

UNITED STATES OF AMERICA

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DEPARTMENT OF LABOR

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MINE SAFETY AND HEALTH ADMINISTRATION

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

+ + + + +

TUESDAY,  
SEPTEMBER 25, 2001

+ + + + +

REGENCY ROOM C & D  
HYATT REGENCY HOTEL  
PITTSBURGH INTERNATIONAL AIRPORT  
PITTSBURGH, PENNSYLVANIA

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## I-N-D-E-X

Opening Statement, Ernie Teaster, Moderator . . .	3
Statement of Mike Wright, United Steelworkers . .	20
Statement of Harry Tuggle, United Steelworkers .	25
Statement of Joy Wilson, National Stone, Sand and Gravel Association . . . . .	38
Statement of Mike Sprinker, International Chemical Workers Union . . . . .	53
Statement of Timothy Hroblak, United Mine Workers, Local Union 2300 . . . . .	76
Statement of Randy Bedilion, United Mine Workers, Local Union 2300 . . . . .	82
Statement of Harry Tuggle, United Steelworkers .	89
Statement of Victor Goulet, Safety Director for Brachs Industries, Incorporated . . . .	95
Statement of Harry Tuggle, United Steelworkers	127
Statement of Mike Sprinker, International Chemical Workers Union . . . . .	135
Statement of Chris Hipes, Environmental and Health Safety Coordinator for Luck Stone's Western Region, Virginia . . . . .	140

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P-R-O-C-E-E-D-I-N-G-S

(9:10 a.m.)

1  
2  
3 MODERATOR TEASTER: Good morning. Welcome  
4 to MSHA's public hearing on our interim final rule for  
5 hazard communication in the mining industry.

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

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

18 We are here to listen to your comments on  
19 the hazard communication interim final rule which we  
20 published on October 3rd last year. We are holding  
21 this hearing in accordance with Section 101 of the  
22 Federal Mine Safety and Health Act of 1977. As is our  
23 practice, we will conduct the hearing in an informal  
24 manner. During the proceeding, panel members may ask  
25 questions of the presenter.

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1           Although formal rules of evidence will not  
2 apply, we will be taking a verbatim transcript of the  
3 hearing and will make it a part of the official  
4 rulemaking record. The hearing transcript will be  
5 available for review by the public, along with all  
6 comments and data that MSHA has received to date. The  
7 entire rulemaking record of course, is available to  
8 all at our office in Arlington, Virginia.

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

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

16           On November 2, 1987, the United  
17 Mineworkers of America and the United Steelworkers of  
18 America jointly petitioned MSHA to adapt OSHA's hazard  
19 communication standard to both coal and metal and  
20 nonmetal mines and propose it for the mining industry.  
21 They based their petition on the need for miners to be  
22 better informed about chemical hazards and that miners  
23 working at both surface and underground coal and metal  
24 and nonmetal mines are exposed to a variety of  
25 hazardous chemicals.

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1           On March 30, 1988, in response to this  
2 petition, MSHA published an advanced notice of  
3 proposed rulemaking on hazard communication for the  
4 mining industry. In this notice, we indicated that  
5 would use the OSHA hazard communication standard as  
6 the basis for our standard and requested specific  
7 comments on a number of related issues.

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

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

19           We reopened the rulemaking record on March  
20 30, 1999, requesting comments on the impact of the  
21 proposed rule on the environment, small mines, State,  
22 local and tribal governments, and the health and  
23 safety of children.

24           The National Environmental Policy Act and  
25 more recent statutes and executive orders included

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1 requirements for us to evaluate the impact of a  
2 regulatory action in these areas.

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

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

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

23 On December 7, 2000, we personally spoke  
24 with or e-mailed all commenters and other interested  
25 parties telling them of our decision to hold a public

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1 hearing in Washington, D.C. on December 14, 2000. the  
2 public notice of the hearing appeared in the Federal  
3 Register on December 11, 2000.

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

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

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

25 A number of mine operators and trade

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1 associations challenged the hazard communication final  
2 rule in the U.S. Court of Appeals and the United Mine  
3 Workers of America and the United Steelworkers of  
4 America have intervened in the litigation.

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

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

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

25 The hazard communication interim final

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

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

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

25 I would like to clarify one point about

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1 the labeling requirements. Practically speaking, very  
2 little labeling is required. You only have to label  
3 stationary process containers and temporary portable  
4 containers and then only under some circumstances.

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

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

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

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

23 Mine operators should already have MSDS  
24 sheets provided by the supplier for those chemicals  
25 brought to the mine. The MSDS must be accessible in

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1 the work area where the chemical is present or in a  
2 central location, immediately accessible to miners in  
3 an emergency.

4 The hazard communication interim final  
5 rule requires mine operators to establish a training  
6 program to ensure that miners understand the hazards  
7 of each chemical in their work area, the information  
8 on the MSDSs and labels, how to access this  
9 information when needed, and what measures they can  
10 take to protect themselves from harmful exposure.  
11 Under the interim final rule, mine operators have the  
12 flexibility of combining training requirements for  
13 hazard communication with existing Part 46 and Part 48  
14 training. The interim final rule does not require  
15 mine operators to have an independent training program  
16 separate from Part 46 and Part 48 training.

17 Many operators already cover some of the  
18 above information in their current training program.  
19 If so, they do not have to retrain miners about the  
20 same information. We designed the hazard  
21 communication training requirements to be integrated  
22 into existing training programs for miners.

23 The hazard communication interim final  
24 rule requires mine operators to provide miners, their  
25 designated representatives, MSHA, and NIOSH with

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1 access to materials that are part of the hazard  
2 communication program. These include the program  
3 itself, the list of hazardous chemicals, labeling  
4 information, MSDSs, training materials, and any other  
5 material associated with the program.

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

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

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

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

20 The HazCom rule does not duplicate other  
21 MSHA standards, as claimed by some commenters  
22 representing the aggregate industry. It augments,  
23 supplements, and complements these existing standards.  
24 The rule specifically deals with chemicals and  
25 chemical exposures. Chemicals may be used in any mine

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1 including those in the aggregate industry. There have  
2 been hundreds of chemical burns in the aggregate  
3 industry. Chemical burns can occur on any part of the  
4 body. Skin burns may require multiple skin grafts and  
5 require repeated hospitalization. Eye burns can be  
6 serious and result in permanent loss of eyesight.

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

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

14 Third, many of the chemicals used at small  
15 mines are not covered by the rule. For example, soaps  
16 used for washing hands are "cosmetics" and are exempt.  
17 A can of spray paint is a "consumer product" and is  
18 exempt when used in small quantities intermittently.  
19 The length of exposure, as well as the amount, is  
20 really the determining factor -- a can of paint only  
21 lasts a short time. Glue or adhesives, when used  
22 intermittently in small quantities, are exempt.  
23 Again, the length of exposure, as well as the amount,  
24 is the determining factor in whether or not a consumer  
25 product is exempt.

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1           We recognize, however, that not all mines  
2           are likely to use a wide range of chemicals. Although  
3           we cannot exempt the aggregates industry from hazard  
4           communication, as we said, there are steps we can take  
5           to minimize the burden of the rule. For example, we  
6           intend to make extensive Compliance Assistance Visits  
7           and conduct extensive outreach. We also will be  
8           publishing a compliance guide to help operators and  
9           miners understand the application of the HazCom final  
10          rule. We are developing a variety of compliance aids,  
11          such as a model HazCom program, a training video for  
12          mine operators about determining chemical hazards and  
13          a training video for miners about chemical hazards and  
14          reaching an MSDS.

15                 A draft of the MSHA compliance guide has  
16          been on the MSHA website for months. If you refer to  
17          the compliance guide, many of these issues are  
18          explained. If you have any questions in these areas,  
19          send them by e-mail to [comments@MSHA.gov](mailto:comments@MSHA.gov) or to the  
20          Office of Standards at the address listed in the  
21          hearing notice. We will use these questions to  
22          clarify your responsibilities and include additional  
23          or better examples in the compliance guide. As a rule  
24          of thumb, however, if you are in compliance with  
25          OSHA's rule, you will be in compliance with MSHA's.

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1           In the same vein, mine operators may  
2 obtain help from organizations that have developed  
3 generic guides to meet OSHA's hazard communication  
4 standard because HazCom contains the same basic  
5 requirements. We will provide links on our website to  
6 some organizations which have developed a variety of  
7 generic HazCom materials.

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

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

22           Under "HazCom Determination," we may  
23 revise the references to the American Conference of  
24 Government Industrial Hygienists, the NTP, that's the  
25 National Toxicology Program and the International

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1 Association of Research for Cancer from those  
2 considered in determining if a chemical is a hazard  
3 and if the chemical is carcinogenic. One option we  
4 are considering in determining whether a chemical is  
5 a hazard is to refer to the 2001 editions of the ACGIH  
6 TLV booklet, IARC, and NTP. In determining whether a  
7 chemical is a carcinogen, we are considering referring  
8 only to the 2001 editions of the NTP and the IARC.

