UNITED STATES OF AMERICA

DEPARTMENT OF LABOR

MINE SAFETY AND HEALTH ADMINISTRATION

PUBLIC HEARING RE:
INTERIM FINAL RULE FOR HAZARD COMMUNICATION
IN THE MINING INDUSTRY

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MODERATOR TEASTER: Good morning. Welcome to MSHA's public hearing on our interim final rule for hazard communication in the mining industry.

I'm Ernie Teaster, Administrator for Metal and Nonmetal Mine Safety and Health.

The members of the Panel today are Deborah Green from the Solicitor's Office; Bob Snashall from the Solicitor's Office. We have Ed Sexauer, who is representing the Office of Standards, Regulations and Variations. This is Richard Feehan. Richard worked on the rule. He's with Educational Policy Development. This is Carol Jones. She works in Metal and Nonmetal Health Division. And we have Robert Stone who is an economist that works for the Office of Standards, Regulations and Variances.

We are here to listen to your comments on the hazard communication interim final rule which we published on October 3rd last year. We are holding this hearing in accordance with Section 101 of the Federal Mine Safety and Health Act of 1977. As is our practice, we will conduct the hearing in an informal manner. During the proceeding, panel members may ask questions of the presenter.
Although formal rules of evidence will not apply, we will be taking a verbatim transcript of the hearing and will make it a part of the official rulemaking record. The hearing transcript will be available for review by the public, along with all comments and data that MSHA has received to date. The entire rulemaking record of course, is available to all at our office in Arlington, Virginia.

If you wish a personal copy of the hearing transcript, please make your own arrangements with the court reporter.

Now let me briefly give some background on the interim final rule and highlight its major provisions. Following that I will share with you our reaction to some of the comments received thus far.

On November 2, 1987, the United Mineworkers of America and the United Steelworkers of America jointly petitioned MSHA to adapt OSHA's hazard communication standard to both coal and metal and nonmetal mines and propose it for the mining industry. They based their petition on the need for miners to be better informed about chemical hazards and that miners working at both surface and underground coal and metal and nonmetal mines are exposed to a variety of hazardous chemicals.
On March 30, 1988, in response to this petition, MSHA published an advanced notice of proposed rulemaking on hazard communication for the mining industry. In this notice, we indicated that we would use the OSHA hazard communication standard as the basis for our standard and requested specific comments on a number of related issues.

We published a notice of proposed rulemaking on hazard communication on November 2, 1990 and held three public hearings in October 1991. The record closed January 31, 1992.

In their comments on the advanced notice of proposed rulemaking and the proposed rule, commenters represented both small and large mining companies, individual miners, a variety of trade associations, State mining associations, chemical and equipment manufacturers, national and local unions, Members of Congress, and federal agencies.

We reopened the rulemaking record on March 30, 1999, requesting comments on the impact of the proposed rule on the environment, small mines, State, local and tribal governments, and the health and safety of children.

The National Environmental Policy Act and more recent statutes and executive orders included
requirements for us to evaluate the impact of a regulatory action in these areas.

At that time, we also requested comments on the information collection and paperwork requirements of certain provisions of the proposal now considered as an information collection burden under the expanded definition of "information" under the Paperwork Reduction Act of 1995.

We received seven comments to the limited reopening of the rulemaking record, primarily from trade associations and labor organizations. The rulemaking record closed on June 1, 1999.

On October 3, 2000, we published an interim final rule on hazard communication with an effective date of October 3, 2001. We gave commenters until November 17, 2000, to submit comments. The interim final rule specifically requested comments on the plain language format and the content of the interim final rule, mine operators' experience under OSHA's Hazard Communication Standard, and any changes in the mining industry since the publication of the proposed rule.

On December 7, 2000, we personally spoke with or e-mailed all commenters and other interested parties telling them of our decision to hold a public
hearing in Washington, D.C. on December 14, 2000. the
public notice of the hearing appeared in the Federal
Register on December 11, 2000.

We received 22 written comments on the
interim final rule and heard testimony from six
persons at the public hearing on December 14, 2000.

Commenters objected to what they
considered to an inadequate comment period and an
inadequate notice of the hearing. These commenters
stated that they did not have sufficient time to fully
analyze the impact of the interim final rule which
affected their ability to develop and submit
meaningful comments. They also stated that many
operators were unable to testify at the hearing
because they did not have enough time to prepare
testimony and make plans to attend the hearing.

Members of the mining community have also
stated that because this is the first time MSHA
promulgated an interim final rule, there is some
confusion about their compliance obligations. The
National Mining Association and the National Stone,
Sand and Gravel Association have asked for a delay in
the effective date of the interim final rule until we
respond to their previous comments on it.

A number of mine operators and trade
associations challenged the hazard communication final rule in the U.S. Court of Appeals and the United Mine Workers of America and the United Steelworkers of America have intervened in the litigation.

Now I will briefly highlight the six major provisions of the rule.

The hazard communication interim final rule requires mine operators to identify the chemicals at their mine and determine if they prevent a physical or health hazard to the miners based on the chemical's label or the material safety data sheet or on a review of the scientific evidence.

Under the interim final rule, for the purposes of hazard communication, MSHA considers a chemical hazardous and subject to the hazard communication rule if it is listed in any one of the following four recognized authorities or sources: Title 30, Code of Federal Regulations, Chapter 1; the American Conference of Governmental Industrial Hygienists Threshold Limit Values and Biological Exposure Indices; National Toxicology Program Annual Report on Carcinogens, latest edition. Both of those are the latest edition. International Agency for Research on Cancer Monographs or Supplements.

The hazard communication interim final
rule requires mine operators to develop, implement and maintain a written program to establish a hazard communication program. The program must include procedures for implementing hazard communications through labeling, MSDS sheets and training of miners; a list of the hazardous chemicals known to be present at the mine; and a description of how mine operators will inform miners of the chemical hazard present in non-routine tasks and of chemicals in unlabeled pipes and containers.

If the mine has more than one operator or has an independent contractor on site, the hazard communication program also would have to describe how the mine operator will inform other operators about the chemical hazards and the protective measures needed.

A label is an immediate warning about a chemical's most serious hazards. The hazard communication interim final rule requires mine operators to ensure that containers of hazardous chemicals are marked, tagged or labeled with the identity of the hazardous chemical and appropriate hazardous markings. The label must in English and prominently displayed.

I would like to clarify one point about
the labeling requirements. Practically speaking, very little labeling is required. You only have to label stationary process containers and temporary portable containers and then only under some circumstances.

Chemicals coming onto mine property are almost always labeled. You would not have to relabel them unless the existing label becomes unreadable.

You would not have to label containers of raw material being mined or milled while they are on mine property.

You would not have to label mine products that go off mine property. You would have to provide the labeling information to downstream users upon request.

A chemical’s material safety data sheet or MSDS, provides comprehensive technical and emergency information. It is a reference document for mine operators, exposed miners, health professionals, and firefighters or other public safety workers. The hazard communication interim final rule requires mine operators to have an MSDS for each hazardous chemical at the mine.

Mine operators should already have MSDS sheets provided by the supplier for those chemicals brought to the mine. The MSDS must be accessible in
the work area where the chemical is present or in a central location, immediately accessible to miners in an emergency.

The hazard communication interim final rule requires mine operators to establish a training program to ensure that miners understand the hazards of each chemical in their work area, the information on the MSDSs and labels, how to access this information when needed, and what measures they can take to protect themselves from harmful exposure. Under the interim final rule, mine operators have the flexibility of combining training requirements for hazard communication with existing Part 46 and Part 48 training. The interim final rule does not require mine operators to have an independent training program separate from Part 46 and Part 48 training. Many operators already cover some of the above information in their current training program. If so, the do not have to retrain miners about the same information. We designed the hazard communication training requirements to be integrated into existing training programs for miners.

The hazard communication interim final rule requires mine operators to provide miners, their designated representatives, MSHA, and NIOSH with
access to materials that are part of the hazard communication program. These include the program itself, the list of hazardous chemicals, labeling information, MSDSs, training materials, and any other material associated with the program.

Mine operators do not have to provide copies of training materials purchased for use in training sessions, such as videos.

Also, mine operators do not have to disclose the identity of a trade secret chemical except when there is a compelling medical or occupational health need.

I will now share with you our thoughts on some of the comments received on the interim final rule.

Commenters representing the aggregate industry argued strenuously that the hazard communication rule is unnecessary and that the aggregate industry should be exempt from the rule.

The HazCom rule does not duplicate other MSHA standards, as claimed by some commenters representing the aggregate industry. It augments, supplements, and complements these existing standards. The rule specifically deals with chemicals and chemical exposures. Chemicals may be used in any mine
including those in the aggregate industry. There have
been hundreds of chemical burns in the aggregate
industry. Chemical burns can occur on any part of the
body. Skin burns may require multiple skin grafts and
require repeated hospitalization. Eye burns can be
serious and result in permanent loss of eyesight.

We believe the burden on small mines is
less than some commenters stated. First, small mines
typically use far fewer chemicals than large mines,
and in many cases, no new chemicals.

Second, small mines typically use
chemicals in small quantities and for shorter periods
of time, similar to household use.

Third, many of the chemicals used at small
mines are not covered by the rule. For example, soaps
used for washing hands are "cosmetics" and are exempt.
A can of spray paint is a "consumer product" and is
exempt when used in small quantities intermittently.
The length of exposure, as well as the amount, is
really the determining factor -- a can of paint only
lasts a short time. Glue or adhesives, when used
intermittently in small quantities, are exempt. Again, the length of exposure, as well as the amount,
is the determining factor in whether or not a consumer
product is exempt.
We recognize, however, that not all mines are likely to use a wide range of chemicals. Although we cannot exempt the aggregates industry from hazard communication, as we said, there are steps we can take to minimize the burden of the rule. For example, we intend to make extensive Compliance Assistance Visits and conduct extensive outreach. We also will be publishing a compliance guide to help operators and miners understand the application of the HazCom final rule. We are developing a variety of compliance aids, such as a model HazCom program, a training video for mine operators about determining chemical hazards and a training video for miners about chemical hazards and reaching an MSDS.

A draft of the MSHA compliance guide has been on the MSHA website for months. If you refer to the compliance guide, many of these issues are explained. If you have any questions in these areas, send them by e-mail to comments@MSHA.gov or to the Office of Standards at the address listed in the hearing notice. We will use these questions to clarify your responsibilities and include additional or better examples in the compliance guide. As a rule of thumb, however, if you are in compliance with OSHA's rule, you will be in compliance with MSHA's.
In the same vein, mine operators may obtain help from organizations that have developed generic guides to meet OSHA's hazard communication standard because HazCom contains the same basic requirements. We will provide links on our website to some organizations which have developed a variety of generic HazCom materials.

While it will remain the responsibility of operator to develop and implement a HazCom program and to have MSHAs, to the extent possible, we will help you establish the hazard communication program if requested. We have already taken other steps in revising our interim final rule to make it easier for mine operators to comply, without reducing the protections offered by the rule.

We are considering the following substantive changes to the interim final rule in response to commenters' concerns. We also are considering several nonsubstantive changes to clarify our intent, our correct errors based on commenters' perspectives and questions.

Under "HazCom Determination," we may revise the references to the American Conference of Government Industrial Hygienists, the NTP, that's the National Toxicology Program and the International
Association of Research for Cancer from those considered in determining if a chemical is a hazard and if the chemical is carcinogenic. One option we are considering in determining whether a chemical is a hazard is to refer to the 2001 editions of the ACGIH TLV booklet, IARC, and NTP. In determining whether a chemical is a carcinogen, we are considering referring only to the 2001 editions of the NTP and the IARC.

We had expected the use of the ACGIH, NTP and IARC lists to reduce the burden on mine operators because mines use relatively few hazardous chemicals for which they would have to develop an MSDS and label.

Commenters objected to the use of these lists stating that the organizations which compile them offer no opportunity for public comment; they impose unknown future requirements by citing the "latest edition," and they violate regulations governing incorporation by reference. We are open to considering alternatives where the impact of the alternative would not reduce protection afforded miners by the interim final rule.

Concerning labels and MSDSs, commenters requested additional language to clarify that the designated "responsible person" mentioned on the
labels and the MSDSs can be the mine operator. Accordingly, we are considering changing these provisions to read the name, address, and telephone number of the operator or a responsible party who can provide this information.

Concerning the availability of the MSDSs, commenters asked that we increase compliance flexibility and recognize that MSDSs may be stored in a computer. In response, we are considering modifying the requirement to have an MSDS available for each hazardous chemical before using it to one requiring the operator to have an MSDS available for each hazardous chemical which they use.

MSHA is also considering accepting a listing of the OSHA PEL on an MSDS as an alternative to a listing of the MSHA PEL. This would facilitate the use of the widespread existing MSDSs and reduce costs by eliminating the need to develop additional MSDSs.

In response to comments concerning hazard communication training, we are considering changing the language from requiring the operator to train the miner whenever introducing a new hazardous chemical into the miner's work area to requiring training when the operator introduces a new chemical hazard into the
miner's work area. This change would clarify MSHA's intent that when a new chemical is introduced, additional training is required only if the hazard changes. This is the intent as discussed in the preamble of the interim final rule.

Also, in response to comments, we are considering revising the definition of health hazard. The interim final rule defines health hazard to include chemicals that damage the nervous system including psychological or behavioral problems. We are considering deleting the phrase "psychological or behavioral problems." We are also considering adding the criteria "toxic or highly toxic" to more closely conform the language to that in OSHA's Hazard Communication Standard.

The hazard communication interim final rule is an information and training standard that requires mine operators to know about the chemicals at their mines and to inform miners about the risks associated with exposure to hazardous chemicals, the safety measures implemented at the mine to control exposures, and safe work practices.

The hazard communication interim final rule does not restrict chemical use, require controls, or set exposure limits.
We will publish our response to the written comments, including those comments received today at this hearing, in the preamble to the hazard communication final rule. We will consider all comments contained in the rulemaking record, from the publication of the advanced notice of proposed rulemaking on March 30, 1988, through the close of the record on October 17, 2001, in the development of the final rule.

You may submit written comments to me during the hearing or send them to the address listed in the hearing notice. We will also accept additional written comments and other appropriate data on this final rulemaking from any interested party, including those who do not present oral statements. All comments and data submitted to MSHA, including that submitted to me today, will be included in the rulemaking record. The record will remain open until October 17, 2001, for the submission of post-hearing comments.

We ask that everyone sign the sheet at the back of the room, if you wish to speak, and there's also a separate sign-in sheet for the presenter.

We will begin with the folks that have signed up in advance to speak. If there's time at the
end of that, anyone in the audience who wants to come up and make a statement will be able to do so. We will continue the hearing until all speakers have an opportunity to address the panel. Should it be necessary, we can extend the hearing beyond 5:00 o'clock today.

We intend to put the hearing transcripts on MSHA's webpage within 48 hours of the close of the hearing.

This concludes my opening statement. We will, as I said, start with the folks that have requested to speak and we'll stay as long as we can stay to make sure that everyone has an opportunity to present their oral argument.

First one to sign up was Chris Hypes from Lupstone. He may come in later this afternoon. I know he's over at the -- our second will be Mike Wright from the United Steelworkers. And then Harry Tuggle from the Steelworkers.

MR. WRIGHT: Thanks, Mr. Teaster. We're going to do this today.

I don't have a written statement to put into the record. I was not sure I was going to be here today. We're in a series of negotiations and I was able to make it.
My name is Mike Wright. I'm the head of
the Health Safety and Environment Department of the
United Steelworkers of America. With me today is of
course Harry Tuggle who all of you who is our Mine
Safety and Health Specialist and has done terrific
work for the Union on that subject ever since he left
the mine where he was the local Union President in
Missouri 20 years ago now, I think, a little over.

We are -- it's customary to say at the
beginning of a hearing that we are happy to have this
opportunity to present evidence and argument on an
important standard. I have some difficulty saying
that because we don't think this hearing ought to be
taking place. We had a standard in place. It was a
final standard and now we are back again in the
necessity of defending that standard.

I think actually it's shameful that we
have to do this here today in the Year 2001. OSHA
proposed its standard in 1983 and I believe the
standard became effective in 1985. We petitioned this
Agency for a standard on hazard communication a decade
and a half ago. Virtually every other worker in
industrialized countries is protected by right to know
standards.

Everybody under OSHA's jurisdiction, every
Canadian worker, including Canadian miners, are protected by the Canadian WIMOS standard. Miners and other workers throughout the European community enjoy right to know standards and laws. Miners and other workers in Japan, Australia, New Zealand, Brazil, there is, in fact, even a new right to know standard in China. Chinese workers have rights that American workers in American mines do not. We could have done this 15 years ago and here we are working on it yet today.

I don't want to comment in detail on the standard itself. In its original -- oh, and let me say one more thing about that. We don't blame this Administration for that problem. The fact that we don't have a standard yet is a problem really shared by the three previous Administrations. This Administration could have done the right thing and simply allowed the standard to go into effect. It did not do that. We understand the reasons for that. We do not agree with the reasons, but we would like to think they were well motivated.

In any event, the thing we want the most is to see the standard go into effect as quickly as possible because American miners need this standard and Harry will talk about that.
Let me say in the course of my work on this issue I was involved in, of course, the original OSHA standard. I was also the head of the workers group that worked on the ILO Convention and the ILO recommendations concerning safety in the use of chemicals at work which wrote a kind of a voluntary right to know standard. The last 10 years, I've been involved in a group working under the auspices of the United Nations and the International Program on Chemical Safety and the OECD that's charged with harmonizing chemical classification and labeling systems around the world, so I've had a fair amount of experience with this.

