

# TRANSCRIPT OF PROCEEDINGS

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In Re: )  
 )  
PUBLIC MEETING ON )  
MINING SAFETY TRAINING )

PAGES: 1 through 120  
PLACE: Albany, New York  
DATE: December 11, 1998

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## HERITAGE REPORTING CORPORATION

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1220 L Street, NW, Suite 600  
Washington, D.C.  
(202) 628-4888

MINE SAFETY AND HEALTH ADMINISTRATION  
DEPARTMENT OF LABOR

In Re: )  
 )  
PUBLIC MEETING ON )  
MINE SAFETY TRAINING )

Salon A  
Marriot Hotel  
189 Wolfe Road  
Albany, New York

Friday,  
December 11, 1998

The parties met, pursuant to the notice, at  
8:14 a.m.

PARTICIPANTS:

KATHY ALEJANDRO, MSHA  
KEVIN BURNS, MSHA  
ROSLYN FONTAINE, MSHA  
T. J. LYONS, Rifenberg Construction;  
speaking as an individual  
MARINO FRANCHINI, New York State  
Department of Labor  
ALLAN ZWOBODA, Homes Safety Association

RICHARD CUCOLO, New York State  
Department of Labor  
DONNA SHAVE, Rifenberg Construction  
SAL CASTRO, Buffalo Crushed Stone

RICH COME, Cummons Northeast, Inc.  
ED THOMPSON, Blue Circle Cement  
JOHN KLUCSIK, Devorsetz, Stinziano,  
Gilberti, Heintz & Smith

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1 Federal Mine safety and Health Act of 1977 or to carry out  
2 that portion of section 104(g)(1) of such Act relating to  
3 the enforcement of any training requirements, with respect  
4 to shell dredging, or with respect any sand, gravel, surface  
5 stone, surface clay, colloidal phosphate, or surface  
6 limestone mine."

7 In the omnibus budget passed by Congress on  
8 October 21, 1998, MSHA was directed to:

9 "...work with the affected industries, mine  
10 operators, workers, labor organizations, and other affected  
11 and interested parties to promulgate final training  
12 regulations for the affected industries by September 30,  
13 1999. It is understood that these regulations are to be  
14 based on a draft submitted to MSHA by the Coalition For  
15 Effective Miner Training no later than February 1, 1999."

16 MSHA expects to publish a proposed regulation in  
17 the Federal Register some time in the early spring of 1999.

18 The regulations that MSHA will be developing must  
19 include the minimum requirements in Section 115 of the  
20 Federal Mine Safety and Health Act of 1997. To summarize  
21 those minimum requirements:

22 Section 115 provides that every mine operator  
23 shall have a health and safety training program that is  
24 approved by the Secretary of Labor, and that complies with  
25 certain minimum requirements.

1           Section 115 specifies that surface miners are to  
2 receive no less than 24 hours of new miner training, no less  
3 than eight yours of refresher training annually, and task  
4 training for new work assignments.

5           Section 115 also requires that the training cover  
6 specific subject areas; provides that training is to be  
7 conducted during normal work hours at normal pay; requires  
8 that miners be reimbursed for additional costs they incur  
9 incidental to such training; and provides that mine  
10 operators must maintain miners' training certificates and  
11 furnish such records to the miners.

12           In addition to these minimum requirements, MSHA is  
13 looking for suggestions and comments from you as to how best  
14 to achieve effective miner safety and health training,  
15 consistent with the Mine Act, including any additional  
16 requirements that should be included in the proposed rule,  
17 and most importantly, why.

18           Two public meetings have already been held earlier  
19 this week, one in North Brook, Illinois, outside of Chicago,  
20 and one in Denver on Wednesday. Public meetings have also  
21 been scheduled at four other locations in the coming weeks,  
22 including Portland Oregon; Ontario, California; Dallas; and  
23 Atlanta. This is intended to give as many individuals and  
24 organizations as possible an opportunity to present their  
25 views.

1           We are intending to conduct this meeting in an  
2 informal manner, and a court reporter is making a verbatim  
3 transcript of the proceedings. Anyone who has not signed up  
4 in advance to speak at the meeting and wishes to speak here  
5 today should sign up on the speakers' list which is  
6 currently located up here, but I will make it available at  
7 the next break if you should decide that you do want to sign  
8 up.

9           We also ask that everyone who is here today,  
10 whether or not you wish to speak, to sign the attendance  
11 sheet, and I think probably just about all of you have  
12 already done that.

13           You may also decide to submit a written statement  
14 today, either today here or at some later point, which we  
15 will include as part of the record for the proposed rule  
16 that we are going to be developing. You can also send us  
17 written comments after the meeting. Although we don't have  
18 a formal deadline for written comments, I would encourage  
19 you to submit any written comments that you have on or  
20 before February 1, 1999, and that will ensure that we are  
21 able to fully consider them.

22           Although we are most interested in what you have  
23 to say to us, we will also attempt to answer any questions  
24 you may have to clarify the process and the purpose of this  
25 meeting.

1           We are specifically interested in comments that  
2 address certain areas, although you are encouraged to  
3 comment on any issue related to miner safety and health  
4 training at currently exempt mines.

5           The issues we are particularly interested in were  
6 outlined in the November 3 Federal Register notice that  
7 announced the schedule of public meetings, and I will  
8 provide you with a short summary of those issues now.

9           Should certain terms, including "new miner" and  
10 "experienced miner" be defined?

11           Which subjects should be taught before a new miner  
12 is assigned work, even if the work is done under close  
13 supervision?

14           Should training for inexperienced miners be given  
15 all at once, or over a period of time, such as several weeks  
16 or months?

17           Should supervisors be subject to the same training  
18 requirements as miners?

19           Should task training be required whenever a miner  
20 receives a work assignment that involves new and unfamiliar  
21 tasks?

22           Should specific subject areas be covered during  
23 annual refresher training? If so, what subject areas should  
24 be included?

25           Can the eight hours of annual refresher training

1 required by the Mine Act be completed in segments of  
2 training lasting less than 30 minutes?

3 Should records of training be kept by the mine  
4 operator at the mine site, or can they be kept at other  
5 locations?

6 Finally, should there be minimum qualifications  
7 for persons who conduct miner training? If so, what  
8 qualifications are appropriate?

9 I would now like to introduce our first speaker  
10 this morning. We ask that all speakers state and spell  
11 their names for the court reporter before beginning their  
12 presentation, and I thank you all for coming this morning.

13 The first speaker that we have signed up is T. J.  
14 Lyons of Rifenberg Construction, Inc. Is Mr. Lyons here?

15 You can either sit or stand at the podium?

16 MR. LYONS: I want to get in front of everyone.

17 MS. ALEJANDRO: Okay.

18 MR. LYONS: My name is. T. J. Lyons. It's L-Y-O-  
19 N-S. And I'm speaking as an individual, not as an employee  
20 of Rifenberg Construction today, for the record.

21 I wish to thank you all for the opportunity to  
22 offer my comments on proposed miner safety and health  
23 regulations. With a background in the safety field, and the  
24 knowledge of the hazards associated with surface mining, I  
25 see a comparison between what is being proposed to the

1 initial training that was required prior to allowing workers  
2 on hazardous waste site operations.

3 In my opinion, many of the hazards are similar and  
4 protected measures are the same. Dealing with airborne  
5 contaminants, excavations, spoil piles, confined spaces,  
6 respiratory protection from heavy surface material are a few  
7 of the commonalities between the two.

8 My first comment would be for MSHA to review the  
9 standard, its tasks and follow the NIOSH, OSHA, United  
10 States Coast Guard Occupational Safety and Health Guidance  
11 Manual for hazardous waste site activities. This document  
12 is the bible of the industry and was put together in a  
13 fashion that makes it easy to read -- short sections and  
14 plenty of pictures. The format of this document may be  
15 something for MSHA to copy. In my own opinion, this is a  
16 great training aid for a lot of the original 1910 120  
17 training for the HAZ WAPRO standard. It's easy for the  
18 students to follow, quite a few bullets in it, not extremely  
19 technical but comprehensive.

20 With regard to the action of training of new  
21 miners, I would first suggest that all miners, new and  
22 experienced, receive the same level of training. There are  
23 likely too many miners, experienced miners, with poor safety  
24 habits. They must be made aware of improvements that may  
25 have been made since they had been in the trade.

1           As an example, tracking of near misses has become  
2 an important component of any safety effort. I'll speculate  
3 that a near miss to many old miners would mean a negative  
4 pregnancy test, not how it works.

5           Next, instructor surely needs to be competent in  
6 the field of mining and safety to present the information.  
7 Simply pulling someone from the ranks to provide the  
8 training would be inadequate. In my opinion, training  
9 stresses the implication of exposure to work place dangers,  
10 sets the stage for an attentive learning audience. Knowing  
11 that the material you work with will harm or kill you is the  
12 best attention getter that I know.

13           Toxicology or how things harm were stressed during  
14 the 1980s with regard to the asbestos hazard in schools.  
15 People from across the United States are now familiar with  
16 the standards and material and it has become fact that  
17 asbestos can kill. We need to do the same for silica in the  
18 1990s.

19           Last, if the training is presented by a third  
20 party and the instruction is focused on what kills and how  
21 to stay alive, lessons will be learned. I believe that this  
22 must be presented during an eight-hour period in order to  
23 link components in the training like atmospheric hazards in  
24 confined spaces, or how the body filters airborne particles  
25 in health effect section with a link on how well respirators

1 work.

2 At a minimum, I believe this training must be  
3 presented by someone certified by a recognized professional  
4 organization in health and safety. This would include an  
5 occupational health and safety technologist, associated and  
6 certified safety professionals and certified industrial  
7 hygienists.

8 This is a recognized standard for board certified  
9 professionals who present this critical information and  
10 field questions on a wide range of health and safety  
11 questions that should be important to miners. This board  
12 certification also will set a level playing field for the  
13 minimum training requirements for instructions across the  
14 United States.

15 Last, I just want to comment that there is some  
16 discussion in the Federal Register announcement about  
17 perhaps breaking the segments into 30-minute portions, and I  
18 think when you do that you set an unreal time for people to  
19 know that they are going to be out in 30 minutes, and it  
20 would severely curtail any discussion among the group on a  
21 particular topic. In my opinion, this should be eight hours  
22 of concurrent training, not bits and pieces, but information  
23 that's not difficult to share with everyone or discuss in  
24 the room.

25 I want to thank you for your time. I have one

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1 question. Is there a way to summarize perhaps some of the  
2 other comments from the previous two sessions? I think  
3 there is an interest in this group.

4 MS. ALEJANDRO: Yes. I mean, we can do that. I  
5 think what I'd like to do is go through the speakers that we  
6 have signed up, and then we can give you some idea of what  
7 comments we've gotten at other.

8 Mr. Lyons, I have one question. You indicated  
9 that as far as training instructors, that they have minimum  
10 qualifications of being certified as a health and safety  
11 professional.

12 Do you have any recommendations regarding whether  
13 there needs to be some training or certification as far as,  
14 you know, the teaching component, I mean, that they be  
15 qualified to teach?

16 MR. LYONS: Yeah, I think you will find that  
17 people who are interested in providing or presenting  
18 instruction are the ones who are going to come forward. You  
19 may want to take a look at the people in the ranks who may  
20 qualify, but they certainly need to know how to present  
21 information or it's going to be a bogus, you know, you put  
22 in your eight hours and you're back to work.

23 If you have been certified or tried to get the  
24 process of certification through these particular boards,  
25 training and committee involvement, public speaking is a

1 portion of that certification process. So a lot of that is  
2 already weaned out. If you had been registered, you  
3 probably have some of those skills already to make the  
4 presentations.

5 A certified industrial hygienist is a good  
6 example. They work with people every day. They present  
7 some very good information on toxicology, health effects, et  
8 cetera, and one of the portions of the CIH's job is to share  
9 that information with employees, so a lot of these skills  
10 would already be in place if they are certified.

11 MS. ALEJANDRO: Okay. And you also indicated, I  
12 mean, that you feel fairly strongly that refresher training  
13 should be given all at once, the eight hours all at once  
14 rather than broken up?

15 MR. LYONS: Yes.

16 MS. ALEJANDRO: I mean, you don't think that there  
17 may be situations where it may be appropriate to give  
18 shorter periods of time?

19 I mean, to summarize some of the comments we've  
20 gotten, I mean, some people have suggested that, you know,  
21 training over some period of time is more effective. I  
22 mean, the retention, you know, is better if you spread it  
23 out rather than have it all at once.

24 MR. LYONS: Also, for production standpoint, you  
25 don't want to shut down some operation and have your people

1 take eight hours worth of training. But I think if you put  
2 the emphasis on shutting down production in the interest of  
3 doing safety, I think we need to recognize that eight hours  
4 is time spent making a safer working place is only going to  
5 entail better production, safer production in the end run.

6 I believe this whole process of training miners  
7 now is similar to where HAZ WAPRO was as it ran its  
8 operations in the late eighties. People did not recognize  
9 the value of a safely trained work force and properly.

10 I think if MSHA were to state that and make it  
11 clear to the mine operators that there is a return on value,  
12 the eight hours would not be so cumbersome as far as loss of  
13 production.

14 We've presented training courses over the last  
15 several years, I personally have, for fire companies as an  
16 example, the volunteer firemen, and when you break the  
17 training down into two or three-hour sessions, that may be a  
18 minimal. You need to have a focused event for the evening.  
19 A 30-minute presentation, I believe, will not serve in the  
20 best interest of the people involved.

21 MS. ALEJANDRO: Do you conduct training or are you  
22 involved in training at your construction company?

23 MR. LYONS: Yes, I am.

24 MS. ALEJANDRO: Okay, you give safety and health  
25 training to the employees there?

1 MR. LYONS: Correct.

2 MS. ALEJANDRO: Could you maybe tell us a little  
3 bit about your operation, I mean, just for the record?

4 MR. LYONS: Yes. Rifenberg is a large  
5 construction firm. We have a couple surface mines in New  
6 York State. We do HAZ WAPRO training, MSHA training is  
7 performed every years, as well as an annual safety training  
8 for all the employees. It takes quite awhile to get, in my  
9 opinion, employees to recognize the value of not only  
10 working safe for themselves, but to watch the people they  
11 work with to ensure that they are doing everything safely as  
12 well.

13 Eight hours a day seems like a long time to put a  
14 guy in work boots in a classroom to expect him to listen.  
15 But you get a close knit group, and there is a team work  
16 effort involved, you will see after maybe a few hours of  
17 presentation, you start skimming off into conversations,  
18 case histories.

19 MS. ALEJANDRO: Um-hmm.

20 MR. LYONS: It makes for a very active discussion,  
21 and I think it's the best, the best learning experience at  
22 that point.

23 MS. ALEJANDRO: Is the eight hours of -- or the  
24 refresher training that you give typically classroom  
25 training or is there also on-site, hands-on training as

1 well?

2 MR. LYONS: Typically, we have speakers; for  
3 example, they will speak on toxicology. Not one person is  
4 an expert on everything. We'll have a speaker, a OSHA  
5 hygienist who will talk about air sampling. Our insurance  
6 company comes in and may do something on excavation or  
7 something that's close to the topic of the refresher, but  
8 we'll also go through some of these -- it needs to be done  
9 every year for high calibre safety meeting, some of the  
10 stuff gets missed.

11 You have the whole group there at the same time  
12 and you explain some of your expectations on calibration and  
13 how important that is legally and to protect yourself.  
14 That's usually how we spend the better part of the  
15 afternoon.

16 MS. ALEJANDRO: Do you have any questions?

17 MR. BURNS: The manual -- do you have a copy of  
18 that manual that you --

19 MR. LYONS: No, but I can get you the number.

20 MR. BURNS: I'm pretty sure I have a copy. Yeah,  
21 if you could send us the number. You can either just call  
22 the number that you have. Do you have the Federal Register  
23 notice?

24 MR. LYONS: Certainly.

25 MR. BURNS: Okay. I think I have it. It's a

1 little pamphlet?

2 MR. LYONS: It's beige.

3 MR. BURNS: Yeah, I'm pretty sure I have it, but  
4 if could call with the number, it would be easier to get.

5 MR. LYONS: Certainly.

6 MR. BURNS: If I don't have it.

7 Now, I think Kathy has covered the other  
8 questions. I was really just going to talk to you about the  
9 30 minutes because that was an issue that has come up quite  
10 a bit, and we'll go over that later on as you suggested.

11 Thank you.

12 MR. LYONS: Thank you very much.

13 MS. ALEJANDRO: Thank you very much, Mr. Lyons.

14 All right, the next speaker on our list is Marino  
15 J. Franchini of the New York State Department of Labor. And  
16 I apologize if I haven't pronounced your name right.

17 MR. FRANCHINI: That's okay. It's pronounced  
18 Franchini, and spelled F-R-A-N-C-H-I-N-I. And I'll be  
19 speaking on behalf of the New York Department of Labor.