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

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

23 Concerning labels and MSDSs, commenters  
24 requested additional language to clarify that the  
25 designated "responsible person" mentioned on the

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1 labels and the MSDSs can be the mine operator.  
2 Accordingly, we are considering changing these  
3 provisions to read the name, address, and telephone  
4 number of the operator or a responsible party who can  
5 provide this information.

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

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

20           In response to comments concerning hazard  
21 communication training, we are considering changing  
22 the language from requiring the operator to train the  
23 miner whenever introducing a new hazardous chemical  
24 into the miner's work area to requiring training when  
25 the operator introduces a new chemical hazard into the

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1 miner's work area. This change would clarify MSHA's  
2 intent that when a new chemical is introduced,  
3 additional training is required only if the hazard  
4 changes. This is the intent as discussed in the  
5 preamble of the interim final rule.

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

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

23 The hazard communication interim final  
24 rule does not restrict chemical use, require controls,  
25 or set exposure limits.

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1           We will publish our response to the  
2 written comments, including those comments received  
3 today at this hearing, in the preamble to the hazard  
4 communication final rule. We will consider all  
5 comments contained in the rulemaking record, from the  
6 publication of the advanced notice of proposed  
7 rulemaking on March 30, 1988, through the close of the  
8 record on October 17, 2001, in the development of the  
9 final rule.

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

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

24           We will begin with the folks that have  
25 signed up in advance to speak. If there's time at the

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1 end of that, anyone in the audience who wants to come  
2 up and make a statement will be able to do so. We  
3 will continue the hearing until all speakers have an  
4 opportunity to address the panel. Should it be  
5 necessary, we can extend the hearing beyond 5:00  
6 o'clock today.

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

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

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

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

22 I don't have a written statement to put  
23 into the record. I was not sure I was going to be  
24 here today. We're in a series of negotiations and I  
25 was able to make it.

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1           My name is Mike Wright. I'm the head of  
2 the Health Safety and Environment Department of the  
3 United Steelworkers of America. With me today is of  
4 course Harry Tuggle who all of you who is our Mine  
5 Safety and Health Specialist and has done terrific  
6 work for the Union on that subject ever since he left  
7 the mine where he was the local Union President in  
8 Missouri 20 years ago now, I think, a little over.

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

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

25           Everybody under OSHA's jurisdiction, every

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1 Canadian worker, including Canadian miners, are  
2 protected by the Canadian WIMOS standard. Miners and  
3 other workers throughout the European community enjoy  
4 right to know standards and laws. Miners and other  
5 workers in Japan, Australia, New Zealand, Brazil,  
6 there is, in fact, even a new right to know standard  
7 in China. Chinese workers have rights that American  
8 workers in American mines do not. We could have done  
9 this 15 years ago and here we are working on it yet  
10 today.

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

22 In any event, the thing we want the most  
23 is to see the standard go into effect as quickly as  
24 possible because American miners need this standard  
25 and Harry will talk about that.

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1           Let me say in the course of my work on  
2 this issue I was involved in, of course, the original  
3 OSHA standard. I was also the head of the workers  
4 group that worked on the ILO Convention and the ILO  
5 recommendations concerning safety in the use of  
6 chemicals at work which wrote a kind of a voluntary  
7 right to know standard. The last 10 years, I've been  
8 involved in a group working under the auspices of the  
9 United Nations and the International Program on  
10 Chemical Safety and the OECD that's charged with  
11 harmonizing chemical classification and labeling  
12 systems around the world, so I've had a fair amount of  
13 experience with this.

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

23           The one issue I want to comment on is the  
24 notion that you can't give people information or you  
25 can't classify a chemical as hazardous without going

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1 through a full rulemaking process. Virtually every  
2 other standard requires miners to be told the ACGIH  
3 threshold limit value and virtually every other  
4 standard, including standards in place outside  
5 America, even though it's the American Conference of  
6 Governmental Industrial Hygienists, require that  
7 information be given to workers and use that as part  
8 of its classification scheme. It would be completely  
9 unworkable to demand rulemaking before we could  
10 chemical hazardous and before we could say that a  
11 worker has a right to information about it.

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

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

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1 as quickly as possible.

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

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

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

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

19 Normally, Steelworkers would appreciate  
20 this opportunity to submit the comments on a highly  
21 significant rule such as HazCom, but in regard to the  
22 instant HazCom rule, we find it kind of hard to muster  
23 that normal appreciation. Also, as stated by the  
24 Panel in regard to those who have complained about not  
25 being ready or prepared for the interim final rule,

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1       needing further time and so forth, we really find it  
2       hard to muster any sympathy about their lack of  
3       approach to this rule.

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

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

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

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1 and protective HazCom standard for miners.

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

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

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

21 These subtle statements on the matter,  
22 however, are glaring in the absence of conveying that  
23 this rule must also be understood as an enforcement  
24 rule upon lack of compliance. The Agency continues  
25 its subtle approach to the rule by applying the plain

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1 language and government writing. In this case, it  
2 replaced the word "shall" in each and every provision  
3 of the proposed rule with the word "must" in the  
4 interim final rule. In our opinion, the word "must"  
5 versus "shall" is soft language versus plain language  
6 in anyone's writing.

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

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

25 However, 47.2 -- purpose. I'm sorry, 47.1

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1 should say "purpose" and continue with that purpose as  
2 defined by the Agency.

3 47.2 which simply states scope. And we  
4 propose a change to the lead in sentence in the  
5 current language. We believe in the context that  
6 since it's mentioned nowhere else in the standard,  
7 only somewhat implied or somewhat to be understood,  
8 that this an enforcement, still an enforcement  
9 standard, the meaning should begin as we propose in  
10 underlining "the scope of this part is to ensure  
11 compliance and" then go on to read "as currently  
12 drafted applies to any operator producing or using a  
13 hazardous chemical to which a miner can be exposed  
14 under normal conditions of use or in a foreseeable  
15 emergency." And we're also concerned and we'd like  
16 the Agency to take another look within that provision  
17 about the word or phrase "normal conditions."

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

20 Simply take a look at it. We're not going  
21 to belabor the issue there. But we are saying short  
22 of the above revision about this being -- the scope of  
23 this part is to ensure compliance, we do believe that  
24 many of the inspectors out in the field in many  
25 instances will be hard pressed to enforce many of

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1 these quote informative and performance-oriented  
2 standards that keeps being repeated.

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

21 But in regard to the matter, the Mining  
22 Industry reported, while the proposed HazCom standard  
23 was -- the Agency reported, and this is while our  
24 proposed HazCom standard was gathering dust on the  
25 shelf for lack of a better phrase between 1987 and to

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1 date, over 2500 chemical burns and more than 400  
2 chemical poisoning were reported. These were all  
3 acute effects with no one having a clue as to all the  
4 likely high toll of chronic effects by these and other  
5 chemicals to which miners were exposed.

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

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

23 In regard to Section 4731(b) and 4741(b),  
24 we believe that the three months that's referred  
25 therein is an inordinate length of time for an

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1 operator to have to prepare a container label or  
2 update a label with any significant new information  
3 about the chemical's hazards. That's not -- if  
4 someone knows that this has got to be changed, he  
5 doesn't -- I can't fathom 90 days to change a label,  
6 to change an MSDS sheet or whatever the purpose there.

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

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

24 There's no need to simply let that  
25 standard lay there and say it's not your fault. Well,

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1 we agree. Maybe it's not his fault. But let's do  
2 something about it and that means address it  
3 immediately. We're talking about hazardous chemicals  
4 here.

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

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

22 In regard to 4741(d), we believe the  
23 second sentence needs some serious consideration about  
24 the operator, if professionally qualified, developing  
25 their own MSDS or may obtain one from another

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1 professionally reliable source. Here the standard  
2 simply refers that a mine operator may develop his own  
3 MSDS. Anyone developing an MSDS in some context,  
4 there's got to be some credence to their  
5 professionalism in being able as an industrial  
6 hygienist or whatever to develop that MSDS, just to  
7 say he can develop his own and leave it lay in that  
8 kind of weak state, we believe is inappropriate. The  
9 standard should simply convey in some form or fashion  
10 that he or some other responsible person under his  
11 directive has the professional credentials to do such  
12 things as change MSDSs.

13 In regard to Section 4745, at Federal  
14 Register page 59099, we propose that this provision be  
15 deleted in its entirety and that Section 4753 be  
16 revised and that would be as underlined to read, "the  
17 operator must make a record of each MSDS for each  
18 hazardous chemical it has used or produced at the mine  
19 and a record of each miner's HazCom training  
20 thereunder. And keep these records for a minimum of  
21 30 years. To keep these records for two years really  
22 pulls the underpinning of the original OSHA HazCom  
23 standard, reduces the underpinning, weakens the  
24 underpinning of what that standard was all about.

