

U.S. DEPARTMENT OF TRANSPORTATION  
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PIPELINE AND HAZARDOUS MATERIALS  
SAFETY ADMINISTRATION  
+ + + + +  
GAS PIPELINE ADVISORY COMMITTEE  
TECHNICAL PIPELINE SAFETY  
STANDARDS COMMITTEE  
AND  
LIQUID PIPELINE ADVISORY COMMITTEE  
TECHNICAL HAZARDOUS LIQUID PIPELINE  
SAFETY STANDARDS COMMITTEE  
+ + + + +  
WEDNESDAY  
DECEMBER 12, 2012

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The Advisory Committee met in the Edison Room at the Alexandria Westin, 400 Courthouse Square, Alexandria, Virginia, at 9:00 a.m., the Honorable Colette Honorable, Committee Chairperson, presiding.

PRESENT:

COLETTE D. HONORABLE, Chairperson  
CYNTHIA QUARTERMAN, PHMSA Administrator  
TIMOTHY P. BUTTERS, PHMSA Deputy Administrator  
JEFF WIESE, Associate Administrator for  
Pipeline Safety

LANNY W. ARMSTRONG, Fire Services Department,  
City of Pasadena

DENISE M. BEACH, National Fire Protection  
Association  
MICHAEL BELLMAN, City of Richmond Municipal  
Gas  
TODD DENTON, Phillips 66 Pipeline LLC  
RICHARD E. FEIGEL, Hartford Steam Boiler  
TIMOTHY C. FELT, Colonial Pipeline Company  
SUSAN L. FLECK, National Grid  
LULA M. FORD, Committee Chairperson; Illinois  
Commerce Commission  
WAYNE E. GARDNER, Pennsylvania Public  
Utilities Commission  
RICHARD B. KUPREWICZ, Accufacts Incorporated;  
for the public  
CHARLES LESNIAK, III, Watershed Protection  
Department, City of Austin  
CRAIG O. PIERSON, Marathon Pipe Line LLC  
GERALD P. ROSENDAHL, Minnesota Department of  
Public Safety  
LARRY M. SHELTON, Sunoco Logistics  
DONALD J. STURSMAN, Iowa Utilities Board  
MASSOUD TAHAMTANI, Virginia State Corporation  
Commission  
CARL M. WEIMER, Pipeline Safety Trust  
RICHARD H. WORSINGER, City of Rocky Mount,  
North Carolina  
JEFF C. WRIGHT, Federal Energy Regulatory  
Commission  
CHAD J. ZAMARIN, NiSource Gas Transmission &  
Storage and NiSource Midstream Services

ALSO PRESENT:  
LINDA DAUGHERTY, Staff  
JOHN GALE, Staff

SAM HALL  
ALAN MAYBERRY, Staff  
RON MCLAIN, Kinder Morgan Energy Partners  
JAMES PATES, Staff  
CAMERON SATTERTHWAITTE, Staff  
VANESSA SUTHERLAND  
CHERYL WHETSEL, Staff

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

2 (9:02 a.m.)

3 MR. WIESE: Good morning,  
4 everyone. Thank you for joining us on the  
5 last day probably of any of our lives where  
6 all the digits line up. Right? The next one  
7 is January 1 of some next century date. I  
8 forget. I read that early this morning, like  
9 5:30 so I can't remember.

10 Anyway, welcome everyone. I  
11 appreciate your coming in. I really look  
12 forward to today's meeting, in particular  
13 having the full Joint Committee.

14 Today is a -- just a reminder. A  
15 couple of quick reminders from myself before  
16 we kick off. Today is a joint meeting of the  
17 Gas Pipeline Advisory Committee and the Liquid  
18 Pipeline Advisory Committee. I neglected to  
19 mention that yesterday. While statute may  
20 call it one thing, I am tired of having to  
21 look up to say what did TPSSC stand for. So  
22 henceforth, we are calling these the Gas

1 Pipeline Advisory Committee and the Liquid  
2 Pipeline Advisory Committee. It will be a lot  
3 easier for all of us. So welcome again to the  
4 joint session.

5 Just a couple of quick comments  
6 for you. I am ably assisted today and I will  
7 turn it over to the Honorable Colette  
8 Honorable in a few moments to run the meeting.  
9 I was assisted yesterday by Lula Ford and glad  
10 that she is here and joining us for the rest  
11 of this joint session. She has offered to  
12 come back anytime we need her and help us run  
13 additional sessions.

14 (Laughter.)

15 MR. WIESE: I was giving you an  
16 opportunity, Lula. I love having Lula here,  
17 so thank you for coming and helping us again.

18 Just some quick -- eventually I  
19 will turn to Colette and she will do some  
20 introductions and get the thing rolling but I  
21 did want to point out a couple of reminders,  
22 particularly for the people on the Gas

1 Committee who weren't here yesterday. The  
2 purpose of this is to get a dialogue between  
3 people from various points of view on the  
4 public record out in the open, a fair exchange  
5 of ideas. You are all intelligent bright  
6 people. Please don't be shrinking violets.  
7 These are important topics that we have,  
8 particularly the votes. Don, I really meant  
9 you. I know Don will be shy. He is not going  
10 to say anything today but I want to pull him  
11 out.

12 So I also want to remind you,  
13 however, that interesting in our lives, social  
14 media is coming into our lives. We are  
15 tweeting live on those things. That has its  
16 ups and downs. My apologies. Actually there  
17 were some misattribution of quotes yesterday  
18 but as I sat through the Pipeline Safety  
19 Trust, Carl actually came up to me and said  
20 you realize that people are tweeting like  
21 every other thing you are saying here. You  
22 might want to be a little careful with what

1 you are saying.

2 So just FYI, we are also  
3 transcribing once we get together and formally  
4 meet, we will transcribe that. The record is  
5 available to people. The votes are available,  
6 et cetera. So it is a public meeting.

7 We will restrict comments and  
8 commentary to the members for all the  
9 briefings. But when we get to the rules, I  
10 want to be clear there is a comment period for  
11 the public. I would ask the public two  
12 things. One is keep it short and two is stay  
13 on point. We are not here to have a rambling  
14 dialogue. We have got an action-packed  
15 agenda. If the points have already been made  
16 in open, they are on the record. There is  
17 little value served to getting up and  
18 underscoring that and just saying me, too. If  
19 you have something new to add to the debate,  
20 we encourage it. Otherwise, please you have  
21 the representatives here.

22 So I think with that I would just

1 say lastly that the transcript, all the  
2 presentations will be available. Of course,  
3 the committee members should have them now,  
4 they are readily available to you. We also  
5 post these to the docket, which you can access  
6 through regulations.gov at a docket number  
7 fairly obscure, PHMSA-2009-0203. More easily  
8 you can get to these through the website that  
9 we have created for the advisory committees.

10 The last thing I want to mention  
11 is just a safety and comfort moment. If for  
12 some reason we need to get out of this  
13 building, we are following Gerry and Lanny.  
14 They clearly know and Tim will be right there  
15 with them. But there are stairs right down  
16 here. There are fire exits out behind us to  
17 the right. But follow the stairs out of the  
18 building and they will probably assemble  
19 across the street in that park. There are  
20 restrooms out there either in this direction  
21 or back here.

22 And the last thing is my usual



1 apology to you for not providing the basic  
2 creature comforts. Government can't do that.  
3 We did provide water, so if anyone gets  
4 parched. More importantly, if you need  
5 coffee, and I know I do, there is a Starbucks  
6 just a half a block away. Just go out and  
7 turn to the right and you will find it.

8 So I think with that, I will hand  
9 this over to the Chairperson.

10 CHAIRPERSON HONORABLE: Thank you,  
11 Jeff. Good morning.

12 Thank you for your presence here  
13 today. I understand that you had a wonderful  
14 meeting of the Liquid Safety Technical  
15 Advisory Committee yesterday. Thank you for  
16 those who came in yesterday and thank you for  
17 your presence today and, for the Gas  
18 Committee, those who will be present tomorrow.

19 For the record, this is a joint  
20 meeting of the Gas Pipeline Advisory Committee  
21 and the Liquid Pipeline Advisory Committee.  
22 And I would state for the record that I note

1 that a quorum is present for purposes of  
2 voting today.

3 At this meeting, we will be  
4 considering two proposed rules. Jeff  
5 mentioned them briefly.

6 And before I get into those, let  
7 me thank Jeff and his staff and everyone here  
8 at PHMSA for the wonderful work that they do  
9 headed up by Administrator Cynthia Quarterman  
10 and I would invite Administrator Quarterman to  
11 visit with you momentarily and for preparing  
12 for this meeting and the invitation to  
13 participate today.

14 We will consider two proposed  
15 rules and we will conduct a vote for each.  
16 The titles of the rules are Pipeline Safety:  
17 Pipeline Damage Prevention Programs, Notice of  
18 Proposed Rulemaking, NPRM, 77 F.R. 19,800  
19 published on April 2, 2012.

20 The second is Pipeline Safety:  
21 Administrative Procedures; Updates and  
22 Technical Corrections, Notice of Proposed

1 Rulemaking, NPRM 77 F.R. 48,112 published on  
2 August 12 of this year.

3 When the time comes for a vote,  
4 Cheryl, who you all know, will go over an  
5 example on voting protocol and conduct the  
6 vote then according to roll call. Each  
7 committee will vote separately.

8 As this meeting has officially  
9 been called to order, I would remind you of a  
10 few things before we officially begin. One,  
11 please turn or silence your cell phones and  
12 other gadgets. I see several around the  
13 table. You all are so technically advanced.  
14 Please silence them.

15 If you wish to speak, please turn  
16 your tent card up so that we can properly  
17 acknowledge you. And also please state your  
18 name before you speak for the record. As you  
19 are aware, we have a court reporter present  
20 and a record is being compiled.

21 And also, if you make a statement  
22 from the audience please provide a copy of

1 your card to Cheryl or the court reporter for  
2 proper attribution.

3 With that, and I am not sure if  
4 Jeff would like to make introductions at this  
5 point or if we would like to wait.

6 MR. WIESE: I was waiting to see  
7 if Cynthia was going to stop me from that but  
8 she didn't move fast enough. I have had my  
9 Starbucks. So thank you very much. Yes, I  
10 would.

11 I am pleased to. Many of you, I  
12 think most of you probably, know Administrator  
13 Quarterman. She has now passed the three-year  
14 mark of being the Administrator of PHMSA. And  
15 she came in when it was really then very  
16 boring around. We haven't had a lot of  
17 action. It would be interesting to know her  
18 thoughts about then versus now. What brought  
19 her here and if she could reverse time and go  
20 back to that moment, what choice would she  
21 make now?

22 Cynthia has been great to work

1 with. For those of you I haven't mentioned it  
2 to before, Cynthia and I worked together maybe  
3 15 years ago in the MMS. We both did offshore  
4 oil on gas. I was always impressed with  
5 Cynthia then. I remain impressed with her  
6 now. I am pleased to work for her and pleased  
7 to introduce her.

8 I would also like to, at the same  
9 time, invite Tim Butters to come up and talk  
10 with you as well. So Cynthia.

11 ADMINISTRATOR QUARTERMAN: Thank  
12 you, Jeff, for that introduction. Good  
13 morning and welcome everyone here.

14 I want to begin by thanking you  
15 again for your service on this committee. On  
16 behalf of both the President and Secretary  
17 LaHood, we really appreciate the time and  
18 effort that you put in to joining us here  
19 occasionally to talk about pipeline safety.  
20 Your commitment to pipeline safety is  
21 impressive and we appreciate your  
22 participation.

1 I wanted to begin by welcoming  
2 some of our new members to the committee. We  
3 have Chuck Lesniak, Tim Felt, Gerry Rosendahl,  
4 and Chad Zamarin joining us for, I believe,  
5 the first time. Welcome. We are happy to  
6 have you here. We really appreciate your  
7 willingness to serve and we will work you as  
8 hard as we can. Thank you again.

9 We also have some farewells. We  
10 have Charles Bresland, Geraldine Edens, Larry  
11 David, Don Martin, Paul Rothman, and is it  
12 true, Lula, that you are leaving us as well?  
13 Lula Ford.

14 We have many great losses from  
15 these two committees. Again, than you so much  
16 for your service over the years. We really  
17 appreciate the commitment that you put to  
18 this.

19 I think last time we talked a  
20 little bit about the Report to America that a  
21 subcommittee to the two committees worked on.  
22 I wanted to thank again Carl Weimer, Rick

1 Pavarski, Colette Honorable, Massoud  
2 Tahamatani, Craig Pierson and Sue Fleck for  
3 your work on that. We have put a nail in the  
4 coffin of that report. It is now available  
5 online in the form of a pipeline safety  
6 update. I think I communicated to you last  
7 time the unending editing that was going  
8 around associated with that. So it is now  
9 available online.

10 Last month, as Jeff mentioned, I  
11 celebrated my third anniversary as the PHMSA  
12 administrator. And just let me say that I  
13 would do it all again, despite what has been,  
14 I think, a most challenging three years for  
15 the Pipeline and Hazardous Materials Safety  
16 Administration. I think the ten years before  
17 had been good and it was time for some upsets  
18 and we had those in the past few years with  
19 several major and high-profile incidents. And  
20 I view those less as challenges and more as  
21 opportunities. And as you know from my last  
22 address to this group, we have many, many,

1 many things on our plate. We have 74  
2 mandates, if you count the things from  
3 Congress from the NTBS, from the Inspector  
4 General. And I am happy to say that we are  
5 eating through those things as quickly as we  
6 possibly can. A lot of those items were  
7 things that we were already in the middle of  
8 working on in different rulemakings. We not  
9 only have multiple rulemakings outstanding, we  
10 have had many workshops and we have issued  
11 many safety advisories. And I feel like  
12 despite the high number and despite the fact  
13 that those came with zero dollars, the  
14 mandates from Congress, we are chomping away  
15 at that and we will have no problem taking  
16 care of those requirements.

17 For Fiscal '13 as we look forward,  
18 we are going to continue to work on all those  
19 efforts and we are going to spend some time  
20 later in January talking about one of my  
21 favorite topics and I think also Carl  
22 Weimer's, which is data. I went out a couple



1 months ago, I guess to the Pipeline Safety  
2 Trust where he gave a presentation about what  
3 the public sector's wish list is for tying  
4 data to mapping. And I wanted to get up and  
5 say me, too. I want that, too and we hope  
6 this year to start working on making that  
7 happen. It is something that has fallen in  
8 our agenda as all these incidents have  
9 occurred. But now that we feel like we have  
10 a better grasp on those things, we are going  
11 to lift that up in the agenda and try to do a  
12 better job with the way that we present data,  
13 gather more data, present it better to the  
14 public, and analyze it more than we do  
15 currently so we can get in front of incidents  
16 before they occur.

17 In addition to data, we are coming  
18 upon or ending the anniversary of the  
19 Integrity Management Programs. As you know,  
20 we have both a Hazardous Liquid and a Gas  
21 Transmission Rule in process. We are going to  
22 take this opportunity, having ten years under

1 our belt, to take a second look at the  
2 Integrity Management Program and talk about  
3 how we might move forward with that program,  
4 what tweaks need to be made.

5 In addition to all that, very  
6 recently I took a trip out to North Dakota to  
7 see what was happening in the Bakken and I  
8 came back just yesterday from Pennsylvania to  
9 see all the new development in the Marcellus  
10 Play and those are things that we want to  
11 start thinking about what potential effects  
12 they have with respect to pipeline safety. It  
13 may be something that this committee would  
14 like to spend some time thinking about  
15 themselves. I think we want to get in front  
16 of any issues, rather than waiting until  
17 issues occur. Development is moving a pace  
18 and we need to be moving in front or along  
19 with it, at least, before anything negative  
20 happens. From a pipeline safety perspective,  
21 we need to ensure that the pipelines that are  
22 being put in are as safe as possible and those

1 include the gathering pipelines, some of which  
2 are very large diameter with over a 1,000 psi  
3 and pressure, even though they are in Class 1  
4 areas, it is something we need to begin to  
5 take a very, very close look at.

6 Having said that, we have made  
7 progress, I am happy to say, although we  
8 didn't get any more financial resources, we  
9 have finally put a nail in the coffin of the  
10 vacancies with respect to inspection  
11 enforcement staff. As of the end of the last  
12 fiscal year, we were fully subscribed. And as  
13 people leave, we are trying to backfill them  
14 and actually overfill those positions so that  
15 we always remain at the top of our game,  
16 whatever Congress gives us, we plan to have  
17 those people in place.

18 Now we still have great  
19 challenges. And as I spoke last time about  
20 the President's Fiscal '13 budget request,  
21 which would substantially increase the  
22 Pipeline Safety Program, given all the

1 discussions about budgets this year, it is  
2 probably unlikely that we get that in Fiscal  
3 '13. We still have our fingers crossed and if  
4 it is not this year, we will continue to move  
5 forward and press for additional resources to  
6 ensure that this program is properly  
7 resourced, especially as we see the increase  
8 in production across the country. We need to  
9 increase our resources as well to keep up with  
10 that. There is a lot of new construction  
11 that is happening, not only related to the  
12 Bakken and Marcellus, but we are seeing a  
13 great increase in production in this country  
14 and that will mean a great increase in the  
15 amount of pipeline resources as well and we  
16 need to be prepared for that.

17 As Colette mentioned, we will be  
18 talking about two rules today. One is the  
19 last mandate from the last reauthorization  
20 with respect to State Pipeline Damage  
21 Prevention Program adequacy. We hope you will  
22 help us vote on that today.

1           The other one is one of the first  
2 mandates and that is Section 190 of the new  
3 Pipeline Safety Log, which addresses due  
4 process issues with respect to appeals but  
5 also, importantly, civil penalties. And we  
6 would appreciate your help on that.

7           So we have a busy, busy agenda and  
8 we look forward helping you -- having you help  
9 us work through that. And I am happy to  
10 answer any questions, Commissioner Honorable,  
11 that the committee might have.

12           CHAIRPERSON HONORABLE: Thank you,  
13 Administrator. I must say, too, as you are  
14 pondering if you have questions, please hold  
15 your tent card up.

16           But I would certainly like to  
17 publicly acknowledge Administrator Quarterman  
18 for your leadership. It has really been an  
19 honor and a privilege to work under and at  
20 your direction, alongside so many people who  
21 are concerned and interested in public  
22 pipeline safety issues.

1                   So with that, are there any  
2                   comments or questions from the committee? Now  
3                   is your chance.

4                   Seeing none, thank you so much,  
5                   Administrator Quarterman.

6                   ADMINISTRATOR QUARTERMAN: Any  
7                   questions for Tim to answer?

8                   (Laughter.)

9                   ADMINISTRATOR QUARTERMAN: Tim has  
10                  been a valuable resource at the Pipeline and  
11                  Hazardous Materials Safety Administration.  
12                  When I invited him to come as the deputy, I  
13                  told him okay, 50 percent of the time you can  
14                  do whatever you want. The other 50 percent of  
15                  the time, you have to do all the stuff I  
16                  don't. And he has been fantastic on both  
17                  scores. He has been leading our effort on  
18                  emergency response, both in the Pipeline  
19                  Safety Program and the HAZMAT Program and we  
20                  have made marked, marked progress on that. I  
21                  don't know if, Tim, you have any comment.

22                  MR. BUTTERS: Thank you, Cynthia.

1 This is actually -- my two-year anniversary  
2 was in November. It has been a very fast ride  
3 for me. My strengths really were in HAZMAT,  
4 a little bit of pipeline but I sort of came  
5 onboard right after Marshall, Michigan and San  
6 Bruno, and just ahead of Allentown and  
7 Philadelphia. So it was a rather quick ride  
8 for me to get up to speed on pipeline. But we  
9 have made a tremendous amount of progress. I  
10 have had the opportunity to spend some time  
11 with many of you out there as I get out across  
12 the country.

13 The value of this committee to  
14 what we do is critical. So we are very happy  
15 to have you here and engaging with our agency.  
16 As Cynthia indicated, pipeline safety will  
17 continue to be a high priority not only within  
18 the administration but we anticipate both  
19 Congress and, as many of you know, NTSB  
20 pointed out pipeline safety is one of the --  
21 two of the ten more critical, most wanted  
22 issues.

1                   So we are still fully engaged.  
2                   And I am very pleased to be part of the team.  
3                   Cynthia is a great leader, as well as the  
4                   pipeline safety staff, Jeff Wiese and his team  
5                   as well. It is great to be part of it and  
6                   work with many of you as well. I look forward  
7                   to a future with you.

8                   CHAIRPERSON HONORABLE: Thank you.  
9                   Seeing no tent cards, as a point of personal  
10                  privilege, I would also like to acknowledge  
11                  Commissioner Lula Ford. It is so unfortunate  
12                  and really bitter sweet for this to be  
13                  Commissioner Ford's last meeting. She was on  
14                  this committee, I believe on the liquid  
15                  committee. I tell people I am her prot,g,.  
16                  And her steady leadership, both at NARUC, at  
17                  the Illinois Commission and here, has been  
18                  inspiring and we will miss you greatly.

19                  So with that, we will move now to  
20                  agenda item 2 and we will the state of the  
21                  Pipeline Safety Program from Jeff Wiese.

22                  Actually before we do that, I



1 would like the PHMSA staff to please introduce  
2 yourself. Many of us know you and have come  
3 to work very closely with you but in  
4 particular for our new committee members, I  
5 would like to ask. We have heard from the top  
6 brass and Administrator Quarterman and Tim  
7 Butters but we would also love to hear from  
8 our other staff. Please introduce yourselves  
9 and tell us your position.

10 Where is Linda?

11 MS. DAUGHERTY: I'm right here.  
12 Linda Daugherty. I am the Deputy Associate  
13 Administer for Policy and Programs and I work  
14 for Jeff and Cynthia and Tim and everybody  
15 else and the Secretary.

16 MR. MAYBERRY: Good morning. I am  
17 Alan Mayberry. I am Deputy for Field  
18 Operations, Linda's equal. We both kind of --  
19 she covers one side of the house, I cover the  
20 other half, five regional offices that deal  
21 with the --

22 MS. WHETSEL: Cheryl Whetsel. I

1 work in the Office of Rulemaking -- Standards  
2 and Rulemaking. And I am also the committee  
3 manager.

4 MR. GALE: Hi, I'm John Gale. I  
5 am Director of Standards and Rulemaking. I  
6 work for all of the above.

7 MR. SATTERTHWAITE: Cameron  
8 Satterthwaite, Standards and Rulemaking.

9 MR. PATES: Jim Pates, Assistant  
10 Chief Counsel for Pipeline Safety.

11 CHAIRPERSON HONORABLE: Thank you  
12 very much. And also for the benefit of our  
13 new committee members and for those that are  
14 visiting, why don't we begin at this end. If  
15 you will introduce yourselves as well for the  
16 benefit of our new members. And if you are  
17 new, for the benefit of the existing members.

18 MR. FEIGEL: I'm Gene Feigel, Vice  
19 President of Corporate Risk Analysis, Hartford  
20 Steam Boiler Inspection and Insurance Company.  
21 I'm on the Gas Committee.

22 HON. GARDNER: Wayne Gardner,

1 Commissioner with the Pennsylvania Public  
2 Utility Commission and on the Gas Committee.

3 MR. SHELTON: Larry Shelton from  
4 Sunoco Logistics, representing the liquid  
5 industry.

6 MR. PIERSON: Craig Pierson,  
7 liquids industry, Marathon Pipe Line Company.

8 MR. STURSMAN: Don Sturmsma, Iowa  
9 Utilities Board, Gas Committee.

10 MR. FELT: Tim Felt, Colonial  
11 Pipeline Company, the liquids side.

12 MR. DENTON: Todd Denton, Phillips  
13 66 Pipeline, liquids.

14 MR. ROSENDAHL: Gerry Rosendahl,  
15 Minnesota State Fire Marshal.

16 MR. TAHAMTANI: Massoud Tahamtani,  
17 Virginia State Corporation Commission, Liquid  
18 Committee.

19 MR. ARMSTRONG: Lanny Armstrong,  
20 Fire Chief of Pasadena, Texas, City of  
21 Pasadena Fire Department.

22 MS. BEACH: Denise Beach, NFPA,

1 Gas Committee.

2 CHAIRPERSON HONORABLE: Colette  
3 Honorable. I am with the Arkansas Public  
4 Service Commission and I am on the Gas  
5 Committee.

6 MR. WIESE: Jeff Wiese, Associate  
7 Administrator for Pipeline Safety at PHMSA.

8 ADMINISTRATOR QUARTERMAN: Cynthia  
9 Quarterman, PHMSA.

10 HON. FORD: Lula Ford, Illinois  
11 Commerce Commission.

12 MR. BUTTERS: Tim Butters, Deputy  
13 Administrator.

14 MR. LESNIAK: Chuck Lesniak, City  
15 of Austin, Liquids Committee.

16 MR. BELLMAN: Mike Bellman, City  
17 of Richmond Municipal Gas on the Gas  
18 Committee.

19 MR. WEIMER: Carl Weimer, Pipeline  
20 Safety Trust, the Liquids Committee.

21 MS. FLECK: Sue Fleck. I'm with  
22 National Grid and I am on the Gas Committee.

1 MR. KUPREWICZ: Rick Kuprewicz  
2 representing the public on the Liquids  
3 Committee.

4 MR. WRIGHT: Jeff Wright, Federal  
5 Energy Regulatory Commission on the Gas  
6 Committee.

7 MR. ZAMARIN: Chad Zamarin,  
8 NiSource Gas Transmission and Storage and  
9 NiSource Midstream Services on the Gas  
10 Committee.

11 MR. WORSINGER: Rich Worsinger,  
12 City of Rocky Mount in North Carolina, a  
13 member of the American Public Gas Association.

14 CHAIRPERSON HONORABLE: Thank you  
15 very much, all.

16 Let me mention something about the  
17 microphones. It may help when you aren't  
18 speaking if you would turn your microphone  
19 off. It is on when you see the lights. That  
20 should be easy enough.

21 So now we will hear from Jeff on  
22 agenda item two.

1 MR. WIESE: Thank you so much,  
2 Commissioner. Well, again welcome everyone.  
3 Let me start by saying as I mentioned to the  
4 Liquid Committee yesterday but for the benefit  
5 of those who weren't here yesterday, at one  
6 point in time, the committees were used solely  
7 for the purposes of voting on rulemaking. We  
8 collectively decided a number of years back to  
9 shift and engage more in policy-related  
10 discussions. So while the agenda says state  
11 of the Pipeline Safety Program, I am going to  
12 go a little bit broader than that and I will  
13 touch on some issues that Administrator  
14 Quarterman was referencing in her remarks.

15 I think we have a very interesting  
16 future ahead of us as it relates to domestic  
17 energy production. And that has clear  
18 implications for the pipeline industry and  
19 that has clear implications for the pipeline  
20 industry and for pipeline regulations public  
21 safety and environmental protection.

22 I know that many of you, as I look

1 around the table, the people who are engaged  
2 in the business understand this because you  
3 live it but there are a lot of people on the  
4 committee who don't do this for a daily  
5 living. So it is important for us all to sort  
6 of get on the same wavelength.

7 At the last committee session you  
8 may recall we brought in a gentleman from ICF  
9 to talk to you about their views on it. But  
10 I am stunned by the daily announcements on  
11 this daily. You know, things that are coming  
12 out about pipeline shortages, for example.  
13 The Permian Basin, that was this week. There  
14 were a lot of things -- Chuck probably hears  
15 this stuff down there all the time being in  
16 Texas but the Permian now is really just  
17 stopped up. We knew that Bakken was a for a  
18 long time, now the Permian is.

19 So the point I want to -- I want  
20 to go through a couple of things about energy  
21 futures -- let's see if I can figure out  
22 appropriately how to use this -- a little bit

1 about pipeline implications. I will not get  
2 into much detail because we will talk about  
3 all these things at one point or another, what  
4 I call our preordained workload. These are  
5 things that must be done. It is not always  
6 what we would choose to do first but they must  
7 be done. A lot of uncertainties in the world,  
8 a little bit about metrics, and then a little  
9 bit about priorities for '13.

10 So with that, I am using publicly  
11 available sources for most of this  
12 information, DOE for the most part. But I  
13 have asked another expert in the energy  
14 industry to come into our next meeting. She  
15 couldn't make this one. But I saw a  
16 fascinating presentation at NARUC by this  
17 individual and approached her immediately. I  
18 said I loved that presentation. I asked her  
19 if she would come. She couldn't make this  
20 date but she promised me that she would come  
21 to the next one.

22 So I would like to kind of keep



1 this dialogue going about energy futures  
2 because it does set the context for what we  
3 are talking about in new infrastructure and I  
4 think as well about old. So I think these are  
5 the quick takeaways from the Annual Energy  
6 Outlook. If you are not aware of this, I  
7 think I put a URL in one of the next slides,  
8 but it is very easy to find if you just Google  
9 EIA, you will come up with the DOE website.  
10 Look for the Energy for 2013.

11 I think these are things you  
12 probably know but just for the sake of  
13 underscoring them, crude oil production,  
14 particularly from tight oil plays rises  
15 sharply over the next decade. Depending on  
16 who you believe, because there are a lot of  
17 "experts" out there, we have the potential to  
18 be energy independent in this country within  
19 a decade, maybe more, maybe less. Nobody has  
20 predicted where we are now, so I am not  
21 confident that they can predict where we will  
22 be in ten years. But let's just say it is a

1 very strong push on domestic energy  
2 production.

3 Natural gas production is higher.  
4 Gas is really going to the industrial and  
5 electric power sectors and potentially export  
6 markets.

7 For those of you, Jeff Wright is  
8 here, Jeff will remember, not many years ago,  
9 Jeff, we had 40 some projects, export  
10 terminals that we, Alan was working heavily on  
11 this. We were working like crazy together  
12 trying to figure out how to get -- I'm sorry  
13 import terminals. Thank you. -- trying to  
14 get all of those set so we wouldn't impede the  
15 importation of needed gas supply.

16 We have cheap pens here. So be  
17 careful when you use them.

18 I don't know if there are any  
19 import terminals left on. Anything that was  
20 there has really gone to an export terminal  
21 now. And so we are going through a lot of  
22 that and DOE is as well. So just a quick

1       takeaway.

2                       These, I thought you would find  
3       interesting. They are also from EIA. But if  
4       you are not aware of it, the rise in the major  
5       share of domestic energy consumption that  
6       transportation entails, this really kind of  
7       makes the point. Residential is nowhere near  
8       what the industrial consumption in  
9       transportation is. This is total energy  
10      consumed.

11                      Here is just -- the slides, by the  
12      way, will be available on our website. I  
13      apologize for not sending them to you in  
14      advance. These are other slides on primary  
15      energy consumption on what are we consuming.  
16      We can still consume 32 percent of our energy  
17      is coming from oil and other liquids. By the  
18      way, I am pleased to see that liquid biofuels,  
19      as you see in there, we have been working this  
20      committee. Actually, that is how I originally  
21      met Tim Butters. Tim was, as I reminded  
22      Cynthia, we robbed him from this committee.

1 I am not sure which one he would rather be in.

2 But Tim was very instrumental in  
3 getting us engaged with the emergency response  
4 community on biofuels. And we were working  
5 with members who are here. I know Tim's  
6 pipeline, for example, we were working with  
7 them on biofuel issues. But look at the  
8 natural gas taking off from 2011. I'm not  
9 going to beat these to death. I just want to  
10 make the point on these things. Look at the  
11 bump after 2011 from tight oil. It's pretty  
12 important. These are domestic crude oil  
13 production by source. Here we have U.S. dry  
14 natural gas production by source. Look at the  
15 shale gas rise and the projected rise over the  
16 next few years. It's pretty staggering.

17 Here is just a map that I enjoy  
18 because it gives me a sense on where things  
19 are. The only reason I threw this up and will  
20 have it in your handouts, if you are not  
21 familiar with some of these plays, it is  
22 useful, you hear the names all the time in the

1 news, the bigger point here where if you look  
2 at the distribution of some of these, they are  
3 not where traditional plays were. A lot of  
4 them are on the outside of the Permian in some  
5 of those. Some of these are in very  
6 nontraditional areas, which means they are  
7 going to need pipeline capacity to get it out  
8 of that area. So there is clear implications  
9 for pipelines and rail.

10 Cynthia may recall one day I got  
11 OCD and was trying to figure out how long  
12 would a train be that moved 50,000 barrels of  
13 oil per day.

14 There was one that was going in  
15 the Bakken and running out to Cherry Point in  
16 Washington State. It was something like a  
17 mile and a quarter along train, going 1200  
18 miles over infrastructure. We had a bridge  
19 collapse just the other week. So there are  
20 risks inherent in all of this transportation.

21 Lanny said something to yesterday  
22 but I won't put him on the spot about this

1 about all of these things involve risk. Our  
2 job is to manage that risk and ensure that the  
3 public and the environment are not impacted  
4 when things go wrong. But all of these modes,  
5 whether it is train, truck, you name it, there  
6 are risks involved.

7 Just like the last couple of them,  
8 just so you understand where it is happening,  
9 this is annual crude oil production only  
10 through '11. I did have another one that  
11 talked about '12 and these trends are  
12 continuing. Look at what is happening with  
13 Alaska. I think we have seen that.

14 Now there are things happening in  
15 Alaska both in the Chukchi and the NPRA on the  
16 North Slope. There are things that are  
17 happening on Cook Inlet that may get turned  
18 around. Who knows. California has been  
19 declining but look at the uptick in North  
20 Dakota from the Bakken. Texas from several  
21 plays down near Eagleford and the Permian.

22 So I won't read these to you. I

1 just put them in there. These were quotes  
2 from DOE about each of those areas. I thought  
3 that North Dakota has moved ahead of  
4 California in December of 2011. In fact, I am  
5 pretty sure it has moved up again in '12. Is  
6 it now number two? It is, yes. Just  
7 staggering. I mean, five years ago, no one  
8 would have predicted that. Honestly, no one  
9 would have predicted that. So again, who  
10 knows what we can say about five years' hence.  
11 But it is sure changing the geographic  
12 landscape, annual natural gas production.  
13 Look at Louisiana taking off. Again, a lot of  
14 these are shell plays.

15 So a little more narrative on that  
16 about where the sources of these are coming  
17 from. The Haynesville shale play in  
18 Louisiana. So enough on this point. I just  
19 really wanted to say we will spend more time  
20 on these things and I am happy to arrange for  
21 other experts or if you know of people who are  
22 really good in this arena to come in. It sets

1 the stage for a lot of our discussions about  
2 the energy future of the country and what role  
3 do pipelines play in that.

4 So implications, we clearly have,  
5 as the Administrator mentioned just a few  
6 minutes ago, rapid expansion of gathering  
7 lines, both gas and liquid. And she also  
8 pointed out, some of the gathering lines that  
9 we are seeing today look nothing like  
10 gathering lines did five or ten years ago.

11 Five or ten years ago, the  
12 gathering lines that we would see were very  
13 small diameter low pressure lines. Now these  
14 are large diameter high pressure lines. Even  
15 if it is in class one, it is still going by  
16 people's homes, their farms and important  
17 assets that need to be protected. So they  
18 demand our attention and Cynthia had  
19 introduced that in our ANPRM some time ago.  
20 So we will be moving forward on gas gathering.  
21 I expect that will be a very interesting  
22 debate because it brings in a lot of



1 nontraditional stakeholders into the debate.

2 But I wanted to assure you I think that we are  
3 all fully committed to move forward on gas  
4 gathering and liquid gathering as appropriate.

5 I think it is important to say  
6 that we don't seek, generally speaking, to  
7 take every square inch of every gathering line  
8 anywhere. It is if it creates a risk to  
9 people or the environment, I think that is  
10 something that is our job.

11 So a lot of expansion of gas and  
12 liquid. Some of the members here could speak  
13 to that. A lot of people are trying to use  
14 existing right of way for obvious purposes.  
15 Of course that brings other issues with it,  
16 potential collateral damage from failures. If  
17 they are using electrical right away, there  
18 are issues there about stray current. But I  
19 know that Jeff can say, certainly Jeff Wright  
20 can say when we talk about Interstate Natural  
21 Gas Pipelines, the uptick in applications that  
22 they are dealing with.

1 I know that Carl and Chuck aren't  
2 going to let me out of here alive if we don't  
3 get something moving in PIPA. So we will  
4 probably be talking more about PIPA as we go  
5 forward. We have supported that from the very  
6 beginning. We need your advice about how to  
7 advance that initiative. I believe it is  
8 critically important for communities to  
9 engage. Again, for the people on the Gas  
10 Committee, Chuck forgive me, I mentioned  
11 yesterday -- first of all I have known Chuck  
12 for a long time and I am really thrilled to  
13 have him here. But as importantly, Chuck  
14 represents a sector who we really need to  
15 engage with National League of Cities. So I  
16 appreciate your being here Chuck.

17 We have another nominee the  
18 Administrator has forwarded who represents the  
19 National Association of County Officials. So  
20 I think we will start getting some of that  
21 engagement. Maybe that will help us with  
22 PIPA.

1                   This is something I suspect we  
2                   will spend a lot more time talking about  
3                   shortly but I have the greatest respect for my  
4                   state partners, always have. I have worked  
5                   with these people directly for 14 years. I  
6                   hope that they would tell you that, even if I  
7                   wasn't here. Nonetheless, I will say none of  
8                   us perfect and some states are getting there,  
9                   others need to step up their game. It is just  
10                  that simple.