The one issue I want to comment on, Harry will talk about other issues we have, and let me make it clear again, our major issue is getting the standard in place. Since these hearings are taking place and since they will probably become kind of a free for all, we do have some comments on the standard itself, but our major comment is to get the thing in place in mines so that it protects workers as quickly as possible.

The one issue I want to comment on is the notion that you can't give people information or you can't classify a chemical as hazardous without going
through a full rulemaking process. Virtually every other standard requires miners to be told the ACGIH threshold limit value and virtually every other standard, including standards in place outside America, even though it's the American Conference of Governmental Industrial Hygienists, require that information be given to workers and use that as part of its classification scheme. It would be completely unworkable to demand rulemaking before we could a chemical hazardous and before we could say that a worker has a right to information about it.

And as a matter of fact, that kind of system would not withstand review in the tort system. Any company that withheld from workers and the public the fact that the ACGIH had declared something hazardous and subsequently somebody was hurt by that chemical would have enormous liability through the tort system and their lawyers simply wouldn't let them do it. So we need the standard. We need miners to be given all information.

We support the standard as written. We have some comments on that standard as written. If you're going to change it, we have some ideas, but in the end we'd prefer to see you not spend your time changing it, if by so doing, you can get it into place
as quickly as possible.

That concludes my comments and I want to give it to Harry.

MR. TUGGLE: Thank you, Mike, and Mr. Chairman, and I did -- I will be working from some notes and somewhat of a prepared comments and statement from the Steelworkers that I'll be reducing to hard copy and disk and then getting back to the Agency here very shortly.

Not to be redundant of some of the things that Mike has said, and he speaks from, as you see, from off the cuff on these matters. Maybe that's the reason he's the Director of the Department. And I will be working from these notes.

As Mike said, I am -- my name is Harry Tuggle. I am a Safety and Health Specialist with his Department and a certified Mine Safety and Health Professional.

Normally, Steelworkers would appreciate this opportunity to submit the comments on a highly significant rule such as HazCom, but in regard to the instant HazCom rule, we find it kind of hard to muster that normal appreciation. Also, as stated by the Panel in regard to those who have complained about not being ready or prepared for the interim final rule,
needing further time and so forth, we really find it
hard to muster any sympathy about their lack of
approach to this rule.

Also, as stated by the Panel, and as
referred to by Mike, this is a 14-year-old petition
issue with the UMWA and the USWA; an 11-year-old issue
on MSHA's proposed rule books. And all this delay, in
and of itself is really clearly a disservice to our
nation's miners as a whole.

But first, before getting into a few of
the specifics of our comments here, I'd like to go on
record and that is in remembrance of all those injured
and killed or more so literally murdered in the wake
of the recent September 11th devastation and attack on
our nation which is just two weeks ago almost to the
morning.

Given that devastating occurrence, we find
it necessary to say that our mining community is here
today in no small part to join our nation's resolve
that we're still in business. Obviously, not only are
we still in the business of mining, we're still in the
business of addressing the safety and health concerns
of our nation's miners. With that said, we realize we
must get on with the matter at hand to establish
hopefully and as soon as practicable a comprehensive
and protective HazCom standard for miners.

In that light, regardless of our contentions of Agency delay and disservice to our nation's miners on the matter, we are prepared to move forward and we do recognize the significance of this hearing opportunity.

In an effort to maintain a semblance of order on our comments, we'll attempt to keep them in line as reasonably as possible with a few interim rule preamble subjects of discussion and in numerical order of the standards that we'll be addressing.

One is the overview of the rulemaking at Federal Register page 59049. Here, the Agency states that HazCom is an information and training standard about chemical hazards and continues to state at Federal Register 59053 that the provisions of the interim final rule are performance-oriented. We may all agree that the HazCom rule at hand is an information and training standard and that its provisions are performance-oriented.

These subtle statements on the matter, however, are glaring in the absence of conveying that this rule must also be understood as an enforcement rule upon lack of compliance. The Agency continues its subtle approach to the rule by applying the plain
language and government writing. In this case, it replaced the word "shall" in each and every provision of the proposed rule with the word "must" in the interim final rule. In our opinion, the word "must" versus "shall" is soft language versus plain language in anyone's writing.

Be that as it may, if the word "must" must remain in all the rule, we believe it's incumbent on the Agency to convey in some form or fashion in the final rule that the term "must" carries the same meaning or weight as the term "shall."

Also, with that is with what is easily perceived as an over-emphasis on this being an information, training and performance-oriented standard, we propose that Sections 47.1 and 47.2 be revised in title and context to clearly address the purpose and scope of the final rule. In regard to Section 47.1, it should simply state purpose, deleting the reference to purpose of a HazCom standard. The subsection (a) above could easily say that this is a purpose and scope of a HazCom standard, titling the whole provision under subpart (a). So we're saying that 47.1 should simply say the scope and continue with the scope as currently defined by the Agency.

However, 47.2 -- purpose. I'm sorry, 47.1
should say "purpose" and continue with that purpose as defined by the Agency.

47.2 which simply states scope. And we propose a change to the lead in sentence in the current language. We believe in the context that since it's mentioned nowhere else in the standard, only somewhat implied or somewhat to be understood, that this an enforcement, still an enforcement standard, the meaning should begin as we propose in underlining "the scope of this part is to ensure compliance and" then go on to read "as currently drafted applies to any operator producing or using a hazardous chemical to which a miner can be exposed under normal conditions of use or in a foreseeable emergency." And we're also concerned and we'd like the Agency to take another look within that provision about the word or phrase "normal conditions."

If someone says it's an abnormal condition what context or weight does this provision have?

Simply take a look at it. We're not going to belabor the issue there. But we are saying short of the above revision about this being -- the scope of this part is to ensure compliance, we do believe that many of the inspectors out in the field in many instances will be hard pressed to enforce many of
these quote informative and performance-oriented standards that keeps being repeated.

In regard to the need for HazCom as discussed at Federal Register, page 59049 and 59050, here the Agency revisits the survey record where between 1985 and 1989 NIOSH surveyed 500 various mines and about 60,000 miners for the National Occupational Health Survey of Mining or NOHSM as it was referred to at that time. NOHSM documented over 10,000 individual hazardous chemicals and mixtures of hazardous chemicals to which miners could be exposed. ACGIH, on the other hand, covers about what, 500 or so hazardous chemicals. Between that 10,000 individual hazardous chemicals documented by NOHSM and the 600 within ACGIH or any of the other remaining documents that the standard refers to, there's something missing here. As Mike has said, we need to get on with the standard and begin to get something in place and maybe continue to address these other some 9,000 chemicals that miners deal with on a daily basis out there.

But in regard to the matter, the Mining Industry reported, while the proposed HazCom standard was -- the Agency reported, and this is while our proposed HazCom standard was gathering dust on the shelf for lack of a better phrase between 1987 and to
date, over 2500 chemical burns and more than 400 chemical poisoning were reported. These were all acute effects with no one having a clue as to all the likely high toll of chronic effects by these and other chemicals to which miners were exposed.

In short, if there's any question in anyone's mind that this really sums up the USWA's anger about this 11 to 14 year delay of HazCom standard and a contention that such a delay has been a disservice to our miners.

In regard to Federal Register page 59097 regarding the table 4711 on identifying hazardous chemicals we may be providing some, after a little more review, some additional comments about some modification of that table on the basis that we may very well believe that there is a need to combine items 1 or 2 or (a) and (b) I think it reads in regard to chemicals brought into the mine and chemicals produced by the mine operator, that somehow that could be dovetailed all into one provision. But we'll be speaking or addressing that matter in the written context of our comments before the close of the rule.

In regard to Section 4731(b) and 4741(b), we believe that the three months that's referred therein is an inordinate length of time for an
operator to have to prepare a container label or
update a label with any significant new information
about the chemical's hazards. That's not -- if
someone knows that this has got to be changed, he
doesn't -- I can't fathom 90 days to change a label,
to change an MSDS sheet or whatever the purpose there.

So even in that regard, the provision, we
believe, should require the operator advise all
affected miners of the precaution and this should be
able to be done at least within 30 days. And in that
interim, they would advise all miners that's handling
this about this upcoming change and advise them how to
protect themselves in the interim period of time.

In regard to Section 4731(b), we propose
that the additional sentence be added to read as
follows, where it initial says -- this provision says
that a "mine operator will not be responsible for an
inaccurate label" -- we believe that still in that
context it still should go on to read, "however, it
will be the responsibility of the operator when first
knowledgeable of an inaccurate label to take
immediate, corrective measures to obtain an accurate
label as soon as possible."

There's no need to simply let that
standard lay there and say it's not your fault. Well,
we agree. Maybe it's not his fault. But let's do
something about it and that means address it
immediately. We're talking about hazardous chemicals
here.

In regard to Section 4734(b) at Federal
Register 59098, we propose barring from the proposed
rule on this matter portable containers and there it
simply says that a portable container that has
contained hazardous materials shall be left empty at
the end of the shift.

And we need, we think we need to borrow
from the original 1990 proposed rule on that matter
and continue with the sentence that says "the portable
container is intended only for the immediate use of
the miner who performs the transfer." So if he's
transferring something from a large container or
barrel or bucket or whatever into a portable unlabeled
container, that he's -- it's his duty to immediately
use that or dispose of that material back into its
original container or as seen fit by other handling of
the hazardous chemical.

In regard to 4741(d), we believe the
second sentence needs some serious consideration about
the operator, if professionally qualified, developing
their own MSDS or may obtain one from another
professionally reliable source. Here the standard simply refers that a mine operator may develop his own MSDS. Anyone developing an MSDS in some context, there's got to be some credence to their professionalism in being able as an industrial hygienist or whatever to develop that MSDS, just to say he can develop his own and leave it lay in that kind of weak state, we believe is inappropriate. The standard should simply convey in some form or fashion that he or some other responsible person under his directive has the professional credentials to do such things as change MSDSs.

In regard to Section 4745, at Federal Register page 59099, we propose that this provision be deleted in its entirety and that Section 4753 be revised and that would be as underlined to read, "the operator must make a record of each MSDS for each hazardous chemical it has used or produced at the mine and a record of each miner's HazCom training thereunder. And keep these records for a minimum of 30 years. To keep these records for two years really pulls the underpinning of the original OSHA HazCom standard, reduces the underpinning, weakens the underpinning of what that standard was all about.

And that was to develop a record for long-
term and latency period symptoms coming forward some 10, 20 years later and there's a paper trail in regard to those symptoms then, to just say well, we'll keep them two years, and miner, if you want them, you can have a copy and it's now your responsibility. We think it's really dumping the responsibility off on an individual that the legislative history of the Mine Act itself doesn't convey in any other context in regard to any other standard and it shouldn't be conveyed here.

Not to revise this provision, to provide for a long term holding of these records such as 30 years we believe would be a disservice to the miners.

So at this point this concludes my comments with the reserve to provide additional comments as deemed necessary before the close of the record. However, I wish to also say that the USWA stands in full support of all the findings and comments of the UMWA. We jointly petitioned for this rule and so we stand in further support of any changes in the final rule that the Agency may make based on the comments or findings of the UMWA.

So with that, I thank you for this time and opportunity. Any questions?

MODERATOR TEASTER: Just a clarification
on the use of the word "must" versus "shall", we had
an Executive Order that directs us to try to write the
regulations in a plain language, something more or
less like talking to the mining public. But I can
assure you the intent is when we use "must" in place
of "shall" is to carry the same weight in every
responsibility as "shall" interchangeable in terms of
responsibility.

We did ask for comments on that plain
language and we've gotten some and I can also say that
we say that this HazCom rule is primarily a training
and information and that it sets forth requirements
for identifying chemicals, what hazards are associated
with those chemicals and training of miners and record
keeping and that stuff. It doesn't set any limits for
the pails or things of that nature. But they are,
these requirements are mandatory and we want to fully
convey that to the mining public that once we get
these implemented that they are mandatory standards,
that carry the full effect of the regulations.

Does the Panel have any questions or
follow-up, clarification?

MR. SEXAUER: I have one comment, just for
clarification for the record. In discussing 4731,
requirement for container labels, paragraph (d), you
mentioned that the operator is not responsible for an inaccurate label. Just to clarify that paragraph (d) goes on to say "inaccurate label obtained from the chemical's manufacturer or supplier." 4732, label contents, speaks to what is required on a label and the fact that it needs to be accurate for labels that the operator produces.

MR. TUGGLE: Yes, I stand correct. Thank you.

MR. WRIGHT: Let me just comment on "must", "shall." We're fine with "must." We just think that in the preamble to the final rule you need to say that "must" is replacing "shall" and has the same legal meaning, but that's fine. I think "must", I frankly think that we've all grown up working with "shall", "must" is actually a better word and we certainly support the plain language initiative.

On the fact that the mine operators are not responsible for labels that are inaccurate received from suppliers, our concern is to make sure that where the mine operator knows the label is inaccurate, that then they have an obligation to obtain an accurate label as quickly as possible and we want to make sure that the final regulations basically says that.
There are, as all of you know, a lot of very dangerous chemicals used in mining and the use is really these days increasing as we are using more cyanide in these leach mining systems and we've had not that I'm aware of in the mining industry, but there was a very serious accident some years ago in a film recovery operation where a worker died from cyanide used to recover silver out of silver halite film, old x-ray film I think, because there was no labeling on the material that he was using that said it was cyanide. So it's a pretty serious hazard and if the operator knows that the label is inaccurate, the operator ought to get an accurate label real fast.

MODERATOR TEASTER: Thank you very much.

MR. WRIGHT: Thank you.

MODERATOR TEASTER: We'll next have Joy Wilson who is President and CEO of the National Stone, Sand and Gravel Association.

MS. WILSON: Good morning. I'm Joy Wilson, President and CEO of the National Stone, Sand and Gravel Association, headquartered at 2101 Wilson Boulevard, Suite 100, Arlington, Virginia.

For the record, with the merger of the National Aggregates Association and the National Stone Association and according to the USGS, the NSSGA is
now the world's largest mining association with more than 900 member companies, mostly small businesses, operating in thousands of locations across America.

Our membership represents about 90 percent of the crushed stone and 70 percent of the sand and gravel produced annually in the United States. During 2000, 2.7 billion metric tons of crushed stone, sand and gravel, valued at $14.2 billion was produced and sold in the United States from 10,000 locations nationwide.

On behalf of NSSGA's members throughout America, I want to express our appreciation for the opportunity the Mine Safety and Health Administration has provided today and its six more public hearings in the coming weeks for NSSGA and others to comment on MSHA's interim and final hazard communication rule. This is a matter of principle and importance to aggregate producers and I welcome the chance to make available to use NSSGA's views on the impacts of this rule as published, will have on aggregate producers.

Safety. This has never been at the top of all Americans' minds like it has since September 11th and reinforced in all of our industries' minds after the tragic mine explosion in Alabama. From the firemen, police, search and rescue, medical teams,
iron workers, to the political, military intelligence
and charitable forces, American heroes are lifting us
up from our national grief to aid us all in recovery
and prevention of future terrorist attacks. We're all
proud of our government's leadership in both
individual and company response.

One of our members has been heavily
involved at Ground Zero and others provided logistical
and equipment support along with people in financial
ccontributions as so many Americans have.

It is clear that the highway system is
serving its critical defense role as identified by
President Eisenhower when he proposed the interstate
system, especially in the aftermath of attacks on our
people and the airways were temporarily shut down.

And about 40 percent of aggregates are used for
highway repair and construction; 20 percent for
residential construction; 20 percent for commercial
construction and 20 percent for public works, such as
water treatment plants, airports, schools and defense
installations.

Safety and security, around all of our
mines and this is not a hearing to debate, but to
unify in our strongly held commitment to the
importance of safety for our workers in America.

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Safety is the name and mission of MSHA. It is part of organized labor's priorities and it has been a long held priority of the Association I'm privileged to help lead.

Not only do the products of the construction aggregates industry help repair and improve roads, and 14,000 fatal accidents are attributed annually to unsafe road and bridge conditions, but also our industry is committed to safety specifically for industry workers.

Our association whose predecessor organizations have been in existence since the early 1900s organized for safety, environment and health purposes during the 1970s. Our Environment, Safety and Health Division was created, then staffed full-time in the 1980s. We now have a staff of five people, led by a certified industrial hygienist, a geologist, and an engineer devoted to member and industry service in furthering our safety, health and environment guiding principles, principles refreshed and readopted by our new Board of Directors just this past January.

Our members create association training courses, model environmental management systems, safety award programs, recognizing the exemplary
achievements of people, operations and companies and
their multi-year safety records and a new occupational
health program is currently under development.

Our member companies are constantly
working to improve worker safety and health, as well
as ensure quality environment for communities nearby.

The safety and health professionals who
are members initiated discussions with MSHA, other
industries and labor organizations to create a rule
appropriate to the aggregate and other surface mining
industries in lieu of Part 48. Together, through the
Coalition for Effective Miner Training, we worked
together and together we figured out a regulatory
structure, Part 46, that made sense.

However, had there been a requirement that
the government examine cumulative, regulatory impacts
before imposing any new regulation on an industry, I
think MSHA would have had a difficult analysis to make
regarding its constituencies. Part 46, the noise
rule, diesel particulate, HazCom and a variety of
additional regulations in the pipeline are hitting
this industry within 12 months of each other and that
is impacting the ability of our small businesses to
stay in business, as it is also impacting the ability
of our members to do the good job they know they can
do and want to do, to be in full compliance with all applicable local, State and federal laws and regulations.

