
production 47:10,12
 75:8,18 105:20 152:4
products 38:18
professional 13:15
professionals 150:11
program 10:21 12:9
 16:7 24:13,16 34:22
 98:9 99:4 100:3
 113:10 189:1
programs 133:22 134:8
 165:22
progressed 40:13
progression 188:18
promise 194:17
promote 64:17 69:22
 134:10 135:7
promoted 68:2 134:2
prompt 55:10,21 57:8
 79:4,6,20 80:1,19
 87:13
promptly 6:4,7 9:14
 68:17 81:16 145:14
promptness 88:10
pronounce 124:12
proof 119:14 120:12,14
 121:15 144:18
proper 37:19 43:6 99:1
 145:3 197:12
proponent 102:22
proposal 47:2 51:22
proposals 44:20
propose 77:20
proposed 3:8,10 4:1,13
 4:18 5:17,20 7:17,21
 10:16 11:9,12,13
 13:17 14:13 18:5,15
 19:5,7,17,22 20:2
 22:10,15,22 29:19
 30:6,14 36:19 39:20
 43:10,11 44:2 45:4,9
 51:19 52:8 58:19 60:7
 61:1 66:19 68:10,14
 69:7 70:9 72:20 74:13
 74:21 75:10 82:5
 96:11 106:21 121:20
 142:5,6,9 153:4
 167:11 188:19 189:8
 189:8,18 190:3,8,12
 190:12,19 195:22
 198:3 199:9 200:14
 202:3,22 203:4
 208:18
proposes 19:8

proposing 5:12,12 8:13 76:5
protect 144:5,19 146:13 148:10 184:17,22 185:11
protecting 116:2
protective 76:7
proud 111:17
prove 119:14 200:15
proven 64:1
provide 7:15 13:7 75:19 85:6 209:14
provided 34:19
providing 35:10,11 74:11,17
proving 199:11 200:13
provision 6:15 55:19 92:22
provisions 13:18 142:5 142:9
prudent 148:10
public 1:4 3:7,22 4:8,13 4:14,17 14:2,4,10 20:22 21:7 209:16,18
publicly 95:6
published 3:10
puddle 197:17
pull 66:5 145:22 146:3
pulled 156:5
purchase 62:2
purpose 4:16 18:14,18 23:15 63:20 67:14 68:4,6
purposes 25:6 33:1
pursuant 75:21
pushing 115:20
put 16:5 18:11 40:21 42:7,22 97:10 102:8 120:13 128:14 134:3 134:3 136:20 140:19 144:10 145:5 147:7 153:18 154:5,7,15 158:13 162:20 172:8 174:4 206:2,20
puts 104:17 146:22 147:3,4 207:6,7
putting 41:16

Q

qualified 201:12
qualify 8:6
quality 30:18
quarries 39:15
question 23:22 24:17 25:15 26:3,4 30:22 34:7,10 35:16 61:12 70:17 71:1 81:3 92:16 106:17 119:3 120:1

125:6 126:19 130:10 130:17,18 133:1 188:16 190:2 193:4
question's 107:7
questions 5:1,2 23:19 23:21 24:11 25:13 29:11 33:3,16,17,21 33:22 39:3 72:6 100:2 114:4 118:13,15,21 119:18 127:15 132:6 132:8 141:8,21 148:14,18 149:1 163:6,14 174:15 178:8 186:22 193:17 198:17 204:11
quite 35:14 38:16 69:21 125:21 170:12
quote 117:14

R

R 3:1 124:17
radar 116:21
radio 80:20 151:9 152:16,17
radios 152:13,15
rain 71:18
rains 123:15
rainstorm 78:19 83:4 171:9
raised 17:6 30:21 92:16
range 83:1
rant 113:7
rarely 133:12,13
rationale 13:8,12
re- 127:11
re-emphasize 125:2
reached 19:11
read 117:11 142:4 153:3,6,12 160:6 171:4 201:4,4 202:2
reading 118:2 152:5 157:4 199:9
readings 66:5
real 36:4 78:21
real- 76:8
realize 116:6 184:19
really 19:21 34:11 42:9 42:15 43:5,10 44:1,4 49:10 56:3 57:5 66:8 69:16 79:5,20 91:6 103:13 104:6 116:13 130:22 135:3 141:6 142:3 150:17 158:7 165:22 168:7 171:1 181:9 184:22 196:10 207:18
realm 55:7
realtor 153:20

realtors 153:21 154:2,5 154:20
reason 17:18 25:20 38:15 43:6 67:1 195:9 201:20
reasonable 144:14
reasons 45:19 178:8
receive 4:17
received 22:18
receiving 64:9 193:22
recognition 77:17 82:7 91:17 93:18 98:11 166:16
recognize 12:5 54:4 133:21 157:6
recognized 17:14 134:7
recognizes 17:15
recognizing 140:15
record 5:4,6 6:17,20,21 6:22 7:4,7,8 9:10,20 10:6,9 11:1 14:18 29:18 35:11 60:4,15 67:9 74:6 82:3 84:2,4 85:11,13 89:7,22 90:18 91:1 92:5 118:6 122:2 123:21 128:19 128:20 129:2 144:7 144:13 150:2 164:3 167:12 168:3 174:4 181:13 189:18
recorded 67:4 85:17,18 85:20 86:1 127:5 181:13
recording 60:12 64:19 64:21 65:1,3,12,16 110:12,12 122:11 174:11 185:6
recordkeeping 7:20 28:12 59:22 66:19 68:13 69:20 86:17,18 87:7,10 89:14 121:18 121:20 131:4,5,6
records 7:11,13 9:17 37:14 56:18,18 61:18 67:10 87:5,11 88:15 88:18,19 89:17 91:6,7 91:8,22 133:10 172:12 174:1 189:19 200:2
Redetzke 2:16 168:1,4 168:5 178:17 179:15 180:5,7,12,16 181:4,8 181:11 182:5 183:6 185:9,14 186:2,7,12 186:16 187:1
redo 111:12 116:20
reduce 92:11
reduced 88:6

reduces 88:10
redundancy 58:12 92:11
refer 197:8
referring 180:17
regard 169:21 170:9 173:22
regarding 10:21 39:18 96:22 128:4 208:18
regards 101:20 107:22 113:5 115:10 121:3
regions 105:17
Register 3:11 96:7,9 108:3
registered 194:6
registry 198:4
regs 151:2 155:12 201:3 203:2
regular 100:17
regulates 16:1
regulation 96:18,22 98:2,3 99:12 101:20 101:22 104:3 108:15 109:12 110:3,20 111:1,2,11 112:4,15 113:6,6,8 114:16 115:4,9 117:2 120:12 121:5,16 122:6 123:18 124:1 125:8 126:16,20 127:2,8 134:9 135:4 158:18
regulations 1:15 3:5 41:3,9 101:3 108:19 114:1 116:6,10,12,19 118:11 126:7 132:21 140:20,22 153:3 160:15 195:8 204:6
regulations.gov 14:6
regulatory 40:9 53:16
rehash 42:15 43:13
Reid 2:20 199:6
reiterate 5:11 8:12 55:14
relate 77:12 112:8
related 13:15 33:4,5 174:7
relates 91:6
relationship 40:11 43:22 167:11
relevant 13:13 112:9
rely 171:18
relying 197:14
remaining 58:6
remains 76:7
remarks 86:14
remedial 10:18
remember 182:21 193:21

