

DEPARTMENT OF LABOR**Mine Safety and Health Administration****30 CFR Parts 46 and 48**

RIN 1219-AB17

Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend MSHA's existing health and safety training regulations by establishing new training requirements for shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone mines. Congress has prohibited MSHA from expending funds to enforce training requirements at these mines since fiscal year 1980. This proposed rule would implement the training requirements of section 115 of the Federal Mine Safety and Health Act of 1977 (Mine Act) and provide for effective miner training at the affected mines once Congress has removed the appropriation's prohibition from MSHA's budget. At the same time, the proposed rule would allow mine operators the flexibility to tailor their training programs to the specific needs of their miners and operations.

DATES: Submit comments on or before June 14, 1999.

ADDRESSES: Send comments on the proposed rule—

(1) By mail to MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203;

(2) By facsimile to MSHA, Office of Standards, Regulations, and Variances, 703-235-5551; or

(3) By electronic mail to comments@msha.gov. If possible, please supplement written comments with computer files on disk; contact the Agency with any format questions.

Submit written comments on the information collection requirements directly to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for MSHA; and to

Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA 4015 Wilson Boulevard, Room 631, Arlington, VA 22203; by facsimile to MSHA, at 703-235-5551; or by electronic mail to comments@msha.gov.

FOR FURTHER INFORMATION CONTACT:

Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA; 703-235-1910.

SUPPLEMENTARY INFORMATION:**I. Plain Language**

We (MSHA) wrote this proposed rule in the more personal style advocated by the President's executive order on "plain language." "Plain language" encourages the use of—

- personal pronouns (we and you);
- sentences in the active voice;
- a greater use of headings, lists, and questions, as well as charts, figures, and tables.

In this proposed rule, "you" refers to production-operators and independent contractors because they have the primary responsibility for compliance with MSHA regulations. In addition, we recognize and appreciate the value of comments, ideas, and suggestions from labor organizations, industry associations, and other parties who have an interest in health and safety training for miners. We would appreciate comments and suggestions from all parties on this proposed rule and on our use of "plain language." How could we improve the clarity of this style?

II. Paperwork Reduction Act

This proposed rule contains collection of information requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA 95). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. We invite comments on—

(1) Whether the proposed collection of information is necessary for proper performance of our functions, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to us.

Submission

MSHA has submitted a copy of this proposed rule to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, directly to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for MSHA; and to Carol J. Jones, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203. Submit written comments on the information collection no later than June 14, 1999.

Description of Respondents

Those required to provide the information are mine operators and individuals who are paid to perform tasks for the mine operator (e.g., instructors).

Description of Information Collection Burden

The proposal contains information collection requirements in §§ 46.3, 46.5, 46.6, 46.7, 46.8, 46.9, and 46.11. The proposed rule imposes first year total burden hours and costs of 239,188 hours and \$8,291,569. The first year burden hours and costs are composed by summing the figures in Tables VII-1, VII-2, and VII-3. After the first year, the annual burden hours and costs would be 226,685 hours and \$7,865,469, which is shown in Table VII-2

Table VII-1 presents one-time burden hours and costs by provision and mine size.

TABLE VII-1.—MINE OPERATORS' ONE-TIME BURDEN HOURS AND COSTS

Prov.	Mines (1-5)		Mines (6-19)		Mines (≥20)		Totals	
	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs
46.3	7,509	\$256,290	3,277	\$111,830	1,207	\$42,250	11,993	\$410,370

Table VII-2 presents annual burden hours and cost by provision and mine size.

TABLE VII-2.—MINES OPERATORS' ANNUAL BURDEN HOURS AND COSTS

Prov.	Mines (1-5)		Mines (6-19)		Mines (≥20)		Totals	
	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs
46.5	41,007	\$1,676,058	21,458	\$1,016,502	4,860	\$297,170	67,325	\$2,989,730
46.6	7,898	284,341	4,240	152,627	978	35,192	13,116	472,159
46.7	5,599	201,579	7,980	287,297	7,111	256,008	20,691	744,884
46.8	34,551	1,243,839	15,433	555,582	5,461	196,582	55,445	1,996,003
46.9	2,765	73,267	5,876	155,725	5,704	151,164	14,346	380,156
46.11	25,208	579,773	22,005	506,115	8,550	196,650	55,763	1,282,538
Total	117,028	4,058,857	76,992	2,673,847	32,664	1,132,765	226,685	7,865,469

Table VII-3 presents miners and miners' representatives one-time burden hours and costs.

TABLE VII-3.—MINERS AND MINERS' REPRESENTATIVES—ONE-TIME BURDEN HOURS AND COSTS

Prov.	Mines (≤5)		Mines (6-19)		Mines (≥20)		Totals	
	Hrs.	Costs	hrs.	Costs	Hrs.	Costs	Hrs.	Costs
46.3	336	\$7,728	146	\$3,358	28	\$644	510	\$11,730

Paragraph (a) of § 46.3 requires you to develop and implement a written training plan that contains effective programs for training new miners and experienced miners, training miners for new tasks, annual refresher training, and hazard training. The mines affected by this provision are—

- (1) 3,361 mines that employ 5 or fewer workers;
- (2) 1,467 mines that employ between 6 and 19 workers; and
- (3) 285 mines that employ 20 or more workers.

MSHA estimates that a mine supervisor, earning \$36 per hour, would take 2 hours to write a plan in mines that employ fewer than 20 persons, and 4 hours in mines that employ 20 or more persons. The one-time costs are annualized using an annualization factor of 0.07.

Paragraph (b) requires the following information, at a minimum, to be included in a training plan:

- (1) The company name, mine name, and MSHA mine identification number;
- (2) The name and position of the person designated by you who is responsible for the health and safety training at the mine. This person may be the operator;
- (3) A general description of the teaching methods and the course materials that are to be used in providing the training, including the subject areas to be covered and the approximate time to be spent on each subject area;

- (4) A list of the persons who will provide the training, and the subject areas in which each person is competent to instruct; and
- (5) The evaluation procedures used to determine the effectiveness of training.

Paragraph (c) requires a plan that does not include the minimum information specified in paragraph (b) to be approved by us. For each size category, we estimate that 20 percent of you will choose to write a plan and send it to us for approval. Thus, the mines affected by this provision are—

- (1) 672 mines that employ 5 or fewer workers;
- (2) 293 mines that employ between 6 and 19 workers; and
- (3) 57 mines that employ 20 or more workers.

MSHA estimates that it would take a clerical worker, earning \$17 per hour, about 0.1 hours per mine to photocopy and mail the training plan. The one-time costs are annualized using an annualization factor of 0.07.

Paragraph (d) requires you to provide miners' representatives with a copy of the training plan. At mines where no miners' representative has been designated, you must post a copy of the plan at the mine or provide a copy to each miner. The mines affected by this provision are—

- (1) 3,361 mines that employ 5 or fewer workers;

- (2) 1,467 mines that employ between 6 and 19 workers; and
- (3) 285 mines that employ 20 or more workers.

MSHA estimates that a clerical worker, earning \$17 per hour, would take 0.1 hours to photocopy the plan and either deliver or post the plan. The one-time costs are annualized using an annualization factor of 0.07.

Paragraph (e) provides that within 2 weeks following receipt or posting of the training plan, miners or their representatives may submit written comments on the plan to you, or to the Regional Manager, as appropriate. The burden hours and costs of this provision are not borne by you, but by miners and their representatives.

MSHA estimates that a miner or miners' representative would submit comments for 5 percent of the affected mines in each size category. The mines affected by this provision are—

- (1) 168 mines that employ 5 or fewer workers;
- (2) 73 mines that employ between 6 and 19 workers; and
- (3) 14 mines that employ 20 or more workers.

MSHA estimates that a miner or miners' representatives, earning \$23 per hour, would take 2 hours per affected mine to prepare written comments. The one-time costs are annualized using an annualization factor of 0.07.

Paragraph (g) allows you, miners, and miners' representatives to appeal a decision of the Regional Manager in writing to the Director for Education Policy and Development. The Director would issue a decision on the appeal within 30 days after receipt of the appeal. The mines affected by this provision are—

- (1) 13 mines that employ 5 or fewer workers;
- (2) 6 mines that employ between 6 and 19 workers; and
- (3) 1 mine that employees 20 or more workers.

MSHA estimates that for 90% of you who would appeal a decision, a mine supervisor would write the appeal. MSHA estimates that a mine supervisor, earning \$36 per hour, would take 4 hours to write the appeal. The one-time costs are annualized using an annualization factor of 0.07.

MSHA further estimates that for the remaining 10% of you who would appeal a decision, an attorney (a third party) would write the appeal. There are no mine operator burden hours in this case, because you would pay the third party for its services. The attorney fee to handle an appeal process is estimated to be \$2,000 per appeal, and this cost is annualized using an annualization factor of 0.07.

Paragraph (h) requires you to make available at the mine site a copy of the current training plan for inspection by MSHA and for examination by miners and their representatives. If the training plan is not maintained at the mine site, you must have the capability to provide the plan upon request by MSHA, miners, or their representatives. The mines affected by this provision are—

- (1) 3,361 mines that employ 5 or fewer workers;
- (2) 1,467 mines that employ between 6 and 19 workers; and
- (3) 285 mines that employ 20 or more workers.

MSHA estimates that a clerical worker, earning \$17 per hour, would take 0.1 hours to photocopy and file the training plan. The one-time costs are annualized using an annualization factor of 0.07.

Paragraph (a) of § 46.5 requires you to provide each new miner with no less than 24 hours of training. Miners who have not received the full 24 hours of new miner training must work under the close supervision of an experienced miner. The mines affected by this provision are—

- (1) 3,361 mines that employ 5 or fewer workers;
- (2) 1,467 mines that employ between 6 and 19 workers; and

(3) 285 mines that employ 20 or more workers.

MSHA estimates that for each mine, a mine supervisor, earning \$36 per hour, would take 6 hours annually to prepare for the new miner training. MSHA further estimates that the average number of training sessions the mine supervisor would provide annually are—

- (1) 0.46 sessions for mines that employ 5 or fewer workers;
- (2) 0.64 sessions for mines that employ between 6 and 19 workers; and
- (3) 0.82 sessions for mines that employ 20 or more workers.

On average, each training session is estimated to last 13.48 hours.

Additionally, we estimate that part of new miner training would be provided off-site by a third party. You would pay the third party for providing this part of the new miner training; thus you would incur burden costs but no burden hours. The number of miners receiving off-site training are—

- (1) 1,537 miners in mines that employ 5 or fewer workers;
- (2) 1,877 miners in mines that employ between 6 and 19 workers; and
- (3) 940 miners in mines that employ 20 or more workers.

The annual costs for off-site training are \$130 per miner. This consists of the following: a \$35 training fee; \$30 for transportation to off-site training; \$30 per diem for meals; and \$35, on average, for overnight lodging (We assume that half of the miners receiving off-site training will require overnight lodging for one night at \$70 per night, or $0.5 \times \$70$).

Paragraph (a) of § 46.6 requires you to provide each newly-hired experienced miner with certain training before the miner begins work. The mines affected by this provision are—

- (1) 3,361 mines that employ 5 or fewer workers;
- (2) 1,467 mines that employ between 6 and 19 workers; and
- (3) 285 mines that employ 20 or more workers.

MSHA estimates that it would take a mine supervisor, earning \$36 per hour, 1 hour annually to prepare to give the experienced miner training. MSHA further estimates that the average number of training sessions the mine supervisor would provide annually are—

- (1) 0.45 sessions for mines that employ 5 or fewer workers;
- (2) 0.63 sessions for mines that employ between 6 and 19 workers; and
- (3) 0.81 sessions for mines that employ 20 or more workers.

On average, each training session is estimated to last 3 hours.

Paragraph (a) of § 46.7 requires that before a miner performs a task for which he or she has no experience, you must train the miner in the safety and health aspects and safe work procedures specific to that task. If changes have occurred in a miner's regularly assigned task, you must provide the miner with training that addresses the changes. The mines affected by this provision are—

- (1) 3,361 mines that employ 5 or fewer workers;
- (2) 1,467 mines that employ between 6 and 19 workers; and
- (3) 285 mines that employ 20 or more workers.

MSHA estimates that for each mine, a mine supervisor, earning \$36 per hour, would take 0.25 hours annually to prepare for the task training. MSHA further estimates that the average number of training sessions the mine supervisor would provide annually are—

- (1) 2.36 sessions for mines that employ 5 or fewer workers;
- (2) 8.65 sessions for mines that employ between 6 and 19 workers; and
- (3) 41.17 sessions for mines that employ 20 or more workers.

On average, each training session is estimated to last 0.6 hours.

Paragraph (a) of § 46.8 requires that at least every 12 months, you must provide each miner with no less than 8 hours of refresher training. The mines affected by this provision in each size category are—

- (1) 3,361 mines that employ 5 or fewer workers;
- (2) 1,467 mines that employ between 6 and 19 workers; and
- (3) 285 mines that employ 20 or more workers.

MSHA estimates that for each mine, a mine supervisor, earning \$36 per hour, would take 3 hours to prepare for the task training. MSHA further estimates that the average number of training sessions the mine supervisor would provide annually are—

- (1) 0.91 sessions for mines that employ 5 or fewer workers;
- (2) 0.94 sessions for mines that employ between 6 and 19 workers; and
- (3) 2.02 sessions for mines that employ 20 or more workers.

On average, each training session is estimated to last 8 hours.

Paragraph (a) of § 46.9 requires you, upon completion of each training program, to record and certify on MSHA Form 5000-23, or on a form that contains the required information, that the miner has completed the training. False certification that training was

completed is punishable under § 110(a) and (f) of the Act. For all records required to be kept in §§ 46.5, 46.6, 46.7, and 46.8, MSHA estimates that for each mine, a mine supervisor, earning \$36 per hour, would take 0.05 hours to record and certify each miner's training record. In addition, it would take a clerical worker, earning \$17 per hour, 0.05 hours to prepare, copy, and distribute the certificate.

The annual number of training records required to be kept under § 46.5 (New miner training) are—

- (1) 1,537 in mines that employ 5 or fewer workers;
- (2) 1,877 in mines that employ between 6 and 19 workers; and
- (3) 940 in mines that employ 20 or more workers.

The annual number of training records required to be kept under § 46.6 (Newly-hired experienced miner training) are—

- (1) 1,516 in mines that employ 5 or fewer workers;
- (2) 1,856 in mines that employ between 6 and 19 workers; and
- (3) 930 in mines that employ 20 or more workers.

The annual number of training records required to be kept under § 46.7 (New task training) are—

- (1) 18,446 in mines that employ 5 or fewer workers;
- (2) 41,273 in mines that employ between 6 and 19 workers; and
- (3) 41,380 in mines that employ 20 or more workers.

The annual number of training records required to be kept under § 46.8 (Annual refresher training) are—

- (1) 6,149 in mines that employ 5 or fewer workers;
- (2) 13,758 in mines that employ between 6 and 19 workers; and
- (3) 13,793 in mines that employ 20 or more workers.

During the public meetings, numerous commenters stated that records should not have to be retained at the mine site. MSHA agrees and the proposed rule provides that records are not required to be maintained at the mine site, and therefore can be electronically filed in a central location, so long as the records are made available to the authorized representative of the Secretary upon request within a reasonable time, in most cases one day.

Although the proposed rule does not require backing up the data, some means are necessary to ensure that electronically stored information is not compromised or lost. MSHA encourages mine operators who store records electronically to provide a mechanism

that will allow the continued storage and retrieval of records in the year 2000.

MSHA solicits comment on what actions would be required, if any, to facilitate the maintenance of records in electronic form by those mine operators who desire to do so, while ensuring access in accordance with these requirements.

Paragraph (a) of § 46.11 requires you to provide site-specific hazard training to—

- (1) Scientific workers;
- (2) Delivery workers and customers;
- (3) Occasional, short-term maintenance or service workers, or manufacturers' representatives; and
- (4) Outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis.

The annual number of non-miners to be trained are—

- (1) 50 non-miners in each of the 3,361 mines that employ 5 or fewer workers;
- (2) 100 non-miners in each of the 1,467 mines that employ between 6 and 19 workers; and
- (3) 200 non-miners in each of the 285 mines that employ 20 or more workers.

No record is required for this type of training. The burden is for the time the miner takes to provide the training. MSHA estimates that for each mine, a miner, earning \$23 per hour, would take 0.15 hours annually, on average, to provide hazard training.

III. Executive Order 12866 and Regulatory Flexibility Act

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. Based upon the economic analysis, we have determined that this proposed rule is not an economically significant regulatory action pursuant to section 3(f)(1) of E.O. 12866. MSHA does consider the proposed rule to be significant under section 3(f)(4) of the E.O. because of widespread interest in the rule, and has submitted the proposal to OMB for review.

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the RFA, MSHA must use the Small Business Administration's (SBA) definition for a small mine of 500 or fewer employees or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. In this proposed rule, none of the affected mines have 500 or more employees. Therefore for the purposes of the RFA, all of the affected mines are considered small. MSHA has analyzed the impact of the

proposed rule on mines with 20 or more employees, mines with 6–19 employees, and mines with 1–5 employees. MSHA has determined that this proposed rule would not impose a substantial cost increase on small mines.

MSHA has prepared a Preliminary Regulatory Economic Analysis (PREA) and Regulatory Flexibility Certification Statement to fulfill the requirements of E.O. 12866 and the Regulatory Flexibility Act. This PREA is available from MSHA upon request and is posted on our Internet Homepage at www.msha.gov.

Regulatory Flexibility Certification Statement

Based on MSHA's analysis of costs and benefits, the Agency certifies that this proposed rule would not impose a significant economic impact on a substantial number of small entities.

Factual Basis for Certification

General approach: The Agency's analysis of impacts on "small entities" begins with a "screening" analysis. The screening compares the estimated compliance costs of the proposed rule for small mine operators in the affected sector to the estimated revenues for that sector. When estimated compliance costs are less than 1 percent of estimated revenues (for the size categories considered) the Agency believes it is generally appropriate to conclude that there is no significant impact on a substantial number of small entities. When estimated compliance costs approach or exceed 1 percent of revenue, it tends to indicate that further analysis may be warranted. The Agency welcomes comment on its approach in this regard.

Derivation of costs and revenues: In the case of this proposed rule, because the compliance costs must be absorbed by the nonmetal mines affected by this rule, the Agency decided to focus its attention exclusively on the relationship between costs and revenues for these mines, rather than looking at the entire metal and nonmetal mining sector as a whole.

In deriving compliance costs there were areas where different assumptions had to be made for small mines in different employment sizes in order to account for the fact that the mining operations of small mines are not the same as those of large mines. For example, different assumptions for mine size categories were used to derive compliance costs concerning: the number of persons trained per mine and the number of training sessions a mine would have annually. In determining revenues for the nonmetal mines

affected by this rulemaking, MSHA multiplied the production data (in tons) by the price per ton of the commodity.

The Agency welcomes comment on sources that can help it more accurately estimate revenues for the final rule or other rules confined to this sector.