25 And that was to develop a record for long-

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1 term and latency period symptoms coming forward some  
2 10, 20 years later and there's a paper trail in regard  
3 to those symptoms then, to just say well, we'll keep  
4 them two years, and miner, if you want them, you can  
5 have a copy and it's now your responsibility. We  
6 think it's really dumping the responsibility off on an  
7 individual that the legislative history of the Mine  
8 Act itself doesn't convey in any other context in  
9 regard to any other standard and it shouldn't be  
10 conveyed here.

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

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

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

25 MODERATOR TEASTER: Just a clarification

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

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

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

23 MR. SEXAUER: I have one comment, just for  
24 clarification for the record. In discussing 4731,  
25 requirement for container labels, paragraph (d), you

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1 mentioned that the operator is not responsible for an  
2 inaccurate label. Just to clarify that paragraph (d)  
3 goes on to say "inaccurate label obtained from the  
4 chemical's manufacturer or supplier." 4732, label  
5 contents, speaks to what is required on a label and  
6 the fact that it needs to be accurate for labels that  
7 the operator produces.

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

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

18 On the fact that the mine operators are  
19 not responsible for labels that are inaccurate  
20 received from suppliers, our concern is to make sure  
21 that where the mine operator knows the label is  
22 inaccurate, that then they have an obligation to  
23 obtain an accurate label as quickly as possible and we  
24 want to make sure that the final regulations basically  
25 says that.

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1                   There are, as all of you know, a lot of  
2 very dangerous chemicals used in mining and the use is  
3 really these days increasing as we are using more  
4 cyanide in these leach mining systems and we've had  
5 not that I'm aware of in the mining industry, but  
6 there was a very serious accident some years ago in a  
7 film recovery operation where a worker died from  
8 cyanide used to recover silver out of silver halite  
9 film, old x-ray film I think, because there was no  
10 labeling on the material that he was using that said  
11 it was cyanide. So it's a pretty serious hazard and  
12 if the operator knows that the label is inaccurate,  
13 the operator ought to get an accurate label real fast.

14                   MODERATOR TEASTER: Thank you very much.

15                   MR. WRIGHT: Thank you.

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

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

23                   For the record, with the merger of the  
24 National Aggregates Association and the National Stone  
25 Association and according to the USGS, the NSSGA is

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1 now the world's largest mining association with more  
2 than 900 member companies, mostly small businesses,  
3 operating in thousands of locations across America.

4 Our membership represents about 90 percent  
5 of the crushed stone and 70 percent of the sand and  
6 gravel produced annually in the United States. During  
7 2000, 2.7 billion metric tons of crushed stone, sand  
8 and gravel, valued at \$14.2 billion was produced and  
9 sold in the United States from 10,000 locations  
10 nationwide.

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

21 Safety. This has never been at the top of  
22 all Americans' minds like it has since September 11th  
23 and reinforced in all of our industries' minds after  
24 the tragic mine explosion in Alabama. From the  
25 firemen, police, search and rescue, medical teams,

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1 iron workers, to the political, military intelligence  
2 and charitable forces, American heroes are lifting us  
3 up from our national grief to aid us all in recovery  
4 and prevention of future terrorist attacks. We're all  
5 proud of our government's leadership in both  
6 individual and company response.

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

11 It is clear that the highway system is  
12 serving its critical defense role as identified by  
13 President Eisenhower when he proposed the interstate  
14 system, especially in the aftermath of attacks on our  
15 people and the airways were temporarily shut down.  
16 And about 40 percent of aggregates are used for  
17 highway repair and construction; 20 percent for  
18 residential construction; 20 percent for commercial  
19 construction and 20 percent for public works, such as  
20 water treatment plants, airports, schools and defense  
21 installations.

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

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

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

11 Our association whose predecessor  
12 organizations have been in existence since the early  
13 1900s organized for safety, environment and health  
14 purposes during the 1970s. Our Environment, Safety  
15 and Health Division was created, then staffed full-  
16 time in the 1980s. We now have a staff of five  
17 people, led by a certified industrial hygienist, a  
18 geologist, and an engineer devoted to member and  
19 industry service in furthering our safety, health and  
20 environment guiding principles, principles refreshed  
21 and readopted by our new Board of Directors just this  
22 past January.

23 Our members create association training  
24 courses, model environmental management systems,  
25 safety award programs, recognizing the exemplary

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1 achievements of people, operations and companies and  
2 their multi-year safety records and a new occupational  
3 health program is currently under development.

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

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

15 However, had there been a requirement that  
16 the government examine cumulative, regulatory impacts  
17 before imposing any new regulation on an industry, I  
18 think MSHA would have had a difficult analysis to make  
19 regarding its constituencies. Part 46, the noise  
20 rule, diesel particulate, HazCom and a variety of  
21 additional regulations in the pipeline are hitting  
22 this industry within 12 months of each other and that  
23 is impacting the ability of our small businesses to  
24 stay in business, as it is also impacting the ability  
25 of our members to do the good job they know they can

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1 do and want to do, to be in full compliance with all  
2 applicable local, State and federal laws and  
3 regulations.

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

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

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

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

25 Two, NSSGA submits that the published rule

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1 is unnecessary and inappropriate for the nation's  
2 aggregate industry because it duplicates existing  
3 regulations and we believe safety needs to be the  
4 priority and not redundant paperwork. Communications  
5 about how the hazard communications rule might work  
6 without overlaying existing and new requirements by  
7 the government with industry has been woefully  
8 lacking.

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

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

23 In 1986, MSHA itself stated that a hazard  
24 communication rule on chemical health and safety was  
25 unnecessary because its existing regulations offered

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1 miners sufficient protection. The Administration took  
2 comments and did not proceed to final rulemaking for  
3 10 years.

4 The only thing that changed up through  
5 2000 is the implementation and enforcement of new  
6 regulatory requirements including the new Noise Rule  
7 and the new Part 46. Workplace safety has continued  
8 to improve, generally, during this time period, during  
9 record production for the aggregates industry.

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

20 Duplication of regulatory requirements  
21 contained in the published interim final rule is not  
22 proper and it's not the solution that will work.  
23 However, MSHA released an interim final rule on hazard  
24 communications in October 2000 and set it to go into  
25 effect on October 30, 2001. NSSGA and other industry

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1 groups have filed a petition to review with the Court  
2 to challenge the rulemaking.

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

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

21 As I've indicated, MSHA and the industry  
22 agree on the goal but part company on the means to  
23 accomplish the worthwhile end of informing miners  
24 about chemical hazards on the job and how to protect  
25 themselves.

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1 MSHA says the interim final HazCom is the  
2 way. We say that the rules you already have in place  
3 can and should do the job adequately. We have listed  
4 those regulations in early written comments.

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

21 In aggregates, relatively few hazardous  
22 chemicals are needed and the hazards of these are well  
23 recognized even by the late public: welding fumes,  
24 motor fuels and lubricants, used motor oil, solvents,  
25 paints, varnishes, cleaners, anti-freeze, battery acid

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1 and explosives. The obviously dangerous nature of  
2 explosives, coupled with the heavy burden of training  
3 and other regulations imposed upon those who use them  
4 by the Bureau of Alcohol, Tobacco and Firearms, has  
5 led most aggregate producers to turn blasting  
6 activities over to contractor specialists. For those  
7 that do their own blasting, only miners specially  
8 trained to meet the stringent explosive regulations  
9 handle this delicate operation.

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

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

18 Part 46 and Part 48 which applies to  
19 underground aggregate operations both require  
20 extensive training for new and experienced miners and  
21 refresher training every 12 months. More to the  
22 point, under both regulations the miner must be  
23 trained additionally on the health and safety aspects  
24 of the task to which he or she is assigned before  
25 being permitted to perform that task unsupervised. If

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1 the task requires the use of hazardous chemicals,  
2 these regulations require the miner to receive  
3 training on the hazard and how to work with it safely.  
4 If the requirements are already in place, what's the  
5 rationale for piling on new ones?

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

17 Approximately another 25 percent of the  
18 cases dealing with batteries and fueling accidents are  
19 also covered by existing MSHA regulations which  
20 mandate the use of appropriate personal protective  
21 equipment to prevent injuries. The majority of the  
22 incidents relating to aggregate workers in the MSHA  
23 database are not as a result of unregulated activity.  
24 They can and should be prevented and NSSGA has offered  
25 and continues to work with industry, our members,

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1 labor and MSHA to determine how we can together  
2 continue to bring down incident rates and especially  
3 reduce any fatal accidents.

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

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

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

25 MSHA's HazCom, with 24 of 30 provisions,

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1 carrying a paperwork burden, is poised to spread  
2 OSHA's mistake into the mining sector where we are  
3 concerned the outcome will be the same.

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

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

19 In closing, let me emphasize to this Panel  
20 and the mining community that NSSGA stands ready to  
21 work shoulder to shoulder with MSHA and labor in  
22 pinpointing and filling any gaps that may be found to  
23 exist between the regulations already on the books.  
24 If we need new training materials or a specified  
25 amendment to Part 46, let's be responsible and take

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1 reasonable initiative and work that through, rather  
2 than impose a 10-year-old solution that didn't fit  
3 then and doesn't fit now.

