

UNITED STATES DEPARTMENT OF TRANSPORTATION  
**TECHNICAL PIPELINE SAFETY STANDARDS COMMITTEE MEETING**

Loews L'Enfant Plaza Hotel  
490 L'Enfant Plaza, S.W.  
Ballroom A  
Washington, D.C.

Friday, May 30, 2003  
8:40 a.m.

Technical Pipeline Safety Standards Committee Members

LINDA J. KELLY, Chair  
Commissioner  
State of Connecticut  
Department of Public Utility Control

BEN P. ANDREWS, III  
General Manager  
Oak Ridge Utilities District

MICHAEL R. COMSTOCK  
Utility Compliance Coordinator  
City of Mesa, Arizona

RICKEY L. COTTON  
Director of Pipeline Safety  
Mississippi Public Service Commission

J. ANDREW DRAKE  
Director of Codes, Metallurgical Services and  
Project Records  
Duke Energy Gas Transmission

RICHARD E. FEIGEL  
Vice President, Engineering  
Hartford Steam Boiler

JOHN SPENCER LEISS  
Geologist  
Federal Energy Regulatory Commission

THEODORE C. LEMOFF  
Senior Gasses Engineer  
National Fire Protection Association

Technical Pipeline Safety Standards Committee Members

STEVE NIKOLAKAKOS, P.E.  
Project Manager/Manager Corrosion Engineering  
Russell Corrosion Consultants, Inc.

RICHARD PEVARSKI  
Chief Executive Officer  
Virginia Utility Protection Services, LLC

ERIC E. THOMAS  
Director of Engineering  
Southern Natural Gas Company

DR. THEODORE WILLKE  
TLW Solutions, Inc.

JAMES F. WUNDERLIN, P.E.  
Vice President, Engineering  
Southwest Gas Corporation

Office of Pipeline Safety Representatives

STACEY GERARD  
Associate Administrator for Pipeline Safety  
Office of Pipeline Safety

MIKE ISRANI  
Program Manager (IMP)  
Office of Pipeline Safety

BARBARA BETSOCK  
Deputy Chief Counsel

CHERYL WHETSEL  
Office of Pipeline Safety

Participants

DARON MOORE  
El Paso Corporation

TERRY BOSS  
Interstate Natural Gas Association of America

PHIL BENNETT  
American Gas Association

Participants (Continued)

PAUL GUSTILO  
American Gas Association

## A G E N D A

PRESENTATION:	PAGE:
Welcome by Linda Kelly Stacey Gerard	453
Marvin Fell, Economist Office of Pipeline Safety	544
Buck Furrow Liquefied Natural Gas	579
Richard Hurliaux Office of Pipeline Safety	610
Marvin Fell	613
John Erickson	617
Closing by Linda Kelly Stacey Gerard	624

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

(8:40 A.M.)

1  
2  
3 MS. KELLY: We will begin this morning by  
4 talking about the issue that continues to exist on  
5 identified sites.

6 Now how would you like to start that, Stacey?  
7 Is that a proposal that you want us to react to?  
8 Should we start with the proposal that was on the table  
9 yesterday?

10 (Pause.)

11 MS. KELLY: All right. I will ask the  
12 Committee and probably this will be Mr. Drake, to  
13 indicate where, where it is felt the need for further  
14 clarity exists and we will start from there. And we  
15 are on identified sites.

16 For example, do we need to specify a  
17 threshold number of people in a building?

18 MR. DRAKE: I just kind of lay my cards down  
19 here. In the hallway I was, was, we will decide by  
20 Terry Boss, who said that they had discussions prior to  
21 my being here, about how to resolve this issue. Paul  
22 Wood has a list of questions that need to be answered.  
23 You know, I think, to me the Petition for  
24 Reconsideration has three or four issues in it, and if  
25 we want to walk through those, I can ask Terry to get

1 to the microphone and we can walk through what those  
2 issues are. Some of them have been addressed by this  
3 committee and I think that is pretty reasonable.  
4 Yesterday, we handed out the Petition for  
5 Reconsideration and I don't know how many people had  
6 time to read it, but, we can kind of summarize what the  
7 issues are there and then perhaps we can ask Paul or  
8 Stacey if they want to see if these questions are  
9 germane to resolving the outstanding issues.

10 MS. KELLY: I would like to limit it to  
11 outstanding issues. Only the outstanding issue.

12 MR. DRAKE: That is fine. I mean, like I  
13 said, there aren't that many issues anyway, so.

14 MS. KELLY: Right. And again, only those that  
15 the Committee can offer guidance on, because as I said  
16 yesterday, the Committee cannot resolve the petition.  
17 The Committee can only offer guidance to OPS on issues  
18 involving the proposed rule and its implementation.