I give you that history so that you have the context of my remarks today and appreciate that we can both support the same goal without having agreement on the method to reach that goal and that is how I characterize this regulatory divide.

I am here today to address the policy impacts of the published interim final rule. Because this matter remains in litigation, I will address any legally sensitive or technical questions to you in writing.

The changes MSHA recently proposed to the interim final rule and articulated again this morning are currently under review by NSSGA and our members and the association's position on the proposed changes, along with other technical comments, on the interim final rule will be delivered later in the comment period.

I have three primary points to make. One, NSSGA favors proper labeling of chemicals, providing hazard information to miners and providing the means for miners to protect themselves from exposure.

Two, NSSGA submits that the published rule
is unnecessary and inappropriate for the nation's
aggregate industry because it duplicates existing
regulations and we believe safety needs to be the
priority and not redundant paperwork. Communications
about how the hazard communications rule might work
without overlaying existing and new requirements by
the government with industry has been woefully
lacking.

Three, NSSGA believes the interim final
rule would not accomplish MSHA's goal in releasing it
which is to reduce the number of injuries and
illnesses to miners from exposure to hazardous
chemicals. We stand ready to work with MSHA and
labor, however, in determining solutions to any
specific gaps or failures in existing regulations so
that they can work better for the safety and health of
miners.

This interim final rule will only tie up
safety and health resources that could be more
effectively applied elsewhere and will be a
substantial paperwork burden on small operators
without concomitant benefit.

In 1986, MSHA itself stated that a hazard
communication rule on chemical health and safety was
unnecessary because its existing regulations offered
miners sufficient protection. The Administration took comments and did not proceed to final rulemaking for 10 years.

The only thing that changed up through 2000 is the implementation and enforcement of new regulatory requirements including the new Noise Rule and the new Part 46. Workplace safety has continued to improve, generally, during this time period, during record production for the aggregates industry.

There was insufficient attempt by the government to articulate a problem with existing regulations so that meaningful dialogue could ensue and solutions found. Indeed, we would welcome such a dialogue to correct deficiencies when and where the need exists. But instead, an entire new comprehensive rule with significant paperwork burden has been thrust upon the sector of our economy on top of regulations already capturing the hazard communications requirements.

Duplication of regulatory requirements contained in the published interim final rule is not proper and it's not the solution that will work. However, MSHA released an interim final rule on hazard communications in October 2000 and set it to go into effect on October 30, 2001. NSSGA and other industry
groups have filed a petition to review with the Court to challenge the rulemaking.

As noted last year in testimony on the proposed rule, NSSGA does not oppose the principle of chemical hazard information collection and dissemination which MSHA states is the chief purpose of the rulemaking. Obviously, miners need to be informed about potential hazards that might have an adverse impact on their health and safety in the workplace, including hazardous chemicals and they need to be provided with the wherewithal to protect themselves against such hazards and that information needs to be repeated at periodic intervals, both to reinforce and to assure that miners not forget.

Of course, mines also have a responsibility to use the knowledge that they have been given to safeguard their own health and that of fellow miners once miners have been made aware of potential hazards. MSHA's regulations and our convictions on this point seem to diverge.

As I've indicated, MSHA and the industry agree on the goal but part company on the means to accomplish the worthwhile end of informing miners about chemical hazards on the job and how to protect themselves.
MSHA says the interim final HazCom is the way. We say that the rules you already have in place can and should do the job adequately. We have listed those regulations in early written comments.

We are specifically emphasizing Part 48 and Part 46, safety and health training regulations, and your labeling requirements which represent several significant provisions in your already impressive regulatory arsenal. Further, we consider in our opinion, the pervasive OSHA hazard communication standard on which by your own admission has closely modeled, as well as right to know laws in 43 States. HCS affects aggregate operations that have active ready mix or asphalt operations directly as do right to know laws that do not exempt mining. Additionally, both HCS and the right to know laws affecting mining indirectly. We see great redundancy here in MSHA putting the numerous requirements of the interim final rule on top of existing MSHA and external requirements.

In aggregates, relatively few hazardous chemicals are needed and the hazards of these are well recognized even by the late public: welding fumes, motor fuels and lubricants, used motor oil, solvents, paints, varnishes, cleaners, anti-freeze, battery acid
and explosives. The obviously dangerous nature of explosives, coupled with the heavy burden of training and other regulations imposed upon those who use them by the Bureau of Alcohol, Tobacco and Firearms, has led most aggregate producers to turn blasting activities over to contractor specialists. For those that do their own blasting, only miners specially trained to meet the stringent explosive regulations handle this delicate operation.

MSHA's existing regulations mandate that all hazardous products at the mine carry hazard warning labels. The need for a new labeling standard in the interim final rule we find unnecessary.

HazCom requires training and MSHA's new rule assumes existing Part 46 training is insufficient to satisfy the requirement and thus must be augmented. Why, we ask.

Part 46 and Part 48 which applies to underground aggregate operations both require extensive training for new and experienced miners and refresher training every 12 months. More to the point, under both regulations the miner must be trained additionally on the health and safety aspects of the task to which he or she is assigned before being permitted to perform that task unsupervised. If
the task requires the use of hazardous chemicals, these regulations require the miner to receive training on the hazard and how to work with it safely. If the requirements are already in place, what's the rationale for piling on new ones?

We provide analysis of the database MSHA put forth as justification for the rule in written comments, but to show an example of the redundancy, the duplication of his HazCom interim final rule, please note that some 50 percent of all the chemical burn entries for the aggregates industry involve penetration of the eye by limestone dust. MSHA has a regulation on its books specifically dedicated to prevention of eye injuries with requirements to use eye protection if there is a risk of injury to this vital organ.

Approximately another 25 percent of the cases dealing with batteries and fueling accidents are also covered by existing MSHA regulations which mandate the use of appropriate personal protective equipment to prevent injuries. The majority of the incidents relating to aggregate workers in the MSHA database are not as a result of unregulated activity. They can and should be prevented and NSSGA has offered and continues to work with industry, our members,
labor and MSHA to determine how we can together continue to bring down incident rates and especially reduce any fatal accidents.

We do not believe an entirely new rule, yet another layer of bureaucracy for the aggregates industry and our workers can be justified if the real problem is that the current rules need to work better. Therefore, as with the labeling requirements of HazCom, we are hard pressed to appreciate the need for a new training requirement contained in it.

Researchers comment that MSDSs are flawed as viable instruments of communication to workers because they try to serve too many potential audiences: lawyers, occupational physicians and nurses, industrial hygienists, marketing personnel, regulators, customers and workers, among others.

The 17-year-old lesson of OSHA's HCS is that it represents a paperwork shuffle that has drawn resources away from legitimate health and safety concerns. Moreover, because it bleeds off resources and is a bottomless pit of citation activity, it has bred cynicism about government health and safety efforts among business owners and industry health and safety practitioners alike.

MSHA's HazCom, with 24 of 30 provisions,
carrying a paperwork burden, is poised to spread
OSHA's mistake into the mining sector where we are
concerned the outcome will be the same.

MSHA had it right long ago when it
concluded that no hazard communication rule was
necessary in the mining industry because sufficient
regulations were already in place to protect the
miner. Now 16 years later, in light of part 46, the
Paperwork Reduction Act amendments and more, MSHA's
former conclusion is even more accurate.

This interim final rule detracts from its
stated goals when it insists on moving forward with
the regulation that fails to advance the cause of
health and safety, fails to take into account
significant differences among industries and fails to
take into account prior and relatively recent
regulations designed to improve worker health and
safety.

In closing, let me emphasize to this Panel
and the mining community that NSSGA stands ready to
work shoulder to shoulder with MSHA and labor in
pinpointing and filling any gaps that may be found to
exist between the regulations already on the books.
If we need new training materials or a specified
amendment to Part 46, let's be responsible and take
reasonable initiative and work that through, rather than impose a 10-year-old solution that didn't fit then and doesn't fit now.

Again, thank you for the opportunity to appear this morning.

MODERATOR TEASTER: Thank you. Assuming that MSHA would go forward with the hazard communication standard, what compliance assistance do you think that the Agency could provide to small operations in terms of coming into compliance with this type of standard?

MS. WILSON: I'll probably have to give that answer some thought and put it back to you in writing, Mr. Teaster, because I'm not confident that with your proposed changes to the interim final rule, I fully understand the impact of where it appears you've attempted to reduce some of the paperwork burdens. So I think I would prefer to make that part of our extended written comment.

MODERATOR TEASTER: You mentioned that we had regulations in place that could have prevented some of the accidents that we referenced. Do you know whether or not any analysis has been done whether they were in or out of compliance with the standards or whether or not they had knowledge of the hazards that
they were being exposed to?

MS. WILSON: I do not.

MODERATOR TEASTER: Does anyone else have any questions?

Okay, thank you very much. Let's take a short break and we'll reconvene.

(Whereupon, the proceedings went off the record at 10:23 a.m. and went back on the record at 10:45 a.m.)

MODERATOR TEASTER: Next will be Mike Sprinkon from the International Chemical Workers Union.

MR. SPRINKER: I'd better fix my handwriting. It's actually Michael Sprinker. It's --

and I try to do my best when I print things out, too, but --

MODERATOR TEASTER: What's the name?

MR. SPRINKER: Sprinker. S-P-R-I-N-K-E-R.

MODERATOR TEASTER: Looked like O-N here.

(Laughter.)

MR. SPRINKER: It was all those years of signing sampling sheets and --

(Laughter.)

MODERATOR TEASTER: We apologize.

MR. SPRINKER: -- other things. Oh, no
problem. I've been called worse, much worse.

So, anyway, thank you. I'm Michael Sprinker. I am the Health and Safety Director of the International Chemical Workers Union Council of the United Food Commercial Workers Union.

We actually merged about five years ago now and represent a fair number of miners, folks that use mining products, which, I mean, like I say, there isn't a whole lot that doesn't either come out of the earth or is grown that ends up in -- in chemicals and in our products.

I've also been a certified industrial hygienist since 1991. Before April 1994, when I came to work for the Chemical Workers, I spent close to 10 years as an OSHA compliance officer in the Oregon state plan, Oregon OSHA, as an industrial hygienist, beginning there about 1990 -- or 1984, just before the OSHA HazCom standard came into place.

I also spent a couple of years in the former Yugoslavia doing some research and talking to companies and workers and government folks about some of these very similar areas, some of the issues in mining and chemical production, health and safety communications, how various systems work.

I have to say, however, I guess I have to...
say I'm not very pleased to have to be before you once again on this same standard. It's not that I don't value the opportunity to listen, listen, and to testify. But this rule has been so long in the making, adopted as an interim final rule, then hearings held, and now pulled back for reconsideration.

I'd like to say also I strongly agree with Mike Wright about the need to continue to include the ACGIH threshold limit values, contrary to what you'll undoubtedly hear during the hearing, during these hearings over the next month. While these exposure limits -- voluntary exposure limits, I should say -- may not be perfect, there are a number that we would argue are too lax.

But they are a very important source of information, and they are considered by many people throughout the world and used by a number of companies to improve their health and safety programs.

I think we all recognize a lot of the OSHA limits and the MSHA limits, which are based on, what, I think the 75 threshold limit values that were adopted by law and were considered, are rather old and may not always reflect anything close to current knowledge.
The TLBs provide a good source of information. There are companies also that will put their own exposure limits on MSDSs, their own suggested exposure limits. I know the factory ceramic fiber industry has been doing this for years, as well as a number of others, including Monsanto and some of our larger companies will do that when they have a recommended limit which they think employers should try to follow.

So, you know, I do think that those need to continue to be included, and we would very much oppose any move to delete those.

I think, in general, it probably does make sense for the ease of things to include the OSHA PELs, since those are already on most data sheets. I don't think there's too many places where those are different. If there are some places where they're different, and MSHA is stricter, we would like to see those included.

But anyway, this rule is long overdue, and I think it's important to remember that during the 12 years between January 20th, 1981, and January 19th, 1993, MSHA, OSHA, and other agencies that deal with health and safety, both of workers and of the public, were not wanted or supported by two administrations,
except maybe when there were some tragic events.

They also -- those administrations didn't really want to see the agencies change or move or adapt to -- to what even at that time was current knowledge. So we sort of understand why this whole process took a long time, you know, and there was some comment about 1986 it was decided not to go ahead with the standard.

I mean, there are quite a number of standards that were held up in the mid '80s. In fact, most of the standards promulgated in OSHA at that time either came out because Congress finally said, "Look, you know, this -- the administration has to adapt this -- has to adopt this standard, has to propose this standard," or the courts did, especially when there was lengthy record that there were hazards -- formaldehyde, ethylene oxide, benzene, update on benzene, even process safety management in OSHA.

There was a time when I heard a lot from employers. Remember, this was the time I was at Oregon OSHA -- about how come all these rules came out at the same time. And there was a reason. They had been worked on for a long time, and they were kept from coming out. They were prevented from coming out by administrative decisions.
There's also the burden of -- of rulemaking not being done, the burden on employees, the burden on workers. The experience with chemical workers under HazCom -- and I'll go to the experience in general industry -- there's a lot of products, trade secret. You couldn't find out what the heck it was. The company wouldn't tell you. There weren't data sheets. There wasn't a good source of information. They'd be claiming trade secret.

We're talking about things that were reproductive hazards. We're talking about things that could cause severe burns, and we're talking about things that actually did cause these problems -- sensitizers. And it wasn't until people were able to get access to that information that people were able to take the precautions needed.

And I believe a lot of times even the supervisors on the floor didn't know what the heck people -- the hazards of what people were really working on or working with.

We certainly found that, as people understand what they're working with, what the risks are, what the stuff can do to you, what the symptoms are of exposure, they'll use -- they'll use the precautions. A lot of times, too, they'll be finding
out the precautions they've been given won't work.

One of the major mining companies told our workers for years, on the issues of diesel exhaust, that these little -- nice little paper dust masks are just fine against that. And even ignoring the byproducts issue of diesel exhaust, you have the issues of carbon monoxide, faulty running equipment.

"Oh, this is fine. This is fine."

You know, we've wished many times that data sheets had more information or information in a better format than what is out there. Unfortunately, it's up to the manufacturers of those products of those chemicals to write the data sheets. And they may not always be so well written, but they are an important resource.

We find our members use them quite a bit. We find our mining sector members would really like to have access to those things. We also end up doing a fair amount of training of our members and find that the value they place on understanding how to use the information in data sheets, other information sources about chemicals, is something they value quite a bit.

We've had mining sector members who have gone some -- gone through some of the training and through some of the hazardous waste training who talk
about this being the first time they have ever learned
some of these -- some of these things.

So, you know, we've heard a lot -- we've
heard a lot over the years about how so much is being
done voluntarily by industry. And there are some
companies that are doing that. Some of our members
have been decently trained, provided decent
information.

But while some companies were doing that
sort of training, were doing training on chemical
hazards, on proper use of PPE, the need to use it on
engineering controls, others were taking basically a
free ride on the -- on the backs of the workers on the
health and safety, and, truthfully, also taking
advantage of the companies that were spending time and
money to do training. We're talking about having a
level playing field. This rule, like the HazCom
standard, will put on a minimum standard which all
companies must meet.

I do have some comments specifically about
the rule, and some may mirror what the steel workers
have said. And I'll be also expanding on a number of
areas in our written comments.

You know, the issue of a written hazard
communication program is very important. There's
nothing that says this has to be 20 pages long and
match ISO 9000 language either. In fact, some of the
worst -- I've seen some very good hazard communication
programs that are a couple of pages long, or even
less. And we're talking, you know, big type with a
fair amount of space on the pages, too.

I've seen memos from management, and
they'll send companies which are longer than hazard
communication standards and harder to understand, too,
or have -- than their hazard communication program,
and they're harder to understand.

The labeling issue -- also, the labeling
on temporary use, short-term use containers -- I think
is a very important issue, too, and really does need
to be something -- a container which is controlled by
the person who fills it, because one of the problems
is you have something which, for example, is contained
-- a little bit of a reactive compound.

If that's left around, what happens when
someone pours in some water or something else that
reacts with it the next day? You're going to have --
you may have some dust remaining there. You could
have a small problem. You could have a bigger
problem. But labeling of containers is extremely
important, and I think we need to ensure that that's
done even on the temporary containers.

With the hazard communication program contents there should be some statement as to who's in charge of the program, because people need to know who to turn to, because lot of times when -- it appears that nobody is in charge of anything.

MSDSs should be kept for the 30-year period, as suggested by -- by Harry Tuggle of the Steel Workers. Those things do change. We have products which have changed from containing silica, crystalline silica, to containing something more innocuous. And where is the record going to be of what the worker was exposed to?

With the real paucity of exposure monitoring which goes on in mining, with some companies the only people who ever monitor in a mine is MSHA. There may be no record that a person was ever exposed to anything. In 20 years when they develop a disease, or they get the newest company has the latest data sheet, that's not what they're exposed to 20 years before. There needs to be a way to clarify that.

In fact, you know, if there's a concern that this is hard on the smaller employers, then I'd suggest that perhaps the industry associations might
not have a hard time keeping some of this. That would be a nice voluntary effort on their part to offer it to maybe keep some of these older records, these older MSDSs.

It's also important workers have the right to get those MSDSs, which the rule would provide, which otherwise it's totally voluntary on the part of the company.

We're also happy that the standard had the requirement for hazardous waste, and I think it's not only protection for the worker, I think there's going to be protection for the operator, too, because I think a lot of operators would just as soon know what was coming in to be used or to be stored, or whatever is being -- whatever is being done with this.