20 The Department of Labor would like to thank the  
21 Mine Safety and Health Administration for the opportunity to  
22 comment on proposals to develop and enforce training  
23 regulations on the crushed stone, sandy gravel, surface  
24 stone, surface clay, colloidal phosphate, and limestone  
25 mining industries of our nation.

1            Mine safety training as an integral part of an  
2 employer's safety program should address the hazards  
3 employees face and the ways properly and effectively to find  
4 a solution that can be instituted by the employer in a fair  
5 and cost effective way.

6            New York State has been a member of the grants  
7 program since its inception, and has provided on-site  
8 training to thousands of mine employees. The vast majority  
9 of this industry in New York falls under the Part 43 rider,  
10 and voluntarily uses our services. They rely on us for  
11 accurate, detailed information on required areas of training  
12 under the Mine Safety and Health Administration.

13           We have published booklets, flyers and the like to  
14 enhance the operator's ability to provide a safe working  
15 environment to its employees. In addition, we have co-  
16 sponsored workshops each year with the Mine Safety and  
17 Health Administration, and a variety of industry-sponsored  
18 labor and management organizations to supplement supervisory  
19 training with programs that focus on the current enforcement  
20 and training issues.

21           The bottom line is that this works. We have  
22 minimized the severity, frequency and occurrence of fatality  
23 and injuries in the mining industry in the state. We have  
24 done so with minimum funding, minimum staff and minimum cost  
25 to the employees of the State of New York.

1           The New York State Department of Labor has  
2 concerns about how MSHA will implement the new regulations.  
3 I would like to cover these concerns so that MSHA can  
4 consider these issues in their development of the training  
5 regulations.

6           Approval of training plans is the key issue. How  
7 will MSHA's approval of training plans be different from  
8 that of the non-exempt mine employers? Will training staff  
9 be relocated to New York or will this approval come out of  
10 the district office in Pennsylvania?

11           Since New York has a large number of federal  
12 mines, does the staff here need to be near the source to  
13 address the specific needs and problems? What role will the  
14 education centers that MSHA has recently created play in the  
15 approval of such plans?

16           Instructor certification is another issues: What  
17 progress has MSHA made in the tracking of the number of  
18 certified instructors in the surface metal/nonmetal  
19 industry? Is there more than enough of adequate trainers to  
20 address the enforcement of these regulations? Has the  
21 process to certify instructions been so monitored so that  
22 only competent, qualified people receive their  
23 certification? Will instructor certification be required to  
24 provide all forms of training under this new regulation?  
25 And will the enforcement of training regulations bring an

1 obligation to MSHA to provide cost-effective solutions that  
2 address the needs of the industry?

3 One cost-effective option is the state grants  
4 program. How does the state grants program fit into the  
5 equation? Will funding be increased to address the need for  
6 this training? And can the states in the states grants  
7 program rely on MSHA to provide definitive levels of funding  
8 to support training programs?

9 How MSHA defines the terms "associate" with these  
10 regulations will also effect enforcement. Does an  
11 experienced surface miner have to record this experience?  
12 How will MSHA inspectors check on this? And will  
13 independent contractors fall under the same definition?

14 There has been much controversy in determining how  
15 much training an independent contractor should receive. The  
16 grant program uses the number of independent contractors  
17 that are reported to be trained to determine levels of  
18 funding for each grantee. MSHA's ability to enforce this  
19 new regulation on this group will affect the level of  
20 funding available to each grantee.

21 If construction experience counts towards this  
22 determination, can the same criteria apply to experienced  
23 surface miners? And if cast training is also included in  
24 these regulations, it must address these situations and  
25 allow each mine operator some flexibility to deal with those

1 who have work experience, but not experienced in the more  
2 traditional methods of mining.

3 Here in New York an important segment of the  
4 mining population works for municipal towns and counties  
5 that operates sand and gravel pits. Most of their employees  
6 work on the OSHA side of their operation. Will this  
7 experience count in determining their need for training?  
8 Does the fact that most of these operations are seasonal  
9 come into play? How extensive can the hazard training on  
10 portable equipment used by our municipal sand and gravel  
11 operators be? Is it appropriate to list self-rescue devices  
12 as a subject to train surface mine employees? And does MSHA  
13 have data to support this inclusion into the training  
14 requirement?

15 Can subject areas that are covered under OSHA  
16 regulations be included in a program of instruction? What  
17 recordkeeping will be required, and will training  
18 certificates be needed by each municipal employee that may  
19 enter a mining property?

20 The aforementioned issues do pose problems for the  
21 surface mining industry. We believe that MSHA has an  
22 obligation to provide workable solutions to each. The  
23 Department of Labor would like to know if MSHA has prepared  
24 an analysis for any of these issues. We would also like to  
25 see an analysis on the costs associated with implementing

1 these regulations.

2 Does this cost differ for small business operators  
3 than it does for large employers? Will the penalty  
4 structure be the same for a violation of these regulations?  
5 Have compliance guides or a sample model training program  
6 and programs been prepared by staff such as those assigned  
7 to the Mine Safety and Health Academy in Beckley? And will  
8 these guidelines be available before the regulation goes  
9 into effect?

10 The Department of Labor hopes to continue its fine  
11 relationship with the Mine Safety and Health Administration,  
12 and that the issues before both of us provide a forum for  
13 dialogue between the industry and its regulators. We hope  
14 the dialogue continues to recognize the most critical  
15 segment of the mining industry: The issues of providing  
16 quality training for all mine employees, offer MSHA an  
17 opportunity to provide quality solutions that can be  
18 embraced by the mining industry and, in turn, help employers  
19 lower the costs associated with workplace accidents and  
20 illnesses that affect each employer's ability to stay in  
21 business to compete in the open market.

22 I would also like to add a couple of personal  
23 comments regarding the Mine Safety and Health  
24 Administration's safety training. No one who has stood up  
25 in front of a group of mining employees and has talked in

1 detail about fatality and the methods recommended to prevent  
2 another recurrence can be against the idea that training is  
3 a critical element of a mine employer's safety program. The  
4 loss of life in an accident that could have been prevented  
5 by safe work practices affects us all.

6 I've been in the business since 1984 and have seen  
7 this effect. A company that failed to provide training,  
8 fails to take advantage of an opportunity to increase  
9 employee morale, improve customer relations, improve public  
10 relations with the community they live within and lower  
11 their operating cost, and last, but not least, save lives.  
12 The enforcement of training by the Mine Safety and Health  
13 Administration will help level the playing field by getting  
14 mine operators who do not provide at least adequate training  
15 to provide new miner and new refresher and hazard training  
16 to their employees. I personally believe this is how the  
17 mining industry can effect the rate by which we  
18 unfortunately seriously hurt and kill our most precious  
19 human resources. If this takes enforcement to make it work,  
20 then so be it.

21 New York State is part of a Workers' Compensation  
22 Reform Bill, recently enacted a Workplace Safety and Loss  
23 Prevention Program for employers in the state who have not  
24 had much success in controlling their workers' compensation  
25 cost. As part of the program, employers who meet the

1 parameters must implement a 12-point program that develops  
2 and implements a plan for safety. Within this plan is the  
3 requirement for training. I believe this is the most  
4 critical part of the plan. It is the way that the employer  
5 creates a proper environment for safety, the way that  
6 employees accept and buy into safety as part of their every  
7 day responsibilities, and the way that accidents can be  
8 avoided and severity minimized.

9 Safety training works and goes a long way into  
10 turning production into safe production, a concept that  
11 management should not be able to afford to ignore. Many  
12 mine operators are subject to this law and just beginning to  
13 realize the impact of accidents on their ability to stay  
14 competitive and retain affordable compensation insurance.

15 I do not believe that enforcement of the training  
16 regulations on surface mining operations pose a serious  
17 threat to any employer, and can only further attempts to  
18 keep the workforce safe and provide the nation with quality  
19 product and service. I personally hope the industry will  
20 embrace the proposal and work harder with MSHA to make sure  
21 that safe production is maintained rather than to let even  
22 one more accident to occur that could have been prevented by  
23 training.

24 And, in addition, based on the comments that were  
25 made previously, I cannot begin to believe that MSHA would

1 need to even consider using certified safety professionals  
2 or certified industrial hygienists or any type of license to  
3 provide good training to the mine employees in this nation.  
4 The grant program has been able for years to provide people  
5 who are not only interested and step up to the plate who  
6 want to provide the training, but certainly are qualified  
7 and know the mining industry, and that's been the key  
8 element, I think, here in New York. The people that we've  
9 certified as instructors come from the industry, they have a  
10 feel for what the problems are, and it gives the employer a  
11 chance to actually take a look at what's causing accidents  
12 in their operation and fix them.

13 I think if you start to move towards other models  
14 where you're looking at canned programs, you're going to  
15 develop the same take that I think other federal agencies  
16 have taken, and you're going to move towards just doing  
17 training for the sake of compliance, and personally, I would  
18 not support any attempt to bring in any type of licensed or  
19 title protection for instructor certification in mining.

20 Thank you.

21 MS. ALEJANDRO: Mr. Franchini, I have a couple  
22 questions. You raised several issues, and specifically, you  
23 were questioning what the logistics or the process of  
24 approval of training plans would be under our new rule, and  
25 also instructor certification.

1           Do you have any recommendations as far as what  
2 they might look like? Are you involved currently with  
3 getting training plans approved by MSHA in your --

4           MR. FRANCHINI: No, I'm not involved because  
5 technically, at least in my understanding, the district  
6 offices have the enforcement, have the authority to approve  
7 training programs.

8           MS. ALEJANDRO: Right.

9           MR. FRANCHINI: We have a training specialist at  
10 the district office that has not melded, in fact, they've  
11 never melded with the state grants people to take a look at  
12 training plans, and that's -- you know, I see that as kind  
13 of a failure. I mean, the person is in Pennsylvania.  
14 They've got 13 states and the district. They should be  
15 working through the state's grants program to look at  
16 training plans and instructor certification. That's one  
17 area that we really failed to address, and I think without  
18 that you're too far away from the problems.

19          MS. ALEJANDRO: Um-hmm. I guess, so you're saying  
20 that the scheme in theory could work. It's just that there  
21 has been a failure of the scheme to work effectively?

22          MR. FRANCHINI: I think the scheme could work. I  
23 think that if we were involved in the approval of plans, we  
24 would be able to address the issues that surface mining in  
25 New York face. You can't take an approach, one size fits

1 all approach to training plans. Ninety some odd percent of  
2 the industry here is surface metal/nonmetal. Even some of  
3 the materials MSHA provides, especially initially, you know,  
4 10 - 15 years ago, focused on underground mining and  
5 particularly coal. We had to go and develop our own to make  
6 it more pertinent to the needs of the mine operator up here,  
7 and I think you have to do that with training plans.

8 MS. ALEJANDRO: Um-hmm.

9 MR. FRANCHINI: And I think the same thing with  
10 instructor certification. You bring someone who has taught  
11 in underground coal mine in Kentucky, and they come up here,  
12 and they use those teaching methods, and they're used to  
13 talking about the subjects in the way they do, it doesn't  
14 necessarily fly with what's going on up here in surface  
15 mining.

16 MS. ALEJANDRO: And far as the regulation is  
17 concerned though, I mean, do you have any recommendations  
18 for what that might say as far as qualification for  
19 instructor?

20 MR. FRANCHINI: One of the things I thought of,  
21 you know, and I know MSHA does their instruction, MSHA  
22 instruction course down in Beckley. I really think that if  
23 you're going to continue to certify people as instructor of  
24 instructors, that only MSHA should conduct those courses,  
25 and I think there should be a minimum number of hours set

1     aside in that course, the instructor of instructor,  
2     something to the effect of what I took way back in 1984. It  
3     was a two-week course at the time, and it gave you quite a  
4     perspective on the training regs and how to provide the  
5     instruction.

6             MS. ALEJANDRO: Um-hmm.

7             MR. FRANCHINI: We do a course to teach or certify  
8     instructions that's now four days, 32 hours. That seems to  
9     work. I know across the states there are grantees that do  
10    one-day sessions, two-day sessions. One state advertises a  
11    five-day, one state advertises a 10-day course, and they  
12    back it up with first aid training.

13            MS. ALEJANDRO: Um-hmm.

14            MR. FRANCHINI: I just -- you know, I just can't  
15    see that route. If you're going to back a course up in  
16    instruction, you should back it up with something on the  
17    Part 56 or the Part 57 regulations. So there is so much of  
18    a mishmash of the way the instruction courses are being  
19    taught, I think the end result is you have just many people  
20    being certified without any kind of monitoring and certainly  
21    without any kind of adherence to course content.

22            MS. ALEJANDRO: Do you have any questions, Kevin?

23            MR. BURNS: Yes, I do have a couple.

24            So you encourage, as far as the qualifications,  
25    you encourage some sort of trainer-to-trainer type training

1 for any trainer; is that correct?

2 MR. FRANCHINI: Well, definitely. I mean, again,  
3 Beckley has produced so many types of materials and so many  
4 books that have been rehashed and reissued and videoed,  
5 reissued over and over again. It's a nice attempt, but  
6 there has never been anything on instructor training that  
7 gives us an outline that all instructors follow.

8 You can buy a lot of the training information from  
9 vendors nowadays, but it doesn't necessary mean that you're  
10 talking about communication or transportation methods in a  
11 mine. It doesn't necessary mean that you're dealing with  
12 surface haulage problems as opposed to haulage problems.  
13 There really should be some criteria set up to at least give  
14 us a guideline these are the -- not only the areas, you  
15 know, by title that are required to be trained, but these  
16 are the things you need to cover.

17 And actually, I do have a document that I've been  
18 preparing for about three years that expand the official  
19 MSHA topics, and I will get a copy of that to you. It's  
20 something that under the grant that -- this term here, we're  
21 going to be issuing and making copies available to every  
22 mine operator in the nation, and we've done that with  
23 several other booklets and flyers. Not ready for print yet,  
24 but it should be ready before your proposal comes out in  
25 February. We'll get you a copy.

1 MR. BURNS: I would appreciate that.

2 Is that along the lines of a model training  
3 program?

4 MR. FRANCHINI: It doesn't follow the traditional  
5 methods of a model training program like you would say under  
6 OSHA, but it take the required subjects and expands the  
7 issues to give the instructor an idea what they should  
8 cover. So when you deal with personal protective equipment,  
9 it may list in a very brief outline method eight to 10 areas  
10 the instructor make sure is covered, to make sure that that  
11 subject is covered adequately.

12 MR. BURNS: Okay. And this is something that  
13 you've put together based upon you training and your  
14 feedback --

15 MR. FRANCHINI: Based upon --

16 MR. BURNS: -- over all these years?

17 MR. FRANCHINI: -- years of experience in this  
18 business, yes.

19 MR. BURNS: I would certain appreciate getting a  
20 copy.

21 MR. FRANCHINI: I'll get you a copy.

22 MR. BURNS: As far as the cost of the regulations,  
23 we will be addressing that. At the other hearings we have  
24 had had questions concerning what it cost, you know, a small  
25 company to comply versus -- and also we asked for larger

1 companies to put together some information on what they feel  
2 it would cost to comply with regulation.

3 MS. ALEJANDRO: Yes, I think Ros has got a couple  
4 questions on that.

5 MR. FRANCHINI: Yes.

6 MR. BURNS: You asked a lot -- I mean, you have a  
7 bunch of rapid-fire issues there. As far as the independent  
8 contractor, that has been an issue. I don't think you can  
9 hardly talk about anything in mining without independent  
10 contractors being an issue.

11 We certainly want to hear from as many people here  
12 that deal with contractors and get their opinion on what  
13 sort of training that different types of contractors need,  
14 and that's one that you want because you also have to  
15 include them in your training?

16 MR. FRANCHINI: We include -- we include them in  
17 the training, and one of the big problems is is how the  
18 definitive amount of training that MSHA tells us that  
19 contractors need have. I mean, you could make a case for  
20 hazard training, and that could be as little as 30 minutes.  
21 I don't think 30 minutes is adequate. You could make a case  
22 that a contractor needs comprehensive training, eight yours.

23 I had one situation this past summer where an  
24 employer called up and they said that MSHA had told them  
25 that they needed, you know, the equivalent of new miner

1 training for their contractors, and this was an underground  
2 mine. And, you know, we discussed it. We came to a  
3 solution, but these contractors had been in this mine  
4 operation, involved in the operation for over 20 years, and  
5 now at this point the employer may be in a panic, contacts  
6 MSHA, trying to come up with some take on whether these  
7 people are -- people have been properly trained, and they  
8 can document that a minimum amount of experience is  
9 approximately five years, and at that point they're still  
10 going to require, you know, 40 hours of new miner training.

11 It just didn't make sense, and I think that MSHA  
12 needs to, if they're going to enforce a regulation, give us  
13 some definitive amounts so that when the inspectors go out,  
14 they have something to look for and it's not just, well, did  
15 you do the training, and when, and how experienced were  
16 these contractors.

