UNITED STATES OF AMERICA

DEPARTMENT OF LABOR

MINE SAFETY AND HEALTH ADMINISTRATION

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

TUESDAY,
OCTOBER 2, 2001

The public hearing was held in the Cherokee Room of the Wilson World Hotel, 4600 W. Airport Freeway, Irving, Texas, at 9:00 a.m., Earnest C. Teaster, Jr., Moderator, presiding.

PANELISTS:

EARNEST C. TEASTER, JR., MODERATOR,
Administrator, Metal and Nonmetal Mine Safety & Health
RICHARD FEEHAN, Office of Educational Policy Development
CAROL JONES, Metal and Nonmetal Health Division
ROBERT STONE, Office of Standards, Regulations, and Variances
SANDRA WESDOCK, DOL Office of the Solicitor
MR. TEASTER: Good morning. I'm Ernie Teaster. I want to welcome you to MSHA's public hearing on the interim final rule for hazard communication in the mining industry. I will be your moderator for today's hearing.

On my right is Sandra Wesdock; Sandra represents the Solicitor's Office. On my left is Richard Feehan; he's with the Office of Educational Policy Development; he's done a lot of work on the rule; Carol Jones, from Metal and Nonmetals Health Division; and Robert Stone from the Office of Standards, Regulations, and Variances.

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

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

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

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

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

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

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

In their comments on our advanced notice of proposed rulemaking and proposed rule, commentors represented:

- both small and large mining companies,
- individual miners,
- a variety of trade associations,
- state mining associations,
- chemical and equipment manufacturers,
- national and local unions,
- members of Congress, and
- federal agencies.

We re-opened the rulemaking record on March 30, 1999, requesting comments on the impact of the proposed rule on:

- the environment,
- small mines,
• state, local, and tribal governments,
and

• the health and safety of children.

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

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

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

On October 3, 2000, we published an interim final rule on hazard communication with an effective date of October 3, 2001. We gave commentors until November 17, 2000, to submit comments. The interim final rule specifically requested comments on:

• the plain language format and the content of the interim final rule,

• mine operators' experience under the
Occupational Safety and Health Administration's Hazard
Communication Standard, and

- any changes in the mining industry since
the publication of the proposed rule.

On December 7, 2000, we personally spoke
with or e-mailed all commentors and other interested
persons telling them of our decision to hold a public
hearing in Washington, DC on December 14, 2000. The
public notice of the hearing appeared in the Federal
Register on December 11, 2000. We received 22 written
comments on the interim final rule and heard testimony
from six persons at the public hearing on December 14,
2000.

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

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

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

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

1. HAZARD DETERMINATION.

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

Under the interim final rule, for the
purposes of hazard communication, MSHA considers a
chemical hazardous and subject to the hazard
communication rule if it is listed in any of the
following four recognized authorities or sources:

- Title 30 of the Code of Federal Regulations (30 CFR) chapter I,
- American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLV®s) and Biological Exposure Indices (latest edition),
- National Toxicology Program (NTP) Annual Report On Carcinogens (latest edition),
- International Agency for Research on Cancer (IARC) Monographs or Supplements.

2. THE HAZARD COMMUNICATION PROGRAM.

The hazard communication interim final rule requires mine operators to develop, implement, and maintain a written plan to establish a hazard communication program. The program must include:

- procedures for implementing hazard communication through labeling, MSDSs, and training of miners,
- a list of the hazardous chemicals known to be present at the mine, and
- a description of how mine operators will inform miners of the chemical hazards present in non-routine tasks and of chemicals in unlabeled pipes and containers.
If the mine has more than one operator or has an independent contractor on-site the hazard communication program also would have to describe how the mine operator will inform the other operators about the chemical hazards and protective measures needed.

3. CONTAINER LABELING.

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

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

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

You would not have to label containers of raw material being mined or milled while they are on
mine property. You would not have to label mine products that go off mine property. You would have to provide the labeling information to downstream users upon request.

4. MATERIAL SAFETY DATA SHEET.

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

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

5. HAZCOM TRAINING.

The hazard communication interim final rule requires mine operators to establish a training program to ensure that miners understand the hazards of each chemical in their work area, the information on the MSDSs and labels, how to access this
information when needed, and what measures they can take to protect themselves from harmful exposure.

Under the interim final rule, mine operators have the flexibility of combining the training requirements for hazard communication with existing Part 46 and Part 48 training. The interim final rule does not require mine operators to have an independent training program separate from Part 46 and Part 48 training.

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

6. MAKING HAZCOM INFORMATION AVAILABLE.

The hazard communication interim final rule requires mine operators to provide miners, their designated representatives, MSHA, and NIOSH with access to materials that are part of the hazard communication program. These include the program itself, the list of hazardous chemicals, labeling information, MSDSs, training materials, and any other material associated with the program. Mine operators do not have to provide copies of training materials
purchased for use in these training sessions such as videos.

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

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

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

The hazardous chemical rule does not duplicate other MSHA standards. It augments, supplements, and complements these existing standards. The rule specifically deals with chemicals and chemical exposures. Chemicals may be used in any mine, including those in the aggregate industry.

There have been hundreds of chemical burns in the aggregate industry. Chemical burns can occur on any part of the body. Skin burns may require multiple skin grafts and require repeated hospitalization. Eye burns can be serious and result in permanent loss of eyesight.
We believe the burden on small mines is less than some commentors stated. First, small mines typically use far fewer chemicals than large mines, and in many cases, no new chemicals.

Second, small mines typically use chemicals in small quantities and for shorter periods of time, similar to household use. Third, many of the chemicals used at small mines are not covered by the rule. For example, soaps used for washing hands are cosmetics and are exempt. A can of spray paint is a consumer product and is exempt when used in small quantities intermittently.