11                  And particularly as we get to  
12                  damage prevention, they are going to have to  
13                  step up their game. We need to ask for your  
14                  support to help us give the tools to ourselves  
15                  even to incentivize the states to do that.

16                  Cynthia mentioned earlier -- I  
17                  think my numbers might be off a little bit but  
18                  they are close enough to make the point -- I  
19                  think we have 37 mandates from the Congress  
20                  and no funding so far. So that doesn't work  
21                  terribly well. I am very thankful to Cynthia,  
22                  the Secretary and the President for backing us

1 on a very important Pipeline Safety Budget I  
2 Initiative. I thought that was important but  
3 obviously the times are challenging right now.

4 And can I point out for anyone's  
5 purposes, we are talking about fiscal, F-I-S-  
6 C-A-L. I continue to hear all the media call  
7 it physical cliff. I think that is something  
8 else we have all been close to but it is  
9 fiscal.

10 So, the NTSB who, you know, we  
11 have a high respect for the NTSB. We often  
12 assist them in accident investigations. We  
13 work regularly with the Board Members and the  
14 staff there.

15 I will say we worked pretty darn  
16 hard right before the last reauthorization.  
17 Even the chairwoman said to us in our briefing  
18 I know you worked hard to get these done. And  
19 we were down to six open all acceptable and  
20 now we are up to 28 open. So nothing like  
21 some high profile tragic events to really  
22 change your landscape. Six of those went to

1 the Secretary, by the way.

2 So at any rate, I won't belabor  
3 this. The IG then jumped in and we have nine  
4 open recommendations, plus ongoing audit. I  
5 expect more. The U.S. GAO has two, plus an  
6 ongoing audit. We have seen a draft of  
7 theirs. I wouldn't be surprised to see more.

8 And then the one thing that don't  
9 lose sight of that we, like you, most of you  
10 manage organizations, we have a lot of  
11 challenges recruiting. We have had problems  
12 maintain workforce and attracting it. The  
13 industry goes through cycles but they are in  
14 a cycle now where they are hiring. I am  
15 losing one of our top guys, I think this is  
16 his last week, Steve Fisher. He will probably  
17 shoot me. I don't know if he has announced it  
18 publicly but he is leaving and heading out to  
19 the West Coast so we wish him well. But I  
20 would just point out to you that we all have  
21 ongoing challenges in trying to maintain  
22 highly qualified competent workforce. I think

1 that is in all of our interests.

2           So some of the uncertainties that  
3 we are working with. The President's budget  
4 request. I am so hopeful. I want to remain  
5 hopeful. I believe that it is an important  
6 initiative and I am very thankful that it went  
7 through. But at the same time, we are under  
8 a continuing resolution and for those of you  
9 who are not accustomed to the federal budget  
10 process, which is even more arcane than the  
11 regulatory process, that means we have no new  
12 starts and you have only what you had the  
13 prior year. New starts, sometimes these  
14 things that we have in the mandates and the  
15 recommendations, are new starts. It is very  
16 difficult to justify any expense of effort and  
17 time on those under continuing resolution.  
18 Most people don't recognize that. They will  
19 see it as we are being slow. In essence, you  
20 are barred from doing some of those things.  
21 I wanted to make sure you knew that.

22           The looming Fiscal Cliff, 8.2

1 percent across the board cuts. When we are  
2 already strained the way it is, that is a  
3 pretty significant challenge to overcome. It  
4 doesn't sound like a lot of money and a lot of  
5 impact, but our budget really hasn't been  
6 growing that much over the past few years and  
7 the workload piles on. Eventually, these  
8 things are moving in opposite directions.  
9 Right?

10 Difficulty with recruiting, I  
11 mentioned that, although I am proud of the  
12 fact that we did manage to get some regular  
13 attention from the Administrator, get  
14 ourselves to the 135 number and we are  
15 committed to maintaining or surpassing that.

16 The uncertainty and sluggishness  
17 of the regulatory process, the new members  
18 were subjected to a quick briefing on that as  
19 they came in yesterday. If you ever want to  
20 go through that as a committee again and have  
21 John Gale and Cameron and others talk to you  
22 about this, we would be glad to. But it is

1 just amazing what is deemed significant these  
2 days versus what is deemed non-significant.  
3 It used to be economic criteria really drove  
4 it but now it is controversy. So really all  
5 it takes, if we go non-significant, we have  
6 one significant stakeholder stand up and say  
7 you know what, I don't like that, then they  
8 will reclassify it and we will have to go  
9 back.

10 The difference between those  
11 classifications, I would say a minimum of a  
12 year. And so when you wonder why does it take  
13 so long for some of these things to come to  
14 fruition, take a look at the regulatory  
15 process.

16 And then lastly, really, just the  
17 partisan philosophical debate at all levels.  
18 It just is never-ending. That is one of the  
19 reasons I enjoy being in joint session really  
20 with this committee. I consider you all  
21 pretty well-informed. We have civil dialogue  
22 across the table from different points of



1 view, including the public. And it is  
2 important to have that dialogue. It is  
3 important to have it openly and we very much  
4 appreciate your participation in it.

5 Just some quick metrics here. I  
6 will point out that we will have the pipeline  
7 data workshop on January 7th and 8th. We will  
8 be webcasting that if you can't make it to  
9 beautiful Washington in January. Who wouldn't  
10 want to come here? You can tune in. If  
11 that's too long of a URL, you will be able to  
12 click on it when you get the slides. But if  
13 you went to PHMSA's website there is an  
14 announcement, I think, on the front page. So  
15 you can click on it there.

16 I wanted to just really close with  
17 a little bit here on metrics. As Cynthia  
18 said, and you can see, 2010, 2011, some  
19 challenging -- this is a frequency analysis,  
20 but challenging in terms of the numbers of  
21 incidents that were out there.

22 In 2010, I don't have to remind

1 anyone here, there were two extremely tragic  
2 events and then 2011 opened with another one  
3 or two, really.

4 And then it is interspersed by all  
5 of these ones, whether it is in Texas or North  
6 Dakota, you name it, from excavation damage,  
7 we had fatalities involved in those. So never  
8 talk about risk and only look at frequency.  
9 Frequency is important, but as my friend, Carl  
10 Weimer, reports to me all the time, and it is  
11 true, the public reacts to consequence. So  
12 look at both frequency and consequence. 2010  
13 clearly a step up.

14 Now, I have no confidence in data  
15 until it sat for a little while and people  
16 have taken a look at it. The initial  
17 indications are 2012 is looking from both a  
18 consequence and a frequency basis to be much  
19 better. And I think that could be from a lot  
20 of your efforts, a lot of our efforts.  
21 Collectively, we have helped influence the  
22 risk curve. Injuries also are reportedly down

1 at this point. We are still verifying all of  
2 that data. And property damage significantly  
3 down. So let's take some heart.

4 It has been a rough couple of  
5 years but we have all sort of doubled down and  
6 I am hoping that that is what is making a  
7 difference on that.

8 On causes, this is unfair because  
9 it is such a long period of time and I can't  
10 read it without better glasses than I even  
11 have. But I think we can see that it varies  
12 by sector. This is not so much for analysis.  
13 It is just to make a broader point. Whether  
14 you are in gas distribution or gas  
15 transmission or liquid, this will change, the  
16 pie curve. But clearly major causes still in  
17 excavation damage. We are going to be talking  
18 about excavation damage today. There is a  
19 clear reason to be talking about that at  
20 almost every meeting.

21 I used to say, by the way, I  
22 always welcomed NTSB keeping excavation damage

1 in the top ten. You know, keep it in there,  
2 as far as I am concerned, because we have a  
3 lot of work to do.

4 Corrosion, though continues to be  
5 an issue for us to be wrestling with, as are  
6 material welds and equipment failures.

7 Actually we have seen those play a role in  
8 some of these really significant incidents.

9 So some top priorities in '13 and  
10 I put these up there with a little trepidation  
11 because they are still moving and I haven't  
12 fully gotten the Administrator's blessing on  
13 all of this but I think we are generally in  
14 sync. We have worked together long enough.  
15 We are going to move forward with these higher  
16 priority rulemakings, refreshing IMP on both  
17 the gas and the liquid side. Gas gathering in  
18 particular. We are continuing to push to  
19 improve our state program oversight. NTSB has  
20 given us a call there and we are responding.  
21 We are also moving on the Oil Spill Response  
22 Plan Program. We have already made

1 significant progress on that. And I know the  
2 industry is responding as well. So I look  
3 forward to bringing that together.

4 I would be remiss if I didn't  
5 point out that my boss is a data hound. So  
6 when I go to her, I try to have the data that  
7 I need. We don't have what we need. I don't  
8 mind telling you, we don't have what we need.  
9 It is difficult for us to calculate the risk  
10 to focus on without additional data. So I am  
11 committed to trying to move forward with that  
12 data-driven risk-informed inspection process,  
13 as well as really a regulatory process. I  
14 think it was Todd who said yesterday, and I  
15 couldn't agree more, we can't do everything  
16 everywhere all the time. We have to focus on  
17 those things that we think will make the  
18 greatest difference and that is where the data  
19 take us.

20 As I mentioned yesterday, I am  
21 very thankful to Tim in particular for his  
22 leadership on the emergency responder. I

1 think we have made more progress in the past  
2 couple of years than we had made in any years  
3 before that. And I am very pleased to have  
4 both Gerry and Lanny here. They are both  
5 shrinking violets. I know that they won't be  
6 having anything to say. That is why I am  
7 happy to have them.

8 So at any rate, I have made a lot  
9 of the rest of these points already and for  
10 the people in the Gas Committee, we will be  
11 talking more about IMP 2.0. I think one of  
12 our next presentations, actually, is going to  
13 tie into that very nicely when we talk about  
14 safety management systems, which is also a  
15 recommendation from NTSB but something that we  
16 have really been engaged with for a decade.

17 So I will really close on that. I  
18 have touched on the other points already. We  
19 will, and I hope I can count on all of you to  
20 help us as we get in every April we keep  
21 reminding the public about the critical  
22 importance of calling before they dig,

1 reminding all operators and locators and  
2 excavators to adhere to the best practices  
3 that the Common Ground Alliance. Many people  
4 around here on the table, by the way, are  
5 members of the Common Ground Alliance. Some  
6 of them are on the Board. And I know that we  
7 can count on your support as we get into  
8 National Safe Digging Month next April.

9 I know that Bob is here and he  
10 will stand up and correct me if I have made an  
11 error on that. And I think that is really  
12 what I had. I am happy to take any questions  
13 but don't feel compelled to.

14 CHAIRPERSON HONORABLE: Thank you,  
15 Jeff. Great presentation. Very informative.  
16 Are there any questions on Jeff's  
17 presentation?

18 Thank you, Jeff. I think you have  
19 answered all of their questions.

20 MR. WIESE: Maybe over-answered.

21 CHAIRPERSON HONORABLE: The next  
22 agenda item is a regulatory agenda briefing.

1 Oh, we did have a question. Don.

2 MR. STURSMA: You mentioned all  
3 the different recommendations from different  
4 agencies that are affecting PHMSA. I would  
5 probably come up with the ones from the NTSB  
6 but I am not sure where I could locate the  
7 ones from OIG or GAO. Are those available or  
8 published someplace?

9 MR. WIESE: Absolutely. And I  
10 know I can count on John and Cheryl to remind  
11 me. We will send those to you. They are  
12 available in various places but we have  
13 entered them into a database. I won't tell  
14 you exactly who on staff has point on them but  
15 we have deadlines for completing all these  
16 things. But we will send you the database of  
17 all these recommendations and mandates.

18 And by the way Don and Massoud, I  
19 forgot to mention the NAPSA resolution. So I  
20 still have NAPSA resolutions. I am committed  
21 to working through those as well. My  
22 apologies.



1 CHAIRPERSON HONORABLE: And I  
2 noticed a tent card near the end.

3 DR. FEIGEL: Jeff, I apologize. I  
4 haven't been on your website and look at the  
5 data workshop you are having in January.  
6 Could you give us a 30-second overview of what  
7 that is all about?

8 MR. WIESE: Sure, I would be glad  
9 to. Actually, we had called that for -- the  
10 date will elude me now -- it was right around  
11 the time Hurricane Sandy was hitting. And so  
12 we made a preemptive call to postpone that  
13 workshop. But in short, Gene, what we are  
14 hoping to do is two things, really. I think  
15 I already told you the Administrator and we  
16 are committed to using data to drive the  
17 program. We want to have a public debate  
18 about that. And we are also responding in  
19 part of the NTSB recommendation about what  
20 they characterize as meaningful metrics, both  
21 for the operators and for oversight programs.  
22 So I am pleased that the

1 Administrator will be opening the workshop for  
2 us but we have also invited NTSB member Mark  
3 Rosekind, who I am pretty sure was responsible  
4 for that meaningful metrics thing. I asked  
5 him to come and address all the people in  
6 there about his view on meaningful metrics.  
7 I have heard it myself. I think Mark is an  
8 incredibly articulate man. I look forward to  
9 that debate. But we will have a lot of  
10 discussion, public discussion about what data  
11 do we have, what confidence do we have, and  
12 what do the metrics say and what is missing.  
13 How do we go about acquiring some of that  
14 data.

15                   Hopefully, you can make that,  
16 Gene. If not, as I say, we will have the  
17 webcast, which you can tune into. And you  
18 will be able to submit comments through the  
19 webcast. We will take comments from people  
20 remotely.

21                   CHAIRPERSON HONORABLE: Thank you.

22 Thank you, Gene.

1 Any other questions for Jeff?

2 We will turn it over to John.

3 MR. GALE: Thank you, Colette.

4 As you see up here, the title of  
5 my office is Director of Division of Standards  
6 and Rulemaking. I think I might have to  
7 change it to a sluggish rulemaking and  
8 unpredictability of rulemaking.

9 The orientation that Jeff  
10 mentioned earlier, actually the handouts that  
11 we gave during the orientation are part of  
12 your book. Please, if you have any questions,  
13 if you want to contact Cheryl, Cheryl gave a  
14 great overview of the FACA process. But if  
15 you want any more information or if anybody  
16 would like for us to do an orientation at the  
17 next meeting, please recommend it and we will  
18 try our best to make that happen.

19 One last comment on all the  
20 mandates that Cynthia and Jeff had mentioned.  
21 What I see at least in terms of rulemaking as  
22 I see it driving our agenda for the next

1 couple of years at least with the limited  
2 staff we have, as Mr. Kuprewicz recommended at  
3 the last meeting, we are trying our best to  
4 prioritize and direct our resources as smartly  
5 as possible. But there is a lot of mandates  
6 in our plate and a lot of requirements that we  
7 have to meet, in addition to dealing with the  
8 GAO and the NAPSRS and GPTC recommendations,  
9 et cetera. We are going to try our best to  
10 get them done but there is a heck of a lot of  
11 things on our plate right now.

12 So what I am going to do real  
13 quick is go through a rulemaking update of the  
14 specific rules we have that we are working on  
15 or rulemakings that were in process. I will  
16 give you an idea of where they are at in the  
17 process and maybe, if appropriate, an  
18 anticipated publication date.

19 The first rulemaking is one of the  
20 highest priority rulemakings we have in our  
21 organization. We call it the Hazardous Liquid  
22 Rulemaking, which is kind of relooking at a

1 lot of the requirements dealing with hazardous  
2 liquid pipelines.

3 Kind of a history of it, an ANPRM  
4 was published back in October of 2010, comment  
5 period ending shortly thereafter. We have  
6 been in the process over the last several  
7 months of drafting that rulemaking and  
8 identifying the issues and recommendations to  
9 our management of where we should move forward  
10 with those different areas. We are looking at  
11 things like redefining and HCA. We are  
12 looking at assessing non-HCA areas and maybe  
13 a commensurate repair criteria. We are  
14 looking at repair criterias in HCAs  
15 themselves, leak detection systems and a slew  
16 of different areas, things dealing with  
17 hazardous liquid pipelines. As you can  
18 imagine, that is a very broad rulemaking. It  
19 is very intensive in terms of our resources  
20 and we hope to be moving on that sometime in  
21 the spring of this year or maybe early summer.  
22 But it is definitely one of our top priorities

1 and we have as many resources as possible to  
2 try to get that done.

3 If you like, it would be best to  
4 answer specific rules as we go through them,  
5 instead of waiting until the end. I am okay  
6 with that. So if anybody has any questions as  
7 we go through the process, just let me know,  
8 please.

9 Kind of a sister rule to this is  
10 our Gas Transmission Rule, looking at very  
11 similar topics, very similar issues just with  
12 the flavor on the gas transmission side.

13 The ANPRM was published back last  
14 August or a year ago August. But in this  
15 situation, we received over a hundred comments  
16 to this docket. So the breadth of this one is  
17 a little bit bigger than on our hazardous  
18 liquid when it comes to the comments we  
19 received. But the topics are somewhat  
20 similar. We are looking at the definition of  
21 an HCA. Repair criteria both in HCA areas and  
22 possibly assessing of non-HCA areas and the

1 repair criteria associated in those areas. We  
2 are looking at assessment methods and we are  
3 also looking at things like the grandfather  
4 exception and gas gathering, as Jeff mentioned  
5 earlier, or the rural gas gathering and the  
6 exceptions thereof, or the exceptions from  
7 reporting requirements for gas gathering. So  
8 we are in the process of developing that rule.

9 This is a little bit earlier in  
10 the process compared to the liquid rule, a  
11 little bit about six to nine months behind it.  
12 But it is definitely the other rule, they are  
13 1 and 1A in our office in terms of priority  
14 and hopefully we will be moving on this rule  
15 sometime this summer is our hope, at least on  
16 the NPRM stage. And then a vote would  
17 probably come later next year.

18 One of the rules you are voting on  
19 today is the excavation damage rule. Just  
20 some of the history. So to put it in  
21 perspective was the notice was published back  
22 in April. The comment period closed shortly

1 thereafter. And our hope is to have the vote  
2 on this rule today. And then if we get a  
3 positive vote and we have action we can move  
4 on, our hope would be to have this rule  
5 published sometime in the summer of 2013.

6 This rule is deemed significant,  
7 as you recall in the orientation process.  
8 That alone mandates about a four to six-month  
9 review time in offices outside of PHMSA. So  
10 those are things that are outside of our  
11 control. So after we finalize and write it  
12 up, get it through our concurrence process, we  
13 will have four to six months after that period  
14 of time to get it into the Federal Register  
15 and publish as a final rule.

16 The Miscellaneous Rule is a rule  
17 you all voted on last time and passed with  
18 some recommended changes. We are hoping to  
19 actually publish that rule within the next  
20 couple of months. And you should be seeing  
21 that rule very shortly.

22 EFVs is something we are also



1 starting to move on. We are looking at we  
2 have some congressional mandates and some NTSB  
3 recommendations. And we are looking at  
4 mandating EFVs for broader than the single  
5 family homes, multi-family residences in  
6 certain types of commercial buildings.

7 We had originally started off  
8 doing a survey which was not what we are  
9 seeing, to say the least. It was a little too  
10 broad. We have decided to back off of that  
11 census and not move forward with it but we  
12 believe we have the information we need to  
13 perform the cost-benefit analysis we need to  
14 perform and make our decisions and move  
15 forward on that rule.

16 So what we are doing now is going  
17 to focus on the development of the NRPM on the  
18 areas we have identified. So we are hoping to  
19 be able to see that, depending on its  
20 significance determination, probably in the  
21 middle of next year.

22 We are also working, as we have

1 done in the past, those familiar with our  
2 rulemaking, we have done standard update rules  
3 regularly every couple of years. And usually  
4 they are not big deals and we just kind of  
5 move forward and we adopt our new standards.

6 We incorporate in our regulations  
7 about 60 standards, currently. However, in  
8 the recent reauthorization bill, and this  
9 issue will be addressed later today by our  
10 Chief Counsel, Ms. Vanessa Sutherland, there  
11 is a requirement now in our statute that we  
12 cannot adopt new standards unless they are  
13 publicly available for free on the internet.  
14 So this has put a kind of a hold right now on  
15 this rule or any other rule that significantly  
16 deals with standards. Ms. Sutherland has  
17 spear-headed our challenges associated with  
18 getting these standards publicly available and  
19 she will provide us an update later today on  
20 the status of that issue. But hopefully, we  
21 will be able to move on this pretty soon, at  
22 least for those standard organizations that

1 have committed to making them available and  
2 hopefully we can get that rule moving shortly  
3 within the next few months here.

4 The Part 190 Rules, the other  
5 rules that you will be discussing today  
6 dealing with some administrative issues on the  
7 enforcement process dealing with open  
8 enforcement and the like. And I see this rule  
9 was deemed not significant at its notice  
10 stage. If that holds true, it is very  
11 possible with movement by this committee today  
12 that we could hopefully see this published as  
13 a final rule early in 2013.

14 This is kind of a placeholder name  
15 right now, in re: authorization. There is a  
16 lot of miscellaneous or smaller items that are  
17 mandated by us, mandated to us to complete  
18 dealing with incident reporting. There is,  
19 currently, we have a standard of reporting  
20 incidents two hours after knowledge of the  
21 incident. There is a mandate in the statute  
22 to change that to a one-hour notification.

1       There is a requirement for us or an allowance  
2       for us to recover certain costs associated  
3       with certain permitting, like special permits  
4       or other highly costly projects dealing with  
5       gaseous carbon dioxide and regulating it. We  
6       are also trying to develop a renewal process  
7       for our special permits. Currently, those of  
8       you who have seen some of our special permits  
9       of late, we have started to add expiration  
10       dates into them. So we want to build into our  
11       regulations a process for renewing those  
12       special permits, if appropriate. Otherwise,  
13       we don't have that process in our system. And  
14       if we identify any other smaller issues that  
15       may be appropriate from NAPS or GPTC or the  
16       like, we will try to plug those in there so  
17       that we can deal with some of these other  
18       issues while we deal with those mandates at  
19       the same time.

20                       We are also dealing with a  
21       rulemaking on mapping. In the miscellaneous  
22       rule, it was the first time where we have

1 actually added the mapping requirements into  
2 the pipeline safety regulations. This  
3 rulemaking would look at modifying some of  
4 those requirements. We would be looking at  
5 our accuracy requirements where right now the  
6 data has to be accurate within 500 feet but we  
7 are also looking at collecting additional  
8 attributes like diameter, MAOP, pipe grade,  
9 piggability, et cetera, so that we have better  
10 data, so that we can focus our resources and  
11 our efforts in the correct areas.

12 And if possible, one of the things  
13 we will have to look at is the more  
14 information we get through the mapping system,  
15 will that eliminate the need for some of the  
16 other reporting requirements that we also  
17 have, like some of the annual report data that  
18 we collect.

19 We are also trying to move forward  
20 on a plastic pipe rule. This would be an  
21 ANPRM on about five or six issues, focusing on  
22 composite pipe petitions, specifically

1 Fiberspar, a petition from Fiberspar,  
2 utilizing PA12 of the design factor that is  
3 currently at 0.32 and possibly moving it to  
4 0.4 and enhanced tracking and traceability.

5 So hopefully -- we have had this  
6 rule in our hopper for several -- for a couple  
7 years now and we are hoping to move it at  
8 least to an ANPRM stage this coming summer.

9 Something to point out which is  
10 not a rule per se. We just revised our Gas  
11 Transmission Annual Report form, the Gas  
12 Transmission Incident Report form, and the  
13 Hazardous Liquid Accident Report form. They  
14 were just revised or approved by OMB on  
15 December 5th. This was through the  
16 information collection process that we  
17 referred to at the orientation yesterday.

18 When we have any kind of  
19 information collection like an annual report,  
20 it has to be approved by OMB.

21 Some of the information that we  
22 are going to garner from that is information

1 related to grandfather clause, which will help  
2 us move forward on our mandates related to the  
3 grandfather clause and should we or should we  
4 not get rid of that exception.

5 Miles of gas transmission pipe  
6 which operators have incomplete records to  
7 verify their MAOP. Again, a mandate from  
8 reauthorization. And the ability of gas  
9 transmission lines to have assessment tools  
10 run through them or piggability of gas  
11 transmission lines.

12 So this was something that we have  
13 been working on since last December. We put  
14 a lot of resources into getting those forms  
15 revised so that we can get the data to figure  
16 out what rules we want to move forward with  
17 and help us on our cost-benefit analysis.

18 But in addition to all those  
19 rules, there is lots of other rules that we  
20 have kind of waiting in the wings as these  
21 different reports get finalized. A lot of the  
22 reports that you have heard about yesterday or

1 we will hear about again tomorrow such as leak  
2 detection and valves, depths of coverage, the  
3 MAOP verification and other things that as we  
4 collect a lot of this other information we are  
5 going to morph into rules eventually or may  
6 morph into rules eventually at some point in  
7 time. So you can see again how the NTSB  
8 recommendations and these congressional  
9 mandates are really going to be driving our  
10 agenda for the coming months or in the coming  
11 years.

12 Yes, Mr. Gardner?

13 HON. GARDNER: The leak detection  
14 workshop that was well, I guess the mandate  
15 was it was supposed to be completed in the  
16 fall, where are you on that?

17 MR. GALE: Mr. Gardner, we will be  
18 giving a briefing on that whole leak  
19 detection, the project and its estimated  
20 completion date tomorrow at the gas  
21 transmission or the gas committee. We gave an  
22 update on that to the liquid committee



1 yesterday. So if you are okay with that, we  
2 will just hold that information for then.

3 MR. WIESE: Can I jump in just  
4 really quickly? The short answer is we are  
5 almost done and we hope to submit to the  
6 Congress early in the year. We may not make  
7 January but we are reaching closure on that  
8 and we will brief you in more detail tomorrow.

9 HON. GARDNER: Thank you.

10 MR. GALE: I'm kind of hoping for  
11 a delay.

12 And Ms. Honorable, that is all I  
13 have, unless there is any additional  
14 questions.

15 CHAIRPERSON HONORABLE: Thank you,  
16 John. I see a couple of tent cards and I will  
17 first start with Craig and then Don.

18 MR. PIERSON: Craig Pierson,  
19 Liquids.

20 John and Jeff, when you speak  
21 about IMP 2.0, could you put that in context  
22 with what we just saw? Is that the NPRM for

1 liquids and NPRM for gas?

2 MR. WIESE: Let me, if you will  
3 allow me to do this, Craig, it is an important  
4 question, why I don't I do that as I introduce  
5 the next speaker? Because I think that is  
6 immediately relevant and Ron McClain is coming  
7 up in a second and I will introduce him and  
8 then I think he will deliver nicely as he  
9 tells you the work that we are doing in that  
10 regard. But I think they are integrally  
11 related, so with your permission, I will.

12 CHAIRPERSON HONORABLE: Don?

13 MR. STURSMA: You mentioned that  
14 OMB has approved some new report forms.

15 MR. GALE: Yes.

16 MR. STURSMA: And I have already  
17 had an inquiry on that because your website,  
18 as of yesterday, had forms that were dated  
19 June of 2011, which at least from that date,  
20 don't appear to be the latest version of those  
21 forms.

22 MR. GALE: I would be glad to take

1 a look at that with you. Because what we  
2 actually is we will show some of the older  
3 forms. In other words, we are going to show  
4 forms for reporting for 2011 and we are  
5 showing the forms that you would report for  
6 2012 as well. So I would like to, if you  
7 could, maybe at a break if we could take a  
8 look at it, you could show me specifically  
9 what the issue is because normally what we are  
10 doing is we are going to show the old form and  
11 we are going to show the new form.

12 MR. STURSMA: Well the inquiry I  
13 got was that they are looking at the forms and  
14 the only ones they could find, the latest ones  
15 they could find are the ones dated June 2011  
16 and they wondered if there should be a newer  
17 version with a later date someplace. And that  
18 was as of yesterday.

19 MR. GALE: Yes, okay. We will  
20 take a look. Thank you, Don.

21 MR. WIESE: Yes, we will make sure  
22 that that is there, Don. But I also wanted to

1 mention some people in the audience know on  
2 the gas side, for the people on the gas side,  
3 those who would normally the annual report  
4 normally due in March for a number of reasons  
5 we can go into in Gas Committee, that has been  
6 extended to June. So it will be the same date  
7 as the liquid annual report is due. It will  
8 be June 15th. So just clearing that up now  
9 but we will absolutely make sure the current  
10 forms are on the website, Don.

11 CHAIRPERSON HONORABLE: Any other  
12 questions for John? Thank you.

13 And our next agenda item is a  
14 briefing on safety management by Ron McClain.  
15 But before we hear from Ron, I would ask Jeff  
16 to put this in context. Thank you.

17 MR. WIESE: So Craig, you didn't  
18 have to wait long. I won't give you a  
19 detailed one now and we did go a little bit  
20 into this yesterday. As I said, there are a  
21 lot of moving parts. You saw yesterday from  
22 the briefings and from John's presentation, it

1 makes me tired looking at all these  
2 rulemakings but there is a lot going on.

3 And the picture moving forward is  
4 to try to address some clear deficiencies in  
5 the rules through these rulemakings but to  
6 drop back and take a more holistic view of our  
7 future in the fall when we do as we call it  
8 the IMP 2.0 workshops.

9 So between now and then, we want  
10 to be fixing what we see as some holes through  
11 rulemaking but then to drop back and take a  
12 larger view about -- you know, frankly, I  
13 think we have accomplished a lot through  
14 integrity management. I don't think we should  
15 shrink from that for a moment but there is a  
16 lot yet to do, clearly. And there are some  
17 things that integrity management does not  
18 provide us now that I think we will start to  
19 hear more as we get into safety management  
20 systems. So the future is not crystal clear  
21 and the roadmap is kind of adjust as we go but  
22 our target is to have an informed debate next

1 fall in what we call IMP 2.0 that brings these  
2 rulemakings, Safety Management, SMS, and the  
3 Integrity Management Programs together to kind  
4 of craft what I think is a consensus agenda  
5 about the things we need to take on and in  
6 what order going forward.

7 So with that, I would just say we  
8 will be spending a lot of time on this  
9 subject, Craig. And with that, if you will  
10 allow me, I ask for a moment to introduce Ron  
11 McClain. I have known him for a long time.  
12 Ron must have been left standing or the only  
13 one who didn't attend the meeting when they  
14 asked for someone to chair the API Committee  
15 on safety management systems. So that will  
16 teach him. Ron is a great guy and he is a  
17 good person to have, I think, leading this  
18 Initiative on Safety Management Systems.

19 As you all know and heard, the  
20 NTSB made recommendations to us about SMS, as  
21 they are to all modes. But I will also  
22 quickly add that we have, as you will see as

1 this develops, we have all been engaged in  
2 safety management systems for a decade. But  
3 we have been working and integrity management  
4 has many of the principles that you will see  
5 evolve out of safety management systems. They  
6 derive in part from the whole quality  
7 movement. You know, process control and  
8 quality control. Many operators, by the way,  
9 have far broader programs than Integrity  
10 Management Programs. They will have  
11 Operations Management Programs. They have  
12 Quality Management Programs. There is a  
13 number of things. SMS, I think, is a way of  
14 bringing some of this together.

15 So with no further ado, I will  
16 introduce Ron who will talk to you about the  
17 process going forward on SMS.

18 MR. McCLAIN: Thank you, Jeff, for  
19 the kind words. You know yesterday we touched  
20 on a number of topics that referenced safety  
21 management systems. Actually, it referenced  
22 the people's side of many processes. And

1 having listened to that yesterday I have a  
2 couple of opening remarks before we start into  
3 my presentation. But almost every discussion  
4 recognized the people element of success. You  
5 know we had a presentation on leak detection  
6 systems and they were defined as people and  
7 hardware. I mean, it takes both to make that  
8 work. And fitness for service, you know, a  
9 very people-driven process, engineering  
10 disciplines. And you have to have good  
11 processes to yield a good result but very  
12 people oriented.

13           You know, we had a little bit  
14 discussion about good operators and some that  
15 might be considered less than good or maybe  
16 even bad. And you know there is not really a  
17 good explanation for that because the same  
18 code, the same tools are available and really  
19 the difference is how do people approach the  
20 problem.

21           So I am going to present safety  
22 management systems as kind of the overarching



1 process that drive people toward optimization  
2 or toward excellence. And a lot of companies  
3 already embrace safety management systems.  
4 And I can't provide data at this point, maybe  
5 that will come as our committee works, but I  
6 believe those with good safety management  
7 systems are probably the better performers but  
8 I can't support that with data.

9           You know, this is just a little  
10 bit of history, I mean a pipeline of both  
11 natural gas and hazardous liquid says  
12 considered safety management systems several  
13 times to assure that adequate processes exist  
14 to protect the public, the environment,  
15 employees, and contractors. And all four of  
16 those parties are very important to industry  
17 and to regulators and certainly to the public.

18           You know, at AOPL, API, AOPL we  
19 have a performance excellence team. And I can  
20 tell you five or six years ago when I was on  
21 that committee, we wrestled with the concept  
22 of safety management systems or quality

1 management systems but we just couldn't reach  
2 the consensus to actually create a standard or  
3 a process for industry.

4 I think given the incidents in  
5 2010, 2011, recommendations from NTSB and  
6 interest from PHMSA and others, the time is  
7 right for industry to come together. And I  
8 can tell you I think industry is ready to  
9 embrace or define safety management systems.

10 A lot of companies have highly-  
11 evolved processes to ensure the adequacy of  
12 procedures and implementation and  
13 verification. But the incidents certainly  
14 revealed weaknesses and oversight as  
15 contributing factors.

16 This is actually the NTSB  
17 recommendation. It was made to API and it is  
18 on page 24 of the Marshall, Michigan report.  
19 All of these reports are very, very valuable.  
20 And I always say the cheapest knowledge you  
21 can gain is that you learn from others and the  
22 most expensive is that you go out and learn

1 for yourself.

2 And the reports from NTSB are very  
3 educating. And it really behooves every  
4 company to kind of pick those things apart and  
5 what does this tell me about my system or  
6 could I have a similar risk. And every  
7 company can improve.

8 But just a couple of things to  
9 note here is they directed it to API and  
10 actually the name, they recommended a practice  
11 that API has, 750, Management of Process  
12 Hazards, and it also directed API to follow an  
13 established ANSI standard for development of  
14 standards. And that is important. It  
15 actually causes certain things to happen  
16 during development and I will expand on that  
17 a little bit more.

18 Now this slide is far too busy.  
19 In fact this one and the next one are for  
20 reference. Those people kind of review more  
21 details but this is from the same NTSB report,  
22 pages 116 and 117.

1                   And just the things I would like  
2                   to point out, that is really maybe the first  
3                   sentence or two. And the NTSB has advocated  
4                   implementation of SMS and transportation  
5                   systems by elevating SMS to its most wanted  
6                   list but that has not been the case for  
7                   pipeline systems until recently.

8                   And then the elements down in the  
9                   bold where SMS, they outline elements that  
10                  they would like to see in an SMS and it  
11                  requires an operator to "continuously  
12                  identify, address, monitor threats to the  
13                  safety of operations by the following." I  
14                  think these are important enough I am actually  
15                  going to walk through them, but proactively  
16                  addressing safety issues before they become  
17                  incidents or accidents. I mean prevention is  
18                  really, really good business.

19                  Documenting safety procedures  
20                  requires strict adherence to the procedures by  
21                  safety personnel and safety has both the  
22                  employee health and safety plus pipeline

1 safety elements to it.

2 Treating operator errors as system  
3 deficiencies is not a reason to punish and  
4 intimidate operators. You know, there is  
5 probably a perception that there are  
6 consequences for shutting systems down. You  
7 know I certainly don't see that at senior  
8 management levels that I interact with. In  
9 fact, they know the system must be shut down.  
10 Some of these incidents reveal situations  
11 where maybe an operator is running a pipeline  
12 for 20 years and never seen that happen. So  
13 I have heard Linda say operators in denial.  
14 But no one supports that and that is not a  
15 company policy.

16 But the report recognizes that  
17 employees have to feel empowered to shut down  
18 systems without consequence. And we at Kinder  
19 Morgan try to iterate that over, and over, and  
20 over, because in the dark of the night you are  
21 not there telling them that. They have to  
22 really believe and feel that. So it is one of

1 the elements.

2           Requiring senior management,  
3 senior company management to commit to  
4 operational safety. You know, in the last two  
5 years the performance excellence team that I  
6 lead, it reports to API-AOPL, we interviewed  
7 a number of stakeholders from PHMSA both  
8 within the national headquarters and regional  
9 offices NTSB, Pipeline Safety Trust, fire  
10 marshals. I mean, as many stakeholders that  
11 we could find. And one of the perceptions and  
12 probably in some cases reality, there was a  
13 sense that senior management didn't know what  
14 was happening. And I would like to think that  
15 that is not true with the better and best  
16 performers but we have certainly listened to  
17 that comment. And a good safety management  
18 system will have processes that assure people  
19 know their level of compliance and know their  
20 level of -- what their integrity risks are now  
21 they are mitigating this. So, there is an  
22 element of communication in the system that we

1 would develop.

2           Identifying personnel responsible  
3 for safety initiatives and oversight. You  
4 need to have clear accountabilities  
5 implementing a non-punitive method for  
6 employees to report safety hazards. I mean,  
7 within the system you ought to have anonymous  
8 ways for people to do it. There ought to be  
9 overt ways for employees to report and no  
10 retaliation if they do that. And I believe  
11 from my experience managers appreciate it.  
12 Now sometimes people misuse the system but for  
13 people who are reporting true safety risk or  
14 anything, they really appreciate it. And we  
15 do, I believe, expect people to shut things  
16 down if they are not sure about its safety,  
17 even if it is a capital project.