reminders 103:5
remote 78:15
removed 123:9
removing 145:19
renegades 188:15
repair 25:6 32:1 33:1
 103:1 105:22
repeat 124:14
repetition 157:22
repetitious 144:11
 147:18
replace 115:8 208:1
report 20:21 21:5
 134:13 171:13 191:14
reportable 173:16
reported 116:16 190:20
 192:7
reporter 14:9 15:8
 16:17 74:6 124:15
 164:7 187:8 194:20
 199:5
reporting 78:3 191:22
reports 20:5,7 145:4,6
represent 15:19 36:5
 39:13 44:8,14 51:11
 60:10 141:10 145:9
 150:12 153:10 163:11
 167:7 168:9,10 188:7
representative 15:5
 141:16 149:14,15
 160:20 161:1 189:20
 189:21
representatives 7:15
 7:16 9:18 10:12 37:2
 188:6 190:4
representing 16:3
 40:13
represents 39:12
request 4:8,14 7:16
 12:20 13:3 49:18
 53:22
requesting 11:8
requests 4:11 11:11
require 5:20 9:6,10,14
 9:16,19 11:15 12:21
 55:10 58:19 59:19
 68:10 69:19,20 72:15
 75:6 76:16 77:17
 125:13,18 126:11
 140:10,21,22 176:2
required 32:14 35:2
 53:9 61:3 67:16,18
 69:1 78:22 79:16 87:6
 121:5 130:19 188:20
requirement 5:18 42:2
 42:6 45:7 52:1,8
 63:19 66:20 68:1
 76:21 86:8 120:19

requirements 4:18 7:20
 10:16 59:9,22 70:22
 96:12 121:19,20
 131:6 203:3
requires 18:19
requiring 65:3 67:14
 87:6 120:19
requisite 54:8
rescue 170:5
resolve 67:6
resolved 62:21 63:9
 85:7,16,19,22 88:20
resource 144:5 148:11
 193:5
responded 197:9
response 4:11 62:3
 95:15 195:7 208:14
responsibilities 7:19
responsibility 10:1
 94:2,3 205:2,3,4
responsible 196:18
 197:2
responsive 13:21
rest 117:14 175:5
result 20:17 144:19
 145:12,14,21 146:4
 146:10 147:21
results 105:10 155:18
retain 128:18
retained 67:12 128:20
 129:2
retention 189:19
retired 99:6
retrain 111:12
retraining 42:19 141:1
reverse 64:17
review 13:9 14:4 78:5
 82:16,18 89:17 91:18
 102:4,22
reviewed 91:2 129:5
reviewing 93:20,20,21
revises 18:21
revision 19:8
revisions 74:14,22 79:5
rib 180:20 182:14 204:2
Richard 1:10
right 3:16 26:12 27:17
 30:2 31:16 33:11,17
 36:7 51:8 59:20 60:2
 60:8 61:5,9 64:18
 65:7 78:11 80:1 83:21
 88:21,22 89:2,20 90:9
 90:17,20 91:13 94:4
 94:13 100:4 104:11
 108:7 109:4 112:12
 112:13 115:4 120:9
 121:1,6,21 122:20
 123:12 127:8 128:7

132:9 134:14 135:4
 137:8 141:20 143:19
 146:1 156:21 159:19
 160:2 162:15 174:1
 175:14,15 176:17
 180:4,5,12 182:14
 186:15 190:13,21
 192:11 193:11 198:8
 202:2,12,19 203:9
 207:16,20 208:2
rights 115:1
rigorous 8:16
rise 148:9
risk 91:13
River 97:6
road 159:4
roads 70:10,12 202:4
roadway 71:17 78:18
roadways 71:9 77:5
rock 46:19 47:22 48:9
 160:9
Roger 2:11 135:20
 136:1
roll 27:19
Rolla 40:5
rolled 28:20 29:1 156:2
rolls 97:11
roof 172:2 173:2,8,9,10
 173:14 174:6
room 16:19 104:6 110:6
 115:22 116:4 117:14
 123:2 166:10 168:20
 168:21 169:3 170:19
 172:3 179:19 180:19
room-and-pillar 165:3
 165:6 168:6
rooms 1:9 178:20
roped 145:18
routine 78:3 100:17
 105:3 107:17,18
rule 3:8,10 4:1,13,19
 5:12,17,20 6:16 7:17
 7:21 8:13 11:10,12,13
 13:20 14:13 17:18
 18:5,9,15,19,21,22
 19:1,4,5,7,9,10,13,15
 19:17,18,22 20:2,8
 21:22 22:2,10,15,22
 23:7,16,20,20 28:7,9
 29:7,19 30:6 33:9,22
 35:14 36:7,19 38:14
 38:14 39:20 40:22
 41:2,11 42:1 43:11,21
 44:4 45:4,4,10,20
 46:11,11 47:17 51:19
 52:22 53:1 54:20 55:9
 57:1,7 58:15,19,19
 59:9,17,19,20 60:7

61:2,3,6 63:15 64:16
 66:21,22 67:5 68:10
 68:14,19,21 69:5,7,9
 70:9 72:20 75:22 76:7
 77:19,21 78:9 81:1
 82:5 86:6 88:18 94:5
 94:6 96:11 106:21
 116:15 142:5,6,9
 153:4 167:11 168:12
 169:15 175:1,6,7
 176:1 177:1,2,6,12,15
 178:4 179:6 181:16
 182:3,16 184:14,19
 184:20 185:17 188:19
 188:19 189:8,8,13,18
 190:3,8,12,12,19
 200:14 202:22 203:4
 208:18 209:13
rulemaking 5:4 33:20
 95:11 209:4,15
rules 4:22 47:7 74:14
run 2:15 73:14 136:13
 164:9 170:2 201:19
running 154:13 164:4
 201:18
rushed 159:6
Ryan 2:6 39:8,10

S

S 3:1
S-E 39:10
safe 38:4 71:16 137:15
 138:4,8 166:12 169:7
 169:12 188:10 193:10
 207:15
safely 160:3
safest 140:10
safety 1:2,15 3:6,18
 4:19 5:16 6:3,7 7:3
 9:1 10:19 11:7 12:18
 16:7,9,13 17:2 18:8
 18:17 23:11,15 26:2
 29:4 37:15 38:2 40:3
 42:18 44:22 45:18
 47:16 53:15,16 54:5
 55:11 56:15 63:20
 64:17 67:14 68:1,4
 69:22 73:14 75:20
 76:3 77:2 81:16 93:6
 93:7 96:2,3 114:6
 117:4,22 126:2,5
 132:22 133:13,22
 134:2,3,4,8,10,11
 135:8 137:22 143:18
 148:7 149:14 150:12
 165:22 178:20 187:10
 187:11 195:1,4
 196:11,14,16