The length of exposure, as well as the amount, is really the determining factor. A can of paint only lasts a short time. Glue or adhesives, when used intermittently in small quantities, are exempt. Again, the length of exposure, as well as the amount, is the determining factor in whether or not a consumer product is exempt.

We recognize, however, that not all mines are likely to use a wide range of chemicals. Although we cannot exempt the aggregates industry from hazard communication, as we said, there are steps we can take to minimize the burden of the rule. For example, we intend to make extensive compliance assistance visits
and conduct extensive outreach.

We also will be finalizing a compliance guide to help operators and miners understand the application of the HAZCOM final rule. We are developing a variety of compliance aids, such as model HAZCOM programs, a training video for mine operators about determining chemical hazards, and a training video for miners about chemical hazards and reading of MSDSs.

A draft of the MSHA compliance guide has been on the MSHA web site for months. If you refer to the compliance guide, many of these issues are explained. If you have any questions in these areas, send them by e-mail to comments@MSHA.gov or to the Office of Standards at the address listed in the hearing notice. We will use these questions to clarify your responsibilities and include additional or better examples in the compliance guide. As a rule of thumb, however, if you are in compliance with OSHA's rule, you will be in compliance with MSHA's.

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

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

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

Under "Hazard Determination," we may
revise the reference to ACGIH, NTP, and IARC in
determining if a chemical is a hazard and if the
chemical is carcinogenic. One option we are
considering in determining whether a chemical is a
hazard is to refer to the 2001 editions of the ACGIH
TLV booklet, IARC, and NTP. In determining whether a
chemical is a carcinogen, we are considering referring
only to the 2001 editions of NTP and IARC.
We had expected the use of the ACGIH, NTP, and IARC lists to reduce the burden on mine operators because mines use relatively few hazardous chemicals for which they would have to develop an MSDS and label. Commentors objected to the use of these lists stating that the organizations which compile them offer no opportunity for public comment, they impose unknown future requirements by citing the "latest edition," and they violate regulations governing incorporation by reference.

We are open to considering alternatives where the impact of the alternative would not reduce protections afforded miners by the interim final rule.

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

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

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

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

This change would clarify MSHA's intent
that when a new chemical is introduced additional
training is required only if the hazard changes. This
is the intent as discussed in the preamble to the
interim final rule.

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

The hazard communication interim final rule is an information and training standard that requires mine operators to know about the chemicals at their mines and to inform miners about:

- the risks associated with exposure to hazardous chemicals,
- the safety measures implemented at the mine to control exposures, and
- safe work practices.

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

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

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

We ask that you please sign the attendance
sheet at the back of the room, and if you wish to
speak, there is a separate sign-in sheet for
presenters.

We will begin with the folks that have
signed up in advance to speak. If there's time, which
I can assure you there will be, at the end of that,
anyone in the audience who wants to come up and make
a statement will be able to do so. We will continue
the hearing until all speakers have had an opportunity
to address the panel, and we'll stay as long as
necessary to address all comments.
We only have one speaker that has previously signed up to speak, and that is David Pfile from the Hanson Aggregates Association. We'll start with David.

MR. PFFILE: Ernie, first of all, before I start, I appreciate the comments you just made. I had not heard all those before, some of your responses to commentors, and I appreciate that. I just want to let you know that I didn't know that when I prepared my comments. Okay?

Anyway, good morning, and thanks for the opportunity to speak. My name is Dave Pfile. I'm the safety director for Hanson Aggregates South Central Region. I have been in the mining and construction industries for over 30 years now.

I'm a member of the American Society of Safety Engineers and the International Society of Mining Safety Professionals, and I'm a certified mine safety professional. I also serve on National Stone, Sand, and Gravel Safety Committee, and several task forces and subcommittees concerning safety. I'm a certified OSHA and MSHA instructor, as well as a certified supervisor under Part 77. I have responsibility for 40 operations in six states and nearly 1,000 employees.
Today I just want to offer my comments on
the HAZCOM standard -- on the MSHA HAZCOM standard,
but before I get that I want to tell you little bit
about my company, the group I work with.

The philosophy of my company is that the
safe way to do something is the right way to do
something, and it is the productive way. Compliance
with the law is not an option. It's not optional in
our organization. It is a requirement and a floor or
minimum for operations, not a ceiling.

We pride ourselves on our overall safety
record and on our concern for our employees' safety
and health. We strive for constant improvement
through training, education, coaching, reevaluating,
and adjusting.

I ask that you would stay this regulation.
It's going to be confusing and burdensome to many,
with little effect on injuries, accidents, or worse.

Rather than continue to report this standard I would
ask that you revisit a cooperative effort with all
affected parties, use the exiting regulations to
provide the protections for employees that this new
standard allegedly addresses.

The success that was achieved in Part 46
should be a model for the future. I researched the
access to my operations back ten years to find incidents that could have been prevented by having HAZCOM in place. There aren't any.

The nearest I can find are two accidents where batteries exploded. There was no permanent damage. Employees were wearing PPE, and they were flushed with water immediately. There are no others I can find. HAZCOM would not have prevented an employee from hooking up booster cables wrong.

I've also checked with my two safety managers, and in the last seven years between them there has been one request for an MSDS. In my career -- because I have OSHA operations as well -- I have had two requests for MSDSs I don't know how many years: one for Orange Citrus Cleaner and one for argon gas used in welding.

The training had been done. The MSDSs were available. No one ever asked for them.