I think some of the use of material which was contaminated with dioxins which were dumped on roads, and I think a lot of construction operators and others who use those materials, who use those oils, might have really thought, again, if they realized this was actually contaminated material that was coming to them, not only wouldn't they want the liability, I mean, I've dealt with a lot of those folks, and they don't want -- they don't want to take the risk of making their people sick with something
which is a major health concern.

There's been some discussion of the training issues, and, you know, this additional level of training would be a burden. That all depends on what training has been done. I think MSHA has made it quite clear you don't have to redo training you've already done.

You are looking at basically a performance standard here. Do workers understand the hazards? Do they understand the signs and symptoms? Do they understand the ways to protect themselves? And that's not just PPE, but that things can be controlled through other means such as ventilation, and so on. If that's already being done, hey, it's real easy to comply with that part of the standard because you already have.

Some of this stuff, I mean, I -- I keep -- I'm looking at these things which were fought over for so many years in general industry, including small employers, including employers with four or five people. And now for a lot of those folks it is really common. I've had employers, small employers in the State of Oregon, actually be grateful that some of this information -- that they've been able to find out some of this information, and even to choose better
and safer products for people.

There are some -- of course, there are some burdens. There are some burdens with every standard. There are some burdens also when there aren't standards. I mean, who ends up paying for the injuries and illnesses of workers? Especially the illnesses, which a lot of times are never traced back to chemical exposures or to something somebody worked with. And in some states in this country you don't get worker's compensation for an occupational illness.

And so what are we talking about here? We're talking about preventing some of those at the very -- before they can happen. We believe this rule will go a long ways towards helping with that. I think we've seen a lot of that in general industry. We've certainly seen improvements -- like I said, improvements in the way personal protective equipment is used, in glove selection when that is needed, in respiratory selection when that is needed, and even in engineering controls.

It may be hard to measure the -- how many people's health have been saved. But we also know what happened in those industries before all this information was available, and how many people were made sick, how many people did suffer burns, how many
people did lose -- did lose function.

   And, you know, I think this is a -- I
think that is a way to show that having such a
standard and having requirements of, "Look, in your
training you've got to include this stuff" will do
that.

   I know that as a member of one of the
industrial -- a couple of the industrial hygiene
associations I have talked with a lot of industry
health and safety people over the years. I count some
of them as friends and people I respect.

   And what I usually find with them is, how
do we find ways to better talk about the hazards, not
just to educate the workers about the hazards, but to
educate corporate management, plant management about
-- about the hazards of the various chemicals they're
working with, how to effectively do that.

   And that's really been the big focus of
many of those people. How do we do effective
education of everyone involved in chemical use? Be it
the engineer who is designing a system, to the
purchasing person who is buying the stuff, to the
worker who is using it, to the supervisor who is
overseeing what's being done.

   And there is a great appreciation for the
fact that this information has to be provided -- the
MSDSs have to be provided by the -- by manufacturers
and distributors now.

You know, is it absolutely the perfect
solution? There is no perfect solution to every
problem. But it gives us all a basis on which to
work, a basis on which we're saying every employer
needs to at least be at this level, and we can work
from there. We've worked very well with a lot of our
employers on hazards, on dealing with these hazards,
on educating our workers and helping to educate them.

And we're perfectly willing to -- to work
with employers and with MSHA and with our members to
raise the level of health and safety in our plants.
But I think we need a rule like this, which everyone
is -- is expected to follow.

So, as I said, I will expand on -- on more
in my written comments. And I'm happy to answer any
questions you might have.

MODERATOR TEASTER: Just a couple of
clarifications. The interim final rule adopted the
latest -- what are required pails in accordance with
the latest version of the -- whether it's the American
Conference of Industrial Hygienists, whatever was the
latest edition.
MR. SPRINKER: Right.

MODERATOR TEASTER: What we said in the opening statement that we would consider employing in 2001 for each of those documents identified in there.

The other point that I wanted to make -- on the pails you said that we should accept OSHA's, and that's something the agency has stated that it would consider, saying that the OSHA pails would be acceptable on these labels or the MSDS use.

MR. SPRINKER: Yes. And I guess one -- one thing on that, too, is, you know, I realize that's a -- I think in many ways we'd like to see whatever the current rules are, MSHA's rules. But on the other hand, I think that could be an acceptable compromise to us.

I mean, truthfully, we don't really see why -- in some ways why we're back here on this. And if it was a choice between the rule going through as it was adopted in December, or waiting another year, we'd take the rule in December and work with it.

MODERATOR TEASTER: Well, the one thing that -- and just for clarification -- what an interim final rule is is it -- and this to my knowledge is the first time MSHA has issued one in my 30-plus years. But it's a final rule with a piece of proposal up
front.

And what the agency had intended to do was they opened the rulemaking record up for 45 days after publication, and then they were going to take the comments that they had received during that period, and then have a hearing later, and then draft a final rule. And that never did occur, and a lot of things took place. But hopefully at some point we can get all of this information and come out with a final rule, engulf the interim part of the rule.

MR. SPRINKER: And I think there are some basic things in there which are, you know, labeling, and so on, which -- you know, it's very disappointing to see the stay in effective dates or dates by which people need to be in compliance.

MR. SEXAUER: Mike, I have a couple of questions I'd like to ask you about personal protection. Earlier we heard a speaker say that 50 percent of chemical burns affected the eyes and they were covered by another standard. In your experience, you would probably agree that a hazard communication standard is necessary in addition to the other standard. And I wondered if you care to comment on that.

MR. SPRINKER: Yes, sir, because I -- you
know, you see situations where people do get things in their eyes, even using -- for example, even using goggles and face shields, because there are times you get sweaty, stuff drips down, you take off your PPE, it drips into the eye. People don't know really what the hazards of these materials are, and what they can do, and what starts out as a little stinging can quickly become much worse.

They may go far longer before they -- before they go to an eyewash and wash it out or wash it out long enough. I mean, if I get something in my eye, I mean, hey, I'm -- I may rinse it out for a while. If I know that it can cause serious burns, not only am I going to make sure I get the -- a good -- 15 minutes is a heck of a long time.

I'll probably go and seek some medical attention if -- or at least someone to look at that eye who knows what they're looking at to make sure I have gotten it out, because it's not hard to get something back -- you know, back behind up at the top or whatever.

And these things are -- you know, and there are a lot of times, too, when you know what the hazard is and what it can do. You may realize -- well, I realize, you know, these safety glasses with
slide shields aren't going to do a darn thing in this case.

So I think that's -- that's one of the keys. I mean, knowing -- knowing there is a PPE need is one thing, but understanding really why and making sure that you take all of the additional precautions -- because PPE can fail and it usually does. None of it is perfect. None of it fits our heads right or our bodies correctly all the time, and there are a lot of conditions out there that can make -- that can limit the usefulness of PPE.

MR. SEXAUER: You stated also that your members have found MSDSs to be very useful. And you said that you would expect that miners would also find them useful. I wonder if you could expand a little bit on how miners might find it useful.

MR. SPRINKER: Well, one, not only just from seeing the exposure limits -- and, of course, no one can look and say, "Geez, that looks like a milligram per cubic meter out there, and I know -- and that's above the limit." I mean, you know, no one can really just look and see that, but it gives them an idea of ranking of hazards.

Also, the issues on -- I mean, admittedly, some MSDSs are far better than others. I've seen
MSDSs for arsenic which, you know, even in the '80s or '90s didn't acknowledge arsenic as a carcinogen. Quite surprising.

We also see MSDSs which do discuss at times what kind of gloves are proper, do discuss the symptoms -- signs and symptoms of exposure. Some even get into -- certainly list whether something is -- has been found to be a carcinogen or not. So they're used as a tool, as a reference, maybe as one of several references.

We've taught a number of our -- in some of the teaching that we do we deal with New Jersey fact sheets, Canadian fact sheets, and so on. Clearly, something that not every workplace has, very few have. But it helps to give our members -- the MSDSs help give our members certainly some information that if they need more they know where to go to.

You know, they could look these things up on the internet. They can contact us. They can talk to their physician perhaps. It ends up being used in a number of ways.

Also, the issue is, too, although it's not -- certainly, we like to see much more -- a much better section on chemical reactions and incompatibles on MSDSs, that information does -- can help, too.
Some of that can help just on the basis of what people are using to handle equipment.

MR. SEXAUER: We have some statements in the record that miners, in fact, do not use MSDSs.

MR. SPRINKER: Hmmm. Well, I'll tell you, when we put on training at some of our regional conferences our miners have stated the fact that they want to know about chemical hazards, how do -- you know, where are the references for materials?

You know, I -- we get a lot of frustration from them, too, that those things aren't available in every workplace. It's not that everyone -- every miner is going to use -- is going to go through every single MSDS. I mean, it's -- I don't know anybody that -- I don't want to say that crazy, but who wants to spend, you know, days and days and days reading each MSDS.

But if they're taught -- if they learn -- if they learn what an MSDS contains, what kinds of information it contains, how to find it, and they see -- and they feel there's a need, just for their own curiosity, or because they have been exposed in the past, or because they're working -- going to be working with something that they haven't worked with for a long time, they will use that. I'm not saying
every single person will, but I'm confident they will.

MR. SEXAUER: Thank you.

MR. SNASHALL: You said something to the effect that a HazCom program can be done in a few pages or something -- that you are aware of it having been done in a few pages. They don't necessary have to be lengthy.

What, in your estimation, makes for a good HazCom program?

MR. SPRINKER: Number one, it needs to be, you know, fairly complete -- who is responsible, when training will take place, you know, a list of what the hazardous chemicals are, the hazardous products are.

Especially like in OSHA, the thing about having the -- the uncommon tasks that are done, the -- now I'm forgetting my terminology. You know, such as, for example, cleaning out a vessel or a tank, or things like that, where you may have exposures you wouldn't normally have or different exposures you might not normally have.

Also, you know, because those sorts of things do show what kinds of things people -- you're supposed to be trained on, what your rights are under the rule for information, where you -- who you turn to to get things if you can't find it.
I mean, there are times even the supervisors or the foreman may not know who is responsible for things, you know, although that should be -- that should be helped through HazCom training, too. You know, and that it's readable, in relatively plain language. I mean, it --

MR. SNASHALL: Has this been done in a few pages?

MR. SPRINKER: It can be. Some of it takes longer. Unfortunately, some -- some companies find a need to put everything in. You know, I was sort of joking about the ISO 9000. But the places I've -- people I've heard of complaining about how long their programs are and how nobody reads them, have them in very -- sort of very stilted and, you know, formal --

MR. SNASHALL: Legal-ease.

MR. SPRINKER: Yes, legal-ease and all of that. And those are the ones where you don't see fingerprints on them. You don't see the dirty fingerprints. You know, so that's -- and the fact is is that it -- really, the written program really serves as a reminder of what the -- of what the training has been to people, too.

So, you know, I used to write things very
lengthy and very formally, and so on. And that
doesn't work so well in training people. And like I
said, part of the function of a written program is --
in many ways it is a part of the training, and it is
-- it is letting people know who they can turn to, or
who they're -- who they're supposed to turn to if they
-- if there are problems, and what the employer is
supposed to do, and really to some degree what your
responsibility is, too, as a worker.

MODERATOR TEASTER: Good. Thank you.

MR. SPRINKER: Okay. Thank you.

MODERATOR TEASTER: Our next speaker is

Timothy Hroblak, the United Mine Workers, Local
Union 2300.

MR. HROBLAK: How are you doing? My name
is Timothy Hroblak. I've been in the mines for 28
years. I'm currently Chairman of the Health and
Safety Committee. I'm not a paid commentator or a
lawyer by any stretch of the imagination.

I work six days a week, get paid $60 a
month for performing -- to perform my health and
safety duties, and they are performed in my spare
time.

I'm here because I'm concerned for the
health, safety, and protection of my people. I have
seen a dramatic increase in the use of chemicals in
the workplace. Traditionally, we -- miners -- are
exposed to hazards that we cannot see or detect.

The miners have the knowledge, advice,
experience, and know how to deal with hazards in our
industries, such as methane, coal dust, etcetera. We
are now exposed to hazards, chemicals, that we cannot
see, detect, or have the knowledge or training to
safely deal with them.

The following comments on the HazCom rule
are real-life examples and experiences. We live in a
real world. We're exposed to many hazards over the
course of our mining careers -- gases, coal dust,
diesel particulates, and now potentially hazardous
chemicals. I wonder what else the mining industry has
to hasten our demise.

My comments -- miners need basic human
protection as afforded most other workers in this
country. This rule has been debated for 14 years. It
is time to enact a rule that truly, truly protects the
miners.

It is obscene to allow coal operators to
make a determination what or what is not a hazard.
Coal operators knew that coal dust caused black lung
in 1840, but no protection from this hazard was
afforded to the miners until 1969.

The determination on whether a chemical is a hazard or not needs to be left to the proper scientific determinations, not the mine operators. Labeling of chemicals is of the utmost importance, that any chemical container be properly labeled.

The miners must know how to properly handle and deal with the hazards associated with the chemicals. Labels must be on all containers, regardless of the length of use. The labels must be in plain and easy to understand language, and any changes to the contents of a chemical must be on the label without any three-month delay.

You see, the hazard and/or medical treatment required by the use or misuse of this chemical has no three-month delay. Medical people need the proper knowledge to treat our people in the event of an accident.

We use poly grout injection in our roof on a long wall. It is a known carcinogen. In the past, no miners were allowed to be on the downwind side while injecting this chemical. Then, no miners were allowed within 500 feet down there.

Currently, the chemical can be injected right over your head. I've seen drums of this
chemical, without labels on the drums, only cover coating. I've also seen drums of this chemical -- we're talking large drums, 65 gallons -- punctured by scoop forks and leaking all over equipment, the mine floor, and people's skin and clothing, wrecking the intake air courses, exposing the entire long wall section to the chemical's ill effects.

How are we, as miners, supposed to deal with chemical hazards without proper labels and training? We, as miners, must know what is in these chemical drums and how to safely deal with them. Also, medical personal must also know this to properly treat our people in case of an accident or an emergency.

Mine operators, chemical and manufacturers, must be responsible for proper, current, and accurate labeling information on all chemicals brought into the mine.

MSDS -- safety data sheets must be in plain, easy-to-understand language. Any changes to the MSDS must be updated before the chemicals are used. The mine operator must be responsible for maintaining the MSDS. If the mine operator makes a conscious decision to select and use the chemical, he must also make a conscious decision to provide and
maintain the MSDS.

Also, the miners should not be responsible for retaining MSDS information. A miner could be exposed to hundreds of chemicals over decades of employment. It is impossible for the average miner to retain this information.

Training -- miners must be trained before a chemical is used at the mine. The miner -- the miner must know how to safely handle, use, in the event of an accident, treat our people in case of emergency. If the mine operator makes a conscious decision to use certain chemicals, the mine operator must also make a conscious decision to train miners on the proper use in handling of the same chemicals.

This makes sense not only from a safety perspective but from an effective use perspective. Many times in the past lack of proper training has resulted in pain and suffering for our people.

Summary -- any comments already stated above require very little effort on the part of mine operators to protect the miners from hazards. They are mostly all paper-chase issues that require no real work to achieve. The above-stated comments also in no way inhibits the mine operators' operations or inhibits the use of chemicals in the workplace.
The only thing the miners request is that necessary protection from the use of hazardous chemicals be issued in the workplace.

I'm here to entertain any questions.

MODERATOR TEASTER: You indicated that there are a lot of new chemicals being introduced at your mine. Are you -- do you have any personal knowledge of any injuries or illnesses that resulted from the use of chemicals that --

MR. HROBLAK: Yes. We've had some people exposed in our preparation plants. They have become sick, nauseated, dizzy, and had to leave the workplace.

MODERATOR TEASTER: Do you know what the chemical was?

MR. HROBLAK: No. We've had MSHA people brought in, and they were -- they weren't able to detect anything. We had probably at least three people that I know of that have been made sick by this chemical.

MODERATOR TEASTER: Are they back to work now?

MR. HROBLAK: Yes, they are working.

MODERATOR TEASTER: Any questions? Thank you very much.
MR. HROBLAK: Thank you.

MODERATOR TEASTER: Our next speaker is Randy Bedilion, also from United Mine Workers, Local Union 2300.

MR. BEDILION: Good morning. My name is Randy Bedilion. I'm also on the committee with Timmy. He kind of made my job a little easier.

We got together on what we had planned to tell you today, but for a matter of the record a statement I heard earlier about -- that it was heard that the miners did not want the MSDSs. Well, I've been in the mine for 27 years. When I first started in the mine in '75, probably the only chemical I had to worry about was rock dust.

If you had seen another chemical, it -- it was very minimal, to the thousands that we're, you know, subjected to today. But the miners definitely -- I represent the miners, being a Health and Safety Committeeman. And the miners definitely want the MSDSs.

The MSDSs we have now are so -- should I say inadequate? It might say "may cause the skin to burn." It doesn't have anything about the long effect of this, about the -- the majority of them don't have anything on them as far as the overexposure, the long
exposure, whether you were exposed one time, or some people -- like Tim had mentioned, we had people around chemicals in a plant that actually made them sick, nauseous, and they had to be taken off site.

We've had guys underground that the glue that Mike Long came in -- like he said, it used to be the most stringent, and now it's down to the minimal. We'd stand underneath it while they've pumped it. We've had guys breathe that. It has made them nauseous, made them sick. And they've been sick from it. But we -- the miners definitely do want the MSDSs.