salaried 195:17	42:22 43:6,9,22 46:9	146:15 159:1	191:4 209:3
salary 195:18	51:19 58:18 71:20	shafts 148:1	shut 76:16,20 78:2,12
Salt 2:17,21 4:3 168:5	75:18 78:10,16 82:1	shape 201:15	shutdown 77:12
199:7	83:19,20 93:9 95:11	shapes 39:13	side 21:1 103:2
Sam 1:18 35:20 71:7	97:15 100:19 120:18	sheet 5:8	sign 5:8 6:19 113:16
73:1 88:3 109:6	158:1,2,21 159:9	sheets 15:2	133:20 134:12 154:11
112:12 118:18 120:3	168:7 171:14 174:6	Sheila 1:14 2:4 3:4	161:15 171:20 181:19
132:18 135:15 143:2	179:1,9,21 182:17	Sheraton 1:9	181:19 184:4
148:17 163:13 167:14	183:19 186:3 189:8	shift 6:1,20 9:5 17:9,10	signage 80:20
174:17 178:7 188:11	191:3,17,19 192:4,18	17:11,12 25:3,16 26:8	signature 131:11,12
193:2,16 198:20	193:12,15 196:19	26:21 27:2,3 31:20	189:15
204:12	197:2 200:14 203:1,5	32:3,3,18 36:9 38:10	signed 15:1 136:21
Sam's 119:3 178:12	203:8 208:20	45:8,15,16,17 46:17	139:22 164:11 182:8
Samuel 3:16	seeing 35:7 189:12	47:6 48:4,5,7,8,18	189:16
sand 111:4 187:12	seeking 45:6 195:4	49:16 50:5 51:2 52:6	significant 27:5 74:20
Sanford 79:12	Seelke 2:6 39:8,9,10	52:17 53:4 56:16 58:7	75:6 88:11
sat 162:19	50:15,22 51:3,8,10,21	62:19,20 63:3 69:18	signify 201:17
Satellite 124:6	52:3,10,13,16,21 53:5	70:17 71:21 77:21	signing 172:9 205:1
save 156:7 161:7	53:7,9,13,20 56:10	78:6,16 79:18 80:8	signs 182:12
saved 156:22 157:16	57:7 60:2,5,19,22	81:15,20 82:12,12,17	similar 37:4 65:20
158:22 171:6	61:6,10 62:1,11,16	88:9,9 89:14 91:3,21	112:15 168:16
saving 156:8	63:4,14 65:5,7,14	92:3,6 97:1,18,22	similarly 16:13 17:1
saw 109:6,6 154:11	66:14 67:20 68:9 71:6	101:21 102:2 105:19	22:2
156:14 159:9	71:13 72:18 73:3,12	106:2,14,20,21 107:6	simple 78:19
saying 51:4 60:6 61:2,3	73:15,18	107:9,16 115:18	Simply 16:5
70:15 78:19 82:4	seen 40:16 47:19 48:2	118:4,5 120:21,22	single 99:7 106:14
87:20 105:20 120:4	91:11 121:7 133:14	122:12 125:15 126:21	168:10 172:5
180:1 182:13 197:4	136:5 139:8,10	127:4,6,22 132:3	single-shift 201:17
204:22 206:16	160:11 175:22 188:15	136:18,19,20 137:1	sir 15:7 73:10 95:17
says 19:10 24:20,21,22	196:13 200:7,12	137:14,22 138:1,6,9	135:17 149:1 204:8
24:22 27:5 29:9 41:22	sees 49:6 119:5 199:18	146:20 151:14 152:7	sit 171:4
43:20 54:20 77:19	selectively 147:14	152:10,11,20 161:14	site 100:9 101:1,15
81:13 92:22 96:10	sell 113:4	161:22 165:5,8 169:8	111:22 133:9 134:19
101:20 102:17 108:3	send 46:22 51:14	169:12,19 171:10	175:21 176:18
113:17 115:6 117:12	170:21 191:6	175:5,14 176:3	sites 86:18,19 103:8
119:8,17,22 123:9,15	sense 25:17 26:2 36:2,4	177:10 181:14,18	sitting 62:13
126:7 146:19 154:12	36:22 37:3 57:9,9	182:2 184:12,16,21	situation 62:5 65:21
160:6 162:20 175:6	66:22 127:16,19	185:10,11,15,18	79:22 85:15 88:19
181:16 184:11 192:10	178:9 186:13	186:1,3,14 189:17	90:13 107:20 122:16
scaler 67:6	sent 51:6 153:7,17	195:11,15 197:15	123:1 164:19 165:3
scalars 58:4	172:13	198:10 201:19,20,21	180:1 196:21 205:8
scaling 57:12	sentence 68:15	203:12,12,15,16,19	situations 61:16 78:6
scared 64:9 135:3,3	separates 110:5,19	203:20 204:3 206:18	89:8 144:11
scenario 67:7	111:8	shift's 177:8	six 25:21 32:1 47:9 87:8
scope 94:7	September 14:16,19	shifter 196:6	87:21 146:15 158:8
scrape 180:19	209:8	shifts 37:12 46:16,17	sizes 39:13 51:12
seasoned 114:2	serious 8:14	106:19 109:2 115:11	skipped 187:17
second 16:16 68:15	seriousness 167:10	115:12 170:3	slam-dunk 192:15
108:17 159:13	serve 23:4 143:16	shirk 205:4	slightly 37:9
secretaries 108:5	187:11	shop 44:14 149:17	slips 154:3
Secretary 3:12	served 160:19	shops 117:1	slow 154:12
section 14:13 53:22	serves 63:20	shortly 115:7	small 39:14 69:3 98:19
65:21 66:2,10 138:7	service 15:22 77:7	show 14:18 42:11	122:7 168:11
144:16 202:6,10	set 69:6 155:6,14,20	167:12 182:7	smaller 60:10
section's 202:9	195:6	showed 173:8	smell 103:8
sections 8:2,2 202:7	setting 155:7	shower 161:15	smells 111:1
see 28:22 29:4 30:16	settling 159:4	showing 113:21 140:17	Smith 131:21
35:5 40:7,8 42:7,17	seven 87:8,21 123:12	shows 100:22 133:8	soft 145:21

sole 57:13
Solicitor 3:19
somebody 54:16,18
 71:19 142:15 144:6
 147:10,19 152:16
 157:10,16 159:8
 160:10 162:16,17
 166:9 173:20 176:14
 191:6 200:21 201:11
 201:12 206:22
somebody's 175:9
 181:18 207:22
someday 162:19
someone's 54:15
someplace 27:11
somewhat 33:3
sorry 74:3 95:13 113:7
 124:10 139:4 204:19
 204:20 206:13
sort 26:18 40:6 42:5,8
 43:1
sorts 24:15 38:18
sounds 165:22
south 141:13
southeast 3:17 72:4
 182:22 185:3,3
 190:17 191:3
southern 97:5 118:10
space 69:19 87:3
speak 15:15 29:11 95:6
 120:2 150:9 161:3
 190:17 194:6 208:18
speaker 2:2 5:2,2 15:4
 16:19 39:7 73:13,22
 95:18 124:5,11
 135:19 164:1 167:22
 178:7
speakers 5:3 15:4 78:8
 84:15 91:7 93:14
 105:5 139:21 150:22
 152:3 166:2,16
speaking 59:22 66:14
 74:1 103:15 138:21
specific 5:10 8:11
 11:11 12:6 13:11,19
 13:19 45:3 46:13
 59:21 62:12 80:5
 83:14 190:2
specifically 72:6
specifics 59:2
specified 11:17 45:8
 130:22
spell 15:9 199:7
spelled 39:10 124:17
 158:6
spelling 15:12
spent 155:11
spill 103:21