17 It is a very complex issue, and we've tried to get  
18 more and more contractors involved in our training. It's  
19 difficult because I feel that the employers don't know that  
20 MSHA is going to require them to give them one hour, two  
21 hours, eight hours, and a lot of contractors just don't show  
22 up. You need to work on that.

23 MR. BURNS: This question is based more on your  
24 experience and training, different types of contractors, I'm  
25 really asking you now.

1           You've obviously trained some contractors that  
2     have OSHA experience. Based upon your training of those  
3     people, how much time or what subject areas do you feel  
4     different types of contractors need? Say a construction  
5     contractor who works normally at a quarry.

6           MR. FRANCHINI: Well, the subjects that a  
7     construction contractor or a welding contractor have been  
8     exposed to are pretty common. I mean, you take things like  
9     confined space and hazard communication, and maybe hazardous  
10    waste, blood-borne pathogens, and personal protective  
11    equipment. You have a lot of crossovers. There is not a  
12    real lot of difference.

13           The big area that when contractors come on to a  
14    mine property they need to be exposed to is some of the  
15    basic stuff that MSHA put together years ago: introduction  
16    to the mine environment; the safe work practices of that  
17    employer; I mean, company policies, rules and regulations.

18           I mean, a lot of times there is some different  
19    things that companies do that work for them, and, you know,  
20    maybe it's stated, maybe down the road it's communicated,  
21    but basically if you could give those contractors safe work  
22    procedures and tailor it to the company's take on their  
23    safety program, whether it's an approved program or not, you  
24    have a chance that they can play by the rules.

25           This workers' comp reform thing I'm involved with

1 has a model program in it where it talks about the goals of  
2 the safety program, the valuation and analysis, the  
3 examination of the workplace. You know, maybe something  
4 like that again is particular to that employer is really  
5 good information for the contractor.

6 A contractor, a blasting contractor, a drilling  
7 contractor, probably not. That doesn't fit. They pretty  
8 much have their own mine ID numbers. They are there in the  
9 mining environment every day. They know the hazards, so you  
10 pretty much don't have to worry about them. You may have to  
11 take a look at whether or not it's the first time they've  
12 been on that property, and whether or not they have  
13 experienced employees, but you probably should be less  
14 concerned about the driller and the blaster than you are the  
15 construction worker, the welder, maybe the electrical  
16 company that's coming in to refit some electrical system in  
17 a mill.

18 And you might be able to take advantage of the  
19 crossover subjects and supplement them with, you know,  
20 really what I would call hard-core mining subjects, make  
21 them aware that in 1998, if you're on a surface mine, that's  
22 the most dangerous type of mining environment to be in based  
23 on, you know, the data that MSHA has.

24 MR. BURNS: I think that's all the questions I  
25 have. I think Ros has questions.

1 MS. ALEJANDRO: Ros has got a couple of questions.

2 MS. FONTAINE: Based on your experience in helping  
3 to set up training programs for mine operators, using MSHA's  
4 traditional definition of one to 19 is a small mine, 20  
5 above is larger, could you give me a range of cost?

6 MR. FRANCHINI: A range of cost for the training  
7 program or --

8 MS. FONTAINE: Yes.

9 MR. FRANCHINI: -- or for the folks to actually do  
10 the training?

11 MS. FONTAINE: To actually do the training.

12 MR. FRANCHINI: Well, I can use some numbers that,  
13 you know, came out of our grant. We currently have two and  
14 a half people funded to do training out of the grant at a  
15 cost of an eight-hour refresher session is approximately  
16 \$45.00 per student, and that's going to, you know, include  
17 the travel that we have to do.

18 MS. FONTAINE: Okay.

19 MR. FRANCHINI: The set-up into the class. The  
20 number of classes we do annually is approximately 175. We  
21 train approximately 5500 people, so you can multiply those  
22 numbers and see how much it actually costs.

23 I think, you know, if you're going to take the  
24 cost of a four-hour session, you can't really have the  
25 numbers because you still have a tremendous amount of travel

1 and set-up, and I honestly don't have the figures on our  
2 hazard training committed to memory.

3 But I would suggest that you contact the grant  
4 manager.

5 MS. FONTAINE: Okay.

6 MR. FRANCHINI: Because each grantee is supposed  
7 to put in their proposals the actual cost of instruction,  
8 and we usually do it by way of per student cost.  
9 Occasionally you'll see a number per session. And then we  
10 have to take those numbers and expand them so that we have a  
11 per issue cost. So if you take the 175 classes, of which  
12 maybe 135 are end refresher training, we will be able to  
13 show in the grant that there is a cost of providing X amount  
14 of sessions of end refresher training as an issue and then  
15 some contractor training for hazard awareness training, for  
16 instructor training. You should be able to get some pretty  
17 good quotes out of the grant program.

18 MS. FONTAINE: Okay.

19 MR. FRANCHINI: That at least give you an idea of  
20 what the cost of training. Cost of implementing the safety  
21 program, not a clue, not a clue. I mean, that's going to  
22 vary from company to company, whether or not there is a  
23 corporate structure, how many company employees and the  
24 like.

25 MS. FONTAINE: Okay.

1 MS. ALEJANDRO: Thank you. Thank you very much.

2 MR. FRANCHINI: Thank you.

3 MR. BURNS: I have just one more question.

4 Do you do -- do you get involved in new miner  
5 training?

6 MR. FRANCHINI: We do. What we try to do in the  
7 state is during the summer months try to have two to three  
8 sessions located geographically across the state where we  
9 have one or two companies sponsor the session and send as  
10 many people as they can. The problem is the mining  
11 employers never know when they're going to hire. So even if  
12 we tentatively set up a session out of the Buffalo region in  
13 the beginning of July, you know, the day of the class, even  
14 though we have 12 - 15 people scheduled, we may have four or  
15 five show up.

16 And the mine operators have a problem with --  
17 well, I should say a problem. They don't have a problem  
18 with providing the eight hours right off the bat. What  
19 happens is when they have to provide the other 16 to get  
20 that done in a timely fashion, and to overlap it with that  
21 first eight hours, and then have enough people to train at  
22 one time, then they start to obviously look at ways to get  
23 into compliance as quickly as possible.

24 I was hoping that, you know, if this regulation  
25 moves forward, what we would end up doing is scheduling

1 three-day sessions, you know, maybe May, June, July, the  
2 peak season for when they - you know, when they bring on new  
3 employees, we would have it at a location and hopefully it  
4 would be central enough where mine employers could send as  
5 many people as they could. They're going to have to get  
6 better at projecting, you know, when and where they're going  
7 to hire. We're going to have to get better at getting these  
8 sessions set up so that they at least get the eight hours  
9 in, and if not, the full 24.

10 We could provide the full 24, again, maybe with a  
11 little more funding, and a number of training session in new  
12 miner training. We could do it here in New York.

13 MR. BURNS: Yeah, that was -- I mean, as you were  
14 talking, I was thinking that at some point in time you  
15 should be able to give -- have some sort of estimate or  
16 projection as to, you know, how many people are going to  
17 need to be hired, you know, for start up in some areas of  
18 the state, and maybe we need to start gathering that  
19 information so that that sort of training can even be given  
20 before they hire -- I mean, it could help someone get a job  
21 if they already had training.

22 MR. FRANCHINI: One of the problems with that is  
23 that the number of employees that are reported to MSHA as  
24 full-time employees in the mining industry in New York is  
25 very, very conservative. The number is extremely low. I

1 think the current numbers show about 5,000 mining employees  
2 in the State of New York. I would venture a guess there are  
3 over 10,000. We get to probably half and we're doing 5500.

4 A lot of the small towns and counties that I  
5 mentioned in my comments report one, two, maybe four people,  
6 when in fact they may have 10, 12, 15, 20, and in some cases  
7 county operations may have as many as 75 to 100 people who  
8 may in fact enter the mine some time during the summer, and  
9 could be subjected to, you know, the enforcement of training  
10 regulations, and that's part of the problem with the  
11 calculation of funding. The numbers are not good. So, you  
12 know, these employers know basically how many people they  
13 have on the payroll. The private sector is doing a great  
14 job of reporting the numbers they have. Unfortunately, the  
15 public sector, for whatever reason, underreports, and the  
16 projections, getting a good projection of them would go a  
17 long way in, you know, looking at what you're trying to  
18 figure out, how many more people you would need for  
19 refresher training, new miner training, hazard training.

20 And, again, how you get that data, other than the  
21 tradition methods, through the -- you know, the MSHA  
22 database, is beyond me.

23 MS. ALEJANDRO: Actually, this may be a premature  
24 question but I'm going to ask it anyway. One of the issues  
25 that we will have to resolve as we work our way through this

1 rulemaking process is after a rule is developed, a final  
2 rule is published, what period of time is going to be  
3 necessary for the industry and for the trainers and for  
4 everyone involved to get ready to comply with whatever  
5 requirements we're going to put in place, and, obviously,  
6 that may depend to some extent on what those requirement  
7 look like, which we don't know yet.

8 But do you have any sense for how long it might  
9 take for operators and trainers to come into compliance?

10 MR. FRANCHINI: Well, I know back in the inception  
11 of the grant, it took about three years of instructor  
12 training to get everyone certified that the industry wanted  
13 have certified at that time. I don't think it's going to  
14 take nearly that long. It takes us about two years to  
15 really get an instructor up and running when they come to  
16 work for the State of New York.

17 The first year, there's a good six months of on-  
18 the-job training. They're taking the instructor  
19 certification course. We try to get them to Beckley as soon  
20 as we can. The next six months they're going to be out  
21 conducting maybe a third of the sessions they normally  
22 would. Generally, what we try to do is monitor as many  
23 sessions as possible. It's not really till the second year  
24 that they're really on their own, and ready to be on their  
25 own. So you're going to have probably a two-year lag for

1 really qualified instruction.

2 In New York, using the grant program, if we were  
3 able to put on one more instructor, we would be able to  
4 handle 25 percent, easily 25 percent more work. So that may  
5 get us to about 75 percent of the training needs of the  
6 employers that are in New York, when it comes to any  
7 refresher, and most likely, new miners.

8 The industry themselves, that's what I've seen  
9 over the last couple of years, is you have a little more  
10 interest in instructor certification. The people that are  
11 coming into it are generally from the industry. The  
12 unfortunate thing is they wear, you know, several hats, so  
13 they are not doing training full time. They're not  
14 developing training programs full time. They're not, you  
15 know, looking at the training program or safety program full  
16 time, so it takes them, you know, many more attempts, many  
17 more sessions to really get a program together.

18 There is one company locally that we certified an  
19 instructor about a year ago. Last year, we did a co-session  
20 with them for annual refresher training. Basically what  
21 happened was we did four hours, the new instructor did an  
22 hour session, and then brought in three other instructors to  
23 do the other three hours. That's what happens a lot of  
24 times.

25 MS. ALEJANDRO: Um-hmm.

1           MR. FRANCHINI: This year I've already talked to  
2 that instructor. We're going to go back and do another four  
3 and four. Hopefully the instructor is going to be ready to  
4 take on more. But, again, they're wearing so many hats that  
5 they can't develop the programs. And even when you hand  
6 them the material from Beckley, or we give them something  
7 we've developed, they're not ready to stand in front of a  
8 group and, you know, talk about, you know, the rules and  
9 regs in detail, and the issues, and the current initiatives.  
10 And even though MSHA does a great job with sending the  
11 policy memoranda and the fatal-grams, and there is all kinds  
12 of information on the internet, these people don't have the  
13 time to put it together into a program.

14           So, you know, I think you're going to be hard-  
15 pressed that unless a company already has an established  
16 safety program, and this is going to affect the small mining  
17 operator, to just create instructors. I'm sure people will  
18 come running. They're all going to want to be certified,  
19 and that's why I asked the questions about the quality of  
20 instruction.

21           Unless you use the grant program that each people  
22 in each state can monitor that process and move these people  
23 along, you're going to find yourself probably with what I  
24 think happened, you know, in the last maybe 10 years in  
25 underground mining, in the coal industry, there is a

1 different instructor every day, and it becomes just, you  
2 know, an issue of compliance as opposed to, you know, good  
3 quality training.

4           So I would hope, again, that if you can, you know,  
5 use the grant program to get these trained and maybe even  
6 look at things like retraining for instructors. This March  
7 I'm conducting a retrain the trainer in two locations in New  
8 York. We're going to invite as many people we can to come  
9 in, and even if it's one day, give them a class in training  
10 because unless they've taken the instructor course, they  
11 probably haven't had any additional training to stand up in  
12 front of a group and know the do's and don'ts. And, of  
13 course, with the changing technology and multimedia, there  
14 are some different issues they have to face, and, again, a  
15 lot of them just don't have the time, and in some cases  
16 that's going to create distraining, if there is such a term.

17           MS. ALEJANDRO: I just have one last question and  
18 you may or may not be able to answer this.

19           But obviously MSHA cannot enforce Part 48,  
20 although technically operators are still required to comply  
21 with it. Do you have any sense, I mean, in the area,  
22 geographical area that you work in, of what percentage of  
23 operators aren't providing any sort of real safety and  
24 health training to their employees?

25           I mean, how -- I guess, I'm trying to get, you

1 know, this kind of folds into the whole issue of how long  
2 it's going to take for the industry to come into compliance.  
3 And if there is large numbers of people who are not into the  
4 process right now, I mean, you're going to need additional  
5 resources to train those miners and also bring those  
6 operators up to speed where they need to be.

7 MR. FRANCHINI: I would venture a guess, if you're  
8 looking at the definition of a small mine employer, if we  
9 use the 20 or less, I would guess about 50 percent of those  
10 operations do provide training.

11 If you're looking at the larger definition of, you  
12 know, more than 20 --

13 MS. ALEJANDRO: Right.

14 MR. FRANCHINI: -- I would think the highest  
15 percentage possible of those companies have some system in  
16 order either from their corporate office or from the safety  
17 person, you know, at that location, or a foreman, or  
18 supervisor who may in fact be certified by MSHA and at least  
19 provide some form of training, even if it's in 15-minute  
20 increments, you know, every other week.

21 MS. ALEJANDRO: Um-hmm.

22 MR. FRANCHINI: I think the small employer is  
23 really the one that they don't have the time or the  
24 resources.

25 MS. ALEJANDRO: Right.

1           MR. FRANCHINI: At least here in New York. And,  
2 you know, I supplement that with the fact that even though  
3 we get a lot of them, you know, in the grant program and  
4 provide the training, there is a lot of them that still  
5 don't know about the program, and in some cases that's --  
6 you know, that is the function and responsibility of MSHA,  
7 to make sure they do know. And I think in some cases we've  
8 probably failed in that area too.

9           MS. ALEJANDRO: You say 50 percent of the small  
10 operators provide training, and you say effective, I mean,  
11 reasonably effective training, 50 percent provide it, and  
12 the other 50 percent provide no type of safety and health  
13 training at all or?

14          MR. FRANCHINI: I think the 50 percent that I'm  
15 talking about that provide training are using our services.

16          MS. ALEJANDRO: Okay.

17          MR. FRANCHINI: And we are using -- we are doing  
18 the full one-day, eight-hour sessions. We will do  
19 occasionally contractor training for a minimum of four  
20 hours, but no less, and I, you know, personally would have  
21 to say that if you're going to do refresher training, you do  
22 have to connect the subjects, and you do have to make a case  
23 for setting certain themes in the program each year.

24                 We've been able to do that. In fact, you know,  
25 since 1989, every year we put a brand new refresher program

1 together, so I think that's what keeps these companies  
2 coming back to us, and I think that's what makes it  
3 effective training.

4 The other 50 percent may be providing some form of  
5 training, but they're using a lot of canned information and  
6 they give their employees the MSHA videos and, you know, I  
7 think everyone realizes they're making a good faith attempt,  
8 but is it really effective training? In a lot of cases,  
9 it's, you know, just to make sure that they're in  
10 compliance.

11 MS. ALEJANDRO: Okay.

12 MR. BURNS: Yeah, I wanted to look this up. Along  
13 the lines of the effective date, I mean, certainly the Mine  
14 Act requires training. I mean, that's a statutory  
15 requirement. So even if the final rule has an effective  
16 date to put together a training plan and to establish  
17 qualified instructors or whatever, for the term that the  
18 rulemaking comes up with, I believe the Part 48 had in there  
19 a requirement that current miners that would be considered  
20 experienced, there was -- I think, Part 48 had a requirement  
21 that within 90 days they would have eight hours of annual  
22 refresher?

23 MR. FRANCHINI: Yes, exactly.

24 MR. BURNS: Now, based on your experience, if this  
25 rule would have that sort of 90-day requirement, would you

1 have the resources to do the training that would come from  
2 that sort of demand?

3 MR. FRANCHINI: Not under the current funding. I  
4 mean, you know, if we -- I mean, we can conduct probably in  
5 the three months that we're -- the industry hires people, we  
6 conduct possibly 20 new miner sessions, one-day sessions in  
7 those three months. I don't think that would be enough to  
8 cover the needs of the industry in New York, and we would  
9 have to put on at least one and a half people. We'd have to  
10 have four full-time people, I think, to be able to put on  
11 enough new miner sessions in all the geographic areas to  
12 cover the need and provide the full 24 hours of training.