The agency has noted that, in 47.1, the purpose of the rule is to reduce injuries and illness by ensuring each operator identifies the chemicals at the time, determines which chemicals are hazardous, establishes a HazCom program, and informs each miner who can be exposed, and other onsite operators whose miners can be exposed, about the hazards and appropriate protective measures.

I can tell you from being through many companies that has owned Cumberland Mine in Green County, the numerous subsidiaries that has had them. It might be some other company, but when U.S. Steel went to USX, an operator -- from what I've seen, from
one end to the other, is going to go with the most minimal thing they can as far as the safety of the miners.

It's been a fact, as far as the operator needs -- needs to be held accountable, more so than ever right now.

Based on conditions and loopholes contained in the rule, as well as the preamble of the rule --

MODERATOR TEASTER: Randy, can we stop just a minute?

MR. BEDILION: Yes.

MODERATOR TEASTER: Okay. Sorry about that. If you could back up from --

MR. BEDILION: That's all right. Okay.

However, based on conditions and loopholes contained in the rule, as well as the preamble to the rule, there is no reason to believe that miners will be afforded the necessary protections from chemical uses at the mines.

The union has previously argued that the agency's ardent desire to write a rule that is solely performance-based offers little, if any, assurance to miners that HazCom is ultimately an enforceable standard. While the union does not argue that the
limited use of performance-oriented incentives can be beneficial, the decision to base a rule of this importance solely on such advice is misguided.

The agency should understand that their operators do not seek these incentives as an opportunity to work mutually toward increasing safety, and that's what -- one of the things I was trying to tell you.

Probably now, if at any time, the safety -- safety is there if pushed by the worker. Management, to me, what I see, is at a minimal they are going to do at a very bare minimum what they have to do to keep the health and safety of the worker.

Lacking enforceable standards and left to their own devices, some operators have routinely circumvented acceptable safety standards for the sake of another ton of coal. This rule written as it is does not offer the level of enforceable safety that is required in this instance.

By its own admission, Federal Register Volume 25, Number 192, page 59055, there is no intention by the agency to regulate chemical use or prohibit to limit chemical use. Further, HazCom's effectiveness is dependent upon operators' and miners' knowledge and awareness of hazards.
And, again, back to what I was saying, we get minimal -- they tell us minimal knowledge of what we need to know, and there is no link in the hazards that long-term cause or use of -- being around it nowadays compared to 27 years ago, there is probably not a day that I don't go in the mine that I'm not exposed or close to some kind of a chemical that I don't know what the long-term effect is.

Therefore, it's unclear what the rule will regulate or control, because the ambiguous language and enforcement action necessary to protect miners is not available. The union recommends changes be made to the interim final rule which recognizes the significant hazard chemicals pose to the workplace. They must also realize the use of certain chemicals need to be restricted or prohibited.

Considering the history in industry, self-regulation of such an important matter is not advisable. The agency must take a proactive stance in the instance and issue chemical use guidelines.

As far as getting back in touch, my more or less final -- on the MSDS, we see contractors come underground, and an MSDS may be on the drum of material they're using, or the canister. Things are discarded. We don't know -- the drums are punctured.
The MSDS doesn't show us what's going to happen as far as that chemical getting into the walkway, on machinery that one of the miners may have to use.

He walks onto that. He not only exposes himself to it, but when he leaves the coal mine he exposes everybody he comes in contact to with that chemical. And it happens. People don't all shower at the mine. People that work around these chemicals carry those chemicals home to their homes, and it no longer stays just within the health and safety of the miner. It also goes to the health and safety of the people that he surrounds.

That's all I have.

MODERATOR TEASTER: In the Part 48 training that you received at the mine, is there any detailed discussion on the chemicals that they have at the mine that -- as far as --

MR. BEDILION: I personally don't believe that, in an eight-hour class, which is -- is the Part 48 for the annual retraining -- I don't really believe that to do it efficiently you could do the chemical training also, as far as in that eight-hour training and cover everything else you should cover in that.

It has been touched on, but to the extent
that I believe it should for the -- our personal protection, no.

MR. STONE: Let me ask a clarification. Are you saying that it's not currently being done, but -- that the chemical training is not being done currently under Part 48 or Part 46? Or are you saying that it could -- you don't believe it's possible to do it in an eight-hour training?

MR. BEDILION: And covering all of the other Part 48? I believe that this chemical training, as far as the subject to it, the MSDSs, the stuff -- I think that could probably be its own training in itself, as much as there is nowadays in the mining industry to cover.

There is -- like I said, 27 years ago chemical was your rock dust and uranium. Today there's thousands, and it's in an everyday mining process that they're used.

MR. STONE: Okay.

MODERATOR TEASTER: One thing that -- under the interim final rule that would be more focused training on the hazards that would be -- that could be, and I think in most cases would be incorporated into the Part 48 or the Part 46 training. So there would be some specific items discussed and
addressed in that -- in those training plans.

MS. GREEN: But for clarity, let me just establish -- try to establish one thing, and that is, are you saying that you feel that there's a strong need for this regulation because it provides you a lot more information than your current Part 48 training, such as the MSDSs, and such as the specific labeling requirements?

MR. BEDILON: Let me follow what you're asking. Do I believe in this rule?

MS. GREEN: Yes. And do you feel that it enhances --

MR. BEDILON: Yes. I think it is taking too long.

MODERATOR TEASTER: Okay. Thank you.

That's all the speakers that have requested to speak. If there's anyone in the audience that has not signed up that would like to speak, please come forward now. If there is no one --

MR. TUGGLE: Just a point, Mr. Chairman.

If there is no other speakers, I'd like maybe three minutes of additional time here just to make a couple -- a few more comments.

Okay. Again, Mr. Chairman, my name is Harry Tuggle with United Steel Workers of America.
And I would like to make just a few brief comments on some matters that have been raised this morning. That's in regard to where some comments were made that -- that feeling this rule is basically redundant of other provisions in the rule, and references to various states that have right-to-know laws and that the majority of states having right-to-know laws are way up there in the forties, or whatever.

However, you can call any one of those states, and I think the last count that we had -- approximately 50 percent of those 40-some states that have right-to-know laws in place has no enforcement office whatsoever. Some of them have just an answering service and tells you to go to OSHA or to MSHA or whatever else agency you might have on these issues.

And I -- and anyone is welcome to make those calls and find out just where those standards lie on that matter.

As far as this particular HazCom standard, to many, in review or face value, yes, it may appear somewhat extensive. It replaces one given standard that was -- is being deleted, and that's in regard to the labeling standard. With the current labeling standard being deleted, the HazCom standard comes in
place, and it's very necessary.

There were some references to very -- or
some questions in regard to some various known miners
that have had problems with MSDSs or problems with
getting assistance in their workplaces. And the steel
workers have had numerous occasions -- and in the
copper range, specifically, and even in regard to
silica, having underground miners exposed to silica
coming out from underground, being advised by their
doctors to come out from underground, who want a
janitor's job, this, that, or the other.

Having not been earlier on advised about
the hazards of that silica, they wind up on surface.
They can't move from a production job or a craft job
underground, come to a janitor's job on the surface
and support their families. And with no other
protection in place, they simply go back underground
to the silica exposure. That's another issue that
we'll be addressing some years down the road.

But by the same token, even in the iron
range, there is MSDSs in regard to some various
aimings used in the flotation process to remove the
silica from the iron ore process. And the miners
there are trained in regard to MSDS sheets that had to
specifically handle this.
However, we found that in a number of cases -- downstream emergency processes that this standard now addresses -- busted pipes, overflowing processes, put labor on it, put this one on it, clean that stuff up, work for days on it, and these guys wind up sick at their stomach, rashes going on, nausea, problems breathing.

And come to find out, there is no downstream process until you nail it in the company's face that you've got to address these people, too, just as though they were directly handling it themselves. It's in the process. So we've had -- we've had those situations.

In regard to miners wanting MSDSs, the steel workers, along with probably every other labor organization, has an annual, if not more than annual, safety health conferences with its general membership from general industry and its miners from the mining industry.

And each and every time that we get them in a group, and we have an ongoing need for continued education because of our election process for new officers, new miners' representatives, new employee representatives -- every election turnaround, and we bring these people back together, and these
individuals -- you begin to tell about OSHA MSDSs and OSHA HazCom.

And the miners -- to many of them this is the first they've heard of it. They start raising their hand. Well, what about us? What do we do? Where do we get this stuff? And we're talking to miners' representatives and miners in these conferences. And we're saying, "Hold on. There's one still in the works. We're still working on it."

And we've been telling them that now for 11 years in regard to that. And where we are at today, we seriously need, as we -- as Mike Wright has stated -- to get on with this HazCom standard, and we really don't believe -- if we can get beyond the litigation issues, we don't believe the standard needs to be laid in abeyance until June of 2002.

There should be a great potential for this to go in place, even with the outreach that's already been ongoing, all of the information on the standard itself that's been going forward, MSHA's assistance, ready assistance to get into this issue. I think we should be prepared for this standard by January 1 of 2002.

Thank you.

MODERATOR TEASTER: We have -- the
National Stone, Sand, and Gravel Association is having a safety awards meeting in Pittsburgh, and they have requested to speak at 3:00 this afternoon, different representatives.

So if there's no one else here that wishes to speak, we will adjourn until 3:00 p.m. this afternoon. All are welcome to come back and join us at that time.

Thank you.

(Whereupon, at 11:47 a.m., the proceedings in the foregoing matter went off the record.)
MODERATOR TEASTER: Back on the record.

Our first speaker for the afternoon session is Victor Goulet. He's with the National Sand, Stone, and Gravel Association.

MR. GOULET: Good afternoon, ladies and gentlemen. My name is Victor Goulet. I actually prefer Vic. And I'm the Safety Director for Brach's Industries, Incorporated, which is headquartered in Dracut, Massachusetts.

We own and operate five mines located in New Hampshire and Massachusetts. And by any definition, we are small mines. Of the 175 people who work for us, who are employed in our company, approximately 50 to 55 are employed at our mines. Now, this number varies depending on the employees who have duties that would be shared with our asphalt, paving, and real estate divisions.

By last accounting, we have a company-wide incident rate of 1.56 and a mod rate of .65. We try to maintain a safe and healthy workplace for our miners, and, indeed, all of our employees. I'm here to represent the position of my company, a small mine operator, with a safety department of one, a strong
safety committee, and a team of good and committed plant managers.

I have responsibility for employees who work in OSHA-regulated construction and general industry divisions, as well as MSHA-regulated mines. I say this just to give you a quick thumbnail sketch of what my experience tells me is the position of literally hundreds of safety professionals just like myself.

They are typically people who wear many hats, whether it is several job responsibilities besides safety and health or responsibilities for the occupational well-being of employees, and workplaces who fall under the jurisdiction of several agencies, be they federal, state, or local.

I'm here to try to explain to you why I feel that this HazCom rule would be a burden to my company, my efforts, and that of my small mine associates.

I read your opening statement with great interest, because in it you share with us the agency thought, which in part states precisely my argument. You stated that, "The HazCom rule does not duplicate other MSHA standards as claimed by some commenters representing the aggregates industry." And this is
where I agree. "It augments, supplements, and complements these existing standards."

Outside of reviewing and listing every standard that you have claimed this rule would augment, supplement, and complement, I prefer to explain why this will burden my existing standard compliance safety and health efforts.

Looking your claims up in my comment desk dictionary has raised concerns with what you propose this rule will do to my company. Augment means to make greater, as in size, extent, or quantity. A second definition means to add. Supplement is defined as something added in part. And complement, as a noun, refers to the number or quantity required to make up the whole.

Even taking into consideration the balance of the definitions, nowhere is there a relationship to the quality of a requirement, only to the quantity of requirements. When you increase the quantity of a safety requirement, you increase my burden to comply with it.

Now, if this were by design to enhance a deficiency in the way that chemical hazards are labeled, recognized, or their avoidance was improved, I suppose my argument about burden would be less
valid. But the agency, by your own acknowledgement, has accomplished that.

I don't even have to refer to the old 1986 program information bulletin in which the agency argued itself that a HazCom rule was not necessary because, among several other reasons, it was duplicative.

Instead, in the current record of this interim final rule, MSHA states no fewer than 24 times that existing standards in the programs that they prescribe address requirements of HazCom. When someone tells me something 24 times in 48 pages, I figure that they mean it.

Again, not wanting to be redundant and list the gamut of existing standards that address these things already, I can only say that to duplicate these requirements will add to my precious and overtaxed job responsibilities providing necessary assistance in those areas where we have experienced injuries and illnesses.

For instance, we have had miners seriously hurt by trips, slips, and falls, by defective tools or their improper use, etcetera. We have not had a chemical-related injury.

Now, I know that I represent only one mine
operator with only five mines. But in my case, and in
the case of several of my associates with whom I share
and compare information, this is not the prioritized
cause of incidents that you state.

Not unlike any single anecdotal
justification cited in the preamble, my submission for
your consideration is that this isn't happening to us.
And I can certainly testify that I know of no cases
where anybody suffered injury or illness because every
T wasn't crossed and every I wasn't dotted in a
written plan -- by the way, which OSHA has elevated to
the infamous status of their most cited standard.

As a matter of fact, we do use the OSHA
HCS with our miners based on the recommendation of
MSHA, in 46.4 of the training standard. Because of
our treatment of this existing requirement, and with
this recommended way to handle the training to
recognize hazards in our mine, it has been
incorporated into our approved Part 46 training plans
with the agency's blessings.

So in terms of my take on how another
existing standard is augmented, supplemented, or
complemented by HazCom, I prefer the term
"duplicated." There's no ambiguity in my
understanding of the definition of the word
"duplicate." It is simply defined as to double, to make twofold, copy, replicate, repeat, and imitate. It is here that I am burdened, and my efforts will be duplicated.

There is the presentation in the final regulatory economic analysis of September 2000 that a mine the size of one of ours should only incur an annual burden of $230.

I can assure you that I've already expended that in just the time it took me to read all of this material, as well to expend the time to assure that my existing program would be adequate to make necessary changes to assure that I -- that I've trained all affected or potentially exposed miners, and document all of this in accordance with the new rule, I will experience a cost to my employer that will be several times the stated amount, not to mention the time required to keep me properly trained to be qualified to keep this program in compliance.

I don't argue that these steps are not necessary, or that cost analysis alone is a primary consideration, but, to the extent that they are redundant, detracts from my actions to make my hazard information and training program of chemical hazards any more effective than is already built into my
approved Part 46 plan.

I suppose -- and you have commented on --
that a lot of these tasks could be contracted out.
But I am still responsible and liable for compliance,
and that will still cost my time on top of the cost of
the contractor. And I believe that the miners at our
mines will realize no greater nor more effective
safeguards to their safety than currently exist.

I was about to find an excellent study on
some of the problems with the OSHA HCS in the form of
an agency requested analysis that was done by the
National Advisory Commission on Occupational Safety
and Health. And it was released in September of 1996.

This OSHA request was based partly on
complaints of small businesses to the burdensome
requirements of the standard, and by the Clinton
administration as part of the effort to make the rule
more efficient, less of a burden, improve
understanding and compliance, and reduce ineffective
paperwork.

Some of the findings in this report echo
what I'm trying to say here today. This report
recognized the paperwork burden as real. It also
pointed out that MSDSs are flawed, that training based
on these MSDSs was ineffective. That the complexities
of compliance with the standard resulted in inadequate programs and cynical attempts to present a program that was little more than ignored paperwork.

More troubling were the findings that enforcement actions were cast in an unflattering manner. The report detailed how OSHA compliance officers wrote citations that were based on their misunderstanding and misinterpretation of the requirements of the HCS.

It as well points out that perceived deficits on the details of written plans on understandable MSDSs, and a minutia of non-hazard-correcting requirements, added to small business suspicion of the intent of the citation writers, and, indeed, the standard itself; hence the report's recommendation for a de minimis violation and several paperwork infractions.

To this day, paperwork violations represent the most cited standard by OSHA, and five of the top of the 20 cited general industry violations that are written.

Now, if I were to associate this statistic with the MSHA HazCom rule, I as well would argue that this presents a burden to your enforcement efforts as well as to my compliance efforts. We would
undoubtedly both be tied up with precious inspection
time debating the lack of or the perceived lack of
dotted I's and crossed T's.

As well if this were to become MSHA's
number one cited violation, can you quantify for me
the amount of time that your inspector supervisor and
I would be tied up in conference? Not unlike me, he
and his staff of ARs would much rather be at the mines
assessing the working conditions that injure,
potentially fatally injure, our miners.

I'm asking you to consider the burden on
your acknowledged strained enforcement efforts. I'm
asking you for your economic analysis of costs to
enforce this rule.

In the preamble for Part 46 rule, you
identified that the annual cost burden on mines of our
size would be about $1,800. This is a cost that we
have already acknowledged, accepted, and expended. As
well the compliance costs of the other existing
standards, agency acknowledged existing standards,
have already been invested in our safety budget.

This is just the small guy speaking here.
But since we've invested this substantial amount,
wouldn't it be more cost effective and, more
importantly, more protective for the miner for you and
me to expect that your compliance efforts should be emphasized with the equally protective and currently existing standards and not on undue duplicative rule?

Could'n't we look at the existing Part 46 training rule as adequate to ensure that chemical hazards are as real and as important as the other hazards that exist? And, if not, why? Is that rule deficient?