18           Continuously identifying and  
19 addressing risk in all safety critical aspects  
20 of operations. You know, I think the  
21 integrity management rule intended to do that.  
22 As Jeff talks, I mean I think this can take it

1 to the next step of engagement of senior  
2 management.

3 And then providing safety  
4 assurance by regularly evaluating or auditing  
5 operations to identify and address risks. I  
6 will touch on these again when I get to the  
7 scope of the team that we put together to  
8 create this practice.

9 Just one bullet on this from the  
10 NTSB again. This is where they expanded  
11 before they made their formal recommendation.  
12 But it says the evidence from this accident  
13 and the San Bruno accident indicates that  
14 company oversight of pipeline control center  
15 management and operator performance was  
16 deficient. And you know, sometimes during --  
17 and it is in fact, I think always during  
18 incidents you either see companies at their  
19 worst or you see the worst companies. But  
20 people within the industry are really striving  
21 for continuous improvement. And I think the  
22 time is right for companies and industry to



1 embrace safety management systems.

2 Now to API, who was targeted by  
3 the recommendation. You know there is really  
4 four kinds of standards that API can create,  
5 specifications, recommended practices,  
6 standards and codes. We believe this will be  
7 a recommended practice, although I don't know  
8 that we have settled on that. I mean, that is  
9 what was given as a reference with RP 750.  
10 Many recommended practices become referenced,  
11 so it does carry a lot of force for industry  
12 to follow.

13 And API follows an established  
14 standards development process that includes  
15 the ANSI standard for standard development and  
16 they have been doing this since 1919 with the  
17 first standard published in 1924. And the  
18 reason I want to focus on the ANSI process is  
19 because it forces certain process of draft  
20 publication inclusiveness to stakeholders and  
21 reaching out to the public for comment. So  
22 that will all be a part of the development of

1 this or the team what we develop.

2 And for API, their process is  
3 accredited by ANSI. And not only that, they  
4 are reviewed every five years by ANSI's  
5 organizational audit. So they stay current  
6 with their ability under ANSI. And that was  
7 an element of the NTSB recommendation.

8 Now this is a team that we put  
9 together to create this practice. And I will  
10 be leading the team. We have a content editor  
11 consultant engineer who will also help  
12 develop, Mark Hereth. I am not going to read  
13 each name here but direct participants we  
14 have, we have five from liquid pipelines,  
15 three from natural gas pipelines. I think we  
16 have actually three or four trade  
17 organizations now. We have regulators, the  
18 NTSB. We have what I call the public two  
19 subject matter experts in John Bresland and  
20 Stacey Gerard and one contract engineer. And  
21 some have alternates to assure that they are  
22 able to participate. It is very difficult to

1 schedule all of the people that are listed  
2 here because they are all quite busy.

3 Here is the scope. Again, it is  
4 pretty small but it tries to follow the  
5 recommendation that the NTSB gave. But what  
6 we intend to do is develop high-level  
7 guidance, specifically a recommended practice  
8 and I think we have a number 1173 allocated to  
9 it to help operators build management systems  
10 that assure these things.

11 Definition of leading indicators  
12 regarding safety performance. Senior  
13 management roles in oversight. And here is  
14 the question that kind of drives that. Does  
15 senior management have processes to know their  
16 level of compliance and their integrity? It  
17 is just not acceptable to come in after an  
18 incident and say well, if I had known, I would  
19 have done something different. And I think  
20 industry embraces that concept completely.

21 Appropriate employee involvement.  
22 Are all employees empowered to shut down the

1 pipeline if they have concerns and without  
2 repercussion?

3 Management of change required by  
4 process safety management, an OSHA 1910 rule.  
5 We believe that is good. In fact many  
6 companies have already embraced that rule for  
7 all changes, whether they are in a process  
8 safety management facility or not.

9 Compliance, both operational and  
10 during construction, assurance of pipeline  
11 integrity, definition of risk and senior  
12 management involvement in those decisions.

13 Establishment and adherence to  
14 operating practices. I mean within companies,  
15 practices aren't suggestions, O&M procedures  
16 are published, PHMSA audits them for their  
17 compliance and also for their implementation.  
18 It should be a clear path for how that system  
19 works and how you do maintenance.

20 Audits and assessments of programs  
21 and practices. I think this is a really key  
22 element. You know, you have to have and

1 certainly PHMSA and others audit the pipeline  
2 industries but companies have to have their  
3 own audit and assessment programs, too. And  
4 I call it to make sure that what you think is  
5 happening is really happening out there.  
6 Because I mean you can speak and have written  
7 procedures but it is through audits and  
8 assessments that you validate that what I  
9 think is happening is really happening.

10 Then you have to have continuous  
11 improvement which, as you take those results  
12 of what is found in the assessments, you know,  
13 how do you manage pipeline safety and system  
14 integrity with continuous improvement.

15 So systems should be limited to  
16 management design, construction operations,  
17 maintenance, integrity management and training  
18 on line pipe and pipeline facilities.

19 A key element, again, is to inform  
20 senior management on risk and the efficacy of  
21 mitigation and ongoing assessments.

22 And my last bullet on this page is

1 really important to the system. And when I  
2 say the system in this context, I mean the  
3 system that we are about to create, the RP.  
4 It has to be flexible to allow companies who  
5 have highly evolved management systems to  
6 build upon their existing platforms, yet  
7 structured enough to let some companies start  
8 from scratch. And that is really important.  
9 Companies that have worked for years with  
10 success in a management system, I would think  
11 they would take a recommended practice and  
12 compare their system to the practice and look  
13 for gaps and make adjustments. Companies that  
14 really have procedures but no overarching  
15 process, they are probably going to just  
16 bullet by bullet begin to try to figure out  
17 how to implement.

18           And then here our standard is  
19 already in publication. This team isn't  
20 starting from scratch. There is RP 75, which  
21 is a management system for offshore operations  
22 and facilities. There is RP 750 referenced by

1 NTSB, management of process hazards. A  
2 standard that some preliminary looks have  
3 yielded very positive comments on as an ANSI  
4 C10 standard on occupational health and safety  
5 management. I mean it really is practical and  
6 doable at a level to let people use their  
7 highly evolved systems.

8 Then there is a Canadian standard  
9 that governs all pipeline safety in Canada and  
10 Section 3.1 specifically addresses management  
11 systems. And it is really pretty well  
12 written. So given the standards that are out  
13 there, we are still collecting some of them,  
14 Peter Lidiak of API has provided complementary  
15 copies of 75 and 750 to the working team so  
16 they have the full reference to work with on  
17 the team but it is certainly not starting from  
18 scratch.

19 Then there are some implemented  
20 corporate systems for consideration. You  
21 know, how do pipeline companies actually  
22 approach these risks? And Marathon, Exxon

1 Mobil, Kinder Morgan, Arco, Sinclair all are  
2 operating companies with a system to at least  
3 see how a pipeline company approached it.  
4 Then INGAA has published a very good system,  
5 safety management system White Paper and we  
6 look forward from the oil side to work with  
7 the gas partners and the public and regulators  
8 to come away with a really good process.

9 This slide from one of our  
10 previous meetings, it kind of shows how the  
11 existing standards show similarities. And the  
12 ANSI C10 standard has five elements, RP 75  
13 that I have listed has -- I don't know if I  
14 can read that, 15, 13. But what is key about  
15 it is you look at the color coding, the green  
16 on the left column corresponds to the green  
17 elements under RP 75. Management leadership  
18 and employee participation, I mean, those are  
19 so important and I really have kind of gone on  
20 and on about how important it is to have that  
21 executive leadership working and understanding  
22 what is happening throughout the trenches.



1                   Planning is in blue and there is  
2                   safety, environmental information, hazard  
3                   analyses. There is implementation operations.  
4                   Now that broad element goes over several  
5                   elements over on RP 75, management changes  
6                   again, one of the things that is referenced.  
7                   Evaluation and corrective action,  
8                   investigation of incidents. I mean you  
9                   certainly can learn from thorough either root  
10                  cause or other systems to evaluate what has  
11                  happened in an incident. And then management  
12                  review.

13                  And in all of these systems, you  
14                  still have to have that internal process that  
15                  supplements what regulators do in determining  
16                  what is really happening. And then how do you  
17                  respond and then see continuous improvement?

18                  And I have a timeline and I want  
19                  to say this is not set, nor is our scope  
20                  exactly set. The team has not yet met. They  
21                  have been assembled. We have volunteers from  
22                  all the stakeholders. But some key elements,

1 there was the NTSB report in July 10th of  
2 2012. API held a workshop on management  
3 systems in Houston, October 4th. We have an  
4 initial team meeting of the SMS members. I  
5 sent out a preview to them last night but that  
6 is next week at the API offices and I hope  
7 every member can participate. At that point,  
8 we will tackle scope and timeline and try to  
9 gain the different stakeholders' view on the  
10 process. And I am saying a time to conclude  
11 is 18 months to allow for development drafts  
12 for comments, final version, and API  
13 balloting.

14 It probably can't be quicker than  
15 that. I know Jeff is anxious to get a  
16 product. And you know there are two tensions.  
17 One person can go write this in a closet and  
18 have a product next week. The other extreme  
19 is in order to have many, many rounds of  
20 public participation and trying to analyze  
21 ever possible comment. And I think 18 months  
22 certainly allows for really good publication

1 of drafts and recognition of comments and  
2 continuous improvement in the process itself.  
3 But we will actually try to wrestle with what  
4 the timeline might be, recognizing there is a  
5 sense of urgency for this document to be  
6 created and published. And I think that  
7 concludes my presentation. I guess I would  
8 close with I really believe the time is right  
9 both for regulators, investigators, for the  
10 public, and for industry and I think there are  
11 huge benefits to come from this. And if we do  
12 our jobs right, I think it will directly  
13 contribute to additional pipeline safety.

14 So with that, I will take any  
15 questions.

16 CHAIRPERSON HONORABLE: Thank you,  
17 Ron. And I want to go first to Craig to make  
18 sure that we have answered your questions.  
19 And if not, I would like to give you the first  
20 opportunity. Thank you.

21 Any other questions? Yes.

22 MR. KUPREWICZ: Rick Kuprewicz,

1 representative of the public. I guess a  
2 couple of observations that you want to be  
3 careful of. There is a wide level of  
4 experience in the committees here so I am  
5 going to say that it is easy to assume that  
6 this, given the force and the amount of effort  
7 that this can be overly complexed, overly  
8 complicated. I think the core issues you will  
9 find and from a safety management system  
10 perspective, if you start to find yourself  
11 getting too complex, you are probably on the  
12 wrong path. And again, this is not new to a  
13 lot of these companies who are capturing these  
14 concepts. I would advise you to step back.  
15 As a representative of the public, I would  
16 also advise you that given the importance of  
17 this issue that it is probably more important  
18 to be guided by doing it right, rather than  
19 doing it rushed. That is an excuse for  
20 delaying. I have been in groups, meetings  
21 with public people where we have talked about  
22 these concepts after events and they grasp the

1 concept of its importance in doing it right,  
2 rather than rushing it and having to do it  
3 over again and learn from another series of  
4 failures.

5 So that is my comment on this and  
6 I wish you all the best of luck. I think it  
7 is a good effort. I just would keep those  
8 guidance in mind.

9 We all get distracted. We all  
10 have a commonality in this room. We are all  
11 tied to this technology that is coming at us  
12 24/7 and it is just pulling people away from  
13 things that you would think would be core.  
14 But I think if you find these issues getting  
15 to as a council member or committee members.  
16 We talked about fitness for service yesterday,  
17 a fairly simple concept. It is driven by  
18 documentation. And so that is a fairly simple  
19 core issue. If you don't have the  
20 documentation, you shouldn't be using fitness  
21 for service as an example.

22 So I think as the committees get

1 to wrestle with this, you don't have to be a  
2 technical pipeline guru expert with four  
3 years' experience to grasp the basic concepts  
4 that you have talked about today in some of  
5 those issues. So I will just leave it at  
6 that. This is a tough nut but you can do it  
7 fairly well.

8 MR. McCLAIN: And I appreciate the  
9 comments. I think you are exactly right that  
10 it has to be a high level document. We don't  
11 intend to tell everyone every step to take.  
12 And in fact, I think if we can identify the  
13 right elements and then describe kind of what  
14 that element means, at the end a company will  
15 have to figure out now what does that mean for  
16 me and do I have a process that meets that.  
17 And if not, create one. If they have one,  
18 maybe they need to adjust it. Otherwise, they  
19 might just confirm we have that one down.  
20 What is the next item on the list.

21 And again with highly evolved  
22 systems, I think everyone can always improve

1 but they may not make a lot of change. But  
2 for some of the findings in the report where  
3 that was a major indicator, I mean really  
4 maybe tremendous change within a company but  
5 still directed by the standard at a high  
6 level.

7 CHAIRPERSON HONORABLE: Thank you,  
8 Rick. Next question?

9 MR. ZAMARIN: Chad Zamarin with  
10 the Gas Committee.

11 Andy Drake couldn't be with us  
12 here today but asked that I mention a few  
13 words. He has been leading for the last two  
14 years for the interstate gas pipelines  
15 companies an effort to focus on management  
16 systems working very closely with the NTSB,  
17 working with partners in obviously actively  
18 interested stakeholders at PHMSA. And his  
19 team, in the interstate gas side, Ron  
20 mentioned it has produced a White Paper. They  
21 have produced a lot of good work to hopefully  
22 help serve as a primer, also some of the

1        comments, to make it clear that I don't think  
2        operators have to wait for some magical answer  
3        to come from a standard. The standard is  
4        going to be critically important to help us  
5        all work from a common basis. But it is not  
6        a revolution in science that we are looking  
7        for here. It is about a culture of commitment  
8        to safety and excellence as an operator.

9                Andy asked that I provide a copy  
10        of the INGAA White Paper that again might help  
11        at least show the perspective of the  
12        interstate gas companies as they have reached  
13        out to the NTSB, Andy and his team have talked  
14        to the nuclear industry, they have talked to  
15        the refining industry, to other parts of  
16        industry that have good examples of safety  
17        management systems. And hopefully, I think  
18        Ron you mentioned the team already has it, we  
19        have got gas companies involved in the effort,  
20        but may at least provide a glimpse of what I  
21        think the operators are already committed to  
22        seeing implemented further reinforced by the



1 standard that is being developed.

2 CHAIRPERSON HONORABLE: Thank you.

3 And tell Andy we missed him here at the  
4 meeting. And I will look forward to getting  
5 the report. I am sure the other members of  
6 the committee would as well.

7 MR. ZAMARIN: Yes, thanks. I  
8 actually have copies that Andy sent with me.  
9 So maybe at break or at some other time I will  
10 hand those to Cheryl to be distributed.  
11 Thanks.

12 CHAIRPERSON HONORABLE: Thank you.  
13 Sue?

14 MS. FLECK: Thank you. Similar to  
15 INGAA, AGA working with the distribution  
16 companies has also put forward a significant  
17 commitment to safety. It has been evolving  
18 over years. I think we have passed it out at  
19 last year's meeting. I have copies today and  
20 Christina will get them to Cheryl also to pass  
21 around. And I just wanted to just make a few  
22 comments also very similar to what Chad had to

1 say.

2                   These are voluntary efforts. They  
3 have been ongoing for some time. We are  
4 working with some other agencies and some  
5 other areas to understand safety management  
6 systems INPO for one, North American  
7 Transmission Forum. AGA has two members on  
8 the API committee working on the safety  
9 management system standards. We are also  
10 looking at PAS 55, ISO 991, some quality  
11 management systems in the environmental side  
12 and on other areas.

13                   And I don't want to talk forever.  
14 I could but I am going to try to keep this  
15 brief. We are looking at some short-term  
16 actions that we are taking as an industry and  
17 then we also have a long-term plan around  
18 safety. Some of the things that we are trying  
19 to jump on right away on safety is peer-to-  
20 peer reviews. We have some companies with  
21 some member companies that have done that over  
22 the last few years in the northwest. We are

1 expanding that to I think we have about a  
2 dozen companies have volunteered to do that.  
3 We are kicking that off this month. We are  
4 going to participate in, as I said, the safety  
5 management system standard development. We  
6 have a pretty significant information sharing  
7 effort going forward. It is a little tricky.  
8 Somebody else mentioned you want to find a way  
9 to get people to talk about their problems but  
10 feel a sense of safety about talking about  
11 them having no repercussions. So that is a  
12 little bit difficult.

13 We are kicking off cyber security  
14 task force. We keep looking at these other  
15 agencies and what they can do and we will keep  
16 evolving that commitment to safety over time.  
17 So I will pass that information out or make it  
18 available at break time. Thank you.

19 CHAIRPERSON HONORABLE: Thank you,  
20 Sue. Any other questions or comments?

21 Thank you. And thank you, Ron.  
22 Thank you for your effort.

1 MR. McCLAIN: Well and thank you  
2 to the committee. I think it will be  
3 difficult to ask at times but I think the  
4 benefit is really large. And as I have  
5 indicated, a lot of companies have already  
6 embraced these practices. But that trend that  
7 Jeff presented of incidents, hopefully this  
8 fills in some of the gaps so that a company  
9 just double-checks themselves or creates a  
10 process if it is missing to just continuously  
11 improve safety. That's all.

12 CHAIRPERSON HONORABLE:  
13 Absolutely. And I think the remarks by Chad  
14 and Sue indicate the industry's efforts in  
15 this regard. And as Chad mentioned, working  
16 toward a culture of safety and a spirit of  
17 excellence. So we look forward to it.

18 And I am going to yield to Jeff.  
19 I am not certain if we are ready for a break  
20 at this point.

21 MR. WIESE: You guys don't want a  
22 break, do you? You do? Yes.

1 Well actually we are going to take  
2 a break. But I hope you will allow me to  
3 close out that last conversation by just  
4 underscoring the importance that we place on  
5 that, the development of that. And I don't  
6 know if it matters but both Linda and I are  
7 committed to being on the committee because we  
8 believe it is that important that we have to  
9 spend time on that and so we will. And I also  
10 help you will understand, after having heard  
11 from Ron why I am thankful that he was left  
12 standing when the list of names went out for  
13 volunteers. So thank you, Ron, very much.

14 Okay so with that, why don't we  
15 break? We can be a little flexible. We don't  
16 have to break at noon. You know, we can break  
17 at 12:15, 12:30.

18 But we will break now for like 15  
19 minutes. Come back at a little bit after  
20 11:00. You will hear it. We will convene it  
21 and then we will get into the fun. Okay,  
22 thank you so much.

1                   (Whereupon, the foregoing  
2                   proceeding went off the record at  
3                   10:47 a.m. and went back on the  
4                   record at 11:12 a.m.)

5                   CHAIRPERSON HONORABLE: Most of us  
6                   are here. I will go ahead and state that we  
7                   are back on the record in this joint committee  
8                   meeting. And the next agenda item is a  
9                   briefing on the excavation damage rule. So we  
10                  will hear from Sam Hall.

11                  MR. HALL: Good morning. It's  
12                  still morning, I think. My name is Sam Hall  
13                  and the issue we will be talking about today  
14                  is the Notice of Proposed Rulemaking on  
15                  pipeline damage prevention programs. The  
16                  docket ID is PHMSA 2009-0192.

17                  I think there are some new members  
18                  on the committees, so I want to provide some  
19                  background and bring you up to speed. Feel  
20                  free to ask questions as I go through this if  
21                  something isn't clear.

22                  The Pipeline Inspection,

1 Protection, Enforcement and Safety Act, PIPES  
2 Act of 2006 placed a pretty heavy focus on  
3 excavation damage prevention and it gave PHMSA  
4 a new authority to enforce damage prevention  
5 regulations against excavators who damage  
6 pipelines. The enforcement authority is  
7 limited. It was limited by the PIPES Act and  
8 it says in particular that PHMSA can enforce  
9 against excavators who damage pipelines in  
10 states -- only in states that are deemed to  
11 have inadequate damage prevention law  
12 enforcement programs.

13 The PIPES Act went to say that in  
14 order for us to use this new enforcement  
15 authority we had to promulgate a rule that  
16 described our process for deeming state  
17 enforcement programs inadequate. So that is  
18 the topic of this rulemaking.

19 We decided to take a go slow  
20 approach and we used the option of an Advanced  
21 Notice of Proposed Rulemaking. We published  
22 that ANPRM in October of 2009, so it has been

1 some time, and we got excellent feedback on  
2 that ANPRM. And that feedback really informed  
3 the development of the proposed rule.

4 In April of this year, we  
5 published the Notice of Proposed Rulemaking  
6 and it proposed four basic things that are  
7 listed here. The first was the criteria that  
8 we would use, that PHMSA would use to evaluate  
9 state damage prevention law enforcement  
10 programs. Again, in order to use our  
11 enforcement authority with excavators who  
12 damage pipelines, we had to declare a state's  
13 enforcement program inadequate. So we  
14 proposed the criteria that we would use to  
15 assess the adequacy of those enforcement  
16 programs.

17 We also proposed the  
18 administrative process for states to contest  
19 notices of inadequacy from PHMSA. We then  
20 proposed the federal standards that we would  
21 enforce in states with inadequate enforcement  
22 programs. We don't enforce state law. We had



1 to decide what we would enforce in states with  
2 inadequate enforcement.

3 And then finally we proposed the  
4 adjudication process for violators of the  
5 regulation. What is the due process for  
6 excavators who were cited by PHMSA?

7 Some thoughts on the intent of the  
8 NPRM. Some background that is really relevant  
9 here is that every state has an excavation  
10 damage prevention law. Every state in the  
11 union has a law on the books but no two laws  
12 are identical. Some states do not adequately  
13 enforce their damage prevention laws and that  
14 is really the purpose of this rulemaking.

15 We know that effective enforcement  
16 has reduced excavation damage rates in states  
17 with effective enforcement programs.

18 So this rule is really intended to  
19 accomplish the following. First we obviously  
20 want to reduce excavation damage to pipelines.  
21 Excavation damage is a leading cause of  
22 serious pipeline incidents that result in

1 injury, fatality, and property damage. The  
2 crux of this rule is we want to encourage  
3 states to enforce their damage prevention  
4 laws. That is the whole idea here. As we  
5 developed this rulemaking, as we reviewed the  
6 comments to the ANPRM, we kept our eye on that  
7 goal. We want to encourage states to enforce  
8 their own damage prevention laws.

9 Finally, we want to provide a  
10 backstop federal enforcement authority in  
11 states with inadequate programs. So states  
12 that do not have adequate enforcement, we want  
13 to serve as a backstop federal authority in  
14 those states.

15 This map on the screen depicts the  
16 enforcement authority in each state. This  
17 does not speak to whether the state has an  
18 adequate enforcement program or not. It just  
19 lays out who is the enforcement authority in  
20 each state. Those states in red, there are  
21 nine of them, have no enforcement on the  
22 books. They do have a damage prevention law

1 but they have no enforcement provision in the  
2 state law.

3 The states in the dark green have  
4 enforcement authority with PHMSA's state  
5 partners, the public utility commission or the  
6 equivalent. The states, I believe in light,  
7 the turquoise color, have enforcement with the  
8 Attorney General. And then there is a  
9 smattering of other enforcement authorities  
10 across the U.S.

11 I think this really highlights a  
12 key issue that we are facing with this rule  
13 and that is enforcement, where it is  
14 conducted, is conducted differently and we  
15 need to be aware of that as we proceed with  
16 the rule and understand that we will be  
17 working with some stakeholders that we, as  
18 PHMSA, often do not traditionally work with.

19 Okay, I mentioned these topics  
20 covered in the rule. The criteria we will use  
21 to evaluate enforcement programs, the  
22 administrative process for states to contest,

1 the federal standards that we will enforce,  
2 and the adjudication process for violators.

3 We received comments from 39  
4 separate entities to the NPRM. Again, that  
5 was published in April of this year. The  
6 commenters can be categorized as follows. The  
7 Pipeline Trades commented AGA, APGA, AOPL,  
8 API, INGAA, and some state line associations.  
9 Also some individual pipeline operators  
10 commented. Excavation and Construction Trade  
11 Associations commented, individual citizens,  
12 pipeline safety consultants, state one-call  
13 organizations and one-call service providers,  
14 nonprofit damage prevention association,  
15 specifically the common ground alliance,  
16 NAPSAR, utility locating trade associations and  
17 individual utility locating companies, the  
18 American Farm Bureau, the Association of  
19 American Railroads, and the Gas Processors  
20 Association were all commenters to the  
21 proposed rule. And the comments were  
22 generally supportive of the proposal.

1                   There were some prominent themes  
2                   in the comments. The themes can be  
3                   categorized as I have done here in this slide.  
4                   The first is the scope and applicability of  
5                   the proposed criteria for evaluating state  
6                   enforcement programs. The second is the scope  
7                   and applicability of the proposed federal  
8                   standard that PHMSA would enforce in states  
9                   that have inadequate enforcement programs and  
10                  exemptions was a major topic of comment.

11                  And finally the incentives for  
12                  states to implement adequate enforcement  
13                  programs as proposed in the NPRM.

14                  As we move forward in this  
15                  presentation, we will proceed with a vote on  
16                  key topics as we address each of those topics.  
17                  That is how we structured the presentation.  
18                  If that ends up not being the right approach,  
19                  we can certainly adjust as necessary. We will  
20                  talk about each topic, each key topic, and  
21                  certainly give the members an opportunity to  
22                  provide their comments.

1           The public will also be given an  
2           opportunity to comment after the completion of  
3           the brief on each topic and then both  
4           committees will vote separately.

5           We received considerable comments  
6           of an editorial nature, including definitions  
7           to terms and editorial changes to the proposed  
8           language. A lot of these comments, as I was  
9           developing this presentation and considering  
10          how to discuss the primary issues associated  
11          with this rule, I saw them as relatively minor  
12          in scope and controversy. However, I  
13          understand that there are some things that may  
14          be more important than perhaps what I thought.  
15          So I think that some of those may be brought  
16          up today in motions for consideration.

17          A lot of the things that were  
18          minor were definitions of terms, although that  
19          may be considered more important to some. And  
20          then editorial changes to the proposed  
21          language -- strike this word, add another  
22          word, those kinds of things. I did not

1 address a lot of those in this presentation,  
2 but certainly they are up for conversation  
3 here at this meeting.

4 Okay, so the first topic that  
5 really received a lot of comment was the  
6 proposed criteria for evaluating state  
7 enforcement programs. What I have done here  
8 is, given the actual language that was  
9 proposed in the NPRM, and I will walk through  
10 this language so that everyone is familiar  
11 with the wording as it was proposed. I will  
12 provide a summary of the major comments that  
13 we received and then we can begin with  
14 discussion.

15 So in the NPRM Section 198.55, as  
16 proposed, says: "What criteria will PHMSA use  
17 in evaluating the effectiveness of state  
18 damage prevention law enforcement programs?"  
19 And it says that we will use seven criteria.  
20 The first is does the state have the authority  
21 to enforce its state excavation damage  
22 prevention law through civil penalties. Does

1 the state law include enforcement with civil  
2 penalties?

3 The second: Has the state  
4 designated an agency or other body as the  
5 authority responsible for enforcement of the  
6 state excavation damage prevention law? So,  
7 do you have enforcement on the books and do  
8 you have a designated enforcement agent?

9 The third is is the state  
10 assessing civil penalties for violations at  
11 levels sufficient to ensure compliance with  
12 the law and is the state making publicly  
13 available information that demonstrates the  
14 effectiveness of the state's enforcement  
15 program.

16 Fourth is does the enforcement  
17 authority, assuming one exists, have a  
18 reliable mechanism such as mandatory reporting  
19 or complaint-driven reporting, for learning  
20 about excavation damage to underground  
21 facilities.

22 The fifth criterion is does the



1 state employ excavation damage investigation  
2 practices that are adequate to determine the  
3 at-fault party when excavation damage to  
4 underground facilities occurs.

5 The sixth criterion is a multi-  
6 part criterion and it addresses the contents  
7 of the law itself. At a minimum, does the  
8 state's excavation damage prevention law  
9 require the following: a) excavators may not  
10 engage in excavation activity without first  
11 using an available one-call system to  
12 establish the location of underground  
13 facilities in the excavation area; b) that  
14 excavators may not engage in excavation  
15 activity in disregard of the marked location  
16 of a pipeline facility as established by a  
17 pipeline operator; and c) that an excavator  
18 who causes damage to a pipeline facility: i)  
19 must report the damage to the owner or the  
20 operator at the earliest practical moment  
21 following discovery of the damage; and ii) if  
22 the damage results in the escape of any

1 flammable, toxic, or corrosive gas or liquid  
2 that may endanger life or cause serious bodily  
3 harm or damage to property must promptly  
4 report to the authorities by calling 911.

5           The seventh criterion is does the  
6 state limit exemptions for excavators from its  
7 excavation damage prevention law. A state  
8 must provide to PHMSA a written justification  
9 for any exemptions for excavators from state  
10 damage prevention requirements and PHMSA will  
11 make the written justifications available to  
12 the public.

13           The proposal also said that PHMSA  
14 may consider individual enforcement actions  
15 taken by a state in evaluating the  
16 effectiveness of a state's damage prevention  
17 program. And we saw a comment on that as  
18 well.

19           The wording in some of these  
20 criteria, especially six, I have backed up a  
21 slide here, is taken verbatim, essentially  
22 from the PIPES Act and I think that is

1 important to note.

2           So on those criteria, we did  
3 receive significant comments and I have done  
4 my best to summarize those comments here.  
5 These are not verbatim but I think give you a  
6 sense of what some of the major issues were.

7           The National Association of  
8 Pipeline Safety Representatives and the Iowa  
9 Utilities Board said that the section, the  
10 198.55, the criteria, contains two separate  
11 and unrelated provisions; one about assessment  
12 of civil utilities and another about  
13 publicizing information on the enforcement  
14 program. They recommended that the second  
15 part should not be adopted, that is,  
16 publicizing information.

17           Also one of the criteria, six and  
18 seven, they said had nothing to do with  
19 enforcement and that the PIPES Act that  
20 authorized this regulation did not authorize  
21 PHMSA to find state enforcement inadequate due  
22 to unrelated perceived deficiencies in the

1 state law and the two sections were  
2 recommended to be removed.

3 Other comments from the Kansas  
4 City Corporation Commission, they said that it  
5 appears that paragraph B would allow PHMSA to  
6 deem a state program inadequate if PHMSA did  
7 not agree with an enforcement action taken by  
8 the state. They said that PHMSA did not offer  
9 sufficient guidance, that is a procedure on  
10 how we will carry out the concepts found in  
11 the NPRM.

12 DCA, Distribution Contractors  
13 Association and NUCA, the National Utility  
14 Contractor's Association of Ohio said that  
15 criterion six is incomplete and that we should  
16 restate the operator's responsibilities to  
17 mark in a timely and accurate fashion.

18 In general some commenters stated  
19 that the criteria are too vague and leave too  
20 much to interpretation. Some criteria might  
21 be considered pass/fail while others might be  
22 considered more subjective.

1                   Those were the primary issues that  
2                   came up. And as we discussed our approach to  
3                   resolving some of these concerns, one idea  
4                   that we had that we would like your comments  
5                   and recommendations on is to essentially  
6                   develop a policy that would be incorporated  
7                   into the preamble of the final rule that would  
8                   address how the criteria would be applied.  
9                   The policy would discuss issues of which  
10                  criteria have more relative importance, the  
11                  intent of the criteria, and would clarify some  
12                  of the issues of primary concern in these  
13                  comments.

14                  At this point, I would be  
15                  interested in, I think it is maybe the time to  
16                  turn this over and open it for discussion on  
17                  the criteria.

18                  CHAIRPERSON HONORABLE: Of course.  
19                  Thank you, Sam. At this time we will  
20                  entertain questions/comments with your tent  
21                  cards raised please. And we will start with  
22                  Massoud.

1 MR. TAHAMTANI: Sam, this is a  
2 general question. When we look at 196, the  
3 one called damage prevention requirements and  
4 the purpose of that part or section, it talks  
5 about to protect underground pipelines from  
6 excavation-related damage.

7 When we go to the section about  
8 the adequacy of a state program, we have  
9 excavation damage to underground facilities.  
10 So can you clarify why the difference?

11 MR. HALL: The scope of the rule  
12 is limited to pipeline facilities that are  
13 under our jurisdiction or that we regulate.  
14 In evaluating the enforcement of state damage  
15 prevention laws as we proposed it, those laws  
16 are broader in scope because they address  
17 other underground facilities to include  
18 pipelines.

19 So as we were developing the  
20 proposed language on the criteria, we were  
21 looking at what do those state laws say about  
22 underground facilities in general and intended

1 to evaluate the enforcement of the state laws,  
2 which is why we used underground facilities as  
3 opposed to underground pipelines.

4 CHAIRPERSON HONORABLE: Don, is  
5 that your tent card?

6 MR. STURSMA: Don Stursma, Iowa.  
7 And yes, I have an opinion on the matter.

8 I am going to read from the law  
9 that set this whole thing off. And it says  
10 the Secretary may not conduct an enforcement  
11 proceeding under subsection D for a violation  
12 within the boundaries of the state that has  
13 the authority to impose penalties prescribed  
14 in Section 60134(b)(7), which is number seven  
15 of the nine elements listed, against persons  
16 who violate the state standard prevention  
17 laws, unless the Secretary determines the  
18 state's enforcement is inadequate. The word  
19 is enforcement. It does not say that the  
20 states -- anything about the state law. This  
21 is -- I see a lot of the comments are one  
22 thinks we have to go further in setting what

1 the criteria for a one-call law ought to be.

2 That is not here.

3 I don't see this law as giving  
4 PHMSA the authority to say that we think your  
5 enforcement is inadequate because we don't  
6 like your law, that it doesn't conform to some  
7 PHMSA or industry vision of what a state law  
8 ought to look like. The question is whether  
9 they are enforcing the state law as it is.

10 Again to reiterate, and I know I  
11 am sounding like a lawyer, which is always  
12 dangerous, and I am hoping I am doing better  
13 than when lawyers try and talk like engineers,  
14 but I do think that this rulemaking goes far  
15 beyond what Congress authorized and even from  
16 following the law when it was being adopted  
17 what Congress even contemplated. But the  
18 issues is whether the state is enforcing its  
19 damage prevention law, not whether the state  
20 is enforcing some vision of what their law  
21 ought to be.

22 CHAIRPERSON HONORABLE: Any other



1 questions, comments from the committee? I see  
2 Craig and I see one down at the far end, Gene.

3 So we will hear from Craig and  
4 then Gene.

5 MR. PIERSON: Craig Pierson,  
6 Liquids Committee.

7 We have got a number of comments  
8 which we summarized in a paper that was passed  
9 out. From a procedural perspective, I am not  
10 sure how you want to go through those but we  
11 will be ready to address those as you deem fit  
12 through this discussion.

13 So I will leave it to you to  
14 orchestrate how you want to have that  
15 discussion but we are prepared to walk down  
16 through these as it makes sense for the group.

17 CHAIRPERSON HONORABLE: We will  
18 hear from Jeff.

19 MR. WIESE: Gene, if you will give  
20 me one second, maybe I will just respond.

21 Well the way we are doing this,  
22 Sam has structured it so we are going to have

1 a number of votes, right, just for clarity  
2 sake. I have done this before where we had  
3 too many moving parts and we tried to vote on  
4 the whole thing and people got really  
5 confused.

6 So although Carl may disagree with  
7 that with the vehemence with which he put his  
8 nametag down, I think the proper thing to do  
9 is when it gets to the point of vote, my  
10 apologies, you are going to have pull up those  
11 sections of your motion that relate to that  
12 vote and put those forward at that time.

13 So you can make any motion you  
14 want to relevant to the immediate vote when it  
15 is Liquid Committee. And a reminder to  
16 everybody, we will vote twice. We have to.  
17 You know Gas Committee will vote, Liquid  
18 Committee will vote. Does that make sense,  
19 Craig?

20 MR. PIERSON: Yes. Just you will  
21 give us a signal when you feel it is  
22 appropriate to walk down through these?

1 MR. WIESE: Yes, I will mention  
2 after we have closed the vote and succeeded in  
3 our favor and then --

4 (Laughter.)

5 CHAIRPERSON HONORABLE: In other  
6 words, Craig will try to be considerate of the  
7 many -- I shouldn't say many -- the several  
8 motions you would like to raise. And please  
9 feel free to pipe up if you think that we are  
10 getting ahead of you here. We don't want to  
11 overlook the points that you want to raise.

12 We will hear from Gene and then  
13 Carl.

14 DR. FEIGEL: One of the  
15 effectiveness criteria that you are proposing  
16 to apply is is the state making publicly  
17 available information demonstrates the  
18 effectiveness of the state's enforcement  
19 program, it would seem to me to be one of the  
20 -- maybe not the only, but one of the measures  
21 of that would be numbers of incidents.

22 Several years ago we were

1 developing a third-party damage insurance  
2 product and I tried to research that, even in  
3 the states that ostensibly have fairly  
4 vigorous enforcement programs and that  
5 information largely is not available in any  
6 meaningful way. I am curious how you would  
7 propose to actually apply that.