13 Right now we're -- you know, we're okay with the  
14 first eight hours that the employers are willing to have us  
15 in for.

16 MR. BURNS: Right.

17 MR. FRANCHINI: But then that other 16, truthfully  
18 and with no intent to, you know, point fingers at anyone,  
19 the other 16 is usually, you know, on-the-job training under  
20 the supervision of a very experienced foreman or supervisor.

21 MS. ALEJANDRO: Does that work though? I mean, is  
22 some part of that valuable?

23 MR. FRANCHINI: It's very valuable and, you know,  
24 the problem is that you may let a few people fall through  
25 the cracks.

1 MS. ALEJANDRO: Um-hmm.

2 MR. FRANCHINI: It's not a level playing field.  
3 Companies one year are very aggressive in doing that; in  
4 other years, they can't be, so it becomes, you know, a  
5 little more of a problem for the mine operator to guarantee  
6 that every new employee that gets hired every years is  
7 adequately trained. And what's going to happen under -- you  
8 know, under the enforcement side of this is the two year  
9 history that follows, if they, you know, get cited for not  
10 having an employee trained, you know, because they're  
11 working in July and they had the first eight hours, and  
12 that's when their inspection is or occurs, you know, it  
13 happens, you know, two years or within that two-year period  
14 again, the employer, you know, is going to be subjected to,  
15 you know, increased fines and things, and, you know, it may  
16 not have been possible, you know, based on what -- based on  
17 what's going on that year in that company.

18 If the grant program had the proper funding, and  
19 we were able to provide the right number of sessions, and we  
20 had three days set up, you know, every other week we had a  
21 session set up somewhere in the State of New York, that  
22 employer would -- within those 90 days would be able to send  
23 their employees to one of those sessions. And, you know,  
24 basically they wouldn't have to worry about compliance.  
25 They would be assured they were getting good training that

1 meets all the MSHA requirements, that talks about all the  
2 current initiatives, and we work very hard in New York to  
3 make the pre-call on a lot of these issues. And I think  
4 that that would relieve a lot of stress that some of the  
5 employers here in New York may go through, with new miner  
6 training.

7 I mean, that's going to be one of the tougher,  
8 tougher areas probably only second to contractor training.

9 MS. ALEJANDRO: Do you have anymore questions?

10 MR. BURNS: No. I appreciate your help on this.

11 MR. FRANCHINI: Oh, you're most welcome.

12 MS. ALEJANDRO: Thank you very much, Mr.

13 Franchini.

14 MR. FRANCHINI: Thank you.

15 MS. ALEJANDRO: All right, the next speaker on the  
16 list is Allan Zwoboda of Holmes Safety.

17 MR. ZWOBODA: Good morning. I'm here representing  
18 the Holmes Safety Association for the Capital District. I'm  
19 the president, Allan Zwoboda, Z-W-O-B-O-D-A.

20 MS. ALEJANDRO: Thank you.

21 MR. ZWOBODA: Upon hearing of this hearing today,  
22 we sent out flyers requesting input from our membership  
23 because we felt it was important that we be represented  
24 here. One of the overriding concerns from the membership  
25 was the fear of losing control of their safety program.

1           The approval for their trainers, I know from the  
2 Holmes Association we've helped sponsor retrain the trainer,  
3 train the trainer programs, MSHA certified training. I  
4 don't believe that our membership feels the need for  
5 bringing in the professionals, that they believe in site-  
6 particular training with on-site trainers.

7           Mr. Franchini had mentioned that where we -- I'm  
8 an MSHA trainer myself, and I'm also a senior electrician  
9 for St. Lawrence Cement, but that gives me a neat  
10 perspective on the problems that so on my mine site. And if  
11 we go to a uniform guideline, I believe that personal touch  
12 and that personal knowledge would be lost.

13           We do believe that definite standards should be  
14 maintained for the trainers though. We would like to see  
15 updates presented, at least yearly, from MSHA on information  
16 to the trainers themselves. I know they must maintain a  
17 list some place.

18           MS. ALEJANDRO: Yes.

19           MR. ZWOBODA: At least that's a hope.

20           We'd like to know what's going on with MSHA and  
21 the overall statistics from the mining industry available to  
22 the trainers on a whole.

23           On another area of concern, this is from labor, is  
24 the supervisor training, where supervisor training should be  
25 above and beyond your minimums, where most safety programs

1 are going to succeed or fail based upon the behavior of the  
2 supervisors, and we'd like to make sure that they are  
3 adequately trained. I know some companies, when they go for  
4 supervisor training, they make sure they know how to keep  
5 books, where we'd like to see the training standards  
6 elevated for them to be able to work with the men safely.

7 Also, another concern is along the lines of the  
8 train the trainer programs is, as Mr. Franchini had  
9 mentioned, is that we run into locally here some budget  
10 restrictions. We'd like to see some more money provided for  
11 the train the trainers.

12 Another concern that was brought forth was the  
13 guidelines and how they'll be presented to each mine, and  
14 will they change from year to year, will they be updated,  
15 and how they would be approved?

16 Another concern was should the contractors be  
17 responsible for their own training or will it be the mine's  
18 responsibility?

19 And that's all they brought forth.

20 MS. ALEJANDRO: Mr. Zwoboda, I've got a couple of  
21 questions.

22 Could you give us some idea of who it is that  
23 you've gotten this input from just as far as, you know, size  
24 of operations, type of operation?

25 MR. ZWOBODA: The Capital District Holmes

1 Association.

2 MS. ALEJANDRO: Yeah.

3 MR. ZWOBODA: Also, proud and relieved to say that  
4 some of our members are here today.

5 MS. ALEJANDRO: Good.

6 MR. ZWOBODA: We take in the cement plants of the  
7 region right down to the mom and pop sand and gravel pits.  
8 We represent a broad spectrum of the mining industry in this  
9 Hudson Valley.

10 MS. ALEJANDRO: Okay. And you also indicated you  
11 were speaking on behalf of labor. Are those individual  
12 miners or are they --

13 MR. ZWOBODA: Yes, individual miners. I visited  
14 at least two sites and my own fellow workers.

15 MS. ALEJANDRO: Okay. In your initial remarks,  
16 you indicated that the people you had spoken to were  
17 concerned about losing control of their programs.

18 Could you maybe provide a little bit more detail  
19 on what their areas of concern are?

20 MR. ZWOBODA: Well, the number one concern was the  
21 establishment of like the safety professional come in,  
22 that's at great expense, and it's not always going to be  
23 successful.

24 MS. ALEJANDRO: When you say "safety  
25 professional," are you talking about the person who comes in

1 to give the training?

2 MR. ZWOBODA: Yes.

3 MS. ALEJANDRO: Okay.

4 MR. ZWOBODA: They are also afraid of the canned  
5 presentation where the guidelines would be sent and you will  
6 present this information.

7 MS. ALEJANDRO: Because it would not be  
8 appropriate to their particular operation?

9 MR. ZWOBODA: That is correct.

10 MS. ALEJANDRO: Okay. You mentioned the value of  
11 on-site instruction, I guess, as part of the training.

12 I mean, do you also believe that some classroom  
13 training is valuable or do you think that that should be  
14 left up to the discretion of the operator as far as one of  
15 the elements of, you know, the required training?

16 MR. ZWOBODA: Well, we believe that the eight-hour  
17 refresher as a block presentation is very valuable and  
18 should not be dismissed.

19 MS. ALEJANDRO: Okay. Eight-hour classroom?

20 MR. ZWOBODA: Yes.

21 MS. ALEJANDRO: Okay. But supplemented with on-  
22 site instruction?

23 MR. ZWOBODA: Oh, definitely.

24 MS. ALEJANDRO: Okay. And you also raised the  
25 issue of whether contractors were going to be responsible

1 for the training of their employees.

2 Does your -- do the people that you're speaking on  
3 behalf of have a position on that issue?

4 MR. ZWOBODA: Well, naturally, everybody wants to  
5 make sure everybody foots their own bill.

6 MS. ALEJANDRO: Right. Okay.

7 MR. ZWOBODA: I mean, that's pretty basic. But I  
8 know a lot of the local mines offer hazard recognition  
9 training for their contractor who comes on site --

10 MS. ALEJANDRO: Okay.

11 MR. ZWOBODA: -- as a minimum.

12 MS. ALEJANDRO: Right.

13 MR. ZWOBODA: But that is to make sure, once  
14 again, it's site particular. Most of the mine operators  
15 don't believe they should for every contractor that rolls  
16 through the gate they should be responsible to make sure  
17 that their people are adequately trained. They should be  
18 responsible for receiving a certificate of the training and  
19 that's it.

20 MS. ALEJANDRO: Do operators -- I mean, in your  
21 experience, do operators frequently provide comprehensive  
22 training for the contractors who come onto their property or  
23 does it vary?

24 MR. ZWOBODA: It's going to vary.

25 MS. ALEJANDRO: Uh-huh. Okay.

1 Do you have any questions?

2 MR. BURNS: I guess, just a couple things.

3 In your experience, the trainers that are on  
4 record with MSHA do not receive much information from MSHA  
5 in order to update their training? Is the information they  
6 get pretty much limited to the fatal-grams and things like  
7 that?

8 MR. ZWOBODA: Yes, and it's -- and it's sent to  
9 the operator of the mines particularly. I know that we at  
10 my plant, we spend a lot of time gathering information  
11 through the MSHA office locally, Mr. Franchini's office, and  
12 the National Safety Council. We invest a lot of time and  
13 effort and to gathering this information, but it's all self-  
14 generated. Nothing is really out there provided easily. I  
15 mean, we have the interest, we have the desire. The Holmes  
16 Association provides information locally also, but that's  
17 still generated from people who have a real, real interest,  
18 whereas the small mom and pop mines, for an example, they  
19 want to make money, they want to survive, so they are going  
20 to do what's necessary to be certified. And if things were  
21 more easily provided for them, they would probably do more.

22 MR. BURNS: Okay, so you would see some value in  
23 MSHA working, I guess, with industry and labor in the states  
24 to put together materials that can be used for small time  
25 gravel operation and cement operation, something that's

1 appropriate for individuals operations?

2 MR. ZWOBODA: It should be -- everybody uses the  
3 phrase "canned presentation," and nobody wants that, nobody  
4 that I've talked to anyway.

5 MR. BURNS: It should just be information that  
6 they could --

7 MR. ZWOBODA: Information for themselves, that  
8 apply to them.

9 MR. BURNS: I guess, some of the companies that  
10 you talk to were fearful that the -- you mentioned  
11 guidelines. I think you were talking about also combining  
12 that with the plan?

13 MR. ZWOBODA: Yes.

14 MR. BURNS: Using those interchangeably.

15 They're concerned that the requirements may be  
16 more along the lines of Part 48; is that what they're  
17 looking at as far as being too restrictive?

18 MR. ZWOBODA: I think there is -- to go back to,  
19 they would like to keep it particular to their site, and  
20 what they have to deal with every day as opposed to an  
21 abstract of the -- a miner as he's out in the field doesn't  
22 necessarily care so much about the laws and regulations, et  
23 cetera, et cetera. He wants to make it through the day. He  
24 wants to do it safely. He wants to know how to do that.

25 MR. BURNS: As far as the qualifications of

1 trainers, that you've already heard some statements here  
2 today, and this has been an issue at the other two hearings  
3 also, on one side, people offer that they need to be  
4 somewhat professional type trainers from the standpoint that  
5 they have some real training experience, or they have some  
6 sort of trainer certificate.

7           What sort of qualifications would you see  
8 necessary or recommend it to ensure good training  
9 everywhere?

10           MR. ZWOBODA: Well, I believe that you should have  
11 experience in the field a minimum number of years. You  
12 should be able to document that. You should have a train  
13 the trainer course behind you. You know, you just have to  
14 set up a minimum somehow. I mean, those two things there  
15 come to mind. I don't think necessary a college degree is  
16 necessary or a four-year course or a two-year course where  
17 you've stood up and received it is necessary. Where I do  
18 see it experience would be a valuable teacher.

19           MR. BURNS: What about at a mine where say --  
20 would you see it appropriate or effective if the mine has  
21 one person that meets that qualification that oversees the  
22 program, and has perhaps someone that with a great deal of  
23 electrical experience that does a little electrical  
24 training, he may not have the train the trainer experience?

25           MR. ZWOBODA: I still think your experience is

1 what you need the ability to present the information.

2 MR. BURNS: Okay.

3 MR. ZWOBODA: And you could be the smartest person  
4 in the world but you can't teach it, you're wasting  
5 everybody's time.

6 MR. BURNS: Okay. Yeah, I'm just bringing up some  
7 of the -- you know, statements that we've heard in the past.  
8 That was one of the ones that someone made and they felt it  
9 was important that not everybody with experience necessarily  
10 needs, you know, three days of train the trainer to  
11 effectively get across their subject matter.

12 MR. ZWOBODA: Right.

13 MR. BURNS: As long as there is someone there to  
14 help them prepare to do the presentation.

15 MR. ZWOBODA: Well, I just think that you still  
16 need an effective means to convey your message. I know from  
17 my, once again, from my experience in my plant, there are  
18 two of us that are certified from MSHA, and we use like the  
19 eight-hour refresher course to present a unified message  
20 throughout the entire plant population. The ability to have  
21 the train the trainer course was invaluable because it gives  
22 you the basics on how to present. You know, we come from  
23 all walks of life and some of us did take courses in  
24 college, some of us didn't, and to have that to fall back on  
25 as a starting point, I think, is necessary.

1           MR. BURNS: Okay, I appreciate that. I mean,  
2 being in college, I've had some training from professors who  
3 really weren't very effective too.

4           MR. ZWOBODA: You've got to have the whole  
5 package.

6           MR. BURNS: Right. I don't have any more  
7 questions. I appreciate your input and your answers.

8           MS. ALEJANDRO: Thank you, Mr. Zwoboda.

9           MR. ZWOBODA: Thank you.

10          MS. ALEJANDRO: We have come to the end of list of  
11 people who have signed up in advance to speak. Is there  
12 anyone out there who hasn't signed up who would like to come  
13 up and make some remarks?

14                 What we can do now is just maybe give you some  
15 idea of some of the issues and comments that have been  
16 raised at our earlier meetings that we've had this week, and  
17 it could possibly -- oh, we do have somebody who wants to  
18 speak? Sure.

19          MR. CUCOLO: I'm from the New York State  
20 Department of Labor and Director of Safety and Health.

21                 We have in New York State --

22          MS. ALEJANDRO: Excuse me. What's your name?

23          MR. CUCOLO: Richard Cucolo, C-U-C-O-L-O.

24          MS. ALEJANDRO: All right, thank you.

25                 In the New York State Department of Labor, we have

1 11 different safety and health programs; three of which are  
2 funded partially by U.S. Department of Labor, that's the  
3 mine and safety training program, the 7(c)(1) program, and  
4 all public sector state plan. But New York has been in the  
5 business of safety regulation for almost 100 years ago. And  
6 one of our former Commissioners, Frances Perkins, and give  
7 the name to the U.S. Department of Labor in Washington.

8 But there are a couple of general concerns that we  
9 have. New York, in 1997, had the best accident performance  
10 for the top 10 industrial states in the public sector, and  
11 we've had the best public sector accident rate since the  
12 program began in 1981.

13 But a couple of the issues that we've seen  
14 repeatedly in all of our safety programs, and we have eight  
15 state programs which include asbestos control, order of  
16 safety industry inspection at amusements, window washing  
17 devices, and we have a lot of experience in this area.

18 There are a couple of things that are inherent to  
19 the State of New York that are of particular local concerns,  
20 and that is, the trainer qualifications. In 1996, the  
21 historic Worker's Compensation Reform, occurred in New York  
22 state. In the workplace safety and loss prevention program,  
23 we addressed the issue of third party consultants, third  
24 party trainers being allowed to come in and create safety  
25 programs to bring down workers' injury rates, and also the

1 workers' compensation rates, which was driving businesses  
2 out of the state.

3           And rather than a OSHA-type of regulations, you  
4 know, thousands of pages and volumes, we basically set up a  
5 program which had 12 different areas that a consultant would  
6 go in and look at safety problems, and address that with a  
7 program based on areas where accidents and injuries were  
8 occurring. And this program has been in effect for a year  
9 and a half, and the workers' compensation rates in New York  
10 State have gone down 37 percent.

11           And the people we certify, we certify the trainers  
12 and the consultants that do these third party consultations,  
13 which is something that's not really even adopted by OSHA,  
14 but we found it works very well here. And the types of  
15 people that we certify to do this include: certified  
16 industrial hygienists, we'll accept a CIH, we'll accept a  
17 CSP, we'll accept two or three of the titles of the World  
18 Safety Organization, we accept ARM, which is an insurance,  
19 associate risk management from an insurance company, and  
20 ALCM, associate loss control management, from the insurance  
21 company. But most notably, we will accept also a person who  
22 has eight and a half years of verifiable experience as a  
23 safety officer for a construction company or a public safety  
24 company.