I fail to recognize how my intentions to work to protect our miners, in compliance with our corporate management's commitment, our employee's best interest, and a desire to protect their health and safety, will be increased or improved with duplicating that which already exists. To me, and to many of my fellow safety professionals, this has the unfortunate flavor of rulemaking for the sake of rulemaking.

Thank you very much.

MODERATOR TEASTER: Thanks, Vic. You say that your Part 46 plan incorporates training that addresses the chemicals that are used at your operation?

MR. GOULET: Yes, sir.

MODERATOR TEASTER: Would that -- do you feel that that would comply with our interim final rule as far as the training requirements for --
MR. GOULET: I feel that that very much complies with what I interpreted Part 46 to mean when we talked about training miners in the avoidance of hazards, one of which is chemical hazards that I recognize.

I think it would meet the intent, as I perceive it -- this is my perception, Mr. --

MODERATOR TEASTER: That's what we're asking for.

MR. GOULET: Right.

MODERATOR TEASTER: And you say you comply with OSHA's hazard communications standard?

MR. GOULET: We adopted OSHA's HCS as part of our Part 46 training plan, as we did several other either national consensus standards or other training programs, information and training programs that were available in the marketplace -- again, taking the lead, from what I read in the record, concerning Part 46, that there is availability of existing programs that can be incorporated to meet the intent or the intention of that training regulation. So in our case, yes, we -- we used HCS.

MODERATOR TEASTER: Do you have an idea of how many chemicals, different chemicals, that you have there that you address in your Part 46 training?
MR. GOULET: In terms of an actual number, Mr. Teaster, I don't have it. I can get it for you. We address chemicals in -- well, our Part 46 plan obviously is different at each of our mining sites. We have specific plans for it, where we talk and teach in general chemical hazards, and in specific what we have located at that location.

I didn't submit these or anything, but this is just a picture of our MSDS shelf, which happens to be at my office. Each mine has their own for the hazard that exists on the mine site, and I maintain a library for not only reference but availability for anybody that has a request for availability.

MODERATOR TEASTER: And those are available for review by the miners?

MR. GOULET: By the miners, yes.

MODERATOR TEASTER: So if your -- is it reasonable to say that you comply pretty much with the OSHA standard?

MR. GOULET: Yes, sir.

MODERATOR TEASTER: What we are saying for the most part, that if you comply with -- with MSHA's interim final rule that -- that that would satisfy our rule, if you comply with OSHA's.
MR. GOULET: I understand that. My compliance with OSHA's HCS is because it is in my Part 46 plan. It's there. And I felt that I was directed to do that when I adopted my Part 46 training plan.

This would duplicate several of the efforts and add on to the burden some additional -- and I understand as well in your opening statement you talked about looking at some of the requirements in this interim final rule and making some adjustments based on the comments that you've received.

I didn't address those in my testimony, but I recognize them, and I'd say carry on, but continue to carry on.

MODERATOR TEASTER: You mentioned in your statement something about a flawed MSDS sheet. Did I understand you correctly?

MR. GOULET: Yes, sir.

MODERATOR TEASTER: Could you clarify that, or expand --

MR. GOULET: I extracted that from that report by -- that OSHA ordered and was -- and I have a copy of it here. They talked about some problems that they've noticed with MSDSs in the marketplace in that -- you know, available out there, supplied by
suppliers and manufacturers, supplied to workplaces on request when the chemical was brought onsite. And that was by the National Advisory Committee on Occupational Safety and Health.

And flawed -- when they talked about flawed, they talked not only about content. But the way, again, that I perceived and read this report is the type of information that was presented, the fact that because there would be omissions in there, some operations, some companies would assume that the chemical did have a hazard that didn't necessarily exist, based on their use of the chemical and these sorts of things.

They recognized that since they were written, which seemed to be primarily for attorneys, cover litigation issues, other users of that, rather than strictly an employee, that that made them flawed in terms of their use that they were designed for, at least that HCS and MSHA has looked at them -- you know, as information for the miner. I guess in a lot of words, to sum it down, understandable.

MODERATOR TEASTER: Do you have any knowledge how often a miners may refer to the MSDS to different operations?

MR. GOULET: In my operations, in the past
three years I've never had a request for an MSDS by a miner.

MODERATOR TEASTER: Would you have knowledge of any request made at the mine?

MR. GOULET: No, sir. No, meaning I -- I have knowledge that there has been none.

MODERATOR TEASTER: Okay. Assuming that the agency goes forward with this interim final rule, in your opinion, what can the agency do to best assist the small operators to come into compliance?

MR. GOULET: Well, I'm not exactly sure how you would be able to assist me. I know I've read in the record, as well as in other documents that have been supplied by the agency, that there are several steps to include outreach and compliance assistance. And I don't want to appear cynical, because I will represent to you that I have, in my opinion, a good relationship with MSHA, at least on the local level. I know, Mr. Teaster, we've spoken on this before. I have yet to have a CAD on Part 46.

Our particular local office is having difficulty meeting their requirements for inspections for several reasons. And this is not in terms of criticism; this is real world that I'm talking about. I wouldn't hardly expect that they would be able to
expend effort in helping me write or train or understand anything in this standard.

EFS has one available person for New York and New England. John Montgomery is a great guy. I've worked with him on a lot of things, but he is stretched so thin.

MODERATOR TEASTER: Yes. I agree that we're short on resources, and we -- based on the discussions we've had here with you today, I -- you seem to be very progressive as a small operator in terms of compliance.

But I think as far as doing the compliance assistance visit on Part 46, we try to focus with folks that -- that need the help first, and then we go to anyone that we think that needs it or has requested it. We try to get to all of them, but I think during this outreach, going -- during the interim period of waiting for the rule to become final and after, we've done a tremendous outreach.

And I think we've tested a lot of mines to notify them, make them aware of the Part 46. But we -- if we had an operator that we felt was in compliance, we try to call all of the Part 46 and find out if we needed help with it.

I think we visited most of the small
operations that really needed assistance. We're going
to I guess stop doing the compliance assistance at the
end of the month. Hopefully, we've reached all of the
folks that have needed help, and I think we have for
the most part.

MR. GOULET: I didn't come prepared with
statistics of people I'm associated with who have or
haven't had visits. I'm speaking primarily myself.
But I did mention that I communicate often with
people, and that's based on sort of the direction --
informal direction I got from the agency back in June
when we sat in a room for a brainstorming session, and
we talked about what each other can do to help us meet
what Mr. Larisky has set as goals for both the agency
and industry and labor combined to meet.

And one of the recommendations that came
from the MSHA side of the table was a mentoring
program. Why doesn't industry actually get a
mentoring program? So I jumped on that, and this is
where I'm coming up with some of the inputs.

Some of the small mines -- and we're small
mines, but smaller than us -- where their safety
director, unlike I am -- my responsibility is also the
bookkeeper, and possibly one of the supervisors, and,
heck, may spend hours driving a haul truck for that
matter, and there's a couple of those like that. And
we've talked about -- I've talked about this with
them.

So that's why I had said I represent sort
of their point of view as well, so maybe you can say
my program seems to be in order, and I wouldn't have
to do much to comply with this, although I -- I would
still consider it a serious burden, and a burden as
well on our relationship, as I had stated in -- in
your enforcement efforts and my compliance. They've
indicated to me that they're having a tough time with
it.

MR. FEEHAN: How long had you had the
program, your -- how long have you included your
HazCom program in the training?

MR. GOULET: In terms of Part 46, since
its inception. Prior to that, we have OSHA regulated
industries within our -- the confines of our mine
sites. So we've had that requirement since before
Vic, my predecessor, in terms of making sure that
people that are regulated by the OSHA regulation have
the proper training.

And I had said that we have some range of
miners, and that's because our people move back and
forth. So they've received HazCom HCS training prior.
MR. FEEHAN: Have you had a HazCom program? And do you have MSDSs and --

MR. GOULET: Correct.

MR. FEEHAN: -- labeled?

MR. GOULET: I don't know if I showed you that. It's been shelved.

MR. FEEHAN: Well, it seems -- you know, and I'm interested in hearing from you, but to me the $267 cost that we've costed for this, I don't think there's any cost. I mean, don't you already have compliance with the standard?

MR. GOULET: I have compliance with -- from my OSHA operation, HCS, and I believe I have compliance on the MSHA side with Part 46. And I'm just saying that you're asking for compliance with a new rule that has some differences. It will take time and effort away to make sure that we're in compliance.

MR. FEEHAN: Well --

MR. GOULET: Notwithstanding some changes that you're proposing, okay, the rule -- the interim final rule as it stands -- and I haven't measured -- haven't had the opportunity to measure it -- this will make a big difference, some of these changes you propose. I would suspect it would be a difference, but still a burden.
MR. FEEHAN: The changes from OSHA's HCS, though, there are about five of them, and they're all basically liberalizations of the compliance requirements, except for -- you know, excepting, let's say, the hazardous waste requirement which doesn't apply at your operation. And the training record retention. Okay.

Other than that, almost everything else is a liberalization of the compliance requirements. Now how is it that it would be more difficult to do?

MR. GOULET: Well, as I had stated, it's my understanding -- and although you've mentioned several times that if I'm in compliance with HCS I will largely be in compliance with this.

But this still doesn't mean I'm in compliance with it. I have to run the program as I understand it the way -- the way it is written or I am subject to be in violation in terms of compliance with this standard, which takes time and effort to do these changes, and changes in the labeling requirement.

And, again, you're addressing some of that as well. But there are changes from HCS to HazCom and labeling requirements. And, again, I talked about a burden that involves the relationship with MSHA and my company, both in their time and cost, and in my time
and cost, which will add to it now because, as my
local office can tell you, we sit down and talk when
there's a -- when I've been cited for a violation for
a couple of reasons. Maybe I disagree, or maybe I
need an education to help me get into compliance. But
this will just add to that again.

MODERATOR TEASTER: Vic, if you're
planning on submitting some post-hearing comments,
we'd be interested in your comments on our thoughts
addressing some of the concerns in our opening
statement, how that might reflect on -- on your
overall view of the interim final rule, and the
differences with complying with what you're doing now
and how that might make it easier to comply, if those
changes were implemented, and what effect it would
have on it. Any comments in that area we'd appreciate
it.

MR. GOULET: Okay. As well it will give
me the opportunity to talk to some of these people
that I'm working with out there in the field in this
little mentoring program that we've started. I
solicited comments from them. I don't represent them
in front of you, and I understand that. I'm just
trying to give you what I perceive is sort of --

MODERATOR TEASTER: Sure. I understand
MR. GOULET: -- feeling from the -- my part of the country or similar operations. Notwithstanding changes that you have proposed, you may look at in your statement this morning, as well I don't want to leave this table watering down the message that I came to say, that I believe it's duplicative.

I believe I already have it on my workplace, based on existing standards, and I believe you have acknowledged that to a large extent. That's what brought me here, is that my belief is they're there, and they are working.

MR. SEXAUER: I think I, too, was struck by your comments in light of the existing standards that there would be an increase in burden, and I'm just trying to pin down what that increase in burden would be. So if you are submitting any additional comments, that would be interesting to see how that would break down.

You showed us a photograph of your MSDS roll, I think you called it. And what I was going to ask you is if you don't mind parting with that photograph, we'd like to put it into the record --

MR. GOULET: Absolutely.
MR. SEXAUER: -- if that's all right with you, and we'll call it Exhibit 1.

MR. GOULET: Sure.

MR. FEEHAN: I have a question about them. Are they broken down by -- do they represent -- they represent MSDSs from all of your mines. Does that mean if five of your mines have diesel number 2 being used for the equipment that you have diesel number 2 in five times?

MR. GOULET: No.

MR. FEEHAN: Is it broken down by mine or is it --

MR. GOULET: No, and let me explain the photograph, if I may. I wasn't sure if I was going to be able to introduce it, but we got into a conversation. There are two shelves of white notebooks labeled MSDS. The top shelf is, and I have represented to you, here's our MSDSs at all of our locations. They're alphabetical. They're found alphabetical. So if the person wants to come in and look for diesel number 2 generically, maybe because they feel they may be exposed to it at several locations or, you know -- they're able to find it alphabetically for the company.

This second shelf, the lower shelf, if you
will, on there is where it is broken down by location. If someone says, "I was at Location X, I thought I saw a chemical," he may want to go to that. So that's why I said I needed to qualify those pictures. I had showed you the picture of one shelf, I think, I hope.

MR. SEXAUER: Let me just clarify for the record that there are five photographs, each showing different angles of the same display of shelves.

MR. GOULET: Correct.

MR. FEEHAN: But this is not just the MSDSs for the mining section. This is MSDSs for all of the companies.

MR. GOULET: That's correct. I said we have within the confines of our property, OSHA, both construction in general, industry jurisdiction divisions, as well as MSHA. And I felt, as I do my training, that the miner, as he moves around our site that he has to, would be exposed to those hazards that are brought in there by our other divisions. No different than if a contractor in the back of his pickup truck or on his service truck brought in a hazard. I would be obligated to train the miners on their potential exposure to that. I do the same thing here.

MS. JONES: Excuse me. You said you had
five mine sites? Do miners at each of those mine sites have access to these MSDSs? Is that how it works?

MR. GOULET: At the mine site, this is my library that is available --

MS. JONES: To miners from all five mines.

MR. GOULET: That's correct.

MS. GREEN: But would they get a copy of it? Are they entitled to a copy?

MR. GOULET: Yes.

MS. GREEN: Or are they just entitled to review it?

MR. GOULET: No, no. They get --

MS. GREEN: They get a copy for themselves?

MR. GOULET: It's not in the picture but a little bit over to the left of that is a copy machine.

MS. GREEN: I'm just going to ask you, you referred to an OSHA document --

MR. GOULET: Yes.

MS. GREEN: -- I believe, that you have there in your notebook. If it you'd like to submit it for the record, we'd appreciate it. If that's your only copy, we could just take the reference.
MR. GOULET: Okay.

MS. GREEN: The cite for the document.

MR. GOULET: Yes.

MS. GREEN: But it needs to be in the record.


MR. FEEHAN: Can you tell me what your understanding is of the recommendations or conclusions of that report?

MR. GOULET: There were several recommendations, some of which is that the program should not be changed. There were some comments in there as well, recognizing some changes that needed to be made and some that have actually already taken place, some of which have not; the Agency has not moved on them.

MR. SEXAUER: How many -- you have two shelves of MSDSs and basically there are duplicates arranged according to different formats, right?

MR. GOULET: That's correct. And I hoped I made the representation that I was talking about the
top row, because that's my library of MSDSs. It's just rearranged for --

MR. SEXAUER: How many would you say you have in that top row?

MR. GOULET: Sir, I'll have to get back to you with an exact number or anything close to it. Hundreds.

MR. SEXAUER: What do you do with, I guess, older MSDSs as they get replaced with new ones?

MR. GOULET: I archive them, as well as I archive --

MR. SEXAUER: Would you do updates?

MR. GOULET: Oh, absolutely.

MR. SEXAUER: Yes.

MR. GOULET: Yes, absolutely. We recently got in one on a chemical where it specifically stated that this replaces previous MSDSs, and they stated to archive or to remove the library --

MR. SEXAUER: And you keep a copy of the older one somewhere.

MR. GOULET: Absolutely.

MR. SEXAUER: By the way, we mentioned this morning that our intent is to put transcripts on each hearing on our web site within 48 hours after the hearing. So to refresh your memory, if you're
thinking about what was said here, that would be a good place to go back to.

MR. GOULET: Thank you. I realize that I've downloaded already previous testimony, which is why I didn't want to be redundant when I said I'm not going to start listing the numbers of the existing standards as I see them, and they've been testified to before and so on and so forth. I just wanted to go from my perspective. But as it stands alone, because this other stuff is already entered into the record. Again, my beef is replication and duplication.

MODERATOR TEASTER: When we talked earlier about how many chemicals or MSDS sheets you had for one of your mining operations, you said you'd get back to us on them, but could you take like the smallest operation that you have and give us the number of chemicals that you would have MSDS sheets on at that specific operation?

MR. GOULET: I'm representing a recollection here. It's not a number that -- because I may get back and find out I could be off as much as twice, because it is -- 20 to 25, I want to say I recall, in that range. A couple of dozen if that answer works.

MR. FEEHAN: That sounds about right.
MR. GOULET: And I'll make sure to verify that to you when I get back with additional written comments --

MODERATOR TEASTER: Okay. We appreciate that.

MR. GOULET: -- since it's a specific question and I don't want to leave on -- make it that general.

MODERATOR TEASTER: Okay. Appreciate it.

MR. SEXAUER: One further. You mentioned that no miners have looked at your MSDSs to your knowledge.

MR. GOULET: Have requested.

MR. SEXAUER: Have requested.

MR. GOULET: I think that was the question.

MR. SEXAUER: Right. Have requested to look at them. But you certainly have looked at them, right?

MR. GOULET: Yes, I have.

MR. SEXAUER: And so you're familiar with them to some extent. You know where --

MR. GOULET: I'm familiar with what they look like, and I'm familiar with what they are. I don't represent myself as having a large scientific
background. Quite a bit of it's confusing to me.

MR. SEXAUER: I guess my question really
goes to is have you had occasion to use the MSDSs?

MR. GOULET: Outside of training? No.

When you say "used," maybe I'm confused. Maybe I'm
not quite clear on the question.

MR. SEXAUER: Well, I guess one question
would be if there was an incident at your facility,
another question would be whether or not as a
reference, if you were to --

MR. GOULET: As I have testified, excuse
me, we haven't had one. That's another thing, that I
can't justify a whole new rule, and I think I
qualified that by saying that we're one mine operator,
five small mines, but that's my testimony. We haven't
used it, and we have had hazards that have hurt our
miners. But I would much rather spend my time on and
much rather have MSHA's help in ensuring that if we
can do something about that rather than this.