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

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

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

20 MODERATOR TEASTER: You mentioned that we  
21 had regulations in place that could have prevented  
22 some of the accidents that we referenced. Do you know  
23 whether or not any analysis has been done whether they  
24 were in or out of compliance with the standards or  
25 whether or not they had knowledge of the hazards that

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1 they were being exposed to?

2 MS. WILSON: I do not.

3 MODERATOR TEASTER: Does anyone else have  
4 any questions?

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

7 (Whereupon, the proceedings went off the  
8 record at 10:23 a.m. and went back on the record at  
9 10:45 a.m.)

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

13 MR. SPRINKER: I'd better fix my  
14 handwriting. It's actually Michael Sprinker. It's --  
15 and I try to do my best when I print things out, too,  
16 but --

17 MODERATOR TEASTER: What's the name?

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

19 MODERATOR TEASTER: Looked like O-N here.

20 (Laughter.)

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

23 (Laughter.)

24 MODERATOR TEASTER: We apologize.

25 MR. SPRINKER: -- other things. Oh, no

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1 problem. I've been called worse, much worse.

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

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

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

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

25 I have to say, however, I guess I have to

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

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

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

20 I think we all recognize a lot of the OSHA  
21 limits and the MSHA limits, which are based on, what,  
22 I think the 75 threshold limit values that were  
23 adopted by law and were considered, are rather old and  
24 may not always reflect anything close to current  
25 knowledge.

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1           The TLBs provide a good source of  
2 information. There are companies also that will put  
3 their own exposure limits on MSDSs, their own  
4 suggested exposure limits. I know the factory ceramic  
5 fiber industry has been doing this for years, as well  
6 as a number of others, including Monsanto and some of  
7 our larger companies will do that when they have a  
8 recommended limit which they think employers should  
9 try to follow.

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

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

20           But anyway, this rule is long overdue, and  
21 I think it's important to remember that during the 12  
22 years between January 20th, 1981, and January 19th,  
23 1993, MSHA, OSHA, and other agencies that deal with  
24 health and safety, both of workers and of the public,  
25 were not wanted or supported by two administrations,

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1       except maybe when there were some tragic events.

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

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

19               There was a time when I heard a lot from  
20       employers. Remember, this was the time I was at  
21       Oregon OSHA -- about how come all these rules came out  
22       at the same time. And there was a reason. They had  
23       been worked on for a long time, and they were kept  
24       from coming out. They were prevented from coming out  
25       by administrative decisions.

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1           There's also the burden of -- of  
2 rulemaking not being done, the burden on employees,  
3 the burden on workers. The experience with chemical  
4 workers under HazCom -- and I'll go to the experience  
5 in general industry -- there's a lot of products,  
6 trade secret. You couldn't find out what the heck it  
7 was. The company wouldn't tell you. There weren't  
8 data sheets. There wasn't a good source of  
9 information. They'd be claiming trade secret.

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

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

21           We certainly found that, as people  
22 understand what they're working with, what the risks  
23 are, what the stuff can do to you, what the symptoms  
24 are of exposure, they'll use -- they'll use the  
25 precautions. A lot of times, too, they'll be finding

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1 out the precautions they've been given won't work.

2 One of the major mining companies told our  
3 workers for years, on the issues of diesel exhaust,  
4 that these little -- nice little paper dust masks are  
5 just fine against that. And even ignoring the  
6 byproducts issue of diesel exhaust, you have the  
7 issues of carbon monoxide, faulty running equipment.  
8 "Oh, this is fine. This is fine."

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

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

23 We've had mining sector members who have  
24 gone some -- gone through some of the training and  
25 through some of the hazardous waste training who talk

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1 about this being the first time they have ever learned  
2 some of these -- some of these things.

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

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

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

24 You know, the issue of a written hazard  
25 communication program is very important. There's

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1 nothing that says this has to be 20 pages long and  
2 match ISO 9000 language either. In fact, some of the  
3 worst -- I've seen some very good hazard communication  
4 programs that are a couple of pages long, or even  
5 less. And we're talking, you know, big type with a  
6 fair amount of space on the pages, too.

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

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

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

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1 done even on the temporary containers.

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

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

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

23 In fact, you know, if there's a concern  
24 that this is hard on the smaller employers, then I'd  
25 suggest that perhaps the industry associations might

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1 not have a hard time keeping some of this. That would  
2 be a nice voluntary effort on their part to offer it  
3 to maybe keep some of these older records, these older  
4 MSDSs.

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

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

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

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1 which is a major health concern.

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

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

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

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1 and safer products for people.

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

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

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

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1 people did lose -- did lose function.

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

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

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

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

25 And there is a great appreciation for the

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1 fact that this information has to be provided -- the  
2 MSDSs have to be provided by the -- by manufacturers  
3 and distributors now.

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

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

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

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

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1 MR. SPRINKER: Right.

2 MODERATOR TEASTER: What we said in the  
3 opening statement that we would consider employing in  
4 2001 for each of those documents identified in there.

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

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

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

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

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1 front.

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

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

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

25 MR. SPRINKER: Yes, sir, because I -- you

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

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

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

22           And these things are -- you know, and  
23 there are a lot of times, too, when you know what the  
24 hazard is and what it can do. You may realize --  
25 well, I realize, you know, these safety glasses with

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1 slide shields aren't going to do a darn thing in this  
2 case.

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

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

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

24 Also, the issues on -- I mean, admittedly,  
25 some MSDSs are far better than others. I've seen

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1 MSDSs for arsenic which, you know, even in the '80s or  
2 '90s didn't acknowledge arsenic as a carcinogen.  
3 Quite surprising.

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

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

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

22 Also, the issue is, too, although it's not  
23 -- certainly, we like to see much more -- a much  
24 better section on chemical reactions and incompatibles  
25 on MSDSs, that information does -- can help, too.

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1 Some of that can help just on the basis of what people  
2 are using to handle equipment.

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

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

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

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

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1 every single person will, but I'm confident they will.

2 MR. SEXAUER: Thank you.

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

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

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

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

21 Also, you know, because those sorts of  
22 things do show what kinds of things people -- you're  
23 supposed to be trained on, what your rights are under  
24 the rule for information, where you -- who you turn to  
25 to get things if you can't find it.

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1 I mean, there are times even the  
2 supervisors or the foreman may not know who is  
3 responsible for things, you know, although that should  
4 be -- that should be helped through HazCom training,  
5 too. You know, and that it's readable, in relatively  
6 plain language. I mean, it --

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

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

17 MR. SNASHALL: Legal-ease.

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

25 So, you know, I used to write things very

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

10                        MODERATOR TEASTER: Good. Thank you.

11                        MR. SPRINKER: Okay. Thank you.

12                        MODERATOR TEASTER: Our next speaker is  
13           Timothy Hroblak, the United Mine Workers, Local  
14           Union 2300.

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

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

24                        I'm here because I'm concerned for the  
25           health, safety, and protection of my people. I have

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1 seen a dramatic increase in the use of chemicals in  
2 the workplace. Traditionally, we -- miners -- are  
3 exposed to hazards that we cannot see or detect.

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

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

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

22 It is obscene to allow coal operators to  
23 make a determination what or what is not a hazard.  
24 Coal operators knew that coal dust caused black lung  
25 in 1840, but no protection from this hazard was

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1           afforded to the miners until 1969.

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

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

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

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

24                      Currently, the chemical can be injected  
25          right over your head.   I've seen drums of this

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1 chemical, without labels on the drums, only cover  
2 coating. I've also seen drums of this chemical --  
3 we're talking large drums, 65 gallons -- punctured by  
4 scoop forks and leaking all over equipment, the mine  
5 floor, and people's skin and clothing, wrecking the  
6 intake air courses, exposing the entire long wall  
7 section to the chemical's ill effects.

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

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

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

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1 maintain the MSDS.

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

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

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

19 Summary -- any comments already stated  
20 above require very little effort on the part of mine  
21 operators to protect the miners from hazards. They  
22 are mostly all paper-chase issues that require no real  
23 work to achieve. The above-stated comments also in no  
24 way inhibits the mine operators' operations or  
25 inhibits the use of chemicals in the workplace.

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1           The only thing the miners request is that  
2 necessary protection from the use of hazardous  
3 chemicals be issued in the workplace.

4           I'm here to entertain any questions.

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

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

14          MODERATOR TEASTER: Do you know what the  
15 chemical was?

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

21          MODERATOR TEASTER: Are they back to work  
22 now?

23          MR. HROBLAK: Yes, they are working.

24          MODERATOR TEASTER: Any questions? Thank  
25 you very much.

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1 MR. HROBLAK: Thank you.

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

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

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

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

21 The MSDSs we have now are so -- should I  
22 say inadequate? It might say "may cause the skin to  
23 burn." It doesn't have anything about the long effect  
24 of this, about the -- the majority of them don't have  
25 anything on them as far as the overexposure, the long

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1 exposure, whether you were exposed one time, or some  
2 people -- like Tim had mentioned, we had people around  
3 chemicals in a plant that actually made them sick,  
4 nauseous, and they had to be taken off site.