I remember when the OSHA HAZCOM standard began to affect the construction industry. After a flurry of MSDSs and confusion we finally got it right, we think. We now have MSDSs for all our products. Subsequently, commercial product providers came on board with HAZCOM programs, states go on board with right to know, and MSDSs were available online.
Now the agency wants to reinvent this with just enough differences to make much of our previous work obsolete: the TLBs and some of that ACGIH stuff and the IARC things, just enough to make -- rewrite all the MSDSs.

First, we already have regulations in place that address the issues that the HCS alleges to address. We have the labeling standards, warning standard for hazards not immediately obvious, training standards, toxic material standards. We have all those.

Secondly, we already have MSDSs to meet the requirements of OSHA. The vast majority of our customers are regulated by OSHA, and we provide them with MSDSs. We would have to modify these MSDSs to meet the MSHA standard and provide them to all of our customers.

Third, I believe you underestimate the amount of chemicals on a mine site that could potentially be required to have MSDS on it. There are multiples of MSDS for various lubricants, different types of oil, different greases; Lubriplate, Mobil, high-temp grease, Castrol, drydene [phonetic], various fuels: propane, atacees [phonetic], Lok-tite products. Lok-tite alone probably has 50 or 60 MSDSs,
depending on the product. Oxygen, acetylene, et cetera.

My operations currently have MSDS books ranging from about 125 chemicals in a book to a book at one location that is three inches thick. Nearly every substance produced in the US has an MSDS sheet. More importantly, every time there's a change on an MSDS a new sheet is issued by the manufacturer, whether it's its phone number, zip code, area code; something changes and they issue a new sheet.

Many manufacturers routinely ship MSDSs with their product. Someone has to compare the sheets to ensure that the proper sheet is being used. The changes are not highlighted. One must compare the sheets side by side.

It's my belief that the primary effect of this rule will be an increase in citations. Overzealous -- and I emphasize overzealous -- ARs will comb through MSDSs with the sole purpose of finding a citable offense. They will print an MSDS from Exxon when the operator has just switched to using Mobil. They may look for an MSDS book in the shop, only to find it in the mine office and claim that it is not immediately available. This behavior will in turn tie up MSHA supervisors and conference litigation.
representatives as operators like myself, conference citations that they considered unjust and are technical violations that have no effect on safety and health of miners.

As an example of how confusing this whole issue can be of these MSDSs I offer the following. It is interesting that different manufacturers of the same product often have strikingly different MSDSs. I have with me three MSDSs from three manufacturers for the same product. One MSDS is three pages long, one MSDS is four pages long, and one is five pages long. The health hazards listed are different. The first aid procedures are different. The firefighting procedures are different, and the chemical composition is different, and there are other differences on these sheets as well.

You can look over them. I'll give them to anybody that wants them. And I'm sure you want to know what the product is, and what it is is air. Pure air. Calibrated gas or breathing air for calibrating instruments or for breathing air, and when you read these you won't believe it.

The hazard is that the air is stored compressed in a cylinder. That's the only hazard I can think of. I can't think of any other. So this
rule was pushed out at the end of the last administration, and I'm not going to say anything else about that.

The new administration is asking for a new way of doing business. The secretary has asked the stakeholders to trust him. I take him at his word. I have spoken with many in the agency about this and about cooperating and sharing information and working together. The opportunities for trust, cooperation, and good relations among all of the interested parties is here. It is up to all of us to take this positive spirit and have it take hold at all levels with the singular goal of improving conditions in our respective operations.

Allowing this rulemaking to go forward now will probably damage some of the cooperative efforts that have already begun to take root. As I have asked my operations to put away our swords and extend the hand of trust and cooperation, I'm asking the agency to do the same. Come to the table. Let's use the existing standards to allow us all to protect our employees and improve things for all of us.

Thanks.

MR. TEASTER: Thank you, David. We're glad that your folks put away the sword.
Dave, the training that you have provided for your miners under Part 46, do you feel that they would satisfy the intent of this interim final rule as to what information would have to be shared with the miners in the training program?

MR. PFILE: Yes. I think we could do it under Part 46 without any problem. We already do it at many of our operations. We went through an acquisition here in the last year, so I can't say -- I'm going to say 90 percent sure we do it at all of them, but I can't say for sure that we do HAZCOM training at all of them because I still have some new operations I'm trying to integrate into our program.

The majority of them, yes, we do. We already talk about HAZCOM. We have MSDS books. We have the sheets there. It's all OSHA stuff, and the ARs have never looked at them because it's OSHA stuff, but we have it; we've talked about it. We talk about it with our employees.

They have it available. We might use it as recommendation on the PE they're supposed to use: Hey, look on the MSDS sheet. And we provide MSDSs for all of our customers. We have a huge bank of them because of the different products that we provide; we've got crushed stone, sand and gravel, all of the
different geological compositions of some of my different operations.

MR. TEASTER: You mentioned that you have volumes of very voluminous MSDSs. Are these -- represent the current MSDSs?

MR. PFILE: We keep all the OSHA papers for 30 years, and occasionally -- we can't do it every day, but occasionally we go through, cross-reference things, take some out and put them in a box. We keep them at the plant. We keep them for 30 years. That's the --

MR. TEASTER: But the book that you have that's available for review would reflect the chemicals that you currently use and the latest MSDSs?

MR. PFILE: As near as I can guess. It's not something that I have somebody update every week. We might do it on a manual basis as stuff comes in, and so it keeps -- put in the book, put in the book. It gets pretty big.

MR. TEASTER: Is someone at the mine designated to oversee these MSDSs as part of their --

MR. PFILE: I'm not consistent on that. One of things I've talked to some of your people about is consistency, and at some mines there's more consistency than others, just like with some ARs
there's more consistency with others. I think we all have that challenge.