Results of screening analysis. As shown in Table V-1 with respect to the nonmetal mines affected by this rule that have 1 through 5 workers, the estimated costs of the rule as a percentage of their revenues are 0.30 percent. For nonmetal mines covered by this rule that have 6 through 19 workers, the estimated costs of the rule as a percentage of their revenues are 0.13 percent. For nonmetal mines covered by

this rule that have 20 or more workers, the estimated costs of the rule as a percentage of their revenues are 0.03 percent. Finally, for all nonmetal mines covered by this rule (which are mines that have 500 or less workers), the estimated costs of the rule as a percentage of their revenues are 0.09 percent.

In every case, the impact of the proposed compliance costs is substantially less than 1 percent of revenues, well below the level suggesting that the proposed rule might have a significant impact on a substantial number of small entities. Accordingly, MSHA has certified that

there is no such impact for small entities that mine the commodities that are covered by this rule.

As required under the law, MSHA is complying with its obligation to consult with the Chief Counsel for Advocacy on this proposed rule, and on the Agency's certification of no significant economic impact on the mines affected by this rule. Consistent with Agency practice, notes of any meetings with the Chief Counsel's office on this proposed rule, or any written communications, will be placed in the rulemaking record. The Agency will continue to consult with the Chief Counsel's office as the rulemaking process proceeds.

TABLE V-1.—EXEMPT NONMETAL MINES COVERED BY THE PROPOSED RULE ^a
[Dollars in thousands]

Employment size	Estimated costs	Estimated revenues ^b	Costs as percentage of revenues
(1-5)	5,857	1,949,366	0.30
(6-19)	5,883	4,555,543	0.13
(20 or more)	3,154	9,756,081	0.03
All Mines ^c	14,894	16,260,990	0.09

^a All mines covered by the proposed rule are surface mines.

^b Data for revenues derived from U.S. Department of the Interior/U.S. Geological Survey. *Mining and Quarrying Trends, 1997 Annual Review, 1997. Tables 2 and 3.*

^c Every mine affected by rule has 500 or fewer employees.

Compliance Costs

MSHA estimates that the total net cost of the proposed new 30 CFR part 46 training requirements would be approximately \$16.2 million annually, of which about \$14.9 million would be borne by mine operations in the following surface nonmetal mining sectors: shell dredging, sand, gravel, stone, clay, colloidal phosphate, and limestone. Since fiscal year 1980, Congress has prohibited MSHA from enforcing existing MSHA health and safety training regulations in 30 CFR part 48 at mines ("exempt mines") in these sectors of the surface nonmetal mining industry. The exempt mines that are not currently in compliance with the existing part 48 training requirements would incur costs of approximately \$17 million annually to comply with the proposed rule, while those currently in compliance with the existing part 48 training requirements would derive savings of approximately \$2.1 million annually.

Over the past 20 years, MSHA has consistently categorized a mine as being small if it employs fewer than 20 workers and as being large if it employs 20 or more workers. For the purposes of this PREA, however, MSHA has identified three mine size categories

based on the number of employees, which are relevant to the estimation of the cost of the proposed rule: (1) Mines employing 5 or fewer workers; (2) mines employing between 6 and 19 workers; and (3) mines employing 20 or more workers. These mine categories are important because they are believed to have significantly different compliance rates for existing part 48 training requirements. For this proposed rule, MSHA estimates that the following percentages of exempt mines by size category are currently not in compliance with existing part 48 requirements: 60 percent of mines with 5 or fewer workers; 40 percent of mines with between 6 and 19 workers; and 20 percent of mines with 20 or more workers.

In 1997, there were 10,152 exempt mines covered by the proposed rule. MSHA estimates that the average cost per exempt mine to comply with the proposed rule would be approximately \$1,500 annually. For the 5,297 exempt mines with 5 or fewer workers, MSHA estimates that the average cost of the proposed rule per mine would be approximately \$1,100 annually. For the 3,498 exempt mines with between 6 and 19 employees, MSHA estimates that the average cost of the proposed rule per

mine would be approximately \$1,700 annually. For the 1,357 exempt mines with 20 or more employees, MSHA estimates that the average cost of the proposed rule per mine would be approximately \$2,300 annually.

These costs per mine may be slightly misleading insofar as the exempt mines currently in compliance with part 48 training requirements would also be substantially in compliance with the proposed rule and would therefore incur no compliance costs. In fact, as noted above, these mines would derive savings of approximately \$2.1 million annually as a result of the proposed rule. For the exempt mine operators (including independent contractors that employ miners) not currently in compliance with part 48 training requirements, the annual cost of complying with the proposed rule would, on average, be approximately \$1,800 per mine operator with 5 or fewer workers; \$4,400 per mine operator with between 6 and 19 workers; and \$15,500 per mine operator with 20 or more workers.

Table IV-1 from the PREA summarizes the yearly costs of the proposed rule by mine size and by provision.

TABLE IV-1.—SUMMARY OF YEARLY COMPLIANCE COSTS FOR THE PROPOSED RULE *

Requirement/provision	Mines with 1-5 employees	Mines with 6-19 employees	Mines with 20+ employees	Total cost for all mines	Total cost for other parties	Total cost
§ 46.3	\$18,567	\$8,102	\$3,013	\$29,682	\$841	\$30,523
§ 46.5	2,431,069	1,943,402	762,385	5,136,856	.....	5,136,856
§ 46.6	389,353	281,137	99,589	770,079	.....	770,079
§ 46.7	225,783	450,693	441,197	1,117,672	.....	1,117,672
§ 46.8	2,131,047	2,520,492	1,482,488	6,134,027	.....	6,134,027
§ 46.9	81,563	173,352	168,280	423,195	.....	423,195
§ 46.11	579,807	506,046	196,788	1,282,641	1,282,641	2,565,282
Total	5,857,188	5,883,255	3,153,740	14,894,153	1,283,482	16,177,635

* Source: Table IV-12, Table IV-17, Table IV-19, Table IV-20; Table IV-23, Table IV-25, and Table IV-26.

Benefits

Safety and health professionals from all sectors of industry recognize that training is a critical element of an effective safety and health program. Training informs miners of safety and health hazards inherent in the workplace and enables them to identify and avoid such hazards. Training becomes even more important in light of certain factors that can exist when production demands increase, such as an influx of new and less experienced miners and mine operators; longer work hours to meet production demands; and increased demand for contractors who may be less familiar with the dangers on mine property.

Although there may be some differences in production technology and the production environment between the exempt mining industry and other surface nonexempt mining industries, the data presented in Chapter III of the PREA show that the lack of training in exempt mines contributes significantly to the disproportionate number of fatalities that occur at such mines. From 1993 to 1997, there were 200 fatalities at surface mines, of which 163 occurred at exempt mines. Thus, exempt mines accounted for 82 percent of all fatalities at surface mines. During the same period, however, employees at exempt mines accounted for only 64 percent of the total number of hours worked at surface mines.

One of the major reasons that exempt mines experience a higher fatality rate than the surface mining industry as a whole is that smaller operations, those which employ fewer than 20 workers, make up the vast majority of exempt mines. These small operations have the highest rates of noncompliance with part 48 training and, not surprisingly, the highest fatality rates.

It is plausible to assert that at least some of these fatalities may have been prevented if victims had received appropriate, basic miner safety training.

Similarly, MSHA believes that compliance with the requirements of this proposed training rule would, in turn, reduce the number of fatalities at exempt mines. As discussed in greater detail in Chapter III of the PREA, MSHA estimates that compliance with the proposed rule would prevent about 10 fatalities per year. Although not quantified, MSHA further expects that better trained exempt miners would have a positive impact on reducing mining accidents, injuries, and illnesses. MSHA believes that this proposed rule would make training more responsive to the needs of the industry and more effective for individual miners, thereby raising the compliance rate and reducing mine injuries and fatalities.

IV. Executive Order 12875: Enhancing the Intergovernmental Partnership

Executive Order (E.O.) 12875 requires executive agencies and departments to reduce unfunded mandates on State, local, and tribal governments; to consult with these governments prior to promulgation of any unfunded mandate; and to develop a process that permits meaningful and timely input by State, local, and tribal governments in the development of regulatory proposals containing a significant unfunded mandate. E.O. 12875 also requires executive agencies and departments to increase flexibility for State, local, and tribal governments to obtain a waiver from Federal statutory or regulatory requirements.

There are 152 sand and gravel, surface limestone, and stone operations that are run by State, local, or tribal governments for the construction and repair of highways and roads. We believe that all of these state-owned mines are in compliance with the proposed rule's provisions. The Agency specifically solicits comments and any data to either support or refute this assumption.

V. Unfunded Mandates Reform Act of 1995

We have determined that, for purposes of section 202 of the Unfunded Mandates Reform Act of 1995, this proposed rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million. Moreover, the Agency has determined that for purposes of section 203 of that Act, this proposed rule does not significantly or uniquely affect these entities.

Background

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist federal agencies to make this same determination with respect to regulatory actions.

Analysis

Based on the analysis in the Agency's PREA, the net compliance cost of this proposed rule for the surface nonmetal mine operators is about \$14.9 million per year. Accordingly, there is no need for further analysis under section 202 of the Unfunded Mandates Reform Act.

MSHA has concluded that small governmental entities are not significantly or uniquely impacted by the proposed regulation. MSHA estimates that approximately 185 sand and gravel, surface limestone, and stone operations are run by State, local, or tribal governments. The Agency believes that all of these state-owned mines are in compliance with the proposed rule's provisions.

When MSHA issues the proposed rule, we will affirmatively seek input of any State, local, and tribal government which may be affected by this

rulemaking. This would include state and local governmental entities that operate sand and gravel, surface limestone, and stone operations in the construction and repair of highways and roads. MSHA will mail a copy of the proposed rule to approximately 185 such entities.

VI. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

In accordance with E.O. 13045, MSHA has evaluated the environmental health and safety effects of the proposed rule on children. MSHA has determined that the proposed rule would have no effect on children.

VII. Executive Order 13084 (Consultation and Coordination With Indian Tribal Governments)

MSHA certifies that the proposed rule would not impose substantial direct compliance costs on Indian tribal governments.

VIII. Statutory and Rulemaking Background

Until 1977, the metal and nonmetal mining industries and the coal mining industry were covered by separate occupational health and safety statutes. The Federal Coal Mine Health and Safety Act of 1969 (1969 Coal Act) governed the coal mining industry. The Federal Metal and Nonmetallic Mine Safety Act of 1966 (1966 Metal Act) governed the metal and nonmetal mining industries. The 1966 Metal Act was the first federal statute directly regulating non-coal mines. The 1969 Coal Act authorized promulgation of mandatory safety and health standards for coal mines, but the safety and health regulations promulgated under the 1966 Metal Act for metal and nonmetal mines were largely advisory.

Passage of the Federal Mine Safety and Health Act of 1977 (1977 Act), 30 U.S.C. 801 *et seq.*—

- (1) placed coal mines and metal and nonmetal mines under a single statute;
- (2) substantially increased the health and safety protections afforded all miners, but particularly metal and nonmetal miners; and
- (3) applied to all mining and mineral processing operations in the United States, regardless of size, number of employees, or method of extraction.

Thus, the Mine Safety and Health Administration (MSHA), the agency charged with carrying out the mandates of the 1977 Mine Act, regulates and inspects two-person sand and gravel pits, as well as large underground coal mines and processing plants employing hundreds of miners.

Neither the 1969 Coal Act nor the 1966 Metal Act contained comprehensive requirements for health and safety training of miners. However, in the 1977 Mine Act, Congress clearly recognized training as an important tool for preventing accidents and avoiding unsafe and unhealthful working conditions in the nation's mines. Consistent with this determination, section 115 of the 1977 Act directed the Secretary of Labor to promulgate regulations requiring that mine operators subject to the Act establish a safety and health training program for their miners.

MSHA published regulations in 30 CFR part 48 on October 13, 1978 (43 FR 47453), implementing section 115 of the 1977 Mine Act. At that time, certain segments of the mining industry strongly believed that the new training regulations were designed for large and highly technical operations and, therefore, were inappropriate and impractical for smaller surface nonmetal mines. Industry representatives expressed their concern over the difficulties that many small nonmetal operators would have in complying with part 48 and requested relief from its comprehensive specifications.

In 1979, various segments of the metal and nonmetal mining industry raised concerns with Congress regarding the appropriateness of applying the requirements of part 48 to their operations. Congress responded by inserting language in the Department of Labor's appropriations bill that prohibited the expenditure of appropriated funds to enforce training requirements at approximately 10,200 surface nonmetal work sites. Congress has inserted this language into each Department of Labor appropriations bill since fiscal year 1980. This language specifically prohibits the use of appropriated funds to:

- * * * carry out § 115 of the Federal Mine Safety and Health Act of 1977 or to carry out that portion of § 104(g)(1) of such Act relating to the enforcement of any training requirements, with respect to shell dredging, or with respect to any sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mine.

This language remains in place under our appropriations contained in the Omnibus Appropriations Act for 1999, P.L. 105-277, signed by the President on October 21, 1998. The 1999 training rider, however, authorizes us to expend funds to propose and promulgate final training regulations by September 30, 1999, for operations affected by the prohibition.

IX. General Discussion

Crushed stone and sand and gravel account for the majority of operations where we cannot enforce training requirements. The United States Geological Survey, United States Department of the Interior (USGS), derives domestic production data for crushed stone and sand and gravel from voluntary surveys of U.S. producers. USGS makes these data available in quarterly Mineral Industry Surveys and in annual Mineral Commodities Summaries. Annual crushed stone tonnage ranks first in the nonfuel minerals industry, with annual sand and gravel tonnage ranking second. USGS data show that domestic production of sand and gravel and crushed stone increased every year between 1991 and 1999, an indication of the continuing strong demand for construction aggregates in the United States.

The number of hours worked at sand and gravel and crushed stone operations has been increasing steadily since 1991. In 1991, the hours worked at crushed stone operations totaled approximately 104 million employee-hours, rising to 117 million employee-hours in 1997. Similarly, the number of employee-hours at sand and gravel operations rose from approximately 65 million in 1991 to 72 million in 1997. Based on hours reported for the first nine months of 1998, the total hours worked for 1998 will exceed the total hours worked in 1997. Although some of the increase in hours worked may result from longer workdays, the data strongly suggest that the aggregates industry workforce is growing.

Crushed stone and sand and gravel are essential and used widely in all major construction activities, including highway, road, and bridge construction and repair projects, as well as residential and nonresidential construction. Although crushed stone is also used as a basic raw material in agricultural, and chemical and metallurgical processes, it is used mostly by the construction industry. The construction industry also is by far the largest consumer of sand and gravel. Consequently, the level of construction activity largely determines the demand for, and resulting production levels of, these aggregate materials.

On June 9, 1998, President Clinton signed the Transportation Equity Act for the 21st Century, commonly known as "TEA-21" (Pub. L. 105-178), which authorizes highway, highway safety, transit, and other surface transportation programs for the fiscal years 1998 to 2003. The demand for materials

produced by the surface nonmetal mining industry is anticipated to increase substantially due to, in significant part, transportation infrastructure construction resulting from the recent enactment of TEA-21. TEA-21 builds on the initiatives established in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which was the last major authorizing legislation for surface transportation. As the largest public works legislation in the nation's history, appropriating almost \$218 billion for highway and transit programs, TEA-21 provides a 40 percent funding increase over the ISTEA levels for such programs.

In addition to the passage of TEA-21, other factors may also contribute to the continued growth in construction activity and, thus, the demand for aggregate materials. These include a healthy U.S. economy in general, low interest rates, and adverse weather conditions, such as from El Niño and La Niña, which have damaged and destroyed homes, roads, and bridges in various parts of the country.

Since fiscal year 1980, the year in which the congressional appropriations rider took effect, more than 600 miners have been killed in occupationally related incidents at mines where we cannot enforce miner training requirements ("exempt mines"). The rider affects approximately 10,200 surface nonmetal mines and 120,000 miners. Approximately 9,200 of these sites are surface aggregate operations (sand and gravel and crushed stone); the remainder are surface operations mining other commodities such as clay or colloidal phosphate.

Our data indicate that, of the 200 miners involved in fatal accidents at surface metal and nonmetal mines from 1993 to 1997, about 80% (163 miners) worked at exempt mines. During this same period, the annual number of fatal accidents at exempt mines almost doubled (from 24 fatalities in 1993 to 45 fatalities in 1997). In each of the years 1996 and 1997, 90% of fatalities at surface metal and nonmetal mines occurred at operations affected by the appropriations rider.

A large proportion of exempt mines are smaller operations, which experience a higher fatality rate than larger operations. For example, of the 9,200 aggregate mines, approximately 4,900 employ five or fewer miners, and approximately 8,100 employ fewer than 20 miners. Long-term data show that mines with fewer than six employees are three times as likely to experience fatalities as mines with 20 or more workers. Also, mines with between six

and 19 employees are more than two times as likely to have fatal accidents as operations with larger workforces.

Several other reasons may contribute to the number of fatal accidents, including—

- (1) An influx of new and less experienced miners and mine operators;
- (2) Longer work hours to meet production demands; and
- (3) Increased demand for contractors who may be less familiar with the dangers on mine property. All of these factors are also more likely to exist when production activity accelerates to meet increases in demand.

We believe that some of these fatalities may have been prevented if victims had received appropriate, basic miner safety training. Our fatal accident investigations show that the majority of miners involved in fatal accidents at mines affected by the rider had not received health and safety training that complied with the requirements of part 48. In 1997, for example, 80% of fatal accident victims at exempt mines had not received health and safety training in accordance with part 48.

Safety and health professionals from all sectors of industry recognize that training is a critical element of an effective safety and health program. Training of new employees, refresher training for experienced miners, and training for new tasks serve to inform workers of safety and health hazards inherent in the workplace and, just as important, to enable workers to identify and avoid those hazards. Congress clearly recognized these principles by specifically including training provisions in the 1977 Mine Act.

The legislative history to the 1999 Appropriations Act reveals congressional concern with our inability to enforce training requirements for the exempt industries. The Senate Report associated with the Senate appropriations bill for fiscal year 1999 states:

The Committee has continued language carried in the bill since fiscal year 1980 prohibiting the use of funds to carry out the training provisions of the Mine Act with respect to shell dredging, or with respect to any sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mine. The Committee recommends including this language for another year. However, the Committee finds the agency's data regarding the number of untrained workers in these industries who are exposed to the risks and hazards associated with the mining environment disturbing. Therefore, the Committee intends for fiscal year 1999 to be the last year this provision will be contained in the bill.

S. Rep. No. 105-300 for S. 2440, 105th Cong., 2d Sess., (1998).

In the Conference Report to the Omnibus Appropriations Act for 1999, Congress recognizes the high priority that employee safety and health training should have for the mining industry. However, Congress also notes that both we and the industries affected by the rider acknowledge that existing part 48 regulations do not address either the industries' or miners' needs in the most effective manner. In the Report, Congress reaffirms the priority to provide health and safety training for miners and directs us to expeditiously develop appropriate training regulations for miners working in these industries. The Conference Report also specifies that we must submit a progress report on the training regulations before appropriations hearings on our fiscal year 2000 budget and that we work cooperatively with labor and industry representatives to disseminate information on the revised training requirements in the period between the publication of the final rule and its effective date.