8 MR. HALL: I think the idea behind  
9 that proposal, the publicly available  
10 information was to transparency in an  
11 enforcement world is an important aspect of  
12 enforcement. As it was proposed, our thinking  
13 was that certainly some states have some  
14 concerns around what can be made publicly  
15 available and how it can be made publicly  
16 available. Active cases often certainly can't  
17 be made publicly available those kinds of  
18 issues. But we are interested in seeing  
19 publicly available information that speaks to  
20 the effectiveness of the enforcement program,  
21 perhaps trend information, summary information  
22 on enforcement cases.

1 DR. FEIGEL: Well I would submit  
2 to you, at least in my experience that that is  
3 largely unavailable in any useful way for most  
4 states, even though, at least in my judgment,  
5 that have fairly aggressive laws and  
6 enforcement activity.

7 I know this is a fairly narrow  
8 issue but I am really -- I really question how  
9 you would really apply anything meaningful for  
10 that criteria that you developed there.

11 CHAIRPERSON HONORABLE: Thank you,  
12 Gene. Carl?

13 MR. WEIMER: I guess getting to  
14 Don's point, I would like to hear from PHMSA  
15 about, you know, I think when Congress passed  
16 their bill, they did fairly narrowly constrain  
17 this about the enforcement of this program in  
18 states. But I guess it would be my belief  
19 that PHMSA has existing authority to go beyond  
20 just what Congress said in this rulemaking.  
21 So I guess I would like to hear from someone  
22 at PHMSA about whether we need to constrained

1 just about enforcement or whether we can go  
2 beyond that.

3 MR. WIESE: I could have some fun  
4 and put my council on the spot but I think  
5 Carl has already made the point and I would  
6 say the more delicate way of putting it to say  
7 we always listen to what people, particularly  
8 the committee advises us on what we should do.  
9 That being said, that is a specific  
10 legislative requirement. It does not impede  
11 us from going beyond that.

12 If you will allow just two  
13 seconds, I will add that the evolution of this  
14 rule has taken forever on purpose. The point  
15 of PHMSA's program has been to keep the states  
16 in the primary role. There were repeated  
17 pushes for national legislation, national  
18 coverage of this issue and I think we agreed,  
19 particularly with the excavators who we have  
20 worked closely with on this that the states  
21 should have primacy on this issue but at the  
22 same time, trying to actually make some

1 progress on it.

2           So this is a push-pull sort of  
3 game when we are keeping the states in the  
4 front. That part on transparency, Gene, and  
5 some others are part of the push. You know,  
6 if the state is doing it, great. If they have  
7 the authority and they are using the  
8 authority, and they can demonstrate that they  
9 are using the authority, that is what matters.

10           We are not trying to get into --  
11 to Don's point, we are not trying to get into  
12 decimal place accuracy here. It is really, I  
13 mean does the state have the authority. Can  
14 they show they are using it? If they are, we  
15 are out.

16           Your other point about more  
17 broadly, or maybe that was Massoud, more  
18 broadly the facilities, I think we intend,  
19 obviously, we wouldn't enforce anything on an  
20 electrical or water or sewer. It would be  
21 strictly related to pipelines.

22           So I would say, the last thing I

1 will say on this by the way, and I hope that  
2 some of my state partners would agree on this  
3 one, enforcement is a necessary evil in the  
4 damage prevention world. I think we have  
5 worked on every other element. We worked  
6 together -- we have been doing this for like  
7 eight or ten years. We define the nine  
8 effective elements of the damage prevention  
9 program together. We agreed even back then  
10 that enforcement was part of that. We have  
11 promoted every other aspect of this before  
12 getting to enforcement. But I think the  
13 lessons and I think there are some here who  
14 could speak to this is that enforcement is  
15 eventually a necessary evil to make it work.  
16 No one sites that as our goal. Clearly not  
17 our goal. But eventually have got to have the  
18 authority and you have got to have the will to  
19 use it. I think that is all I would say on  
20 it.

21 CHAIRPERSON HONORABLE: Thank you.

22 I have on my list Craig, Don, Massoud, and



1 Jeff. So we will proceed in that order.

2 Craig.

3 MR. PIERSON: Craig Pierson,  
4 Liquids. At the risk of being within the  
5 wingspan of my friend next to me, there are  
6 some one-call requirements that are brought  
7 out in 196 that are valuable and we do support  
8 bringing that out. It is a little bit of  
9 enforce what. And we support bringing that  
10 out.

11 CHAIRPERSON HONORABLE: Don.

12 MR. STURSMA: Don Stursma, Iowa.  
13 On item three above, I think that kind of is  
14 a good example of some of the things that  
15 concern me about this entire approach.

16 First of all, are the state civil  
17 penalties big enough? There is nothing in the  
18 rulemaking or rule itself that really defines  
19 what is considered big enough. Some states  
20 that write out one-call violations, it is the  
21 equivalent of a traffic ticket by local law  
22 enforcement. The fine might be \$100. Is that

1       okay? In my state, we have never assessed, I  
2       think, less than \$5,000. I am hoping that is  
3       good enough. But there is -- I don't see  
4       anything that defines for the benefit of the  
5       states what is considered good enough or what  
6       factors go into deciding whether it is good  
7       enough. To me, that leaves it awfully open-  
8       ended.

9                   And on the second part about  
10       making the information publicly available, I  
11       certainly agree that that is a good idea and  
12       it is useful public information but is it  
13       enforcement? Is it actually an enforcement  
14       criteria where you are going into not what the  
15       state does but do we like the way we tell  
16       people about it? I think this should be  
17       limited to what does the state actually do in  
18       terms of enforcement.

19                   CHAIRPERSON HONORABLE: Massoud.

20                   MR. TAHAMTANI: For those that  
21       know anything about the Virginia program,  
22       obviously wouldn't be surprised my comments on

1 enforcement.

2 We began an enforcement program  
3 back in the mid-'90s after a major accident,  
4 pipeline accident, not far from here, dumped  
5 a lot of oil in the Potomac River. But  
6 enforcement is not the only solution to the  
7 issue here. It is a combination of things and  
8 that combination is pretty well defined in the  
9 act in terms of what is an effective damage  
10 prevention program.

11 I understand Mr. Stursma is  
12 concerned that some states may be nervous  
13 about what PHMSA will do in terms of their  
14 determination of whether a state program is  
15 effective or not. And I think that having  
16 worked with PHMSA for close to 25 years and  
17 knowing that they have got their hands full,  
18 I don't envision them walking into a state  
19 that has anything that even resembles an  
20 effective program and saying you are not doing  
21 your job.

22 Now I do have one concern that I

1 brought up earlier. In Virginia, we decided  
2 to enforce, have monitor requirements on  
3 pipelines only for the obvious reasons. And  
4 20 years later, we are talking about DIMP and  
5 IMP and that excavation damage to pipelines  
6 continues to be the leading cause, the leading  
7 risk. And again if an operator or state is  
8 not doing all they can to address that, then  
9 they are not really doing the job that they  
10 are supposed to be doing.

11 We focused on pipelines and I am  
12 happy to report that because of a combination  
13 of things, the nine elements that are in the  
14 Act I think were borrowed from Virginia. I  
15 testified before Congress on those elements  
16 and I want that to be on the record because it  
17 didn't get on the record in Congress and I am  
18 very proud of that.

19 We focused on pipelines and today  
20 we can show that damage to pipelines in  
21 Virginia have been reduced by 70 percent over  
22 the last 18 years. So there is no question

1 that you have to have not only all the things  
2 that CJA is doing, all the stuff that are done  
3 under ARP 1162 and on and on and on but you  
4 have to have someone that is active, that  
5 brings parties together to address issues.  
6 And if that someone is not a state entity,  
7 then PHMSA should walk in and do what they can  
8 to make sure that enforcement is done in a  
9 fair and consistent way.

10 Now having said that, I have  
11 another question for PHMSA and that is, you  
12 determine a state that does not have an  
13 effective damage prevention program and you  
14 investigate a major accident where there is  
15 death and injury, and it just happened that  
16 the violation points to the operator, not the  
17 excavator. And that state happens to be,  
18 Jeff, one of those 17 states or 18 states that  
19 don't enforce their pipeline safety  
20 regulations. I don't mean to put you on the  
21 spot but often you put me on the spot.

22 (Laughter.)

1                   MR. TAHAMTANI: So how would you  
2 deal with that?

3                   MR. WIESE: For those who don't  
4 know this, I already owe his wife flowers,  
5 wine, whatever. I keep recruiting him into  
6 things and he is paying me back in public.

7                   Well first of all, I think I have  
8 stated at least in mine, and I think it is  
9 consistent with PHMSA's philosophy is we don't  
10 see enforcement as our goal. But we, our  
11 state partners and we already have authority  
12 over an operator and its contractors. We had  
13 sought to move on third parties and I think  
14 that was sort of the root of this. But your  
15 question goes to the heart of our partnership  
16 with the states. And there are, as Massoud  
17 pointed out, a number of states who don't  
18 enforce against operators.

19                   You know I have to really seek --  
20 I will take your counsel and I take it  
21 seriously. I mean if there is a serious  
22 accident, you know, I can only tell you what

1 my personal opinion is. I think you probably  
2 already know what I would do. But I would  
3 have to seek the advice of counsel about my  
4 authority having established a partnership  
5 with a state and delegating that to them. I  
6 think we would have to go through a due  
7 process with the state for its not following  
8 through on its commitments.

9 So hopefully that addresses yours.  
10 I can tell you my personal opinion but it  
11 doesn't really matter in the overall equation  
12 because I do have legal counsel who will tell  
13 me what I can and can't do.

14 I would tell you and I think you  
15 would know that the states that -- it is not  
16 going to be our goal to come into a state and  
17 enforce this. It is not. We will do  
18 everything possible to get the state to take  
19 care of its issues and that is part of the  
20 reason for transparency and some of these  
21 other things, build a variety of drivers that  
22 head towards the goal. We are not resourced

1 to come in and enforce these things, clearly.

2 So on the other hand, we won't  
3 turn our back. As Sam said, it is a backstop.  
4 It is meant to be there if really needed. It  
5 wouldn't be used frivolously. Somebody dings  
6 a pipeline, I mean I think there are ways to  
7 address that, even if a state is not on its  
8 game. So sorry for going on. I can't really  
9 answer your question, which is a good one.  
10 But I personally, if it were me and I were in  
11 the state, I would be acting on the operator.

12 The excavator, for my friends in  
13 the excavation community, let me reinforce,  
14 they are often not the cause of the accident.  
15 Often it just seems to be all parties have a  
16 play in that. Locators, operators,  
17 excavators, even one-call centers.

18 MR. TAHAMTANI: Madam Chairwoman,  
19 if I may comment on that. Again, having been  
20 through the trenches for almost 18 years, if  
21 enforcement appears to be inconsistent from  
22 the contractor's point of view, it won't work.



1 If they believe they have done all they can at  
2 the end of the day the operator didn't mark  
3 correctly or didn't mark at all and there is  
4 a major incident, it will lose -- the process  
5 will lose its credibility. And I can tell  
6 that from day one, contractors did not trust  
7 the government, did not want to be regulated  
8 further, and did not trust the big operators  
9 that happened to have the government in their  
10 pocket, according to the contractors.

11 I just caution you that as we  
12 approach this and go through the next several  
13 years of trying to encourage the states to  
14 have better laws consistent and adequate  
15 enforcement against all parties, including the  
16 states, the cities, the one-calls, is the key  
17 to the success. Thank you.

18 CHAIRPERSON HONORABLE: Thank you,  
19 Massoud. Jeff.

20 MR. WRIGHT: Thank you. Jeff  
21 Wright, Gas Committee.

22 I guess my comments relate

1 somewhat to Don's and maybe it is more of a  
2 point of information. Does a state  
3 enforcement program to be effective under what  
4 PHMSA wants to promulgate, does it have to  
5 show penalties? In keeping in that vein, can  
6 you still have a state enforcement program  
7 penalizing those who violate and not be solely  
8 monetary? That is, you could suspend people's  
9 operations, you could require education, and  
10 that still would be an efficient enforcement  
11 action. And I take this from my own  
12 experience at my agency where we do have  
13 enforcement powers and not everything results  
14 in a monetary penalty. It could be a  
15 suspension of operation, that kind of thing.

16 MR. WIESE: Well for what it is  
17 worth, I would say we agree generally. And I  
18 have seen and I can point out my friend  
19 Massoud here, I think our general belief would  
20 be in a system that gradually escalates  
21 enforcement. And I have seen that where  
22 Massoud and others, Minnesota and others, go

1 to fix the problem. Fix the problem. It is  
2 not always about the money.

3 Civil penalties, by the way, can  
4 be assessed and then mitigated to zero, in  
5 lieu of something else. So I think we should  
6 be cognizant of the fact that it doesn't have  
7 to mean dollars are trading hands. It is the  
8 civil penalty is assessed, it can be mitigated  
9 in lieu of alternate action.

10 CHAIRPERSON HONORABLE: Did I see  
11 Larry's tent card?

12 MR. SHELTON: Larry Shelton,  
13 liquids industry.

14 Just fortunately having Mr.  
15 Pierson to my left as a buffer, on the issue  
16 of enforcement, there is more to effective  
17 enforcement in terms of increasing pipeline  
18 safety than just the penalties.

19 Well for example, if we built a  
20 highway and didn't put any speed limit signs  
21 out there and just wrote tickets, we would be  
22 enforcing but we wouldn't be improving the

1 safety of that highway. So we would hope that  
2 in the evaluation of the states' programs that  
3 PHMSA would be looking at those things that  
4 keep penalties from having to be used as  
5 enforcement actions, things like the state's  
6 investigation process or the standards for  
7 excavators, excavator education and whether  
8 one-call centers need to have a required  
9 positive response on one-calls.

10 CHAIRPERSON HONORABLE: Thank you,  
11 Larry. Sue?

12 MS. FLECK: Thank you. Just a  
13 couple of comments in support of this rule.

14 You have to remember there is tens  
15 of thousands of miles of distribution system  
16 and transmission systems out there. And it is  
17 not physically possible for the utility  
18 companies and the transmission companies to  
19 protect all those assets. So without an  
20 effective enforcement program or on damage  
21 prevention laws, it is just going to be  
22 chaotic. So we need to do this. We just have

1 to figure out how to do it right.

2 Most companies and most excavators  
3 try to do the right thing every day but there  
4 is those that don't. So again, an adequate  
5 enforcement program has to be in place to find  
6 those bad actors and straighten them out and  
7 get them on the right path.

8 So I agree with a lot of the  
9 comments in support of this. AJ submitted  
10 some comments on how to do an enforcement or  
11 some things that we think need to be in the  
12 evaluation of the enforcement program and  
13 those should be considered. But we are in  
14 support of this.

15 CHAIRPERSON HONORABLE: Thank you,  
16 Sue. We are going to give Don a third bite at  
17 the apple and then we are going to go to  
18 Chuck.

19 MR. STURSMA: Don Stursma, Iowa.  
20 Sorry to the gentleman on my right but I feel  
21 a need to reiterate that the law says unless  
22 the Secretary has determined that the state's

1 enforcement is inadequate. It doesn't say  
2 unless the Secretary determines that the  
3 state's prevention program is inadequate or  
4 the state's damage prevention law is  
5 inadequate.

6 I don't see this as an opportunity  
7 to go after state laws as part of this  
8 rulemaking. That is a whole broader question.  
9 All that the federal law at this point takes  
10 as one slice of that and that is the  
11 enforcement. And the enforcement is under  
12 review, not the entire state management  
13 program.

14 CHAIRPERSON HONORABLE: Thank you.  
15 Chuck?

16 MR. LESNIAK: Sam, when you all  
17 were looking at this as the criteria that you  
18 have got today here, the standards that you  
19 are proposing today, do you have an idea how  
20 many states would meet these standards today?

21 MR. HALL: The short answer is no,  
22 I don't know how many states would meet all of

1 these standards perfectly.

2 The first two criteria listed here  
3 does the state have the authority to enforce  
4 its law and has the state designated a state  
5 agency. That, I think, we can answer pretty  
6 clearly and we can do that with the map that  
7 I posted earlier.

8 There are nine states in red that  
9 do not have enforcement on the books. Some of  
10 the other questions that Don has brought up,  
11 some of the other concerns about evaluating  
12 the law itself, we can't say what states, if  
13 we took a strict line on interpreting those  
14 criteria, how many states would actually  
15 comply. This map, I think, points to really  
16 where a lot of the problem lies, and that is  
17 in states that don't have the authority to  
18 enforce. That is what this rule is really  
19 about, and that is encouraging states to  
20 enforce their own laws.

21 MR. LESNIAK: I just want to say  
22 that I think that it follows whether the PIPES

1 Act said this explicitly or not, if there is  
2 not a reasonable regulation in place to be  
3 enforced, then enforcement is moot. And that  
4 I am generally in support of this portion of  
5 the proposal.

6 CHAIRPERSON HONORABLE: Any other  
7 comments from the committee? Gene, pardon me.

8 DR. FEIGEL: The gentleman over  
9 here, I think, alluded to the point I am about  
10 to make. Don, the distinction between  
11 adequate enforcement and adequate regulation  
12 is real. But if the underlying state statute  
13 and/or regulation is manifestly inadequate,  
14 then whether they are enforcing it or not  
15 becomes pointless.

16 CHAIRPERSON HONORABLE: Any other  
17 questions, comments? If I am not mistaken,  
18 and maybe I should go back to Sam, at some  
19 point we will need to hear from the public.

20 MR. WIESE: May I ask a question?  
21 Sam, and with apologies for being in a  
22 position of asking this question, how many



1 votes have you subdivided this into?

2 MR. HALL: I believe it is four.

3 MR. WIESE: Four?

4 MR. HALL: Yes.

5 MR. WIESE: A lot of the  
6 discussion we have been having, as I was  
7 telling our chairwoman, is it is generic to  
8 the whole issue. I don't think we will be  
9 repeating a lot of that as we get into the  
10 other votes.

11 And so we are trying to debate the  
12 whole issue about lunch. I am sort of of a  
13 mind to say I would like to have Sam get on  
14 the table what we are going to vote on before  
15 we take a break. And then I will consult with  
16 the Chair about whether to take a break, go to  
17 lunch, come back and vote, or not. I think I  
18 am going to get support for that issue about  
19 vote after lunch.

20 I do want to say really quickly,  
21 and maybe it addresses some of what Don's  
22 issues are. Our intent, and so I am on the

1 record being clear, our intent here when we do  
2 a designation to the state that it is  
3 inadequate, there is a fairly substantial due  
4 process provision. It was put in there on  
5 purpose to give the state every opportunity to  
6 fix that or to dispute it and say no, you are  
7 wrong and here is why you are wrong.

8 So it is not like this will be  
9 draconian, we come in with the storm troopers  
10 the day after we determine inadequate. We are  
11 going to give the state every opportunity to  
12 either tell us we are wrong and show us why or  
13 to fix the issue and tell us what their plan  
14 is.

15 Again, our goal is clear. It is  
16 that the state primacy and they do their job.  
17 I think that is it.

18 CHAIRPERSON HONORABLE: So Jeff,  
19 will you give us the lay of the land? What  
20 are we doing before lunch?

21 MR. WIESE: May I suggest that we  
22 have Sam lay out the votes? There is only

1 three more. We will do those fairly concisely  
2 so you are clear on the votes that we are  
3 going to take and then, with your permission,  
4 we break for lunch. We will do a calculation  
5 like at the clock. We will give everybody at  
6 least 30 minutes to eat.

7 CHAIRPERSON HONORABLE: Correct,  
8 an hour.

9 MR. WIESE: And then we will come  
10 back in and do the vote afterwards. I think  
11 it will move quicker that way.

12 CHAIRPERSON HONORABLE: When will  
13 we hear from the public?

14 MR. WIESE: A good point. We  
15 should probably hear from them after Sam has  
16 gone through this. But I would say to the  
17 public, you would be standing between the  
18 committee and their lunch. If you don't have  
19 novel new information, please don't stand up  
20 just to be rhetorical.

21 I would certainly defer to our  
22 esteemed colleague Mr. Kip who happens to be

1 in the room and it is great fun to always put  
2 Bob Kip on the spot whenever you can, if he  
3 has comments, since he leads the National  
4 Damage Prevention Organization. If he has  
5 comments, I think we should make those.

6 So Sam, if you can kind of quickly  
7 run through what we will vote on.

8 MR. HALL: The first vote will be  
9 on the criteria that we use to evaluate state  
10 enforcement programs. And one idea is to  
11 develop a policy in the preamble of the rule  
12 that would explain how those criteria will be  
13 applied, what essentially weight we will give  
14 to each of the criteria in an attempt to  
15 address some of the concerns that Mr. Stursma  
16 has brought up and similar concerns.

17 The second issue will be  
18 pertaining to the federal excavation standard  
19 that was proposed. That is, what is it that  
20 PHMSA will enforce? Bear with me a moment  
21 please. Yes, that's true. On the federal  
22 enforcement standard we will also be voting on

1 exemptions to that federal enforcement. Are  
2 any parties exempt from federal enforcement?  
3 Of course, we will discuss those issues.

4 The third vote will be incentives  
5 for states to implement adequate enforcement  
6 programs. We proposed a maximum ten percent  
7 reduction in base grants to states with  
8 inadequate enforcement programs after a five-  
9 year grace period, assuming PHMSA has declared  
10 that state's enforcement program inadequate.  
11 We will discuss those incentives and then take  
12 a vote.

13 I think that is the last one. So  
14 it is three issues that we will be voting on.  
15 And I think Craig, you may also have some  
16 issues, some editorial issues that you would  
17 like to address.

18 MR. PIERSON: Yes, that is  
19 correct. I am not sure in your listing of the  
20 three, is that three times two -- liquids and  
21 gas? Is it three times two?

22 CHAIRPERSON HONORABLE: Yes.

1 MR. PIERSON: So six votes. So  
2 some of the issues that we tabled, when do  
3 they -- do they come out under your second  
4 item, the federal excavations? Do most of the  
5 ones we tabled come out under the second item?

6 MR. HALL: I believe so. I think  
7 if you want to bring up issues that are  
8 relevant to those three categories of votes as  
9 they come up. For example in the document you  
10 created -- you had mentioned number nine,  
11 criteria to evaluate state damage prevention  
12 programs.

13 MR. PIERSON: It would be the  
14 first, exactly. Yes, got it. So the three  
15 are criteria, federal excavation standard, and  
16 then incentives.

17 MR. HALL: Incentives for states  
18 to enforce, yes.

19 MR. PIERSON: Okay, thank you.

20 CHAIRPERSON HONORABLE: All right.  
21 Now is the time for public comment. And I  
22 believe that Linda or someone has a

1 microphone. Oh, very good. It is standing  
2 there. If I would have turned around, I would  
3 have seen it.

4 So if you plan to make a public  
5 comment, we invite you at this time. I think  
6 Jeff has offered a few kind of --

7 MR. WIESE: He baited Bob Kip to  
8 say something but he doesn't have to if he  
9 doesn't want to.

10 MR. KIP: I'll make a couple of  
11 quick comments.

12 CHAIRPERSON HONORABLE: If you  
13 will identify yourself, please and who you are  
14 with.

15 MR. KIP: Bob Kip, Common Ground  
16 Alliance.

17 We support everything in here. I  
18 think this is just the right way to go. We  
19 have believed in it since the original report  
20 back in 1999. Enforcement is a big part of we  
21 think will reduce damages. I think if you got  
22 anybody from AGC up here or NUCA or Chairman

1 of the Board, he would tell you that he  
2 supports this 100 percent. The true  
3 professional contractor is not worried about  
4 these rules, these laws, these regulations.  
5 They don't concern them. They do the right  
6 thing every time and it is done well.

7 We see by our studies, our DERP  
8 Report, that we still have issues with the  
9 smaller contractor, the fencing person, the  
10 irrigation person. I am a little concerned  
11 with that 12-inch shovel thing in there  
12 because of that. If you are going to dig,  
13 call and let the people tell you whether or  
14 not you should have your alliance marked but  
15 by and large, everything is good.

16 I would request or suggest a  
17 couple of things. Massoud is very humble. He  
18 has got a great, great system going. And I  
19 would suggest that at some point in time that  
20 when you have one of these meetings, if  
21 Massoud you could schedule one of your  
22 hearings on the Tuesday and do it in



1 Alexandria or Arlington, the day that you  
2 folks meet on the Tuesday. And I would  
3 encourage all of you to go and see how it  
4 works, how a system works. You can't describe  
5 it. You have to see it.

6           When you see people at nine  
7 o'clock in the morning, a contractor come up  
8 and he has been given a letter of reprimand,  
9 not a fine, but a letter. And he stands there  
10 in front of everybody and he says I have been  
11 a contractor 25 years and I didn't do this  
12 wrong. Let me explain it to you. And it  
13 wasn't the fine. It was the enforcement.

14           And then you get the next guy and  
15 the story of the well driller who had been  
16 educated. That was his fine. He had been  
17 educated for not calling before he dug. And  
18 for a bunch of reasons he was given the okay  
19 to go and dig about two years ago. And he  
20 shouldn't have been given the okay. And as he  
21 is digging with his three people, there is  
22 four of them, I believe, he hits something and

1 he doesn't know what. But in the education he  
2 had been told by one of Massoud's people,  
3 trust your gut. You know your tools better  
4 than we do. When you hit something, respond.  
5 And he goes down the street or down the hill  
6 and there is a little garage there. And he  
7 says, do you know if there is anything back  
8 there? And the guy says well I have got this  
9 calendar on my wall that I get every year from  
10 the pipeline company. He says you might want  
11 to call them. He was over a 30-inch high  
12 pressure gas line. So that is the kind of  
13 thing when you talk about enforcement.

14 The other one I like the last time  
15 I attended your fines at that point were \$500,  
16 \$1,000, \$1,500 and whatever. And there is a  
17 particular contractor who hadn't called a  
18 number of times and he was being fined, I  
19 think, \$500. And the contractor on his Board  
20 said we should change the rule. It shouldn't  
21 be \$500. It shouldn't be \$1,000. It should  
22 be \$811, 8-1-1. He will call before he digs

1 the next time. He will know that 8-1-1.

2 So I think by and large I like  
3 everything you are doing here. I think it is  
4 great. Enforcement has been a big part of  
5 what we believe in in the CGA since 1998. The  
6 contractors believe in it. The excavators  
7 believe in it. Our Board believes in it.

8 I really encourage Massoud to try  
9 and coordinate one of these meetings so that  
10 some of you can see how it works. You have a  
11 lot influence in your states, in your  
12 industries, in your companies. Go and see how  
13 it works and I bet you will encourage people  
14 in your states to do the same.

15 So those are my comments, Jeff.  
16 Thanks.

17 CHAIRPERSON HONORABLE: Thank you,  
18 Kip.

19 MR. WIESE: We knew we could count  
20 on Bob to be brief.

21 CHAIRPERSON HONORABLE: Anyone  
22 else? My goodness, I think everyone is

1 hungry. Well if there is nothing further, why  
2 don't we ask Jeff to set a time to return?

3 MR. WIESE: Let's say 1:15.

4 CHAIRPERSON HONORABLE: We will  
5 return here to reconvene at 1:15. Enjoy your  
6 lunch.

7 (Whereupon, at 12:08 p.m., a lunch  
8 recess was taken.)

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

2 (1:23 p.m.)

3 CHAIRPERSON HONORABLE: We're back  
4 on the record. I hope that each of you had an  
5 enjoyable lunch. And we will now turn to  
6 Cheryl Whetsel to advise us of the Advisory  
7 Committee voting protocol.

8 MS. WHETSEL: Okay, let's see how  
9 many times we can say this, feasible,  
10 practicable and all that stuff.

11 Just for the record, the  
12 committees are to consider each proposal  
13 published in the Federal Register, including  
14 the regulatory evaluation for its technical  
15 feasibility, reasonableness, cost-  
16 effectiveness, and practicability. And each  
17 committee will vote separately.

18 And we just, when you call for a  
19 motion you are just going to use that  
20 particular language and that language will be  
21 up on the screen so you will have it  
22 available.

1 I believe they are taking, for  
2 this first vote, they are going to be taking  
3 three separate motions of it, maybe a fourth  
4 if it doesn't cover the entire thing in the  
5 three categories.

6 MR. WIESE: With the Chair's  
7 permission, just a quick comment before we get  
8 into voting. Particularly since we have some  
9 new members here, it is my obligation to tell  
10 you that we have run the Advisory Committees  
11 for many years. We take the advice that we  
12 get very seriously. People who have been on  
13 here for many years I think would tell you we  
14 rarely go against the advice of the committee.  
15 So I take it very seriously. I don't want to  
16 minimize that but I am like obligated to tell  
17 you that at the end of the day the Secretary  
18 and the Administrator retain the prerogative  
19 to guide the rules they wish. But it doesn't  
20 -- I just didn't want to minimize the advice  
21 of the committee because honestly I think that  
22 any of the people who have been here for years

1 will tell you it is with great difficulty that  
2 we go against the Committees' advice.

3 CHAIRPERSON HONORABLE: All right,  
4 so I am going to look back at Sam to see how  
5 we will proceed on each of the votes.

6 MR. HALL: I think we should offer  
7 an opportunity to discuss any proposals from  
8 the committee on the criteria that we  
9 discussed. Now would be the time to bring  
10 those up if you would like to discuss any of  
11 the things that you brought to the committee.

12 CHAIRPERSON HONORABLE: May I  
13 suggest, Sam, and I am going to offer to be  
14 corrected by Jeff here, but would it be  
15 helpful if you put up on the slide the first  
16 thing that we will vote one? We will hear  
17 proposals, conduct the vote for gas and liquid  
18 and complete that one, and then move to the  
19 second.

20 MR. HALL: That works.

21 MR. WIESE: Plus at this point,  
22 since we have gone to vote, really it is up to

1 the members to actually make a motion. So we  
2 are not in there discussing that part now. We  
3 have moved to vote. So we will try to get, if  
4 we can, the actual one that we are voting on,  
5 so it is clear.

6 Oh, I'm sorry, Sam. This is for  
7 the criteria for evaluating state enforcement  
8 programs. It might be worth just reiterating.

9 MR. HALL: I think John is trying  
10 to post -- there we go.

11 MR. WIESE: Well I think the  
12 protocol at this point is, and sorry that this  
13 one is a little complex because it has those  
14 moving parts. My understanding is that some  
15 of the members of the committee already have  
16 ideas that they want to put on the table. So  
17 it seems to me that it would be appropriate  
18 for them to make a motion, recognizing we have  
19 gone through -- maybe show the second page of  
20 that, Cam, if you will, just to refresh  
21 everybody's memory on the criteria.

22 And I am fairly sure that Mr.



1 Pierson has a motion.

2 CHAIRPERSON HONORABLE: All right.  
3 We will recognize a motion. Craig.

4 MR. PIERSON: Craig Pierson,  
5 Liquids. Have low expectations with this.

6 I would like you to describe what  
7 I am going to try to make the motion for.  
8 There was language that spoke to a policy  
9 statement in the preamble that the motion  
10 would be that we --

11 CHAIRPERSON HONORABLE: Are we  
12 able to find the language that Craig is  
13 referencing?

14 MR. WIESE: Yes. Back up one.

15 MR. PIERSON: Right there.

16 CHAIRPERSON HONORABLE: Yes.

17 MR. PIERSON: The intent would be  
18 to make a motion -- and we are speaking to  
19 criteria for adequacy. And it is my  
20 understanding that you intend to have a policy  
21 statement in the preamble which gives some  
22 additional flavor for the adequacy assessment.

1 And the motion that I want to try to craft  
2 says that in that policy statement that the  
3 following things would be considered. Does  
4 that make sense what the intent is?

5 So I will try that.

6 MR. WIESE: And by the way, since  
7 everyone has that, you could probably just  
8 reference it and it will simplify it for  
9 everybody.

10 CHAIRPERSON HONORABLE: And I'm  
11 sorry, Craig, we will also need to provide a  
12 copy to the court reporter. Please proceed.

13 MR. PIERSON: So if you look at  
14 item nine on the back of that page, it is  
15 titled Criteria to Evaluate State Damage  
16 Prevention Programs. The motion would be to  
17 consider the items in those three paragraphs  
18 in the policy statement. Okay?

19 So do you think it could be as  
20 simple as we make a motion to --

21 MR. WIESE: Yes, incorporate. But  
22 I would make sure the committee has time to

1 read it and that they are prepared to vote.

2 MR. PIERSON: Right. The first  
3 paragraph speaks to having a more holistic  
4 broad view of the assessment to include a  
5 broad range of factors such as the state  
6 investigation process, standards for  
7 excavators, excavator education efforts,  
8 commitment to continued improvement.

9 The second paragraph says that the  
10 state on-call center would have a mandatory  
11 positive response for locate requests.

12 And the third would be that as  
13 PHMSA assesses that they allow a public  
14 comment period.

15 CHAIRPERSON HONORABLE: There is a  
16 motion on the floor. Maybe I should yield to  
17 Cheryl on this point he is conducting --

18 MS. WHETSEL: Yes, I'm sorry. I  
19 was just going to say if you look under your  
20 tab for the NPRM pipeline damage prevention  
21 there is a copy at the very back of the  
22 language that we would normally use to propose

1 the rule.

2 MR. PIERSON: Yes, right.

3 MS. WHETSEL: So I believe you  
4 would just want to go with to start the motion  
5 item number two there, the proposed rule as  
6 published in the Federal Register. And then  
7 the rest of that, --

8 MR. PIERSON: Right.

9 MS. WHETSEL: -- as long as the  
10 following items are considered. And then --

11 MR. PIERSON: I will try and  
12 articulate that now.

13 MS. WHETSEL: Okay.

14 MR. PIERSON: Again, have low  
15 expectations.

16 MR. WIESE: You know, we are  
17 government. It is important to be officious.

18 MR. PIERSON: Okay. The proposed  
19 rule as published in the Federal Register is  
20 technically feasible, reasonable, cost-  
21 effective, and practicable if the following  
22 changes are made. Consideration of the three

1 paragraphs that are listed as item number nine  
2 on the document that we will provide for  
3 decorum would be included in the anticipated  
4 preamble policy language.

5 CHAIRPERSON HONORABLE: There is a  
6 motion on the floor. Carl?

7 MR. WEIMER: I would like to offer  
8 a friendly amendment because I think the way  
9 the motion was made, it votes on the entire  
10 rule and I think what we are trying to do is  
11 just vote on the criteria for evaluating state  
12 enforcement. So if you insert that second  
13 sentence that is up on the screen there, I  
14 think we get to the right motion, --

15 CHAIRPERSON HONORABLE: Craig, do  
16 you accept that?

17 MR. WEIMER: -- if you will accept  
18 that friendly amendment.

19 MR. PIERSON: Yes, I would. And I  
20 want to -- yes, let's cover that. And then I  
21 have got one other and I am probably going to  
22 mess this up. Again, have low expectations.

1                   The grace period was five years  
2                   and that is on the item six of what we handed  
3                   out. I think it might fall in this bucket,  
4                   but I am not certain. It does not? Later?  
5                   Good.

6                   CHAIRPERSON HONORABLE: I was  
7                   going to say, maybe it would be better to do  
8                   this, conduct this one and then get to that  
9                   one.

10                  MR. PIERSON: Yes.

11                  CHAIRPERSON HONORABLE: So we have  
12                  a motion with a friendly amendment, which  
13                  would include the first two paragraphs on this  
14                  slide here, including the inclusion of the  
15                  information that Craig referenced as item nine  
16                  in the handout. Is there a second for the  
17                  motion?

18                  HON. FORD: Second.

19                  CHAIRPERSON HONORABLE: There is a  
20                  second by Commissioner Lula Ford and a  
21                  question by Commissioner Wayne Gardner.

22                  HON. GARDNER: And I wished to ask

1 my question before the motion was seconded  
2 because I wasn't clear if all of item nine in  
3 the handout, the criteria for evaluation, was  
4 to be added to the language of the motion or  
5 was that edited down as an alternative to  
6 using this language here on this slide?

7 CHAIRPERSON HONORABLE:  
8 Commissioner, this is the proper time for that  
9 question. So once we have the motion and we  
10 have a second, now we can have this  
11 discussion.

12 So Craig or Sam, I would like to  
13 ask you to answer the Commissioner's question.

14 MR. PIERSON: The intent was that  
15 PHMSA develops a policy, incorporates in the  
16 preamble, and that the three paragraphs be  
17 included as considerations in that policy in  
18 the preamble.

19 I don't know if I answered your --

20 HON. GARDNER: I'm still -- I am  
21 more confused.

22 MR. WIESE: I think it is all of

1       them, Wayne. I think it is all of them.

2                   HON. GARDNER: It's all of them?

3       Okay. I am less confused now.

4                   MR. PIERSON: Okay. I'm sorry.

5                   MS. WHETSEL: We're not saying  
6       that PHMSA is going to use the exact language  
7       that is in number nine. We are going to  
8       consider is what we are stating. Correct?

9                   CHAIRPERSON HONORABLE: That is  
10       correct. That was Craig's motion.

11                   MS. WHETSEL: Do you want me to  
12       try and just read the thing? I will try.

13                   CHAIRPERSON HONORABLE: Please do.

14                   MS. WHETSEL: Okay.

15                   CHAIRPERSON HONORABLE: We have  
16       been doing great. Let's not ruin it now.  
17       Come on, Cheryl.

18                   MS. WHETSEL: You have been doing  
19       great. So let's just see if I can formulate  
20       the -- okay.