MR. TEASTER: I'm glad that MSHA is not the only one that has a problem with consistency.

But the --

MR. PFILE: No. In some places we do, some places we don't. It's very, very confusing. The example of air -- I have MSDSs on Tide detergent, because it was used -- we bought huge volumes in Tide at one time at one of our paving operations. It was used to clean up any hydraulic oil spills on the blacktop. It's the most effective product we could find to prevent deterioration in asphalt. But since we buy it at a non-consumer, whatever that means, fashion and sprinkle it all over the highway, you have to have an MSDS for it, and I have some remarkable MSDSs on everything.

And the problem is when you get an MSDS, somebody at the plant -- you know, we're safety people. Everybody practically here is a safety person. We understand the language; we understand the abbreviations, all the different things that we use. We understand that. I can talk about CLRs to you and you'll know what I'm talking about, but I can talk to other people and, What are you talking about? They
have no idea.

What happens is in the fearfulness of -- we've got this MSDS. We'd better put it in the books, because somebody thinks it's hazardous. Something thinks it's hazardous. You go on and on and keep adding to the book of so-called hazardous chemicals.

And it might be hazardous because EPA says it's hazardous, or it might be hazardous because DOT says it's hazardous, or it might have to be placarded when it's transported, so an MSDS is produced, and I don't expect our people to reach the level of sophistication to understand the variety of regulatory schemes that they potentially come under and how to sort these things out.

Well, we don't have to have that one, because that's just a DOT requirement, but we have to have this one because it's an OSHA requirement. Now we have to have this one because it's an MSHA requirement. It gets very confusing. I think -- I could show you stuff out of books. You'll see it's confusing.

And when I made that comment about the Ars, again -- and it's been my experience with Part 46 the majority of them -- we have one program that we basically adapted to all of our operations. I'm not
going to write -- start from scratch at every
operation for a Part 46 training plan. That's crazy.
We wrote a good one. We used the National Stone as a
base, and we put it out at all our plants, and some
ARs come in and say, Man, that's the best thing since
white sliced bread, and other ones come in and say,
No. It's all wrong. You've got to change this and
that and the other thing.

It's the same plan. The only difference
is that person reviewing it, and I think we're headed
down that same road with HAZCOM, where for a good
while it will just tie up a bunch of resources and
cause hard feelings between the agency and the
regulated people.

MR. TEASTER: Getting back to the MSDSs,
is there any -- are these things catalogued where you
could reference a particular chemical if you wanted to
go to it?

MR. PFIFLE: Ernie, that's one of the
challenges that I've never adequately come up with the
best way of doing it. At some locations we're doing
it electronically. You just log on and do it
electronically, because you can cross-reference a
variety of ways. We've done it -- we've tried to do
it by lubricants, solvents, fuels. We tried to sort
it out that way and put it in alphabetically, and we tried to put it alphabetical by product. We've tried putting it alphabetically by manufacturer.

I have not come up with the perfect way to put paper in a book that it can be cross-referenced rapidly, depending -- and then there's generic names. People make up names for stuff. I haven't found a real good way to catalogue this stuff. The best way I've found is going online, because then you can cross-reference through chemical name, CS number, manufacturer, and you can find it a whole lot of better ways online probably a lot faster I think.

MR. TEASTER: You said the miners have very infrequently requested to review MSDSs.

MR. PFILE: Yes.

MR. TEASTER: Are they fully aware and have been trained in these MSDSs, their locations and availability?

MR. PFILE: Again, I can't say for all of the plants. A lot of them have. In the OSHA operations that I have I had OSHA -- I have had specific HAZCOM training that I personally performed with a group, and subsequently during an OSHA inspection, as infrequent as they are, the compliance officer asked one of my employees what he knew about
MSDSs, and his reply was that he had watched the Jerry
Lewis telethon the previous weekend, and I know that he was there.

I know he was in a class. I had his signature. I went over the material safety data sheet and MSDS and all the language, and he still thought it was the Jerry Lewis telethon for Muscular Dystrophy, or MDA, when the inspector said MSDS.

So are they getting it? I guess not, but I don't know what else to do other than train and retrain. And when I reminded him, you know, about the hazardous chemicals and things -- oh. Yes. I know about that stuff. Yes. That's in that book. That's those sheets.

But again, it might have been intimidation. It might have been -- I don't know -- fear, but that was his response. I'll never forget it. I turned about -- sure, we do all this. I turned about six colors of red.

MR. TEASTER: How often do you in the performance of your job responsibilities go to the MSDSs for information?

MR. PFILER: Rarely. We don't have the incidents. In my career -- let me get it right. I think it was 1986 I had an incident, and in 1988 I had
an incident, and they were both involving construction
operations, not mining. I had mining and
construction. It was with my current employer,
probably under a different name at that time.

One of them -- an employee came to the
shop and we had just bought this -- at that time
Orange Citrus solve was a pretty new technology 15
years ago. That's when it was -- first became
popular, and had tracked asphalt topcoat into his
wife's house on her carpet, and she was not happy. So
he went to the shop foreman and asked -- told his
dilemma, and -- I've got this stuff. We've just got
it in to help you out. It's Orange Citrus Cleaner.

And he had a 55-gallon drum of it, so he
took a milk jug, a common milk jug, filled it up with
this stuff and gave it to the foreman to let him --
and he took off for home.