The Conference Report language specifically instructs us to:

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

H.R. Rep. No. 105-825 for H.R. 4328, 105th Cong., 2d Sess. (1998).

The Coalition for Effective Miner Training (Coalition) consists of associations that represent industries currently exempt from miner training requirements. Coalition members include:

American Portland Cement Alliance
China Clay Producers Association
Dry Branch Kaolin Company
Georgia Crushed Stone Association
Georgia Mining Association
Indiana Mineral Aggregates Association
National Aggregates Association
National Industrial Sand Association
National Lime Association
National Stone Association
North Carolina Aggregates Association
Arizona Rock Products Association
Construction Materials Association of California
Sorptive Minerals Institute
United Metro Materials
Virginia Aggregates Association

In 1998, the Coalition initiated a process to outline an alternative regulatory approach to part 48 for miner training in the exempt industries. This process included working with industry and labor organizations during the course of the development of its

proposal. On February 1, 1999, the congressionally established deadline, the Coalition presented us with a final joint industry/labor draft proposed rule.

To facilitate the broadest possible input from the regulated public, we held seven preproposal public meetings throughout the country in December 1998 and January 1999 to solicit comments on development of the miner training rule for exempt mines. We selected meeting locations in California, Colorado, Georgia, Illinois, New York, Oregon, and Texas to provide as many miners, miners' representatives, and mine operators, both large and small, with the opportunity to attend at least one of the meetings and present their views. The public was encouraged to comment on any issue related to miner safety and health training at exempt mines. The **Federal Register** notice announcing the schedule of public meetings (63 FR 59258, November 3, 1998) listed key issues on which we were specifically interested in receiving comments. The issues included:

- Should certain terms, including "new miner" and "experienced miner" be defined?
- Which subjects should be taught before a new miner is assigned work, even if the work is done under close supervision?
- Should training for inexperienced miners be given all at once, or over a period of time, such as several weeks or months?
- Should supervisors be subject to the same training requirements as miners?
- Should task training be required whenever a miner receives a work assignment that involves new and unfamiliar tasks?
- Should specific subject areas be covered during annual refresher training? If so, what subject areas should be included?
- Can the 8 hours of annual refresher training required by the Mine Act be completed in segments of training lasting less than 30 minutes?
- Should the records of training be kept by the mine operator at the mine site, or can they be kept at other locations?
- Should there be minimum qualifications for persons who conduct miner training? If so, what qualifications are appropriate?

More than 220 individuals, including representatives from the Coalition, labor, contractors, mining associations, State agencies, small and large operators, and trainers, attended the meetings. Many of the attendees made oral presentations at the meeting, offering their views on effective miner training. In addition, we have received a number of written comments on how to ensure effective miner safety and health training.

Speakers at the public meetings and other commenters generally emphasized the importance of developing a training rule that provides you with the flexibility to tailor your miner training

programs to your particular operations and workforce. Several speakers underscored the need for practical and workable training requirements to meet the needs of the wide variety of mines that will be affected by the new training rule. Others commented on training for employees of independent contractors working on mine property, recordkeeping requirements, and appropriate qualifications for persons who will provide training. In addition, speakers at every meeting commented on the need for consistent implementation of the final training rule and the increased involvement of MSHA and the state grantees in providing training assistance and materials.

X. Discussion of the Proposed Rule

A. Statutory Requirements

Section 115(a) of the 1977 Act authorizes the Secretary of Labor to promulgate miner health and safety training regulations; section 115(a), (b), and (c) also include minimum requirements for miner training programs. The training regulations proposed here for miners working at shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone operations are consistent with these minimum requirements, which provide among other things, that:

- Each operator must have a health and safety program approved by the Secretary of Labor;
- Each approved training program for new surface miners must provide for at least 24 hours of training in certain specific courses, including:
 - The statutory rights of miners and their representatives under the Act;
 - Use of self-rescue and respiratory devices, where appropriate;
 - Hazard recognition;
 - Emergency procedures;
 - Electrical hazards;
 - First aid;
 - Walkaround training; and
 - The health and safety aspects of the task to which the miner will be assigned;
- Each approved training program must provide for at least eight hours of refresher training every 12 months for all miners;
 - Miners reassigned to new tasks must receive task training prior to performing that task;
 - New miner training and new task training must include a period of training as closely related as is practicable to the miner's work assignment;
 - Training must be provided during normal working hours;
 - During training, miners must be paid at their normal rate of compensation and reimbursed for any additional cost for attending training;
 - Upon completion of each training program, each operator must certify, on a

form approved by the Secretary, that the miner has received the specified training in each subject area of the approved health and safety training plan;

- A certificate for each miner must be maintained by the operator, and be available for inspection at the mine site;
- A copy of the certificate must be given to each miner at the completion of the training;
- When a miner leaves the operator's employ, the miner is entitled to a copy of his or her health and safety training certificates;
- False certification by an operator that training was given is punishable under section 110(a) and (f) of the 1977 Mine Act; and
- Each health and safety training certificate must indicate on its face, in bold letters, printed in a conspicuous manner, that such false certification is so punishable.

The proposed training rule takes a performance-oriented approach, where possible, to afford currently exempt operations, particularly small operations, the flexibility to tailor miner training to their particular needs and methods of operation. For example, the proposal would give you the latitude to choose many of the topics addressed in training and the amount of time to be spent on each topic. Also it would allow you to keep training records in a format of your choice, as long as the records include the minimum information specified in the rule.

B. Summary of Proposed Rule

We currently anticipate that the part 46 final rule will be consistent with existing part 48 training requirements, so that those of you who have implemented a safety and health training program that complies with part 48 would not have to alter your programs to comply with proposed part 46. However, we request comment on whether the final rule should specifically allow you the option of complying with the requirements of part 48, in lieu of part 46.

The proposed rule would require you to develop and implement a written training plan that includes programs for training new and experienced miners, training miners for new tasks, annual refresher training, and hazard training. Plans that include the minimum information specified in the proposal would be considered approved by us and would not be required to be submitted to us for formal review, unless you, the miners, or miners' representative requests it.

The proposal would require new miners to receive 24 hours of training within 60 days of employment. Instruction in four specific areas must be provided before the miner begins work—

- (1) Introduction to the work environment;
- (2) Recognition and avoidance of hazards at the mine;
- (3) Escape and emergency evacuation plans in effect at the mine, and firewarning signals and firefighting procedures; and
- (4) Health and safety aspects of the tasks to be assigned.

The remainder of new miner training would be required to be completed within 60 days, and would address, at a minimum, the subjects specified in section 115 of the Mine Act.

Under the proposal, newly-hired experienced miners would receive instruction, before beginning work, in the same four topics required to be covered for new miners before they begin work. Newly-hired experienced miners would receive annual refresher training within 90 days, including instruction on several specific topics.

Every 12 months, all miners would receive no less than eight hours of refresher training, which at a minimum would address major changes at the mine. Under the proposal, you would have the flexibility to determine the other subject areas to be covered in refresher training.

The proposal would require new task training for every miner before the miner is assigned to a task for which he or she has no previous experience or which has changed. Site-specific hazard training would be required for persons who do not fall within the definition of "miner" and who would therefore not be required to receive comprehensive training (i.e., new miner training or newly-hired experienced miner training, as appropriate). The proposal would also require site-specific hazard training for employees of independent contractors who have received comprehensive training but who need orientation in the hazards of the mine where they will be working.

You would be required to certify that a miner has received required training and retain a copy of each miner's certificate for the duration of the miner's employment and for 12 months after the employment ends. Under the proposal, you could use our existing form for the certification (MSHA Form 5000-23) or maintain the certificate in another format, so long as it contains the minimum information listed in the proposal. You would also be required to maintain a copy of the current training plan in effect at the mine. You would be allowed the flexibility of keeping training records at the mine site or at a different location, but would be required to provide copies of the records to us and to miners and their representatives upon request.

Unlike part 48, we would not approve training instructors under the proposal. Instead, training could be provided by a competent person—someone with sufficient ability, training, knowledge, or experience in a specific area, who would also be able to evaluate the effectiveness of the training provided.

The proposal would adopt the Mine Act requirement that miners be trained during normal work hours and compensated at normal rates of pay. Miners would also be reimbursed for incidental costs, such as mileage, meals, and lodging, if training is given at a location other than the normal place of work.

The proposal would allow you, where appropriate, to substitute equivalent training required by OSHA or other federal or state agencies to satisfy your training obligations under part 46.

Finally, the proposal would address responsibility for training and would vest primary responsibility for site-specific hazard training with the production-operator. Additionally, independent contractors who employ miners required to receive comprehensive training under the proposal would be primarily responsible for ensuring that their employees satisfy these requirements.

C. Section-by-Section Discussion

The following section-by-section portion of the preamble discusses each proposed provision. The text of the proposed rule is included at the end of the document.

Section 46.1 Scope

This section provides that the provisions of part 46 set forth mandatory requirements for the training and retraining of miners at all shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines.

Corresponding changes for part 48 have been included in this proposal and are intended to make clear to the mining community that part 46 training requirements will apply to those mines which have been subject to the congressional appropriations rider since fiscal year 1980. This section is consistent with a similar provision in the draft proposal of the Coalition for Effective Miner Training.

Commenters should be aware that the language of the rider describes the exempt operations in broad terms. It does not attempt to list each type of operation that is included within the category listed. For example, operations that produce marble, granite, sandstone, slate, shale, traprock, kaolin, cement, feldspar, and lime are also exempt from

enforcement under the rider and would be affected by the requirements of this rule.

Several commenters were of the opinion that the new training regulations for mines that are currently exempt from enforcement should be incorporated into part 48. However, to avoid confusion, we have proposed these regulations under a separate part of Title 30 of the Code of Federal Regulations.

Although the requirements of this proposed part would amend the training requirements for surface miners in part 48, part 48 has not been enforced at exempt mines for almost 20 years. The proposed rule takes a more flexible and performance-oriented approach than similar provisions in part 48. For example, the proposed rule would not require our traditional approval of training plans; would give you greater latitude in determining what subjects should be included in your miner training programs and in recordkeeping; and would not mandate a formal instructor approval program.

We are mindful of our statutory obligation not to reduce the protections provided to miners under our existing standards. Under section 101(a)(9) of the 1977 Act, "[n]o mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health or safety standard." Although the proposal would allow greater flexibility to you in training plan content and implementation, protection to miners would not be reduced. Our approach in this proposal is to allow you, with the assistance of miners and their representatives, to tailor your miner training programs to the specific needs of your operations and workforce. In this way, training received by miners would be relevant to their workplace and would be effective in providing them with the information and instruction that will enhance their ability to work in a safe and healthful manner. Several commenters stated that the flexibility to design their training programs to address the most significant safety and health concerns at their mines would enhance the overall benefits of training for their miners.

It should be noted that this proposal does not affect those mines not subject to the rider, which would include all underground metal and nonmetal mines, all surface metal mines, all coal mines, and a few surface nonmetal mines, such as surface boron and talc mines. Operators at those mines will continue to be responsible for complying with the miner training provisions in part 48.

Section 46.2 Definitions

This section includes definitions for terms used in proposed part 46. These definitions are provided to assist the mining community in understanding the requirements of the proposed rule. We are interested in comments on whether the definitions, as proposed, are appropriate and clearly expressed. Commenters should also identify any other terms they believe should be defined in the final rule.

Act. All references to the "Act" in the proposal refer to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.*

Competent person. Under the proposal, training would be conducted by a "competent person" designated by you. "Competent person" is defined in the proposal as a person who has the ability, training, knowledge, or experience to provide training to miners on a particular subject. Under this definition, the competent person must be able to evaluate whether the training given to miners is effective.

This definition does not specify the type or extent of ability, training, knowledge, or experience needed for a person to be "competent" and, therefore, allowed to provide training under the rule. This is consistent with the performance-oriented approach taken in the proposal. As addressed in greater detail in the preamble under § 46.4, a number of commenters recommended that persons who provide training receive, at a minimum, some instruction to ensure that they are able to instruct miners effectively. The proposal does not adopt this recommendation. Instead, we leave it to your discretion to determine whether the person is competent to provide training to miners in one or more subjects.

We specifically solicit comments on the definition of "competent person," whether the final rule should establish specific minimum qualifications for training instructors, and whether the final rule should require that training instructors be approved by us, similar to the approach taken in the part 48 regulations.

Experienced miner. A number of commenters addressed the definition of the term "experienced miner." Several commenters suggested that part 46 should adopt the definition of "experienced miner" in the part 48 training regulations. Recent revisions to part 48 (63 FR 53750, October 6, 1998) define "experienced miner" as a person with at least 12 months of experience who has completed new miner training. Other commenters recommended that a

miner be considered experienced if he or she either has received new miner training or has accumulated at least 12 months of mining experience or the equivalent. One commenter stated that the definition of experienced miner should allow miners with experience to return to mining after an extended absence or lay-off and still be considered experienced.

A miner would be "experienced" under the proposal if he or she satisfies one of three definitions. First, paragraph (c)(1)(i) provides that an experienced miner is a person employed as a miner on the date of publication of this proposal. Most regularly employed miners would be considered "experienced" under this definition, and therefore not subject to the rule's new miner training requirements. This is similar to the approach taken when part 48 first took effect in 1978, which provided that all persons employed as miners on the rule's effective date were experienced miners, regardless of the length of their mining experience or the extent of their safety and health training. Under the proposed definition, most miners working on the date of the proposed rule will have accrued several months of experience by the publication date of the final rule, and even more experience by the rule's effective date.

Under the proposed definition, however, a miner with many years of experience who happens to be out of work on the date of the proposed rule would not be an "experienced miner". We are uncertain as to whether this would have an adverse impact at some operations, particularly in light of the intermittent and seasonal nature of many operations that will be covered by the final rule. We are therefore interested in whether commenters believe that the rule should address this situation in some fashion and, if so, what specific provisions should be included in the final rule to deal with this issue.

A miner would also be experienced under paragraph (c)(1)(ii) if he or she begins employment at a mine after the date of publication of the proposal but before the effective date of the final rule, and has received new miner training consistent with the requirements proposed under § 46.5 or with existing requirements for surface miners at § 48.25. This would provide flexibility to those of you who are already providing training to your miners under part 48, or who wish to provide training under the more performance-oriented requirements of proposed part 46, before the final rule takes effect. This provision is not intended to require compliance with the proposed rule, but would be a

voluntary option for those of you who want to get an early start on developing a training program and in complying with the rule.

Under paragraph (c)(1)(iii) a person who has completed 24 hours of new miner training under either § 46.5 or § 48.25 and who has at least 12 months of surface mining or equivalent experience would be an experienced miner. This definition is more stringent than the approach suggested by a number of commenters or in the Coalition draft, which would define "experienced miner" as a person who either has 12 months of experience or who has received the required 24 hours of new miner training, but not both. The definition in the proposed rule reflects our preliminary determination that an "experienced miner" should have both training and work experience. Additionally, we also recognize that it would be unduly burdensome and impractical to require all miners who are currently working at affected mines to receive new miner training. Many of these miners have extensive experience in the industry and should not be treated as new inexperienced miners. Consistent with this, under paragraphs (c)(1)(i) and (ii), the majority of miners who have been trained or who have relevant work experience would be considered experienced when the final rule goes into effect.

The proposal would allow a miner to accumulate the necessary 12 months of experience in non-consecutive months. This would respond to the concerns of several commenters that the intermittent and seasonal nature of many segments of the industry would make it difficult, if not impossible, for most miners to accrue the necessary experience in one continuous period.

The proposed definition would also allow equivalent experience to be counted towards the 12-month requirement. We intend that equivalent experience would include such things as work at a construction site or other types of jobs where the miner has job duties similar to the duties at the mine where he or she is employed. Commenters stated that similar work experience should be considered if the work performed is equivalent to the tasks that the person will perform at the mine. Commenters stated that many experienced construction workers have learned to work safely at construction sites that pose many of the same types of hazards that they could be exposed to at a mine site. Under the proposal, you would determine whether the miner's experience is equivalent and therefore whether the miner is "experienced." We request comments on the acceptance of

equivalent experience under this paragraph in determining who is an "experienced miner."

Paragraph (c)(2) provides that an experienced miner will retain that status permanently under part 46. This responds to several commenters who indicated that it was not uncommon for miners to be away from the mining industry for extended periods of time, either because the miners took jobs in another industry, such as construction, or because the miners had been laid off. These commenters recommended that the rule make clear that an absence from work in the mining industry would not result in miners losing their status as experienced miners. This paragraph responds to these concerns and is also the approach taken in the recent revisions to part 48. Once a miner attains the status of an "experienced miner," he or she would be considered experienced permanently. However, under proposed § 46.6, miners returning to mine work would be required to receive newly-hired experienced miner training and annual refresher training within 90 days of beginning work.

Extraction or production. The definition of the term "miner" includes persons engaged in "extraction or production." "Extraction or production" is defined in this section as the mining, removal, milling, crushing, screening, or sizing of minerals at a mine. This definition also includes the associated haulage of these materials at the mine. We request comments on whether this definition adequately describes the activities that should be considered part of the extraction and production processes at a mine.

Hazard training. The proposed definition of "hazard training" is intended to provide examples of the type of instruction or information that you might address in providing this training to miners under proposed § 46.11. "Hazard training" is defined as information or instructions on the hazards a person will be exposed to while on mine property, as well as on applicable emergency procedures. These hazards and procedures may include site-specific risks such as unique geologic or environmental conditions, traffic patterns, and restricted areas, as well as warning and evacuation signals, emergency procedures, or other special safety procedures. The purpose of this training is to ensure that those persons who are unfamiliar with the mine and with the hazards of the operation have been provided with enough information to avoid exposure to these hazards.

Independent contractor. The proposal defines "independent contractor" as a person or entity that contracts to

perform services at a mine under this part. This is consistent with the language of the Act, which includes independent contractors who perform services or construction at a mine within the definition of the term "operator."

Miner. The proposal would define "miner" for purposes of part 46 training more narrowly than the Mine Act, which defines "miner" in section 3(g) as any individual working at a mine. This allows the proposed rule to make a distinction between those "miners" who would be required to receive comprehensive training (that is, new miner training or newly-hired experienced miner training, as appropriate) and those persons who would be required to receive hazard training.

A person would be considered a "miner" under the proposal if he or she works at a mine under this part and is engaged in mining operations integral to extraction or production. We gave serious consideration to including as "miners" persons who are regularly exposed to mine hazards, or maintenance or service workers who work at the mine for frequent or extended periods, consistent with the definition in part 48. However, we are seeking to include a definition in the final rule that is clearer than the existing part 48 definition.

The definition of "extraction or production" includes the mining, milling, crushing, screening, or sizing of minerals, as well as the haulage of these materials. We intend that this definition include workers whose activities are integral to the extraction or production process, such as persons who are employed by the production-operator and who provide daily maintenance of mining equipment on the mine site. We do not intend to include workers who come onto mine property for short periods of time to perform services that are not integral to extraction or production, such as manufacturers' representatives who may be at the mine site infrequently to perform warranty service on mining equipment; this type of activity is usually conducted by a person whose presence at the mine site and exposure to typical mine hazards are limited. Although both types of workers perform maintenance on equipment, the extent of their exposure to mining operations and mine hazards is different, and the extent and type of training required would also be different under the proposal. We intend that the definition of "miner" include those workers whose activities are related to the day-to-day process of extraction or production. We have concluded that

these are the types of workers who should receive comprehensive training.