spoke 42:3 177:20
 180:17
spot 21:18 145:22
spring 97:6
Springs 74:12 86:20
square 171:16
stability 128:10,10
stack 195:20
stakeholders 4:11
stakeholders' 72:3
Stalite 124:7
standard 7:13 13:14
 20:20 24:2,6,6 30:13
 30:17 36:8,18 40:15
 40:18 42:17,19 44:12
 51:6 56:6 64:19 68:16
 81:9,12,13 82:2 83:11
 83:12 89:20 100:5
 108:15 127:18 155:6
 155:8,9 178:16
standards 1:15 3:5,21
 5:13 9:1,3,6,9,13,16
 9:19 10:19 41:4 59:21
 70:14 86:7
standing 182:13
standpoint 22:13 26:2
 32:6 114:9 174:11
stands 75:22
start 11:18 15:3 17:3
 26:8 37:20 45:15 46:4
 48:8 62:19 63:21 82:9
 82:10 83:16 84:18
 96:6,21 97:1,1,18,22
 104:14 107:6 125:15
 125:20 152:11 160:14
 162:11 175:12 196:4
 198:5 202:1 206:18
started 50:5 66:2 150:8
 162:16 184:12
starting 22:15 165:14
starts 17:9 26:21 52:17
 76:14 86:9 133:11
 182:2 197:19
startup 97:20 103:18,20
 105:2
state 15:8 74:6 111:16
 113:16 126:20 140:11
 140:16,19 143:12
 148:6 164:6 168:3
 187:7 191:18 194:19
stated 11:14 12:9,15
 60:22 76:13 87:5
 92:17 143:22
statement 60:6 140:6
 141:7 172:12
statements 5:7 44:4
 73:5,6 148:13
states 1:1 72:5 108:15

114:9 119:8 126:16
 140:18 198:4
stating 49:2
stationary 17:13
stay 106:1
Steelman 2:6
stick 118:12
sticking 146:7
stifles 112:15
stifling 110:13
Stone 2:9 95:19 96:1
 110:9 187:12
stop 16:15 57:21 65:11
 85:1 106:6 152:4
 153:1 154:6,8 156:20
 156:21 196:20
stop-work 85:1 196:18
stopped 152:12 159:10
store 56:18 89:15,15
story 18:3
straight 103:6 146:7
strengthen 5:17 96:11
strict 101:4 193:8
struck 34:11 160:8
structure 107:12
studies 13:14
stuff 48:9 63:21 69:3
 103:21 122:5 150:14
 150:14 154:20 157:12
 204:4 206:10
stuffed 204:6
submission 13:16
submissions 14:8
submit 14:11 23:8 73:4
substantive 22:13
subtle 103:5
successes 196:13
successful 99:10
sudden 197:17
suffice 130:13
suffices 135:5
sufficient 13:8 56:14,16
 56:18,20 130:21
suggest 61:8
suggested 55:18
suggesting 28:13 65:13
suggestion 47:13 52:5
 52:7 54:7 55:8 57:8
suggests 28:7
Sunbelt 41:21
sunk 148:1
sunrise 26:17
superintendent 97:10
 101:15
supervision 86:1
supervisor 12:11 23:5
 34:18 40:5 61:15
 62:18,18 82:12

100:10 101:10,14
 102:21 109:14 146:18
 189:4 196:21
supervisors 23:13
support 13:12 19:22
 20:8 21:22 22:2 43:10
 52:12,16 54:11 87:17
 139:17 142:3,5,8
 143:20 148:9 149:2
 163:11
supporting 49:13 166:6
 166:22
supposed 80:12 90:5
 119:6
sure 28:18 29:2,18 60:5
 60:21 64:20 71:13
 80:9 86:2 87:9,13,17
 92:13 93:11 100:20
 121:13 138:8 141:12
 152:14 159:22 160:1
 176:10,13 177:13
 178:3,20 181:10
 184:3 193:22 201:11
 206:9 208:8
surface 26:6 38:17 46:3
 46:7 47:21 84:16
 111:5 137:9
sweet 112:9,10
sworn 147:5
system 89:4 129:9
 200:2

T

T-H-I-E-L-E 124:19
T-R-E-E-C-E 136:1
table 162:19
tail 200:4
take 26:14 34:17 44:21
 57:14 58:1,4 73:21
 78:15 80:6 83:6 106:8
 108:8 111:17 137:11
 147:14 159:13 161:15
 167:10 175:1 182:16
 192:14 194:16 205:2
 209:11
taken 7:5,6,9 9:13
 10:10,22 30:8 62:9
 68:12 102:17,19
 111:12 147:4 151:1,3
 200:6,9
takes 17:21 88:11 92:4
 116:17 137:12,13
 157:22 205:1
talk 34:1,15,18 45:5
 80:2 82:22 96:21
 99:21 106:13 107:10
 108:16 109:2 132:17
 132:21 133:12 150:12

150:13 152:3 164:18
 175:1 203:21,22
 204:3
talked 96:8 110:22
 118:4 139:9 150:17
 166:9 171:11 186:9
 188:3 197:9
talking 36:18 51:22
 67:21 81:8 120:20
 126:17 138:14 168:15
 169:21 171:15 174:12
 185:5 197:20 203:7
talks 37:15 166:5 167:9
 185:6
tangible 75:19 144:13
tape 27:11 130:8,20
 158:14
tapes 130:13
task 35:1,4,10 114:21
tasked 58:1
tasks 83:16,18 84:21
tattle-tale 200:2
taught 119:4,7,10,16
 162:5
tea 112:9,10
teach 37:22 38:1 183:1
technically 115:1
tell 18:4 20:22 21:4
 32:10 34:15 51:11,14
 57:21 59:4 81:19 85:8
 100:2 102:6 108:7
 109:1 133:5 151:10
 152:16 154:9,11
 157:10 162:1 191:1
telling 54:10 55:15 58:9
 137:9 199:15
tells 42:5 97:10
temperature 97:7,7
ten 103:3 111:6 158:20
ten-hour 170:2
tenure 115:7
term 96:17 173:11
terminology 109:11
terms 17:20 23:17,17
 31:2 36:7 37:18 52:7
 62:7 65:1 71:8 84:2
 85:11 95:9 100:2
 127:15 167:7 177:22
 190:10
Terry 155:4
test 108:9 140:16,20
 142:20
testified 43:14 46:1
testify 36:14,15 37:2
 39:18 167:3
testifying 73:16 163:10
 163:10 204:9
testimony 13:18 14:7

39:4 73:6,11 105:7
 135:11 139:17 144:15
 147:12 148:16 149:3
 163:20 164:2 166:21
Texas 156:2 158:9
thank 3:13 15:14 16:22
 29:10,13 39:3,6,10
 73:1,10,12 86:13
 95:12,17 124:3,4
 135:10,17,18 139:19
 139:20 142:22 143:4
 143:5 148:15 149:4,5
 149:20 163:9,19,21
 166:20 167:13,20
 186:21 187:1,3,4
 194:7,9 198:16,22
 199:1 204:8,16 208:9
 208:11,12,22 209:2
 209:16
thankful 157:10
thanking 166:22
Thanks 191:22 193:2
they'd 47:4,5 65:11
 151:16 156:12 161:13
 161:22 162:1 170:8
 192:14
thick 159:12
Thiele 2:10 124:13,18
thing 30:10 33:15 37:16
 40:16,19 41:8 43:1,7
 63:16 70:2,5 105:15
 106:12 118:20 131:3
 155:16,17 156:6
 158:5 165:18 172:11
 174:20 177:20 186:8
 200:13,19 204:17
things 16:10 21:1 22:8
 26:18 31:14,16 34:21
 34:22 37:9,10 42:13
 43:18 45:4 47:22 48:7
 48:9 50:16 51:12
 56:22 58:17 64:7,8,11
 98:12,19 100:21
 101:8,11 102:13,16
 103:9,19,21 110:17
 114:1 116:22 117:10
 117:20 121:8 122:7
 123:5 125:3 132:17
 139:14 145:2 150:21
 156:15,15 166:1
 170:15 176:19,20,22
 177:1 178:22 183:2,3
 195:11 196:10 199:10
 200:17 202:22 203:5
think 16:5 17:8 19:19
 28:17 29:5 30:12,20
 32:6 33:2 34:5 35:6,8
 35:13,16 37:8,17,19