And where the MSDS comes into play in this
is that the foreman did his work and cleaned up his
carpet. He thought he'd be a hero with his wife. And
he left the milk jug sitting on his kitchen counter,
and his nephew came in and took a drink of it,
thinking it was orange juice, because it smells like
it and it looks like it, and if you're a kid you're
not immediately going to get that -- an unlabeled
container -- and there was a flurry of activity, and
very -- almost on-fire phone lines, that ultimately we
got the MSDS to the hospital because the critical
information on it is what do you do?

What's the treatment? Do you cause them
to throw up or do you give them activated charcoal, or
what's the treatment? And the hospital refused to
treat until they had the MSDS to know what they
needed. And there were some breakdowns in the system
on labeling and getting employees stuff to take home,
and a variety of things that went wrong in there, but
ultimately the little boy was okay, and the hospital
treated him, and everything was fine, and it
heightened the awareness.

And the other one was an employee that --
and again, it's more of a work practice than it was
the ability to understand the MSDS. One minute the
Orange Citrus was a work practice issue and a training
issue rather than a HAZCOM issue. That HAZCOM came in
when we had to do the first aid or the medical
treatment for the young boy.

The other one was an employee -- and I
believe this was in 1987, 14 years ago -- climbed up
in an aluminum truck bed of an over the road truck to
weld, and this was a truck that hauled asphalt. Of
course, some of it sticks to the bed, and he had to weld on the bed, and he wanted to paint it, and he took a product -- I can't remember the name of it. It was Two Plus Two Brake Cleaner or some kind of brake cleaner solvent that everybody thought this was the best stuff in the world to dissolve asphalt.

And he sprayed it on there and he realized he was in a truck bed -- I use this for confined space training as well -- with the tailgate closed, and he's welding aluminum, so he's using an argon shielding gas. He's got a continuous-feed weld gun, and he's using argon as the shield gas for welding.

So he sprays this brake cleaner on there and starts to weld, and pretty soon he gets overcome and weak and yells for help, and they get him out of the bed and they take him to the hospital and put him on oxygen. And subsequently what was discovered, two things happened -- and we're not sure which affected him the most. You shouldn't go into confined spaces unless you have some ventilation, so he propped the tailgate open so that anything in there -- so you could get some airflow through there.

What happened is we -- we don't know for sure whether he was overcome by the argon gas as it filled the truck bed and displaced the oxygen, or if
the ultraviolet rays and heat from the welding took
the 1-1-1-trichloroethane that was in the brake
cleaner and had it decomposed to the phosgene gas. We
don't know whether he was getting poison gassed or
whether it was oxygen-deficient atmosphere, because we
opened up the tailgate and got him out of there --
this was on the night shift.

I got a call in the middle of the night,
got over there, and we couldn't figure out what had
happened at first, and then subsequently the MSDSs
gave us at least some clue of what was going on, argon
being heavier than air, and the trichloroethane in the
brake cleaner when it's exposed to the ultraviolet
rays of welding and heat it decomposes into phosgene
gas and some other nasty stuff.

So that's two incidents in 30 years, and
that's it. In neither case there was no permanent
damage. It was scary. We learned something from it.
We use it for subsequent training. But again, I don't
think a welder is going to go look at an MSDS before
he goes and welds, and I don't think he's going to
look at the label of the brake cleaner to see if it
has something -- it's such an obscure connection.
They're not going to do it.

They don't even see the hazard, and I
didn't know the hazard. I do now. I talk about it, but I'm sure there's other ones out there that I don't know about, and there's stories of depressed housewives killing themselves by mixing Drano and Clorox together in a toilet and creating chlorine gas, and there's all sorts of -- you can take household chemicals and whip up some terrible stuff.

I don't know how we -- that MSDSs actually can address all those eventualities. I don't know.

MR. TEASTER: In your training program do you have a -- or your training programs because you cover multiple operations -- how much time is allotted -- and let's say your eight-hour refresher training -- is allotted toward training?

MR. PFILE: There's some employees that are more sophisticated than others, and they pick up on it a little quicker. There's others that we could talk about it for hours and I'm not sure what effect it has.

MR. TEASTER: This --

MR. PFILE: I don't know how much we actually spend on it. We probably only spend a half hour to an hour, depending on the group. If it's a bunch of fellows in the pit group hauling out of the quarry, they might not have a lot of talk about it.
Welders and mechanics that are more exposed to those kind of hazards we'd probably talk about it a little bit more.

I'll tell the story about the confined space and the brake cleaner and the argon, and that at least gets people thinking about what they're doing because it's a real story, but again, they might think about and they might think about argon, and they might think about brake cleaner, and they might think about some of the other things, but they might not think about something else that when you put it together reacts in some way.

MR. TEASTER: Do you think under this training program -- was this accident prior to Part 46?

MR. PFILE: Oh, yes. Way before Part 46.

MR. TEASTER: Would you --

MR. PFILE: And it was in a -- both of those were construction operations that were -- they were on my property, but they were at an asphalt plant in a shop separated -- when we put up an asphalt plant on our property we put up signs and go by the memorandum of understanding.

MR. TEASTER: Would you think --

MR. PFILE: I won't try to sandbag you.
We do that. We put up signs. OSHA starts here, MSHA starts here, because what they do under OSHA is different than what we do under MSHA.

MR. TEASTER: Would that type of incident that resulted in that accident you just described, do you think that's something that would be covered under your training program?

MR. PFILE: Prior to that incident, no. I would have never even -- it would have not occurred to me to even train on that combination. It wouldn't have occurred. And now what we do, we basically use it as a confined space topic when we talk about entering confined spaces, because we talk about confined spaces and hazardous atmospheres, and we do that with our miners as well, even though there's no standard on it.

MR. FEEHAN: I have a question if I can?

MR. TEASTER: Sure.