We believe this is one of the more significant distinctions that should be made in this rule, and we solicit comment on this issue. We are particularly interested in recommendations for final rule language that would help to clarify the scope and application of this definition. Specifically, we would like comments on whether the final rule should include in the definition of "miner" persons whose exposure to mine hazards is frequent or regular, regardless of whether they are engaged in extraction or production, or who are employed by the production-operator, similar to the approach taken in part 48. Another possible approach would be to characterize a person's activities more specifically in terms of how integral or essential they are to extraction or production at the mine.

Under the proposal, mine operators and supervisors would also be considered miners if they are engaged in extraction or production and would be covered by the same training requirements. This is in response to the statements by a number of commenters that there is no reason why supervisors should not be subject to the same training requirements as miners. Several commenters also recommended that training for supervisors be tailored to address their supervisory responsibilities. Although we agree that it would be appropriate for you to develop special training programs for your supervisory personnel, the proposal would not require it.

Commenters should be aware that we intend that the requirements of this rule apply to construction workers who work at mines covered by the rule. Section 115(d) of the Act directs the Secretary of Labor to develop "appropriate" training regulations for construction workers. We have determined that this statutory provision does not prohibit the application of this part 46 standard to construction workers until we promulgate a separate training rule for those workers. Therefore, construction workers whose activities at the mine site are integral to extraction or production would be considered "miners" under this rule and must receive appropriate comprehensive training. For example, construction workers building a new crusher in an active quarry would be considered "miners." All other construction workers at mine sites would be required to receive site-specific hazard training. We solicit comments on whether we should develop separate training standards specifically for construction workers

employed at mine sites, and if so, what type of training would be appropriate.

New miner. The proposal defines a new miner as a person who has been newly hired who does not satisfy the definition of "experienced miner." The definition of experienced miner is discussed in detail earlier in this section.

Normal working hours. Under proposed § 46.10, training would be conducted during "normal working hours," as required by the Act. "Normal working hours" is defined in this section as a period of time during which a miner is otherwise scheduled to work. This definition, adopted from part 48, also provides that the sixth or seventh working day may be used to conduct training, provided that the miner's work schedule has been established for a sufficient period of time to be accepted as a common practice. As discussed under § 46.10 of the preamble, we intend that the schedule must have been in place long enough to provide reasonable assurance that the schedule change was not motivated by the desire to train miners on what had traditionally been a non-work day.

We are interested in comments on whether these proposed provisions adequately address the issue of compensation and the scheduling of training.

Operator. The proposed definition is consistent with the definition of "operator" in section 3(d) of the Act, and would include both production-operators (defined in this section as owners, lessees, or other persons who operate or control a mine) and independent contractors who perform services at a mine. The term "operator" is used throughout the proposed rule to refer to the person or entities responsible for providing health and safety training under part 46. However, separate definitions are provided for "production-operator" and "independent contractor" in proposed § 46.2 to allow a distinction to be made in proposed § 46.12 between the two types of operators and to address production-operators' and independent contractors' responsibilities for training.

Production-operator. Production-operator is defined as any owner, lessee, or other person who operates, controls, or supervises a mine covered by this part. This would mean the person or entity that actually operates the mine as a whole, as opposed to an independent contractor who provides services. As noted earlier, both would be considered "operators" under the proposal.

Task. The proposal defines "task" as a component of a job that is performed on a regular basis and that requires job

knowledge. This definition is intended to identify the type of job duties that would be subject to the new task training requirements proposed under § 46.7. Under that section, a miner must be provided with training in a task for which he or she has no previous experience, or which has been modified.

We and *us* refer to the Mine Safety and Health Administration (MSHA). We have written the proposal in the more personal style advocated by the President's executive order on "plain language," which, among other things, encourages the use of personal pronouns.

You refers to production-operators and independent contractors, because they have primary responsibility for compliance with MSHA regulations.

Section 46.3 Training Plans

This section of the proposal requires you to develop and implement a training plan and also addresses our approval of training plans, how and where a copy of the training plan must be maintained, and who has access to the plan.

Section 115 of the Mine Act provides that mine operators shall have a health and safety training program that shall be "approved by the Secretary [of Labor]." A number of commenters and speakers at the public meetings supported flexible guidelines for plan content, emphasizing the wide variety in size and type of mining operations that will be covered by part 46 requirements. These speakers believed that the most effective training plans would be those that can be tailored to the particular operation, focusing, for example, on specific mine processes or hazards, or on the accident and injury experience at the mine. Other commenters stated that it had been their experience that the traditional approval process often did not enhance or ensure the quality of training plans. These commenters felt that resources saved by a less formal plan approval process could be directed elsewhere with greater benefits for miner safety and health.

A number of commenters who believed that traditional approval by us would not improve the development of your training plans advocated some form of "automatic" approval that would eliminate the need for submission of a plan to us, saving time and reducing paperwork for both you and us. These commenters suggested that the rule provide that if a plan meets or exceeds reasonable standards, it would be considered approved. Other commenters supporting this approach stated that emphasis should be placed on assisting you in developing effective

training plans, rather than concentrating on unnecessary paperwork. Some commenters stated that they had no problem with submitting plans to us for initial approval, but were concerned about a requirement for submission of plans to us for approval of small, essentially nonsubstantive changes to the plan, such as the identity of the instructors providing the training or the locations where training takes place.

The draft proposal submitted to us by the Coalition would provide that any training plan that complies with the minimum requirements of section 115 of the Mine Act would be considered "approved by the Secretary." Section 115 of the Act requires both that the plan be approved by us and that the plan comply with the minimum requirements in section 115. We have determined that in order for a plan to be considered approved by us, we must prescribe requirements in the proposal and the final rule beyond the minimum required in the Mine Act.

In response to these considerations, the proposal provides that a plan would be considered "approved by MSHA" if it includes the minimum information listed in paragraph (b). This is consistent with the approach recommended by several commenters. Under this approach, plans that include the information listed in this section would be considered "approved" and would not be required to be submitted to us for review. Inspectors and other MSHA personnel who review your plan at the mine site would simply determine—

- (1) That you, in fact, have developed a written training plan;
- (2) That the written plan contains the minimum information specified in paragraph (b) of proposed § 46.3; and
- (3) That the plan is being implemented consistent with the plan specifications.

We have also included in the proposal an alternate process for plan approval, for those cases where a plan you developed does not include the minimum required information, where you may prefer to obtain traditional approval, or where the miners or miners' representative requests such approval.

Paragraph (a) provides that you must develop and implement a written plan, approved by us under either paragraph (b) or (c), that contains effective programs for training new miners and newly-hired experienced miners, training miners for new tasks, annual refresher training, and hazard training. Although the language in section 115 of the Act does not explicitly state that a training plan must be in writing, we believe that it is inherently required by

the Act. We have included the term "effective programs" in the proposed rule to deal with instances where a training plan, as implemented, is inadequate or deficient. In such cases, we intend to determine how and why the training program falls short and assist you in revising your plan to address the deficiencies. We also intend that the plan be updated as needed, to reflect any changes in the mine's training program, such as changes in courses, teaching methods, instructors, methods of training evaluation, etc.

Paragraph (b) provides that a training plan is considered approved by us if it contains the minimum information listed in paragraphs (b)(1) through (b)(5). This information includes—

(1) The company name, mine name, and MSHA mine identification number;

(2) The name and position of the person responsible for training at the mine, which may be the operator;

(3) A general description of the teaching methods and course materials to be used in the training, including the subject areas that will be covered and the approximate time that will be spent on each subject area;

(4) The persons who will provide training, and the subjects in which each person is competent to instruct; and

(5) The evaluation procedures used to determine the effectiveness of the training.

Our intention is that the information required will be sufficient to allow us to make a preliminary determination of your compliance with training requirements, without imposing an unnecessary paperwork or recordkeeping burden. We are interested in comments on whether the proposed approach will facilitate the development of effective training plans.

The approach taken in the proposal for plan approval recognizes that, while our review of your written training plan could provide an initial check on the quality of the program, such review could not ensure that the program is successful in its implementation. Rather than expending our resources on the review and approval of training plans at all of the mines affected by this rule, we would instead direct those resources toward verification of the effectiveness of training plans in their execution, and in assisting you in developing and providing quality training to your employees. Similarly, you and training providers would be able to focus on the development and administration of training plans tailored specifically to your needs rather than on traditional procedures to gain our approval.

Under this approach, you would be free to make revisions to existing training plans without seeking our approval of those changes, so long as the

plan continues to include the minimum information required. For example, you could change the identity of instructors, the subjects addressed as part of the training, or the scheduling of training, and you would not be required to submit these changes to us. This would address the statements of many commenters that requiring our approval of subsequent nonsubstantive plan changes was unduly burdensome and unnecessary.

We specifically solicit comments on whether we should require information in addition to that listed in paragraphs (b)(1) through (b)(5) before we consider a plan approved. We are also interested in comments on whether we should require less information than what is proposed. Several commenters stated that the rule should require only that the training plan specify subject matter and the timing of the training, and that other information is unnecessary. We also solicit comments on allowing you to develop plans that are considered approved by us without traditional approval. We are particularly interested in whether commenters believe that a traditional plan approval process, similar to the process in part 48, is necessary to ensure that training plans meet minimum standards of quality, and why this may be true.

Paragraph (c) provides that a plan that does not include the minimum information listed in paragraphs (b)(1) through (b)(5) must be approved by the Educational Field Services Division Regional Manager, or designee, for the region in which the mine is located. The term "Regional Manager" refers to the Regional Manager in the Educational Field Services Division (EFS) of the Directorate of Educational Policy and Development (EPD). We will be moving the responsibility for the approval of new and modified training plans from District Managers in Coal and Metal and Nonmetal Mine Safety and Health to the EFS Regional Managers or their designees. The EFS Division is divided into an Eastern and a Western region.

Under this paragraph, you may also voluntarily submit a plan for Regional Manager approval. We anticipate that the majority of plans developed under this part would satisfy the requirements of paragraph (b) and consequently would not be required to be submitted to us for traditional approval. However, we also recognize that some of you may develop effective training plans that do not fit squarely within the requirements of paragraph (b), and you may therefore need to submit your plans to us for approval. We also anticipate that some of you may prefer to obtain our traditional approval, to ensure that there

is no question that your training plan satisfies minimum requirements. In response, the proposal does include a provision that would address these situations.

Paragraph (c) also allows miners and their representatives to request our traditional approval if they choose. We expect that in most cases miners and their representatives will bring any concerns they may have about the training plan to your attention, and resolve it in that manner. However, there may be a few instances where miners or their representatives believe that direct involvement by us may be needed to resolve issues or concerns, and the proposal would address those situations.

Paragraph (d) would require you to furnish the miners' representative, if any, with a copy of the training plan no later than two weeks before the plan is implemented or submitted to the Regional Manager. At mines where no miners' representative has been designated, a copy of the plan must either be posted at the mine or a copy provided to each miner at least two weeks before the plan is implemented or submitted to the Regional Manager for approval. This is intended to ensure that miners and their representatives are notified of the contents of your training plan before it goes into effect or is submitted to us for approval.

We recognize that at many mines, particularly small operations, there may be no mine office and no appropriate place for posting the plan. The proposal therefore would allow a copy of the plan to be provided to each miner in lieu of posting. We are assuming that this requirement would not place a large burden on you, because mines where posting would be difficult or impractical would typically have a very small number of miners. However, we are interested in whether this assumption is correct, and we are also specifically interested in comments on whether this paragraph provides a practical and workable approach to informing miners and their representatives of training plan content.

Although not explicitly stated in the proposal itself, we intend that you must provide miners or their representatives with copies of the training plan, and with the opportunity to submit comments or request approval by us, whenever major revisions are made to the plan. By "major revisions" we mean significant changes in course content or training methods, not minor alterations such as the identity of instructors or the duration of courses in certain subject areas. We request comment on whether the final rule should specifically require

notification of miners of plan revisions, and what type of revisions should require notification.

Under paragraph (e), miners and their representatives have two weeks after the posting or receipt of the training plan to submit comments on the plan to you, or to the Regional Manager if the plan is before the Manager for approval. This is intended to provide miners and their representatives with a means to provide input on the training plan, either to you, if traditional approval is not being sought, or to the Regional Manager who is reviewing and approving the plan.

Under paragraph (f), the Regional Manager must notify you and miners, or their representative in writing of the approval, or the status of the approval, of the training plan within 30 days after the date on which the training plan was submitted to us for approval.

We are interested in comments on this process, specifically on whether the proposal provides sufficient flexibility to you in developing your plans, while at the same time ensuring that miners and their representatives have been allowed meaningful participation in the process.

We considered adopting the traditional approval procedures already contained in part 48. We have instead proposed a more streamlined version of existing part 48 approval procedures. This approach reflects our expectation that the parties will be able to reach a satisfactory resolution of any concerns about the plan without the need for specific procedures. As indicated earlier, we anticipate that most of you will not seek our formal approval of your training plans, and that in most cases concerns of miners or their representatives will be resolved informally. In those limited cases where we become directly involved in plan approval, we intend for the Regional Manager to provide reasonable notice to you and miners or their representatives of the status of plan approval or perceived deficiencies in the plan and also to provide parties with a reasonable opportunity to express their views or offer solutions to the problem, without the need for detailed procedures.

Nonetheless, we solicit comments on whether a detailed plan approval process, such as in § 48.23, should be adopted in the final rule, to apply to those cases where traditional plan approval is sought.

Paragraph (g) provides you, miners, and miners' representatives the right to appeal a Regional Manager's decision on a training plan to the Director for Educational Policy and Development. Consistent with the shifting of plan approval responsibility from Metal and

Nonmetal Mine Safety and Health to EFS, a Regional Manager's decision on a plan will be reviewed on appeal by the Director for EPD.

Under this paragraph, an appeal must be submitted in writing within 30 days after notification of the Regional Manager's decision on the training plan. The Director for EPD will issue a decision on the appeal within 30 days after receipt of the appeal. We anticipate that this provision will be rarely used and expect that when a disagreement arises between us, you, and miners and their representatives about plan design or content, it can be resolved without the need for intervention of the Director for EPD. However, in those rare cases where the parties are unable to come to terms on the content of a particular training plan, the proposed rule would provide parties the option of seeking review from the Director for EPD. As indicated, parties have 30 days in which to file a written appeal of the Regional Manager's decision on a plan, and the Director for EPD has 30 days from the date of appeal to reach a decision.

Paragraph (h) would require you to make available at the mine site a copy of the current training plan for inspection by us and for examination by miners and their representatives. If the training plan is not maintained at the mine site, you must have the capability to provide the plan upon request to us, the miners, or their representatives. Under this paragraph, you would have the flexibility to maintain your training plan at a location other than the mine site, provided that you are able to produce a copy of the plan upon request to our inspectors or miners and their representatives. A number of speakers at the public meetings indicated that there was no need for plans or other training records to be kept at the mine site, given that modern communications technology, such as electronic mail and fax machines, allow virtually instantaneous transmission of documents from one location to another. The proposal does not specify a time within which a copy of the plan must be produced after a request is made by us or miners; the expectation is that if you choose to maintain the plan away from the mine site, you should have the capability of producing the plan within a reasonable period of time. If you do not have such capability, you must maintain the plan at the mine site. We have taken this approach in the proposal for several reasons. It has been our experience that we may complete an inspection at a surface mine in less than one day. Although we wish to give you flexibility in recordkeeping, we do not want this to result in an inspector

having to delay his or her departure from a mine site waiting for you to obtain a copy of the training plan. Similarly, inspectors should not be put in the position of having to return to a mine site the next day simply to inspect a copy of the training plan that was unavailable during the course of the inspection the day before. Additionally, miners and their representatives should not be required to wait to inspect the training plan in effect at the mine. We are interested in comments on whether this is the most practical approach. One possible alternative would be to require the plan to be produced within a reasonable period of time after the request is made, but in no case longer than one business day.

A number of commenters focused on the type of assistance that we should provide to facilitate compliance with the final rule after it is published. Assistance, particularly for small operators, in developing training plans appropriate for their operations, was the subject of much comment. Several commenters suggested that we or other organizations implement a "cafeteria-type" approach for plan development, where you could choose among various training plan components to tailor a plan to your particular operation. For example, the plan options from which you might choose would include training components on subjects or curriculum that are suitable for a small sand and gravel operation, or for a typical limestone mine, or a shell dredging operation.

We appreciate the commenters who are already giving thought to the types of resources that would provide the greatest benefit to the mining community in complying with the final training rule. We acknowledge that compliance assistance for the mining community will be a key element in the successful implementation of the final rule. We intend to provide extensive compliance assistance to you, not only through our staff in Metal and Nonmetal Mine Safety and Health, but also through our newly formed Educational Field Services Division; we also expect state grantees to play a significant role in assisting you in developing effective training plans and, at the same time, in satisfying the requirements of the final rule.

To this end, we solicit comments on whether we should include examples of model training plans, appropriate for different types and sizes of mining operations, in a nonmandatory appendix to the final rule. We are also considering including such model plans in a compliance guide that we will be developing for the mining community

after publication of the final rule. We anticipate that other organizations, including state grantees and large operators, also may develop generic training plans and make them available to small operators to assist in training plan development. We are interested in commenters' suggestions for other types of compliance assistance that would be useful to the mining community.

Section 46.4 Training Program Instruction

This section of the proposal—(1) would require you to ensure that training given under this part is consistent with the written training plan required under § 46.3; (2) would require training to be presented by a competent person; and (3) would allow you to arrange for training to be provided by outside instructors. This section also responds to comments, including the draft of the Coalition, that the rule should allow the use of innovative training methods and should accept equivalent training, provided to satisfy the requirements of the Occupational Safety and Health Administration (OSHA) or other federal or state agencies, to satisfy part 46 requirements. Finally, this section would permit short safety and health talks and other informal instruction to satisfy training requirements under this part, in response to a number of comments.

Paragraph (a)(1) would clarify that training under part 46 must be conducted in accordance with your written training plan. This is intended to ensure that the training given under this part is consistent with the approach outlined in your plan, and is part of an organized scheme for comprehensive miner training.

Paragraph (a)(2) provides that the training must be presented by a competent person. "Competent person" is defined in proposed § 46.2 as a person designated by you who has the ability, training, knowledge, or experience to provide training to miners on a particular subject. Under this definition, the competent person must also be able to evaluate the effectiveness of the training.

We asked for specific comments during the public meetings on whether the rule should establish minimum qualifications for persons who conduct miner training, and if so, what those qualifications should be. Many commenters offered their views on this issue.