25           Many times, especially in the construction field,

1 they have persons working in the construction industry as an  
2 ironworker or an electrician or a carpenter who, as he gets  
3 older in his career and can no longer handle the actual  
4 construction work, becomes the safety officer based on  
5 lifetime source of experience with safety.

6 And also, in police departments you'll find this  
7 and many of the fire departments around the state, why put  
8 someone on the shelf who has got a lifetime worth of  
9 experience just because he doesn't have the CIH or CSP.

10 In two legislative sessions ago, title protection,  
11 special interest legislation was introduced that would make  
12 it easier to get a license to do safety consultations and  
13 safety work in the workplaces and was very strongly  
14 supported, as they are around the country, by AIHA and ASSE.  
15 This was strongly opposed in New York State by the AFL-CIO  
16 for this very reason. There are many qualified people out  
17 there with the experience that do not have a college degree  
18 but who have a lifetime worth of very valuable experience.

19 I would hope that along with what MSHA is asking  
20 for, what Marino had mentioned before, that you would make  
21 the qualifications broad enough to address this.

22 The second point I'd like to raise is that we do  
23 have a lot of small entities in federal and state,  
24 especially as Marino mentioned, municipalities that own  
25 mines who would qualify under the Small Business

1 Administration definition of small entities for RIFA  
2 purposes, and I would certainly hope that you reach out to  
3 them in other session like this around the company, the  
4 public sector. This is something that would been highly  
5 critical of OSHA for -- they just -- they just did a  
6 respiratory protection standard, as well as a number of  
7 other standards, where there was absolutely no outreach to  
8 the public sector. These regulations are formulated for  
9 private sector and then basically the public sector is told  
10 to heed it, you know, through the state grant plans, state  
11 plan grant system.

12 There is no real -- there is a difference between  
13 the way a public sector and private sector operation works,  
14 and I hope you take that into consideration.

15 Also, on the issue of cost/benefit analysis, one  
16 thing that OSHA continually ignores and we would hope that  
17 MSHA will take this into consideration too, is not just the  
18 cost of putting on the training sessions, which you may not  
19 be able to derive from assistance in the organization as  
20 well as, you know, from the state grants programs, it cost  
21 \$45.00 per student, et cetera, but also don't forget to take  
22 into account overhead the employer. You know, the mine  
23 needs to be open by an electrician. The electricity has to  
24 be turned on, people have to be there. That overhead is a  
25 cost to be factored in. Also, the salary paid to all the

1 people who train, that's not productive time, and that's a  
2 cost to the employer. Also, unproduced product for that  
3 day. While they are training, they are not producing the  
4 product, undelivered product for that day, and also profit  
5 not realized for that day.

6 On the OSHA side, even the most optimistic course  
7 projects and analyses that have been done about OSHA  
8 regulations show that the cost of OSHA regulations are about  
9 \$30 billion, and the benefit is about \$3 billion,  
10 outnumbering, you know, costs outweighing the benefit by  
11 about 10 to one, and that's not even to mention some of the  
12 analyses that have been done -- Bicusini's study on the cost  
13 per life saved. Some of the OSHA regulations, most of the  
14 older ones, in fact, are a very good ratio, of course, to  
15 life saved, whereas the new ones, some of them have  
16 outrageous prices attached to them, the asbestos standard,  
17 formaldehyde standard, the ones that OSHA is probably very  
18 proud of, like the methylene chloride standard, has a cost  
19 per life saved of about \$30 million.

20 So I hope all of these factors will be taken into  
21 consideration and making certain -- you know, we've heard  
22 about, you know, talk, scuttlebutt, about OSHA and MSHA  
23 merging, and OSHA taking over MSHA. We would certainly hope  
24 that doesn't happen. But if it does, that it be MSHA taking  
25 over OSHA.

1 (Laughter.)

2 MS. ALEJANDRO: Yes, I have a couple of questions.  
3 Your comment about experience being considered as -- I mean,  
4 that you can be qualified through experience as well as by,  
5 you know, licenses or whatever, do you have a particular  
6 recommendation, you know, for the context of this regulation  
7 as far as if we were to cast that in terms of experiences  
8 and alternative, how we might do that?

9 Where did the eight and a half years come from,  
10 for example, for New York State?

11 MR. CUCOLO: We did a lot of -- before we got the  
12 total of 59 on workers' comp reform, we did a lot of  
13 outreach with the different people that would be under the  
14 regulations.

15 MS. ALEJANDRO: Um-hmm.

16 MR. CUCOLO: Especially engineers. Engineers are  
17 also, by the way, automatically accepted, engineers, ACLM,  
18 JLM, CIH and CSGs, and the eight and a half years basically  
19 was a number that was thrown out. You know, we capitalized,  
20 and some people said, well, we need 10 years, some people  
21 said five.

22 MS. ALEJANDRO: That was negotiated?

23 MR. CUCOLO: Yeah.

24 MS. ALEJANDRO: There is nothing scientific about  
25 eight and a half year?

1 MR. CUCOLO: No.

2 MS. ALEJANDRO: All right.

3 MR. CUCOLO: No, but this is the type -- when  
4 someone is applying for certification in New York State,  
5 basically it's \$10,000, it's good for three years, and then  
6 renewal fee is -- is it \$100.00? And then also, if you  
7 apply as a group, we have a sliding scale. So if you apply  
8 for six or more people, it goes down to \$750; for 10 -- like  
9 this will allow the company who want to get its own people  
10 certified a break on getting it certified.

11 And our feeling is the more certified consultants  
12 that we have, the better. We currently have in New York  
13 State over 400, and the geographical distribution is very  
14 good so that employer in Buffalo wouldn't have to get  
15 someone from New York City.

16 And also, one of the best features that we have  
17 here was that the New York State Department of Labor does  
18 not a monopoly on this. We have private sector consultants  
19 charging market rate, and the statute also allows for us to  
20 -- we keep our costs so the employer is in a position of  
21 being able to choose either a government agency to do the  
22 consultation or the private sector, and this builds in  
23 excellence because it's not a monopoly. It's competition.  
24 If the state doesn't do it well, you can go elsewhere. And  
25 if the private sector consultants charge too much, they can

1 always come to the state. This is, I think, an excellent  
2 way to do it, and if you create something along those lines,  
3 we would be more than happy to share with you our experience  
4 in promulgating Code Rule 3059.

5 As I said before, our worker's compensation rate  
6 has done in the past three year 37 percent in the state.

7 MR. BURNS: Yeah, I mean, we would cheerfully be  
8 very satisfied if the first year after this regulation we  
9 come up with a 37 percent reduction. That's a very  
10 commendable rate reduction.

11 You talk about state certified consultants. They  
12 are not only doing training, they're doing walk-around and -  
13 -

14 MR. CUCOLO: Yes.

15 MR. BURNS: -- around the plants and making  
16 recommendations on where they can increase safety?

17 MR. CUCOLO: Their primary focus is creating  
18 safety and health programs.

19 MR. BURNS: Okay.

20 MR. CUCOLO: And they will conduct training if  
21 that is one of the areas identified as a loss or course  
22 driver for that particular employer. It's is diametrically  
23 opposed to what OSHA does. OSHA will go in and do a wall-  
24 to-wall inspection, cite you for violations which maybe  
25 never have caused an accident in your workplace.

1           We approach it from a different angle. We look at  
2 an employer's C-2 forms of workers' comp. Where have you  
3 been having accidents? And we focus right in on those.  
4 There are federal agencies, they take care of the rest.  
5 But that is the cost driver, that's the think that's causing  
6 costs for the employer and suffering for the worker, and the  
7 thing that, if you can make an analogy, we're the emergency  
8 room. These are the employees identified as having a 1.2  
9 experience modification rate or higher. They also have got  
10 to get down. And we think it's working very well, and our  
11 program is being copied by other states, Missouri,  
12 Pennsylvania, Connecticut has a program right now based on  
13 ours, and we think this is the way to the future because it  
14 gets more people involved.

15           If we have 1,000 certified consultants out there,  
16 and after a year or two they lose interest, we still have  
17 more. We can have 500 - 600 actively involved, and they'll  
18 be replaced.

19           And also, by getting them into the workplace for  
20 this purpose, while they're in there they can sell other  
21 things, like getting in there for purpose of workers' comp,  
22 but they could at the same time address workplace OSHA  
23 violations for an additional fee. So it's good for the  
24 private sector, it's good for the entrepreneurs, it's good  
25 for labor, it's good for management, and we hope you go that

1 way.

2 MR. BURNS: I have another question for you too.  
3 You mentioned the cost/benefit analysis?

4 MR. CUCOLO: Yes.

5 MR. BURNS: Maybe this is an assumption on my  
6 part. I assume that the state did some sort of analysis for  
7 their program?

8 MR. CUCOLO: Yes.

9 MR. BURNS: Would you be able to provide a copy of  
10 that to use?

11 MR. CUCOLO: Yeah, sure. We have to cost  
12 everything out when establishing per diem rates. Yeah.

13 MR. BURNS: I think that would be very helpful. I  
14 think we'd certainly be remiss if we didn't come up with  
15 something that had such a good effect. I mean, that's what  
16 we want.

17 MR. CUCOLO: A cost/benefit analysis is, as you  
18 know, down within the beltway, something which is hotly  
19 debated, how you do it. I'm not an accountant or a  
20 statistician, but I know there is a great deal of dispute  
21 about what one person says the cost/benefit analysis is and  
22 what another one says, and there is always finger pointing,  
23 well, you forgot this and you forgot that.

24 MS. ALEJANDRO: Right.

25 MR. CUCOLO: I hope you take a very good look at

1 that because a lot of it is, you know, you get numbers.  
2 This will costs if there is no net budgetary effect, you  
3 know, no one really agrees with that, and I hope -- I can  
4 highly recommend this book "Risks and Lives Saved" by B-I-C-  
5 U-S-I, which is an excellent book on cost/benefit analysis.

6 MR. BURNS: That's all the questions I have. I  
7 certainly appreciate your input.

8 MS. ALEJANDRO: Thank you very much.

9 MR. CUCOLO: Yes.

10 MS. ALEJANDRO: Do we have anyone else who -- all  
11 right.

12 MR. BURNS: Donna.

13 MS. ALEJANDRO: Donna.

14 MR. BURNS: It's easy to remember the women's  
15 names.

16 (Laughter.)

17 MS. ALEJANDRO: You can say that.

18 MS. SHAVE: I didn't prepare or write a speech to  
19 go across with you today, so I'm going to keep it pretty  
20 simple.

21 My name is Donna Shave, S-H-A-V-E. I'm also with  
22 Rifenberg Construction. And I would just like to quickly  
23 bring up a point.

24 I've taken both the MSHA train the trainer, and as  
25 recently as last week, the OSHA competent person training or

1 the 10-hour training, although they do not consider that  
2 you're certified or technically qualified to be able to  
3 teach that.

4           When Marino spoke about doing train the trainer  
5 with a contractor and the first lesson or the first session  
6 that person did being four hours of Marino and four hours of  
7 the contractor, I know he wasn't talking about me because I  
8 think we did our seven ours of Marino and one hour of me. I  
9 did not have the same expertise in the sand and gravel arena  
10 to feel, even though I had my training, feel comfortable in  
11 relating that information.

12           I have since established a better library of  
13 material and more competencies in being able to address that  
14 information to the people that I train, but I think you want  
15 to add one more thing with your training. When I went to  
16 OSHA training, they required you have five years of  
17 experience in the field. If you did not have five years of  
18 experience, then there was an additional training  
19 requirement, that you needed to spend an additional week to  
20 first have pre-introductory training before you were trained  
21 as a trainer.

22           One thing that they've incorporated in the program  
23 through this OSHA training is that, although you're  
24 qualified to train, every four years you need to do a  
25 refresher on that training, and that's the one point I'd

1 like to bring up.

2 I think it should be mandated that people have to  
3 stay about that current with the issues. Within their  
4 training block, there are -- if you are doing 10 hours of  
5 OSHA training, there are five segments that are mandated.  
6 They mandate that those segments be one hour each. I have  
7 to believe that they've done studies that indicated that  
8 that was a minimum and that was beneficial.

9 The other five hours, there were several blocks  
10 that you can choose from, if you feel that your operation is  
11 more -- more demanding in a certain area, such as ours being  
12 more demanding in excavation, then I have the liberty to be  
13 able to train in excavation for four or five hours, so the  
14 five hours of mandated are done, and the other could be  
15 technically just excavation.

16 I think that would give mine operators also the  
17 availability to be able to hone in on the items that are  
18 most relevant to the operation that they're doing.

19 And that's about all I have to interject at this  
20 point.

21 MS. ALEJANDRO: As far as the segments that you're  
22 talking about, I mean, you mentioned excavation, are they --  
23 I mean, are the subjects that you choose from, I mean,  
24 specific to sites, or, I mean, what kind of subject areas do  
25 they typically cover?

1 MS. SHAVE: As far as excavation?

2 MS. ALEJANDRO: Well, no.

3 MS. SHAVE: Oh.

4 MS. ALEJANDRO: I mean, you say that that was, you  
5 know, one of the things that you could choose from. I mean,  
6 what other types of things?

7 MS. SHAVE: They go mainly with the standards.

8 MS. ALEJANDRO: Uh-huh.

9 MS. SHAVE: And the five mandatory segments would  
10 be such as fall protection, and one hour of OSHA history and  
11 statistics, and I think you would probably want very much  
12 the same as far as statistics in MSHA on incidents that have  
13 occurred. Then they go through the subparts of the  
14 standards and choose relevant areas; scaffolding,  
15 electrical, and such that -- at that point the five options  
16 can be chosen from any of 20 different subtopics in the  
17 regulation.

18 MS. ALEJANDRO: Is any of the focus methods of  
19 instruction? I mean, one of the things that keep coming up  
20 is, you know, people have got substantive knowledge and  
21 experience, but --

22 MS. SHAVE: Right.

23 MS. ALEJANDRO: -- a lot of them are going to need  
24 some kind of additional instruction in how to actually  
25 provide training.

1 MS. SHAVE: Actually, the MSHA train the trainer  
2 was more specific to how you would present your material  
3 than the OSHA was. The OSHA was more driven to what  
4 material needed to come across --

5 MS. ALEJANDRO: Right.

6 MS. SHAVE: -- in hopes that if you're going to  
7 stand in front of a group, you're -- maybe you're going to  
8 muddle through, and for me every time I step up here my  
9 heart is pounding like crazy --

10 MS. ALEJANDRO: Right.

11 MS. SHAVE: -- and I'm scared to death that I'm  
12 going to start stuttering. But if you're willing to stand  
13 up in front of a group, I think, just for personal comfort,  
14 you're going to find a way to be able to do that.

15 I think maybe the MSHA and the OSHA could mesh  
16 together and find a happy medium, but, I'm sorry, Marino,  
17 but personally for me coming through the MSHA, which was  
18 marvelous for the public speaking portion of that training,  
19 I still was not confident that I knew everything that I  
20 needed to know about electrical or grounding, and that was  
21 not Marino's job to be there that day and teach me  
22 everything there was to know about mining.

23 On the other hand, the OSHA segments went through  
24 all the regulations, and if you can remember all of your  
25 statistics and your ratios of where people need to be and

1 such. I came out of there realizing that all the people in  
2 the room had different -- we each had to do a presentation  
3 at the end of the week, and each person had a different way  
4 of presenting themselves.

5 So I think the mix of the two would be good, or  
6 knowing that you have to have the five years experience. I  
7 can get through a train to trainer segment in MSHA, but I've  
8 worked very hard at that, and I have never operated a loader  
9 and I need to stand up in front of 20-year veterans and say  
10 this is what you're going to do and this is why. So the  
11 experience factor should weigh heavily on that, I do  
12 believe, but there are ways to train people without having  
13 to be the expert in the area also.

14 And for those companies that don't have the full-  
15 time people on board, or don't have the resources to do  
16 that, then I strongly encourage that we continue supporting  
17 the grant type programs in the Department of Labor type  
18 areas so that those resources are still there for the  
19 smaller company.

20 At Rifenberg, we're trying really hard, we just  
21 recently started a safety committee, and we're trying really  
22 hard to in the future incorporate bringing in a lot of our  
23 subcontractors and vendors into our training segment so that  
24 we can share some of that knowledge and training and  
25 expertise with the companies that work along with us,

1 because if your subcontractors aren't up to snuff, it's  
2 eventually going to tunnel down and you will feel the  
3 effects of that. So maybe some of the other companies could  
4 also incorporate people into their training.

5 But most assuredly, at least utilize what's  
6 available through the Department of Labor.

7 MR. BURNS: I just had one, I guess, question.  
8 I've gone through the OSHA training too, and my recollection  
9 was that it covered the types of hazards, like fall  
10 protection and things like that, that make up -- I can't  
11 remember the exact percentage, but something like 90 percent  
12 of the fatalities and serious injuries is the way it was set  
13 up. But it also had a segment on how to set up an effective  
14 safety and health program and how to evaluate it.