MR. FEEHAN: To clarify something for me. This is in the back of a 14 wheel truck or something like that, that size truck?

MR. PFILE: Yes. An over-the-road rock-truck kind of thing --

MR. FEEHAN: And it's open on top?

MR. PFILE: It's open on top.
MR. FEEHAN: So --

MR. PFILE: It was in a shop.

MR. FEEHAN: It was in a shop, but that's not what I consider a classic confined space.

MR. PFILE: Not, it isn't, but if you study confined space, it certainly can become a confined space quite readily. The bed is -- keep the tailgates tight, because you're hauling sand as well --

MR. FEEHAN: Yes.

MR. PFILE: -- and you can't have any leakage, and with still air in the middle of the night in a shop that's closed up, that argon just will displace the oxygen right out of the top.

MR. FEEHAN: Yes, I can see that happening.

MR. PFILE: And that's what happened. It's amazing. Since we've done that, I collect confined space stories. There's open nortanks [phonetic] that have turned into confined spaces. People have been killed on farms, silos, things -- containment dikes around tanks, which aren't typically very hot. When somebody breaks the plane and gets down in there, there have been confined-space incidents in those.
And again, I don't know how you would train -- how you would make a connection between HAZCOM and inside of a containment dike. I can't seem to put it together.

MR. TEASTER: David, have your supervisors been given the same type of training as the miners are given as far as hazard --

MR. PF FILE: They get the same --

MR. TEASTER: Communication.

MR. PF FILE: -- they get the same kind of training, but they get even more with them. We do more of the supervisors. Every supervisor gets a week off training program, not every year. But then we have refreshers that are about anywhere from four to six hours at least on an annual basis, separate from the Part 46.

MR. TEASTER: Assuming that this interim final rule would become a final rule, how do you think the agency could best assist mine operators, and particularly small operators, in coming into compliance with this rule?

MR. PF FILE: Well, to make it easy, there are a multitude of canned OSHA programs available. Every safety magazine -- there's just an absolute multitude of these things. And again, I think if the
intent is there the intention be recognized and not be
looking for technical violations.

A small operator can go out for a small
amount of money, buy a canned OSHA program, put it
together for his operation. The intent is there. The
information will get there. If he doesn't have an
MSHA T crossed or an MSHA I dotted, I think that the
agency would look kindly on him and say, You're making
a good effort. Now just give him some CAV help and
modify this a little bit, and go that way.

I think that will get -- it's a common
saying that you get more with sugar than you do with
vinegar, so getting with the small operators -- the
big operators, there's not going to be a terrible
problem. It's just the concern of tying up resources
over technicalities and technical differences. That's
my biggest concern.

We're still trying to keep people from
falling off of things and running into things and
backing over each other. We're still trying to do
that effectively in our industry prior to getting to
the more obscure types of incidents that I described
today. But I never would have thought that would have
happened.

I have a new war story to share with
everybody about -- but HAZCOM wouldn't have helped it unless you were a chemical engineer.

MR. STONE: Let me just ask one question. You had suggested that one of your concerns was that the MSHA interim final standard was just sufficiently different from the OSHA HCS that that would impose some substantial costs on you. I don't know if you said it in those terms.

MR. PFILE: I didn't say it in those terms, but yes, it would cause me some -- a bit of work.

MR. STONE: Yes. Suppose it were the case that compliance with OSHA's HAZCOM standard, HCS, would allow you -- would put you in compliance with MSHA standards.

MR. PFILE: That would be a whole lot less of a burden.

MR. STONE: Okay. I know they're not identical, but they could -- I don't know if we could do this, install language that would say compliance with one would be virtual compliance with the other.

MR. PFILE: Like I said, that would be a whole lot less of a burden. We've got a laboratory that does chemical analysis of our MSDSs so that we have the right stuff for our own products, and I don't
want that batch to out and have to double breast
everything and add ACGIH limits and IARC limits and a
bunch of other stuff that makes our stuff obsolete.

We have thousands of customers. That's a
big financial burden to send those things out.

MR. STONE: Okay.

MR. PFILE: And again, I want to comment
on the underestimating of the chemicals. When I read
the preamble and the other information, the
manufacturer, just like we do -- our MSDSs are not
written by safety professionals or chemical engineers.
They're written by attorneys, and we all know that,
and they cover every eventuality that they can think
of to avoid litigation on the MSDSs, and that's what
makes them confusing.

The best MSDS that I have ever seen in my
life was put out by a company called Orkin Steel, and
they put it out, and it had two lines: steel is
heavy. Do not drop on foot. That was it. No
attorney got involved in the production of that MSDS.
They told about the properties of the product and what
the hazard was.

So if there was a simple way of saying
this stuff is bad and it can hurt you if you drink it,
eat it -- but even on our own MSDSs we have warnings,
Do not eat limestone. It will cause gastrointestinal distress. Do not eat hot mix asphalt. It will make you sick. It is beyond comprehension that we have to put that stuff on there, but we do.

I don't know of -- I've heard of people eating clay, but I've never heard of anybody eating limestone or things like that, and it's absurd that we have to do that, that we have to put that on there.

MR. TEASTER: I'm sorry, David. I was -- it's absurd to do what with limestone?

MR. PFILE: Well, we have a warning on our MSDSs for our limestone that says, Do not eat limestone. It will cause gastrointestinal distress.

Now, I've been the mining industry a long time, but I don't eat the asphalt, and I don't eat sand and gravel, and I don't eat limestone, you know, that --

MR. TEASTER: So you've identified limestone as a chemical hazard?