A number of commenters stated that the rule should impose no minimum qualifications for trainers. Some indicated that many supervisors and other employees at mining operations

possess the experience and skills necessary to train others effectively, and that you should have broad latitude to use on-site trainers for some, or all, of your training needs. Other commenters believed that it is impossible to regulate the quality of instruction with minimum criteria such as academic training, mining experience, years of training experience, etc., and that an instructor certification program would not guarantee the quality of instruction. One commenter was concerned that restricting all training to a limited pool of certified instructors would deprive you of the flexibility needed to develop training plans responsive to the unique circumstances of each mining operation. Another commenter stated that if training instructors are required to be certified and to complete some type of formal training, you could have great difficulty in finding people who can actually deliver training in the necessary subject areas.

On the other hand, several commenters recommended that the approach taken in part 48, which requires our approval of instructors, be used as a guideline for addressing instructor qualifications under part 46. Under part 48, instructors may be approved in several ways. For example, instructors may take an instructor training course and complete a program of instruction approved by us in the subject to be taught; instructors may also obtain approval to provide training based on written evidence of their qualifications and teaching experience.

In contrast, several commenters stated that the instructor approval process under part 48 has had inconsistent results, at best. Another commenter suggested that instructors should be certified by a recognized professional organization in health and safety. Still others recommended that if we do not require instructors to be approved, the rule should require prospective trainers to go through a training course so that they will know how to present training materials correctly and effectively. Several commenters believed that instructors should also be able to evaluate the effectiveness of the training they are giving.

The proposal adopts the recommendations of many commenters that the rule not require a formal program for the approval or certification of instructors, or establish rigid minimum qualifications for instructors. We are persuaded at this stage that a formal instructor approval program would provide no real guarantee that training will be effective, and that the benefits realized from a formal program would not justify the additional

administrative burden. We are also persuaded by commenters who stated that there are many experienced and knowledgeable people currently working in the industry who can provide effective training in a wide variety of subject areas.

Contrary to the recommendations of several commenters, we have not included a proposed requirement that trainers receive instruction in how to provide training before they serve as instructors. Instead, we would expect you to assess how well a person can communicate in determining whether he or she is capable of providing training for your miners. A person with extensive knowledge in a particular subject area may not be a good choice as an instructor if he or she is unable to convey the information to miners clearly and effectively.

The proposal would require that training be conducted by a "competent person" designated by you. The proposal would not establish minimum academic or professional qualifications for these persons. Instead, these persons would be required to have sufficient ability, knowledge, training, or experience to enable them to provide training to miners. They must also be able to evaluate in some fashion whether the training has been effective. The proposal does not specify how such an evaluation must be conducted, and we anticipate that the method of evaluation will depend to a large extent on the type of training being given. For example, a written test might be appropriate in a traditional classroom setting, while a miner receiving new task training may be asked to demonstrate to the trainer that he or she can perform the task safely. The proposed rule would allow a significant amount of discretion in this determination. In addition, we will be available to provide assistance to you in determining the appropriate training for your operation.

We are interested in comments on the approach taken in the proposal for training instructors, particularly on our preliminary decision on the merits of a formal instructor approval or certification program. For example, one commenter recommended that we should focus our attention on the evaluation of instructors who have not taken a course on presentation skills, also known as "train-the-trainer" courses. We are also interested in commenters' views on whether the final rule should require some minimum amount of formal training for instructors, designed to ensure that the instructor has the communication skills needed to provide effective training.

Paragraph (b) provides that you may conduct your own training or may arrange for training to be conducted by federal or state agencies; associations of operators; miners' representatives; other operators; contractors, consultants, or manufacturers' representatives; private associations; educational institutions; or other competent training providers. This provision is similar to language in § 48.24 and in the Coalition draft proposal and would make clear that you may choose from a variety of training providers in satisfying your training responsibilities under part 46. We recognize that a wide variety of effective miner training is available from many types of organizations across the country. Under the proposal, you would be free to arrange with outside training providers in satisfying your training obligations. We expect that many small operators and independent contractors, who may not have the resources for a formal in-house training program, will elect to arrange with outside organizations to provide some part of their training.

Paragraph (c) would allow the acceptance of training required by OSHA or other federal and state agencies to satisfy the training requirements under part 46. Under the proposal, this training must be equivalent to what would be provided under part 46—that is, it must be safety and health training that is relevant to the mining environment.

Acceptance of OSHA training was raised by a number of speakers at the public meetings. Several speakers indicated that many operations regulated by us, such as sand and gravel or crushed stone sites, are also associated with an OSHA-regulated facility, such as a construction site. Employees may be shared across several operations under the same management. One speaker pointed out that in many cases the equipment at these operations is interchangeable, the tasks are interchangeable, and the workers are interchangeable. These employees may perform the same duties at both sites and have been trained to work around the same types of hazards. These speakers strongly urged us to accept the safety and health training provided to comply with OSHA regulations to satisfy training requirements under part 46. Several commenters also recommended that we accept training that is provided to satisfy the requirements of other regulatory agencies, and this recommendation is reflected in the proposal. It should be noted that this training would need to be documented under § 46.9 to be accepted, not only to establish the

duration of the training but also the equivalency of the training. We are persuaded at this point that acceptance of this training is appropriate. However, we are interested in comments that both support or take issue with this determination. We are also interested in receiving comments on which federal and state agency training requirements may be used to satisfy the requirements of part 46.

Paragraphs (d) and (e) are intended to provide you with flexibility in satisfying your training obligations. Under paragraph (d), training under part 46 could consist of classroom instruction, instruction at the mine site, other innovative training methods (such as computer-based training), alternative training technologies, or any combination thereof. The recognizes that a combination of different training methods can be extremely effective, and makes clear that we encourage you to be creative in complying with your training responsibilities.

Several commenters recommended that the rule allow for training at the mine site, particularly initial training for new miners. Another commenter believed that training under the rule should not be limited to traditional classroom instruction, but that a mix of different approaches should be permitted. A number of commenters strongly recommended that the rule be sufficiently flexible to accommodate future technology and training advances. The proposal is responsive to these recommendations.

We intend that the proposed rule allow new training technologies developed in the future to be used to comply with part 46. We anticipate that many of you will use a combination of different approaches to provide training, including innovative technologies. On the other hand, the classroom may serve as the most appropriate forum for training on particular subjects.

Paragraph (e) would allow employee safety meetings, including informal safety and health talks and instruction, to be credited toward either new miner training, newly-hired experienced miner training, or annual refresher training requirements, provided that you document the training consistent with proposed § 46.9. We requested comment in the notice of meeting published in the **Federal Register** on whether informal instruction lasting less than 30 minutes should be allowed to satisfy training requirements under the rule. Part 48 currently requires a training session to last at least 30 minutes, and several commenters urged the inclusion in part 46 of this 30-minute restriction. One commenter believed that a 15-

minute minimum was appropriate. Other commenters stated that some of the best training occurs in sessions of less than 15 minutes, and that the rule should not impose an arbitrary restriction on the length of training sessions. A number of commenters indicated that short training sessions provided throughout the year can be very effective.

We are persuaded by those commenters who advocate flexibility in the length of training sessions, and this determination is reflected in the proposal. However, we are interested in any rationale or evidence from commenters that would support imposing a minimum duration on training sessions.

Section 46.5 New Miner Training

This section includes minimum requirements for training new miners when they begin work at a mine. This section lists subject areas that training must cover, addresses which of those subjects must be taught before new miners begin their work duties at the mine, and specifies the minimum number of hours of instruction required by the Act for new miner training.

Section 115(a)(2) of the Mine Act requires mine operators to provide at least 24 hours of training to inexperienced surface miners. This training must include instruction on specific topics.

The **Federal Register** notice announcing the public meetings solicited comment on several issues related to new miner training. Specifically, comments were requested on—

- (1) The subjects that should be taught before a new miner begins assigned duties;
- (2) Whether training should be given all at once or over time, or whether you should make this determination; and
- (3) The advantages and disadvantages of spreading training over an extended period.

While section 115 does not expressly require new miners to be trained before they begin work, part 48 currently requires that the full 24 hours of new miner training be given before miners are assigned work at the mine, unless specifically permitted to do otherwise by the District Manager. Even with District Manager approval, however, operators under part 48 must provide a minimum of eight hours of training to new miners before work duties begin.

Many speakers at the public meetings and many of those providing written comments addressed how much of the 24 hours of new miner training should be given before a miner is allowed to begin work. One commenter stated that all of the subjects listed in section 115

of the Mine Act should be taught before a new miner is assigned work, even if the work is done under close supervision. However, the majority of commenters indicated that they believe it would be appropriate to require at least eight hours of training before the miner begins work, which is also the minimum number of hours specified under the Coalition's proposal. Several commenters advocated a six-to eight-hour training minimum before a miner begins work, and one commenter took the approach that initial training could include two hours of instruction on hazard recognition, personal protective equipment, and the company's safety policy, followed by six hours of work closely supervised by an experienced miner. However, a number of commenters, including those who indicated approval of a minimum initial training requirement, also said that setting a minimum number of hours for training may be excessive for many mines. According to many commenters, effective initial training could be completed in less than a mandated minimum depending on the size of and conditions at the mine, tasks to be performed, and experience of the miner. The commenters claimed that the key issue is the quality and relevance of training and not the number of hours spent providing initial training for a new miner.

In response to commenters and the Coalition's proposal, we considered adopting an eight-hour minimum initial training requirement in the proposal and also gave serious consideration to several other approaches. These alternatives included a requirement that all 24 hours of training be completed prior to the miner commencing job duties, or that a minimum period of initial training be completed, such as two or four hours, before the miner begins work. We also considered a two-hour minimum period of initial training, which could be reduced, with our approval, based on the size of the operation, complexity of the mine site, and experience of the new hire. We also considered a requirement that you provide instruction to the miner on specific topics before beginning work, in lieu of a minimum time requirement for initial training.

We have made a preliminary determination that requiring a minimum number of hours to be spent on training before a miner begins work may be unduly burdensome and unnecessary for many mines, particularly small mines with few employees and limited equipment. Commenters indicated that at many small operations, a thorough workplace orientation on the mine and

its hazards would not even require two hours. These commenters recommended flexibility be given to you in determining the amount of initial training that should be provided. We believe you are in the best position to determine the amount of training that is needed for new miners, depending on your particular operation.

We have determined that it is appropriate to require that new miners be given instruction on certain subject areas prior to beginning work, rather than to establish a minimum number of hours that must be devoted to this training. The proposal would require training on four specific topics for each new miner before he or she begins work at the mine, with the balance of the 24 hours of training to be provided within 60 days. By not requiring a minimum number of hours of initial training for new miners, the proposal would provide flexibility to you to tailor your training plans to focus on the unique needs of your operations and workforce and to provide the most effective and relevant training for the new miners at your mines. At the same time, by requiring that specific subject areas be covered before new miners begin work, the miners would receive training on relevant topics to ensure that they are familiar with the operations and environment at the mine, their job duties, and the hazards they may encounter at the mine site.

We are interested in whether commenters agree with this approach, or whether the final rule should establish a minimum number of hours of training that new miners must receive before beginning work. One possible approach would be to specify a minimum number of hours of initial training that must be provided to miners based on mine size or complexity of operation. For example, a large operation may be required to provide eight hours of training, while a very small operation would be required to provide one hour of training. We are interested in comments on this alternative, particularly on the criteria that might be used in determining how much initial new miner training must be given, such as employment, type of operation, type and amount of equipment, etc. Commenters who believe that a minimum number of hours of training should be required should also specify what the minimum number of hours should be.

Many speakers and commenters addressed how long the rule should allow the balance of the 24-hour new miner training to be given. The draft Coalition proposal would require that new miner training be completed within

60 working days of the miner reporting to work at the mine site. Most commenters favored a 60-day deadline for completion of new miner training, but did not indicate whether the deadline should be 60 working days or 60 calendar days. One commenter expressed a preference for spreading out the remaining training over a 90-day period.

Some commenters pointed out that new miners can be overwhelmed with too much information when they first come to work at a mine. These commenters were opposed to providing training all at once. A few commenters maintained that providing new miner training over an extended period of time, with practical work experience between training periods, improves and encourages miners' retention of important training material.

Citing the rapid turnover of workers in the industry, other commenters who favored training over an extended period of time were concerned that operators would not recoup the substantial up-front investment incurred for training if it were required to be given all at once. This was offered as one reason to allow training to be given over a longer period, up to 90 days or even six months; additionally, some commenters maintained that it would be less burdensome in the long run since they would not have to provide the balance of training to miners whose employment at the mine lasted less than three months. Another commenter believed that a six-month period would also be less disruptive to the mining process since it would give you more flexibility to schedule training during periods when operations would be slowed or idle.

In contrast, there were a few commenters who pointed out several disadvantages of spreading new miner training over a period of time. The drawbacks mentioned were that the new miner may not receive a timely general overview of all potential safety and health hazards, which could result in a greater risk of injury. These commenters also stated that training over a longer period of time could increase recordkeeping and paperwork burdens and create scheduling problems.

After considering the comments received, we believe that there are advantages to training new miners over an extended period of time, including better retention of information by miners, and flexibility in providing the training. We are sensitive to the economic hardships that many smaller operators may experience due to their inability to hire or spare employees for training purposes. In addition, training

may be more meaningful after a worker accrues some work experience at the mine.

On the other hand, inexperienced or untrained miners should not be permitted to work for long periods without being fully trained. Therefore, we are proposing in paragraph (d) that you must provide the balance of the 24 hours of new miner training within 60 days after the new miner begins work at the mine. Under the proposal, the 60 days would be calendar days, not working days as recommended by the Coalition. We believe that a deadline measured in working days would be impractical, particularly given the intermittent and seasonal work schedules of many operations. It would not only present an administrative burden to you, both for paperwork and for class scheduling, but would also make enforcement extremely difficult. However, we solicit comment on the 60-day deadline for the completion of new miner training and are interested in suggestions for alternate approaches.

Section 115(a)(2) of the Act requires new miner instruction on the following topics:

* * * statutory rights of miners and their representatives under the Act, use of the self-rescue and respiratory devices where appropriate, hazard recognition, emergency procedures, electrical hazards, first aid, walk around training, and the health and safety aspects of the task to which the miner will be assigned.

A number of commenters and speakers at the public meetings addressed the subjects that should be taught to new miners, without indicating whether the courses should be taught before or after a new miner begins work. The comments varied greatly. One commenter advocated the elimination of required training subjects altogether and urged the use of task training in lieu of new miner training. Several commenters approved of providing training on the eight general subject areas listed in section 115(a)(2) of the Act but did not endorse describing the specific contents of courses to be taught, as is presently done in part 48. Other commenters favored new miner training subjects as they are presented in part 48, but believed that first aid training, in particular, needs to be addressed in a different forum, citing the significant amount of instruction needed to adequately cover the topic. One commenter questioned the appropriateness of including training on self-rescue devices for surface miners.

Several commenters recommended that the final rule list as required topics the more general subjects found in

section 115, rather than the more detailed approach taken in existing part 48. They maintained that a longer list of subjects with detailed course content would limit your ability to provide meaningful training at the varied operations at mines affected by the rider. Others suggested that criteria or guidelines be provided to you to assist you in selecting new miner training topics and in determining the time that should be devoted to specific subjects. Suggested criteria included the size of the mine, the history of accidents, injuries, and fatalities at the mine, national trends in accidents and fatalities, and the experience and knowledge of individual miners.

A number of commenters addressed the subjects that should be taught before a new miner begins assigned work duties. The majority of commenters and speakers agreed that some general orientation as well as site- and task-specific training must take place before a miner begins work at the mine. At the same time, many commenters maintained that you need flexibility to tailor the training to the specific safety and health needs of your miners and the unique conditions at your mines. The Coalition's draft proposal would require eight hours of instruction in the following subjects before a new miner could begin work: walkaround training; hazard recognition; and the health and safety aspects of tasks to which the new miner will be assigned. Commenters most frequently mentioned the courses listed above. In addition, some commenters recommended that training on escapeway and emergency procedures be included in pre-work training.

In response to these comments, proposed paragraph (b) would require that you train new miners in four areas before they begin work—

(1) An introduction to the work environment, including a visit and tour of the mine, or portions of the mine that are representative of the entire mine. The method of mining or operation utilized must be observed and explained;

(2) Instruction on the recognition and avoidance of hazards, including electrical hazards, at the mine;

(3) A review of the escape and emergency evacuation procedures in effect at the mine and instruction on the firewarning signals and firefighting procedures; and

(4) Instruction on the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, and the mandatory health and safety standards pertinent to such tasks.

Instruction of new miners in these four areas is intended to ensure that miners are sufficiently familiar with the hazards at the mine, that they can avoid

exposing themselves and others to unnecessary risks and can perform their job assignments safely, and that they are able to respond to mine emergencies. We are requesting comment on whether the subject areas required are appropriate, especially in light of the fact that the proposal does not establish a minimum number of hours for pre-work training.

Paragraph (c) of the proposal would allow new miners to practice under the close supervision of a competent person to satisfy the requirement for training on the health and safety aspects of an assigned task. This provision is consistent with our current policy under part 48, and is also included in the Coalition's draft proposal. Our existing policy under part 48 allows a miner to perform an actual task assignment at the mine site as long as there is continuous supervision by an approved instructor, and training, not production, is the primary goal. "Close supervision" would mean that the competent person is in the immediate vicinity of the miner and is focusing his or her complete attention on the actions of the miner being trained. A miner would not be considered under "close supervision" if the competent person is occupied with any other task or is not in close proximity to the miner. Although the proposal would not require training instructors to be approved by us, we believe that practice of a task by a new miner under the close, individualized, supervision of a "competent person," as that term is defined in proposed § 46.2, can be an effective training method and can be accomplished safely. We gave consideration to allowing practice to be supervised by an experienced miner rather than a competent person, but have determined that the person supervising new miners and instructing them on the health and safety aspects of their jobs must be qualified in the particular subject matter, possessing the skills to teach that subject and to evaluate whether the recipient of the instruction has understood it. We solicit comments on whether it is reasonable to allow a new miner to practice a task under the supervision of a "competent person" to satisfy this pre-work training requirement.

Similarly, under paragraph (a), until the full 24 hours of new miner training is received, a new miner must work under the close supervision of an experienced miner. This is modeled after a similar provision in § 48.25(a), and is intended to ensure that the health and safety of a new untrained miner are protected until new miner training is completed. We are interested in comments on whether this provision is

realistic, workable, and in the best interests of the miner.

Proposed paragraph (d) lists the remaining subject areas that must be covered in new miner training within 60 days after the miner begins work, and is derived from section 115 of the Mine Act and recommendations from commenters and the Coalition's draft proposal. These subjects include—

- (1) Instruction on the statutory rights of miners and their representatives under the Act;
- (2) A review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives;
- (3) An introduction to the mine's rules and procedures for reporting hazards;
- (4) Instruction and demonstration on the use, care, and maintenance of self-rescue and respiratory devices, if used at the mine; and
- (5) A review of first aid methods.

The proposed rule provides some specification of the content of the training on each subject area, beyond what is included in the Mine Act. This detail is provided in the proposal to assist you and miners in developing training plans. We are interested in comments on whether the courses being proposed are sufficient, whether including specification of the content of subject areas is helpful, or whether it decreases your flexibility in developing training materials that best meet your needs.