15 Do you feel that that's -- was that of value, in  
16 your opinion? I mean, is that something that we ought to  
17 have in our training?

18 MS. SHAVE: It probably would not be a bad idea,  
19 although there are a lot of safety and health programs  
20 canned and available within the industry. I think it was  
21 really beneficial to go to the OSHA training just in having  
22 so many other people that work in different -- within your  
23 industry but maybe with a different focus on that industry,  
24 and sharing their expertise. It was just -- it was really a  
25 well worth week for sure.

1           Is that it?

2           MS. ALEJANDRO: Thank you very much.

3           MR. BURNS: Thank you.

4           MS. ALEJANDRO: Do we have anyone else?

5           Actually, do you think we should take a break?

6           MR. BURNS: Yeah. Yeah.

7           MS. ALEJANDRO: Why don't we take a 15-minute  
8 break. I have like about five till 10. So why don't we  
9 come back at 10 after 10.

10           (Whereupon, a recess was taken.)

11           MS. ALEJANDRO: Okay, I think we can get started  
12 again.

13           Is there anyone here who would like to make  
14 remarks for the record? There was somebody who had their  
15 hand raised earlier, but I don't think he's come back into  
16 the room.

17           What we can do -- we've had a couple of requests  
18 from some of the people here to give you a short summary of  
19 the comments and the issues that have come up at our earlier  
20 meetings, and with the help of Ros and Kevin, I will try to  
21 give you some idea of what the issues -- did you want to  
22 speak?

23           MR. CASTRO: Just for a second.

24           MS. ALEJANDRO: Okay.

25           MR. BURNS: That would be great.

1 MS. ALEJANDRO: Okay, why don't you come up now?

2 MR. CASTRO: My name is Sal Castro, C-A-S-T-R-O,  
3 and I represent Buffalo Crushed Stone.

4 At the top of my -- excuse me, my breath is --

5 MS. ALEJANDRO: Do you want to just --

6 MR. CASTRO: I'm okay.

7 MS. ALEJANDRO: Okay.

8 MR. CASTRO: At the top of the hearing you had  
9 mentioned that this is an informal hearing, and you got  
10 informal. I did not prepare anything. However, I did want  
11 to reiterate a lot of what Marino had said today, excuse me,  
12 a lot of what Richard had mentioned, from the Department of  
13 Labor.

14 As I stand here today, hearing the comments of  
15 what was said today, I closed my eyes and I envisioned being  
16 at the quarry, and I see a lot of what could be  
17 administrative nightmares, especially for the lowly safety  
18 guy like myself where the administrative aspect of this  
19 could conceivably become a nightmare, especially with  
20 subcontractor issues.

21 Subcontractor issues, at least in my organization,  
22 proposals are accepted predominantly through cost, the low  
23 bidder generally gets the work. Trying to have this man  
24 stop his operation, stop our production operations to say,  
25 "Well, stop, you don't have the training, I'm sorry, we

1 can't bring you on to the site," or, "Well, you're going to  
2 have to take new miner training and I'll see you in a week,"  
3 Is totally, at least in my mind, a little impractical.

4 I think you should at least recognize the fact  
5 that we do have those situations that we have to contend  
6 with.

7 As far as enforcement goes, certainly I am a big  
8 proponent of safety training. I think Marino can attest to  
9 that. We have -- we have 99 to 100 percent of our people  
10 trained each year. However, there are occasions where we do  
11 have people that come in, for instance, after July, as a new  
12 miner. We have the program set up and we have this  
13 gentleman trained for the first four hours initially, in-  
14 classroom training, we have on-the-job training, and we have  
15 once a month a safety meeting that I give for half an hour,  
16 45 minutes, to reiterate or just to enforce some of the  
17 policies that we have.

18 The question that I have is in that training that  
19 I do with these people is that going to be considered part  
20 of the new miner training, or can it be?

21 What I don't want to see is an additional tool for  
22 the MSHA inspector to come out and say, "Well, you don't  
23 have it, so therefore here is your citation," even though  
24 there is a concerted effort being made to have these people  
25 trained. Like I said, I don't want to see that as a tool

1 where citations are issued pretty much at every facility  
2 because that conceivably can happen.

3           Again, such specific training, I think, is  
4 important. I think the subcontractors need to be aware of  
5 the site-specific hazards that are involved with the  
6 operation. However, they know the job. They have been  
7 trained specifically, they were hired specifically to do a  
8 job. To say that I can train them any better than what they  
9 already know or the experience is already attested to would,  
10 again, be impractical and not cost effective.

11           Those re the comments that I have.

12           MS. ALEJANDRO: Mr. Castro, could you give us some  
13 idea of what your operation, you know, the size and --

14           MR. CASTRO: Well, Buffalo Crushed Stone is an  
15 entity of times during peak operations of about 600 people.  
16 There are about 150 miners that are represented, and there  
17 are three limestone quarries, two sand and gravel  
18 operations. The biggest being about 40 people. The  
19 smallest operation being about 15.

20           MS. ALEJANDRO: Okay. Then you raised the  
21 contractor/subcontractor issue. What kind of services do  
22 the contractors/subcontractors that you bring onto your  
23 property typically perform?

24           MR. CASTRO: Well, they can range anywhere from  
25 last year we built a whole new facility where we had

1 ironworkers down to concrete people, whereas, as week we had  
2 a tire guy come in and change a tire on a loader.

3 MS. ALEJANDRO: Uh-huh, so big, big extensive and  
4 small.

5 MR. CASTRO: There's a broad spectrum.

6 MS. ALEJANDRO: Okay. Do you have any questions?

7 MR. BURNS: Yes, I do.

8 You touched on one of the issues that we really  
9 haven't heard much, at least I don't recall anybody really  
10 talking about it today, but it's come up at the other two  
11 meetings, and at least I think you touched on it. You  
12 mentioned that your new miners, you have -- you do four  
13 hours of classroom training; is that correct?

14 MR. CASTRO: Initially.

15 MR. BURNS: And then the next four would be  
16 supervised work, I think. I mean, you said on the job, and  
17 that's sort of the same thing.

18 MR. CASTRO: Right.

19 MR. BURNS: Supervised work or on-the-job  
20 training, is that correct?

21 MR. CASTRO: Well, typically, typically, a  
22 scenario in that respect would be four hours would be going  
23 through the training of the overall agenda of our policies  
24 and our requirements for working at the mine. The on-the-  
25 job training would be, for instance, if he was a truck

1 driver hauling, would be in the seat right next to an  
2 experienced miner for at least the duration of the week, if  
3 not more, depending on how well he adapts, in addition to  
4 the monthly safety meetings that I give.

5 MR. BURNS: How much of the training that the  
6 person would receive from the experienced truck driver, how  
7 would you see that entering into the mix of required 24  
8 hours of training?

9 MR. CASTRO: Well, again, on-the-job training, he  
10 is hired to do a specific task. I certainly wouldn't want  
11 him to be experienced and expertise in blasting operations.  
12 However, he would know that blasting operations do exist and  
13 the hazards that are involved where he is exposed.

14 The driving training specific where -- any  
15 hazards, inherent hazards on the haul roads or in areas  
16 where he's going to travel, the experienced miner would  
17 point out those situations, and make the new miner aware of  
18 those situations specifically for his operation.

19 MR. BURNS: Okay. Yeah, I guess, some of the  
20 other people have mentioned that -- in the past, I'm just  
21 bringing up what I've heard at the meetings -- that  
22 particularly a small sand and gravel quarry plant, they  
23 might do two hours of training and then supplement that with  
24 on the job or supervised work and additional training  
25 thereafter, you know, classroom type training.

1           And I believe one of them mentioned that as far as  
2 their -- the training that they provide before they start to  
3 work, it's pretty much the subjects that are covered under  
4 Part 48 that require if you do the eight hours of training  
5 before they go to work, they get miner's rights, and safety  
6 and health aspects of the job and very site-specific things.

7           Are those things that you cover?

8           MR. CASTRO: Yes, they are.

9           MR. BURNS: And that takes four hours for your  
10 particular site?

11           MR. CASTRO: It takes -- there are certain -- you  
12 could go for eight hours very easily in our operation. Four  
13 hours that I give the initial training. It's given to the  
14 man so that he has a general understanding and knowledge of  
15 what it takes to work in the mine industry. The on-the-job  
16 training is accomplished throughout the rest of the week.  
17 There is a follow-up course by me as a site inspection to  
18 see how he's doing, if there is an issue of training that's  
19 required or not, grasping a certain task, then appropriate  
20 measures will be taken. That hasn't happened.

21           MR. BURNS: Okay.

22           MR. CASTRO: Most everybody has pretty much caught  
23 on.

24           MR. BURNS: Yeah, I mean that's pretty -- that  
25 consistent with what we've heard, at least with -- I can't

1 remember which meeting it was, but one of the portable  
2 plants where more or less stated that it really only takes  
3 two hours, and in some cases with some miners, it might even  
4 take two hours for their particular site, to cover the  
5 things addressed in Part 48 before they start to work, and  
6 that's really what we're looking at is what's appropriate  
7 for -- I mean, this is going to be a wide variety of  
8 operations covered by this rule.

9 MR. CASTRO: Well, we obviously have a concern  
10 over interpretation once the law does come out. You've had  
11 problems in the past, but we have disagreed with comments on  
12 the past as far as what -- where the line was. There are  
13 obviously some very important things in the regulations that  
14 we want to make sure that we're clear on.

15 MR. BURNS: No, I can appreciate that, and I --  
16 you know, being an attorney, and attorney's love, you know,  
17 any word to be interpreted well, any word can be interpreted  
18 in a lot of different ways, and we want to try to make this  
19 rule as clear as possible so that there isn't that much left  
20 for interpretation on the very basic issues of what we're  
21 talking about, and I appreciate your input.

22 MR. CASTRO: This area is not unique to budget  
23 restrictions.

24 MS. ALEJANDRO: I believe that Roslyn has a couple  
25 of questions for you, Mr. Castro.

1 MS. FONTAINE: Yes. You said that you train 99 to  
2 100 percent of your employees annually. Could you give me a  
3 rough estimate of how much that cost you?

4 MR. CASTRO: Well, I don't have specific numbers.  
5 However, you can take about 130 miners at a day's pay at the  
6 end of the wages, giving them lunch and, you know, whatever  
7 production is lost, as Richard has mentioned earlier, you  
8 take those into account, and there is a substantial amount  
9 of money.

10 MS. FONTAINE: Do you usually bring an instructor  
11 in or do you just have --

12 MR. CASTRO: Well, we have a Department of Labor  
13 on an annual basis with Marino's group coming in to do the  
14 training, and followed up by myself, and we pretty much take  
15 care of things in that respect.

16 MS. FONTAINE: Okay.

17 MS. ALEJANDRO: Thank you very much.

18 MR. CASTRO: Thank you for your time.

19 MS. ALEJANDRO: Do we have anyone else who would  
20 like to make some remarks? There was a gentleman -- this  
21 gentleman here in the black leather jacket?

22 MR. COME: Thank you. Good morning.

23 My name is Rich Come, and I represent Cummons  
24 Northeast, Incorporate.

25 MS. ALEJANDRO: Could you spell your last name for

1 the record, please.

2 MR. COME: C-O-M-E.

3 MS. ALEJANDRO: Thank you.

4 MR. COME: We function in New York and New England  
5 as a contractor. We do primarily diesel engine repair, and  
6 some power unit service and repair for our customers in the  
7 mining industry.

8 We routinely have men and equipment on surface  
9 mine sites. However, we are concentrated solely on the  
10 repair of power units in mobile equipment.

11 And our concerns stem mostly in the area of  
12 definition. Going back to the early eighties, our people  
13 were classified as surface miners and we were --

14 VOICE: Speak up, please? We can't hear you.

15 MR. COME: In the early eighties, we were  
16 classified as surface miners, and we were required to  
17 initiate 16 hours of training for our people, followed by an  
18 annual eight-hour refresher.

19 Much of what we were exposed to was outside the  
20 area in which we operate. At the time the only expense we  
21 bore was that of that manhour wage and lost productivity,  
22 and we're concerned that if we are to be redefined or  
23 reclassified, we're concerned about what the training  
24 requirement for us will be, how much of it will be directly  
25 pertinent to the function we perform, and how the cost is to

1 be allocated.

2 We also, going back to those early eighties,  
3 remember that if we as a surface miner were in violation of  
4 any of the existing regulations, the entity responsible was  
5 the site owner. This put us in a particularly awkward  
6 position in that we were responsible for our own training  
7 and our own safety administration. However, our customer  
8 was the one who ended up with the fine assessment and the  
9 mark on their safety record if we were in violation.

10 Again, we can understand that point of view from  
11 the standpoint of you are responsible for whomever is on  
12 your property. However, it seemed to be kind of a dual  
13 contradiction there, and that was basically an area in which  
14 we felt that the mine operator was being held to task  
15 unfairly. Not that we had any particular incidents that  
16 played into that, but it was always something we always had  
17 to be extra careful about.

18 And those basically sum up our concerns as a  
19 contractor.

20 MS. ALEJANDRO: What kind of training, if any, do  
21 you provide for -- I mean, aside from, I guess, you know,  
22 the immediate training regarding the equipment itself, but  
23 do you provide your employees who go to mine sites with kind  
24 of comprehensive training right now?

25 MR. COME: What we have been doing since the time

1 that we were no longer classified as miners, is we coat tail  
2 on our customers' training whenever possible. Our people  
3 who work at mine sites train with the site owner's people.  
4 They are kind enough to allow us the courtesy to sit in on  
5 their training, and that's what we do.

6 We have not gotten into specific areas like  
7 confined space and such other areas as don't concern us with  
8 power haulage and mobile equipment, but we've concentrated  
9 on mine traffic control and safety around mobile equipment.

10 MS. ALEJANDRO: Typically, do you go repeatedly to  
11 the same mine sites?

12 MR. COME: Yes.

13 MS. ALEJANDRO: And typically, how long would  
14 someone from your company spend on a mine site at any given  
15 time? I mean, is it just a couple of hours or days or  
16 weeks?

17 MR. COME: All of those, yes.

18 MS. ALEJANDRO: Okay, it depends --

19 MR. COME: Depending on the extent of the repair.  
20 We have had people assigned to a site for as much as four  
21 weeks continuous.

22 MS. ALEJANDRO: Okay.

23 MR. COME: And we've also done a lot of one-day or  
24 two-day repairs.

25 MS. ALEJANDRO: When they were there for four

1 weeks, what specifically were they doing?

2 MR. COME: Engine removal from say a large wheel  
3 loader or shovel.

4 MS. ALEJANDRO: Okay.

5 MR. COME: Rebuild and reinstallation.

6 MS. ALEJANDRO: Okay. Do you have specific  
7 recommendations as far as what kind of training would be  
8 appropriate for employees such as yours and who should be  
9 responsible for that training?

10 I guess, you know, reading between the lines you  
11 don't think that it's appropriate to classify or consider  
12 your employees as miners, subject to the 24-hour  
13 comprehensive training requirements. But short of that,  
14 what would you say would be appropriate safety and health  
15 training for those individuals?

16 MR. COME: I think there must be a middle ground  
17 there somewhere that -- we're dually regulated in that in  
18 our shop operations OSHA is the regulating authority, and we  
19 do training, of course, in those areas as required annually  
20 for the initial training and the refreshers, In addition to  
21 that, the people who go onto mind sites, I think, should be  
22 exposed in those areas of basic safety, especially as  
23 regards power haulage for their own and for the safety of  
24 the people around them.

25 Other task-specific training, I think, would be

1 best left off their agenda as something that they won't be  
2 concerned with.

3 MS. ALEJANDRO: Do you have any questions?

4 MR. BURNS: You sort of answered one of the  
5 questions I had. I assume you also do diesel engine repair  
6 at OSHA sites?

7 MR. COME: Yes.

8 MR. BURNS: Not only your repair shop but also at  
9 construction sites and things like that?

10 MR. COME: Yes, we do.

11 MR. BURNS: Do you -- so then you feel that -- is  
12 there a problem for you at times where you feel you have to  
13 provide MSHA training and OSHA training and they are not  
14 necessarily the same and you're perhaps doing some redundant  
15 training to comply with both?

16 MR. COME: I think that some of our people,  
17 because we do train in-house and we do expose them to our  
18 customers' training just to make sure everybody is on the  
19 same page, I think they do see some redundancy, but a  
20 reminder never hurt anybody either.

21 MR. BURNS: Okay. Okay, that was basically what I  
22 was going to ask, whether or not some -- if you see some way  
23 where if you do the training under OSHA, if that should  
24 comply with what's required by MSHA, as long as it's  
25 supplemented by the mine operator or you to include, you

1 know, the mine traffic and things like that that introduce  
2 additional risk; that the actual task that they're going to  
3 perform is the same.