MR. SNASHALL: Do you give Part 46
training every time a new chemical hazard is
introduced in the environment?

MR. GOULET: As a new chemical is
introduced into the environment --

MR. SNASHALL: Or a new hazard.
MR. GOULET: -- we do that at weekly safety meetings. And it's the time that's spent is entered into the training record as time spent on that or any other hazard or a new process or those sorts of things. That seems to be the best time when we have the attention of the miner and he understands that this is a safety meeting and we're going to be discussing hazards versus -- our five locations tend to be remote; they're rather scattered. Small geographic area to a lot of people if you're from the West, Texas or something, but up in New England we've got some mountains between some of our places, so this is how we do it.

I do it with safety meetings that are held on site by the person that's designated in each of the plants. He tends to be our Plant Manager. So I'm able to discuss it with him, and then he imparts the information on to the miner and it's recorded on our weekly meetings and, as well, is recorded on the training records.

MR. SNASHALL: Could there be some exposure of the miners to a new chemical hazard before they receive any training?

MR. GOULET: Could there be? Yes. And the reason I say that is getting the MSDS is often not
an easy thing. It's often not an easy thing. Now, in your proposed test common rule where it says that the MSDS must be there, well, if you will, prior to the chemical, prior to the exposure, we, as best we can, get copies so that they arrive at the site with the exposure. Those are the ones that are ordered and under our control, the ones that are purchased locally in quantities. I can't represent to you that they receive the training before that chemical hits the site.

MR. SNASHALL: Does your assessment of a hazard depend upon the MSDS? In other words, do you identify a hazard based on an MSDS?

MR. GOULET: No.

MR. SNASHALL: How do you assess that hazard?

MR. GOULET: The label. Because it comes with the product. It's there at least the same time as the product; actually, not often before but it comes with the product. And we can work off the label because typically on the label they will identify the chemical name, the hazard, and more often than not necessary avoidance or at least required PPE. And, again, that's on the chemicals that are ordered and controlled sort of universally -- guy goes out and
buys a case of ammonia for windows or WD-40. I will
admit to you that that would be difficult or is
currently, and it would be under the requirements of
the standard as well.

MODERATOR TEASTER: Thank you very much.
We appreciate it.

MR. GOULET: Thank you. And I will make
sure to get back with you on those, as I told you I
would.

MODERATOR TEASTER: Appreciate it.

MR. GOULET: I appreciate the opportunity
to speak.

MODERATOR TEASTER: Appreciate you coming.

Is there someone in the audience who would like to
speak?

MR. TUGGLE: Yes, Ernie. I'd like to
follow-up with some of my comments this morning.

MODERATOR TEASTER: Okay.

MR. TUGGLE: Harry Tuggle here again on
behalf of the steel workers. And, Ernie, I do
appreciate this opportunity again. This is going to
be only -- about the only hearing I'll be able to
attend so I'd like to make the best of it while I'm at
it.

MODERATOR TEASTER: Sure.
MR. TUGGLE: But something I did want to relate this morning and I think now is an appropriate time, and that was to convey that the United Steel Workers represents about 20,000 miners in the U.S. and about 30,000 miners in Canada. And of our 20,000 mining membership in the U.S., about 4,000 to 5,000, or a little less than a fourth, of our membership is in small sand gravel stone operations and a few other of non-metal mining processes.

But in this part of the industry, we would fully agree with what we understood from the speaker from NSSGA this morning in that chemicals are quite limited in this industry. And in our opinion, HazCom can easily dovetail or be dovetailed into Part 46, and that's even without having to extend on their annual eight-hour refresher training in most instances.

And in regard to the HazCom Program that has to be outlined for these particular industries, I do believe that would easily fit on the two or three pages that even Mike Sprinker spoke about this morning. In our opinion, this is not extensive material to get into.

In general, we find that these operations deal with, by and large, some petroleum products -- hydraulic oils, fuel oils and transmission oils and so
forth. And these are almost on a borderline of consumer product. It is common sense products. You know, you don't drink this stuff. There's a potential of fuel oil to burn. Gasoline, if they have it on their property, the potential for explosion. But it's common sense safety measures that regulates a lot of those issues.

MSDSs, yes, should be available on those products. Beyond that, we've seen where you have some parts of washer tanks for small parts to be cleaned, steam cleaner solvents that's used to steam clean equipment with, and a few other products like that, very few others.

And, in general, for the small mine operator, and we're talking about anywhere from the ten-, 20-, to possibly 50-man operation, that these MSDS listings may range to two dozen, in general, or more likely around one dozen items to, quote, "hazardous chemicals" to be concerned about and to be trained in regard. And that may be, especially in this area, that's besides, for lack of a better term, their in-house silica they may be confronted with or whatever that would add to it.

But, in general, we feel that this HazCom standard for those industries it simply provides an
extension on these hazardous materials to the Part 46 provision for small mines. And in all due respect to Mr. Victor Goulet, is it, and I wish that all of our sand gravel stone operations where miners are represented came as well prepared as he is with having a HazCom -- basically, a HazCom standard in place. If all of ours were like that, we would be asking our mine operators, "What's the problem?" And I think the provision is clear enough to simply state that if you have a HazCom standard in compliance with OSHA HazCom, then it's basically acceptable without modification. As matter of fact, it may go above and beyond, and there's nothing wrong with that, and it seemed like a case there.

I wouldn't want to play -- and, again, in regard to a statement just recently made by Mr. Goulet about the term "augment." Not to be the horse to death or come up with semantics or whatever, at face value, as we have read the preamble, the standard and so forth, we perceive the term "augment" to mean to improve upon basically without burden. It's simply almost a given here to improve it to this degree with little, if any, burden. And that was our perception on that.

I would go into some of the matters
recently spoke about on the limited manpower and so forth that MSHA has, but I think at some point in time, as we speak, we're even getting beyond that by what's going on. To my understanding, there's some training of inspectors coming down the pike, especially for metal on metal. And hopefully get a better handle on this. We're very shorthanded where your inspectors were just basically for enforcement purposes, running from one line to another, face to fact, versus a mine even in its entirety and going on down the road to the next operation. We hope to see that change.

And, again, something else that was just spoken about by Mr. Goulet and against somewhat of all that was said, and I appreciate basically all that he said except the reference to time and cost. And something I spoke on this morning, and it's already in the record in the preamble, is on the somewhere around 2,500 burns have been recorded from industry to the Agency, 500 poisonings between somewhere around '96 and '99 or late in the game. And there's time and cost and money in that. I mean there's lost time, there's hospital time, there's all the time and worry -- I mean if you could pull that cost back out, surely an operation would buy into another approach to avert
that cost.

With that said, I'd like to make one last point in regard to MSDSs in general. And that is in the regard to the miners' needs for such documents. And at the point in time that we get back into the conferences and at the point in time that we hope to see this HazCom rule in place, hopefully very soon, we will be advising our miners and our miners' representatives that if you have concerns about understanding MSDSs, as was conveyed I think by some comments this morning that, you know, miners may not even understand what they're looking at, and I think they highly underestimate the comprehension of their own miners.

But if these particular MSDSs are going to be made available through this HazCom process, we will be advising our miners and miners' representatives where you have concerns and where you have symptoms from chemical hazards, chemical burns, one thing or another, ask or a copy of that MSDS as you have a right to do under the standard, and take it to your physician along with your symptoms and say, "Here's what I'm working with, and here's the problems," and let them -- let a, quote, "a little higher level professional" assist in reviewing that.
And we're going to be advising our people that to make use of those things, hopefully they don't have to make use of them, that the protection factors are in there to where they're not needed to be requested other than review and training. But in the emergency situation, then we're going to be informing our people of their right to have that information and to take that to a professional either within their own union, if they have to take it up to Mike Wright, take it to an agency, industrial hygienist, take it to their own doctor and go from there with it.

With that, again, I thank you for this time to speak.

MODERATOR TEASTER: Harry, you have some of your representation-at-large mines that are covered by Part 48 training. Are you familiar with any of the -- is that right?

MR. TUGGLE: Yes.

MODERATOR TEASTER: Do you have any knowledge of how Part 48 would address the hazard communication part of the plan?

MR. TUGGLE: Possibly somewhat unlike Part 46, which I think is minimal, or chemicals under smaller operations, which is minimal, as I said, and may dovetail into their Part 46 some of the larger
mines and some of the numerous other exotic chemicals, hazardous chemicals, there may be cases to where if they want to include it in their Part 48, it might very well make them go beyond the eight hours. But that eight hours is a minimum of training. And if this standard causes situations to where they have to go to ten hours a year, oh, my God. In short, we think it would be very worthwhile even if it infringed on that eight-hour time frame.

In that regard, we also want to make it clear, as hopefully we understand it, that where these matters are dovetailed into Part 46 on HazCom or HazCom has dovetailed into Part 48 for some of the larger mines, other mines, and that may be where Mr. Goulet was concerned about time and cost and effort in that regard, these would have to -- that Part 46 modifications or Part 48 modifications has to be approved by the District Manager.

To get back to your question there, but for the larger mines, longer lists of chemicals, there may be some infringement on their attempt to continue to try to crunch everything they must address within eight hours. That standard simply says that they'll do the training a minimum of eight hours. In a lot of cases that HazCom training will fit right in. In some
cases, it may exceed it by 30 minutes. In some cases, an hour or two, over a year. That can be addressed and divided out just as Mr. Goulet had referenced even under Part 48 on the 30-time basis on a tailgate meeting or a monthly meeting. And within a couple of those meetings, you've got everything right back in context within over a year's period of time. And we don't perceive it to be a burden.

MODERATOR TEASTER: Any questions? Thank you, Harry.

MR. TUGGLE: Thank you.

MODERATOR TEASTER: Did Chris Hipes leave? While we're waiting on Chris, he's the only one that I have signed up that has not spoken, is there anyone else in the audience that would like to --

MR. SPRINKER: I do. Yes, Michael Sprinker again with the International Chemical Workers' Union, and like Harry, I probably won't be able to make the other -- any of the other meetings also, being almost a one-person health and safety department except for our training side.

It was interesting listening to some ideas of some of the things I didn't want to take the time with this morning, but some others issues we've seen. And part of this comes from my experience in enforcing
the OSHA HazCom standard too. And there is -- I mean,
I will admit there is a need to have enforcement staff
well-trained so they also understand what is a
significant hazard, what isn't a significant hazard
under HazCom.

I think that in many cases, certainly not
all, but in many cases I've been able to look at
things, look at different hazards, what is the extent
of the hazard? Someone, for example, not having an
MSDS for a particular brand of gasoline that they're
using versus the other probably, I would hope, would
very rarely be considered a citable issue. If people
know that, hey, just because I'm using Shell diesel as
opposed BP diesel the hazards are basically the same.

That's a -- there are other things which
are more serious. For example, having a set of MSDSs,
I've seen in the past, both in large and small
companies where basically the MSDSs might as well be
put in a stack on the table all at random and when you
ask people or even the plant, plan management, "I'd
like to look at this MSDS just to see what hazards are
in this particular product," and it takes half an hour
to find the MSDS because they're scattered in totally
random order. Well, those are certainly times when
you won't find -- where those really aren't very
available, because people just don't have half an hour to go searching through.

I think that it's -- I know in dealing with people doing spray painting on large trucks the labels used to say on the paints, used to say that you could get by with a regular respiratory, air-purifying respirator. I believe the MSDSs used to also. But the medical information and symptom information on the MSDSs would talk about respiratory sensitization and things like this with, for example, the isocyanic-based paints. Many times that may not be so readily available on the label, and truthfully, as I get older and my eyesight's not so good, it's hard to read that what often times on a label could be eight-point or six-point print. So that is certainly one value of an MSDS.

And it's interesting, we've been having these discussions on the EPA high-production volume chemical testing, on the need for information and how much information should be available on either the web site which has the information about this toxicological testing on chemicals and the question of whether workers meet that or not. And, truthfully, while I said that, certainly speaking for our members and a lot of the people that we do training for, that
they can actually use the more detailed information. They may not be able to understand everything on there. There's a number of things I won't be able to understand everything on too.

But when they -- for example, when you start to see that with such and such a chemical we find these effects -- you know, these effects were found in rats, these effects were found in other species, that raises flags.

And if -- and then people will turn to myself or I may turn to our consulting physicians or to other folks, either within government or without, to try and find out the answers as to what kind of a problem could this pose to people or could this pose to people in certain situations? Maybe a male who is -- he and his wife are trying to conceive a child. Is this a potential birth defect issue? And that's the kind of information which isn't always readily apparent and which hopefully things like data sheets do contain.

They're certainly not all perfect. One large mining company used to be quite famous for on their arsenic data sheet refusing to put down that arsenic was a carcinogen, and this was in the early '90s. We're certainly not talking -- this is a large
multinational. So there are problems with data
sheets, and they aren't always perfectly accurate.
But to the extent that OSHA or MSHA can enforce the
accuracy of those data sheets to cite manufacturers
for not reporting proper information, it will make
those better.

So all in all, I do expect to -- that
we'll see perhaps more and more requests from our
members in mining through what they learn in their
training and through what they see in the data sheets
so we can make it safer.

Again, too, there's also other times when
someone may have a concern and because they can give
me the information of the contact at the company
that's made the chemical, because they can give me the
chemical abstract number, because some of those names
get real lengthy and could be messed up pretty badly
when you're looking things up, I can do some research
and find out perhaps that this chemical and where
you're using it really isn't a huge hazard, sometimes
because people have the name mixed up with something
it is -- tetrachloroethylene versus trichloroethane;
similar names but a big difference in hazard.

But that's really about all I'd like to
add, and I'm -- I'll -- of course, I'll have more in
my written testimony for you too.

MODERATOR TEASTER: Our next speaker is
Chris Hipes. You're representing Luck Stone?

MR. HIPES: Yes, sir. Good afternoon. I
guess you guys have probably been here since early
this morning, so I'll try to run through the
information. I'm the Environmental and Health Safety
Coordinator for Luck Stone's western region in
Virginia. I'm kind of the guy that -- I'm kind of a
field guy. I like to spend my time in the field. I
like to spend my time interacting with our miners.
That's where I feel like I'm the most valuable in our
organization. And I'm also the guy that usually,
after all the dust settles from the lawsuits and the
position papers, I'm usually the guy that gets the
standard or the compliance manuals and opens them up
and sits down and says, "Okay, how are we going to
attack this? How are we going to do this for multiple
facilities with different settings." And so just to
kind of give you a little background from where I'm
coming from.

At Luck Stone, we're very committed to the
health and safety of our associates, and we absolutely
don't oppose the collection and dissemination of
chemical information. We do feel like current intra-
regulations that already cover hazardous chemicals, and I know you've heard them already -- labeling for toxic materials, barricades and warning signs where health and safety hazards exist, containers for hazardous materials and storage of hazardous materials -- along with current Part 46 training regulation and some specific programs to target the most common types of chemically related injuries in the aggregate industries would be best suited for Luck Stone.

I think all these things combined would meet the goals that MSHA's trying to obtain. I can tell you right now that we have MSDSs on-site. We try to keep MSDSs not only for hazardous chemicals; we try to keep them for mostly all chemicals. I can also tell you that most of the time the MSDS books sit there on the shelves, because at least at our sites most of the materials or chemicals we bring in are labeled -- have good labels on them.

If our miners have questions or our mine foremen have questions, supervisors have questions on chemicals, we tend to use the back of cans and container labels. If they have a question, at least at Luck Stone, then they would come to either me or call the manufacturers. In a rare instance of an emergency, I feel like that's what they would do, so
it's kind of I'm there to assist for questions on any chemicals.

I know the question's been asked and answered and asked and answered, but one may ask what is the true burden of the HazCom rule. Like I said, we have no problem with the intent of the HazCom rule. But I've heard the statement that HazCom only asked operators to pull together information that they already have, such as MSDSs and labels, and they can incorporate or we can incorporate training into existing training plans, and I think all that's true.

But I think the burden becomes very apparent when I sat down to try to make some of these comments and I started printing off reams of paper from web sites and a 39-page draft compliance guide and a combined 47 pages of HazCom preamble and standard and started trying to weave my way through them and figure out exactly how we were going to do it.

Just to hit some of the major points, on the inventory of chemicals at your mine site, we sat down to determine which are hazardous and keep a list of those that are deemed hazardous. This sounds easy enough until I sit down and I start thinking, how are we going to keep a truly accurate count of product,
specific chemical inventory at each one of our sites? Our managers are constantly looking for better products. They're looking for the cheapest vendor. And I guess my -- the burden comes in when an inspector comes on-site and says, "Okay, do you have -- I see here on your list you have glass cleaner A from this vendor. What's on the shelf here is glass cleaner C from this other vendor, and there's a problem in your list or your inventory." So that's where I see some of the potential burden coming in, because it's out of citation, so interpretation gets thrown in there. Because that's where -- that's the end of things I live on is that when we get to that point.

There was an example about glass cleaner in the 39-page draft compliance guide that said if a miner uses glass cleaner and he uses it as a consumer would, then it would not be considered a hazardous chemical. And it does give an example that upfront seems to be straightforward. If you have a janitor on-site that's using glass cleaner, he would certainly be exposed above and beyond what an average consumer would be. And I agree with that.