38:2,10,20,22 40:19
 40:21 41:1,10 42:17
 45:22 47:15,16 48:19
 50:18 55:5,6 56:22
 57:5,18,19 58:3 65:8
 66:15,20,21 67:13
 68:1,22 70:2 109:10
 109:15,21 110:3
 112:3,14 118:7,8,11
 123:1 125:5,7 131:6
 137:3 142:11 143:20
 144:13 146:10 148:9
 151:5 156:8 157:15
 158:19 161:9 163:4
 166:15 169:1,3,15,15
 171:6,20 172:9 174:1
 174:1 176:8 179:6
 182:5 187:16,21
 188:4,6,8 193:7 198:3
 198:15 201:14 202:21
 206:11 208:17
thinking 81:8 175:3
thinks 41:8 205:7
third 96:10
third-generation
 111:20 196:12
this- 38:21
thorough 65:16
thoroughly 32:14,15
thought 48:17 72:20
 81:7 95:8 99:19 156:4
 204:21
thoughts 137:17
 177:21 203:10 208:16
thousand 47:11 87:2
threat 48:22
three 4:3 20:6 21:20
 34:2 45:21 46:15,16
 59:8 64:5 110:17
 115:2 116:12 123:7
 123:15,22 126:17
 136:11,18 137:3,4,11
 139:21 146:18 152:6
 154:3 165:4,7 166:2
 166:16 202:7
three-by-four-foot
 158:9
throat 204:6
throw 110:17 123:6
throwing 41:16 111:10
 115:20 122:20
thunderstorm 84:19
Thursday 1:7
tie 207:11
till 177:8 184:15,20
 203:21
Tim 124:5
time 9:5 11:17 14:17

17:11 34:1 36:9 45:8
 45:13,13 47:10 48:8
 52:8,11 62:3 65:2
 66:5 76:13,19 79:1
 86:8 87:3,14 88:6
 89:13 92:8 103:10
 110:22 132:3 133:1
 139:13 163:7 164:17
 164:18,20 166:8,9
 169:7 170:2,10 172:2
 172:3,4,5 175:8 177:3
 185:21 187:2 191:8
 191:16 193:15 194:12
 195:5,22 197:1 198:1
 200:7 201:22 202:7
 205:4 206:7
timely 78:13
times 19:20 37:13
 102:1 111:6 118:6
 120:3 133:19 157:21
 190:1 191:13
timing 127:20
tipped 20:13
today 3:13 15:15 39:4
 40:21 46:2 49:22 74:2
 74:11,19 107:3 134:2
 144:15 147:12 152:3
 153:5 154:7 161:3
 163:8 167:6,9 175:1
 183:7 188:6 204:2
today's 4:7
told 152:20 156:19
 157:5 161:4 162:3
 190:4
Tomorrow 105:20
tool-over 123:9
toolbox 102:12
top 34:2 146:7 150:12
 171:7
topic 55:8 130:6
topics 188:3
topography 174:7
totally 44:16,17
touched 42:3 196:10
track 129:6 146:7
trail 121:15 146:15
 147:17
trailer 205:14
train 16:11 35:4 41:4
 53:10,15 81:7 82:6
 93:13,16 98:9 99:19
 171:22 172:6 176:5
 183:1 187:21
trained 63:4
training 12:17 13:1 17:4
 18:1,3 22:18 34:18
 35:1,10,13 41:10 42:6
 42:16,16,19 53:14

54:3,9,15,17,18,21
70:3 77:15,16,17 93:2
93:15,17,17 98:8
100:16,20 114:2,21
139:9 140:15 141:4
142:19 143:13 151:19
151:21 205:16 206:8
207:8
transcript 14:1
transcripts 14:4,10
transferring 92:6
travel 24:22 32:9 78:16
171:17 173:15 179:21
traveled 25:2 31:12
32:17
traveling 72:14 113:15
travelways 70:7,14,16
70:19 71:3,10 77:5
138:9
treat 190:4
treated 208:6
tree 104:7,9
Treece 2:11 135:20,22
136:1 137:8,20 138:6
138:13,16,19 139:1,4
139:7,13,19
trend 64:17 99:15
trends 113:13
tried 69:9 145:22 154:5
trips 136:9 154:4
trouble 64:13
truck 145:17 156:11,18
159:17 160:3,7
205:17,17
trucks 77:6
true 56:4 120:5 133:3
147:6
truly 112:2 133:21
134:22 196:14
truth 188:8
try 57:4 92:10 113:3
116:7 129:14 146:2
148:10 155:21
trying 66:6,8 71:2 92:10
93:6 153:7 154:7
173:20 178:9 186:6
turn 35:17 61:14 71:7
135:12 148:17 163:13
172:20
turned 62:17 101:17
173:1,1,7
two 11:17 14:3,22 20:4
22:1 26:14,14 44:14
45:10 46:5,19,21 47:3
47:6,17 48:6,8 49:9
76:13,14 77:11 107:5
107:15 123:21 126:11
126:18 136:10 145:4

146:4 152:4 156:10
156:15 159:1 170:2
195:10,15 202:2,11
209:9
two- 45:19 47:12
two-hour 45:13 51:22
86:8 205:1
type 36:13 42:7 46:10
46:11 53:1 56:6 57:5
58:15 61:16,19 65:20
97:13 107:20 142:17
203:6,7
types 16:1 29:3 37:14
38:16 44:10 69:8
113:9 178:8
typical 48:17 70:14
107:17
typically 19:2 36:19
37:4 178:17

U

U-S-C-H 15:13
Uh-huh 90:21 190:22
ultimate 40:19
UMW 164:18
UMWA 2:12,13,14
139:21 141:9 143:7
unaware 162:14
unbelievable 114:3
unchanged 6:16 7:12
unclear 199:10 202:22
uncommon 32:18
uncovered 183:20
underground 4:9 15:22
38:17 39:13 44:15
46:15 47:22 57:15
70:19,20 86:21 111:5
138:13,15 168:6,20
170:5 171:16
undermining 76:3
underneath 179:1
understand 29:8 61:8
64:20 76:21 81:9
86:15 95:10 109:16
139:2 147:10 164:19
174:21 184:18 186:3
199:21,22 203:2
understanding 38:8
79:6 120:7
understands 178:4
understood 80:9
153:13
undertaken 75:21
undue 79:3
unequivocally 51:14
unfortunate 134:22
169:14
unhealthful 10:2,13

union 147:22 205:8
uniqueness 110:16
111:8
United 1:1 143:15
149:13
Universally 45:11
unjust 172:9
unload 205:19
unloading 156:2
unnecessary 68:13
74:22
unprepared 203:6
204:21
unreasonable 125:20
unreported 173:14
unsafe 10:2 98:15,16
117:5 169:8,13 170:8
196:19
unspoken 188:8
unwarrantable 20:18
uphold 119:10
use 22:9 24:7 44:15
69:6 100:8 102:4
104:2 112:19,22
115:22 116:20 118:7
142:17 152:13 165:5
174:9
uses 19:19 22:2 28:13
usually 103:14 107:9
170:1
Utah 4:4 156:11
utilize 101:19