21                   The proposed rule, as published in  
22       the Federal Register, is found technically



1 feasible, reasonable, cost-effective and  
2 practical if the following changes are  
3 considered. And those changes would include  
4 the items that are listed under nine, number  
5 nine of the handout that was provided by  
6 Craig, right, and the bullet, that is on the  
7 screen as stated. Or even better, what he is  
8 typing in. Perfect. I think that is it.

9 MR. PIERSON: Yes, that is well  
10 done.

11 MS. WHETSEL: That's it.

12 MR. PIERSON: Provided?

13 MR. PATES: Provided by Member  
14 Pierson.

15 MR. PIERSON: That's fine.

16 CHAIRPERSON HONORABLE: You are  
17 afraid now. Just a moment.

18 MS. WHETSEL: I think that is  
19 perfect as we are typing it in.

20 CHAIRPERSON HONORABLE: All right,  
21 I am going to acknowledge several tent cards.  
22 Is that Richard? And then I see Sue, Michael,

1 Chuck, and Don. Richard?

2 MR. WORSINGER: Rich Worsinger,  
3 Gas. I actually just have a procedural  
4 question. Since we are going to vote on this  
5 as two different committees, if the first  
6 committee ratifies it and then the second  
7 committee adds a modification and that is  
8 approved by the second committee, will it go  
9 back to the first committee to consider that  
10 modification?

11 MR. WIESE: Sure.

12 (Laughter.)

13 MR. WIESE: Thank you.

14 We could take being too officious  
15 and waste each other's time. I think our goal  
16 here is to get your advice on what we should  
17 do with this rulemaking.

18 I would just say I understand  
19 there are rules and there is etiquette but we  
20 are also focused on getting stuff done. So  
21 let's just try to make sure we are clear on  
22 what we are voting on and then we will

1 separate -- we will cross that bridge if we  
2 get to it or we will just take the advice  
3 separately.

4 MS. WHETSEL: I think we could go  
5 ahead and discuss both sides, liquid and gas,  
6 if it is not going to be that difficult, that  
7 different. And then we can have each  
8 committee actually state the motion and vote  
9 separately.

10 CHAIRPERSON HONORABLE: And I  
11 believe that is how we usually conducted this  
12 joint meeting process. So we are hopeful --  
13 nothing is going to happen to you if you raise  
14 an issue but we are hopeful that we can have  
15 all of the discussion your heart's desire and  
16 we will conduct the votes and move on to the  
17 next item.

18 Sue?

19 MS. FLECK: I think you answered  
20 my question. I didn't know if we were liquid  
21 right now or gas right now or both.

22 CHAIRPERSON HONORABLE: We are

1 both right now.

2 MS. FLECK: Okay.

3 CHAIRPERSON HONORABLE: We will  
4 separate when it is time for a vote. Thank  
5 you.

6 Michael?

7 MR. BELLMAN: Mike Bellman, Gas  
8 Committee. And this is -- I am sorry to bring  
9 up a procedural issue but at our last meeting  
10 we had some language that was proposed that  
11 had not been originally published in the NPRM  
12 and that was ruled out. And I am looking at  
13 some of the language here in number nine and  
14 it appears that that was not published in the  
15 NPRM. Does that create a procedural problem  
16 for PHMSA?

17 MR. WIESE: Not particularly. As  
18 you will note, this one says that it is  
19 incorporated into the preamble of the final  
20 rule. It is explanatory. It is not part of  
21 the actual rule itself, which in that case,  
22 yes. If it is new and you haven't proposed it

1 previously, you are not allowed to go to final  
2 without re-proposing. But in this particular  
3 case, it is more explanatory.

4 CHAIRPERSON HONORABLE: Good  
5 question. Thank you, Mike.

6 Chuck?

7 MR. PIERSON: Just a quick  
8 question for Craig. The last paragraph on  
9 number nine about the stakeholder/public  
10 comment process. It references both the  
11 administrative process for the states and then  
12 PHMSA accepting public comment. So are you  
13 saying that the state enforcement process  
14 should include a public comment or is it the  
15 evaluation of the states?

16 MR. PIERSON: Craig Pierson,  
17 Liquid. It is the assessment process.

18 MR. LESNIAK: Okay.

19 MR. PIERSON: Public comment  
20 during the assessment process.

21 MR. LESNIAK: Okay, I just wanted  
22 to be clear on that. Thank you.

1 CHAIRPERSON HONORABLE: Don and  
2 then Carl.

3 MR. STURSMA: Don Stursma, Iowa.  
4 Purely as a point of order, it appears we had  
5 a motion and a second and we have since  
6 amended the motion. If I remember my Robert's  
7 Rules of Order, an amendment to a motion  
8 requires a vote to amend the motion. So I  
9 think we have a procedural issue there and I  
10 don't know if this or later would be a good  
11 time to discuss what I consider the merits of  
12 the proposal.

13 CHAIRPERSON HONORABLE: Don, you  
14 are correct. I am going to defer to Cheryl.  
15 I thought we were having discussions about the  
16 amendment. We are going to vote on that and  
17 return to the motion.

18 MS. WHETSEL: Yes, what Colette  
19 says. I think we are still in discussions,  
20 even though we have been batting back and  
21 forth the motion. I think once we come to the  
22 vote, we should go ahead and have one of the

1 committee members read it and then we will  
2 vote on it by each committee. Does that work  
3 for you?

4 I think if you are amending it and  
5 it is friendly language anyway or friendly  
6 amendment or whatever they call it, it is okay  
7 anyway.

8 MR. STURSMA: Well I guess that  
9 gets to my next question on the merits. I'm  
10 not sure I consider it a friendly amendment  
11 because at least the first two items in number  
12 nine are exactly the kind of overreach that I  
13 have been objecting to here today.

14 CHAIRPERSON HONORABLE: We're  
15 going to call for a vote, if there is no other  
16 discussion, on the amendment first and then we  
17 will vote on the first item as a whole. Is  
18 that proper?

19 MS. WHETSEL: Was there anybody on  
20 the Gas Committee --

21 MR. WIESE: I think both are  
22 aware.

1 CHAIRPERSON HONORABLE: So I will  
2 request a roll call vote on the amendment to  
3 the first item and Cheryl will need for  
4 someone to read the item before we vote.

5 MS. BEACH: Denise Beach, NFPA.  
6 If I understand, this is one motion. There  
7 was no amendment. So I am not sure what Mr.  
8 Stursma was referring to as the amendment.

9 MR. WIESE: And I don't claim to  
10 be in tune with Robert's Rules but I think we  
11 did have a motion. Carl suggested a friendly  
12 amendment, which the originator agreed to. So  
13 we have an amended motion here which Craig has  
14 endorsed and allowed us to put his name next  
15 to --

16 CHAIRPERSON HONORABLE: And we  
17 have a second.

18 MR. WIESE: -- and we have a  
19 second. So I think that is what we are voting  
20 on.

21 CHAIRPERSON HONORABLE: Okay, very  
22 good. Thank you. And we are ready for a



1 reading of it and roll call.

2 MR. PIERSON: Cheryl -- I'm sorry.  
3 Craig Pierson, Liquids. Do I need to read it  
4 or do we want Cheryl to read it? Okay.

5 MS. WHETSEL: That's the entire  
6 motion. Oh, yes, because they included number  
7 nine. Okay, got it. All right, so I am going  
8 to read this for the record. This is what we  
9 are voting on.

10 The proposed rule as published in  
11 the Federal Register in terms of the criteria  
12 for evaluating state enforcement programs is  
13 technically feasible, reasonable, cost-  
14 effective, and practical if the following  
15 changes are made: PHMSA develops a policy  
16 incorporated into the preamble of the final  
17 rule that clarifies the scope and the  
18 applicability of the state evaluation  
19 criteria. The policy will address the  
20 relative importance and intent of each of the  
21 criteria and the three items identified in  
22 paragraph nine of the document provided by

1 Member Pierson of the Liquid Committee.

2 CHAIRPERSON HONORABLE: We are  
3 ready for the roll call vote, Cheryl.

4 MS. WHETSEL: Okay. So I am going  
5 to go with the Liquid Committee first. Lula?

6 HON. FORD: Aye.

7 MS. WHETSEL: Massoud?

8 MR. TAHAMTANI: Aye.

9 MS. WHETSEL: Todd?

10 MR. DENTON: Aye.

11 MS. WHETSEL: Tim Felt?

12 MR. FELT: Aye.

13 MS. WHETSEL: Craig?

14 MR. PIERSON: Aye.

15 MS. WHETSEL: Larry Shelton?

16 MR. SHELTON: Aye.

17 MS. WHETSEL: Lanny Armstrong?

18 MR. ARMSTRONG: Aye.

19 MS. WHETSEL: Rick Kuprewicz?

20 MR. KUPREWICZ: Aye.

21 MS. WHETSEL: Charles Lesniak?

22 MR. LESNIAK: Aye.

1 MS. WHETSEL: And Carl Weimer?

2 MR. WEIMER: Aye.

3 MS. WHETSEL: Okay. And that  
4 completes the vote for the Liquids. That's  
5 right.

6 Okay, the Gas Committee. Wayne  
7 Gardner?

8 HON. GARDNER: Aye.

9 MS. WHETSEL: Colette Honorable?

10 CHAIRPERSON HONORABLE: Aye.

11 MS. WHETSEL: Don Stursma?

12 MR. STURSMA: Nay.

13 MS. WHETSEL: Jeff Wright?

14 MR. WRIGHT: Aye.

15 MS. WHETSEL: Mike Bellman?

16 MR. BELLMAN: Aye.

17 MS. WHETSEL: Andy Drake is not  
18 here. Sue Fleck?

19 MS. FLECK: Aye.

20 MS. WHETSEL: Rick Worsinger?

21 MR. WORSINGER: Aye.

22 MS. WHETSEL: Chad Zamarin?

1 MR. ZAMARIN: Aye.

2 MS. WHETSEL: Denise Beach?

3 MS. BEACH: Aye.

4 MS. WHETSEL: Richard Feigel?

5 DR. FEIGEL: Aye.

6 MS. WHETSEL: Rick Pevarski is not  
7 here. And Gerry Rosendahl?

8 MR. ROSENDAHL: Aye.

9 MS. WHETSEL: Okay, that is it.

10 We have one nay and 11 ayes.

11 CHAIRPERSON HONORABLE: The first  
12 item passes both the Liquid and Gas  
13 Committees. Are we ready to proceed to the  
14 next item?

15 MR. HALL: The next item that we  
16 will be addressing in the proposal is the  
17 proposed federal excavation standard.

18 The NPRM language is listed on the  
19 screen in the next several slides. This  
20 portion of the proposal addresses what PHMSA  
21 will enforce with regard to excavation damage  
22 in states that are deemed to have inadequate

1 enforcement programs.

2 The language reads: "What must an  
3 excavator do to protect underground pipelines  
4 from excavation-related damage?

5 Prior to commencing excavation  
6 activity where an underground gas or hazardous  
7 liquid pipeline may be present, the excavator  
8 must:

9 (a) Use an available one-call  
10 system before excavating to notify operators  
11 of the underground pipeline facilities of the  
12 timing and location of the intended  
13 excavation;

14 (b) If underground pipelines exist  
15 in the area, wait for the pipeline operator to  
16 arrive at the excavation site and establish  
17 and mark the location of its underground  
18 pipeline facilities before excavating;

19 (c) Excavate with proper regard  
20 for the marked location of pipelines an  
21 operator has established by respecting the  
22 markings and taking all practicable steps to

1 prevent excavation damage to the pipeline; and

2 (d) Make additional use of the  
3 one-call as necessary to obtain locating and  
4 marking before excavating, if additional  
5 excavations will be conducted at other  
6 locations."

7 Section 196.105 as proposed reads:

8 "Are there any exceptions to the requirement  
9 to use one-call before digging?

10 Homeowners using only hand tools,  
11 rather than mechanized excavating equipment on  
12 their own property are not required to use a  
13 one-call prior to digging."

14 Section 196.107 as proposed reads:

15 "What must an excavator do if a pipeline is  
16 damaged by excavation activity?

17 If a pipeline is damaged in any  
18 way by excavation activity, the excavator must  
19 report such damage to the pipeline operator,  
20 whether or not a leak occurs, at the earliest  
21 practicable moment following discovery of the  
22 damage."

1                   Section 196.109 reads: "What must  
2                   an excavator do if damage to a pipeline from  
3                   excavation activity causes a leak where  
4                   product is released from the pipeline?"

5                   If damage to a pipeline from  
6                   excavation activity causes the release of any  
7                   flammable, toxic, or corrosive gas or liquid  
8                   from the pipeline that may endanger life or  
9                   cause serious bodily harm or damage to  
10                  property or the environment, the excavator  
11                  must immediately report the release of  
12                  hazardous products to appropriate emergency  
13                  response authorities by calling 911. Upon  
14                  calling the 911 emergency telephone number,  
15                  the excavator may exercise discretion as to  
16                  whether to request emergency response  
17                  personnel be dispatched to the damage site."

18                  We received some significant  
19                  comments to this particular section on the  
20                  proposed language pertaining to the standards  
21                  for excavators. I have attempted to summarize  
22                  the comments here. This is not a verbatim

1 summary of the comments.

2 AFBF, AAR, AGC, Iowa One-call,  
3 Iowa Utilities Board, and Northern Natural Gas  
4 oppose the homeowner exemption but support  
5 other state exemptions. AFBF supports, that  
6 is the American Farm Bureau Federation, I  
7 believe, supports exemptions for routine  
8 farming activities like tillage and injecting  
9 fertilizer.

10 The Association of American  
11 Railroads stated that railroads do not  
12 routinely contact one-call centers for the  
13 constant maintenance of right-of-way work  
14 undertaken along the 140,000 miles of right-  
15 of-way. Therefore, there would be a  
16 significant cost to the railroads, the call  
17 centers and utilities if such calls would be  
18 required by the rule.

19 The Iowa Utilities Board stated  
20 that definitions of "excavation" and  
21 "excavator" would not mimic state law, that is  
22 the definitions of "excavation" and



1 "excavator" in state laws and would set  
2 different standards for when a notice of  
3 excavation is required, than may be required  
4 by a state. The costs to excavators of  
5 contending with two sets of notice  
6 requirements are not reflected in the proposed  
7 rule.

8 We have considered these comments  
9 very seriously. We would, based on the  
10 comments, one item for discussion would be the  
11 elimination of the homeowner exemption.  
12 Several comments, many, many comments, in  
13 fact, stated that many state programs have  
14 gone to great lengths to ensure that  
15 homeowners using hand tools call before they  
16 dig. PHMSA does not oppose that in any way.  
17 And so one item of consideration may be to  
18 strike the homeowner exemption altogether.

19 Some comments we received said  
20 that we might replace the homeowner exemption  
21 with a depth exemption using hand tools to 12  
22 inches. And PHMSA would not recommend

1 adopting that exemption either.

2           Essentially what we propose to do  
3 or what we would solicit your comments on  
4 would be to eliminate all exemptions from this  
5 proposed language in the final rule. No  
6 exemptions would be stated in the language.

7           And instead, as we did with the  
8 criteria for the evaluation of state programs,  
9 we develop a policy that discusses how the  
10 enforcement standard would be applied. That  
11 policy would address the scope and  
12 applicability of the standard itself and  
13 triggers for federal enforcement, how PHMSA  
14 will consider state exemptions and enforcement  
15 decisions, and how the federal excavation  
16 standard will be applied in states with  
17 inadequate enforcement programs.

18           We generally recognize that the  
19 comments that we received make good sense.  
20 That if you establish a federal standard that  
21 does not discuss state exemptions that you can  
22 potentially set up a scenario in which you

1 create a gotcha for excavators under state  
2 regulations and laws.

3 So if, for example, in Iowa  
4 certain farming activities are exempt, if  
5 PHMSA fails to consider those exemptions in  
6 Iowa, there could be problems with  
7 communicating our federal standard if suddenly  
8 all the farmers in Iowa are subject to federal  
9 enforcement, they don't know about it. You  
10 know, it really sets up a potential for  
11 enforcement problems.

12 So this policy that we would  
13 develop would address that and state, among  
14 other things, that in making enforcement  
15 decisions, PHMSA will consider state  
16 exemptions to their law.

17 Instead of establishing a blanket  
18 exemption under the federal regulation, we  
19 would say that we would consider state  
20 exemptions in our enforcement actions.  
21 However, we would not limit our power to  
22 enforce against an egregious or negligent

1 excavator who failed to dig carefully, call  
2 811, repeat offenders. We would still retain  
3 that authority but our enforcement decisions  
4 would be considerate of state laws and what is  
5 required by state laws.

6 CHAIRPERSON HONORABLE: Okay, I  
7 have noticed Don's tent card. Don?

8 MR. STURSMA: Don Stursma from  
9 Iowa again. When you do the policy, there is  
10 one issue I would like you to address and that  
11 is the tolerance zone. I think most state's  
12 laws have a distance ranging from 12 to 24  
13 inches with 18 inches being the norm that is  
14 considered the tolerant zone for the markings.

15 And when you are doing your policy  
16 discussion, it might just be -- I would just  
17 suggest you do address that issue, how the  
18 feds would look at the tolerance issue.

19 CHAIRPERSON HONORABLE: Any other  
20 questions, comments? Massoud.

21 MR. TAHAMTANI: I fully support  
22 the proposal to eliminate any type of

1 exemption language from the rule and have  
2 policies, as you indicated, to address that  
3 issue in the context of looking at the state's  
4 program.

5 I know that Virginia has several  
6 exemptions but I can show you that a number of  
7 them are not causing any problems, again,  
8 having investigated 70,000 pipeline damages.  
9 On the other hand, homeowners are exempt under  
10 our law are beginning to be one of the major  
11 problems and I am going to address that in our  
12 law.

13 CHAIRPERSON HONORABLE: Carl and  
14 then Todd and then Jeff.

15 MR. WEIMER: Just a question to  
16 make sure I understand how this will work. So  
17 if a state is found to have an inadequate  
18 program and PHMSA steps in to do enforcement,  
19 the state laws are all null and void then and  
20 we will be using this criteria?

21 MR. HALL: We would be using this  
22 criteria for federal enforcement. That is

1 correct. It does not nullify state law,  
2 however. State law still stands. But if  
3 PHMSA conducts enforcement, we would use these  
4 enforcement standards.

5 MR. WEIMER: So the state could be  
6 enforcing under their law at the same time?

7 MR. HALL: If they have inadequate  
8 enforcement --

9 MR. WEIMER: Probably not.

10 MR. HALL: -- probably not.

11 MR. WEIMER: Well the question I  
12 had is it talks a lot about what the  
13 excavators have to do but states have gone to  
14 great pains to make sure it is fair to the  
15 excavators on the other side. And some of it  
16 was Don's point about how close you can dig  
17 and others is how soon an operator has to show  
18 up and mark. And I don't see that mentioned  
19 in here at all. It says that you have to wait  
20 for the operator to show up. What if you are  
21 waiting six months later?

22 MR. HALL: That is a very good

1 point. And in crafting the proposal it was  
2 difficult to encompass the requirements of  
3 every state law you can imagine how difficult  
4 that would be.

5 So again, this policy would  
6 address those kinds of questions. And while  
7 we would not adopt state standards, our  
8 enforcement policy would be considerate of  
9 those state standards.

10 So in that case, if it is a 48-  
11 hour waiting period or a 72-hour waiting  
12 period, PHMSA would consider that waiting  
13 period in any enforcement action that was  
14 taken.

15 MR. WEIMER: Okay, thank you.

16 CHAIRPERSON HONORABLE: Todd?

17 MR. DENTON: Todd Denton, Liquids.

18 I'm trying not to continue the confusion we  
19 started on the first motion. I will ask a  
20 question first. We have about five, I  
21 believe, of our topics here that apply, I  
22 think to this vote. Do you want me to note

1 those comments or wait until we make a motion  
2 to include those? Okay, I will wait.

3 CHAIRPERSON HONORABLE: Jeff, I am  
4 going to ask you to wait and go to Sue.

5 MS. FLECK: I had one question.  
6 If we incorporate this language -- this is Sue  
7 Fleck from the Gas Committee and my question  
8 is for Sam.

9 If we incorporate this into the  
10 policy instead, how does it address the  
11 comments that were made about whether this  
12 should apply to anyone hand digging versus  
13 just a homeowner hand digging?

14 MR. HALL: The final rule would  
15 not include any exemptions for any excavator  
16 whatsoever. And the policy would essentially  
17 state that we would be considerate of  
18 exemptions at the state level when making  
19 enforcement decisions.

20 MS. FLECK: So the state would  
21 have to make a determination whether an  
22 exemption applied to anyone hand digging



1 within 12 inches or whatever.

2 MR. HALL: We would --

3 MS. FLECK: There would be none.

4 So nobody could hand dig without a dig safe.

5 I guess I don't understand how the policy

6 changes what you were asking to put into the

7 actual rule. I am having trouble seeing how

8 that changes it.

9 MR. HALL: How does the policy  
10 change the proposed language?

11 MS. FLECK: Yes.

12 MR. HALL: The proposed language  
13 said that everyone would be subject to -- any  
14 excavator would be subject to federal  
15 enforcement. An excavator is defined in the  
16 proposed language in the definition section.

17 It defines who is an excavator, what

18 constitutes excavation. It also proposed that

19 we would exempt or have an exception for

20 homeowners digging on their own property with

21 hand tools. We are of the mind that we should

22 eliminate all exemptions from the federal

1 excavation standard. So that would be one  
2 change here, we would eliminate the homeowner  
3 exemption that was originally proposed and we  
4 would then develop an enforcement policy that  
5 would state that in making enforcement  
6 decisions, we would look to state exemptions,  
7 waiting periods, all of the provisions of  
8 state laws and consider those state laws and  
9 those provisions within state laws and  
10 regulations in making enforcement decisions.

11 MS. FLECK: Okay, so let me just  
12 give an example so I understand.

13 If a state, say the State of  
14 Massachusetts, has no laws with any  
15 exemptions, if somebody is putting a shrub in  
16 their front yard with a shovel and they hit a  
17 main, they are subject to an enforcement  
18 action by PHMSA.

19 MR. HALL: Potentially, yes.

20 MS. FLECK: Okay, I just wanted to  
21 make sure I understood.

22 MR. HALL: Okay.

1 MR. WIESE: Yes, hopefully -- I'm  
2 trying to be helpful. I think we are not  
3 trying to create -- I want to remind people we  
4 are not trying to create --

5 First of all, I am hoping never to  
6 encounter the need to use it. Our goal here  
7 is to drive state programs to be improving and  
8 taking over responsibility for enforcing their  
9 own laws.

10 What Sam is saying to you is we  
11 are trying not to create a national standard  
12 but what we are trying to do is continue  
13 driving states to do it.

14 Now there are going to be  
15 some anomalous situations where the state law  
16 really, you know, it has got little niches  
17 over in the corner but rather than create a  
18 standard law for everyone, really our choice  
19 is either that or defer to the state law. And  
20 I think that is our preference in general is  
21 to defer to the state law.

22 So again, just keep in mind that I

1 am hoping not to have to use this but it is a  
2 backstop. It is not meant to solve world  
3 hunger. It is meant to fall back on if it is  
4 needed.

5 CHAIRPERSON HONORABLE: Richard.

6 MR. KUPREWICZ: Yes, I am just  
7 going to enter into the record I concur with  
8 the wording that is being proposed. I think  
9 you are trying to find some middle ground here  
10 on a very tough issue. I will give you an  
11 example on the exemptions. During our many  
12 iterations in Washington State trying to  
13 improve our abysmal, at the time, one-call  
14 system and enforcement -- actually lack of  
15 enforcement, the argument of the grandma  
16 digging for a rosebush, well so it became the  
17 grandma exemption. Well, let me tell you, if  
18 grandma can dig and blow up a neighborhood,  
19 grandma better have a phone calling one-call.  
20 Nobody really wants to go after grandma. I  
21 don't think I see that in the spirit going on  
22 here.

1                   So I want to support the no  
2                   exemption policy. I think the way you have  
3                   reiterated it here as a policy, great  
4                   responsibility to the state is the proper  
5                   perspective. And each state is going to have  
6                   a slightly different bend on this rule. And  
7                   enforcement is kind of like the last place  
8                   that anybody wants to be, I think.

9                   So you capture all of that in your  
10                  wording that we can vote on and I am ready to  
11                  go.

12                  CHAIRPERSON HONORABLE: Massoud  
13                  and then Michael.

14                  MR. TAHAMTANI: Just to be very  
15                  clear, Sam, are we saying that we will  
16                  actually remove 196.105 completely and the  
17                  corresponding language in the definition  
18                  section? You can simply say yes.

19                  MR. HALL: Yes, we would  
20                  completely remove the homeowner's exception.

21                  CHAIRPERSON HONORABLE: Mike and  
22                  then Chuck.

1 MR. BELLMAN: Sorry to beat this  
2 dead horse here but 196.105 says: "Are there  
3 any exceptions to the requirement to use one-  
4 call before digging?" It doesn't say anything  
5 about homeowners. To Massoud's point, are we  
6 just taking that whole paragraph out or are we  
7 going to have an answer to that question that  
8 says no?

9 MR. HALL: We would remove the  
10 whole paragraph. We would be silent on  
11 exceptions. There would be no exceptions.

12 CHAIRPERSON HONORABLE: Chuck and  
13 then Gene.

14 MR. LESNIAK: I understand the  
15 concern here. And you know, I appreciate the  
16 information from Massoud. I have been  
17 thinking about this. It kind of troubles me  
18 a little bit though that to remove the  
19 exception and I realize that this is intended  
20 just as a backstop in case the state program  
21 goes away or something, but I think that if we  
22 put this in the criteria that as people, as

1 states revamp their programs going forward,  
2 they will look to this as a standard to go by.  
3 And it concerns me that a homeowner, before  
4 they do anything, anywhere on their property,  
5 with a shovel or a hoe, or whatever, would be  
6 at risk or would be required to call one-call.

7           You know, I know that not  
8 everybody is aware of the easements on their  
9 property and that sort of thing. They should  
10 be, however. And I would be much more  
11 comfortable with removing the homeowner  
12 exemption if it only applied for within  
13 easements on their property. I just kind of  
14 have a problem with saying you can't take a  
15 shovel anywhere on your property without  
16 calling one-call first. I think that is  
17 unreasonable. I think it is burdensome.

18           Now if you have an easement on  
19 your property and you don't know about it,  
20 well then you are at risk. You ought to know.  
21 And so if you have got an easement on your  
22 property and you do know about it and you want

1 to dig within that easement, then you should  
2 be obligated to call one-call and I don't have  
3 a problem with removing that exemption.

4 But I think that it is overly  
5 burdensome to just say you can't do it  
6 anywhere on your property.

7 MR. WIESE: Just as a quick  
8 response because it fired a neuron that was  
9 sleeping. I should have said it earlier.  
10 Again, all we are trying to do is in the  
11 worst-case scenario where there is an event,  
12 in the state we have an inadequate state  
13 enforcement program, what would the federal  
14 government enforce? What we are trying to say  
15 is we would defer to the state practice.

16 Now the other thing I forgot to  
17 say and the neuron that was asleep was we also  
18 have a mandate which we begin next year, early  
19 in the year about dealing with exemptions. We  
20 have a congressional requirement to study  
21 exemptions and to report on those.

22 Ann Marie Robinson is here. She



1 and Sam and Steve Fisher and others have been  
2 organizing that effort. Where we will sort of  
3 get into the meat of some of these exemptions,  
4 we have to report back to the Congress.

5 I don't think we are trying to  
6 create, unless I am misunderstanding it,  
7 Chuck, I don't think we are trying to create  
8 a requirement to enforce against that  
9 homeowner. We would just defer to what the  
10 state practice is.

11 MR. LESNIAK: But I do think that  
12 going forward that states are liable to look  
13 to this as if they want to reconsider their  
14 program, they may look to this as a de facto  
15 federal standard that they ought to be meeting  
16 sort of a minimum bar and that is my concern.

17 So you may end up having states  
18 adopt similar language and lose that homeowner  
19 exemption at a state level and then you do  
20 have a bunch -- and the state's defense may be  
21 well the feds are doing it and so we think  
22 they are expecting us to do it because we are

1 accepting federal money from them.

2 And so if we don't expect states  
3 to do it, why would we do it at a federal  
4 level?

5 MR. HALL: If I might respond,  
6 many states do require homeowners to call  
7 before they dig. It is a state decision.

8 I think you are right that there  
9 is a possibility that people may look to this  
10 federal standard as a foundation for  
11 developing their own standard. The  
12 enforcement standard is taken almost verbatim  
13 from the PIPES Act and it is not nearly as  
14 specific as state standards.

15 If we propose an exemption for  
16 homeowners following your point, we may create  
17 a scenario in which states use that exemption  
18 in the federal standard as justification for  
19 eliminating the homeowner exemption. For  
20 example, it could go the other way. And some  
21 states have worked hard. We just heard from  
22 Massoud. They are working to eliminate

1 potentially the homeowner exemption.

2           Eliminating the homeowner  
3 exemption and remaining silent about  
4 exemptions and again, being considerate of  
5 state exemptions and state laws is the  
6 compromise that we see as the fairest way to  
7 approach it, leaving the power with the  
8 states, to create laws that make the best  
9 sense in their territory.

10           MR. WIESE: I'll just add, Chuck,  
11 that is easy enough in the policy statement  
12 that we include in the preamble to say it is  
13 not our intention to create precedent for  
14 state enforcement programs. We are trying to  
15 simply create a minimum backstop that we would  
16 expect that states would go beyond that and  
17 that we would also be studying the whole  
18 issues of exemptions and reporting to Congress  
19 on that during next year.

20           But I get your point. It will not  
21 be our intent to tell people hey, this is a  
22 model program. It is a bare bones, just what

1 are we going to have to do in the worst-case  
2 scenario where we have to step in.

3 CHAIRPERSON HONORABLE: Gene and  
4 then Don.

5 DR. FEIGEL: Jeff, I am not  
6 convinced by your argument. I think the  
7 obverse will work just as easily, quite  
8 frankly. You are setting here saying you are  
9 trying to set some minimum standards but I  
10 don't think it is going to work that way.

11 To the specific point of the  
12 homeowner exemption, that would preclude my  
13 going out in my back yard and digging a whole  
14 to put a rosebush in. Now if that is the net  
15 effect of what we want, that strikes me as  
16 being extraordinarily extreme. It will  
17 potentially prevent some decimal place out  
18 accident. I would submit to you that the  
19 cost-benefit for the population, the general  
20 homeowner population of this country is going  
21 to be minuscule.

22 CHAIRPERSON HONORABLE: Don?

1                   MR. STURSMA: Don Stursma, Iowa.  
2           To the one point about restricting the  
3           requirement to easements, at least in my  
4           experience the gas service line to a  
5           residential business is not on an easement.  
6           Rather, it is a condition of providing service  
7           that they allow access to a line. So if the  
8           homeowner is going to hit anything it is most  
9           likely going to be a service line and that  
10          would not be an easement situation.

11                   And I am hearing some people  
12          basically not liking the idea of being subject  
13          to one-call law on their own property and  
14          doing their own work. But at least in many  
15          states and many damage prevention  
16          organizations are actively targeting the  
17          homeowners as being exactly the people you  
18          want to reach, exactly the people you want to  
19          have call in because of the risk of hitting  
20          underground facilities.

21                   So you might be swimming against  
22          the tide on that one.

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CHAIRPERSON HONORABLE:

Commissioner Gardner, is your tent card up?

HON. GARDNER: No.

CHAIRPERSON HONORABLE: No, that's  
Gene. Thanks. Sorry about that. Massoud.

MR. TAHAMTANI: I think Don  
pointed out a couple of things I wanted to  
point out but I will just translate what Don  
said.

(Laughter.)

MR. TAHAMTANI: Clearly, easements  
are not defined on properties and you can't  
expect homeowners to know where things are.  
There was a time that you only had a couple of  
things underground, it was water and sewer but  
now you have got all sorts of stuff  
underground. And I am afraid that the  
majority, so it is not the gas companies, they  
find the quickest way to that box on the house  
and go around all sorts of places to get  
there. So the only way to protect the  
underground facilities is to call, like Don

1 said. Even though there are exemptions, all  
2 the campaigns that we know about and CGA admit  
3 it as long as they are being spent, it doesn't  
4 say with the exception of homeowners, others  
5 need to call. So the campaign is about  
6 anybody who is digging anywhere to call. It  
7 is the right thing to do.

8 Now I want to make clear to you  
9 that we have a number of exemptions. For  
10 example, tilling the farms is exempt in  
11 Virginia. Railroads exempt in Virginia. We  
12 haven't had any problems by any of those  
13 people being caused but 25 percent of our  
14 damages today are caused by homeowners and we  
15 have that exemption in the law. And my plan  
16 is to, one of these days, change our law and  
17 remove that exemption.

18 So I believe it is the right thing  
19 to do for the federal government to stay  
20 silent in terms of these rules are concerned.  
21 But in the preamble or the policy, encourage  
22 all to call, as is the practice with CGA and

1 all the campaigns.

2 MR. WIESE: I'm just going to add  
3 for a point of clarification maybe to help  
4 move this along because I think there is a  
5 natural tendency of many of us in the room who  
6 have been involved in damage prevention for  
7 many years and we just want to roll up our  
8 sleeves and get into that exemption issue.  
9 That is not what we are here to debate. We  
10 are strictly here to debate what is the  
11 minimum standard that the federal government  
12 would use only in a circumstances where it has  
13 deemed a state enforcement program inadequate  
14 and the state has failed to respond within the  
15 lengthy period of time that we are giving them  
16 to correct or challenge our assertion.

17 So I just want to say that because  
18 there is a meaty discussion to be had around  
19 exemptions and we all have personal points of  
20 view on that which we need to play out in a  
21 public arena. I would just suggest to you  
22 this isn't it. That is coming in the spring.



1 I think it is March. We are still working out  
2 the logistics. But I agree and that is the  
3 policy we had had, actually, Massoud, was as  
4 I say, as long as the state can justify,  
5 honestly, the exemption that they have,  
6 whether we like it or not, if they can back it  
7 up with data to show that it is not an issue,  
8 it is probably not our place to tell them.

9 CHAIRPERSON HONORABLE: Richard.

10 MR. WORSINGER: Rich Worsinger,  
11 Gas. Just one other comment about homeowners.  
12 Homeowners oft times think they own up to the  
13 curb. A lot of times they don't. It depends  
14 on what state you are on. A lot of times the  
15 public right of way extends 10, 15, 20 feet  
16 back onto their property. And that is the  
17 area where a lot of gas mains, services, and  
18 other underground facilities are. Homeowners  
19 maintain it. They plant bushes, put in  
20 mailboxes. They think it is theirs. It is  
21 not and they are not aware of what is  
22 underground.

1                   CHAIRPERSON HONORABLE: Thank you,  
2 Rich. Seeing no other tent cards -- now  
3 seeing no other tent cards, I think we have  
4 had a very thorough discussion and I would  
5 like to try to move us along. And I  
6 understand that Todd had some items to offer.

7                   MR. DENTON: Okay, so before  
8 making a motion then I will just try to  
9 clarify what the motion will include. So this  
10 would be on the federal excavation standard.

11                   So on the sheet that we passed  
12 around, I believe that we had six items that  
13 were originally intended for this vote. Given  
14 this discussion and what I am hearing, I guess  
15 support for just eliminating 105 -- 196.105  
16 and we will exclude number one. So I will  
17 briefly cover what the other five are.

18                   Number two would be a proposed  
19 change and this would be "upon calling 911  
20 emergency telephone number, the excavator may  
21 exercise discretion as to whether to request  
22 emergency response personnel." That is how it

1 is worded today. We would propose that PHMSA  
2 should eliminate the discretion of the  
3 excavator in requesting that personnel.

4           Number three, item three, it is  
5 excavator responsibilities in 196.103. This  
6 is basically clarifying the language in  
7 196.103. It reads "Prior to commencing  
8 excavation activity where an underground gas  
9 or hazardous liquid pipeline may be present...  
10 the excavator must call." We would propose  
11 striking that "where an underground gas or  
12 hazardous liquid pipeline may be present."  
13 They should just call if they are digging.

14           Item four is a stop work  
15 provision. We propose that a stop work  
16 provision be incorporated into the  
17 regulations, which would require excavators to  
18 stop work if a pipeline is damaged in any way,  
19 until the operator has had an opportunity to  
20 assess that damage.

21           And then item five is on  
22 backfilling and this would be that we would

1 propose a requirement that an excavator may  
2 not backfill a site where damage or a near-  
3 miss has occurred until the operator has been  
4 provided an opportunity to inspect the site.

5 And then item seven would be on  
6 reporting time frame. I think it fits in this  
7 in this boat. Currently the way the NPRM is  
8 worded, I believe it states excavators should  
9 report "as soon as practicable." We would  
10 propose "promptly", being that "as soon as  
11 practicable" has been defined previously as  
12 two hours. And I think that two hours is also  
13 mentioned in the preamble. But we would just  
14 prefer the word "promptly."

15 So given those, I will make a  
16 motion that the proposed rule as published in  
17 the Federal Register in terms of the proposed  
18 federal excavation standard is technically  
19 feasible, reasonable, cost-effective, and  
20 practicable, if the following changes are  
21 made.

22 First would be eliminate the

1 homeowner exemption and instead develop a  
2 policy as stated on the screen. And then in  
3 addition, the five proposed changes, items two  
4 through six -- I'm sorry -- two through five  
5 and number seven on the sheet that we passed  
6 out.