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

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

21 I can tell you from being through many  
22 companies that has owned Cumberland Mine in Green  
23 County, the numerous subsidiaries that has had them.  
24 It might be some other company, but when U.S. Steel  
25 went to USX, an operator -- from what I've seen, from

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1 one end to the other, is going to go with the most  
2 minimal thing they can as far as the safety of the  
3 miners.

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

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

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

12 MR. BEDILION: Yes.

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

15 MR. BEDILION: That's all right. Okay.  
16 However, based on conditions and loopholes contained  
17 in the rule, as well as the preamble to the rule,  
18 there is no reason to believe that miners will be  
19 afforded the necessary protections from chemical uses  
20 at the mines.

21 The union has previously argued that the  
22 agency's ardent desire to write a rule that is solely  
23 performance-based offers little, if any, assurance to  
24 miners that HazCom is ultimately an enforceable  
25 standard. While the union does not argue that the

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1 limited use of performance-oriented incentives can be  
2 beneficial, the decision to base a rule of this  
3 importance solely on such advice is misguided.

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

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

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

20 By its own admission, Federal Register  
21 Volume 25, Number 192, page 59055, there is no  
22 intention by the agency to regulate chemical use or  
23 prohibit to limit chemical use. Further, HazCom's  
24 effectiveness is dependent upon operators' and miners'  
25 knowledge and awareness of hazards.

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1           And, again, back to what I was saying, we  
2           get minimal -- they tell us minimal knowledge of what  
3           we need to know, and there is no link in the hazards  
4           that long-term cause or use of -- being around it  
5           nowadays compared to 27 years ago, there is probably  
6           not a day that I don't go in the mine that I'm not  
7           exposed or close to some kind of a chemical that I  
8           don't know what the long-term effect is.

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

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

21          As far as getting back in touch, my more  
22          or less final -- on the MSDS, we see contractors come  
23          underground, and an MSDS may be on the drum of  
24          material they're using, or the canister. Things are  
25          discarded. We don't know -- the drums are punctured.

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1 The MSDS doesn't show us what's going to happen as far  
2 as that chemical getting into the walkway, on  
3 machinery that one of the miners may have to use.

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

13 That's all I have.

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

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

25 It has been touched on, but to the extent

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1 that I believe it should for the -- our personal  
2 protection, no.

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

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

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

19 MR. STONE: Okay.

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

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1 addressed in that -- in those training plans.

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

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

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

13 MR. BEDILION: Yes. I think it is taking  
14 too long.

15 MODERATOR TEASTER: Okay. Thank you.

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

20 MR. TUGGLE: Just a point, Mr. Chairman.  
21 If there is no other speakers, I'd like maybe three  
22 minutes of additional time here just to make a couple  
23 -- a few more comments.

24 Okay. Again, Mr. Chairman, my name is  
25 Harry Tuggle with United Steel Workers of America.

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1 And I would like to make just a few brief comments on  
2 some matters that have been raised this morning.  
3 That's in regard to where some comments were made that  
4 -- that feeling this rule is basically redundant of  
5 other provisions in the rule, and references to  
6 various states that have right-to-know laws and that  
7 the majority of states having right-to-know laws are  
8 way up there in the forties, or whatever.

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

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

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

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1 place, and it's very necessary.

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

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

20 But by the same token, even in the iron  
21 range, there is MSDSs in regard to some various  
22 aimings used in the flotation process to remove the  
23 silica from the iron ore process. And the miners  
24 there are trained in regard to MSDS sheets that had to  
25 specifically handle this.

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1           However, we found that in a number of  
2 cases -- downstream emergency processes that this  
3 standard now addresses -- busted pipes, overflowing  
4 processes, put labor on it, put this one on it, clean  
5 that stuff up, work for days on it, and these guys  
6 wind up sick at their stomach, rashes going on,  
7 nausea, problems breathing.

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

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

20           And each and every time that we get them  
21 in a group, and we have an ongoing need for continued  
22 education because of our election process for new  
23 officers, new miners' representatives, new employee  
24 representatives -- every election turnaround, and we  
25 bring these people back together, and these

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1 individuals -- you begin to tell about OSHA MSDSs and  
2 OSHA HazCom.

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

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

17 There should be a great potential for this  
18 to go in place, even with the outreach that's already  
19 been ongoing, all of the information on the standard  
20 itself that's been going forward, MSHA's assistance,  
21 ready assistance to get into this issue. I think we  
22 should be prepared for this standard by January 1 of  
23 2002.

24 Thank you.

25 MODERATOR TEASTER: We have -- the

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1 National Stone, Sand, and Gravel Association is having  
2 a safety awards meeting in Pittsburgh, and they have  
3 requested to speak at 3:00 this afternoon, different  
4 representatives.

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

9 Thank you.

10 (Whereupon, at 11:47 a.m., the  
11 proceedings in the foregoing matter went  
12 off the record.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(2:58 p.m.)

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 Brachs 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

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1 safety committee, and a team of good and committed  
2 plant managers.

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

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

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

20 I read your opening statement with great  
21 interest, because in it you share with us the agency  
22 thought, which in part states precisely my argument.  
23 You stated that, "The HazCom rule does not duplicate  
24 other MSHA standards as claimed by some commenters  
25 representing the aggregates industry." And this is

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1 where I agree. "It augments, supplements, and  
2 complements these existing standards."

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

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

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

22 Now, if this were by design to enhance a  
23 deficiency in the way that chemical hazards are  
24 labeled, recognized, or their avoidance was improved,  
25 I suppose my argument about burden would be less

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1 valid. But the agency, by your own acknowledgement,  
2 has accomplished that.

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

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

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

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

25 Now, I know that I represent only one mine

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1 operator with only five mines. But in my case, and in  
2 the case of several of my associates with whom I share  
3 and compare information, this is not the prioritized  
4 cause of incidents that you state.

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

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

21 So in terms of my take on how another  
22 existing standard is augmented, supplemented, or  
23 complemented by HazCom, I prefer the term  
24 "duplicated." There's no ambiguity in my  
25 understanding of the definition of the word

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1 "duplicate." It is simply defined as to double, to  
2 make twofold, copy, replicate, repeat, and imitate.  
3 It is here that I am burdened, and my efforts will be  
4 duplicated.

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

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

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

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1 approved Part 46 plan.

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

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

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

21 Some of the findings in this report echo  
22 what I'm trying to say here today. This report  
23 recognized the paperwork burden as real. It also  
24 pointed out that MSDSs are flawed, that training based  
25 on these MSDSs was ineffective. That the complexities

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1 of compliance with the standard resulted in inadequate  
2 programs and cynical attempts to present a program  
3 that was little more than ignored paperwork.

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

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

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

22 Now, if I were to associate this statistic  
23 with the MSHA HazCom rule, I as well would argue that  
24 this presents a burden to your enforcement efforts as  
25 well as to my compliance efforts. We would

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1 undoubtedly both be tied up with precious inspection  
2 time debating the lack of or the perceived lack of  
3 dotted I's and crossed T's.

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

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

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

22 This is just the small guy speaking here.  
23 But since we've invested this substantial amount,  
24 wouldn't it be more cost effective and, more  
25 importantly, more protective for the miner for you and

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1 me to expect that your compliance efforts should be  
2 emphasized with the equally protective and currently  
3 existing standards and not on undue duplicative rule?

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

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

17           Thank you very much.

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

22           MR. GOULET: Yes, sir.

23           MODERATOR TEASTER: Would that -- do you  
24 feel that that would comply with our interim final  
25 rule as far as the training requirements for --

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1 MR. GOULET: I feel that that very much  
2 complies with what I interpreted Part 46 to mean when  
3 we talked about training miners in the avoidance of  
4 hazards, one of which is chemical hazards that I  
5 recognize.

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

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

10 MR. GOULET: Right.

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

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

23 MODERATOR TEASTER: Do you have an idea of  
24 how many chemicals, different chemicals, that you have  
25 there that you address in your Part 46 training?

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1 MR. GOULET: In terms of an actual number,  
2 Mr. Teaster, I don't have it. I can get it for you.  
3 We address chemicals in -- well, our Part 46 plan  
4 obviously is different at each of our mining sites.  
5 We have specific plans for it, where we talk and teach  
6 in general chemical hazards, and in specific what we  
7 have located at that location.

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

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

17 MR. GOULET: By the miners, yes.

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

21 MR. GOULET: Yes, sir.

22 MODERATOR TEASTER: What we are saying for  
23 the most part, that if you comply with -- with MSHA's  
24 interim final rule that -- that that would satisfy our  
25 rule, if you comply with OSHA's.

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1 MR. GOULET: I understand that. My  
2 compliance with OSHA's HCS is because it is in my  
3 Part 46 plan. It's there. And I felt that I was  
4 directed to do that when I adopted my Part 46 training  
5 plan.