4 MR. COME: Okay.

5 MR. BURNS: Is that accurate?

6 MR. COME: I would say yes, as long as the  
7 functions are compatible, then the training would be  
8 adequate.

9 MR. BURNS: I think that's --

10 MS. ALEJANDRO: Thank you very much.

11 MR. COME: Thank you.

12 MS. ALEJANDRO: Is there anyone else who would  
13 like to -- yes, the gentleman in the back?

14 MR. THOMPSON: Good morning. My name is Ed  
15 Thompkins. I am the safety rep for Blue Circle Cement, also  
16 a certified MSHA trainer.

17 And I'd like to ask the audience a few questions,  
18 if that's permissible, when we get to it.

19 MS. ALEJANDRO: I think that would be alright.  
20 The only problem we have is with -- to make sure that the  
21 court reporter gets everything down, so it may be a  
22 situation of people are going to be answering your  
23 questions, they would have to come to a mike.

24 MR. BURNS: Come to the table.

25 MS. ALEJANDRO: Yeah, that would probably work

1 out.

2 MR. THOMPCKINS: Okay, that will be good.

3 MS. ALEJANDRO: Okay.

4 MR. THOMPCKINS: I've been a miner for 37 years,  
5 and then have been dealing with safety at our facility for  
6 at least 35 of the 37 years. And I've seen all the  
7 regulatory agencies come and go. As a certified miner  
8 trainer, I do 90 percent of the safety training in our  
9 facility. We have used Marino and associates in the past,  
10 and they have done a good job.

11 But we found, in our estimation, that we're the  
12 ones that work on site. We know what our personal problems  
13 are on a daily basis. We've set up a safety committee.  
14 We've set up accident investigation teams that work, both  
15 salary and hourly together. And our safety committee has  
16 done a very viable job in our facility.

17 Now, getting down to training, the eight-hour  
18 course is what we provide. We use a slightly different  
19 format than other people. We use a monthly what we call  
20 "Time Out For Safety Program." Every miner at our facility  
21 has to attend these classes. They are usually an hour  
22 session. They are credited with 45 minutes for each session  
23 they attend over the year.

24 Then at one month out of the year we do a four-  
25 hour session, and that gives us normally more than eight

1 hours for every miner at our facility. And those that don't  
2 have the total eight hours, we make sure that they get it  
3 before the end of the year. In fact, next week we'll be  
4 doing our four-hour session for the year to get the total  
5 requirements required.

6 Recently, we just did an in-plant survey of every  
7 aspect of the working facility at our cement plant, and the  
8 highest rating, the ratings went from poor, good, to very  
9 good to excellent, and the highest rating out of that survey  
10 that was -- it was -- no one was required to sign the survey,  
11 so the people had an open mind as to what they wanted to  
12 check off. And Ironically, if you want to put it that way,  
13 our safety program wound up with the highest rating of the  
14 whole survey.

15 Our people like the way we do our training at our  
16 facility. At times we bring in outside experts for safe  
17 specifics, like electrical, HAZMAT, if there is a need for  
18 it. Every week on a Tuesday morning we have a safety  
19 committee meeting. That's an open door policy. Everybody  
20 in the plant has an opportunity to stop in that meeting and  
21 ask any or have any problems, they're usually corrected  
22 within an hour's time of that meeting.

23 Over the years I've met many peers across the  
24 country in the safety aspect in the mining industry, and one  
25 of the most important meeting per year in the National

1 Safety Council's Congress and Exposition that's put on once  
2 a year. Now, you're well aware that we call it the MSHA  
3 brass, is available at those meetings, that we can talk to  
4 McAteer -- well, he didn't show up this year, but we can  
5 talk to the hierarchy of the MSHA staff with personal  
6 questions, and years ago we asked about the outside  
7 contractor training that has become quite an issue.

8           What we do at our facility is any contractor that  
9 has to come on site we give them a one-hour safety rules and  
10 awareness orientation of what's required by our rules and  
11 MSHA's rules while they are on our property. We flatly  
12 state that as your -- if you're on our property, you're  
13 considered a miner, and you will adhere to both of these  
14 rules and regulations.

15           When they finish this one-hour orientation, they  
16 are required to sign off, each individual that will be  
17 working on our property, and as such, we keep documented  
18 records of the outside contractor's force. It works for us.  
19 It has also provided MSHA inspectors on site have cited  
20 outside contractors that have gone through this rules and  
21 awareness, and we have provided the documentation and they  
22 receive citations while on our property, but they violated  
23 the rules and regulations.

24           But getting back to training, we use as many, I  
25 call my fellow workers at the plant professional miners,

1 which 99 percent of them are. We have a bunch of young, new  
2 people in there that has to have all the training from new  
3 mining right up to their personal task training. But most  
4 of my professional associates on site agree with our safety  
5 program and it has worked for us.

6 If there is any questions.

7 MS. ALEJANDRO: Yes. Mr. Thompkins, you've  
8 touched on a couple of areas, and I'd like to see if you've  
9 got, you know, maybe a few more specific comments.

10 From what you've said, I gather that the people  
11 who provide your safety and health training are people who  
12 have got experience doing the tasks at your operation

13 Do you have any specific recommendations for what,  
14 if any, minimum qualifications might be appropriate for  
15 people who are providing safety and health training? I  
16 mean, experience or, you know, training in how to train or  
17 anything like that?

18 MR. THOMPCKINS: On an outside entity, there is an  
19 outside source for many professional trainers. But, in our  
20 estimation, they provide safety training in the areas that  
21 they are expertise in. Take a generality like electrical  
22 safety training, there are many experts in the field out  
23 there, but a lot of our outside training people dealing with  
24 safety deal in generalities across the board, those MSHA-  
25 mandated requirements per se.

1 MS. ALEJANDRO: Um-hmm.

2 MR. THOMPCKINS: We have found that in-house we get  
3 to the exact source of the problem because we know what the  
4 source and the problem is, and that's the way we provide our  
5 training to our people. And outside source may be able to  
6 provide the safety training 80 percent, but it's that extra  
7 20 percent that we provide in-house that seems to make the  
8 difference.

9 MS. ALEJANDRO: Okay. Do the people that provide  
10 the training at your operation get any kind of instruction  
11 on how to train, or usually, I mean, do they, you know, just  
12 do it however they feel most comfortable?

13 MR. THOMPCKINS: We use two factors. One, a  
14 certified MSHA trainer, that's one of our requirements.  
15 They have to sign the certifications during the year that  
16 they provided adequate MSHA-mandated training.

17 By the same token, as long as that MSHA, the way  
18 that we use it, as long as that MSHA certified trainer is  
19 setting in that classroom and monitors the training that's  
20 going on, whether it be someone out of our own department  
21 that's been there 20 or 30 years and knows the hazards more  
22 than anybody else in his task filed, as long as we monitor  
23 those classes and make sure that we agree to what the  
24 content that was put into those classes, then we sign them  
25 off.

1 MS. ALEJANDRO: Um-hmm.

2 MR. THOMPCKINS: If we don't agree, then we simply  
3 do not sign the certificates and do not allocate that amount  
4 of time as safety training.

5 Over the years we've had some poor instructors,  
6 then we kind of weed them out, if you want to call it that.  
7 We wind up with the good instructors to the excellent  
8 instructor.

9 In the mining industry throughout the United  
10 States, there are safety instructors in the mining  
11 facilities themselves, who I deem is the best safety  
12 instructors in the world, considered in mining. And I can  
13 give you their names and addresses if you want.

14 But, again, referring back to the National Safety  
15 Congress and a lot of people in this room have probably  
16 never been there, and a lot of people just for whatever  
17 reason don't attend, but when you go to the National Safety  
18 Congress on a yearly basis, every form of technical  
19 information, classroom information, the best and the latest  
20 in the safety field of technical training is available to  
21 you. There are professional development seminars available  
22 to you. Now, for the first time this year, for four days,  
23 in the past it used to be for two days. This training is  
24 all provided at these national congresses, along with the  
25 best safety speakers in the world. They all attend this.

1 And if I'm acting like I'm promoting the National Safety  
2 Congress, that's exactly what I'm doing.

3 But by the same token, we also have a chance to  
4 talk to the MSHA brass on a one-on-one basis if you have  
5 specific problems, and try to get them to give us an answer.  
6 It's not successful some of the times.

7 MS. ALEJANDRO: The type of training that you give  
8 to your employees, is the format typically classroom or does  
9 it vary or is it on site?

10 MR. THOMPkins: Over the years what we've done is  
11 two things. We've provided formulated and made a training  
12 room. That's specifically what this room is. And we are  
13 able to accommodate up to 50 people in that room, and that's  
14 where all -- 90 percent of our safety training is provided  
15 in that training facility. We have some of the latest  
16 technology in how to provide that training with your visual  
17 aids and such.

18 Some of the training is done on-site. Well, take  
19 for instance the haul trip driver. We can run them through  
20 a two or three-day course on providing the training. You  
21 take them from the workbooks right on up through the actual  
22 physical hands on approach on that vehicle. There is no  
23 better training, you provide the technical training up front  
24 of what they're going to be doing, but if this person has  
25 never drove a haul truck, you have to provide an in depth

1 training period for them with physical hands on driving, and  
2 there you have to make a decision: Is this man qualified  
3 after a certain period or isn't he? And there is some  
4 people that will never be a truck driver, and there is  
5 others that after eight hours you feel totally confident in  
6 what their abilities are, and that provides the same thing  
7 in basically all of our job classifications at the plant.

8           There are people that come into our electrical  
9 program. They are continually trained. We have just about  
10 every department in our cement industry in our plant, we  
11 have seminars, off-site classes and everything. But most of  
12 the safety training, 99 percent of it is done right on site.

13           MS. ALEJANDRO: You sort of touched on this in  
14 your remarks, but I would maybe like to get a more specified  
15 statement from you. You indicated that you give -- over the  
16 course of the year you'll give your employees, you know,  
17 short safety talks of, you know, periods of an hour or so,  
18 and this is one of the issues that we've been hearing a lot  
19 about at some of our other meetings.

20           Eight hours of annual refresher training, I think,  
21 Part 48 currently requires that that training be given in  
22 increments of no less than 30 minutes, and we've heard a lot  
23 of comments about how, depending on the circumstances,, that  
24 the training will last less than 30 minutes over an extended  
25 period of time can be valuable.

1 Do you have any feelings on that?

2 MR. THOMPCKINS: In my personal estimation, 30  
3 minutes is not enough.

4 MS. ALEJANDRO: Okay. At one?

5 MR. THOMPCKINS: For any session on any topic.

6 MS. ALEJANDRO: Okay. And why is that?

7 MR. THOMPCKINS: Because we've found that by using  
8 an hour format, you usually get 45 minutes of productive  
9 information gathering/sharing out of that. If you limit it  
10 to a 30-minute time, there is always going to be a few  
11 people a few minutes late and a few minutes that's got more  
12 important things to do and a few people that's basically not  
13 interested in what you're telling them.

14 But if you can provide enough interest, keep their  
15 attention span, and another things, as an instructor over  
16 the years you learn who is listening and who is not simply  
17 by looking at them, their body language, et cetera. I think  
18 every instructor in here knows that and will tell you the  
19 same thing.

20 What we've found for us, the format of one hour,  
21 45-minute, that's what we allocate to their records, that  
22 works on a monthly basis.

23 We also have each crew, as we call it, each crew  
24 does tailgating safety talks with their own crews during the  
25 week, and they touch on certain subjects.

1 But basically that's it.

2 MR. BURNS: Yeah, I have a couple questions for  
3 you.

4 As far as the tailgate talks, that's not something  
5 that you document? Give me a second, please.

6 MR. THOMPCKINS: Sure, go ahead.

7 MR. BURNS: That's not something that you document  
8 from the standpoint of the eight hours annual refresher.  
9 You may document for your own purposes, but not for that?

10 MR. THOMPCKINS: That's right. The tailgates  
11 aren't allocated to the time slots for the eight hours, no.

12 MR. BURNS: Okay. Even though some of those  
13 probably last more than half an hour?

14 MR. THOMPCKINS: They could be, yes.

15 MR. BURNS: Okay.

16 MR. THOMPCKINS: But here again, somebody has got  
17 to do the documentation and the recordkeeping.

18 MR. BURNS: As far as -- do you sometimes use  
19 manufacturers' reps to do training?

20 MR. THOMPCKINS: Yes.

21 MR. BURNS: Okay, and these are the people that  
22 many of which would not be --

23 MR. THOMPCKINS: Well, we're talking about --

24 MR. BURNS: --- certified or qualified by MSHA?

25 MR. THOMPCKINS: Right, but we're talking like say

1 a motor mechanic.

2 MR. BURNS: Right.

3 MR. THOMPCKINS: There might be a safety aspect as  
4 to taking apart a hydraulic system that could explode in  
5 their faces if they don't know the awareness of what they're  
6 dealing with. We have those type of training programs.

7 MR. BURNS: Okay. The other thing is you  
8 mentioned that you do one-hour training for all contractors?

9 MR. THOMPCKINS: Yes.

10 MR. BURNS: Does that include someone who might,  
11 like a welder or somebody who you might call out, you know,  
12 on an emergency basis to get something done in the mine?

13 MR. THOMPCKINS: I'll give you -- I'll tell you  
14 what we do at our plant, and we actually stole the idea from  
15 somebody else in the mining industry .

16 When we give these outside contractors their one-  
17 hour training, we have high visibility stickers that we  
18 punch on the month or the day that they were trained, and  
19 while they're on our property they are required to wear that  
20 hard hat with that sticker on. So anybody on our property  
21 can look at that contractor and if he doesn't see that  
22 sticker for this year, then they are to be questioned as to  
23 why they are not, and that's how we regulate.

24 Once in awhile there is a couple that try to slip  
25 through the cracks because they're only going to come in for

1 four to six hours. That's kind of difficult. And we have a  
2 lot of outside trucks that come on our property, and that's  
3 one of our major concerns, how do we regulate our constant  
4 daily flow of outside contractors, the haul trucks, the  
5 cement tankers, the flat beds, the outside entities that  
6 come in and bring supplies. Some of them might come here  
7 once in five years, but they're still on our property.

8 MR. BURNS: Yeah, that's an interesting -- how do  
9 you deal with the truck drivers?

10 MR. THOMPkins: If they are a truck driving outfit  
11 that comes on our property continual, then we contact their  
12 supervision and make them aware of what their  
13 responsibilities are on our property. Some of our concerns  
14 is a lot of truck drivers come out of New York and New  
15 Jersey, and they can't speak English. If they can't speak  
16 English, how can they read road signs? Good question.

17 MR. BURNS: I mean, do you also give them one one-  
18 hour training, the individual truck drivers --

19 MR. THOMPkins: No, because --

20 MR. BURNS: You never know who is going to come.

21 MR. THOMPkins: You never know who is coming on  
22 the property, but we make their supervision aware of any  
23 transgression or if they come on our property speeding,  
24 they're given a one-shot deal. You do it again you don't  
25 come on our property ever. We throw them right off the

1 site.

2 MR. BURNS: And I'm sure you know that that's not  
3 an issue that's unique to you. I mean, how to do with  
4 truckers, it's very difficult, and you can't possibly train  
5 everyone of them because they'll send a different driver,  
6 you know, who they haven't touched on yet.

7 I was somewhat intrigued by your sticker issue.  
8 Is this something like, you know, a sticker issued for  
9 inspection of cars or it's a certain color and it has the  
10 year on it?

11 MR. THOMPkins: Exactly. It has the year and the  
12 coloration, like this year happens to be high visibility, is  
13 blue. Last year's was a high visibility pink. So we've got  
14 contractors that's got both of them on their helmets. Some  
15 of them carry three or four. We've been doing this for  
16 about four year now, and it does work. I have people come  
17 to us or anyone on the safety committee and say, "Hey,  
18 there's a contractor up there doing some welding and he  
19 hasn't got a sticker on his hat." So we find out why.

20 MR. BURNS: Okay, I just wanted to go back to the  
21 manufacturers' reps, but I think you covered that from the  
22 standpoint that your preference is, is that you may have a  
23 loader operator make a presentation, and they may not be  
24 qualified -- they may not be a qualified trainer, but you or  
25 someone that is qualified is present in the room in case

1 they need some assistance?

2 MR. THOMPCKINS: No, I didn't quite say that. What  
3 I'm saying is an outside manufacturer's rep, he might come  
4 on site and demonstrate a new loader, front-end loader per  
5 se, but we're there with them while they're on site.

6 MR. BURNS: Now, this was -- that was brought up  
7 in the past, and I think that's an important point.  
8 Probably some of the best training you can get would be from  
9 some of the manufacturers's reps because, you know, they've  
10 seen --

11 MR. THOMPCKINS: You can run into -- you can run  
12 into all kinds of problems like say a manufacturer's rep for  
13 a new front-end loader comes in there. You buy the loader,  
14 and some of them think that they can just simply drive on  
15 your property to check that loader operation wherever it  
16 happens to be in the operation. Well, we require that you  
17 sign in, and then find out where it is, and someone has to  
18 either go with them or they bring the loader to the garage  
19 are, or they take someone with them to actually see it in  
20 operation.