We would note that the requirement for first-aid instruction under paragraph (d) would not require you to hire an approved first-aid instructor or obtain first-aid teaching equipment to train new miners. We understand that some miners and designated supervisors will receive first-aid training under the requirements of 30 CFR parts 56, 57, 75, and 77, and that an in-depth first-aid course for new miners may be impracticable in many cases. However, first-aid instruction should include a review of basic first-aid measures, such as contacting emergency medical personnel, application of bandages, or the circumstances where injured persons should not be moved.

A few commenters were concerned that miners who had completed new miner training but did not have sufficient work experience for status as an experienced miner would be required to repeat new miner training. To minimize the likelihood that miners would have to repeat new miner training unnecessarily, proposed paragraphs (e) and (f) would make certain allowances for new miners who have not attained experienced miner status for training purposes but who have completed new miner training

under part 46 or part 48. Under paragraph (e), miners who have completed new miner training within the previous 36 months but who do not have the 12 months of experience for experienced miner status would not have to repeat new miner training if they begin work at a new mine. This is similar to a recently revised provision in § 48.25(d). We have determined that it would be illogical and unnecessary to require these miners to repeat 24 hours of new miner training each time they begin work at a new mine covered by part 46, until they have accrued the requisite 12 months of experience. However, miners would be required to receive pre-work training under paragraph (b) on the same four subjects that are required for both new miners and newly-hired experienced miners, to ensure that they are familiar with the mine's operations and practices before starting work.

We also recognize that, although a miner may not have completed new miner training under part 46 or § 48.25, he or she may have completed training in particular subject areas as an underground miner under § 48.5, or as a surface miner under § 48.25. In some cases, the subject areas covered may be relevant to courses required for new miners under part 46. Paragraph (f) would allow this training to be credited toward new miner training. For instance, a miner may have received new miner instruction at an underground mine on the statutory rights of miners and their representatives; the use, care, and maintenance of self-rescuers or respiratory devices; or on first aid methods. In those cases, under proposed paragraph (f), it would be acceptable to give credit for relevant training courses already taken by the miner, provided that the courses were completed within the previous 36-month period.

Although the proposal would allow credit for training in any subject area, we request comment on whether credit for training given at other mines should be limited to training in subject areas listed under proposed paragraph (d), and not be given for subject areas listed under paragraph (b), which have a very mine-specific orientation. For example, it may be inadvisable to allow credit for hazard recognition training or a review of the escape and emergency procedures given at another mine, because this training may have very limited value or application at the mine. On the other hand, a miner returning to the same mine could be given credit for all training completed at that mine within the previous 36-month period.

We encourage commenters to address whether the final rule should allow such crediting and how it should be handled. Our intention in paragraphs (e) and (f) of § 46.5 is to—

- (1) Be practical;
- (2) Reduce the compliance burden and expense of redundant training for you; and
- (3) Still ensure that miners receive effective training.

Section 46.6 Newly-Hired Experienced Miner Training

This section of the proposed rule would address training requirements for newly-hired "experienced miners," as that term is defined in § 46.2. This section lists the subject areas that must be addressed in training newly-hired experienced miners, before they begin work at the mine, and requires that the miners receive annual refresher training within a 90-day period after they begin work. This section also includes separate training requirements for experienced miners who are returning to the same mine after an absence of 12 months or less, and for experienced miners who are employees of independent contractors and who are on mine property for short durations.

Section 115 of the Mine Act does not expressly direct the Secretary to promulgate training requirements for newly-hired experienced miners. However, experienced miners should be thoroughly familiar with the particular environment and hazards present at their mine before they start work. The regulations in part 48 provide separate training requirements for newly-hired experienced miners.

The draft proposal of the Coalition would require newly-hired experienced miners to receive only site-specific hazard recognition training before being assigned work duties, and annual refresher training within 90 days of employment. The Coalition draft provides that if a miner had received refresher training "commensurate with the hazards of the new job from a previous employer within the last year," the miner would be required to receive hazard recognition training.

Only a few commenters addressed newly-hired experienced miner training. One commenter stated that experienced miners need the same level of training as new miners so that poor safety habits can be corrected. One commenter maintained that before work begins, a newly-hired experienced miner should receive a safety orientation that addresses both task- and site-specific subjects. Another commenter maintained that appropriate task training should be provided before the newly-hired experienced miner begins

work, and supported the requirement that refresher training be given to newly-hired experienced miners within 30 days of employment if they are not current with their refresher training. Several commenters addressed situations where an experienced miner returns to mining after an absence. One commenter stated that such a miner must be made aware of improvements in the trade since the miner's absence. Another commenter, referring to training requirements for newly-hired experienced miners in part 48 and to an earlier draft proposal from the Coalition, questioned the appropriateness of requiring only eight hours of training for a person returning to mining work after an absence of five years or more.

Paragraph (a) would require you to train newly-hired experienced miners in four subject areas before they begin work. These required subjects would include—

(1) An introduction to the work environment, including a visit and tour of the mine, or portions of the mine that are representative of the entire mine. The method of mining or operation utilized must be observed and explained;

(2) The recognition and avoidance of hazards, including electrical hazards, at the mine;

(3) The escape and emergency evacuation plans in effect at the mine and instruction on the firewarning signals and firefighting procedures; and

(4) The health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, and the mandatory health and safety standards pertinent to such tasks.

The requirements of proposed paragraph (a) are identical to the requirements proposed in § 46.5(b) for training for new miners before they begin work and would include both task- and site-specific instruction. For the same reasons discussed in the preamble for § 46.5, the proposal specifies subjects and course materials that are intended to ensure that a newly-hired miner is familiar with the mine environment, operations, equipment, potential hazards, and emergency procedures. These requirements are also intended to ensure that newly-hired miners have sufficient instruction to perform work assignments safely. We are interested in whether the subject areas that would be required to be addressed for newly-hired experienced miners before they begin work are appropriate or whether different subject areas would be more relevant for experienced miners. Commenters should note that proposed § 46.6 would not specifically provide, as do the requirements for new miner training, that a newly-hired experienced miner

could perform actual task assignments as "practice" to fulfill the requirement for training on the health and safety aspects of an assigned task. However, we are interested in whether this issue should be addressed in the final rule.

Paragraph (b) directs you to provide annual refresher training to newly-hired experienced miners within 90 days after their employment. The proposal specifies that, at a minimum, the refresher training must include—

(1) Instruction on the statutory rights of miners and their representatives under the Act;

(2) A review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives;

(3) An introduction to your rules and procedures for reporting hazards; and

(4) Instruction and demonstration on the use, care, and maintenance of self-rescue and respiratory devices, if used at the mine.

The requirements of this paragraph are identical to those proposed for new miners under § 46.5(d), except that a review of first aid methods would not be required for experienced miners. The proposal would not require first aid instruction for newly-hired experienced miners because it would be covered in new miner training and may be reviewed during annual refresher training. This would not prevent you from including first aid training for newly-hired experienced miners if you choose. Again, we request comments on the suitability of the listed subjects and whether the detailed description of the subject areas would limit your flexibility in tailoring course materials to meet the needs of newly-hired experienced miners. We are also interested in whether the 90-day deadline to provide annual refresher training on the required subjects is reasonable. We request that commenters explain the reasoning behind their recommendations.

The proposal would not require a minimum number of hours for newly-hired experienced miner training, in recognition of the wide range of experience and skill among experienced miners. The approach taken in the proposal is intended to allow you to determine the amount of training that is appropriate for each newly-hired experienced miner, based on your assessment of the miner's needs. The proposal would require all newly-hired experienced miners to receive at least some training in all of the required subject areas. However, a miner transferring from one mine to another where the operations and equipment in use are very similar may not need as

much training in some areas as another experienced miner whose previous experience has been less relevant. We are interested in whether commenters advocate setting a minimum number of hours for newly-hired experienced miner training, or support training of a specified duration based on discrete criteria such as mine size, mining methods, type of operations or equipment, etc.

Paragraph (c) of proposed § 46.6 would address training for a newly-hired experienced miner returning to the same mine after an absence of 12 months or less. This provision has been adopted from recently revised provisions in § 48.26. Under this paragraph, you would not be required to provide such a miner with the training required by paragraphs (a) and (b); instead, you would simply be required to inform the miner, before the miner begins work, of changes at the mine that occurred during the miner's absence that could endanger his or her safety or health. You would also be required to provide the miner with any annual refresher training that the miner may have missed during his or her absence, within 90 days after the miner starts work.

Under paragraph (d), employees of independent contractors who are "miners" under the proposed definition and who work at the mine on a short-term basis would be required to receive either newly-hired experienced miner training under paragraphs (a) or (b) or site-specific hazard training under § 46.11. This is based on a similar provision in the definition of "miner" in existing § 48.22(a)(1). The language of the proposed rule itself reflects our assumption that this provision would be applicable primarily to drillers and blasters who, because of the nature of their work, are at a mine for a short period of time before moving on to another job at another mine. We do not believe that it makes practical sense to require miners who regularly move from one mine to another to be treated the same as newly-hired miners who remain at one mine site. Therefore, the proposal would not require them to receive newly-hired experienced miner training whenever they begin work at a new mine. However, we are interested in comments on whether these are appropriate exceptions from the newly-hired experienced miner training requirements.

Section 46.7 New Task Training

Section 115(a)(4) of the Mine Act provides that:

* * * any miner who is reassigned to a new task in which he has had no previous

work experience shall receive training in accordance with a training plan approved by the Secretary * * * in the safety and health aspects specific to that task prior to performing that task.

This section of the proposed rule would implement this statutory provision by requiring you to provide miners with training for new tasks and for regularly assigned tasks that have changed, before the miners perform the tasks.

Commenters strongly supported a requirement for task training, stating that employees need to be aware of the hazards and the risks associated with the jobs or tasks that they are asked to perform and be familiar with the systems, tools, equipment, and procedures required to control these hazards. The proposed task training requirements are intended to reduce the likelihood of accidents resulting from lack of knowledge about the elements and the hazards of the task. This training should ensure that miners receive necessary information before performing the tasks that they are assigned, so that they can avoid endangering themselves or other miners at the mine site.

Some commenters recommended that new task training requirements be patterned after the requirements for task training in part 48. Under part 48, for example, a program for new task training must include instruction, in an on-the-job environment, in the health and safety aspects and safe operating procedures of the task; supervised practice during nonproduction times is also required.

Paragraph (a) of proposed § 46.7 provides that, before a miner performs a task for which he or she has no previous experience, you must train the miner in the safety and health aspects and safe work procedures specific to that task. Additionally, if changes have occurred in a miner's regularly assigned task, you must provide the miner with training that addresses the changes.

Unlike part 48, the proposal does not include detailed requirements for task training. This is intended to allow you to design task training programs that are suitable for your workforce and your operation. We expect that effective new task training will include, at a minimum, instruction in the elements of the task, including hands-on training, and an explanation of the potential health or safety hazards associated with the task and ways of minimizing or avoiding exposure to these hazards. However, we are interested in comments on whether the final rule should include more detail and guidance for you on the elements of an

effective new task training program, and what areas should be addressed. We also solicit comments on whether new task training requirements under the final rule should be modeled after the requirements in part 48, as recommended by some commenters.

Several commenters stated that very effective and safe training in a new task can include the miner practicing the task while under the close supervision of a competent person, who instructs the individual in how to perform the task in a safe manner. We believe that supervised practice can allow the miner to gain experience at the new task and to learn how to avoid the hazards presented by the performance of the task. Consistent with this determination, paragraph (b) specifically provides that practice under the close supervision of a competent person may be used to satisfy new task training requirements. "Close supervision," as discussed in the preamble for new miner training under proposed § 46.5, would mean that the competent person is in the immediate vicinity of the miner and is focusing his or her complete attention on the actions of the miner being trained. A miner would not be considered under "close supervision" if the competent person is occupied with any other task or is not in close proximity to the miner.

We intend that task training would not be required for miners who have performed the task before and who are able to safely perform the task. However, you must first determine that task training is not necessary, typically by having the miner demonstrate that he or she is able to perform the task safely.

Several commenters recommended that the rule allow task training to be credited toward new miner training requirements. We recognize that new task training will be a fundamental and essential part of the training for most new miners, who must be trained in the health and safety aspects of the tasks they will be assigned. Allowing task training to be used to satisfy new miner training requirements would be consistent with this requirement. Paragraph (c) would therefore specifically provide that new task training may be used to satisfy new miner training requirements, as appropriate. Additionally, although speakers at the public meetings did not specifically raise the issue, we are interested in whether commenters support allowing new task training to satisfy some portion of annual refresher training requirements.

Section 46.8 Annual Refresher Training

Section 115(a)(3) of the Act requires all miners to receive at least eight hours of refresher training no less frequently than once every 12 months, but does not require that specific subjects be covered as part of this training. In the **Federal Register** notice announcing the public meetings, we requested comment on whether specific subject areas should be covered during annual refresher training, and if so, what subjects should be included.

Commenters strongly supported the concept of annual refresher training. However, most commenters believed that the subjects covered in refresher training should not be fixed, but instead should be tailored to the safety needs of the miners at the particular operation. Many commenters indicated that training topics should vary from year to year.

Several commenters stated that although general guidelines addressing possible training topics was a good idea, the final rule should allow flexibility in choosing topics. One commenter stated that refresher training should cover subject areas relevant to the biggest safety problems at the mine over the preceding year. Another commenter indicated that his operation took that approach and analyzed accidents that occurred at the mine over the past year, basing its training program on that analysis. One commenter stated that the idea that annual refresher training is just boring, routine, and repetitious of the same topics every year is dangerous, and that lifesaving critical skills that are non-routine need to be refreshed because people forget.

We are persuaded by commenters' recommendations that you have flexibility in selecting topics for refresher training and have made a preliminary determination that refresher training that addresses topics relevant to the mine's methods of operation, equipment, accident and illness history, etc., can be extremely effective. The proposal reflects this determination.

Paragraphs (a) and (b) of proposed § 46.8 provide that you must provide each miner with no less than eight hours of refresher training once every 12 months. The refresher training must include, at a minimum, instruction on changes at the mine that could adversely affect the miner's health or safety. We expect that these changes would include such things as a modification in mine traffic patterns, new or retrofitted equipment, a new blasting schedule, etc.

Paragraph (b) also includes a list of topics that may be covered as part of the refresher training, but none of these topics would be mandatory. The list of topics has been taken from part 48, and includes, among others, transportation controls and communication systems; ground control; water hazards, pits, and spoil banks; illumination and night work; and explosives. We expect that you will carefully select the areas that will be covered in the refresher training at your mine, to ensure that your miners will receive practical and useful instruction designed to effectively address the safety and health conditions at your mine. However, we are interested in comments on whether the final rule should include more detailed requirements or guidance for refresher training programs. We are specifically interested in whether the final rule should require instruction on particular topics, similar to part 48, and if so, which subjects should be included.

Some commenters recommended that the 12-month interval for training should be calculated based on the months that a miner actually works as a miner rather than on 12 calendar months. These commenters reasoned that many miners only work at the mine site two or three months out of the year, and that these miners should not have to receive the same amount of training as miners who are continuously employed at a mine. The proposal does not adopt this suggestion. The rationale for a refresher training requirement is that the passage of time results in the loss of important information. Congress determined that miners should be retrained at a specified interval—no less frequently than every 12 months—and there is nothing in the Act's legislative history that suggests that Congress intended that refresher training be given every 12 working months rather than calendar months. In extreme cases, this interpretation might mean that some miners would receive refresher training every two or three years, rather than once every year as provided in the Act.

Section 46.9 Records of Training

This section of the proposal includes requirements for you to record and certify that miners have received health and safety training under this part.

Section 115(c) of the Mine Act provides that, upon completion of each training program, each operator shall certify, on a form approved by the Secretary, that the miner has received the specified training in each subject area of the approved health and safety training plan. The Mine Act also provides that a certificate for each miner shall be maintained by the operator and

shall be available for inspection at the mine site; and that a miner is entitled to a copy of his or her training certificate when he or she leaves the operator's employ. Finally, the Mine Act requires that each training certificate indicate on its face in bold letters that false certification by an operator is punishable under section 110(a) and (f) of the Act.

Recordkeeping was one of the issues identified by us in the **Federal Register** notice announcing the public meetings. We specifically asked for comments on whether records of training should be kept at the mine site, or whether you should be allowed to keep these records at other locations.

A number of speakers at the public meetings addressed the issue of recordkeeping. Several speakers at the public meetings supported flexibility in all aspects of record maintenance, stating that you should be able to choose the record storage option that best suits your operation. One commenter stated that paperwork should be kept at a minimum, because if supervisors must spend too much time on paperwork, they will not have enough time to address mine hazards or ensure that miners are working safely. A number of commenters stated that you should have the option of keeping records at a location other than the mine site. These commenters believed that this would allow you to keep records in computer format or at a central location, and pointed out that the prevalence of electronic mail, computer networks, and fax machines would permit those of you with records maintained away from the mine site to provide copies of any record essentially instantaneously, such as to an MSHA inspector during a regular inspection.

One commenter stated that centralized record management was likely to be more reliable and more cost-effective for many of you than a less automated system. Other commenters stated that at many mine sites the only place where records could be kept would be in a pickup truck, because there was nothing that resembled a mine office on the sites. Another commenter indicated that many of you have multiple mine sites, and that often the smaller sites are not well-suited for record maintenance, particularly if the records are computerized. Several commenters, however, believed that training certificates belonged at the mine site, and that such a requirement would not be particularly burdensome.

The draft submitted by the Coalition would require that you certify that required training has been provided, provide certificates of training to

miners, and maintain a copy of the training records during employment and for a period of 12 months following termination of employment. The Coalition draft also would provide that a miner who leaves your employ would be entitled, upon request, to a copy of his or her health and safety certificates.

Proposed paragraph (a) would provide that, upon a miner's completion of each training program, you must record and certify that the miner has received the training. Consistent with the Mine Act requirement that certifications be kept on a form approved by the Secretary of Labor, the proposal would allow training certifications to be kept on MSHA Form 5000-23, which is the approved form used by operators under part 48 regulations to certify that training has been completed. However, this paragraph also would provide that you may use any other form that contains the minimum information listed in paragraph (b) in this section, and adopts the Mine Act provision that false certification by an operator that training was given is punishable under section 110(a) and (f) of the Act.

The requirements of this paragraph are intended to allow those of you who may already be using MSHA Form 5000-23 for training certifications to continue to use this form under the new rule. However, in response to commenters requesting flexibility in complying with recordkeeping requirements, the proposal would allow the use of other forms that contain the minimum information specified in proposed paragraph (b). Under this paragraph a form would be considered approved by us if it contains the information listed in paragraphs (b)(1) through (b)(5). Information required would include—

- (1) The printed full name of the person who received the training;
- (2) The type of training that was received, the duration of the training, the date the training was received, and the name of the person who provided the training; and
- (3) The mine name, MSHA mine identification number, and the location where the training was given.