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

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

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

18 MR. GOULET: Yes, sir.

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

21 MR. GOULET: I extracted that from that  
22 report by -- that OSHA ordered and was -- and I have  
23 a copy of it here. They talked about some problems  
24 that they've noticed with MSDSs in the marketplace in  
25 that -- you know, available out there, supplied by

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1 suppliers and manufacturers, supplied to workplaces on  
2 request when the chemical was brought onsite. And  
3 that was by the National Advisory Committee on  
4 Occupational Safety and Health.

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

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

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

25 MR. GOULET: In my operations, in the past

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1 three years I've never had a request for an MSDS by a  
2 miner.

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

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

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

11 MR. GOULET: Well, I'm not exactly sure  
12 how you would be able to assist me. I know I've read  
13 in the record, as well as in other documents that have  
14 been supplied by the agency, that there are several  
15 steps to include outreach and compliance assistance.

16 And I don't want to appear cynical,  
17 because I will represent to you that I have, in my  
18 opinion, a good relationship with MSHA, at least on  
19 the local level. I know, Mr. Teaster, we've spoken on  
20 this before. I have yet to have a CAD on Part 46.

21 Our particular local office is having  
22 difficulty meeting their requirements for inspections  
23 for several reasons. And this is not in terms of  
24 criticism; this is real world that I'm talking about.  
25 I wouldn't hardly expect that they would be able to

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1 expend effort in helping me write or train or  
2 understand anything in this standard.

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

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

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

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

25 I think we visited most of the small

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

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

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

21 Some of the small mines -- and we're small  
22 mines, but smaller than us -- where their safety  
23 director, unlike I am -- my responsibility is also the  
24 bookkeeper, and possibly one of the supervisors, and,  
25 heck, may spend hours driving a haul truck for that

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1 matter, and there's a couple of those like that. And  
2 we've talked about -- I've talked about this with  
3 them.

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

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

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

23 And I had said that we have some range of  
24 miners, and that's because our people move back and  
25 forth. So they've received HazCom HCS training prior.

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1 MR. FEEHAN: Have you had a HazCom  
2 program? And do you have MSDSs and --

3 MR. GOULET: Correct.

4 MR. FEEHAN: -- labeled?

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

7 MR. FEEHAN: Well, it seems -- you know,  
8 and I'm interested in hearing from you, but to me the  
9 \$267 cost that we've costed for this, I don't think  
10 there's any cost. I mean, don't you already have  
11 compliance with the standard?

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

18 MR. FEEHAN: Well --

19 MR. GOULET: Notwithstanding some changes  
20 that you're proposing, okay, the rule -- the interim  
21 final rule as it stands -- and I haven't measured --  
22 haven't had the opportunity to measure it -- this will  
23 make a big difference, some of these changes you  
24 propose. I would suspect it would be a difference,  
25 but still a burden.

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1 MR. FEEHAN: The changes from OSHA's HCS,  
2 though, there are about five of them, and they're all  
3 basically liberalizations of the compliance  
4 requirements, except for -- you know, excepting, let's  
5 say, the hazardous waste requirement which doesn't  
6 apply at your operation. And the training record  
7 retention. Okay.

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

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

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

21 And, again, you're addressing some of that  
22 as well. But there are changes from HCS to HazCom and  
23 labeling requirements. And, again, I talked about a  
24 burden that involves the relationship with MSHA and my  
25 company, both in their time and cost, and in my time

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1 and cost, which will add to it now because, as my  
2 local office can tell you, we sit down and talk when  
3 there's a -- when I've been cited for a violation for  
4 a couple of reasons. Maybe I disagree, or maybe I  
5 need an education to help me get into compliance. But  
6 this will just add to that again.

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

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

25 MODERATOR TEASTER: Sure. I understand

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1 that.

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

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

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

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

25 MR. GOULET: Absolutely.

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

3 MR. GOULET: Sure.

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

10 MR. GOULET: No.

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

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

25 This second shelf, the lower shelf, if you

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

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

9 MR. GOULET: Correct.

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

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

25 MS. JONES: Excuse me. You said you had

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1 five mine sites? Do miners at each of those mine  
2 sites have access to these MSDSs? Is that how it  
3 works?

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

6 MS. JONES: To miners from all five mines.

7 MR. GOULET: That's correct.

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

10 MR. GOULET: Yes.

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

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

14 MS. GREEN: They get a copy for  
15 themselves?

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

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

21 MR. GOULET: Yes.

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

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1 MR. GOULET: Okay.

2 MS. GREEN: The cite for the document.

3 MR. GOULET: Yes.

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

6 MR. GOULET: I understand. This document  
7 was downloaded off of the OSHA web site, www.osha-  
8 slc.gov. It is titled, "Report of the Hazard  
9 Communication Work Group to the Nation." It is an 83-  
10 page report.

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

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

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

24 MR. GOULET: That's correct. And I hoped  
25 I made the representation that I was talking about the

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1 top row, because that's my library of MSDSs. It's  
2 just rearranged for --

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

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

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

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

12 MR. SEXAUER: Would you do updates?

13 MR. GOULET: Oh, absolutely.

14 MR. SEXAUER: Yes.

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

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

21 MR. GOULET: Absolutely.

22 MR. SEXAUER: By the way, we mentioned  
23 this morning that our intent is to put transcripts on  
24 each hearing on our web site within 48 hours after the  
25 hearing. So to refresh your memory, if you're

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1 thinking about what was said here, that would be a  
2 good place to go back to.

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

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

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

25 MR. FEEHAN: That sounds about right.

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1 MR. GOULET: And I'll make sure to verify  
2 that to you when I get back with additional written  
3 comments --

4 MODERATOR TEASTER: Okay. We appreciate  
5 that.

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

9 MODERATOR TEASTER: Okay. Appreciate it.

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

13 MR. GOULET: Have requested.

14 MR. SEXAUER: Have requested.

15 MR. GOULET: I think that was the  
16 question.

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

20 MR. GOULET: Yes, I have.

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

23 MR. GOULET: I'm familiar with what they  
24 look like, and I'm familiar with what they are. I  
25 don't represent myself as having a large scientific

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1 background. Quite a bit of it's confusing to me.

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

4 MR. GOULET: Outside of training? No.  
5 When you say "used," maybe I'm confused. Maybe I'm  
6 not quite clear on the question.

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

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

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

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

25 MR. SNASHALL: Or a new hazard.

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

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

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

24 MR. GOULET: Could there be? Yes. And  
25 the reason I say that is getting the MSDS is often not

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1 an easy thing. It's often not an easy thing. Now, in  
2 your proposed test common rule where it says that the  
3 MSDS must be there, well, if you will, prior to the  
4 chemical, prior to the exposure, we, as best we can,  
5 get copies so that they arrive at the site with the  
6 exposure. Those are the ones that are ordered and  
7 under our control, the ones that are purchased locally  
8 in quantities. I can't represent to you that they  
9 receive the training before that chemical hits the  
10 site.

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

14 MR. GOULET: No.

15 MR. SNASHALL: How do you assess that  
16 hazard?

17 MR. GOULET: The label. Because it comes  
18 with the product. It's there at least the same time  
19 as the product; actually, not often before but it  
20 comes with the product. And we can work off the label  
21 because typically on the label they will identify the  
22 chemical name, the hazard, and more often than not  
23 necessary avoidance or at least required PPE. And,  
24 again, that's on the chemicals that are ordered and  
25 controlled sort of universally -- guy goes out and

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1 buys a case of ammonia for windows or WD-40. I will  
2 admit to you that that would be difficult or is  
3 currently, and it would be under the requirements of  
4 the standard as well.

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

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

10 MODERATOR TEASTER: Appreciate it.

11 MR. GOULET: I appreciate the opportunity  
12 to speak.

13 MODERATOR TEASTER: Appreciate you coming.  
14 Is there someone in the audience who would like to  
15 speak?

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

18 MODERATOR TEASTER: Okay.

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

25 MODERATOR TEASTER: Sure.

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

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

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

23 In general, we find that these operations  
24 deal with, by and large, some petroleum products --  
25 hydraulic oils, fuel oils and transmission oils and so

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1       forth.   And these are almost on a borderline of  
2       consumer product.  It is common sense products.  You  
3       know, you don't drink this stuff.  There's a potential  
4       of fuel oil to burn.  Gasoline, if they have it on  
5       their property, the potential for explosion.  But it's  
6       common sense safety measures that regulates a lot of  
7       those issues.

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

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

24             But, in general, we feel that this HazCom  
25      standard for those industries it simply provides an

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

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

25 I would go into some of the matters

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

13           And, again, something else that was just  
14 spoken about by Mr. Goulet and against somewhat of all  
15 that was said, and I appreciate basically all that he  
16 said except the reference to time and cost. And  
17 something I spoke on this morning, and it's already in  
18 the record in the preamble, is on the somewhere around  
19 2,500 burns have been recorded from industry to the  
20 Agency, 500 poisonings between somewhere around '96  
21 and '99 or late in the game. And there's time and  
22 cost and money in that. I mean there's lost time,  
23 there's hospital time, there's all the time and worry  
24 -- I mean if you could pull that cost back out, surely  
25 an operation would buy into another approach to avert

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1 that cost.