MR. PFILE: You bet you. We have an MSDS for every one of our products: sand and gravel, briolite [phonetic], granite, limestone, limestone base, asphalt that we produce at one of our plants. We have MSDSs on everything we -- and we ship them out regularly.
We send them out to people all the time.

MR. TEASTER: Under our standard it wouldn't -- silica or some chemical contained in it would need to be, but you would only -- not require those raw materials to be --

MR. PFILE: OSHA does that. We're already doing it.

MR. TEASTER: So you're doing that so it wouldn't impact -- you're doing that anyway?

MR. PFILE: Again, I've got a group now for analysis that all of our products -- to find out if there's any flexible five to one ratio fibers in any of our -- which is entirely not the issue of this hearing, but I've got them on point to find out if some of our softer limestones that we use for base have some potential -- I hate to say it -- asbestos foreign fibers.

I don't know if they do or not, and how they're going to be identified -- and so, yes. We have to put that stuff out.

MR. TEASTER: Carol?

MS. JONES: I just wanted to ask you one question just for information. You had mentioned earlier that you hadn't had an opportunity to see what Mr. Teaster was going to discuss today as far as what
the agency is considering as far as changes. I would like to ask that if you're going to submit written comments that perhaps you include comments on those points as well.

MR. PFILE: Those are on the web page now, your introduction and everything else?

MS. JONES: Yes.

MR. TEASTER: We did share that with ones that had -- most of those that had requested to speak. We certainly sent it to the Stone Association.

MR. PFILE: I might not have had your last comments though about what you were considering modifying. It seems to me that I don't remember reading that. I read some of your introduction before, but I don't remember reading the proposed changes to the interim final rule that you are considering based on commentors comments.

MR. TEASTER: That was included in the opening statement, and we shared that with a lot of folks. I'm not sure we got it to everyone.

MS. JONES: And also the transcript of today and all the past and future hearings will be on our website within a couple of days.

MR. PFILE: Again, you've got to realize there's a pretty voluminous amount of material to read
and digest, and this isn't the only thing I did, so --

MS. JONES: I understand.

MR. FEEHAN: At the properties that you've
had for a while, Dave, and not the ones that you
recently acquired and have question marks about, but
what's that training like on chemical hazards?

MR. PFILE: It's basically -- it's
probably a 20 minute to an hour -- again, depending on
how many questions come from the group, kind of like
this group it depends on how long you speak and then
you have the questions, but it's a thing that I stole
from the OSHA 500 course, the ten hour and 30 hour
courses for construction workers that OSHA does. I
basically got it from Georgia Tech from when I got
certified there. That's what it is.

This is an MSDS. These are labels. You
want to look for this, about the NFDA diamond if they
see -- the blue and the yellow and the red and the
white --

MR. FEEHAN: Yes.

MR. PFILE: -- and it's basic -- it's
pretty simplistic stuff. We don't get into exotics.
I used to do HAZWOPER work as well, hazardous waste
operations, and I've tried to distance myself from
that environmental as much as I possibly can, but I've
been on several sites.

And HAZWOPER is another animal altogether.

We do not go into that kind of detail that the things
that -- we tell them if you find an unlabeled, old
rusty drum, leave it alone and stop. Don't touch it.
Go get an adult. You've got to go get somebody that
knows what they're doing and don't mess with it.

MR. FEEHAN: What about a fairly common
kind of maintenance task at the properties, like
changing oil?

MR. PFFILE: Well --

MR. FEEHAN: Do you warn employees about
the carcinogen hazard, the people who do that?

MR. PFFILE: I haven't. No. I've never
warned anybody about carcinogenic properties of
changing oil. I haven't done that, and if one of my
safety managers has, I'm not aware of it.

MR. FEEHAN: Yes. Okay.

MR. PFFILE: I didn't know changing oil had
a carcinogenic --

MR. FEEHAN: If you look on the MSDS, it
will tell you that there are laboratory studies
indicating that used oil has a potential human
carcinogen.

MR. PFFILE: One comment I'd like to make
about some of the lab studies, and this is part of my
objection to some other obscure agencies rather than
OSHA and MSHA.

Several years ago there was a move to
declare hot-mix asphalt fairly dangerous and a
carcinogen, and I don't know if you remember this
deal. They were going to make hot-mix asphalt as a
suspected carcinogen and have all the workers on an
HMA paving train working on the pavers and everything
else wear protective clothing and respirators; wear
Tyvek suits and respirators.

And I don't know if you're ever been
around that stuff, but when it comes out of the paver,
it comes out at somewhere around 300 degrees, 275 to
325, somewhere on that order. If you get much hotter,
you start getting hydrogen sulfide gas off of it, and
it's dangerous to get over 400 degrees.

But in any event, they were going to do
this, and the industry of course and the associations
were outraged and fought it and successfully pushed it
back into the box some place for the time being. And
when it came about that the health study was done to
determine that asphalt -- liquid asphalt cement was
carcinogenic -- had those properties as a carcinogen,
we discovered what they did.
And the way they determined this was they took laboratory rats and they shaved their backs and they painted them with hot asphalt. Now, I don't know about you, but I think if somebody threw me down on the ground and painted my back with hot asphalt, cancer might be a blessing considering what else could have happened to me.

The study didn't represent anything near real life, and I don't know -- I guess they couldn't get small pavers for them. I don't know.

MS. JONES: Could I respond to that somewhat? I'm somewhat familiar with that situation, and I don't think the issue was ever resolved whether or not it was or was not a carcinogen, but as an outgrowth of the discussions between industry, NIOSH, and OSHA there was an agreement to put controls on paving machines --

MR. PFILE: Yes.