We took this approach in response to comments that supported the elimination of some of the recordkeeping requirements under part 48. This approach is similar to the approach taken for approved training plans in proposed § 46.3—formal approval of your recordkeeping format would not be required so long as the record includes the minimum information listed in the proposal. This is intended to provide you with the flexibility to tailor your method of recordkeeping to the particular

operation. We expect that in many cases the recordkeeping system will be computer-based; others may choose to keep certifications on MSHA Form 5000-23. Still others whose records are not computerized may choose to use another paper-based form.

It should be noted that the information required under the proposal is less inclusive than the information called for on MSHA Form 5000-23. We believe that the information listed in the proposal would be sufficient to allow us to determine compliance with the training requirements. The information should also enable miners and their representatives to determine that necessary training has been provided for every miner, without placing an unnecessary recordkeeping burden on you. However, we specifically invite comment on whether information is needed beyond what is included in paragraph (b) to determine compliance with training requirements, and why that additional information is necessary. Similarly, we are also interested in whether any items of information listed in paragraphs (b)(1) through (b)(5) are unnecessary, and why. We also invite comments on whether the final rule should require the exclusive use of MSHA Form 5000-23 for training certifications or of a similar form that has been formally approved by us, and why commenters believe such an approach is advisable or necessary.

Paragraph (b)(4) incorporates the requirement in section 115(c) of the Mine Act that each health and safety training certificate indicate on its face that false certification that training was conducted is punishable under § 110(a) and (f) of the Mine Act. Section 110(a) of the Act provides that an operator who violates a mandatory standard or any other provision of the Act shall be assessed a civil penalty of up to \$50,000. Section 110(f) of the Act provides that a person who makes a false statement, representation, or certification in records or other documents filed or maintained under the Act may be subject to criminal prosecution and fined up to \$10,000 and imprisoned for up to 5 years. Paragraph (b)(4) has been included in the proposal to ensure that everyone who will be affected by the final rule or who will be responsible for compliance is aware of the civil and criminal penalties under the Mine Act for false training certification.

Finally, paragraph (b)(5) requires that the training certificate also include a statement signed by the person responsible for training that "I certify that the above training has been completed." The proposal would

require the statement to be signed by the person who is identified in the training plan, under proposed § 46.3(b)(2), as responsible for health and safety training at the mine. The proposal would not require miners who have received training to initial or sign the form; the proposal would also not require the signature of the person who actually conducts the training, unless that person is designated in the plan as responsible for health and safety training at the mine.

This approach is taken in response to a number of commenters who supported reduced recordkeeping requirements. The proposal reflects our preliminary determination that a miner's initials or signature do not enhance the likelihood that training requirements will be fulfilled. However, we request comments on whether miners should be required to sign their training certificates. We also request comment on whether other persons besides the person responsible for training at the mine should be allowed to sign the certificates.

Paragraph (c) adopts the requirement of section 115(c) of the Mine Act that operators give miners copies of their training certificates at the completion of each training program. We intend that miners receive copies of their certifications after they have completed the required 24 hours of new miner training, eight hours of annual refresher training, newly-hired experienced miner training, or new task training. This would not prevent you from providing certificates to miners as partial installments of required training are completed, particularly when training is spread out over some period of time. We are interested in whether the requirements of this paragraph will ensure that miners will receive training certificates in a timely manner.

Under paragraph (c), you would also be required to give a miner a copy of his or her training certificates when the miner leaves your employ, upon the miner's request. This adopts the provision in section 115(c) of the Mine Act that miners are "entitled" to a copy of their certificates when they terminate their employment with an operator. The proposal interprets the statutory language to mean that a miner must be provided a copy if he or she requests it, but that you do not have to provide copies to miners who do not make such a request.

We anticipate that miners who are leaving for another job in the mining industry or who intend to return to the mining industry at some point in the future will request copies of their training records. This will enable

miners to document their training status under our regulations at other mining operations. However, we also anticipate that some miners will terminate their employment because they are retiring or with no expectation of returning to mining. Because of this, the proposal would not require that you provide these records to the miner automatically. We do not believe that this provision is unduly burdensome for the miner. However, we invite comment on whether you should be required to provide such records automatically upon the miner's termination of employment, or whether you should be required to offer such records to the miner.

Paragraph (d) provides that you must make available at the mine site a copy of each miner's training certificate for inspection by us and for examination by miners and their representatives. This paragraph also states that if training certificates are not maintained at the mine site, you must have the capability to provide the certificates upon request by us, miners, or their representatives. This is the same approach taken for training plans under proposed § 46.3. As explained in the preamble discussion for that section, no time is specified within which a copy of the records must be produced after a request is made by us or by miners. If you elect to keep training certificates away from the mine site, you must be able to produce copies of the training certificates within a reasonable period of time. In most cases, we would expect that the records could be produced in a relatively short period of time, particularly if they are to be faxed or e-mailed to the mine site. In those cases where a mine may not have a formal office, a longer period of time to produce the records may be allowed depending upon the individual circumstances.

Comments are invited on whether the final rule should require that you maintain training certificates at the mine site. We also invite comment on the suggestion that the most recent training certificates be required to be kept at the mine site, allowing you to maintain other certificates at another location. We are also interested in whether commenters believe that the final rule should establish a deadline for you to produce records that are maintained away from the mine site, or whether the language in the proposal is adequate. One possible alternative would be require the records to be produced within a reasonable period of time, but in no case longer than one business day.

Paragraph (e) would require that you maintain copies of training certificates

and training records for each currently employed miner during his or her employment, and for at least 12 months after a miner terminates employment. This provision is adopted from the draft of the Coalition. Under this provision, you would be required to retain a miner's training certificates while the miner continues to be employed by you. At the termination of a miner's employment, you would be required to maintain the miner's certificates for at least 12 months after that employment has ended. This approach would allow us to determine compliance with the training requirements in this part for both current and recently departed miners. However, we request comment on whether a shorter or longer period for record retention is appropriate, and whether different record retention periods make sense for current and former miners. For example, part 48 requires that training certificates of currently employed miners be retained for at least 2 years, or for 60 days after termination of a miner's employment. Some commenters advocated adoption of the part 48 time frames.

Section 46.10 Compensation for Training

This section of the proposal addresses when training under this part must be conducted and the compensation that miners must receive when they are undergoing training. This section adopts the provisions of section 115 of the Mine Act that address compensation for miners who attend required training.

The issue of normal working hours and compensation for training was the subject of only one comment. A speaker at one of the public meetings stated that the rule should include a specific provision that adopted the statutory requirements in this area, to ensure that there was no confusion or uncertainty about the requirements of the Act.

Section 115(b) of the Mine Act provides that health and safety training shall be provided during normal working hours and that miners shall be paid at their normal rate of compensation when they take such training. Section 115(b) also requires that if training is given at a location other than the normal place of work, miners shall be compensated for the additional costs incurred in attending such training.

Paragraph (a) of proposed § 46.10 incorporates this statutory requirement and would provide that health and safety training must be conducted during normal working hours. As discussed earlier in this preamble, the part 48 definition of "normal working hours" has been included in the

proposal in § 46.2 and provides that normal working hours means "* * * a period of time during which a miner is otherwise scheduled to work." The definition also indicates that training may be conducted on the sixth or seventh working day provided that such work schedule has been established for a sufficient period of time to be accepted as the common practice. The proposed rule does not define the term "sufficient period of time." However, as discussed under the preamble for § 46.2, we intend that the schedule must have been in place long enough to provide reasonable assurance that the schedule change was not motivated by the desire to train miners on what had traditionally been a non-work day.

Paragraph (a) would also provide that persons attending such training must be paid at a rate of pay that corresponds to the rate of pay they would have received had they been performing their normal work tasks. This provision has been adopted from part 48.

Paragraph (b) would require that if training is given at a location other than the normal place of work, miners must be compensated for the additional costs, such as mileage, meals, and lodging they may incur in attending such training sessions. Although we anticipate that much of the training provided under this part will be given at or near miners' normal workplaces, in those cases where miners must travel to receive required training, they are to be fully compensated for their expenses of travel.

This section has been included in the proposal to ensure that you and miners and their representatives are aware of the statutory requirements concerning compensation. We are interested in comments on whether these proposed provisions adequately address the issue of compensation and the scheduling of training.

Section 46.11 Hazard Training

Under the proposal, persons who are not engaged in mining operations integral to extraction or production, and who therefore do not fall within the definition of "miner" under proposed § 46.2, would not be required to receive comprehensive training. Instead, these persons would be required to receive site-specific hazard training. As discussed earlier, proposed § 46.2 defines "hazard training" as information or instructions on the hazards a person could be exposed to while on mine property, as well as applicable emergency procedures. These may include site-specific risks such as unique geologic or environmental conditions, traffic patterns, and

restricted areas; and warning and evacuation signals, emergency procedures, or other special safety procedures.

As a practical matter, "miners" who are employees of a production-operator would receive orientation at the mine site and instruction in site-specific hazards and emergency procedures as part of their comprehensive training. "Miners" who are employees of independent contractors must also receive, in addition to comprehensive training, site-specific hazard training at the mine sites where they work. Under the proposal, hazard training must be given before persons begin their work duties.

As indicated earlier in the discussion of the definition of "miner" in proposed § 46.2, a number of commenters raised the issue of workers whose presence at the mine site is infrequent or whose activities at the mine site do not expose them to significant mining hazards. These commenters strongly recommended that the proposed rule not require these workers to receive comprehensive training. Instead, they suggested that these workers be trained in the hazards that exist at the mine site where they are working. Several commenters stated that a distinction must be made between workers such as independent haulers who come on to the mine site only to pick up a load of material and then leave, and truck drivers who are working within the mine site and who haul from the pit to the crushers.

Some commenters stated that whether or not a worker is employed by a mining company or by an independent contractor should be irrelevant in determining what type of training is appropriate. Several commenters acknowledged that some contractor employees at their operations were directly involved in the extraction or production process, and that it would be appropriate to treat these employees as miners for purposes of training. A number of commenters agreed that contractor employees who are engaged in activities such as milling, extraction, or blasting should be considered miners and should receive comprehensive training, which would include, as appropriate, new miner training or newly-hired experienced miner training.

Other commenters supporting this view stated that persons such as clerical staff who do not go into the plant or quarry do not need extensive safety and health training, and should therefore be excluded from the rule's definition of "miner." Another commenter indicated that the rule must clarify what type of training must be given to service

personnel, delivery people, and occasional mine visitors.

Commenters generally supported a requirement for site-specific hazard training for those workers on mine property who did not receive comprehensive training because their involvement in mining operations and exposure to mine hazards is limited. Commenters also generally supported a requirement for site-specific hazard training for contractor employees who also receive comprehensive training because of the nature of their activities at mine sites, but who move from job to job and mine site to mine site and need initial orientation at every new site before they begin work.

The draft proposal of the Coalition would require site-specific hazard training for specific categories of persons, commensurate with the associated risks, when the individuals are assigned work on mine property. Hazard training would be required for construction workers; individuals who enter mine property to service, maintain, assemble, or disassemble mine extraction or production machinery; delivery, office or scientific workers; customer truck drivers; staff or administrative personnel; or others not engaged in extraction or production activities as related to mining and milling. The Coalition draft would also specifically exempt the listed persons from comprehensive training requirements.

The Coalition draft would not require hazard training for outside vendors, visitors, or office or staff personnel who do not work at the plant location on a continuing basis and do not have access to the mine site, or who are accompanied by someone familiar with hazards specific to the mine site.

Consistent with the Coalition draft and with recommendations from other commenters, the proposal would base training requirements on the worker's activities at the mine. Under paragraph (a), persons who are present at the mine site but who do not fall within the definition of "miner" in proposed § 46.2 would be required to receive only site-specific hazard training.

Paragraphs (a)(1) through (a)(4) list examples of persons who would be required to receive hazard training, including scientific workers; delivery workers and customers; occasional, short-term maintenance or service workers or manufacturers' representatives; and outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis. This list is intended to provide examples of individuals who fall within this category, but is not

meant to be all-inclusive. Our intention is that whether a person is a "miner" and required to receive comprehensive training is determined by the person's activities and exposure to mine hazards, not the person's job title. For example, construction workers would be exempt from comprehensive training requirements under the Coalition draft proposal. However, under our proposed rule, whether a construction worker must receive comprehensive training or site-specific hazard training would depend on what activities the worker is engaged in at the mine site. As discussed in greater detail below, hazard training would not be required if a person is accompanied at all times by an experienced miner.

The proposed rule, unlike the Coalition draft, would require hazard training for outside vendors and visitors. We believe that a vendor or visitor who will be in the vicinity of mine hazards, even for a limited period of time, should receive hazard training unless accompanied by a knowledgeable individual while at the mine site. However, commenters should be aware that we do not intend that hazard training be required for individuals who may come onto property owned by the mining operation but who never travel in the vicinity of the mine site. For example, the mine site would include areas where extraction or production take place, such as the pit, quarry, stockpiles, mine haul roads, or areas where customers travel or haul material. A soft drink deliveryman who goes no farther than an office on mine property would not be required to have hazard training. Similarly, we do not intend that hazard training be required for office or staff personnel whose offices are located some distance from the mine site and whose duties never require their presence at the mine site. This is consistent with commenters who stated that you should not be required to train persons who will not be exposed to traditional mine or plant hazards. We solicit comments on whether this approach is appropriate, and also whether the language of the proposed rule adequately addresses this issue.

Paragraph (b) would require that you also provide site-specific hazard training to each person who is an employee of an independent contractor, and who is working at the mine as a "miner" as defined in proposed § 46.2. Although these employees would receive comprehensive training, they should also receive some form of site-specific hazard training, as recommended by a number of commenters. One commenter specifically stated that the rule should

require hazard training to familiarize contractors with hazards specific to mining and an overview of company safety rules and the applicable regulations. As a practical matter, we expect that many, if not most, independent contractor employees will be required to receive hazard training under paragraph (a), because they do not meet the definition of "miner" under proposed § 46.2. However, employees of independent contractor employees who do fall within the definition of "miner" also need effective orientation to their new work environment before they begin their job duties. Paragraph (b) would ensure that such training is provided. Paragraph (b) would also provide that if these miners have received newly-hired experienced miner training at the mine, and have therefore been instructed in the hazards and conditions specific to the mine, hazard training under proposed § 46.11 would not be required.

Paragraph (c) would require you to provide hazard training before the affected person is exposed to mine hazards. This is intended to ensure that persons coming onto mine property will be provided with the necessary information about the mine hazards they may encounter at the mine site before they are exposed to them. We believe there is no reason to allow any delay in providing hazard training; allowing persons to be exposed to mine hazards before they receive hazard training would defeat the purpose of the training. We expect that hazard training will not be overly burdensome and can be effectively provided to affected persons before they enter the mine site.

Under paragraph (d), you may provide hazard training through the use of—

- (1) Written hazard warnings;
- (2) Oral instruction;
- (3) Signs and posted warnings;
- (4) Walkaround training; or
- (5) Other appropriate means.

Commenters had varying opinions on how long hazard training should last and what form it should take. One commenter stated that this hazard training could last about 15 minutes and would cover the conditions and hazards that the person would encounter at the job site. Another commenter stated that it might take one or two hours to alert the persons receiving the training of the site-specific hazards they might encounter at the mine site, such as conditions or equipment in the area that could cause an injury. One commenter from a large facility stated that any contractor that comes onto the mine site receives a one-hour safety rules and awareness orientation to familiarize the

contractor with the company rules and regulations that apply at the property. Finally, several commenters stated that adequately marked roads and effective warning and directional signs may be sufficient hazard training for some types of workers who are not involved with mining or extraction or the milling process, such as truck drivers who come onto the mine site only to pick up a load of material.

We intend that the proposed rule allow you the flexibility to tailor hazard training to the specific operations and conditions at your mines. Depending on the circumstances, you may provide hazard training through informal but informative conversations; in other cases, you may choose to provide some form of walkaround training by guiding the person receiving training around the mine site, pointing out particular hazards or indicating those areas where the person should not go, or some combination of these methods.

We also intend that hazard training be appropriate for the individual who is receiving it, and that the breadth and depth of training may vary depending on the skills, background, and job duties of the recipient. For example, it may be acceptable for you to provide hazard training to customer truck drivers by handing out a card to the drivers alerting them to the mine hazards or directing them away from certain areas of the mine site. In other cases, adequate warning signs on mine property may be sufficient to direct persons away from hazardous areas. However, we expect that in a number of cases site-specific hazard training should be more extensive, such as for contractor employees who fit the definition of "miner," and who have received comprehensive training, but who need orientation to the mine site and information on the mining operations and mine hazards. Additionally, more extensive hazard training would be appropriate where an equipment manufacturer's representative comes onto mine property for a short period of time to service or inspect a piece of mining equipment. Although this individual may not be on mine property for a prolonged period, the person's exposure to mine hazards may warrant training of a longer duration.

We seek specific comment on whether the flexibility that would be allowed under paragraph (d) in providing hazard training is appropriate and whether the language of the proposed rule is sufficiently descriptive. We are also interested in whether there may be other methods of providing hazard training that should be specifically included as examples in the final rule.

Proposed paragraph (e) would provide that hazard training is not required for any person who is accompanied at all times by an experienced miner who is familiar with the hazards specific to the mine site. The experienced miner referred to in paragraph (e) would not be required to be the "competent person" defined in proposed § 46.2 but should be sufficiently familiar with the mine's operations and its hazards to ensure that the person accompanied is protected from danger while at the mine site. This provision is intended to give you the option to forego site-specific hazard training, most likely for one-time visitors, and instead provide the person with a knowledgeable escort. We expect that in many situations it may be easier or more expedient for the person to be accompanied, such as a visitor who is being taken on a mine tour and would already be escorted by knowledgeable mine personnel. However, under the proposal, you may choose to accompany any category of person in lieu of providing hazard training.

Commenters should note that proposed § 46.9 would only require you to certify training for "miners." As a result, the proposal would not require you to make or maintain records of site-specific hazard training for persons who do not fit within the definition of "miner." We believe that a requirement for recordkeeping of this training, particularly given the many operations that accommodate outside customers on a regular basis, would be unnecessarily burdensome. However, we expect that you will be able to demonstrate to inspectors that you are in compliance with site-specific hazard training requirements. For example, you could show the inspector the hazard training materials that are used; copies of the flyers or handouts containing hazard information that you distribute to persons on arrival at the mine site; or visitor log books with a checklist that indicates that hazard training was given to the visitors. Additionally, you could point out the signs on mine property that warn of hazards or direct persons away from dangerous areas. We are interested in comments as to whether this approach is appropriate, or whether the final rule should require some form of recordkeeping for the hazard training received by all persons, not just miners.

Section 46.12 Responsibility for Training

This section of the proposed rule addresses the allocation of responsibility for training between production-operators and the independent contractors employing persons who work at the production-

operators' mine sites. The provisions of this section respond to the concerns expressed by a number of speakers at the public meetings on responsibility for ensuring that workers receive required training, and are based in part on language in the draft proposal of the Coalition.