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

15 But if these particular MSDSs are going to  
16 be made available through this HazCom process, we will  
17 be advising our miners and miners' representatives  
18 where you have concerns and where you have symptoms  
19 from chemical hazards, chemical burns, one thing or  
20 another, ask for a copy of that MSDS as you have a  
21 right to do under the standard, and take it to your  
22 physician along with your symptoms and say, "Here's  
23 what I'm working with, and here's the problems," and  
24 let them -- let a, quote, "a little higher level  
25 professional" assist in reviewing that.

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1           And we're going to be advising our people  
2           that to make use of those things, hopefully they don't  
3           have to make use of them, that the protection factors  
4           are in there to where they're not needed to be  
5           requested other than review and training. But in the  
6           emergency situation, then we're going to be informing  
7           our people of their right to have that information and  
8           to take that to a professional either within their own  
9           union, if they have to take it up to Mike Wright, take  
10          it to an agency, industrial hygienist, take it to  
11          their own doctor and go from there with it.

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

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

18                       MR. TUGGLE: Yes.

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

22                       MR. TUGGLE: Possibly somewhat unlike Part  
23          46, which I think is minimal, or chemicals under  
24          smaller operations, which is minimal, as I said, and  
25          may dovetail into their Part 46 some of the larger

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1 mines and some of the numerous other exotic chemicals,  
2 hazardous chemicals, there may be cases to where if  
3 they want to include it in their Part 48, it might  
4 very well make them go beyond the eight hours. But  
5 that eight hours is a minimum of training. And if  
6 this standard causes situations to where they have to  
7 go to ten hours a year, oh, my God. In short, we  
8 think it would be very worthwhile even if it infringed  
9 on that eight-hour time frame.

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

19 To get back to your question there, but  
20 for the larger mines, longer lists of chemicals, there  
21 may be some infringement on their attempt to continue  
22 to try to crunch everything they must address within  
23 eight hours. That standard simply says that they'll  
24 do the training a minimum of eight hours. In a lot of  
25 cases that HazCom training will fit right in. In some

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1 cases, it may exceed it by 30 minutes. In some cases,  
2 an hour or two, over a year. That can be addressed  
3 and divided out just as Mr. Goulet had referenced even  
4 under Part 48 on the 30-time basis on a tailgate  
5 meeting or a monthly meeting. And within a couple of  
6 those meetings, you've got everything right back in  
7 context within over a year's period of time. And we  
8 don't perceive it to be a burden.

9 MODERATOR TEASTER: Any questions? Thank  
10 you, Harry.

11 MR. TUGGLE: Thank you.

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

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

22 It was interesting listening to some ideas  
23 of some of the things I didn't want to take the time  
24 with this morning, but some others issues we've seen.  
25 And part of this comes from my experience in enforcing

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1 the OSHA HazCom standard too. And there is -- I mean  
2 I will admit there is a need to have enforcement staff  
3 well-trained so they also understand what is a  
4 significant hazard, what isn't a significant hazard  
5 under HazCom.

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

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

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1 available, because people just don't have half an hour  
2 to go searching through.

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

17 And it's interesting, we've been having  
18 these discussions on the EPA high-production volume  
19 chemical testing, on the need for information and how  
20 much information should be available on either the web  
21 site which has the information about this  
22 toxicological testing on chemicals and the question of  
23 whether workers meet that or not. And, truthfully,  
24 while I said that, certainly speaking for our members  
25 and a lot of the people that we do training for, that

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1 they can actually use the more detailed information.  
2 They may not be able to understand everything on  
3 there. There's a number of things I won't be able to  
4 understand everything on too.

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

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

21 They're certainly not all perfect. One  
22 large mining company used to be quite famous for on  
23 their arsenic data sheet refusing to put down that  
24 arsenic was a carcinogen, and this was in the early  
25 '90s. We're certainly not talking -- this is a large

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1 multinational. So there are problems with data  
2 sheets, and they aren't always perfectly accurate.  
3 But to the extent that OSHA or MSHA can enforce the  
4 accuracy of those data sheets to cite manufacturers  
5 for not reporting proper information, it will make  
6 those better.

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

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

24 But that's really about all I'd like to  
25 add, and I'm -- I'll -- of course, I'll have more in

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1 my written testimony for you too.

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

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

22 At Luck Stone, we're very committed to the  
23 health and safety of our associates, and we absolutely  
24 don't oppose the collection and dissemination of  
25 chemical information. We do feel like current intra-

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1 regulations that already cover hazardous chemicals,  
2 and I know you've heard them already -- labeling for  
3 toxic materials, barricades and warning signs where  
4 health and safety hazards exist, containers for  
5 hazardous materials and storage of hazardous materials  
6 -- along with current Part 46 training regulation and  
7 some specific programs to target the most common types  
8 of chemically related injuries in the aggregate  
9 industries would be best suited for Luck Stone.

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

19 If our miners have questions or our mine  
20 foremen have questions, supervisors have questions on  
21 chemicals, we tend to use the back of cans and  
22 container labels. If they have a question, at least  
23 at Luck Stone, then they would come to either me or  
24 call the manufacturers. In a rare instance of an  
25 emergency, I feel like that's what they would do, so

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1 it's kind of I'm there to assist for questions on any  
2 chemicals.

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

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

20 Just to hit some of the major points, on  
21 the inventory of chemicals at your mine site, we sat  
22 down to determine which are hazardous and keep a list  
23 of those that are deemed hazardous. This sounds easy  
24 enough until I sit down and I start thinking, how are  
25 we going to keep a truly accurate count of product,

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1 specific chemical inventory at each one of our sites?

2 Our managers are constantly looking for  
3 better products. They're looking for the cheapest  
4 vendor. And I guess my -- the burden comes in when an  
5 inspector comes on-site and says, "Okay, do you have  
6 -- I see here on your list you have glass cleaner A  
7 from this vendor. What's on the shelf here is glass  
8 cleaner C from this other vendor, and there's a  
9 problem in your list or your inventory." So that's  
10 where I see some of the potential burden coming in,  
11 because it's out of citation, so interpretation gets  
12 thrown in there. Because that's where -- that's the  
13 end of things I live on is that when we get to that  
14 point.

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

24 But where the, I guess, the gray areas  
25 come in and where the burden becomes is if my operator

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1 gets up in his haul truck in the morning before he  
2 goes to work and sprays his glass off once and he does  
3 it three more times throughout the day and then once  
4 before the end of the shift, is that more than the  
5 average consumer? And I think, again, there's where  
6 I foresee spending a lot of time when those questions  
7 arise in the field trying to figure out and defend or  
8 conference citations.

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

18 I speak with experience not only with MSHA  
19 regulations, because I also have compliance with EPA,  
20 Virginia DEQ, DMME regulations and regulations that  
21 have written plans. I can honestly say that most of  
22 the time there's written plans, although the key  
23 concepts are certainly in there. I can tell you that  
24 until the inspector comes and asks for them, they're  
25 kind of usually sitting over to the side.

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1                   And I know that you may ask the question,  
2 well, how do you ensure that you're complying with the  
3 regulation if you're not looking back and saying,  
4 "Okay, here's my program, here's what I'm doing?" I  
5 wouldn't say I never have to look back at a program,  
6 but I can tell you really that's my job, to know what  
7 requirements are, and that's what I do on a daily  
8 basis is help our plants, work with our plants, work  
9 with our hourly associates to help determine those  
10 types of things and the best way to staying in  
11 compliance, and not only staying in compliance but the  
12 best way to be safe in an environment and be good  
13 environmental stewards.

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

20                   So that's where I feel like the written  
21 HazCom Program what that's going to do is I'm not  
22 going to have a right name and a right place or our  
23 managers switch from site to site on occasion and I  
24 feel like that to spend time writing citations and  
25 conferencing citations for the I's not dotted and the

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1 T's not being crossed and this not being in the right  
2 place on a piece of paper is not necessarily what's in  
3 the truly best interest of our associates and miner  
4 safety.

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

18 We, at Luck Stone, already trained on  
19 hazardous chemicals. I do. I have five crush stone  
20 sites that I've helped with environmental and safety  
21 and health compliance. And I do every new hire that  
22 comes through in the western region. I personally do  
23 the Part 46 new miner training. And I feel like  
24 that's -- we just recently switched to that. We were  
25 doing new miner training -- our site managers, our

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1 foremen were doing new miner training, and we just  
2 recently added a couple more people onto our staff in  
3 that department for that, and I think that has -- I  
4 think that is and has and will continue to reap the  
5 benefits of that. I'm very excited about being able  
6 to get in front of every new associate that comes  
7 through.