21 MR. BURNS: Now, that's a separate issue. I mean,  
22 I've heard that -- that's not that uncommon too. They might  
23 even bring somebody else with them on the property to show  
24 them the loader, which is another problem, you know,  
25 entirely. I'm just talking about using them as trainers.

1 MR. THOMPCKINS: Well, we don't use any --

2 MR. BURNS: Okay.

3 MR. THOMPCKINS: -- any of them in safety training  
4 outside of -- unless they have a particular issue, like some  
5 of your new loaders I'm sure that you're aware of, we just  
6 lost two mechanics this year in the mining industry when  
7 they were working on a hydraulic systems, when they removed  
8 a certain hydraulic portion, the buckets fell on them. Now,  
9 that's two miners that's not going to make it home tonight,  
10 and we're already up to 49 fatalities for the year. So here  
11 again, our consensus and my peers and the rest of the cement  
12 industry feel the same way, safe production is paramount.  
13 And if we can get that miner home safely every day, that's  
14 what we're all about, and that's our criteria that we use  
15 every day at our facility.

16 MR. BURNS: I don't have any more questions.

17 MR. THOMPCKINS: I have a question for you people.

18 MS. ALEJANDRO: Okay.

19 MR. THOMPCKINS: I think just about everyone in  
20 this room is concerned, if this rule goes into effect, which  
21 I assume it will, if and when it does, what authority has an  
22 on-site MSHA inspector, is he going to have to be delving  
23 into the training records that we've done over the years?

24 Is it going to be a personal MSHA -- his own  
25 personal view of what training is required?

1           Take a front-end loader operator for instance. If  
2 he's been totally trained in the safe operation of that  
3 piece of equipment, but maybe he doesn't have, and he has no  
4 training yet because he's only been on the facility for a  
5 couple months. Are we going to be cited because he hasn't  
6 been trained in HAZMAT?

7           MS. ALEJANDRO: Well, obviously, that's going to  
8 depend on what specifically the rule requires, which  
9 obviously right now, I mean, we're in the information  
10 gathering stage. And, you know, aside from the minimum  
11 requirements that are already in the Act that we would need  
12 to include in the regulation, you know, such as 24 hours  
13 minimum, eight hours annual refresher, you know, paying  
14 miners for their normal -- their normal wages when they're  
15 doing training, I mean, you know, right now we're trying to  
16 figure out what additional requirements are going to be  
17 included.

18           You know, subject areas that need to be covered.  
19 I mean, there are certain minimal subject areas that the Act  
20 includes, but beyond that. So, you know, depending on what  
21 the regulation looks like, that's obviously going to give an  
22 inspector some basis for making determinations of whether an  
23 operator is in compliance or not.

24           But one of the things that we keep hearing is, you  
25 know, flexibility and discretion for the operator in coming

1 up with a training program, and, you know, the down side of  
2 that can be that you give people a lot of discretion, and an  
3 inspector comes on and is going to be making a subjective  
4 determination of how well an operator has complied with what  
5 are essentially performance-oriented standards.

6 So, I mean, I guess the short answer is it really  
7 depends on what the reg is going to look like, and I mean,  
8 if you've got specific areas of concern as far as what  
9 inspectors may or may not do, I mean, you should, you know,  
10 maybe give us some idea of what your particular concerns are  
11 so we can take those into account.

12 Is there something specifically you're concerned  
13 about?

14 MR. THOMPkins: Well, I've got a two-page broken  
15 down part of the CF 30 proposal here for the new regs back  
16 there.

17 MS. ALEJANDRO: You mean Part 48 or --

18 MR. THOMPkins: Yeah.

19 MS. ALEJANDRO: Okay.

20 MR. THOMPkins: So, yes, there is questions on  
21 some of those issues, but that will take quite a bit of  
22 time.

23 MS. ALEJANDRO: Well, I mean, one other thing that  
24 you could do, and I encourage you to do this, is if you want  
25 to submit something in writing to us, you know, we would be

1 really happy to get that from you. And if you don't have  
2 the address to send it to --

3 MR. THOMPCKINS: I've got it.

4 MS. ALEJANDRO: -- you can come up to us after the  
5 meeting and we can get that to you. But yeah, if you think  
6 of thing, and this goes for everyone in this room, you know,  
7 if you're not prepared to make a presentation after this or  
8 haven't spoken, but later on you come up with some things  
9 that -- some issues that you want to raise or some  
10 suggestions that you'd like to make, I encourage you all to  
11 submit stuff to us in writing, again, before February 1st of  
12 next year.

13 I don't know whether that answers your question.

14 MR. THOMPCKINS: Somewhat.

15 MS. ALEJANDRO: Yeah.

16 MR. BURNS: I mean, if you have something here  
17 with you that you want to, you know, discuss some of the  
18 details, or if you'd rather think about it.

19 MR. THOMPCKINS: Let me look at it.

20 MS. ALEJANDRO: Okay.

21 MR. BURNS: You know, I'm not going to throw a  
22 plug in for the National Safety Council, I guess maybe I  
23 will, but I mean, I've attended a couple of conferences and,  
24 you know, I do agree with you. They are very valuable. I  
25 think somebody else mentioned that it's important to hear

1 what other safety professionals in other fields are doing.  
2 Sometimes in mining we just sort of get focused on their own  
3 little world, and there are other people doing things that,  
4 you know, that can help you out. So I agree with you from  
5 that standpoint, that it is important to go to things like  
6 that and learn from other people.

7 MR. THOMPCKINS: I'm glad you touched on it because  
8 that's something I forgot. One of the most important things  
9 at the safety congress is the interaction between your peers  
10 and the safety industry, and for us specifically in the  
11 mining industry. They might have a problem ongoing on their  
12 mining site that they might have with their personal MSHA  
13 inspector, which might be the same problem that we're  
14 having, but we have got into a problem with our MSHA  
15 inspector about it yet, but they might have the answer, or  
16 we might have the answer available for them, and that  
17 interaction, that interworking between your peers in the  
18 mining industry is extremely important.

19 And if you don't go to the congresses and you  
20 don't meet these people, you don't have that interaction or  
21 that interconference, I call it. It's extremely important  
22 and I've found it well used over the years.

23 MS. ALEJANDRO: Thank you very much, Mr.  
24 Thompkins.

25 Is there anyone -- yes, the gentleman in the back.

1           MR. KLUCSIK: Good morning. My name is John  
2 Klucsik. I'm an attorney with the law firm of Devorsetz,  
3 Stinziano, Gilberti, Heintz & Smith in Syracuse, New York.  
4 We also have an office in Albany, and we have for the past  
5 20 years represented a very large proportion of the surface  
6 mining industry in the State of New York, as well as  
7 operators throughout the northeast.

8           MS. ALEJANDRO: Could you spell your last name for  
9 the record, please?

10          MR. KLUCSIK: Yes. It's K-L-U-C as in "Charles, S  
11 as in "Sam," I-K.

12          MS. ALEJANDRO: And your firm is, if you could  
13 repeat again?

14          MR. BURNS: You don't have to spell the whole  
15 firm.

16          MS. ALEJANDRO: Yeah, you don't have to spell it,  
17 just repeat it.

18          MR. KLUCSIK: Devorsetz, Stinziano, Gilberti,  
19 Heintz & Smith.

20          MS. ALEJANDRO: Do you have a card?

21          MR. KLUCSIK: I do have a card.

22          MS. ALEJANDRO: Maybe you can give us a card  
23 afterwards.

24          MR. KLUCSIK: And the next question is how did  
25 they let a Klucsik in with that group.

1           But I'd just like to ask you to consider one  
2 element of training and enforcement that we have seen in the  
3 course of our practice and our involvement with the mining  
4 industry, and that is the phenomenon that occurs when a  
5 inspector finds a lapse of adherence to a safety rule, he  
6 finds some employee who is not wearing is safety belt, he  
7 finds some employee who is not using a line when perhaps he  
8 should, and the inspector draws from that observation a  
9 failure to indoctrinate in the safety rules, and further  
10 frequently concludes that even though there is no  
11 requirement presently or no ability to enforce, that that  
12 represents a failure in training, which very often takes the  
13 form of a citation, a failure to indoctrinate.

14           And I would just suggest to you that a lapse in  
15 compliance with a specific safety standard does not  
16 necessarily represent a failure to indoctrinate, and I would  
17 encourage you to do what you can in the formulation of the  
18 rule to make that clear and to provide that instruction and  
19 training to the MSHA inspectors.

20           Thank you very much.

21           MS. ALEJANDRO: Thank you.

22           Is there anyone else who would like to come up and  
23 make some remarks, or someone who has already made remarks  
24 who has additional issues they would like to touch on?

25           Okay. Well, what we're gong to do now is, as best

1 we can, give you a short summary of some of the issues and  
2 positions that we've encountered in the last couple of  
3 meetings.

4 Well, I've got a little list here and I'm sure  
5 Kevin and Ros have got a couple of issues that they would  
6 like to touch on too.

7 One of the things that we've been hearing, and you  
8 heard some of it today, is the whole issue of contractors,  
9 and there is a couple different facets to this. One of the  
10 issues is who should be responsible for the training of  
11 contractors who come onto a mine site.

12 Some of the people who have commented have said  
13 that it would be appropriate for operators to provide site-  
14 specific hazard training to contractors, but that the  
15 contractors themselves should be responsible for the  
16 comprehensive training for their employees.

17 Another issue related to contractors is what type  
18 of training is appropriate for individuals, depending on  
19 what kind of work they may be doing on the mine site. And  
20 obviously, the guy who comes and puts coals in the machine  
21 or delivers, just delivers materials and leaves quickly  
22 should perhaps be subject to different kinds of training  
23 requirements than someone who is directly engaged in the  
24 extraction or processing process.

25 One of the issues that has come up is for initial

1 miner training, the 24 hours of new miner training, how much  
2 training should be given to the individual before they  
3 actually begin work. Some people have advocated eight hours  
4 minimum. Some individuals have indicated that, particularly  
5 from very small operations, and there really isn't all that  
6 much that needs to be done to orient the individual to the  
7 hazards of the work site, and that the rules should allow a  
8 great deal of flexibility as far as how much initial  
9 training should be given before the employee begins work.

10           We've gotten a lot of comments about satisfying  
11 annual refresher training requirements, the eight-hour  
12 requirement. A lot of people have gotten up and said that  
13 the 30-minute minimum that is in Part 48 is too restrictive  
14 for them and that they would like to have the flexibility to  
15 be able to give training in even smaller increments than 30  
16 minutes to be applies towards the eight hours of annual  
17 refresher training.

18           Other people have raised the issue of, you know,  
19 the recordkeeping that might be involved in something like  
20 that. I mean, if you are going to be providing eight hours  
21 of training over the course of the year in very small  
22 increments, I mean, that presents a -- can present a pretty  
23 significant recordkeeping burden for an operator.

24           The theme that has gone through a lot of the  
25 comments from operators has been encouraging the

1 incorporation of flexibility in the rule and a reduction in  
2 any kind of administrative or recordkeeping burden.

3 We've also gotten a number of comments about,  
4 particularly given, you know, increasing electronic  
5 maintenance of records, that it doesn't make a great deal of  
6 sense to require training records to be kept at the mine  
7 site; that we should have the flexibility to allow  
8 centralized recordkeeping, particularly for operations with  
9 multiple locations, and that to include in the rule some  
10 kind of a time frame for operators to be required to provide  
11 training records to an inspector who requests them, some  
12 period, an hour, a couple of hours, or a day, if the records  
13 are not maintained at the mine site.

14 And then, finally, the other issue that has come  
15 up, and it came up a little bit here, is compliance  
16 deadlines. We are under an obligation to publish in the  
17 Federal Register a final training regulation for the  
18 affected industries on or before September 30th of 1999.

19 And then the issue becomes, all right, you know,  
20 the requirements are going to be books on or before that  
21 date, what time are we going to set for the industry to come  
22 into compliance with the requirements that we finally agree  
23 on.

24 And I would say that probably most commenters who  
25 have addressed that issue have recommended that we give a

1 year after the date of publication for the industry to come  
2 into compliance with those requirements.

3 And, you know, that's my best summary of the  
4 issues. Kevin and Ros may have some issues that I have  
5 forgotten.

6 MR. BURNS: I tried to keep track of what you  
7 stated. Another issue that has come up is the plan, whether  
8 or not the rules should require that operators submit their  
9 plan to MSHA for some sort of approval or whether or not  
10 there should be another method to have a plan that meets the  
11 requirements.

12 And at one meeting it was suggested that maybe  
13 there should be, you know, many some nonmandatory guidelines  
14 concerning what would meet the requirements of an approved  
15 plan in the final rule rather than burden both MSHA and the  
16 operators with going through the paperwork of sending plans  
17 back and forth.

18 The issue of -- I think this was raised here too,  
19 is the issue of evaluating trainers, whether or not MSHA  
20 should rather than just have a paper qualification based  
21 upon something submitted in an abstract and saying they're  
22 qualified, whether or not MSHA should try to do more to  
23 evaluate trainers either by sitting in on some training that  
24 they do or talking to miners in terms of whether or not  
25 training is effective.

1           Those were the -- the two main things that, I  
2 think, I don't know if you mentioned them.

3           The only other thing concerns records, of what  
4 sort of information is required on the record. Some people  
5 suggested that what's on the Form 5023, that information  
6 should also be gathered, and others have suggested that all  
7 that information is not necessary.

8           So those are some of the issues that were  
9 discussed at the other meetings also.

10           MS. ALEJANDRO: Hearing that, does anybody have  
11 anything else they'd like to ask?

12           Okay, well, I want to thank you all for coming and  
13 for your participation. I would like to maybe give you a  
14 short summary of what we think our time frame is going to be  
15 so that you can, you know, plan for the future as far as  
16 this rulemaking proceeds.

17           We have got, let's see, we have two more public  
18 meetings next week, and then we have two, the two final  
19 public meetings are going to be the week of January 5th.  
20 We're going to be in Dallas and in Atlanta the week of  
21 January 5th.

22           The Coalition for Effective Miner Training, which  
23 is an industry group of companies that have been involved in  
24 developing a draft to give to MSHA by February 1st, will be  
25 giving us that draft, and that will be used as a basis for

1 developing a proposed rule.

2 Obviously, the proposed rule will be published in  
3 the Federal Register some time after February 1st. Our  
4 schedule calls for publication some time in the early  
5 spring. I think we're looking ideally some time in March.

6 After the publication of the proposed rule, we'll  
7 be holding, I would say, at least two public hearings which  
8 in format will be similar to the public meetings that we're  
9 having now, although the difference will be that commenters  
10 will have a specific proposal that MSHA has come to with to  
11 make comments on.

12 The record will -- people will also have the  
13 opportunity to submit written comments on the proposal if  
14 they are not able or do not wish to participate in the  
15 public hearings.

16 And then we will be publishing a final rule,  
17 taking into account all of the comments that we've gotten on  
18 or before September 30th of 1999.

19 Again, I would encourage you to submit written  
20 comments if you wish by February 1st. If you need the  
21 address, you should come up and talk to us at the end of the  
22 meeting.

23 And also, I'd like to let you know, for those of  
24 you who have got access to the internet, MSHA does have a  
25 home page on the Worldwide Web, and the address is

1 www.MSHA.gov. There is a button on the home page entitled  
2 "Training Regulations," and we are going to -- we've already  
3 got a couple documents on there, and as this rulemaking  
4 proceeds, we will be adding relevant information to that  
5 site. So if you want to, you know, check on that every now  
6 and again, that will be one way for you to keep up to speed  
7 for what's going on.

8           Additionally, if you've got any questions, you  
9 want to give us a call, we can give you our phone number or  
10 you can also call the telephone number that's in the Notice  
11 of Hearing, the notice of meeting that was published in the  
12 Federal Register on November 3rd.

13           VOICE: Is there an e-mail also that we can get to  
14 you?

15           MS. ALEJANDRO: If you want to get to me, I can  
16 give you my e-mail address. It's kalejande@MSHA.gov.

17           And, Kevin, do you want to give your --

18           MR. BURNS: Yeah, mine's the same except it's  
19 burnsk.

20           MS. ALEJANDRO: And do you want to give yours?

21           MS. FONTAINE: It's rfontain, without the "e,"  
22 @MSHA.gov.

23           MR. BURNS: I thought yours was unlisted? No?

24           MS. ALEJANDRO: So, you know, if you've got any  
25 questions or you need additional information, feel free to

1 contact us and we will try and help you out.

2 And if there is nothing else, again, I'd like to  
3 thank you all for coming, and I look forward with working  
4 with most of you or all of you in the next few months.

5 Thank you.

6 (Whereupon, at 11:18 a.m., the public meeting was  
7 concluded.)

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REPORTER'S CERTIFICATE

DOCKET NO.: N/A  
CASE TITLE: Public Meeting on Mine Safety  
HEARING DATE: December 11, 1998  
LOCATION: Albany, New York

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

Date: December 11, 1998

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