7 CHAIRPERSON HONORABLE: There is a  
8 motion by Todd -- two, three, four, five and  
9 seven. Is there a second to the motion?

10 MR. TAHAMTANI: I second the  
11 motion.

12 CHAIRPERSON HONORABLE: Seconded  
13 by Massoud. Is there any discussion? Please  
14 put up your tent cards. Chuck?

15 MR. LESNIAK: I've got a question  
16 on number two. Should eliminate the  
17 discretion of the excavator in determining  
18 whether emergency personnel should be  
19 dispatched. So basically what you are  
20 suggesting is that the language should say  
21 that the excavator has to call 911 and request  
22 emergency personnel to be dispatched? It

1 sounds like that is what you are asking for  
2 but that is not what it says.

3 MR. DENTON: Yes, or perhaps we  
4 just remove the may.

5 MR. LESNIAK: Because the  
6 excavator doesn't make that determination.

7 MR. DENTON: Right.

8 MR. LESNIAK: So what you are  
9 saying is call 911 and ask for emergency  
10 personnel.

11 MR. DENTON: Right.

12 MR. LESNIAK: Okay.

13 CHAIRPERSON HONORABLE: Lanny,  
14 then Don.

15 MR. ARMSTRONG: Lanny Armstrong,  
16 representing the public. In most PSAPs or  
17 Public Safety Access Points, if you call 911,  
18 they are coming. There is no discretion. And  
19 I think it is a good idea to remove the  
20 discretionary language in this particular  
21 amendment, simply because an excavator and/or  
22 contractor doesn't have the necessary

1 authority, number one, to disregard emergency  
2 response personnel. Thank you.

3 CHAIRPERSON HONORABLE: Thank you,  
4 Lanny.

5 Don.

6 MR. STURSMA: Don Stursma, Iowa.

7 On the bullet that was just added,  
8 where it says be incorporated, is that  
9 incorporate into the policy discussion? Is it  
10 incorporate into the regulation? I guess to  
11 me it is a pretty big difference on what it is  
12 being incorporated into.

13 CHAIRPERSON HONORABLE: Thank you,  
14 Don.

15 MR. STURSMA: I would prefer the  
16 policy.

17 CHAIRPERSON HONORABLE: Yes, take  
18 out that final rule.

19 Don, is your tent card still up?  
20 I thought I saw Larry's up. No? Okay, Don,  
21 have at it.

22 MR. STURSMA: I guess I am a

1 little bit nervous about incorporating in to  
2 the final rule. I think some of these areas  
3 are things where the states will again have  
4 some laws on that issue. And I would be  
5 concerned about conflicts with state law on  
6 the same subjects. So I would perhaps put the  
7 emphases on addressing in policy with perhaps  
8 some changes to the rules but I would  
9 certainly put the emphasis on the policy  
10 section, rather than on the rule change.

11 CHAIRPERSON HONORABLE: And in  
12 keeping with Don's point, I wonder if this  
13 goes to the issue that I think Mike raised  
14 about new language in a rule. So, I will put  
15 that to PHMSA.

16 MR. HALL: The second bullet here  
17 has been revised to say that the items two  
18 through five and seven be considered for  
19 incorporation into the final rule.

20 The stop work provision, for  
21 example, was not originally proposed. It  
22 would require further public comment, as I



1 understand. Backfilling would be another  
2 issue that would require further public  
3 comment.

4 I think we also run the risk of if  
5 we establish those kinds of provisions in  
6 regulation, we have a difficult time  
7 communicating those requirements in states  
8 that are deemed inadequate. It is difficult  
9 to reach every excavation stakeholder or  
10 excavation damage prevention stakeholder and  
11 state says it is. Education campaigns are  
12 challenging.

13 Stop work provisions, backfilling  
14 provisions are very specific and would require  
15 some pretty hefty education to ensure that  
16 people are not ignorant of the regulations.

17 I think those are some considerations and I  
18 think if we considered what you have proposed  
19 here for incorporation into the regulation as  
20 opposed to incorporating it, then I think we

21 --

22 MR. STURSMA: Okay.

1 CHAIRPERSON HONORABLE: Very good.  
2 Seeing no other tent cards -- did I see yours  
3 Todd -- I am going to request that Cheryl  
4 conduct the vote.

5 For the record, we do have a  
6 motion and a second.

7 MS. WHETSEL: Okay, here goes the  
8 vote for number two. First we will go with  
9 Gas Committee, to be different. Wayne  
10 Gardner?

11 HON. GARDNER: Aye.

12 MS. WHETSEL: Colette Honorable?

13 CHAIRPERSON HONORABLE: Aye.

14 MS. WHETSEL: Stursma?

15 MR. STURSMA: Aye.

16 MS. WHETSEL: Sorry. Don.

17 Jeff Wright?

18 MR. WRIGHT: Aye.

19 MS. WHETSEL: Mike Bellman?

20 MR. BELLMAN: Aye.

21 MS. WHETSEL: Andy Drake is not  
22 here. Susan Fleck?

1 MS. FLECK: Aye.

2 MS. WHETSEL: Rick Worsinger?

3 MR. WORSINGER: Aye.

4 MS. WHETSEL: Chad Zamarin?

5 MR. ZAMARIN: Aye.

6 MS. WHETSEL: Denise Beach?

7 MS. BEACH: Aye.

8 MS. WHETSEL: Richard Felder -- I  
9 mean Feigel? That's an old name from the  
10 past. Sorry.

11 DR. FEIGEL: Aye.

12 MS. WHETSEL: Rick Pevarski is not  
13 here. And Gerry Rosendahl?

14 MR. ROSENDAHL: Aye.

15 MS. WHETSEL: Okay.

16 CHAIRPERSON HONORABLE: That  
17 passed unanimously.

18 MS. WHETSEL: I guess we should do  
19 Liquid Committee. For the Liquid Committee,  
20 Lula Ford?

21 HON. FORD: Aye.

22 MS. WHETSEL: Massoud?

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MR. TAHAMTANI: Aye.

MS. WHETSEL: Todd Denton?

MR. DENTON: Aye.

MS. WHETSEL: Tim Felt?

MR. FELT: Aye.

MS. WHETSEL: Craig Pierson?

MR. PIERSON: Aye.

MS. WHETSEL: Larry Shelton?

MR. SHELTON: Aye.

MS. WHETSEL: Lanny Armstrong?

MR. ARMSTRONG: Aye.

MS. WHETSEL: Rick Kuprewicz?

MR. KUPREWICZ: Aye.

MS. WHETSEL: Chuck Lesniak?

MR. LESNIAK: Aye.

MS. WHETSEL: And Carl Weimer.

MR. WEIMER: Aye.

MS. WHETSEL: Okay, that passed.

CHAIRPERSON HONORABLE: Thank you.

On to the next one. For the benefit of those  
in attendance, I believe we requested that the  
air be turned off. So I think we requested

1 heat earlier but be careful what you ask for  
2 because we actually got air. So someone is  
3 working on it.

4 MR. HALL: The next issue that we  
5 will discuss is the incentives for states to  
6 implement adequate enforcement programs. The  
7 NPRM language as proposed Section 198.53 says:  
8 "When and how will PHMSA evaluate state  
9 excavation damage prevention law enforcement  
10 programs? PHMSA conducts annual program  
11 evaluations and certification review of state  
12 pipeline safety programs. PHMSA will also  
13 conduct annual reviews of state excavation  
14 damage prevention law enforcement programs.  
15 PHMSA will use the criteria described in  
16 Section 198.55", that is the criteria that we  
17 voted on in our first vote, "as the basis for  
18 the reviews, utilizing information obtained  
19 from any state agency or office with a role in  
20 the state's excavation damage prevention law  
21 enforcement program. If PHMSA finds a state's  
22 enforcement program inadequate, PHMSA may take

1 immediate enforcement against excavators in  
2 that state.

3           The state will have five years  
4 from the date of the finding to make program  
5 improvements that meet PHMSA's criteria for  
6 minimum adequacy. A state that fails to  
7 establish an adequate enforcement program in  
8 accordance with 49 CFR 198.55 within five  
9 years of the finding of inadequacy may be  
10 subject to reduced grant funding established  
11 under 49 U.S.C. 60107." We refer to that as  
12 our base grant program. "The amount of the  
13 reduction will be determined using the same  
14 process PHMSA currently uses to distribute the  
15 grant funding; PHMSA will factor the findings  
16 from the annual review of the excavation  
17 damage prevention enforcement program into the  
18 49 U.S.C. 60107", that is base "grant funding  
19 distribution to state pipeline safety  
20 programs. The amount of the reduction in 49  
21 U.S.C. 60107 grant funding shall not exceed 10  
22 percent of prior year funding. If a state

1 fails to implement an adequate enforcement  
2 program within five years of a finding of  
3 inadequacy, the Governor of that state may  
4 petition the Administrator of PHMSA, in  
5 writing, for a temporary waiver of the  
6 penalty, provided the petition includes a  
7 clear plan of action and timeline for  
8 achieving program adequacy."

9 Significant comments on these, on  
10 the proposed language: Iowa Utilities Board  
11 said that reductions to base grant funding are  
12 not within the scope of the rule.

13 Several pipeline trade  
14 associations are opposed to the reduction in  
15 the base grant funding. The National  
16 Association of Pipeline Safety Representatives  
17 said that the proposed grant funding penalties  
18 for states deemed by PHMSA to have inadequate  
19 excavation damage prevention law enforcement  
20 programs are unnecessary, unjustified, and  
21 unfairly penalizes state's pipeline safety  
22 program. The provisions should be removed.

1           TPA said the grace period should  
2           be limited to three years, as opposed to the  
3           proposed five years, but PHMSA should not  
4           begin enforcement during the three-year grace  
5           period. They also suggested that we limit  
6           funding reductions to ten percent.

7           We currently, and I am not  
8           speaking to the slide here, we currently  
9           evaluate state damage prevention programs in  
10          our annual reviews of our state partners, the  
11          public utility commissions or the equivalent.

12          We calculate eight percent of the  
13          base grant funding on damage prevention  
14          programs using criteria that were established,  
15          I believe, I don't know how long ago but they  
16          are, I think, everyone would agree are fairly  
17          outdated. So again, eight percent of the base  
18          grant funding is dependent upon having a  
19          damage prevention program.

20          We would suggest that we may,  
21          instead of limiting our reduction in base  
22          grant funding to ten percent, we would say



1 that it is limited to eight percent, which is  
2 consistent with what we currently do.

3 What we would also consider would  
4 be changing the criteria that we use in our  
5 state evaluations. Currently again, we have  
6 criteria in those state evaluations that are  
7 outdated. WE would update those criteria with  
8 the criteria that would be listed in the final  
9 rule, the criteria for evaluating state  
10 programs.

11 We would also, again, propose to  
12 develop a policy that would be incorporated in  
13 the preamble that would clarify how the base  
14 grants would be calculated. Again, using the  
15 formula that we currently use, eight percent  
16 of the base grants are based on damage  
17 prevention but we would use the criteria that  
18 are listed here in the final rule or that  
19 would be a part of the final rule. And we  
20 would also suggest that we start, that we  
21 educate those folks above the public utility  
22 commission level. We understand that public

1 utility commissions don't necessarily have the  
2 sway within the state to unilaterally change  
3 damage prevention laws, of course. So we  
4 would propose that we would communicate  
5 directly with the governors about our findings  
6 of inadequacy and make a concerted effort to  
7 educate those who would care within the state  
8 that funding depends upon an adequate  
9 enforcement program.

10 CHAIRPERSON HONORABLE:

11 Questions/comments? Gene.

12 DR. FEIGEL: I'm going to make  
13 some numbers up. If you have a state that is  
14 doing nothing for enforcement, yet 40 percent  
15 of the accidents in that state are due to lack  
16 of one-call enforcement, wouldn't you think  
17 about reducing their grant by 40 percent, not  
18 some eight or ten percent?

19 MR. WIESE: I don't think so. I  
20 think that if we really get to that position,  
21 we really need to be talking about the  
22 certification of the state to begin with. We

1 certify the state to carry out the Secretary's  
2 program. If it gets to the point where the  
3 broader program is broken, then we really need  
4 to talk about that.

5 But in this particular case, we  
6 are trying to provide an incentive to this  
7 date to move in the correct direction, Gene.

8 DR. FEIGEL: Yes, I'm trying to  
9 provide them with an incentive, too, that is  
10 consistent --

11 (Laughter.)

12 MR. WIESE: I'm trying not to kill  
13 them.

14 DR. FEIGEL: -- with the -- and  
15 you could make it however you want; number of  
16 accidents or cost of accidents or whatever.  
17 If they are doing nothing to prevent that, yet  
18 you are funding other parts of the program  
19 that aren't consistent with the gross losses  
20 in that state, I don't follow that logic,  
21 Jeff.

22 MR. WIESE: Well my only reply to

1 that would be that there are many parts to the  
2 pipeline safety program that go well beyond  
3 just the excavation damage side of it. So I  
4 get your take that the outcome in a particular  
5 year was driven by excavation damage. But I  
6 think we, in our state partners, really place  
7 our emphasis on prevention.

8 I would just say I would just  
9 agree to disagree with you. I am not  
10 interested in taking their kneecaps off. I  
11 want to incentivize them to do a good job.

12 MR. WIESE: I'm sorry. I admit  
13 the numbers I made up are made up but I think  
14 they are fairly consistent with the magnitude  
15 of third-party damage. And you are going to  
16 continue to fund them at 90 percent of  
17 whatever, when 40 percent of the damage is  
18 because of uncontrolled third-party damage, at  
19 least in part, obviously, due to their not  
20 enforcing one-call.

21 You can dance around that any way  
22 you want, Jeff, but I don't follow.

1 CHAIRPERSON HONORABLE: Don?

2 MR. STURSMA: Don Stursma, Iowa.

3 I just thought I would point out that we are  
4 not a state damage prevention organization.  
5 We are a state pipeline safety organization,  
6 with what we do for damage prevention being  
7 one part of what we do. To judge the entire  
8 pipeline safety program based on perception of  
9 what we ought to be doing with damage  
10 prevention is wrong. That is just one small  
11 piece.

12 In fact the original rule would  
13 have placed more emphasis -- the rule as  
14 originally proposed would have placed more  
15 emphasis on one-call enforcement than any  
16 other function that the state performs for  
17 pipeline safety, which to me is pretty  
18 ridiculous. I really question whether the  
19 state base grant should even be involved here  
20 at all. I see nothing in the law telling  
21 PHMSA when they can take over for damage  
22 prevention enforcement that says "and punish

1 the state."

2 CHAIRPERSON HONORABLE: Gene.

3 MR. STURSMA: And I am a little --  
4 excuse me.

5 CHAIRPERSON HONORABLE: I'm sorry.

6 MR. STURSMA: And in terms of  
7 whether there should be in a penalty or what  
8 an appropriate penalty is, I would point out  
9 that there is a Joint Federal State Grant  
10 Allocation Committee or Grant Allocation and  
11 Strategic Planning Committee to give a full  
12 name, which would be the perfect place to  
13 discuss what an appropriate system would be  
14 for penalties for states that do not meet  
15 federal expectations. That is where all other  
16 issues concerning program performance and  
17 grant penalties are at least discussed, if not  
18 always to my satisfaction, at least discussed,  
19 before they are put into effect. And I think  
20 this should, again, not be incorporated into  
21 the current rules but should be, like their  
22 Grant Allocation Committee, for further

1 discussion and a little more rationale on what  
2 an appropriate penalty might be.

3 CHAIRPERSON HONORABLE: Gene.

4 DR. FEIGEL: Don, neither your nor  
5 Jeff's comments are addressing the point I am  
6 making.

7 I fully appreciate that state  
8 pipeline safety programs encompass a number of  
9 activities that go beyond one-call. All I am  
10 saying, and I made up some numbers but I don't  
11 think again they are terribly far from what is  
12 happening in the real world, if 40 or 50  
13 percent of the accidents are related to un-  
14 one-call digs and a state chooses not to  
15 enforce whatever law they have got on the  
16 books, why are we funding a bunch of stuff  
17 that doesn't relate to the accident  
18 preponderance?

19 CHAIRPERSON HONORABLE: I'm going  
20 to yield this Chair, maybe to Commissioner  
21 Ford, because I would like to speak. I just  
22 want to put this in context for us. We are

1 talking about from that map maybe ten or  
2 eleven states, I believe. So I think we could  
3 agree that most states have a "adequate"  
4 enforcement system. And from what I have  
5 heard described here, I am described for the  
6 potential that PHMSA could open up or alter  
7 the base funding evaluation process without  
8 proper notice and comment from the public. So  
9 I think to the extent that this body would  
10 want to take up how the noncompliant states,  
11 if we call it that, or states with inadequate  
12 programs should be penalized if this body  
13 believes it is the proper way to go, so be it.  
14 But I would stand with Don on this point.

15 HON. FORD: Jeff.

16 MR. WIESE: Okay, well hopefully  
17 to address all of the above, including Gene's.  
18 Gene, one of the things I can tell you after  
19 having worked with the states for 14 years is  
20 they are not all the same. Some of the state  
21 programs that we are paying to do pipeline  
22 safety work for us in a broader scale really



1 don't have the play on damage prevention.  
2 Enforcement may have been -- maybe they are  
3 promoting 811, call before you dig, but the  
4 enforcement has been delegated, for example,  
5 to the Attorney General's Office. It is not  
6 the pipeline safety.

7           So my only response to you is I am  
8 reluctant to penalize a partner who is doing  
9 the job that we need them to do, particularly  
10 when they lack the ability to make the change.

11           Now I will say that is why this is  
12 here, though, is to say to, and there is a due  
13 process where all we are really trying to do  
14 is elevate the issue to a level where it can  
15 be addressed by saying to the governor, hey,  
16 heads up. We think your program is  
17 inadequate. You are now beginning to  
18 jeopardize base funding.

19           I said I wouldn't say this on the  
20 record but it would be really hard for me to  
21 hit a state pipeline safety program like that.  
22 But I have got to get the attention of some

1 people beyond some of these guys. So the very  
2 existence of the ability to send a letter to  
3 a governor who says you are jeopardizing  
4 federal funds if you don't address this issue  
5 I am hoping is what spurs the action that we  
6 need to fix the program.

7 DR. FEIGEL: I'm with you, Jeff.  
8 I am just trying to get the right proportion.

9 HON. FORD: Don -- Craig?

10 MR. PIERSON: Craig Pierson,  
11 Liquids.

12 If I am hearing correctly, in the  
13 policy statement in the preamble, there would  
14 be the notion of a case-by-case reasonableness  
15 approach. That is a question.

16 As you develop this policy, will  
17 you be reflecting PHMSA taking a case-by-case  
18 reasonableness approach? Will that be evident  
19 in the policy?

20 MR. WIESE: Speaking for Sam, who  
21 is better informed on this issue than I am,  
22 but I think the intent of the second bullet

1       there that says the policy clarifies how base  
2       grants will be calculated, we could easily  
3       modify that to reflect your point, which was  
4       to say -- I will allow you to rephrase that.  
5       I think you have the thought in there. I  
6       don't want to neuter it to the point where I  
7       say it is not our intent to try to use this  
8       provision. You know what I am saying? But if  
9       we could say we would consider state-specific  
10      circumstances, but I don't want to give up the  
11      provision of elevating the issue to the  
12      governor. I think that is the only way to  
13      really get attention to it.

14               Craig, if you can put that in the  
15      terms of a proposal, it would be easier for  
16      me.

17               MR. PIERSON: Bear with me a  
18      second.

19               MR. WIESE: Okay.

20               MR. PIERSON: I am going to need  
21      to clarify something.

22               I am looking for a sentence or

1 some phrases in the second portion that  
2 clarifies how base grants will be calculated  
3 by including the state program evaluation  
4 criteria define the final rule and determining  
5 state enforcement penalties on a case-by-case  
6 basis. I don't like that case-by-case.

7 HON. FORD: Sue and then Massoud.

8 MS. FLECK: I want to just expand  
9 a little bit on what Craig is talking to. We  
10 are talking about the use of the 49 U.S.C.  
11 60122, which is the pipeline safety penalties,  
12 for \$200,00 to \$2 million as the guide. And  
13 we think that there is an opportunity to be  
14 more reasonable and not necessarily to default  
15 to those penalties. And then maybe that is  
16 what we are getting at on a state-by-state  
17 basis and based on their program that the  
18 civil penalties should be much like you  
19 considering whether the enforcement is  
20 adequate or not that some discretion is used  
21 in not necessarily just using the same one  
22 size fits all but considering on each state

1 level what the appropriate civil penalty  
2 should be.

3 I don't think that helped but --

4 MR. WIESE: I think I am  
5 understanding you. Well in a way I think it  
6 did because our proposal said up to ten  
7 percent. And if I hear you correctly, you say  
8 the policies should reflect the circumstances  
9 that would determine the gravity between zero  
10 and ten percent of the penalty, reflecting  
11 state-specific circumstances. I don't know  
12 how to shorten that but it needs to be  
13 probably.

14 HON. FORD: Massoud, did you want  
15 to jump in?

16 MR. TAHAMTANI: Yes. I understand  
17 what PHMSA's challenge is here, where they  
18 have determined the state not to have an  
19 adequate program and they are trying to  
20 encourage, entice, and do whatever else they  
21 can to get that state to move toward doing the  
22 right thing. But I suggest to you that eight

1 or ten percent of the base grant that you  
2 provide to some states is very insignificant.  
3 It is not going to move the ball. At the same  
4 time, it is going to create a problem between  
5 your partners, you keep calling us partners,  
6 but you don't mind taking ten percent of our  
7 money away when you know that in some cases  
8 the commissions don't get involved with  
9 politics and it really takes all the stars to  
10 line up for something to happen within this  
11 particular part of the law. It may be a major  
12 accident in the state. It may not.

13 So Jeff you talked about we need  
14 to communicate with the governor of that state  
15 to maybe move that ball or line up the stars.  
16 Why do we need to even have the ten percent in  
17 the law?

18 To Mr. Stursma's point, one of the  
19 ways that the states and PHMSA work together,  
20 and I used to serve on this committee until  
21 they kicked me off, we have sat together for  
22 hours and hours trying to talk about the

1 appropriate allocation of the pipeline safety  
2 funds. And I realize there has got to be some  
3 evaluation of state's damage prevention  
4 programs but I suggest to you that to punish  
5 the rest of the pipeline safety program at a  
6 time when we need more inspectors and more  
7 boots on the ground, just because the stars  
8 are not lining up and the commissions can  
9 actually in many states, including mine, they  
10 can advocate legislation to move this ball  
11 forward.

12 At the same time, a letter from  
13 the Secretary to the Governor that can say you  
14 just had a major accident. Look at the data  
15 in your state. I have got the data from your  
16 gas companies in your state and look at where  
17 the trends are going. It may be much more  
18 effective with this process where the Governor  
19 has to respond to the Secretary and say here  
20 is my plan of action.

21 Let me give you an example. In  
22 the Virginia law under the constitution, we

1 cannot penalize local government. And we know  
2 that they are in the business of serving the  
3 public. At the same time, our law includes a  
4 provision that says if the City of Richmond is  
5 not doing everything they are supposed to, we  
6 have the authority to bring Mike, and I am  
7 looking forward to that day --

8 (Laughter.)

9 MR. TAHAMTANI: No, he's doing  
10 fine. We have the authority to bring him to  
11 the commission in a public meeting, sit down  
12 with him and say here is the problem. What  
13 are you doing about it? And I think sometimes  
14 that is much more effective when it comes to  
15 local government than penalty.

16 So my suggestion is that the ten  
17 percent is not adequate. I will not agree, of  
18 course, with my friend at the end of the table  
19 that we take people's kneecaps off, although  
20 you said that. The ten percent is  
21 meaningless. It needs to really get out of  
22 this rule.



1 HON. FORD: Any others? Mr.  
2 Lesniak?

3 MR. LESNIAK: You know I just want  
4 to speak in favor of the eight percent or the  
5 ten percent. I know for some state agencies  
6 it may be minimal. But I think for most of  
7 the agencies, especially in today's budget  
8 climates for almost every state, that is a  
9 significant amount. And I think it is  
10 reasonable. I think the language that is  
11 there says that they may be subject to that.  
12 It doesn't require the agency to do anything.

13 And then other thing is I think we  
14 don't look at this as a penalty. This is an  
15 incentive. These states have asked for  
16 federal funding. And what the agency is  
17 saying with this rule is if you want federal  
18 funding, if you want all of the federal  
19 funding that you are asking for, you have to  
20 meet some minimum standards. You have to have  
21 an adequate program or we are not going to  
22 give you all of that money. And I think that

1 is a reasonable approach.

2 I think for some states, you know,  
3 maybe Virginia has a lusher budget than  
4 others. But I know in Texas where we run a  
5 bare bones -- we run a bare bones budget in  
6 Texas and I can tell you that. And I would  
7 imagine that the state agency receiving these  
8 fund would hate to lose eight or ten percent  
9 of their funds. I think it is a significant  
10 incentive. And you know, because I just, I  
11 think this is a good approach and I think we  
12 ought to go with it.

13 HON. FORD: Gene and then Don.

14 DR. FEIGEL: I don't have any idea  
15 what the magnitude of the actual dollars are  
16 but it would be very easy for me to sit in  
17 state government and say look, if you are  
18 going to nick me for eight percent, I have to  
19 put up a better call center or whatever, and  
20 do a very quick cost-benefit analysis and say  
21 fine, take the eight or ten percent because it  
22 is going to cost me more to do the right

1 thing.

2 Now I mean if we want to do that,  
3 that is fine. But I mean that is the kind of  
4 decision I would make, frankly. It would be  
5 a pure dollar cost-benefit decision, political  
6 pressure aside, one way or the other.

7 HON. FORD: Don?

8 MR. STURSMA: Yes, the federal  
9 evaluation of state programs which determines  
10 the score which does influence our grant,  
11 already has provisions in it for the states  
12 one-call damage prevention activities. So it  
13 is already a factor in the program which  
14 potentially could be modified. But again,  
15 that is something that is usually worked out,  
16 at least discussed between the feds and the  
17 states first.

18 In terms of the budget, yes an  
19 eight or ten percent reduction to my pipeline  
20 safety budget would be substantial. It would  
21 be hurtful. Is my pain going to be enough to  
22 drive the legislature to change our state one-

1 call law with all of the other players  
2 involved? I doubt it. In some states it  
3 would take an amendment to the state  
4 constitution. Is loss of ten percent of the  
5 state pipeline safety grant going to drive  
6 that? I don't think so. That is why I think  
7 a penalty of this would harm the state  
8 pipeline safety program, without necessarily  
9 being able to drive any change. And that is  
10 why I really don't think it is really an  
11 appropriate way to take things.

12           And just one other point I thought  
13 I would make, as long as I am thinking again,  
14 the way the rule was originally drafted, it  
15 wasn't just a one-hit of ten percent. It  
16 could be ten percent of the prior year's  
17 funding. So under that wording, you could  
18 take off ten percent every year until I  
19 eventually -- well I was asking Todd but I  
20 would get pretty close to zero, eventually.

21           And to the extent -- I will  
22 correct my preferences that base grant not be

1 a part of this whole business, to the extent  
2 it is, I hope this isn't going to be a  
3 cumulative penalty.

4 HON. FORD: Jeff?

5 MR. WIESE: Okay, in hopes of  
6 capping this off and moving forward, you know  
7 we appreciate the advice. As you can see in  
8 these, it spans a bit of a distance here. Our  
9 intent is to incentivize. I agree with  
10 Massoud's point in particular about you really  
11 need to engage the senior execs. I believe  
12 that with companies, too. I have gotten the  
13 most change with companies when I bring the  
14 president in across country to sit down and  
15 talk about their performance.

16 So I am very sympathetic, too and  
17 I would tell you just I know it doesn't help  
18 in this immediate case that I think our  
19 emphasis on brightening up the light on the  
20 issue, you know, dialing up the intensity of  
21 the light. So sending it to governors, asking  
22 for the Governor, whether it is a letter from

1 the Governor outlining their plan of action or  
2 a meeting with the governor, whatever it is,  
3 that would be the emphasis.

4 I don't think, John, the intent is  
5 to hit ten percent, and hit ten percent, and  
6 hit ten percent to reduce them to zero. That  
7 is clearly not the intent. And it says up to.  
8 So the policy can reflect that consideration  
9 of the state's ability or the pipeline safety  
10 partner's ability to affect it. But I  
11 honestly, and I am just speaking personally as  
12 opposed to PHMSA, I have to say that to  
13 totally remove -- we are a federal grantor.  
14 Okay? I still think they are my partners but  
15 we are a federal grantor. And in this  
16 particular instance, you are a state grantee.

17 I think it would be inappropriate  
18 for us to toss those decisions to a state task  
19 force. So I think highly of the grant  
20 allocation committee and many of the people  
21 are on it. It is not what I am saying. I am  
22 just saying the appearance of that aren't even

1 good.

2 So I think we will decide grant  
3 policy on those things. I would tell you that  
4 it is clearly not our intention to hurt the  
5 pipeline safety partners. We do want to get  
6 the attention of people beyond them.

7 If the pipeline safety partner has  
8 absolutely no ability to affect the change, I  
9 think the circumstances should warrant that.

10 CHAIRPERSON HONORABLE: Are we  
11 ready for -- I see Craig's card up and down.  
12 I'm not encouraging you Craig. I just noted  
13 I observed. Please, Craig.

14 MR. PIERSON: With all the  
15 discussion on the funding mechanism, the five-  
16 year improvement window seems plenty long.  
17 And there was discussion, I think, some prior  
18 comments in two or three years. And that is  
19 a time period that we would support. The  
20 five-year period is so long that people change  
21 and it can be lost. And we feel like the  
22 proper urgency is a two- to three-year time

1 period.

2 CHAIRPERSON HONORABLE: All right.

3 So that was a comment from Craig. Okay.

4 MR. WIESE: We thought Craig was  
5 going to make a motion.

6 CHAIRPERSON HONORABLE: That's  
7 right, yes.

8 MR. PIERSON: Well we can. We can  
9 make a motion.

10 CHAIRPERSON HONORABLE: If it  
11 would help you, Craig, we may need to have  
12 someone read what it is we are voting on and  
13 then if you want to make a motion that  
14 includes your provision, that might help us  
15 along.

16 MR. PIERSON: Part of my question  
17 is procedural in nature with 198.53 specifying  
18 five years --

19 MR. WIESE: Do you want to add  
20 that to the motion?

21 MR. PIERSON: We would prefer two  
22 years but we will accept three.



1 (Laughter.)

2 MR. PIERSON: So my question is  
3 procedural in nature. Can we do that in the  
4 motion? Is that without -- with avoiding  
5 another public comment period?

6 CHAIRPERSON HONORABLE: Yes. I'm  
7 seeing heads nodding that yes, you could do  
8 that in your motion. But before we have the  
9 motion, if you wouldn't mind, I see Sue's tent  
10 card and Chuck's, why don't we --

11 MS. FLECK: I had one more  
12 question and maybe this got lost in the other  
13 discussion. But in Section 196.207 of the  
14 proposal, the proposed rulemaking is about  
15 civil penalties. And that was what I was  
16 really talking about. And I might have not  
17 been clear on that.

18 I think we need to have discretion  
19 around what the penalties are for the  
20 excavators for consideration. And I don't  
21 know where that -- it seems like we never had  
22 a discussion about that. So I don't know

1 where -- is that in the next rule? Okay.

2 CHAIRPERSON HONORABLE: Sue,  
3 remind us and we will come back to that point.  
4 Chuck?

5 MR. LESNIAK: Thank you. This is  
6 just a procedural question/comment. It seems  
7 like for the most part, we are discussing the  
8 language as proposed. And I think other than  
9 people who think we shouldn't do this at all,  
10 most people, for the most part, were talking  
11 about the language as proposed. And I would  
12 suggest that the three-year or another time  
13 period come in as an amendment to the motion  
14 of the base language that we received and then  
15 we can vote on just that portion, rather than  
16 accept or reject it all. Because personally,  
17 I have got a little bit of discomfort about  
18 the time frame but I am comfortable with the  
19 rest of the language. So I would suggest we  
20 do it that way.

21 CHAIRPERSON HONORABLE: Yes, I was  
22 going to say, someone -- why don't we get a

1 motion. Thank you, Denise. Let's get on with  
2 it.

3 MS. BEACH: Okay. My point was,  
4 you could have just made that motion because  
5 you are a committee member.

6 The proposed rule, as published in  
7 the Federal Register in terms of the  
8 incentives for states to implement adequate  
9 enforcement programs is technically feasible,  
10 reasonable, cost-effective, and practicable if  
11 the following changes are considered: Retain  
12 the potential penalty to base grants but  
13 consider lowering the percentage that may be  
14 affected; PHMSA develops a policy,  
15 incorporated into the preamble into the final  
16 rule, that clarifies how base grants will be  
17 calculated by including the state program  
18 evaluation criteria defined in the final rule;  
19 reduce -- I'm sorry, I'm not going to read  
20 that part -- ensure the Governors of states  
21 with adequate enforcement are directly  
22 informed of PHMSA's findings, including

1 potential consequences to base grant funding.

2 So I purposely and with malice of  
3 forethought did not read the third bullet.

4 CHAIRPERSON HONORABLE: And in the  
5 fourth bullet, that "states with inadequate  
6 enforcement." We understood what you meant.

7 There is a motion on the floor.  
8 Is there a second?

9 MR. LESNIAK: Second.

10 CHAIRPERSON HONORABLE: Second by  
11 Chuck. Any discussion on the motion?

12 MR. TAHAMTANI: Well, like Chuck,  
13 sorry about this, he is comfortable with some  
14 of it but maybe not a piece of it. And we are  
15 comfortable with some of it and not the other  
16 piece. Now, what do we do with that?

17 MS. BEACH: Well according to  
18 Robert's Rules, you would have to offer an  
19 amendment to my motion. I will tell you that  
20 I am unlikely to consider it a friendly  
21 amendment. Therefore, it must be voted on by  
22 each committee separately.

1 CHAIRPERSON HONORABLE: There is a  
2 motion and a second. Is there any discussion?  
3 Sue's card is up.

4 MS. FLECK: No.

5 CHAIRPERSON HONORABLE: Chuck?

6 MR. LESNIAK: I think a substitute  
7 motion could be offered and, under Robert's  
8 Rules, you have to vote on the substitute  
9 first.

10 CHAIRPERSON HONORABLE: That's  
11 correct.

12 Any other cards up? I see Craig's  
13 with a motion.

14 MR. PIERSON: Yes. Would now be  
15 an appropriate time to offer the motion -- the  
16 amendment?

17 MR. LESNIAK: Substitute motion.

18 MR. PIERSON: Pardon me?

19 MR. LESNIAK: Substitute motion.

20 MR. PIERSON: I'm sorry, I didn't  
21 hear you.

22 MR. LESNIAK: A substitute.

1 MR. PIERSON: A substitute motion.  
2 Okay. Would it be appropriate to read the  
3 entire --

4 CHAIRPERSON HONORABLE: Yes,  
5 please do.

6 MR. PIERSON: Okay.

7 CHAIRPERSON HONORABLE: This is  
8 getting interesting.

9 (Laughter.)

10 MR. PIERSON: Offer a substitute  
11 motion. The proposed, as published in the  
12 Federal Register in terms of the incentives  
13 for states to implement adequate enforcement  
14 programs is technically feasible, reasonable,  
15 cost-effective, and practicable if the  
16 following changes are considered: Retain the  
17 potential penalty to base grants but consider  
18 lowering the percentage that may be affected;  
19 PHMSA develops a policy, incorporated into the  
20 preamble into the final rule, that clarifies  
21 how base grants will be calculated by  
22 including the state program evaluation

1 criteria defined in the final rule; reduce the  
2 grace period in 198.53 from five years to  
3 three years; ensure the Governors of states  
4 with inadequate enforcement are directly  
5 informed of PHMSA's findings, including  
6 potential consequences to base grant funding.

7 CHAIRPERSON HONORABLE: There is a  
8 substitute motion. Is there a second?

9 HON. GARDNER: Second.

10 CHAIRPERSON HONORABLE: All right.  
11 The second was by Richard --

12 HON. GARDNER: Wayne Gardner from  
13 Pennsylvania.

14 CHAIRPERSON HONORABLE: I'm sorry,  
15 Wayne Gardner. I apologize. I thought I saw  
16 him move his lips.

17 Now we need to take up the  
18 substitute motion. Any discussion? Don.

19 And for the record, the substitute  
20 motion is what you see on the screen.

21 Don.

22 MR. STURSMA: Yes, having spent a

1 number of periods of time dealing with state  
2 legislature and its issues, to me a two- to  
3 three-year window to get something to the  
4 legislature is really not all that long,  
5 especially if it is either something  
6 controversial or something that they don't  
7 think is important enough to pay much  
8 attention to. Either way, it tends to get  
9 deferred or shoved off.

10 In terms of if you wait too long,  
11 people change, sometimes that is the only way  
12 you get anything passed is waiting for people  
13 to change. Sometimes you pray for certain  
14 election results or certain committee  
15 reassignments.

16 So I personally thought if we were  
17 going to include a time period at all, that  
18 five years was at least something fairly  
19 realistic for getting you through the  
20 legislature, gave you time to go through  
21 several cycles of committees, gave you time  
22 for an election or two, if that is what it was



1 going to take. I personally, if there is  
2 going to be a number in that all, five years  
3 is a better number.