A number of commenters stated that the rule should make clear that primary responsibility for training employees of independent contractors is on the contractor. These commenters felt that the contractor, not the production-operator, would be in the best position to train his or her employees in the health and safety aspects of their particular tasks. One commenter stated that the main reason a production-operator hires an independent contractor is because the production-operator does not have the expertise or equipment to do the job safely, and that production-operators should not be compelled to provide training for independent contractor employees beyond what is necessary to address mine-specific hazards. Commenters were concerned about situations where independent contractor employees should receive comprehensive training, because they are engaged in extraction or production or exposed to significant mine hazards. Commenters stated that contractor employees frequently are not adequately trained, but that it should not be the production-operator's responsibility to provide this training. Commenters recommended that the rule specifically require contractors to ensure that their employees have the necessary training.

Commenters did agree that contractors need to be aware of the site-specific hazards at the mine site and supported a requirement for production-operators to provide site-specific hazard training to contractor employees who come onto mine sites to perform services. This section would address these concerns.

Because the part 46 definition of "operator" includes independent contractors, the term "production-operator" is used in this section and is defined in proposed § 46.2 as "any owner, lessee, or other person who operates, controls, or supervises a mine." This is intended to refer to the person or company who actually operates the mine as a whole, as opposed to the independent contractor who performs services there. Paragraph (a) provides that each production-operator is primarily responsible for providing site-specific hazard training to employees of independent contractors; paragraph (b) provides that independent contractors who employ

"miners" are primarily responsible for providing comprehensive training to their employees. This would not prevent a production-operator from arranging for the independent contractor to provide site-specific training to the contractor's employees; some independent contractors may also choose to arrange for the production-operator to provide comprehensive training for the contractors' employees. However, the primary responsibility for site-specific hazard training would continue to rest on the production-operator, while primary responsibility for comprehensive training of contractor employees would continue to rest on the independent contractor.

Production-operators would also be required under paragraph (a) to inform independent contractors of site-specific hazards associated with the mine site and the obligation of the contractor to comply with our regulations, including part 46. Independent contractors would be responsible under paragraph (b) for informing the production-operator of any hazards of which the contractor is aware that may be created by the performance of the contractor's work at the mine. These provisions are intended to ensure that production-operators and independent contractors share information about hazards at the mine, so that their employees may work safely.

The requirements of this section are consistent with our current policy on independent contractors. Under that policy, independent contractors are responsible for compliance with the Act and regulations with respect to their activities at a particular mine. We also cite independent contractors for violations committed by them and their employees. However, neither this policy nor the provisions in this section change production-operators' basic compliance responsibilities. Production-operators are subject to all provisions of the Act and to all standards and regulations applicable to their mining operations. This overall compliance responsibility includes ensuring compliance by independent contractors with the Act and regulations. One way for production-operators to address this responsibility is to confirm when contracting with independent contractors that the contractors' employees will receive safety and health training, and to include this as a provision in the contract.

We solicit comments on the allocation of training responsibility between production-operators and independent contractors who employ workers at mine sites.

Effective Date and Compliance Deadlines

We questioned a number of speakers at the public meetings on how much time should be allowed for the mining community to come into compliance with the final rule. Several speakers recommended that a year after the date of publication of the final rule would provide a sufficient period of time for affected operations to come into compliance. Several other speakers indicated that six months past the publication date would be adequate.

One possible approach would be phased-in compliance deadlines, where certain of the rule's requirements would go into effect at different stages. For example, the requirement that you develop and implement a training plan might become effective six months after the final rule is published, while the requirements for the various types of miner training would take effect one year after publication.

We are seeking comments on how to approach this issue, specifically on whether phased-in deadlines would be useful in facilitating compliance, and what period of time will be needed for full compliance. We have not yet determined what an appropriate effective date would be. We understand that there will be a very large number of operations coming into compliance simultaneously and wish to allow a reasonable amount of time for the transition.

XI. References

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- Transportation Equity Act "TEA-21" (Pub. L. 105-178), June 9, 1998.
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List of Subjects

30 CFR Part 46

Mine safety and health, Reporting and recordkeeping requirements, Surface mining, Training programs.

30 CFR Part 48

Mine safety and health, Reporting and recordkeeping requirements, Training programs.

Dated: April 6, 1999.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

It is proposed to amend Chapter I of Title 30 of the Code of Federal Regulations as follows:

PART 48—[AMENDED]

1. The authority citation for part 48 continues to read as follows:

Authority: 30 U.S.C. 811, 825.

2. Section 48.21 is amended by adding a new sentence to the end of the section to read as follows:

§ 48.21 Scope.

* * * This part does not apply to training and retraining of miners at shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone mines, which are covered under 30 CFR part 46.

3. A new part 46 is added to subchapter H of Title 30 of the Code of Federal Regulations to read as follows:

**PART 46—TRAINING AND
RETRAINING OF MINERS ENGAGED IN
SHELL DREDGING OR EMPLOYED AT
SAND, GRAVEL, SURFACE STONE,
SURFACE CLAY, COLLOIDAL
PHOSPHATE, OR SURFACE
LIMESTONE MINES**

Sec.

- 46.1 Scope.
- 46.2 Definitions.
- 46.3 Training plans.
- 46.4 Training program instruction.
- 46.5 New miner training.
- 46.6 Newly-hired experienced miner training.
- 46.7 New task training.
- 46.8 Annual refresher training.
- 46.9 Records of training.
- 46.10 Compensation for training.
- 46.11 Hazard training.
- 46.12 Responsibility for training.

Authority: 30 U.S.C. 811, 825.

§ 46.1 Scope.

The provisions of this part set forth the mandatory requirements for training and retraining miners working at shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines.

§ 46.2 Definitions.

The following definitions apply in this part:

(a) *Act* is the Federal Mine Safety and Health Act of 1977.

(b) *Competent person* is a person designated by the operator who has the ability, training, knowledge, or experience to provide training to miners on a particular subject. The competent person must also be able to evaluate whether the training given to miners is effective.

(c)(1) *Experienced miner* is:

- (i) A person who is employed as a miner on April 14, 1999;
- (ii) A person who began employment as a miner after April 14, 1999 but before the effective date of the final rule and who has received new miner training under § 48.25 of this title or under proposed requirements published April 14, 1999 which are available from the Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington VA 22203; or
- (iii) A miner who has completed 24 hours of new miner training under § 46.5 of this part or under § 48.25 of this title and who has had at least 12 months of surface mining or equivalent experience.

(2) Once a miner is an experienced miner under this section, the miner will retain that status permanently.

(d) *Extraction or production* is the mining, removal, milling, crushing, screening, or sizing of minerals at a mine under this part. Extraction or

production also includes the associated haulage of these materials at the mine.

(e) *Hazard training* is information or instructions on the hazards a person could be exposed to while on mine property, as well as applicable emergency procedures. These may include site-specific risks, such as unique geologic or environmental conditions, traffic patterns, and restricted areas; and warning and evacuation signals, emergency procedures, or other special safety procedures.

(f) *Independent contractor* is any person, partnership, corporation, subsidiary of a corporation, firm, association, or other organization that contracts to perform services at a mine under this part.

(g) *Miner* is any person, including operators and supervisors, who works at a mine under this part and who is engaged in mining operations integral to extraction or production.

(h) *New miner* is a newly-hired miner who is not an experienced miner.

(i) *Normal working hours* is a period of time during which a miner is otherwise scheduled to work, including the sixth or seventh working day if such a work schedule has been established for a sufficient period of time to be accepted as the operator's common practice.

(j) *Operator* is:

- (1) Any production-operator; or
- (2) Any independent contractor whose employees perform services at a mine.

(k) *Production-operator* is any owner, lessee, or other person who operates, controls, or supervises a mine under this part.

(l) *Task* is a component of a job that is performed on a regular basis and that requires job knowledge.

(m) *We* or *us* is the Mine Safety and Health Administration (MSHA).

(n) *You* is production-operators and independent contractors.

§ 46.3 Training plans.

(a) You must develop and implement a written plan, approved by us under either paragraph (b) or (c) of this section, that contains effective programs for training new miners and newly-hired experienced miners, training miners for new tasks, annual refresher training, and hazard training.

(b) A training plan is considered approved by us if it contains, at a minimum, the following information:

- (1) The company name, mine name, and MSHA mine identification number;
- (2) The name and position of the person designated by you who is responsible for the health and safety

training at the mine. This person may be the operator;

(3) A general description of the teaching methods and the course materials that are to be used in providing the training, including the subject areas to be covered and the approximate time to be spent on each subject area;

(4) A list of the persons who will provide the training, and the subject areas in which each person is competent to instruct; and

(5) The evaluation procedures used to determine the effectiveness of training.

(c) A plan that does not include the minimum information specified in paragraphs (b)(1) through (b)(5) of this section must be approved by the Regional Manager, Educational Field Services Division, or designee, for the region where the mine is located. You also may voluntarily submit a plan for Regional Manager approval. Miners and their representatives may also request review and approval of the plan by the Regional Manager.

(d) You must provide the miners' representative, if any, with a copy of the plan at least 2 weeks before the plan is implemented or submitted to the Regional Manager for approval. At mines where no miners' representative has been designated, you must post a copy of the plan at the mine or provide a copy to each of the miners at least 2 weeks before you implement the plan or submit it to the Regional Manager for approval.

(e) Within 2 weeks following the receipt or posting of the training plan, miners or their representatives may submit written comments on the plan to you, or to the Regional Manager, as appropriate.

(f) The Regional Manager must notify you and miners or their representatives in writing of the approval, or status of the approval, of the training plan within 30 days after the date on which you submitted the training plan to us for approval.

(g) If you, miners, or miners' representatives wish to appeal a decision of the Regional Manager, you must send the appeal, in writing, to the Director for Educational Policy and Development, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 30 days after notification of the Regional Manager's decision. The Director will issue a decision within 30 days after receipt of the appeal.

(h) You must make available at the mine site a copy of the current training plan for inspection by us and for examination by miners and their representatives. If the training plan is not maintained at the mine site, you

must have the capability to provide the plan upon request by us, miners, or their representatives.

§ 46.4 Training program instruction.

(a) You must ensure that each program, course of instruction, or training session is:

(1) Conducted in accordance with the written training plan; and

(2) Presented by a competent person.

(b) You may conduct your own training programs or may arrange for training to be conducted by: us, state, or other federal agencies; associations of operators; miners' representatives; other operators; contractors, consultants, manufacturers' representatives; private associations; educational institutions; or other training providers.

(c) You may substitute equivalent training required by the Occupational Safety and Health Administration (OSHA), or other federal or state agencies, to meet requirements under this part, where appropriate.

(d) Training may consist of classroom instruction, instruction at the mine site, other innovative training methods, alternative training technologies, or any combination.

(e) Employee safety meetings, including informal safety and health talks and instruction, may be credited under this part toward either new miner training, newly-hired experienced miner training, or annual refresher training requirements, as appropriate, provided that you document each training session in accordance with § 46.9 of this part.

§ 46.5 New miner training.

(a) Except as provided in paragraphs (e) and (f) of this section, you must provide each new miner with no less than 24 hours of training as prescribed by paragraphs (b) and (d) of this section. Miners who have not received the full 24 hours of new miner training must work under the close supervision of an experienced miner.

(b) You must provide each new miner with the following training before the miner begins work:

(1) An introduction to the work environment, including a visit and tour of the mine, or portions of the mine that are representative of the entire mine. The method of mining or operation utilized must be explained;

(2) Instruction on the recognition and avoidance of hazards, including electrical hazards, at the mine;

(3) A review of the escape and emergency evacuation plans in effect at the mine and instruction on the firewarning signals and firefighting procedures; and

(4) Instruction on the health and safety aspects of the tasks to be

assigned, including the safe work procedures of such tasks, and the mandatory health and safety standards pertinent to such tasks.

(c) Practice under the close supervision of a competent person may be used to fulfill the requirement for training on the health and safety aspects of an assigned task in paragraph (b)(4) of this section, if hazard recognition training specific to the assigned task is given before the miner performs the task.

(d) Within 60 days after each new miner begins work, you must provide the miner with the balance of the 24 hours of training, including training in the following subjects:

(1) Instruction on the statutory rights of miners and their representatives under the Act;

(2) A review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives;

(3) An introduction to your rules and procedures for reporting hazards;

(4) Instruction and demonstration on the use, care, and maintenance of self-rescue and respiratory devices, if used at the mine; and

(5) A review of first aid methods.

(e) A new miner who has less than 12 months of surface mining or equivalent experience and has completed new miner training under this section or under § 48.25 of this title within 36 months before beginning work at the mine does not have to repeat new miner training. However, you must provide the miner with training specified in paragraph (b) of this section before the miner begins work.

(f) New miner training courses completed under § 48.5 or § 48.25 of this title may be used to satisfy the requirements of paragraphs (a), (b), and (d) of this section, if:

(1) The courses were completed by the miner within 36 months before beginning work at the mine; and

(2) The courses are relevant to the subjects specified in paragraphs (b) and (d) of this section.

§ 46.6 Newly-hired experienced miner training.

(a) Except as provided in paragraphs (c) and (d) of this section, you must provide each newly-hired experienced miner with the following training before the miner begins work:

(1) An introduction to the work environment, including a visit and tour of the mine, or portions of the mine that are representative of the entire mine. The method of mining or operation utilized must be explained;

(2) Instruction on the recognition and avoidance of hazards, including electrical hazards, at the mine;

(3) A review of the escape and emergency evacuation plans in effect at the mine and instruction on the firewarning signals and firefighting procedures; and

(4) Instruction on the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, and the mandatory health and safety standards pertinent to such tasks.

(b) Except as provided in paragraphs (c) and (d) of this section, within 90 days after each newly-hired experienced miner begins work, you must provide the miner with annual refresher training under § 46.8 of this part, which must include:

(1) Instruction on the statutory rights of miners and their representatives under the Act;

(2) A review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives;

(3) An introduction to your rules and procedures for reporting hazards; and

(4) Instruction and demonstration on the use, care, and maintenance of self-rescue and respiratory devices, if used at the mine.

(c) You must provide an experienced miner who returns to the same mine, following an absence of 12 months or less, with training on any changes at the mine that have occurred during the miner's absence that could adversely affect the miner's health or safety. This training must be given before the miner begins work. If the miner missed any part of annual refresher training under § 46.8 of this part during the absence, you must provide the miner with the missed training within 90 days after the miner begins work.

(d) Miners who are employees of independent contractors and who work at the mine on a short-term basis, such as drillers or blasters, may receive either newly-hired experienced miner training at the mine under paragraphs (b) and (c) of this section, or site-specific hazard training at the mine under § 46.11 of this part.

§ 46.7 New task training.

(a) Before a miner performs a task for which he or she has no previous experience, you must train the miner in the safety and health aspects and safe work procedures specific to that task. If changes have occurred in a miner's regularly assigned task, you must provide the miner with training that addresses the changes.

(b) Practice under the close supervision of a competent person may be used to fulfill the requirement for task training under this section.

(c) Task training provided under this section may be credited toward new miner training, as appropriate.

§ 46.8 Annual refresher training.

(a) At least once every 12 months, you must provide each miner with no less than 8 hours of refresher training.

(b) The refresher training must include instruction on changes at the mine that could adversely affect the miner's health or safety, and may include instruction on such subjects as: applicable health and safety requirements, including mandatory health and safety standards; transportation controls and communication systems; escape and emergency evacuation plans, firewarning and firefighting; ground control; working in areas of highwalls, water hazards, pits, and spoil banks; illumination and night work; first aid; electrical hazards; prevention of accidents; health; explosives; and respiratory devices.

§ 46.9 Records of training.

(a) Upon a miner's completion of each training program, you must record and certify on MSHA Form 5000-23, or on a form that contains the information listed in paragraph (b) of this section, that the miner has completed the training. False certification that training was completed is punishable under section 110(a) and (f) of the Act.

(b) The form must include:

(1) The printed full name of the person trained (first, middle, last names);

(2) The type of training completed, the duration of the training, the date the training was received, and the name of the competent person who provided the training;

(3) The mine name, MSHA mine identification number, and location of training (if an institution, the name and address of the institution).

(4) The statement, "False certification is punishable under section 110(a) and (f) of the Federal Mine Safety and Health Act," printed in bold letters and in a conspicuous manner; and

(5) A statement signed by the person designated as responsible for health and safety training in the MSHA-approved training plan for the mine that states, "I certify that the above training has been completed."

(c) You must provide a copy of the training certificate to each miner at the completion of each training program. When a miner leaves your employ, you

must provide each miner with a copy of his or her training certificates upon request.

(d) You must make available at the mine site a copy of each miner's training certificates for inspection by us and for examination by miners and their representatives. If training certificates are not maintained at the mine site, you must have the capability to provide the certificates upon request by us, miners, or their representatives.

(e) You must maintain copies of training certificates and training records for each currently employed miner during his or her employment and for at least 12 months after a miner terminates employment.

§ 46.10 Compensation for training.

(a) Training must be conducted during normal working hours; persons required to receive such training must be paid at a rate of pay that corresponds to the rate of pay they would have received had they been performing their normal work tasks.

(b) If training is given at a location other than the normal place of work, persons required to receive such training must be compensated for the additional costs, including mileage, meals, and lodging, they may incur in attending such training sessions.

§ 46.11 Hazard training.

(a) You must provide site-specific hazard training to any person who is not a miner as defined under § 46.2 of this part but is present at a mine site under this part, including:

- (1) Scientific workers;
- (2) Delivery workers and customers;
- (3) Occasional, short-term

maintenance or service workers, or manufacturers' representatives; and

(4) Outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis.

(b) You must provide site-specific hazard training to each person who is an employee of an independent contractor and who is working at the mine as a miner, as defined in § 46.2 of this part, unless the miner receives newly-hired experienced miner training at the mine under § 46.6.

(c) You must provide hazard training under this section before the affected person is exposed to mine hazards.

(d) You may provide hazard training through the use of written hazard warnings, oral instruction, signs and posted warnings, walkaround training, or other appropriate means.

(e) Hazard training under this section is not required for any person who is accompanied at all times by an experienced miner who is familiar with hazards specific to the mine site.

§ 46.12 Responsibility for training.

(a) Each production-operator has primary responsibility for providing site-specific hazard training to employees of independent contractors who are required to receive hazard training under § 46.11 of this part. Further, the production-operator must provide information to each independent contractor who employs a person at the mine on site-specific hazards associated with the mine site and the obligation of the contractor to comply with our regulations, including the requirements of this part.

(b) Each independent contractor who employs a miner, as defined in § 46.2, at the mine has primary responsibility for complying with §§ 46.3 through 46.10 of this part, including providing new miner and newly-hired experienced miner training, new task training, and annual refresher training. Further, the independent contractor must inform the production-operator of any hazards of which the contractor is aware that may be created by the performance of the contractor's work at the mine.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 46

RIN 1219-AB17

Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule, notice of public hearings.

SUMMARY: We (MSHA) are announcing public hearings on our proposed rule on the training and retraining of miners engaged in shall dredging or employed at sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines. The proposed rule appears elsewhere in this issue of the **Federal Register**.

DATES: See **SUPPLEMENTARY INFORMATION** section for hearing dates. The record will remain open after the hearings until June 16, 1999.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for hearing locations.

Send requests to make oral presentations—