But where the, I guess, the gray areas come in and where the burden becomes is if my operator
gets up in his haul truck in the morning before he
goes to work and sprays his glass off once and he does
it three more times throughout the day and then once
before the end of the shift, is that more than the
average consumer? And I think, again, there's where
I foresee spending a lot of time when those questions
arise in the field trying to figure out and defend or
conference citations.

To move on to the next point, I don't feel
like a written HazCom Program will strengthen the
quality and value of our hazard communication efforts
at our mine sites like it's stated in the compliance
guide. I truly feel like a written HazCom Program is
a paperwork exercise. And, again, the Program itself
can be a potential source of endless citations,
citation conferences and time I'll spend in my office
and not in the field.

I speak with experience not only with MSHA
regulations, because I also have compliance with EPA,
Virginia DEQ, DMME regulations and regulations that
have written plans. I can honestly say that most of
the time there's written plans, although the key
concepts are certainly in there. I can tell you that
until the inspector comes and asks for them, they're
kind of usually sitting over to the side.
And I know that you may ask the question, well, how do you ensure that you're complying with the regulation if you're not looking back and saying, "Okay, here's my program, here's what I'm doing?" I wouldn't say I never have to look back at a program, but I can tell you really that's my job, to know what requirements are, and that's what I do on a daily basis is help our plants, work with our plants, work with our hourly associates to help determine those types of things and the best way to staying in compliance, and not only staying in compliance but the best way to be safe in an environment and be good environmental stewards.

If I had to carry -- again, because I deal with not just safety but environmental also, if I had to carry all of those regulations around and the accompanying compliance plans that are already out there, I'd have to get U-Haul to carry my company car to travel that way.

So that's where I feel like the written HazCom Program what that's going to do is I'm not going to have a right name and a right place or our managers switch from site to site on occasion and I feel like that to spend time writing citations and conferencing citations for the I's not dotted and the
T's not being crossed and this not being in the right place on a piece of paper is not necessarily what's in the truly best interest of our associates and miner safety.

MSDS and labeling requirements, like I talked about already, we already have huge reams of MSDS sheets for most of the chemicals on-site. And like I talked about, we already have -- most of the things that we bring into our operations are very well-labeled, and if we have a question, we will go to that label. And past that, if they had a question, then that's where I would probably step in to help with a certain situation. But the vast majority -- you know, if we had an emergency situation, we would certainly refer back to an MSDS, but the vast majority of the time we really don't find that that's necessary.

We, at Luck Stone, already trained on hazardous chemicals. I do. I have five crush stone sites that I've helped with environmental and safety and health compliance. And I do every new hire that comes through in the western region. I personally do the Part 46 new miner training. And I feel like that's -- we just recently switched to that. We were doing new miner training -- our site managers, our
foremen were doing new miner training, and we just
recently added a couple more people onto our staff in
that department for that, and I think that has -- I
think that is and has and will continue to reap the
benefits of that. I'm very excited about being able
to get in front of every new associate that comes
through.

And in our other regions there's my
counterpart. There's four of us, and we see all the
new hires when they come through to give them a
consistent and what I feel like is very thorough new
miner training. We don't do all the new miner
training. We do eight hours of the new miner
training. It's mainly six hours of a classroom
setting where two hours of it sometimes tours or out
in the plant, and then the additional 24 hours past
that eight hours is done by a site manager. But I
think that works well.

And I know we cover, it's in there -- I
feel like when Part 46 regulations says we'll cover
hazards, I didn't think twice or we didn't think twice
about covering every hazard. So chemical hazards are
in there; we're already doing them.

Another goal for MSHA, as stated in the
HazCom standard would be to reduce the rate of
chemically related injuries. So I went back and
didn't do an extensive study, but I did go back and
look at our reportable injuries for '99 and 2000 and
so far in 2001, and what I found was 22 reportable
injuries during that time frame.

And I felt like -- I don't know exactly
how you all rate injuries or if they're chemically
related or not but using what I think is good judgment
and common sense I found two out of the 22 that would
be, in my opinion, rated a chemically induced injury.
And both of those injuries were during fueling
operations. And I feel like that both of those
injuries could very well may have been -- or could
have been avoided very easily with existing
regulations, existing company procedures and existing
PPE procedures. So, again, even those two that are
chemically related, I feel like if the people that
were injured were truly following things that are
already out there, they very may well have avoided it
in the first place.

So seeing that that is -- you know, I
can't speak for other metal and non-metal -- I think,
I think, and I don't know, but I think that's probably
fairly typical for an aggregate company, an aggregate
in the aggregate industry. Like I say, I can't say
for sure, but that's what we have.

So I read in the preamble of the HazCom standard that from 1990 to 1999 the mining industry reported 2,500 chemical burns and 400 poisonings. Those are -- I think when you read that number it's alarming. So my next question was, you know, where are these happening? What's going on? Because I've had two out of 22 out of 18 or -- we have 18 to 19 operations -- 18 part of that time, 19 now -- and only two out of the past three years were chemically related. So my next question is where are they happening?

And I can't -- I didn't find that answer before today 100 percent. It did say in the preamble that evidently -- it didn't give any numbers, but it said most of them -- let's see, the preamble also stated that the coal industry reported the most chemical burns, with crushed and broken limestone mines reporting the most in metal and non-metal. So then I started trying to find some more about those numbers.

So I reviewed a letter dated May 11, 2001 sent to the Secretary of Labor from Joy Wilson, the President and Chief Executive Officer of NSSGA. And like I said, I did review that document, and in that
letter there's a pretty detailed breakdown of MSHA's chemical poisoning database and chemical burns database. And I don't have a whole lot of statistics on that, but like I said, I did review that.

And I guess the bottom line conclusion that I drew from that is that it's quite obvious to me that if we take a detailed look at these databases, that the risk to chemical exposures in the aggregate industry can be accomplished more effectively by other means than the HazCom standard. I think, again, a combination of existing regulations with a partnership between MSHA and the industry, with a focus on the most common type of chemical injuries, and that we should create specific programs to attack or go towards those specific types of injuries.

Because, again, I don't have the statistics in front of me but from what I remember about reading the article it seemed to me that in the aggregate industry there were two or three -- I think fueling was one of them that jumped out at me, eye injuries with solids and liquids in the eyes, and maybe there's one more. If that -- I'm a pretty -- I usually try to attack problems at the source, and if it were, that's what I'd go after rather than try to blanket an industry with a broad standard that I feel
like at least the aggregate part of the industry is at least complying with the intent. Certainly, I don't know that we'd be in compliance with all the paperwork parts of it, but we're already -- I feel like we are at least complying in the spirit with the regulation.

So I agree with the comments that Mr. Teaster made last night at the Safety and Health banquet at the NSSGA. Mr. Teaster highlighted the fact that MSHA is going to attempt to balance time and resources between compliance training assistance and education. Mr. Teaster also suggested that MSHA wants to partner with the industry in an effort to reduce accidents and injuries. And also to make sure that we don't put regulations out there that don't have that end goal of reducing injuries and accidents.

So I guess you're next question may be, well, what exactly do you suggest? Here's what I suggest. That MSHA and the industry together spend out time and focus our efforts on the following things: As mentioned above, I think using a combination of existing regulations combined with the creation of specific programs that target the most common types of chemical injuries would go a long ways towards improving hazard communications in the aggregate industry. I feel like task training
development is very important. I know at Luck Stone
we are in the process of trying to really -- that's
one of the areas that we feel like is key, and I know
that MSHA is actually -- and I don't know a whole lot
about it, but I know that MSHA is working with NSSGA
right now. And I think -- maybe Mr. Teaster can tell
me, I think we're pretty close to being finished with
a task training module for a haul truck.

MODERATOR TEASTER: Yes. They're working
on it. It should be completed in the near future.

MR. HIPES: So it seems like we're already
on the same page there. Like I said, I love to be in
the field, and I feel like that's -- I can assist in
task training. I already do new miner training. I'd
love to get -- I was in production for a couple years
before I got into the environmental health and safety
part of our Company.

I feel like assisting our sites with
accident and injury investigation with a focus on
prevention of similar types of accidents and injuries,
and then in addition to that communication on findings
of those types of injuries so they don't happen
elsewhere, that's a major effort that we're going to
try to improve on within our Company. Communicating
the accidents at that site through us out to the whole
Company. And past that step, I think the partnership opportunities are with NSSGA to communicate those injuries and accidents to other companies within the industry and then through MSHA to a lot of other companies in the industry.

I think we should focus on developing and implementing near-miss programs in the mining industry and focus on being proactive. There's certainly a place for getting a better feel and data management on our accidents and injuries. And we -- fairly recently Luck Stone instituted a computer-based program, and our managers are going to fill out the drop-down boxes to save them time. And that automatically dumps into a database, and we can start to see some real trends and be able to sort and filter by just dozens of different criteria to try to get a feel for trends, maybe some subtle trends that you can't see just by looking at an accident form.

But in addition to that, what we're also trying to focus on is the development of near-miss programs. We're trying to -- we've recently gone around to all of our locations and we're trying to get our associates -- the miners involved with making those programs, having input on their near -- making their near-miss programs, getting their input on it,
letting them have a stake in it in what works for
them. And that may -- even from site to site, we feel
like that at one site this group of guys may be
comfortable with near-miss reporting to their
supervisors, directly with their supervisors, and this
site here may want to go through a middle man, one of
their senior associates, and then report near misses
that way. But the most important thing to us is that
we get them reported, because we truly feel like near
misses is where -- is a proactive way to focus.

So the other thing that I would suggest is
that we work with the miners, develop safe behaviors
and safety as a value. That's where we're going at
Luck Stone, you know, behavior-based safety. That's
what we want to do. We want to -- we feel like if we
have safe behaviors, a lot of the other things will
take care of themselves. So we, at Luck Stone, are
convinced that compliance-based safety programs with
heavy paperwork and huge policy manuals can take the
safety program to a certain level, and that we're
convinced that working with miners to develop safe
behaviors, involving the miners with the development
of safety programs, developing good accident
investigation and near-miss programs, improve task
training for miners is how we're going to improve the
safety program in what's truly in the best interest of miners.

And I'll close on the note that sometimes I think we all have to step back, and I know sometimes during inspections in the heat of the moment it's easy to get into a contest over whether that guard is truly compliant, even though if it's safe or not. It may truly be safe but is it -- does it meet this compliance or does it meet that compliance? When you're contesting or conferencing citations, it's easy to get caught up in the battle. And so, you know, I know sometimes we just have to step back and really truly ask what is in the best interest of our miners? I know we, at Luck Stone, truly do believe our miners are our most valuable assets and is -- I have to ask myself is a detailed paperwork or having to write name on a certain section of a training plan or saying that I'm going to cover this section in my training plan for 30 minutes, and I only cover it for 24, is our doing and citing and disagreeing over those types of issues truly in the best interest of our miners? And that's all I have to say.

MODERATOR TEASTER: Thank you, Chris. Chris, you had alluded to some of the remarks that I made last night. One of them was we want to partner
with the industry, we want to partner with labor. We want to partner with all of those in the mining community that's going to help us reduce accidents and fatalities, and I think we've been holding stakeholder meetings throughout the country and trying to get more input from all segments to develop some kind of an idea of what direction we need to go to accomplish our goal.

Also talked about the near misses. If we look at those in the same light that we do with some of our serious accidents because the difference between a near miss and serious one there's just very little difference. And so I applaud you for looking into those efforts.

You mentioned that you covered the training for chemical hazards in your Part 46 training. Could you tell me roughly how many chemicals you address during the training, that six-hour training?

MR. HIPES: I can list you some of the ones that I know right off the top of my head. I don't have any training program, but I know we're training on chemical hazards for, at least during the new miner training, for things such as diesel fuel, lubricants, even though, you know, some of the things
I think we train on initially could be covered and then some are covered additionally in specific task training. But we feel like there are certainly some chemicals that are on the property that everybody has some exposure to. And most of those are the, like I said, diesel fuel, lube oils, greases, train on some of your what I think we would consider consumer products. We usually take a tour through -- that's a lot of how I address, because most of our chemicals are housed in the shop areas. So we usually take a tour. I usually try to incorporate a tour through a shop area, and we actually visit -- we look at some of the spray paints that we keep on the shelves, the cleaners and things of those nature.

MODERATOR TEASTER: Do you feel, based on your understanding, that the interim final rule that's training that you now provide for your miners would be -- under Part 46 will be compliant with the interim final rule?

MR. HIPES: I guess I can't answer that question, because I have read through the interim final rule, but there may be some points in there that I can't -- I really can't answer that question that I could say hands down it would be compliant with every point of the rule. Again, I can say that I feel like
it certainly meets the spirit or the intent of the rule.

MODERATOR TEASTER: You mentioned earlier that two out of the 22 injuries in the offices that occurred at your operations over the last three years were chemical related. Do you know if those two that received those injuries, you said that they would have been -- had they been complying with existing standards possibly been prevented. But do you know if they had been trained in the hazards associated with the chemicals that caused their injuries?

MR. HIPES: Well, both of these injuries happened prior to me physically doing the training and the coordinators physically doing the training, so I would be -- I can't tell you -- I can't sit here and tell you for sure that they were, because unless I do the training I certainly can't 100 percent tell you that. I know that we require safety glasses to be worn on the property at all times unless you're in an office building. And, again, I can't say for sure whether -- I did look back at the injuries, and I can't say for sure whether -- I believe one of them was the case of improper PPE. So, again, I think -- I guess what I'm saying is I can't answer for somebody else that trained, because at that point in time I
think our managers were doing the training. So I
would hope that they were trained on them, but I can't
say for 100 percent sure.

MR. FEEHAN: Could you tell us something
about the injuries? Were they -- what happened?

MR. HIPES: I think one was fueling of
equipment, and, again, I should have probably had the
injury reports in front of me, but I think one of them
was fueling equipment, and I think one of them was
actually putting fuel into a fuel tank.

MR. FEEHAN: And what --

MR. HIPES: Splash.

MR. FEEHAN: It splashed back out?

MR. HIPES: Splashed back out.

MR. FEEHAN: And then were they eye burns?

MR. HIPES: I believe so. And then the
rest were pretty cut and dry. Those two I feel like
would have certainly fallen into chemical related.
The rest were more cut and dry.

MR. FEEHAN: Do you ever speculate about
-- how come those people weren't wearing their eye
protection?

MR. HIPES: I can't answer that. And I
think one of them may have been the case, and I'm not
sure about the other one. Like I said, I look back at
them just before I came through up here, and they
weren't -- time-wise again they weren't -- it's been
a little while since these incidents have happened.
They were just real recent.

MR. SEXAUER: Just one question. You
mentioned that some of the burden that you feel that
HazCom would introduce would be from needing to
address close calls in those borderline cases -- do
they come under HazCom or don't they come under
HazCom? Is there anything we can do as an agency to
-- assuming, let's assume for the sake of this
question that there's a HazCom rule in place. Is
there anything we can do as an agency to help address
those kinds of concerns to reduce that burden?

MR. HIPES: Now, when you say -- you said
close calls and --

MR. SEXAUER: Well, you mentioned one
example where you said, "Well, if someone uses a
chemical, household chemical to clean glass on their
truck one time a day versus four or five times a day,
whether that four or five time use would come under
the HazCom rule." And you said, "Well, part of the
burden is trying to decide these issues. Is this a
consumer use? Is it a consumer product? Does it fall
under HazCom?" So my question to you is, assuming the
HazCom rule is in place, what we can do? Is there anything we can do to reduce that type of burden for you?

MR. HIPES: Nothing -- I don't know -- you know, that's kind of the age-old interpretation, and unfortunately I don't have an answer for how do you interpret how different inspectors would interpret different regulations or the scope of the regulation. So I guess unfortunately I can't make -- answer that question with satisfaction.

MR. SEXAUER: All right.

MODERATOR TEASTER: Chris, you said you have the MSDS sheets there. Do you know how often monitors may request to view those?

MR. HIPES: I do not. I can't tell you exact numbers. I know, being in a -- I was in a mine for a little over two years mainly at one specific location. And I was not aware of any request. Again, I feel like it's a common procedure, at least at our Company. If there's a question, usually it's fielded to our manager, and then if we need to get to the MSDS level -- I can pretty honestly say that I don't think any of our associates really are interested in reading an MSDS. I can't say that we took a poll of all of our hundreds -- 400 or some odd miners, however many
we have now. I don't know that they would all say, "No, we're not interested," but as a rule of thumb, I think most of the MSDS books just sit there.

Because, again, if there's a question, they're usually going to go to the manager. And then if they -- usually if the manager would have a question, then they would probably either go -- the manager may go to the MSDS or consult the company or -- most of the time, the first step is they're probably going to go to the container, and then after that potentially go to the MSDS or consult with somebody in our group.

MODERATOR TEASTER: You, as the trainer or the safety person, do you refer to the MSDS with any degree of frequency?

MR. HIPES: No, sir. I can't say that I do.

MODERATOR TEASTER: That's all we have. Thank you. Is there anyone else that would like to speak? This is a first of a series of seven public hearings that we'll have. The next one will be in Beckly, West Virginia on Thursday at the Mine Academy. The following week there will be four: One in Dallas, Texas, one in Reno, Nevada, one in Salt Lake City, and one in Birmingham. And then there will be one the
following week in Evansville, Indiana. If any of you wish to participate, you're more than welcome.

    I want to remind you that the record will remain open until October 17. We encourage all of you that have any comments or anything further you would like for us to consider in drafting this final rule, we would very much appreciate it.

    And with that, we'll close the record.

    Thank you.

    (Whereupon, at 4:43 p.m., the MSHA Public Hearing was concluded.)