4 CHAIRPERSON HONORABLE: Thank you,  
5 Don. I see I think only two more cards and  
6 one is Chad and one is Chuck.

7 MR. ZAMARIN: Thanks. I guess  
8 just listening to the conversation I support  
9 the motion and want to just say that it seems  
10 like a fairly well-balanced approach with a  
11 lot of latitude but optics are important. I  
12 think it conveys a sense of urgency but at the  
13 same time allows for PHMSA to adapt to the  
14 unique circumstances that are faced. So to me  
15 the penalty may not be enough to really hurt  
16 or for some it may be enough to hurt but it  
17 sends a message that this is important, even  
18 to outside stakeholders. They may not  
19 understand the issues. I think it is an  
20 important message.

21 I think the urgency of the  
22 timeline, and I am confident that if there are

1 special circumstances that make it difficult  
2 to implement, that PHMSA understands how to  
3 engage in a way that addresses those needs.

4 So it would seem like a reasonable  
5 approach that I think sends the right message  
6 and I just wanted to make those comments in  
7 support.

8 CHAIRPERSON HONORABLE: Thank you,  
9 Chad. Chuck?

10 MR. LESNIAK: Very quickly, I just  
11 wanted to point out that in Texas the  
12 legislature only meets every two years. And  
13 that Don is right, three years in legislative  
14 time is really fast. And I think five is a  
15 reasonable time frame.

16 CHAIRPERSON HONORABLE: Carl?

17 MR. WEIMER: I'm going to speak in  
18 favor of the shortened grace period, just  
19 because I understand what Chuck said, that  
20 some states only meet every couple of years  
21 and three years is an awful tight time frame.

22 On the other hand, everybody that

1 was paying any attention, was given notice  
2 when this passed congress in 2006. So they  
3 have already had five or six years to be  
4 thinking about this. That is why Washington  
5 State moved and passed and it took two cycles  
6 through our legislature to get it passed but  
7 at least they started paying attention when  
8 the flag went up in 2006. So I support the  
9 three-year.

10 CHAIRPERSON HONORABLE: All right,  
11 I think we are ready for the vote. I am going  
12 to turn it over to Cheryl on the substituted  
13 motion, which includes all of the language  
14 before you. Cheryl?

15 MS. WHETSEL: Okay, we are voting  
16 on all that is on the screen. And we will go  
17 with the gas committee. Wayne Gardner?

18 HON. GARDNER: Aye.

19 MS. WHETSEL: Oh, you said aye. I  
20 thought you were going to say something more.  
21 Excuse me, it's getting late. Colette?

22 CHAIRPERSON HONORABLE: No.

1 MS. WHETSEL: Don Stursma?

2 MR. STURSMA: Nay.

3 MS. WHETSEL: Jeff Wright?

4 MR. WRIGHT: Aye.

5 MS. WHETSEL: Mike Bellman?

6 MR. BELLMAN: Aye.

7 MS. WHETSEL: Andy Drake is not

8 here. Susan Fleck?

9 MS. FLECK: Aye.

10 MS. WHETSEL: Rick Worsinger?

11 MR. WORSINGER: Aye.

12 MS. WHETSEL: Chad Zamarin?

13 MR. ZAMARIN: Aye.

14 MS. WHETSEL: Denise Beach?

15 MS. BEACH: Nay.

16 MS. WHETSEL: Richard Feigel?

17 DR. FEIGEL: Aye.

18 MS. WHETSEL: Rick Pevarski is not

19 here. And Gerry Rosendahl?

20 MR. ROSENDAHL: Aye.

21 MS. WHETSEL: Okay, so we have

22 three nays and -- if I can read my own writing

1 again -- and eight ayes. So it passes.

2 CHAIRPERSON HONORABLE: Liquid  
3 please. It passed the Gas Committee.  
4 Liquids.

5 MS. WHETSEL: Okay, Liquids. Lula  
6 Ford?

7 HON. FORD: Aye.

8 MS. WHETSEL: Massoud?

9 MR. TAHAMTANI: Aye.

10 MS. WHETSEL: Todd Denton?

11 MR. DENTON: Aye.

12 MS. WHETSEL: Tim Felt? Oh,  
13 okay. Craig Pierson?

14 MR. PIERSON: Aye.

15 MS. WHETSEL: Larry Shelton?

16 MR. SHELTON: Aye.

17 MS. WHETSEL: Larry Armstrong?

18 MR. ARMSTRONG: Aye.

19 MS. WHETSEL: Oh, Lanny. Sorry.  
20 Rick Kuprewicz?

21 MR. KUPREWICZ: Aye.

22 MS. WHETSEL: Chuck Lesniak?

1 MR. LESNIAK: No.

2 MS. WHETSEL: And Carl Weimer?

3 MR. WEIMER: Aye.

4 MS. WHETSEL: Okay that passed.

5 CHAIRPERSON HONORABLE: Very good,  
6 thank you. The substitute motion passed both  
7 Gas and Liquid Committees.

8 And we will hear from Jeff and we  
9 will take a quick break and resume.

10 MR. WIESE: I want to say that I  
11 am sorry we had that vote. That is the first  
12 time I have ever had that many nays and we  
13 work pretty hard to try to develop consensus  
14 here. So I don't take lightly that we ended  
15 up with three nays. I want to assure those of  
16 you -- I think I understand those of you who  
17 voted nay why you did and I am sympathetic.  
18 I don't want you to think I am not.

19 On the other hand, I agree with  
20 the assessment Chad made. There is a lot of  
21 flexibility in this. And I can assure you  
22 that it would be our intention to exercise

1 that flexibility and at the same time, still  
2 get the attention of the people's whose  
3 attention we need to fix the problem.

4 CHAIRPERSON HONORABLE: Thank you,  
5 Jeff. We all greatly appreciate that. And  
6 with that, we will return at 3:30. That is a  
7 long break but please make sure you are here  
8 by then. Thank you.

9 (Whereupon, the foregoing  
10 proceeding went off the record at  
11 3:11 p.m. and went back on the  
12 record at 3:31 p.m.)

13 CHAIRPERSON HONORABLE: We're back  
14 on the record and thank you for your  
15 timeliness. We have completed two votes.  
16 Correct? Three votes. And now where are we,  
17 Sam? Who's on first? Are we done?

18 MR. WIESE: We would like to be  
19 done but we are not. With your permission, I  
20 would like to do something really quickly,  
21 make a suggestion.

22 Besides thank you, you know those

1 are torturous and some of you who have been  
2 with us for a while remember like control room  
3 management and DIMP. Those were torturous,  
4 too. Thanks for sticking with us through  
5 that.

6 In an attempt to bypass that and  
7 make it less painful for this next one, I am  
8 going to introduce in a second our Chief  
9 Counsel, who is going to review Part 190 for  
10 you.

11 But I think we had thought about  
12 segmenting it, but I think in looking  
13 backwards just a little bit here, maybe it  
14 would be good to have Vanessa kind of review  
15 the whole proposal, what all the comments.  
16 Let anyone who wants to make motions that they  
17 passed around talk about the whole motion that  
18 they are suggesting they are going to make.  
19 Let's debate that and then vote on it instead  
20 of doing it piecemeal.

21 So with that, I think we will  
22 invite Vanessa to come up and join us. For



1 those of you who don't know her, it is Vanessa  
2 Sutherland, who is our Chief Counsel at PHMSA.  
3 It is her job to keep me out of jail. And she  
4 is so far, it seems like she is not doing a  
5 good job at that.

6 MS. SUTHERLAND: No, I just told  
7 you I am trying to keep you out of jail.

8 So we are going to approach this  
9 as broad categories. And the presentation  
10 really covers comments in four main  
11 categories. There are a lot of other line  
12 item technical amendments to Part 190 that are  
13 considered administrative cleanup, fixing fax  
14 numbers, addresses, and other things that are  
15 outdated that we will not spend time on.

16 One of my colleagues, Jim Pates  
17 and I will be splitting the presentation up  
18 and addressing many of the comments. Let's  
19 see if we can click through that so that you  
20 can see.

21 So the background is we originally  
22 published a notice for proposed rulemaking in

1 the summer, in August. And the comment period  
2 closed in September. And we explained in that  
3 NPRM that we were trying to cover three main  
4 categories and one was to implement the  
5 statutory mandates that, although self-  
6 executing when the 2011 Pipeline Safety Act  
7 were passed, we still wanted to reflect those  
8 in the regulations.

9 We wanted to conform some of the  
10 current regulatory language to actual  
11 practice. Many things that were in the  
12 Pipeline Safety Act and we will talk about  
13 those, such as separation of functions and  
14 adding a presiding official had already been  
15 implemented within PHMSA. So we wanted to  
16 make sure that the regulations conformed to  
17 what we were doing within the agency.

18 And then finally, as I mentioned,  
19 making various technical corrections and  
20 clarifications.

21 The comments that we received came  
22 from five entities, which you can see. But

1 for anyone in the back, it is American Gas  
2 Association, a joint comment from AOPL and  
3 API. INGAA also provided comments and then we  
4 had one pipeline operator and one individual  
5 citizen send us, respectively, their  
6 independent comments.

7 And generally speaking, the  
8 comments we received were extremely detailed  
9 and thoughtful, raising both suggestions about  
10 our current practice and ways to implement  
11 future practices. We are still in the process  
12 of evaluating some of those proposals and  
13 formulating our response, and of course  
14 working with the program to determine the best  
15 ways to implement.

16 It is important to note that as we  
17 go through we will try to highlight which of  
18 the components of the NPRM were statutory  
19 mandates because, obviously, there we have  
20 very little flexibility but we still welcome  
21 regulatory comment changes to make sure that  
22 the way we are communicating the change and

1 the way that we have drafted it is clear.

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So these are the broad categories that we will cover today. And generally speaking, the comments were fairly supportive of us doing the NPRM, memorializing things that we had already been implementing in practice, as well as some of the technical clarifications. But there were four categories that we will discuss today that I think had substantive comments that we are still working through and the first is new procedures for petitions for reconsideration; restrictions and clarification about ex parte communications and access to various documentation and evidence during the hearing process; timing and deadlines of the enforcement process. We will talk about that in a moment but we wanted to put specificity in the new Part 190 capping certain timelines, for example, adding in days where it may have said promptly or adding in clarification and

1        modifying some of those times where we have  
2        hit those targets and realized that numbers we  
3        had currently in the regulations could be  
4        less. And then finally, some miscellaneous  
5        enforcement procedures that are going to  
6        really discuss the informal adjudications  
7        process.

8                    So first petitions for  
9        reconsideration. The current procedures  
10       really don't designate the petition as being  
11       the final agency action. The language  
12       currently says in Part 190 that an operator an  
13       entity may petition. So that is one part of  
14       our NPRM in Part 190 that we wanted to  
15       clarify.

16                   The proposed rule will clarify  
17       that by stating that a respondent must file a  
18       petition to exhaust the administrative  
19       remedies prior to bringing a lawsuit in the  
20       D.C. or any Court of Appeals, Federal Court of  
21       Appeals. And that, we hope, will provide an  
22       opportunity for both parties to correct any

1 errors, misunderstanding, take a look at the  
2 record, and resolve issues more informally,  
3 which is sort of the hallmark of our current  
4 informal adjudications process.

5 And then additionally, there is a  
6 proposed provision on the filing period and  
7 that has been included to conform to the  
8 statutory filing period that is in the statute  
9 and set some legal standard for review for  
10 other final agency actions. And what that  
11 really means is currently in the statute the  
12 only appealable action is a final order and we  
13 have now expanded 190 to include an appeal for  
14 everything else, corrective action orders,  
15 safety orders, et cetera. So it broadens the  
16 scope of what may be subject to a petition for  
17 reconsideration.

18 The comments that we received can  
19 be broken out into two columns and so we tried  
20 to bifurcate it on the slide. But what I am  
21 going to do is talk about the left column  
22 first and then where we are on some of those

1        comments, and then the right column second.

2                So as I mentioned we are still  
3        evaluating our response to these concerns but  
4        let's talk about what they are. The first is  
5        that INGAA, AOPL/API, and AGA in different  
6        comments back to us ultimately in summary said  
7        the same thing. It said if certain  
8        enforcement actions are not stayed pending a  
9        decision on a petition for reconsideration, so  
10       if there is a final order or a CAO that is not  
11       stayed while they petition for us to  
12       reconsider the matter, that the mandatory  
13       petition for reconsideration procedure would  
14       violate the Administrative Procedures Act.

15               The second comment is AOPL and API  
16        both objected to the current requirement that  
17        petitions for reconsideration may not present  
18        new evidence or new arguments without good  
19        cause.

20               On the first point, we are still  
21        taking a look at various Supreme Court and  
22        other Circuit Court cases to provide an

1 adequate response on whether the agency thinks  
2 it would be in violation of the APA, in  
3 particular Section 10(c) if we did not allow  
4 operators to appeal an enforcement action if  
5 it were not stayed. And the comment really  
6 gets to the root of if you have an enforcement  
7 action, someone petitions for reconsideration  
8 but you don't stay the action, effectively, it  
9 is a final action.

10 We currently have language that  
11 says we would stay the payment of civil  
12 penalty but not the underlying corrective  
13 action or other enforcement component.

14 We thought it was a really good  
15 comment. We are continuing to look into that  
16 and we will provide comments back on that  
17 point.

18 On the second point, our comment  
19 gets a little bit more expansive in the sense  
20 that AOPL and API said if there is new  
21 information that should be provided during a  
22 petition for reconsideration, that should be



1 presented at that time. And really the agency  
2 wants to be efficient and maintain its ability  
3 to resolve issues in a timely fashion and new  
4 or novel issues shouldn't really be introduced  
5 at the petition for reconsideration phase.

6 There are opportunities during response along  
7 the way during a hearing in response to NOPVs  
8 to address the issues that are part of an  
9 enforcement action. So to maintain efficiency  
10 and really not have to litigate new issues,  
11 litigate, little i, discuss new issues, that  
12 is not really a new legal principle. You  
13 shouldn't be bringing in or introducing new  
14 evidence during the petition for  
15 reconsideration phase.

16 On the second side of the column,  
17 INGAA's comments were a little bit more  
18 specific and in that specificity there were  
19 four key changes. One was that petitions  
20 should not be considered by the associate  
21 administrator or either deputy but should  
22 undergo independent review. That wasn't fully

1 defined but we agreed with that point that  
2 certainly there is efficiency and we would  
3 consider it advisable to have independent  
4 review.

5 Second, the AA should be  
6 prohibited from ex parte communications with  
7 any person considering the petition for  
8 reconsideration, such as a presiding official.  
9 And then third, that PHMSA would deem a  
10 petition denied, if not acted upon within 90  
11 days.

12 On the second point, as we will  
13 talk about in a moment in more detail on ex  
14 parte, we generally agree and have several  
15 policy statements and letters about PHMSA's  
16 position that there should be no ex parte  
17 communications. Whatever is made available to  
18 one party should be available to other parties  
19 and that the presiding officials and anyone  
20 making decisions should have the benefit of  
21 not only receiving materials from someone but  
22 so should the other side.

1                   So in a moment we are going to  
2 talk about the ex parte communications issues,  
3 generally what the proposal is and where we  
4 are.

5                   MR. GALE: Okay, on the ex parte  
6 communications, the 2011 Act requires PHMSA to  
7 issue regulations prohibiting ex parte  
8 communications that are relevant to the issue  
9 to be decided in the case. For the non-  
10 lawyers in the group, an ex parte  
11 communication is really when you have a court  
12 proceeding, one side doesn't go talk to the  
13 judge privately without the other. That is  
14 basically what is about. It is to preserve  
15 fairness and make sure everybody is on the  
16 same page. You are not generally supposed to  
17 engage in ex parte communications. That is  
18 really a due process consideration. That is  
19 important except now it is in our statute as  
20 opposed to just being a constitutional issue.

21                   Back last year PHMSA issued a  
22 policy statement explaining that ex parte

1 communications with the presiding official at  
2 a hearing is not permitted by any party. And  
3 this prohibition applies to all communications  
4 regarding information, facts, arguments,  
5 everything that is in the case to be decided.

6 The proposal in the proposed rule  
7 would be to incorporate this prohibition into  
8 Part 190 and that we would add a new section  
9 discussing ex parte communications, which  
10 states that it would enjoin any party to an  
11 enforcement proceeding and that includes the  
12 region that brings a case, agency employees,  
13 representatives of either party from  
14 communicating privately with the decision  
15 maker and that is including the presiding  
16 official. As you may know, all of our  
17 enforcement actions are actually decided by  
18 and signed by the associate administrator,  
19 Jeff, or one of his two deputies. So he, or  
20 one of them is the final decision-maker. The  
21 hearing officer is not a decision-maker. He  
22 simply presides at the hearing and then

1 prepares a written draft decision for the  
2 decision-maker to consider along with the  
3 whole record.

4 So the ex parte ban would be from  
5 communicating privately with the decision-  
6 maker, concerning any information that is  
7 material to the question to be decided.

8 And so I think that the agency has  
9 always been very cognizant of due process  
10 considerations. This is simply formalizing it  
11 to a greater degree.

12 The comments that we received  
13 back, again on the left-hand side are from the  
14 three groups, and they were interested in the  
15 rule state explicitly that the Regional  
16 Director should not be allowed to submit an  
17 evaluation or what we sometimes refer to as a  
18 recommendation because the Regional Director  
19 is involved in the investigation or  
20 prosecution of a case. And if there is such  
21 a communication, that the operator, the  
22 respondent, should have an opportunity to see

1 it and to respond.

2 They also wanted to make clear  
3 that if somebody is substituting, we currently  
4 have one hearing officer, but if there is a  
5 substitute presiding official, that it would  
6 apply to that person as well.

7 INGAA in its own separate comment  
8 stated that the ex parte restrictions should  
9 apply not only to information material to  
10 deciding the question but should also include  
11 the facts, evidence, legal, the merits of the  
12 case, and respondent's credibility and past  
13 conduct. In other words, anything having to  
14 do with the final decision.

15 The next issue is the separation  
16 of functions. Again, for the non-lawyers in  
17 the group, separation of functions is a legal  
18 concept that applies to adjudications. And  
19 the idea behind it, it is the due process  
20 concept that you can't be the prosecutor and  
21 the judge at the same time, unless you are on  
22 Capitol Hill, of course.

1                   And again, that is done to ensure  
2                   basic fairness. Now the idea being that if  
3                   somebody is deciding a case and they are also  
4                   sitting over here being a prosecutor, that  
5                   they get tainted, that the final decision is  
6                   susceptible to being tainted.

7                   And so the Act requires PHMSA to  
8                   issue regulations regarding a separation of  
9                   functions between those involved in the  
10                  investigation and prosecution of a case and  
11                  those involved in deciding it.

12                  PHMSA's current practice is the  
13                  personnel involved in deciding an enforcement  
14                  case are not involved in determining the  
15                  allegations that are made, deciding whether to  
16                  seek a particular type of enforcement action,  
17                  or in drafting the actual charging document.

18                  Again, as part of that statement  
19                  that was made last year, we explained the  
20                  separation of functions policy. And to  
21                  conform Part 190 to the current law and  
22                  existing practice, we would add a new section

1 that restates this policy.

2 In terms of the comments received  
3 on separation of functions, AOPL and API  
4 suggested again that the Regional Director  
5 should be specifically, I think, spelled out  
6 as being unable to serve in both an  
7 investigatory/prosecutorial function and also  
8 advising the Associate Administrator on the  
9 decision.

10 According to them, it appears that  
11 the RDs are more appropriately considered to  
12 be part of the agency's prosecutorial  
13 function. Therefore, they suggest that the  
14 section be amended to make clear that the RDs  
15 will not serve in an advisory function.

16 Separately INGAA commented that  
17 this is -- let's see, what do they say? They  
18 were suggesting that this be expanded to  
19 acknowledge that PHMSA non-decisional  
20 employees, including the RDs may not  
21 communicate, comment, or otherwise participate  
22 with the presiding official in drafting a



1 recommended decision. As I said before, that  
2 is currently not our practice and this would  
3 simply formalize that process.

4           There are probably 25 other  
5 sections of the rule, most of which we would  
6 bore you to death by going over them but I  
7 would be happy to answer any questions or if  
8 you have any questions about a lot of those  
9 technical proposals. They include things like  
10 -- one thing that was not mentioned that is  
11 fairly significant in the rule, was a  
12 statutory mandate, a couple of them. Number  
13 one is on the penalties, the penalty caps were  
14 increased. Those are included in the rule.  
15 Also PHMSA got new enforcement authority on  
16 oil spill response plans. That is also in the  
17 rule but that is, again, a self-executing part  
18 of the statute but we did include it in the  
19 rule.

20           Plus there are many other things  
21 in there about payment options and offering  
22 legal opinions and consent agreements. I

1 don't know if any of you have taken the time  
2 to read the proposed rule but there is quite  
3 a bit in there. I would be happy to answer  
4 any questions.

5 CHAIRPERSON HONORABLE: Thank you.  
6 Don.

7 MR. STURSMA: Don Stursma, Iowa.  
8 I must say that I don't really have a dog in  
9 this fight but I did read the material and  
10 there is something that kind of caught my  
11 nitpicky little eye and I just wanted to ask  
12 about it. And it is in 190.233(b) where it  
13 says that "the term expedited review is  
14 defined as the process for making a prompt  
15 determination of whether the order should  
16 remain in effect or be terminated." And that  
17 doesn't seem to leave any room for corrections  
18 or modifications in the order. Either the  
19 order stands as is or is terminated with no  
20 middle ground on that. Am I reading that  
21 correctly or is there room for corrections or  
22 modifications if deemed appropriate?

1                   MR. GALE: Well what the expedited  
2 review is about, first of all, to make clear,  
3 is that when we issue corrective action orders  
4 without notice in true emergency situations,  
5 that is what this refers to, so that there can  
6 be a very prompt resolution of the case if  
7 there is a hearing or there are objections to  
8 it. Okay, once that is issued, then there  
9 would be an opportunity to, if there were  
10 still more corrections or problems or issues  
11 there, a petition for reconsideration could be  
12 filed in that situation.

13                   So there are opportunities built  
14 in to correct these but these are emergency  
15 situations.

16                   CHAIRPERSON HONORABLE: Larry?

17                   MR. SHELTON: First of all I want  
18 to say that -- excuse me. Larry Shelton,  
19 liquids industry. And I want to say that we  
20 do appreciate PHMSA's efforts to revise the  
21 procedures and that many of these proposals  
22 will help to lead to a more transparent agency

1 decisionmaking process.

2           We believe it is important that  
3 the agency's procedures ensure a fair and  
4 timely resolution of issues to help foster  
5 regulatory certainty and that PHMSA's  
6 procedures should ensure that appropriate due  
7 process protections are in place to promote  
8 fairness and even handedness in the process.

9           And in the comments that were  
10 submitted, we made a series of requests and  
11 proposals to help further promote fair and  
12 open process, and some of which were outlined  
13 here. And these are consistent with a goal of  
14 ensuring that we have a continued, safe, and  
15 efficient pipeline operation. And with that,  
16 then, we have submitted, I think everybody has  
17 a copy, of four general points. Rather than  
18 going back to all of these specific comments  
19 that were submitted and the specific changes  
20 that were suggested and requested, we kind of  
21 generalized things into four points here. And  
22 I am not sure at what point we would be ready

1 to make the motion but, at that point in time,  
2 I would be happy to go through those points.

3 CHAIRPERSON HONORABLE: I don't  
4 see any tent cards. So, if you are so led --  
5 thank you. Now I don't see any other tent  
6 cards. If you are so led to move this rule  
7 and with any other proposals you may want to  
8 make, now would be your time.

9 MR. SHELTON: Okay. As a point of  
10 process of making the motion, can we just  
11 refer --

12 CHAIRPERSON HONORABLE: Just a  
13 moment.

14 MR. SHELTON: Okay. In the  
15 process of making the motion, could we just  
16 refer to the handout that was sent around or  
17 should I read through them specifically?

18 MR. GALE: If you will give me  
19 just a second we will bring up the language on  
20 the screen.

21 MR. SHELTON: All right.

22 CHAIRPERSON HONORABLE: That would

1 be very helpful. Thank you, John.

2 MR. SHELTON: Yes, that is it. So  
3 again, the question on process. Can I make  
4 the motion just referring to the document that  
5 is presented on the screen?

6 CHAIRPERSON HONORABLE: And for  
7 clarification, are these items you would like  
8 to see in the language or is this policy? I  
9 want to make sure that the members of the  
10 committees understand.

11 MR. SHELTON: In the final  
12 language, we would like these to be considered  
13 in the structure of that final language. We  
14 would like to see these considered, included  
15 in the final structure of the language.

16 CHAIRPERSON HONORABLE: And did  
17 you make a motion?

18 MR. SHELTON: Not yet.

19 CHAIRPERSON HONORABLE: Okay. I  
20 don't want to rush. I apologize. We were  
21 conferring.

22 MR. SHELTON: No, I'm ready to

1 make the motion. I'm just asking can I just  
2 refer to the document on the screen or do you  
3 want me to read through all of the language?

4 CHAIRPERSON HONORABLE: You can  
5 refer to the document on the screen and I  
6 would, again, ask that you provide a copy of  
7 it to the court reporter.

8 MR. SHELTON: Okay. The motion  
9 then is that the proposed rule is published in  
10 the Federal Register is technically feasible,  
11 reasonable, cost-effective, and practicable,  
12 if modifications are made consistent with the  
13 following principles, as reflected below and  
14 in the comments that were filed in response to  
15 the NPRM. And referring then to the four  
16 items that are displayed on the screen and  
17 that have been provided to the court reporter.

18 CHAIRPERSON HONORABLE: There is a  
19 motion on the floor. Is there a second?

20 MR. ZAMARIN: I'll second.

21 CHAIRPERSON HONORABLE: Who did?

22 Thank you, Chad.

1                   There is a motion and a second.  
2                   And now there is time for discussion. And I  
3                   see a number of tent cards. And we will begin  
4                   with Chuck and then Carl.

5                   MR. LESNIAK: First just a  
6                   comment. You know I think overall I am  
7                   comfortable with the proposal in the NPRM  
8                   because this appears to be almost all  
9                   statutorily required and I don't really have  
10                  an opinion about the appropriateness of it.

11                  My overall comment is we just  
12                  received this on Friday and to the extent that  
13                  these are required by statute, I think I am  
14                  okay with it and I will probably vote to  
15                  approve it. If it wasn't for that, I would  
16                  probably be moving to table because these are  
17                  significant and I think four or five days is  
18                  not enough time for us to look at these. I  
19                  would have liked to have looked into the  
20                  comments, done some more research on this.

21                  And given that, I won't be voting  
22                  for the motion as current because I think I am



1 not sure whether -- how these fit into the  
2 statutory requirements and because of that and  
3 the lack of time to really research and think  
4 about that, you know, I have got some  
5 discomfort with it.

6 And so after maybe hearing from  
7 Carl and some other folks, I think I will  
8 probably offer a substitute motion to approve  
9 the NPRM as published.

10 CHAIRPERSON HONORABLE: Thank you,  
11 Chuck. Carl?

12 MR. WEIMER: A question probably  
13 for one of the PHMSA lawyers. Looking under  
14 number one here, maybe to Larry, that talks  
15 about transparency. I see the first word in  
16 the second sentence is participants, which  
17 would lead me to believe that the transparency  
18 is only between the pipeline companies and the  
19 regulator, PHMSA. And I was wondering if that  
20 transparency could be broader than just those  
21 two and could maybe substitute all  
22 stakeholders, instead of participants. But I

1 don't know where this fits into all the  
2 statutory requirements. So I don't know if  
3 that is even a possibility.

4 CHAIRPERSON HONORABLE: Well of  
5 course Carl would make such a recommendation  
6 and I see Larry's light on. So I am not sure  
7 if he wants to take a crack at answering it or  
8 if we would -- Thank you, Ms. Sutherland.

9 Well, it is your language. So if  
10 you want an opportunity to defend, this is  
11 your time.

12 MR. SHELTON: Okay. With regard  
13 to the transparency, we were speaking  
14 specifically regarding the participants but we  
15 don't have any objection to the transparency  
16 in general and to anybody who might have a  
17 view to the process.

18 The issue with all four of these  
19 is just generally ensuring the whole process  
20 has a fairness and an even-handedness that the  
21 requirements for the agency are the same as  
22 the requirements for the respondent, with

1 regard to what records are produced, the time  
2 frame for producing those records, so you  
3 don't end up walking into a hearing and seeing  
4 some of the documents that PHMSA has regarding  
5 an incident for the first time. We think that  
6 whatever the requirement is for providing the  
7 respondent's records ahead of time to the  
8 presiding officer should be the same as the  
9 time frame for PHMSA, providing those records  
10 to the officer.

11 And in the rule as it is written  
12 right now, it is not clear that those are the  
13 same. In fact in some cases they are  
14 different. They are worded differently. And  
15 we are just asking that in the final rule,  
16 those things be identified and made equal so  
17 that there is fairness.

18 CHAIRPERSON HONORABLE: Thank you,  
19 Larry. Ms. Sutherland, is there anything  
20 additional?

21 MS. SUTHERLAND: Just one quick  
22 thing to follow up on Carl's question. No,

1 nothing in the statute mandates that it be  
2 opened to anyone other than the regulated and  
3 the regulator.

4           When we think about the  
5 transparency of what has happened in a hearing  
6 or what has happened in the ultimate  
7 enforcement action, we think more as a final  
8 order once all the parties have had an  
9 opportunity to present their evidentiary  
10 support and the agency has reached some sort  
11 of final action, we then post that so that  
12 people do have access to it but there is no  
13 current statutory requirement that the process  
14 itself be opened up as it is being adjudicated  
15 or as it is being resolved.

16           CHAIRPERSON HONORABLE: Jeff?

17           MR. WIESE: I have just more  
18 general comments. You know, as I read through  
19 the industry's motion I think they are a  
20 fairly laudatory high-level principles. I  
21 think they are kind of difficult to argue  
22 with.

1                   The point I really want to make  
2 here is probably here more than anywhere in  
3 the subject matter that we talk about, the  
4 agency will reserve its discretion to make  
5 decisions.

6                   You know, I think I would like to  
7 make a case and just underscore what Vanessa  
8 said earlier and I hope the industry would  
9 agree, these points were raised earlier prior  
10 to reauthorization. We changed our procedures  
11 and process to try to reflect concerns that  
12 the industry had brought to us. This action  
13 really formalizes a lot of that. And the  
14 reason for that was the industry came back and  
15 said well, okay, we are getting comfortable  
16 with what you are doing but what happens if  
17 you and Vanessa disappear tomorrow? So I said  
18 okay, fine. Well let's formalize it.

19                   So we are beginning to formalize  
20 that which I thought we had sort of worked our  
21 way through. There is a point of tension  
22 between which we won't be prepared to go. We

1 are going to try to reserve our rights to  
2 evaluate things. I just want to mostly say I  
3 don't personally have any issues with the  
4 things that are being offered here. And I  
5 think that we appreciate your advice and would  
6 take it into serious consideration as we move  
7 forward. But we will still, in the end,  
8 reserve the right to make a call on this one.

9 CHAIRPERSON HONORABLE: Thank you.  
10 Denise?

11 MS. BEACH: I guess this is mostly  
12 a question for PHMSA staff. These are  
13 extremely subjective statements in this  
14 document. So what recourse would this  
15 committee or any individual have if they were  
16 unsatisfied with the way you chose to  
17 incorporate these principles into the final  
18 rule?

19 MS. SUTHERLAND: The same recourse  
20 they would have with anything that we do in a  
21 final rule that they are uncomfortable with.  
22 Challenge it. But I think from looking at

1 these, I would echo Jeff's comment. When we  
2 originally wrote Part 190, we had internal  
3 discussions prior to receiving this motion  
4 about transparency, getting specificity,  
5 having an efficient process for both sides.  
6 I mean, the longer things drag out, the more  
7 resources both sides expend on trying to  
8 resolve enforcement cases.

9           And so I think in looking at this,  
10 many of the comments we received and quite  
11 frankly the five comment sections that we  
12 received and letters, many of these issues  
13 have already been addressed. I think we have  
14 looked at how to make the process more  
15 certain. Some of that is statutorily driven.  
16 Timeliness in figuring out how to put in dates  
17 and I think many of the comments revolved  
18 around us trying to do just that, which was  
19 create finalized deadlines and benchmarks. By  
20 the times we should be responding, as well as  
21 an operator should be responding during an  
22 enforcement process.

1                   So again I would echo what Jeff  
2                   said. We were thinking about these prior to  
3                   receiving the motion as we drafted Part 190 to  
4                   be responsive to the statute and to make sure  
5                   that the process was going to run more  
6                   smoothly in the future.

7                   CHAIRPERSON HONORABLE: Denise?

8                   MS. BEACH: So a follow-up  
9                   question to the submitter would be what  
10                  exactly are your expectations if this motion  
11                  should pass?

12                  MR. SHELTON: Our expectations are  
13                  pretty much a lot of what has been discussed  
14                  in here that some of these specific items  
15                  regarding fairness and again going back to the  
16                  specific comments that had been submitted,  
17                  back during the comment period that addressed  
18                  that, the expectation is that it would be  
19                  clear in the final rule that whatever  
20                  requirements there are for one party are the  
21                  same as for the other.

22                  CHAIRPERSON HONORABLE: All right.



1 I am going to return back to Denise for one  
2 last point here.

3 MS. BEACH: A follow-up question  
4 to my follow-up question. Can you cite any  
5 specific language where it is not currently  
6 clear?

7 MR. SHELTON: I believe, for  
8 example, there is a difference in the  
9 requirement for the timeline for providing  
10 records to the presiding officer. And I don't  
11 have it right in front of me, but I believe it  
12 is ten days for the respondent and then it is  
13 something like as soon as practicable, as  
14 early as practicable before the hearing with  
15 regard to PHMSA.

16 And so we would just look for, if  
17 it is ten days for one side, it would be ten  
18 days for the other.

19 MS. SUTHERLAND: That is accurate,  
20 yes.

21 CHAIRPERSON HONORABLE: All right.  
22 I apologize.

1 MS. BEACH: No, it's my fault.

2 Follow-up question, then. Is it possible to  
3 clarify that?

4 MS. SUTHERLAND: Yes, and that is  
5 actually what we have been doing with the  
6 comments. As I mentioned, there were several  
7 other instances. That is a good one but there  
8 are other instances as well on how long it  
9 should take both parties to respond in general  
10 if there is a request for additional or  
11 supplemental information. So we are looking  
12 at, where appropriate, making if it is ten  
13 days for one, ten for the other, 30 and 30, 40  
14 and 45, but there are going to be a handful of  
15 instances where we are going to try to  
16 reconcile that so that there is some  
17 consistency.

18 MS. BEACH: So the language that  
19 we are voting on today is not the final  
20 language.

21 MS. SUTHERLAND: Correct.

22 MR. WIESE: Just as a point of

1 clarification, it never is. By statute what  
2 happens -- and I don't like it either. But by  
3 statute what the group does is vote on the  
4 proposed rule. We sort of think that is crazy  
5 because we have moved past the proposed rule.  
6 The comments have come in. We have evaluated  
7 it. So we sort of lean further than some  
8 people are comfortable with with telling you  
9 what we are thinking of doing in the final  
10 rule, without taking the administration's  
11 discretion to decide these matters. And there  
12 are people up to OMB who get involved. So we  
13 don't want to promise things. That is why we  
14 don't negotiate the rules here. We take your  
15 advice on the things we should consider in  
16 formulating a final one.

17 It is kind of wacky though and the  
18 committees wrestled with this numerous times.  
19 How do we know what we are voting on? But it  
20 is the way the statute is constructed. So we  
21 are really here largely to get your advice on  
22 those matters.

1 CHAIRPERSON HONORABLE: Don and  
2 then Chad and then Richard.

3 MR. STURSMA: At least in the  
4 administrative procedures that I am used to,  
5 there is opportunities for intervenors to  
6 become involved in the case and as  
7 intervenors, they have access to all the case  
8 documents, possibly excluding those that are  
9 confidential.

10 Do your proceedings in Part 190  
11 allow for intervenors to participate?

12 MS. SUTHERLAND: I'm sorry, I was  
13 shaking my head no.

14 CHAIRPERSON HONORABLE: Chad.

15 MR. ZAMARIN: Just to maybe give a  
16 little more color to the industry thought  
17 process here, since most of the comments were  
18 from industry organizations, I think it is  
19 fair to say and somewhat in response to  
20 Denise's question that I think it is important  
21 for us to try to consolidate and reinforce  
22 some of the key themes related to this

1 particular issue.

2           When we look at the specific rule  
3 I think as an industry we didn't want to get  
4 into the individual items and whether or not  
5 those work independently but, as a whole,  
6 wanted to reinforce some key themes that I  
7 think we have been working together one over  
8 the last couple of years. And I imagine that  
9 discussion will continue to go on but the goal  
10 is to try to keep those organized and front  
11 and center as final rule is developed.

12           CHAIRPERSON HONORABLE: Richard?

13           MR. KUPREWICZ: I have to be  
14 careful here on comments. I will only discuss  
15 the information that readily in the public  
16 domain related to certain instances. And this  
17 is no criticism of PHMSA but building off of  
18 what I heard earlier about the last minute  
19 changes here, the intent may be well-meaning  
20 but there is a formal process here. I am a  
21 little reluctant to approve any changes that  
22 I haven't had a chance to understand, even

1       though the best of intentions may be well  
2       meant here.