MS. JONES: -- in the future to decrease the exposures to that potential carcinogen --

MR. PFILE: Absolutely. And rather than having a rule, industry and associations and labor got together and said, Okay. There could be a problem here. Let's put fans and suck the stuff off the screed and off the screws on the paver and keep it
away from the employees, and it's a great idea.

Why can't they do the same thing here? That's -- you get the same result if we'd just sit down together and do this.

We had a -- I want to add one more thing about how this works. The International Society of Mine Safety Professionals is in the process of doing role delineation about what a mine safety professional should do, and I'm on that committee, and last spring a variety of people melt in Raleigh, North Carolina, and they were representatives of the agency -- Larry Checca was there. Rod Breland was there.

There were people from the state mine inspector that were there, the different state mine inspectors for North Carolina and Arizona. There was a fellow from NIOSH. Lynn Rathe I think was there from NIOSH. There were people there from every type of mining. There were people from gold and metal mining. There were people there from coal mining. There were people there from phosphate mining. There were people there from copper mining. There were people there from coal mining. There were people there from aggregates mining, and in two days in a room this group agreed from divergent directions -- and there was even an attorney there, amazingly
enough -- we got agreement.

So in any event, we put ourselves in a room together with a moderator and facilitator, and we walked out of there. We had definitions and had the role defined of what a mine safety professional should do. And again, that should be an example of how things in the future should go forward. We can sit down from industry, from agency, from labor and all affected parties and put a group together, and we're smart enough -- I'm convinced that we're smart enough that we can come out of there with an agreement of a way to do things that everybody can live with.

I'm totally convinced of it. And that's an example of how some of these things should go forward. It worked.

MR. TEASTER: Well, I agree with you, Dave, and you know that we're -- we've done an extensive outreach now trying to get with the stakeholders and identify a lot of this.

I think that in the past on some of the regulatory things that have come forward that we -- there's very strict rules that govern rulemaking --

MR. PFILE: Sure.

MR. TEASTER: -- and once you get into the regulatory arena in an official capacity it's very
limited the outside involvement that you can have. If we get an advanced notice of proposed rulemaking it gives us a lot of leeway to sit down and work with folks, and I think we need to try to get in that arena so we can get more people involved in the process actively working to try to come up with something that's going to do the job.

And I met with the health and safety committee on a regular basis. Every six months we meet with the National Sand, Stone, and Gravel Association's health and safety committee, and we talk about a lot of things, and one of them involves rulemaking. And they come in and we had a very successful project in coming forward with Part 46: industry, labor, the agency. There was other folks involved in that process, and I think as the result of the commitment to come up with a rule -- first it was the recognition that we needed one, and we all worked collectively to do that, and we worked in that arena primarily before we got into the regulatory arena.

Once that came into rulemaking -- then we can no longer communicate and work with as we had prior to. So I think it's important that when we get these advanced notices of proposed rulemaking that we get everyone involved, because at that point we have
some leeway to work more as a community than we do as an agency, so I think that's a good point.

MR. PFILE: That's some of the issues involved -- because of time and then time constraints and things like that and the way it's defined now, and that's part of the concern right now. You can't turn back the clock.

MR. TEASTER: We're hopeful that we can get comments through this process that we can come up and fabricate a rule that's going to accomplish the intent, and I think most people are in agreement that miners have a right to know what exposures they're being placed in.

We have some -- there's some horror stories from their side not having the information, not having the knowledge about chemicals and working in them and getting injured, getting burned. There's also some concerns about long-term exposure, not something that will -- the exposures will show up today, but maybe ten or 20 years down the road, and they didn't have any information or any protections afforded to them.

So there's I think some agreement that there's a right for these miners to have the knowledge and information about the exposures to which they're
working under, but we need to fabricate a rule that's
going to afford the protections they need and at least
minimizes the burden that we have on the industry on
doing that, and that's -- the purpose of this hearing
today is to gather information how we can best
accomplish that, and hopefully we'll come out with a
rule that is very reflective of that very thing.

And no more questions --

MR. PFFILE: Any more questions for me?

(No response.)

MR. TEASTER: We thank you very much,

David.

MR. PFFILE: Thank you. Thanks for the

opportunity.

MR. TEASTER: We have no other people that
have signed up to speak. I will give the opportunity
to anyone in the audience that would like to come up
and make a statement. We'd welcome you to do so.

(No response.)

MR. TEASTER: If not, I think we will go
off the record. We're not going to adjourn. We're
going to go off the record, and we'll give some time
to see if there's any other people that come up that
would like to speak.

For those of you that may depart, I would
just encourage you to submit any post-hearing comments
that you would like to submit to the agency for us to
consider in drafting this final rule. I remind you
that the record will remain open until October 17. I
think it's important that we get all segments of the
industry to be involved in this process so all
different scenarios that we can are brought forward
and considered.

Obviously you can't go in a hundred
different directions, but I think you can consider
these things, and to the extent you can, you
accommodate them and provide the protections that's
intended to be provided by the rule.

And with that we'll go off the record.

(Whereupon, a short recess was taken.)

MR. TEASTER: It's now approximately
eleven o'clock a.m. We have not had any additional
speakers to sign up. We will adjourn at this time
until 1:00 p.m., at which time we will reconvene to
see if there's anyone that wishes to speak. If not,
we will terminate the hearing at that point.

(Whereupon, the hearing was recessed, to
resume at 1:00 p.m. this same day, Tuesday, October 2,
2001.)

MR. TEASTER: Okay. Let's go back on the
It's now approximately 1:00 p.m. There's no one in the audience. No one has come in to sign up to speak, so therefore we will adjourn this public hearing.

(whereupon, at 1:00 p.m., the hearing was concluded.)