V

vague 203:4
value 171:1,3
variable 97:2
variables 97:3,17
103:13 111:7
variance 111:6
Variances 1:15 3:5
variations 79:13
various 12:9 37:12,12
37:12 39:12 51:12
76:10 79:10,19 80:21
vast 27:14 41:13 44:7,9
46:12 113:21
ventilation 173:16
verbal 56:5 204:1
verbally 36:21 105:9
130:4,20
verbatim 14:1
verify 119:19
versus 97:7 98:3
132:22
vibration 97:20 103:9
103:20
vice 143:15

victim 160:6
view 34:5 75:4 92:18
93:15 172:21 205:3
violation 24:1,6 64:4
119:5,9,11 120:1
191:7 192:9,13
violations 8:22 133:12
144:11 192:2
Virginia 4:6
virtually 170:4
visit 24:19 25:5,6,21
26:1
visited 141:19
visiting 25:9
voluntarily 56:20 63:17

W

W-I-R-T-H 124:17
wait 46:21 47:3,5 55:22
95:13 173:18 177:7
184:15
walk 151:15 162:9
walk-on 208:4
walked 28:1 150:10,19
189:22 205:13
walking 158:15 162:2
162:13
walkway 103:21
wall 128:10,10 159:17
walls 46:8
Walters 148:1,2,4
wandered 200:21
want 3:12 5:11 8:12
31:7,17 45:20 48:3,16
59:1 61:11 63:21 64:6
64:20 78:14 81:4,6
88:3,5 93:10 106:13
118:21 125:4 147:13
147:15,16 150:7,18
150:21 157:12 162:20
162:21 166:11 170:19
172:11 176:10 178:1
178:3 180:4 188:9
191:14 193:20 200:19
200:22 208:17 209:6
wanted 154:20 158:17
158:18 161:2 164:16
165:17 170:15 173:13
174:20
wanting 67:22 195:20
wants 56:7 89:17
116:20 133:9 147:10
warned 157:17
washed 71:17
Washington 46:2
wasn't 22:6 61:2 145:19
156:12,14 169:6
180:20 198:11 203:6

205:15
watch 108:18 157:8,13
watching 138:10
water 20:16 97:7 159:5
 159:6 171:12 197:17
way 37:19 76:18,19
 79:9 83:14 98:21 99:1
 99:1 101:3 109:11
 110:3,20 113:14
 120:12 127:7 129:3
 130:13 149:21 172:5
 176:4,12 181:16
 182:17 185:12 190:16
 191:1 192:3,5 198:3
 200:14 204:5 208:7
we'll 170:2
we're 30:4 33:19 53:9
 58:15 63:17 71:4 73:4
 80:21 83:2 84:16,21
 86:6 88:8 89:10 90:4
 91:21 92:10 93:6 94:8
 94:10 105:21 108:12
 111:19 113:20 115:20
 115:20 116:4 117:17
 120:20 126:17 138:3
 138:3,9 149:10 154:6
 155:13,14 158:5
 161:6 164:4 168:6,11
 170:1 171:15 181:22
 185:5 186:6 189:12
 191:16,19 192:17
 197:20 201:18 204:4
we've 24:9 25:18 33:16
 36:14,14 84:22 89:3
 92:17 93:16 96:19
 98:18 99:3,14 100:7
 109:13 110:21 111:12
 113:14 117:11 121:7
 123:22 143:22 147:20
 155:15 164:21 165:20
 166:2 184:9 188:2,2,4
 196:8 197:16 206:12
weather 170:13
website 14:5 153:6
week 14:22 31:21 70:13
 78:20 88:14 113:14
 209:9
weeks 14:3 64:5 116:12
 145:4
weigh 155:17
welcome 3:12 155:10
went 32:21 102:20
 145:17 148:2 153:5
 153:14 155:20
weren't 48:10 164:10
 173:9,16
White 74:12 86:20
wide 179:20

willing 134:15,17
win 192:15
wintertime 170:1
Wirth 2:10 124:11,16,17
 124:22 127:21 128:8
 128:20 129:1,17
 130:4,15,17 131:3,12
 131:17,19,22 132:2,7
 132:11,15 133:5,8
 135:18
wishes 208:21
withdraw 6:14
won 146:9
wood 104:8,10 123:4
word 28:13 96:8,15
 122:3 162:16 172:10
work 6:1 8:9 9:8 11:18
 12:6 21:17 25:15,16
 26:15 30:5,8,22 31:2
 31:13 32:2,4 36:12,13
 38:4,6,15 41:14 45:9
 45:14,16 50:1,21
 51:15 52:18 53:5,6,17
 57:12 62:2 67:1 69:18
 71:11,21 72:11,13,16
 76:14 78:1 79:11
 80:12 81:22,22 82:9
 82:10,11,18 83:12,15
 83:15 84:16 85:2 86:9
 89:11,12 93:19 97:13
 98:16 102:21 104:17
 104:22 109:15 110:1
 110:9 111:10 112:5
 113:6 114:2 115:15
 117:10 118:9 120:16
 125:20 126:3,7 127:1
 128:16,21 129:1,4,4,8
 133:11 137:18 138:12
 140:10 145:8 152:12
 152:12 153:1,1 157:6
 157:11 162:7,8
 165:12,14 166:11
 168:5 171:18 175:12
 175:19 177:4,13
 179:13,13 180:13
 181:17 184:2,5,9
 185:8,12 197:19
 198:5,8,15 201:5
 202:7,10,18 203:21
 206:6 208:1,3
worked 38:9 49:20
 66:22 107:12 124:1
 160:16 168:16
worker 115:15
workers 36:11 136:6
 141:10 143:16,19
 149:14 166:7 167:1,7
 176:3 197:1

workforce 85:1 91:4
 196:16
workforce's 76:3
working 1:4 3:8 4:2
 5:14,18,22 8:1,8,16
 9:3,4 10:21 11:5,20
 11:22 12:14,22 13:2
 20:15 21:19 25:2 30:3
 30:4,7,18 31:3,7 50:7
 59:16 63:15 70:7,7,10
 70:16 71:3,5,12 79:19
 81:14 89:21 96:12
 97:19 98:17 104:2
 105:11 106:22 109:8
 109:10 111:22 112:16
 113:2 117:1 126:1,10
 129:15 159:2,4
 178:15 179:17 180:11
 201:5 202:4,6,6
workplace 16:4,6,12
 17:2,7,8,16 18:2
 20:19 21:1,13 22:20
 24:12,18,19 25:12
 26:22 27:2,15,22
 32:19 34:2,10,13,14
 35:4,6,10 36:6 37:5
 38:2,3,5 40:15 42:12
 43:7,16,21 45:14
 48:18 50:6,11,13
 51:16 53:17 59:3,7
 62:17 63:12,18 66:7
 67:1 69:4,10 71:10
 72:1,12,15 74:14
 75:20 77:16 81:21
 93:21 97:14 98:5,7,10
 98:13,18 99:4,5 100:3
 100:7,13,17 101:6,14
 102:5,14 103:4,5
 107:15 114:8,14,18
 114:20 115:12,18
 117:21 120:7,16
 123:11,18 125:5,9,14
 127:9,17 133:11
 135:7 140:10 141:2
 141:15,16 142:16
 162:3 175:4 196:7
 197:3,12,15,18 198:9
 198:13,14
works 3:21 18:12 40:3
 55:6 93:12 99:4,11
 110:9 111:9 118:9
 165:2 172:20 186:1
world 76:9 153:8
worried 107:4 116:5
worries 194:3
worry 197:5
worth 77:10 156:8
wouldn't 33:9 78:2