3                   I am a little bit concerned about  
4       anything that changes PHMSA's obligations and  
5       rights for due process that may impact. I  
6       have got an event related to the State of  
7       California on the gas side related to some  
8       activities in November that have left a really  
9       bad taste in a lot of people in that state  
10      regarding process -- fortunately, the ship  
11      righted itself in terms of changes -- where  
12      administrative procedures for due process  
13      apparently were trying to be implemented and  
14      it backfired big time.

15                   So again, I am not here to be a  
16      judge and jury in that but when the public  
17      starts seeing things where it maybe being  
18      played a game, everybody loses, even with the  
19      best of intents.

20                   So with that little speech, I'm  
21      sorry for that, but I am going to defer to  
22      PHMSA on this issue. And until I understand

1 the proposed changes, I cannot vote for the  
2 suggested amendments. I will defer back to  
3 the process that the public has on formal  
4 rules. If we don't comment in that review  
5 process, this may be such a legal change that  
6 I am very concerned. While I appreciate the  
7 high achievement goals here, I am a little  
8 concerned about the implementation.

9 CHAIRPERSON HONORABLE: Larry, are  
10 you still on?

11 MR. SHELTON: Yes, I am. I just  
12 wanted to say that it sounds like one, three,  
13 and four are already being considered by PHMSA  
14 and we just wanted to -- which we greatly  
15 appreciate. We just wanted to put on the  
16 record that these thematic considerations  
17 should be included in the final rule.

18 And number two may be a bit  
19 confusing for some because it refers to the  
20 U.S. Court of Appeals in the Federal District  
21 Court and so on and it may sound like  
22 something more than it is. It is just simply

1 that in the process before with the U.S.  
2 Federal Court, when you go to the U.S. Federal  
3 Court, you have the opportunity to bring all  
4 your records. It is like resetting the whole  
5 process of records reproduction. But when you  
6 go to the U.S. Court of Appeals, as I  
7 understand it -- I'm not an attorney but as I  
8 understand it, when you go to the Court of  
9 Appeals, what the Court of Appeals is going to  
10 look at is the records that have already been  
11 submitted and what were submitted in that  
12 original decision by the presiding officer.  
13 In other words, there is not another  
14 opportunity to produce records. And we are  
15 simply saying that because of that, it is very  
16 important that there be clarity to the record  
17 production process associated with the hearing  
18 because that is the last chance to get those  
19 records into the process, even at the level of  
20 the Court of Appeals.

21 HON. FORD: Jim?

22 MR. PATES: I would just like to



1 respond to that in the sense that you are  
2 absolutely right. But in fashioning this rule  
3 and considering the comments, one of the  
4 challenges that we face is all the panoply of  
5 due process safeguards that come in formal  
6 proceedings, whether it is in a court or a  
7 rate making proceeding or whatever where you  
8 have a transcript, you have formal rules of  
9 evidence, you have discovery, all that is  
10 there to protect the parties.

11 On the other hand, we have an  
12 informal adjudications process that is  
13 centered around the concept of informality of  
14 being able to resolve issues without all those  
15 safeguards and delays that come with it. And  
16 so it is just a balancing act that we have to  
17 do and I think we just have to try to weigh  
18 all that together.

19 HON. FORD: Richard.

20 MR. KUPREWICZ: I guess just a  
21 couple of questions, one to that last point  
22 because I thought when Congress passed this

1 they said that the operators had the ability  
2 to create a record if they wanted to. And now  
3 it sounds like the operators what PHMSA to  
4 create the record. And I was wondering if you  
5 could just talk to that a little bit, Vanessa.

6 MS. SUTHERLAND: Absolutely. No,  
7 that is right. The operators are now allowed  
8 to arrange for a transcription at the hearing  
9 at their own cost. They are required to give  
10 us a copy of the transcript if we request it.

11 But I think to underscore Jim's  
12 point, we do believe there is a record.  
13 Despite the fact that there is an informal  
14 adjudications process, we keep all of the  
15 NOPV, evidentiary support, violation report,  
16 submissions from the operators, submissions  
17 from the region together as a record. It may  
18 not be sort of a District Court filing process  
19 of going to court and having formalized  
20 motions but we do consider that we do a good  
21 job of keeping a complete record of everything  
22 that the decision-maker and presiding official

1 receive during the course of an enforcement  
2 action.

3 MR. KUPREWICZ: All right, thank  
4 you. My other comment was, and the reason I  
5 am starting kind of a lien towards my other  
6 public members over on this side about maybe  
7 not voting in favor of this, is there is also  
8 the clause at the end of the motion that says  
9 we have these four principles laid out but  
10 then at the end it says, "in comments filed in  
11 response to the NPRM." So you brought in  
12 everything else that was filed as parts of the  
13 comments and we don't have those in front of  
14 us and I haven't had time to look at those.  
15 So I am a little hesitant to approve a motion  
16 that includes everything that is in the public  
17 comment record, too.

18 HON. FORD: Larry?

19 MR. SHELTON: Yes, I understand.  
20 It wasn't our intent to propose those comments  
21 but just to say that those comments that PHMSA  
22 would deem to be consistent with the

1 principles, that they consider them in the  
2 final rulemaking. It wasn't meant to actually  
3 bring those comments in but to request that  
4 PHMSA consider them in the final rules.

5 HON. FORD: Jeff?

6 MR. WIESE: Well in the interest  
7 of expediting this, help me here. If the  
8 points that you want to basically underscore,  
9 if I hear you correctly, are made within the  
10 comments, they are already being considered.  
11 So there is nothing wrong with the members  
12 offering their advice and submitting stuff for  
13 us to consider. But I am sort of beginning to  
14 question the need for a motion to do that  
15 which you have already stated within your  
16 comments.

17 So there is absolutely nothing  
18 wrong with your making your points submitting  
19 stuff to the members to say we think these are  
20 important principles that should be  
21 considered. But I am trying to stay out of it  
22 as much as possible, even though I have strong

1 points of view on it. But I just question  
2 whether it needs to be in the form of a  
3 motion.

4 HON. FORD: Larry?

5 MR. SHELTON: Well our objective  
6 here was just to put it in the form of a  
7 motion so that the technical advisory  
8 committee could be on the record as supporting  
9 the basic principles of even-handedness and  
10 fairness that have been proposed. That's all.

11 HON. FORD: Chuck?

12 MR. LESNIAK: It sounds like we  
13 are wrapping up the discussion. And if that  
14 is the case, I would like to offer a  
15 substitute motion.

16 I would like to move that the  
17 proposed rule as published in the Federal  
18 Register is technically feasible, reasonable,  
19 cost-effective, and practicable, and approve  
20 it as published.

21 HON. FORD: Is there a second?

22 Discussion? Do we have to withdraw his? Are

1 we going to vote on both of them?

2 MR. LESNIAK: I believe the  
3 substitute motion goes first --

4 HON. FORD: Okay.

5 MR. LESNIAK: -- and if it is  
6 approved, then the original motion dies.

7 HON. FORD: Then we will vote on  
8 the substitute motion. Is there any other  
9 discussion? Hearing none, Cheryl call for the  
10 vote, please.

11 MS. WHETSEL: Okay, so we are  
12 voting on the substitute motion. First the  
13 Gas Committee.

14 HON. GARDNER: Aye.

15 MS. WHETSEL: Wayne Gardner?

16 (Laughter.)

17 MS. WHETSEL: Thanks, Wayne.

18 MR. KUPREWICZ: Could you tell us  
19 what we are voting on again? Because I lost  
20 track here.

21 MS. WHETSEL: Yes, we are voting  
22 on the substitute motion which is the first

1 line up there as it was proposed in the  
2 Federal Register.

3 MR. KUPREWICZ: Thank you. I  
4 wanted to be sure because I didn't want to  
5 vote the wrong way.

6 MS. WHETSEL: Colette has left the  
7 building.

8 Don Stursma?

9 MR. STURSMA: Aye.

10 MS. WHETSEL: Jeff Wright?

11 MR. WRIGHT: Aye.

12 MS. WHETSEL: Mike Bellman?

13 MR. BELLMAN: Nay.

14 MS. WHETSEL: Andy Drake is not  
15 here. Susan Fleck?

16 MS. FLECK: Nay.

17 MS. WHETSEL: Rick Worsinger?

18 MR. WORSINGER: Nay.

19 MS. WHETSEL: Chad Zamarin?

20 MR. ZAMARIN: Nay.

21 MS. WHETSEL: Denise Beach?

22 MS. BEACH: Aye.

1 MS. WHETSEL: Richard Feigel?

2 DR. FEIGEL: Nay.

3 MS. WHETSEL: Gerry Rosendahl?

4 MR. ROSENDAHL: Aye.

5 MS. WHETSEL: Okay. And for the  
6 Liquid Committee.

7 MS. BEACH: Do you want to tell us  
8 the results?

9 MS. WHETSEL: No. Do I have to?  
10 Let's see we have five ayes and five nays.

11 Okay, Liquid Committee. Lula?

12 HON. FORD: Aye.

13 MS. WHETSEL: Massoud?

14 MR. TAHAMTANI: Aye.

15 MS. WHETSEL: Todd Denton?

16 MR. DENTON: Nay.

17 MS. WHETSEL: Craig Pierson?

18 MR. PIERSON: Nay.

19 MS. WHETSEL: Larry Shelton?

20 MR. SHELTON: Nay.

21 MS. WHETSEL: Lanny Armstrong?

22 MR. ARMSTRONG: Aye.



1 MS. WHETSEL: Richard Kuprewicz?

2 MR. KUPREWICZ: Aye.

3 MS. WHETSEL: Chuck Lesniak?

4 MR. LESNIAK: Aye.

5 MS. WHETSEL: Okay, so we have  
6 three against and -- oh, Carl, I'm sorry.

7 MR. WEIMER: Aye.

8 MS. WHETSEL: I had you leaving at  
9 four, remember?

10 MR. WEIMER: 4:30, aye.

11 MS. WHETSEL: Thank you for  
12 staying. So we have seven ayes and three  
13 nays. So the Liquid it passed the Liquid and  
14 reached stalemate in Gas.

15 MR. TAHAMTANI: Well, we have  
16 advised you properly. So you take it.

17 MS. WHETSEL: Yes, well that is  
18 one thing we can do.

19 MR. WIESE: Well, you guys set a  
20 new record. I told you at three, I was  
21 feeling guilty at three. I don't know about  
22 this one, though.

1 MS. WHETSEL: Well we can do what  
2 Massoud said, and that is they have their  
3 votes on the record and we can go with it as  
4 it is. Or the second thing would then be to  
5 have the -- and you can correct me if I am  
6 wrong -- but we can have the second motion and  
7 we could have just the Gas Committee vote on  
8 the original motion if they feel it necessary.  
9 Otherwise, it is on the record as you have  
10 voted.

11 MR. TAHAMTANI: You go to the  
12 second one and then both committees.

13 MR. WIESE: Right.

14 HON. FORD: I see --

15 DR. FEIGEL: Gene.

16 HON. FORD: Gene, I'm sorry. I'm  
17 brain dead.

18 DR. FEIGEL: That's all right.  
19 Help me again, Larry, one more time. What are  
20 you expectations? I mean you haven't proposed  
21 specific alternative wording. My  
22 understanding and correct me if I am putting

1 words in your mouth is really in supporting  
2 this you are asking for a commitment from  
3 PHMSA staff to consider these issues in some  
4 more substantive way than you think they have.  
5 Is that fair enough?

6 MR. SHELTON: That's exactly  
7 right. We are saying that these are general  
8 principles of fairness that we just want to  
9 see embodied in the language of the final  
10 rule, in order to ensure transparency, due  
11 process, and fairness. That's all.

12 HON. FORD: Well, I'll turn it  
13 over to my lawyers to find out -- Massoud.  
14 I'm sorry. Sue! I'm saying Massoud.

15 MS. FLECK: I had kind of a  
16 clarifying comment. I think what we were  
17 trying to do with the extra things in there,  
18 with the extra considerations was really we  
19 believe there are some mistakes in the rule as  
20 written and this is, basically, saying to  
21 PHMSA, correct those mistakes, keeping these  
22 principles in mind. If we don't include this

1 and vote on the other one, they have to put it  
2 in effect as is. Or we are basically saying  
3 go ahead and put it in as is, even if there  
4 are mistakes. Am I missing something? This  
5 is really just asking to fix it.

6 MR. WIESE: Yes, we clearly will  
7 be considering the comments that were  
8 submitted in response to the rulemaking. It  
9 is the awkwardness of this vote on the ANPRM  
10 stuff that comes out of the statute.

11 Clearly, we are not going to  
12 ignore the comments that were submitted. That  
13 was why I was saying it seems to me with the  
14 exception of number two, which Carl  
15 highlighted and I maybe take a little issue  
16 with, it seemed to me that this was  
17 underscoring the comments had already been  
18 made.

19 So it is not superfluous. I know  
20 you are adding emphasis, but it is duplicative  
21 at best of the comments that you were making.  
22 So I think we could make a tempest in a teapot

1 here.

2 HON. FORD: Chuck?

3 MR. LESNIAK: And just to clarify,  
4 as the maker of the substitute motion, that  
5 was my intent, that it was as it was presented  
6 today and as PHMSA had described it they  
7 intend on revising the published rule.

8 MS. SUTHERLAND: Could I just make  
9 one more point? I couldn't put a percentage  
10 on it. We have already done that. So at the  
11 beginning when I said in a very lofty way, we  
12 have taken into consideration the comments and  
13 have made regulatory tweaks because we  
14 understood that maybe people misunderstood  
15 what our intent was, and we were conforming to  
16 what we already do, I think many of these  
17 things won't be a challenge for us because we  
18 have already been doing that with the  
19 comments, reconciling those.

20 HON. FORD: Craig?

21 MR. PIERSON: Craig Pierson,  
22 Liquids. I think that is important

1 information. To be honest with you, I don't  
2 know that you we knew that you were already  
3 making changes that weren't apparent here.  
4 And it is comforting that you are, indeed,  
5 doing that.

6 HON. FORD: Thank you.

7 DR. FEIGEL: I'll make one more  
8 comment -- or one more question maybe.

9 Given the tenor of the  
10 conversation over the last couple of minutes,  
11 I mean, what would be the objection to  
12 modifying the motion with this, and again this  
13 may be inappropriate, but in effect, saying  
14 that the PHMSA staff commits to taking these  
15 comments into consideration. I take it that  
16 you are doing that already but if it would  
17 give the majority of this committee some  
18 comfort, that we go on position as such. I  
19 mean, would that be an appropriate motion?

20 HON. FORD: And I think another  
21 vote. And I think that we had five nays and  
22 five ayes -- and if you are adding them

1 together, that is 13 ayes and eight nays and  
2 the motion carries the way it is presented.  
3 Am I correct?

4 MS. WHETSEL: No, separately.

5 HON. FORD: Separately. Oh, you  
6 take it separate. Well the Liquid Committee -  
7 - we're done.

8 MR. WIESE: Did the industry feel  
9 that that should be submitted to the AA for  
10 decision?

11 HON. FORD: A tie fails. Yes, a  
12 tie fails.

13 MR. WIESE: You know again, you  
14 know for the sake of argument and again back  
15 to my tempest in a teapot, I personally, as I  
16 said, don't have a particular objection with  
17 the committee moving something like this  
18 forward when it is clear that we will consider  
19 these things. As I have said, and I think  
20 Carl made the point and Vanessa underscored it  
21 on number two, we believe that opportunity has  
22 been made.

1                   To incur the cost for every single  
2                   one we do, most of which will never go beyond  
3                   the informal process, these are things that we  
4                   have to debate and evaluate internally. So I  
5                   don't think we are prepared to sit here and  
6                   promise you an outcome.

7                   On the other hand, I don't think  
8                   there is any real damage made from the idea of  
9                   listening.

10                   MS. WHETSEL: Well I just want to  
11                   point out if you read in the statute, too, is  
12                   that the Administrator will, will take your --  
13                   whatever. My mouth is not working -- your  
14                   advice. The Administrator will take your  
15                   advice into consideration. It doesn't mean  
16                   she has to accept it but she will take it in -  
17                   - or he or she, whoever it is at the time.  
18                   The Administrator. Sorry. Or I think it  
19                   might even be the Secretary if I read it again  
20                   -- delegate it.

21                   Can you all be comfortable, the  
22                   people who voted nay are they comfortable with



1 that?

2 HON. FORD: Chuck. I'm sorry,  
3 Cheryl, are you finished? Chuck.

4 MR. LESNIAK: Maybe as a way to  
5 wrap this up, I think it can be wrapped up  
6 pretty quickly. Just strictly from a Robert's  
7 Rules standpoint, the substitute motion failed  
8 for the Gas Committee. The original motion is  
9 still on the table. They can very quickly  
10 vote and be done with this and it can be on  
11 the record for the Gas Committee on their  
12 position and we can call it done.

13 HON. FORD: Okay.

14 MS. WHETSEL: So does the Gas  
15 Committee want to go back the original motion  
16 and vote?

17 MS. BEACH: By rule we actually  
18 have to because it is still on the floor.

19 MS. WHETSEL: Okay.

20 HON. FORD: All right, Cheryl,  
21 call for the vote from the Gas Committee.

22 MS. WHETSEL: Okay, so the Gas

1 Committee is going to be considering and  
2 somebody will read it for the Gas Committee,  
3 please.

4 MS. BEACH: The original motion as  
5 shown on the top of the screen. I can't read  
6 that from here. I'm sorry.

7 MS. WHETSEL: The original motion  
8 as it is printed on the screen.

9 All right, the Gas Committee.  
10 Wayne Gardner?

11 HON. GARDNER: I'm consulting with  
12 the Liquid Committee to see how to vote.

13 MS. WHETSEL: Oh, okay.

14 (Laughter.)

15 HON. GARDNER: Come on over! Nay.

16 MS. WHETSEL: I'm sorry?

17 HON. GARDNER: Nay.

18 MS. WHETSEL: Okay. You know,  
19 Colette left us in this bind, right?

20 Don Stursma?

21 MR. STURSMA: Aye.

22 MS. WHETSEL: Jeff Wright?

1 MR. WRIGHT: Nay.

2 MS. WHETSEL: Mike Bellman?

3 MR. BELLMAN: Aye.

4 MS. WHETSEL: Andy is not here.

5 Susan Fleck?

6 MS. FLECK: Aye.

7 MS. WHETSEL: Rick Worsinger?

8 MR. WORSINGER: Aye.

9 MS. WHETSEL: Chad Zamarin?

10 MR. ZAMARIN: Aye.

11 MS. WHETSEL: Denise?

12 MS. BEACH: Nay.

13 MS. WHETSEL: Richard Feigel?

14 DR. FEIGEL: Aye.

15 MS. WHETSEL: Rick Pevarski is not

16 here. And Gerry Rosendahl?

17 MR. ROSENDAHL: No.

18 MS. WHETSEL: Okay, so we now have

19 -- no, no, I take it back. Sorry. I'm

20 counting too many nays. We have four nays --

21 MS. BEACH: Don Stursma changed

22 his vote.

1 MS. WHETSEL: Okay, we have four  
2 nays now and six ayes. It passed.

3 MS. WHETSEL: Every meeting you  
4 guys make this more interesting.

5 HON. FORD: Thank you for your  
6 time.

7 MR. WIESE: And thank you. And  
8 if you will allow me just to close that out.  
9 We are not going to -- let me rephrase.

10 We are actively considering the  
11 comments that came in on submitted to the  
12 docket. So again, tempest in a teapot. Yes,  
13 I am going to have to study up on my rules of  
14 order, obviously. But I think we get the  
15 point. We hear you. I don't want you to  
16 think we are not listening. We do hear you.  
17 I understand the emphasis you want to place on  
18 those things. And those are actively being  
19 considered.

20 So, Lula with that I think we have  
21 --

22 HON. FORD: If the Committees want

1 to, we could go straight to Vanessa since she  
2 is here and we possibly could leave earlier  
3 because we were scheduled for a break. But if  
4 you want to go straight to Vanessa, that is  
5 fine. All right, Vanessa.

6 MR. WIESE: It would be my  
7 recommendation to you that we go straight into  
8 this. Vanessa said that she is happy to do  
9 sort of an accelerated view of this, however  
10 you wish, if that is okay with you.

11 Okay, great.

12 MS. SUTHERLAND: And for the  
13 accelerated version, don't feel that you can't  
14 ask questions or stop me but this is probably  
15 a five minute to ten minute conversation, if  
16 that. It is really an overview. There is no  
17 formal rulemaking associated with this but  
18 obviously this issue is going to have an  
19 impact on every rule that we do after January  
20 3, 2013. It is Section 24 of the recently  
21 passed Pipeline Safety Act. We are going to  
22 review the text very quickly and then in a

1 couple of slides, I am going to tell you where  
2 we were on this issue, where we currently are,  
3 and how we plan to address it in our  
4 rulemakings going forward.

5 So as a reminder, Section 24 of  
6 the recently passed Pipeline Safety Act said  
7 that beginning in January of 2013 PHMSA could  
8 no longer incorporate guidance or technical  
9 standards unless they were made available for  
10 free to the public on the internet. And I  
11 know some of you have participated in PHMSA's  
12 workshops and comment periods and individual  
13 meetings to determine how we were going to  
14 address this issue.

15 The issue arose because we and  
16 others had not been fully aware that the  
17 Section 24 was going to be in the Pipeline  
18 Safety Act, nor did we know there wouldn't be  
19 a little bit of flexibility if any SDO said we  
20 were not available, the SDO refused to place  
21 their standards on the internet for free.

22 So our first I guess wakeup call

1 was when we started to receive feedback that  
2 this might mean we would no longer be able to  
3 include technical standards like corrosion  
4 standards, welding, boiler pressure in future  
5 rules if SDOs did not post those on the web.

6 Without the ability to really use  
7 those standards, PHMSA was originally looking  
8 at the two options of either no longer using  
9 technical standards in pipeline safety rules  
10 or starting to write them themselves and  
11 create government-specific standards.

12 Just some related facts to put it  
13 into perspective, I think. It takes on  
14 average about two years to promulgate a rule  
15 and we have been incorporating standards into  
16 PHMSA, previously RISPA rules since about  
17 1970. We do participate in a variety of the  
18 technical committee meetings as a regulator,  
19 along with industry, scientists, and other  
20 interested parties.

21 A number of the standards that we  
22 use are incorporated in whole and in part into

1 many of our existing regs. We currently use  
2 about 65 standards. Only 20 -- actually that  
3 has changed it is 23 now are currently  
4 available for free on the internet and almost  
5 all of them have secondary and tertiary  
6 references to international standards or other  
7 SDO standards. And they manage that by having  
8 contractual arrangements or sort of quasi-  
9 governmental permission to incorporate those  
10 secondary and tertiary standards.

11 And so this is just a  
12 representative sample of some of the Standards  
13 Developing Organizations, SDOs with whom we  
14 engage to incorporate their technical  
15 standards.

16 And where we were was initially, I  
17 think we and others thought well it is a good  
18 idea, standards that the regulated community  
19 is governed by. And obviously that effect  
20 deregulated communities in which we all live  
21 is a good idea. Transparency and access to  
22 the standards would help people understand our



1 rules and pipeline safety more. And then we  
2 began to identify certain issues, which you  
3 can see.

4 I am not going to dig down into  
5 every example but they were in six broad  
6 categories. There were legal issues to  
7 posting the SDO standards. They own the  
8 intellectual property rights in those  
9 standards so we couldn't post them without  
10 violating those copyright and trademarks and  
11 potentially being sued.

12 There are other federal statutes  
13 out there that actually encourage federal  
14 agencies to incorporate voluntary consensus  
15 standards where possible, rather than  
16 developing new ones to achieve the same goal.  
17 That is the national technology transfer and  
18 advancement act and several executive orders.

19 There was a financial component.  
20 There were a variety of issues that we  
21 identified there. If SDOs did not post freely  
22 their standards, how much would it cost the

1 government to buy those standards and  
2 basically create a monopolistic license?

3 If we didn't choose to do that, or  
4 Congress didn't give us the hundreds of  
5 millions of dollars to do so, how much would  
6 it cost for us to hire the same level of  
7 expertise on welding, pressure, corrosion, and  
8 every other type of technical standard that we  
9 incorporate into our regs and build that bench  
10 strength in-house?

11 The practical component was really  
12 just a variety of issues. Rulemaking time, if  
13 we didn't have standards, how much longer  
14 would it take for us to get rules out? If the  
15 government was writing unique standards, how  
16 would we get the resources and the skill? How  
17 long would that take? And then what would it  
18 mean to replicate the existing international  
19 SDO system that pulls resource and expertise  
20 internationally and then creates standards  
21 that everyone agrees to.

22 There were some policy issues

1 about what this might mean for the primacy of  
2 U.S. standards. Right now, some of the SDOs  
3 we have used are the leaders globally in the  
4 types of standards that are issued. And if  
5 they are posted on the web for free, their  
6 concern was that we would lose sort of U.S.  
7 preeminence around the world in certain types  
8 of standards. There are also executive orders  
9 on international cooperation that say we are  
10 members of treaty arrangements and other  
11 informal international regular cooperation  
12 teams. And if we were to start posting  
13 standards, what would that mean in the general  
14 scheme of things of us potentially creating  
15 sort of default standards?

16 And then the last two issues,  
17 international as I have mentioned, is sort of  
18 woven into the preceding four items.

19 And then finally from a technology  
20 perspective, we just had some technical  
21 challenges. How would we, as the government,  
22 make these standards, which are really

1 technical and have a lot of graphs available  
2 to the disabled community? And then where  
3 would they be posted and how would people have  
4 access to them if we could get over the other  
5 hurdles?

6 So a variety of stakeholders gave  
7 us different types of solutions, which we  
8 broke into four categories, some operational  
9 solutions, licensing options, legislative  
10 tweaks or combination of those three.

11 Where we are today is we have  
12 about seven options. I think we have narrowed  
13 it down to sort of a top two. These are in no  
14 particular order, by the way. But they range  
15 -- I am not going to read all of this but they  
16 range from as of January having the Department  
17 of Transportation just post all of the  
18 standards that we incorporate into future  
19 rulemaking. There are obviously some  
20 intellectual property issues there or  
21 notifying the public that other entities that  
22 are not affiliated with the government have

1       been posting standards for some time for free  
2       but we wouldn't be able to verify the legality  
3       or accuracy of what that third party is  
4       posting.

5               Maybe one viable option would be  
6       to have the Standards Organizations do plain  
7       language technical summaries, instead of  
8       posting their entire IP portfolio on the web  
9       for free. It gets to the same goal of  
10       transparency. And for those who aren't  
11       technical anyway in the public, it might be  
12       easier for them to understand why it is being  
13       incorporated and what it means. So that might  
14       be a possible option.

15              Seek legislative changes. As we  
16       all know, getting something through Congress  
17       now might not be at the top of our list. So  
18       I will skip down to the next two.

19              Cease incorporating SDO standards  
20       into PHMSA regulations entirely, which of  
21       course as I mentioned earlier, could mean  
22       everything from PHMSA starting to write its

1 own technical and safety standards to us just  
2 not having any updates and freezing the regs  
3 in place as of a date and time.

4           There is a serious concern there  
5 that many of the states, and I am sure some of  
6 you have heard this from your state colleagues  
7 and friends, that they are concerned about a  
8 potential race to the bottom. If the federal  
9 minimum standards get frozen in time and they  
10 adopt them, as technology improves and the  
11 SDOs continue to make improvements and put out  
12 additional standards but we don't incorporate  
13 them, what does that mean for the states who  
14 are adopting our federal minimum? Are they  
15 going to end up being frozen in time, too?

16           And then lastly, reaching an  
17 agreement with all of the SDOs who will figure  
18 out a way to post the standards on their  
19 websites, rather than making this a government  
20 project, and then they would manage  
21 registration and tracking and keeping the  
22 standards up-to-date. That is also probably

1 one of the second best alternatives.

2 We have managed to get all of the  
3 SDOs to agree, except for one, that any future  
4 rulemaking that incorporates their standard  
5 they will post on their website for free. The  
6 outstanding SDO is ASME because of their  
7 international presence and the amount of money  
8 they make globally for their standards. But  
9 everyone else either is currently posting  
10 their standards for free or has committed to  
11 work with us in 2013 if a rule we publish  
12 incorporates all or part of their standards.  
13 That is where we are at the moment.

14 HON. FORD: Thank you, Vanessa.  
15 Are there any questions or concerns? Rick.

16 MR. KUPREWICZ: Yes, I guess I  
17 will just make a couple of observations.  
18 Based on some other stuff we are seeing in  
19 some very serious cases, and those cases are  
20 public domain, you have got to go through  
21 thousands of documents. But there is  
22 something to think about. There is a

1 hierarchy in your reference standards. Some  
2 reference standards in terms of their impact  
3 on the intent of pipeline safety are more  
4 important. Some of them in the ASME, as an  
5 example. Specifically in the ASME-- well, I  
6 am not trying to demean all the ASME  
7 standards. Obviously, the standards related  
8 to integrity management carry a higher level  
9 of process perspective, if that is the right  
10 word. And so there may be some middle ground  
11 here that people might want to consider.

12 But from a public perspective,  
13 time and time again what we are running into  
14 is if they are incorporated by reference, they  
15 are law. Sections of them, not all of them.  
16 And so I have seen arguments by very serious  
17 people saying what do you mean you are writing  
18 law for pipeline safety and the public doesn't  
19 really get to review it? That is a hard  
20 hurdle to overcome. And so I don't think  
21 anyone wants to be in that position.

22 So I would think about that. Is



1       there some middle ground here?  It isn't all  
2       or nothing.  There may be a hierarchy.  
3       Obviously, the integrity management  
4       regulations or the guidance of standards are  
5       carrying a lot of review right now and there  
6       is a lot of scrutiny as to whether or updated  
7       versions are actually diluting the intents.  
8       And so I will let the lawyers work that issue  
9       out.  That is not my job.  I am just looking  
10      at technical issues.

11                        So that is all the comment I have  
12      on it from a public perspective.

13                        HON. FORD:  Any other questions  
14      for Denise?

15                        Hearing none, Jeff, I will turn it  
16      back over to you.

17                        MS. BEACH:  Anymore questions for  
18      Denise?

19                        MR. WIESE:  Yes.

20                        HON. FORD:  I'm sorry.

21                        (Laughter.)

22                        MR. WIESE:  I thought she was

1 going to say Don.

2 HON. FORD: For Vanessa. I'm  
3 sorry, Denise.

4 MR. WIESE: Hey don't get thrown  
5 in that bucket with Don now. All right?

6 I just wanted to add, though I  
7 understood Rick's intent, and Vanessa can  
8 probably address this better, but I'm not so  
9 sure that the way Congress crafted that there  
10 is the latitude for us to interpret the middle  
11 ground.

12 You know and the other thing I  
13 want to say that in this situation you have to  
14 think a little more global. This is not just  
15 -- once it starts there, it goes everywhere.  
16 So there are legitimate -- I'm not saying that  
17 there aren't competing points of view and they  
18 don't both have points but there are  
19 legitimate concerns about intellectual  
20 property. Some of these standards are  
21 extremely technical and detailed. And so  
22 let's think about all the other safety -- all

1 the other standards -- you might even know,  
2 Vanessa, how many standards are incorporated  
3 government-wide.

4 MS. SUTHERLAND: Last count from  
5 NIST was about 11,000.

6 MR. WIESE: 11,000 standards. So  
7 I think the idea of moving all of those  
8 verbatim into the regulations is not a good  
9 idea. They are confusing enough and it will  
10 take ten years to do it. I will say that we  
11 sit on something like 40 plus committees,  
12 probably more than that and part of our job  
13 and our state partners as well sit on there.  
14 The regulator's job, despite whatever Carl  
15 said, is to represent the public. I'm just  
16 teasing if he was here. But we do represent  
17 the public and our job is to prevent it from  
18 sinking to the lowest common denominator. And  
19 we have some pretty gifted technical people on  
20 those committees as well.

21 So I know there is no perfect  
22 answer here on this one. That is for sure.

1 I think Vanessa and Jeannie Layson -- Jeannie  
2 is in the back -- have partnered on this thing  
3 and done a great job. But is just not an  
4 enviable mandate. It is pretty hard to comply  
5 with.

6 MR. STURSMA: Vanessa, in your  
7 contacts with the Standards Organizations, did  
8 you suggest that an internet version might be  
9 something that is a total read-only, no copy,  
10 no print, maybe not even a search function so  
11 that serious users would still buy the product  
12 but this would satisfy casual users that  
13 probably wouldn't buy the product? Did that  
14 help any?

15 MS. SUTHERLAND: We actually told  
16 them we would not dictate how they made it  
17 happen but that we suggested they could do  
18 read-only, not printable, not downloadable,  
19 PDF, and that they also have tracking  
20 mechanisms that you would have to register  
21 before you could view the free copy. So that  
22 if somebody was abusing it, I mean it was not

1 really a community person, an advocate or  
2 somebody who would benefit from getting a free  
3 copy, that it was somebody who was constantly  
4 going back and back and back and potentially  
5 infringing or printing or trying to game the  
6 system, that they would set up their own  
7 tracking mechanisms to figure out how many  
8 people were coming in to view the website and  
9 the like.

10 I think most of them are  
11 comfortable at this point with posting PDF  
12 versions that are not downloadable or not  
13 printable. They are also going to determine  
14 if there is a way for them to create portals.

15 We talked to one SDO and I am not  
16 quite sure how they are envisioning that this  
17 is going to work but the portal would allow  
18 people to buy sort of a freebie. And then it  
19 would feed them into an ID-only, password  
20 protected portal where they could access it  
21 for a certain period of time, but then it  
22 would be shut off. And then they would have

1 to go through that process again so that it  
2 wouldn't be sort of massively available to the  
3 rest of the world. It would be available for  
4 a specific user for a limited period of time  
5 but they could continue to go back and just  
6 sort of re-register and re-access that portal.

7 I think that made it a little bit  
8 more palatable to them.

9 HON. FORD: Rick.

10 MR. KUPREWICZ: I guess I would  
11 just add the comment that I think there is a  
12 solution somewhere here. I am not here to  
13 give you the solution but it carries much  
14 weight with a lot of parties. And if it is an  
15 all or nothing, that is a lose for everybody.

16 So there ought to be a way to  
17 figure out what the solution should be. I  
18 myself, if you want a section of the  
19 reference, you look at the section of  
20 reference. But I guy the whole damn thing.  
21 Depending on the standard, its context, you  
22 have got to buy the whole thing. And that is

1 not a problem.

2           So we are not here to try to put  
3 these people out of business. That is not the  
4 issue here. But there are certain issues here  
5 that are clearly needing -- the public needs  
6 to see and understand. We are talking about  
7 steel pipe. It is not a super-sophisticated  
8 reactor. So we ought to be able to get a way  
9 there.

10           Now there are differences  
11 somewhere but if it is a win, lose, all or  
12 none, then I got a good idea where Congress  
13 will probably be heading on this issue and I  
14 don't think it is a good place.

15           MS. SUTHERLAND: I think  
16 unfortunately for us, the statutory language  
17 right now is all or none. So, luckily for us  
18 we do have only one outstanding SDO. On the  
19 other hand, they happen to be one of the more  
20 critical SDOs, Integrity Management, right.  
21 But they are working on it and they will find  
22 a plain language summary middle ground.

1                   HON. FORD: Jeff do you want to  
2 close us out?

3                   MR. WIESE: Is that it?

4                   HON. FORD: I didn't see any more  
5 placards.

6                   MR. WIESE: No, no, no. Know when  
7 to close them. Right?

8                   Well, a particular thanks for the  
9 committee today and apologies to the new  
10 members. Not all meetings are as kind of  
11 difficult and wrestling our way through those.  
12 As I said, we have set a record today. I will  
13 have to cogitate on that one. It is not our  
14 goal. We seek consensus, generally speaking.  
15 I think the people who have been here for a  
16 while know that. We try to find the best  
17 workable solution we can.

18                   I should apologize to the public.  
19 That is my fault. We were so caught up in the  
20 debate that I didn't pause long enough before  
21 the vote to take a public comment. I was very  
22 hastened earlier to say I didn't want



1 rhetorical comments or comments that didn't  
2 add new value but I apologize for kind of  
3 closing that out without doing that. We will  
4 seek to improve.

5 I didn't have Colette here to --  
6 she had to take off. I didn't have her here  
7 to sort of push me into the proper behavior.  
8 And it is her husband's birthday so we needed  
9 to let her get home to Arkansas.

10 So at any rate, my thanks to you  
11 all. Members of the Gas Committee, John, what  
12 time do we convene?

13 MR. GALE: Nine o'clock.

14 MR. WIESE: Nine o'clock in this  
15 room. You can leave your books and other non-  
16 valuable things here. And we will see you  
17 here at nine.

18 To the Liquid Committee, thank you  
19 so much for your time and efforts on our  
20 behalf.

21 (Whereupon, at 4:55 p.m., the  
22 foregoing proceeding was adjourned.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Liquid Pipeline Advisory Committee  
and Gas Pipeline Advisory Committee

Before: Pipeline and Hazardous Materials Safety Admin.

Date: 12-12-12

Place: Alexandria, VA

was duly recorded and accurately transcribed under  
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