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

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

24 Another goal for MSHA, as stated in the  
25 HazCom standard would be to reduce the rate of

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1 chemically related injuries. So I went back and  
2 didn't do an extensive study, but I did go back and  
3 look at our reportable injuries for '99 and 2000 and  
4 so far in 2001, and what I found was 22 reportable  
5 injuries during that time frame.

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

21 So seeing that that is -- you know, I  
22 can't speak for other metal and non-metal -- I think,  
23 I think, and I don't know, but I think that's probably  
24 fairly typical for an aggregate company, an aggregate  
25 in the aggregate industry. Like I say, I can't say

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1 for sure, but that's what we have.

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

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

22 So I reviewed a letter dated May 11, 2001  
23 sent to the Secretary of Labor from Joy Wilson, the  
24 President and Chief Executive Officer of NSSGA. And  
25 like I said, I did review that document, and in that

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1 letter there's a pretty detailed breakdown of MSHA's  
2 chemical poisoning database and chemical burns  
3 database. And I don't have a whole lot of statistics  
4 on that, but like I said, I did review that.

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

16 Because, again, I don't have the  
17 statistics in front of me but from what I remember  
18 about reading the article it seemed to me that in the  
19 aggregate industry there were two or three -- I think  
20 fueling was one of them that jumped out at me, eye  
21 injuries with solids and liquids in the eyes, and  
22 maybe there's one more. If that -- I'm a pretty -- I  
23 usually try to attack problems at the source, and if  
24 it were, that's what I'd go after rather than try to  
25 blanket an industry with a broad standard that I feel

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1 like at least the aggregate part of the industry is at  
2 least complying with the intent. Certainly, I don't  
3 know that we'd be in compliance with all the paperwork  
4 parts of it, but we're already -- I feel like we are  
5 at least complying in the spirit with the regulation.

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

16 So I guess you're next question may be,  
17 well, what exactly do you suggest? Here's what I  
18 suggest. That MSHA and the industry together spend  
19 out time and focus our efforts on the following  
20 things: As mentioned above, I think using a  
21 combination of existing regulations combined with the  
22 creation of specific programs that target the most  
23 common types of chemical injuries would go a long ways  
24 towards improving hazard communications in the  
25 aggregate industry. I feel like task training

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1 development is very important. I know at Luck Stone  
2 we are in the process of trying to really -- that's  
3 one of the areas that we feel like is key, and I know  
4 that MSHA is actually -- and I don't know a whole lot  
5 about it, but I know that MSHA is working with NSSGA  
6 right now. And I think -- maybe Mr. Teaster can tell  
7 me, I think we're pretty close to being finished with  
8 a task training module for a haul truck.

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

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

18 I feel like assisting our sites with  
19 accident and injury investigation with a focus on  
20 prevention of similar types of accidents and injuries,  
21 and then in addition to that communication on findings  
22 of those types of injuries so they don't happen  
23 elsewhere, that's a major effort that we're going to  
24 try to improve on within our Company. Communicating  
25 the accidents at that site through us out to the whole

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1 Company. And past that step, I think the partnership  
2 opportunities are with NSSGA to communicate those  
3 injuries and accidents to other companies within the  
4 industry and then through MSHA to a lot of other  
5 companies in the industry.

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

19 But in addition to that, what we're also  
20 trying to focus on is the development of near-miss  
21 programs. We're trying to -- we've recently gone  
22 around to all of our locations and we're trying to get  
23 our associates -- the miners involved with making  
24 those programs, having input on their near -- making  
25 their near-miss programs, getting their input on it,

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1 letting them have a stake in it in what works for  
2 them. And that may -- even from site to site, we feel  
3 like that at one site this group of guys may be  
4 comfortable with near-miss reporting to their  
5 supervisors, directly with their supervisors, and this  
6 site here may want to go through a middle man, one of  
7 their senior associates, and then report near misses  
8 that way. But the most important thing to us is that  
9 we get them reported, because we truly feel like near  
10 misses is where -- is a proactive way to focus.

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

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1 safety program in what's truly in the best interest of  
2 miners.

3 And I'll close on the note that sometimes  
4 I think we all have to step back, and I know sometimes  
5 during inspections in the heat of the moment it's easy  
6 to get into a contest over whether that guard is truly  
7 compliant, even though if it's safe or not. It may  
8 truly be safe but is it -- does it meet this  
9 compliance or does it meet that compliance? When  
10 you're contesting or conferencing citations, it's easy  
11 to get caught up in the battle. And so, you know, I  
12 know sometimes we just have to step back and really  
13 truly ask what is in the best interest of our miners?

14 I know we, at Luck Stone, truly do believe  
15 our miners are our most valuable assets and is -- I  
16 have to ask myself is a detailed paperwork or having  
17 to write name on a certain section of a training plan  
18 or saying that I'm going to cover this section in my  
19 training plan for 30 minutes, and I only cover it for  
20 24, is our doing and citing and disagreeing over those  
21 types of issues truly in the best interest of our  
22 miners? And that's all I have to say.

23 MODERATOR TEASTER: Thank you, Chris.  
24 Chris, you had alluded to some of the remarks that I  
25 made last night. One of them was we want to partner

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1 with the industry, we want to partner with labor. We  
2 want to partner with all of those in the mining  
3 community that's going to help us reduce accidents and  
4 fatalities, and I think we've been holding stakeholder  
5 meetings throughout the country and trying to get more  
6 input from all segments to develop some kind of an  
7 idea of what direction we need to go to accomplish our  
8 goal.

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

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

20 MR. HIPES: I can list you some of the  
21 ones that I know right off the top of my head. I  
22 don't have any training program, but I know we're  
23 training on chemical hazards for, at least during the  
24 new miner training, for things such as diesel fuel,  
25 lubricants, even though, you know, some of the things

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1 I think we train on initially could be covered and  
2 then some are covered additionally in specific task  
3 training. But we feel like there are certainly some  
4 chemicals that are on the property that everybody has  
5 some exposure to. And most of those are the, like I  
6 said, diesel fuel, lube oils, greases, train on some  
7 of your what I think we would consider consumer  
8 products. We usually take a tour through -- that's a  
9 lot of how I address, because most of our chemicals  
10 are housed in the shop areas. So we usually take a  
11 tour. I usually try to incorporate a tour through a  
12 shop area, and we actually visit -- we look at some of  
13 the spray paints that we keep on the shelves, the  
14 cleaners and things of those nature.

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

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

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1 it certainly meets the spirit or the intent of the  
2 rule.

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

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

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1 think our managers were doing the training. So I  
2 would hope that they were trained on them, but I can't  
3 say for 100 percent sure.

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

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

11 MR. FEEHAN: And what --

12 MR. HIPES: Splash.

13 MR. FEEHAN: It splashed back out?

14 MR. HIPES: Splashed back out.

15 MR. FEEHAN: And then were they eye burns?

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

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

23 MR. HIPES: I can't answer that. And I  
24 think one of them may have been the case, and I'm not  
25 sure about the other one. Like I said, I look back at

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1           them just before I came through up here, and they  
2           weren't -- time-wise again they weren't -- it's been  
3           a little while since these incidents have happened.  
4           They were just real recent.

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

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

17                        MR. SEXAUER:  Well, you mentioned one  
18          example where you said, "Well, if someone uses a  
19          chemical, household chemical to clean glass on their  
20          truck one time a day versus four or five times a day,  
21          whether that four or five time use would come under  
22          the HazCom rule."  And you said, "Well, part of the  
23          burden is trying to decide these issues.  Is this a  
24          consumer use?  Is it a consumer product?  Does it fall  
25          under HazCom?"  So my question to you is, assuming the

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1 HazCom rule is in place, what we can do? Is there  
2 anything we can do to reduce that type of burden for  
3 you?

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

11 MR. SEXAUER: All right.

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

15 MR. HIPES: I do not. I can't tell you  
16 exact numbers. I know, being in a -- I was in a mine  
17 for a little over two years mainly at one specific  
18 location. And I was not aware of any request. Again,  
19 I feel like it's a common procedure, at least at our  
20 Company. If there's a question, usually it's fielded  
21 to our manager, and then if we need to get to the MSDS  
22 level -- I can pretty honestly say that I don't think  
23 any of our associates really are interested in reading  
24 an MSDS. I can't say that we took a poll of all of  
25 our hundreds -- 400 or some odd miners, however many

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1 we have now. I don't know that they would all say,  
2 "No, we're not interested," but as a rule of thumb, I  
3 think most of the MSDS books just sit there.

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

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

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

18 MODERATOR TEASTER: That's all we have.  
19 Thank you. Is there anyone else that would like to  
20 speak? This is a first of a series of seven public  
21 hearings that we'll have. The next one will be in  
22 Beckly, West Virginia on Thursday at the Mine Academy.  
23 The following week there will be four: One in Dallas,  
24 Texas, one in Reno, Nevada, one in Salt Lake City, and  
25 one in Birmingham. And then there will be one the

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1 following week in Evansville, Indiana. If any of you  
2 wish to participate, you're more than welcome.

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

8 And with that, we'll close the record.  
9 Thank you.

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

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