130:13 142:21 180:9
 180:10
write 28:2 34:3 59:8,11
 60:18 61:13 64:6,8,11
 69:3 89:1,8 114:14,19
 119:6,22 134:6
 161:13 173:13 191:6
 191:15,16 192:2
 199:17
writes 114:15
writing 18:10 27:11
 34:4,5 59:6 63:21
 173:18 206:21
written 13:19 17:19
 34:8 38:13 40:19 56:5
 73:4 74:17 100:22
 101:3,16,22 109:12
 110:4,20 115:2,4
 127:8 190:3 204:10
wrong 150:14 152:5
 159:22 202:5
wrote 138:2 192:17

X

X 54:21,22 93:1
XYZ 102:21

Y

y'all 149:9,20
yeah 31:1 73:3 85:21
 88:1 105:13 117:19
 122:19,22 161:1
 174:18 178:1 180:6
 185:13 186:2,13
 199:17 207:6
year 7:11 25:22 43:20
 47:11 54:16 67:15,17
 67:18 68:3 69:16
 87:16 89:22 90:3 92:1
 100:11 102:3 106:5,5
 129:3 141:1 147:3,16
 154:10 155:19 170:12
 170:13 189:19
years 10:20 16:4 19:1
 23:18 41:1 42:8 43:1
 44:6 54:18,21 93:1
 99:6 100:12 108:4
 113:19,20 126:15
 132:20 134:1 136:4
 139:7 145:13 149:20
 157:10 168:17 172:16
 173:3,4,4 175:19
 195:4 199:20
years' 20:11 21:10
 140:14 149:15
York 112:11

Z

0	23 14:16 209:8 2350 148:1 24 17:22 185:19 24-hour 46:16 47:8 24/7 76:12 127:1 25 134:1 252 8:21 144:1 26 4:5 267 79:18	77 144:18 791 113:17
1	3	8
1 11:3 10 89:12 126:1,15 132:20 155:19 160:5 173:4 100 46:8 77:4 113:20 120:3,4 175:15 183:4 11 123:8 150:9,19 11:51 209:18 110 8:19,21 65:21 66:2 66:10 134:16,20 144:1,16,16 110(c) 23:2,6,10 131:9 174:12 114 77:10 12 63:19 68:6 126:2 136:4 120 43:20 122 8:19 20:5,7 124 2:10 135 2:11 14 100:9 140 2:12 143 2:13 149 2:14 15 2:5 89:12 100:12 123:14 126:2 157:21 173:4 177:8 15- 116:14 1500 47:11 16 16:3 108:4 164 2:15 168 2:17 18 19:20 199:20 18002 20:19 112:18 120:8 135:5 188:19 187 2:18 19 4:3 1935 111:19 194 2:19 1977 175:21 1981 147:9 148:4 1985 148:5 199 2:21	3 2:4 11:5 30 19:1 41:1 44:6 113:19 172:16 175:19 179:20 300- 87:15 313 79:18 32 145:13 35 20:11 21:10 350,000 87:16 36820 96:9 39 2:7	9
2	4	90 96:5 185:4 92 116:16 95 2:9 8:22
2 11:4 20 75:9,13 149:15 157:21 195:4 200 154:10 2010 8:18 144:1 2014 153:22 2015 8:19 189:2 2016 1:7 21 4:4 2101 1:10	4 1:7 11:6 40 17:22 157:9 400 77:3 41-year 143:11 42 149:15,20 43 99:6 45 137:12 46 98:6	
	5	
	5 117:4 5:00 126:3 50 125:17 173:18 50-some 173:8,13 56 8:2,3 66:17 159:3 56/57.18002 67:19 57 77:10 57.14100 66:17 67:17 57.18002 8:2 57.2 8:3 57.3200 64:4 58 182:22 183:2	
	6	
	6 14:19 6:00 202:17	
	7	
	7 148:1,4 7001 190:20 191:3,10 191:17 7001s 191:8 70s 107:13 71 2:8	

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Examination of Working Places
in Metal and Non-Metal Mines

Before: US DOL/MSHA

Date: 08-04-16

Place: Birmingham, AL

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

Testimonial Comment to Proposed Changes to 30 CFR 57.18002

From: Ryan D. Seelke, Steelman, Gaunt & Horsefield (attorney for mine operators and employees)

Date: August 4, 2016

Preliminary Statement

- A. *Sunbelt Rentals, Inc., et al.*: Commission decision requiring "adequacy" requirement for 56/57/18002(a);
- B. MSHA should put out a PowerPoint (similar to the guarding presentations) explaining the requirements of the current rule and what satisfies as an adequate examination;
- C. We need data to support the proposed changes (inspector input, etc.);
- D. Cited cases do not support proposals; and
- E. Current rule offers flexibility as the rule was never intended to be a one-size fits all standard.

Specific Comments

1. Whether the Agency should require that examinations be conducted within a specified time period (e.g. 2 hours) before work begins in an area.

A. Comment: No. Requiring examinations to be conducted within a specified arbitrary time period before shift would have the following unattended negative consequences:

1. Many operations that I represent are surface mines such as quarries and open pit mines. Several of these operators begin their shifts at daybreak. Requiring a WPE to be completed two hours before the shift starts would mean that the examinations would be conducted in the dark. No competent examination can be completed in a quarry with 100 plus foot high walls at dark. This problem is further exacerbated by potential Section 110 liability for the examiners. Instead, for safety and practicality reasons the WPE should be conducted in daylight.

2. Requiring examinations to be conducted 2 hours before shift would impact scheduling. For example, one of my clients is a large underground miner with several mines who conducts blasting after every shift. This miner has between two and three shifts per 24 hour period depending on the mine. Currently, this miner waits two (2) hours after the blast before its post-blast examiners go in to examine the area. This period allows the gasses to dissipate and loose rock to drip. Under the proposed rule, this operator would have to wait the initial 2 hours before doing the WPE and then wait another 2 hours before the shift actually starts. This would equate to an additional four (4) to six (6) hour downtime per 24 hour period. Over a one year period this would result in 1,000 to 1,600 in lost production hours.

3. Requiring an examination 2 hours before the shift starts has the consequence of adverse conditions developing between the examination and the start of the shift. The potential is there for MSHA to allege that these conditions existed at the time of the examinations when they did not. Plus, conducting an examination well before the shift starts could expose the miners to the newly developed

hazards that were not in existence at the time of the examination. In other words, safety is best served by having the examination being conducted immediately before work begins, not 2 hours before.

4. Having the WPE conducted 2 hours before shift begins may lead to the unattended consequence of miners not paying as close of attention to their workplace once they start working because they believe the examination was already conducted and safety hazards noted.

5. Finally, many of my clients end up working in infrequently traveled areas that were not originally intended to be worked in during certain shifts. That said, these areas would not necessarily receive a WPE before the start of the shift because it would not fall under the definition of "working place" when the shift began. Under the proposal it appears that miners would be unable to enter these areas without the fear of receiving a citation.

C. Alternative: A reasonable alternative to the arbitrary 2 hour proposal would be for miners to be required to conduct an examination immediately prior to conducting work in an area. This is a compromise that my clients can agree to. Safety will also be furthered because an examination will be completed immediately before work begins.

2. Whether a competent person should have a certain ability, experience, knowledge, or training that would enable the person to recognize conditions that could adversely affect safety or health?

A. MSHA has not changed the definition of competent person. That said, so long as an individual meets the definition of competent person then they are competent to complete the examination. There should be no set arbitrary experience or training level because the operator is in the best position to evaluate the competence of an examiner. For example, an operator may believe that someone with 1 year of experience is more competent than someone with 5 years' experience to conduct a workplace examination in any given area. It is a dangerous precedent to rely on arbitrary experience levels and take away operator discretion regarding who is a competent person.

B. Additionally, if an "competent person" must be a supervisor, this will cause rank and file miners to become complacent in looking for safety hazards.

3. Whether the rule should require the prompt notification of miners of any adverse conditions found that may adversely affect safety or health

A. Comment: We need more clarification on this proposal. For example, what will MSHA accept as "prompt"? Similarly, what will MSHA accept as "notification"? Would posting the conditions on a bulletin board, similar to the posting of citations be sufficient? Would safety meetings before the next shift be sufficient? Would it be sufficient if the records are stored and made available to the miners to voluntarily look at? Put simply, industry needs more guidance on this and the type of record or notification involved before we can comment on the burden it would result in.

Also, this requirement is not practical for certain mining jobs. For example, I represent large underground miners who have scaling crews who go into areas to look for and scale down loose ground conditions before drillers and powdermen go into the affected areas. Obviously, loose ground conditions may adversely affect safety or health. However, this is precisely the reason these scalers go into these areas. Given that WPEs will be required before work begins, it would not make sense to require these scalers to promptly notify those in the general area of the conditions because the conditions will likely be resolved before the end of the shift. A better alternative would be to notify miners in the area of any unabated conditions at the end of the shift.

Subsection C of the current rule requires imminent dangers to be brought to the immediate attention of the mine operator. We feel that this rule creates a sufficient safety factor.

4. Whether the rule should require a description of each condition found that could adversely affect the safety or health of miners.

A. Comment: As written, this proposal is vague as different miners may evaluate conditions differently. This is yet another reason supporting training on the current rule rather than a new rule. Also, this proposal will disincentive miners to note hazardous conditions out of fear of receiving citations for those conditions. Finally, there is no safety benefit of keeping a description of conditions found for one year.

Instead, I suggest a new proposal that closely tracks the self-propelled mobile equipment safety defect standard found at 56/57.14100. For example, only conditions that are not corrected immediately should be recorded. This would resolve the scaler scenario that is mentioned above. Also, any records of hazardous conditions found that could not be corrected immediately should only be retained until the conditions are corrected. These requirements are sufficient for 56/57.14100 and will likewise be sufficient for a new WPE rule.

Finally, to prevent the unintended consequence of persons not noting hazardous conditions out of fear that citations will be issued, MSHA should establish a safe harbor for timely corrected conditions. OSHA has a well-established safe harbor provision and there is no reason why MSHA should not have such a provision.

5. Whether the proposed rule should require a description of the corrective action and date the corrective action was taken.

A. This proposed requirement is unnecessary. The second sentence of Sections 56/57.18002(a) already mandates that, "[t]he operator shall promptly initiate appropriate actions to correct such (hazardous) conditions." The added record keeping requirement is unnecessary and is an attempt to create a one size fits all solution that focuses more on internal methods than safety. Moreover, this requirement will create an additional paperwork burden which is against the very flexibility noted in the various MSHA policy statements regarding WPE record keeping. Indeed, this requirement has the potential of requiring two forms being filled out (a WPE and a corrective action form). This will very likely present a paperwork burden to all operators, especially small operators.

Finally, it is concerning that the persons conducting the "corrective actions" could be held as agents of the operator.

In short, the current rule already provides an enforcement mechanism to require mine operators to promptly abate hazardous conditions. The Agency should first attempt to enforce the current law before it adds unnecessary and redundant regulations.

Conclusion

In conclusion, I recommend that the Agency re-propose the rule with the above referenced recommendations. This will allow industry personnel to be in a position to better offer specific recommendations and comments.

Comment on: MSHA-2014-0030-0001

Examination of working places in Metal and Nonmetal Mines

Submitter

Tim Agner

Manager of Engineering Services

Stalite

Thank you for the opportunity to speak and express our concerns.

The new rule addressing the Examination of working places in metal and nonmetal mines is onerous in nature, and needs to be clarified, and modified to help meet the end goal of making our mines a safer place to work. As it is presently written, the rule creates a wolf in sheep's clothing, leaving large openings for paperwork violations, and other frivolous citations.

Workplace inspections of the work areas are, and should be an important aspect of our work day routine. It is key to have our employees identify, notify and rectify potential hazards that impact their safety, and the safety of others in an efficient and cost effective manner.

Our plant has been making lightweight aggregate in Gold Hill, NC since 1959 and shipping material nationally and worldwide. We have 23 acres of production area with an additional 20 acres of stockpile area. This plant contains many active work areas, with many more inactive work areas that are seldomly used. The plant operates 24 hours per day, 7 days per week and 365 days per year. Most mines operate Monday through Friday 8 to 12 hours per day. During our semi annual MSHA visit we will typically have 3 inspectors, for 3 to 4 days, inspecting 8 hours per day. This amounts to 74 total man hours per inspection. There are not enough hours in a 12 hour shift to complete a work place examination based on the time it takes a team of inspectors to inspect our plant, including where work might take place and where work will ^{TAKE} place in the plant area prior to beginning work.

A better solution is to allow the work place exam to be conducted as our competent employee enters his or her work area to perform work. When a hazard is found, isolate the hazard, document it in his/her small individual log book, and fix it on the spot, and if necessary follow up as the condition warrants. As in most mines the work area is dynamic and changes constantly as the sun rises and falls. A work area free of hazards in the morning may develop one by the end of the shift. Each of our operations are different and unique offering individual challenges. With our own employees, continued and updated hands on training from MSHA professionals could be key in helping enhance miners recognition of potential hazards. By expanding MSHA Field Services to help train miners in a positive manner, we will be able to take a step in the right direction, creating a partnership between agency and miners. The 30 CFR documents that we ask our miners to read, contain a lot of grey areas that are hard to understand. As we move forward, create rules that are easy to understand and do not need a program policy manual or an attorney to read between the lines. Standards should be written to help the miner remain safe and go home at the end of their shift.

It is impossible to understand the impact of many of these rules sitting behind a desk, working 9 to 5, wearing a tie. Let the office legislators wear the boots of the miner that they are trying to keep out of harms way, and experience the rules that are written. Finding better means to increase input from the miners that are working in the many different mines would help develop common sense based rules that identify, notify and rectify unsafe situations.

Thank you for the opportunity to speak, and the work that you do. Please help develop a working partnership between the agency and the miners, allowing the Mining industry to remain safe, be sustainable, and profitable.

God bless America!