19 MR. DRAKE: Yes, the primary issue of the  
20 petition, as we said yesterday, is to try to provide  
21 actionable criteria that can, that can make the rule  
22 practicable in regards of the identification of  
23 identified sites. And the Committee has talked about  
24 it. It has been discussed in public meetings at  
25 various depths throughout the last nine months. So,

1 maybe I can turn that over to Terry and he can kind of  
2 walk us through a summary.

3 MR. BOSS: Very, very quickly, the subject  
4 matter that was addressed in Petition for  
5 Reconsideration is exactly the same subject matter that  
6 you have already discussed in this meeting. In fact,  
7 two meetings ago the HCA definition is although  
8 subjects were approached, as far as I could identify  
9 from what you talked about here already in the previous  
10 meetings, identified sites and the clarity of the  
11 definitions are the only things that are left over.  
12 So, that basically is it. And some of the discussion  
13 you had yesterday, addressed a lot of those issues.  
14 For example, where you do have a definition that has  
15 been in the regulations for some 30 odd years on, you  
16 know, people and places five days a week, etc., that is  
17 a definition we all understand. We thought if you had  
18 one in the dictionary already, why don't we use that  
19 definition, since everybody understands that. And  
20 there were clarify discussions that I think were  
21 brought up at two meetings ago here. The identified  
22 sites was also brought up at the TPSC meeting several  
23 weeks. And there are several solutions out there.

24 What was talked about yesterday and almost  
25 voted on yesterday was a good solution on the impaired

1 one, where you had the successions. There has been  
2 other items identified on the docket, but there doesn't  
3 seem to be any disagreement from what I have seen on  
4 the docket comments. Public comments we had on that  
5 from Mr. Kucowitz(ph) was essentially talking about the  
6 outside areas.

7 MS. GERARD: Let's take these one by one.

8 One question was on the issue of does there  
9 need to be a threshold number for people in a building,  
10 for which we want to added protection? Because in the  
11 Advisory Committee meeting we had last and in one of  
12 the public meetings, you, guys, put up the number 50,  
13 and we haven't given you any indication in the  
14 documents that might distribute, about how we felt  
15 about it. We did not pick that up as something we  
16 supported, you know, so, we said nothing about the  
17 number 50.

18 MR. BOSS: Let me articulate the two positions  
19 as I know them, so you can compare those two positions.

20 Okay. The two positions, the one that we  
21 filed with the 50, essentially takes the issue of 20  
22 houses with the standard occupation of 2.5 people and  
23 we said if we are looking in that sort of thing, that  
24 looks like 50 people in the houses in equivalency. So,  
25 that is the basis of that.



1           If you look at your proposal yesterday, which  
2 talked about people with impaired mobility, and then  
3 you talked about licensed facilities being available on  
4 a commercial basis and that was an add. Once a public  
5 safety official knew it, and these things. Essentially  
6 you get up to that level of population in those types  
7 of facilities, roughly the same. One it is explicit.  
8 The other one it is implicit by the, by the things that  
9 you have got in there.

10           MS. GERARD: If I could just comment about  
11 that, the number 50 and the concept of equivalency to  
12 the 20.

13           What I would say is that as a federal  
14 official with the policy job of proposing values for  
15 discussion, to me people that have problems evacuating  
16 shouldn't be compared with people who don't have  
17 problems evacuating. So, I wouldn't be making the  
18 judgement based on equivalency to the other standard.  
19 I would want to look for a reasonableness test. The  
20 concept of facilities, you know, readily identified  
21 visible facilities would be one indicator. I wouldn't  
22 want use a numerical equivalency test. I can't think  
23 of anything that reasonable between a facility and a  
24 house with a mark on it.

25           MR. BOSS: Yes.

1 MS. GERARD: And we hadn't talked about  
2 houses. We had talked about facilities. I can't think  
3 of anything in between and that is what I am seeking  
4 advice from the Committee on. I wouldn't want to use  
5 the number 50 with the rationale being that 50 people,  
6 you know, is equivalent to the 2.5 blah, blah.

7 MR. BOSS: Yes.

8 MS. GERARD: Because I think that people who  
9 are mobility impaired deserve extra consideration  
10 because they have difficulty. The consequence is  
11 higher to them because they can't get out as easily as  
12 people who aren't mobility impaired.

13 MR. BOSS: Let me get some clarity on that  
14 also.

15 There is agreement where you have outside  
16 areas or you have a building with an outside area that  
17 have, if there is an agreement on the 20 on that. The  
18 theory behind the building is that you have essentially  
19 a barrier that adds time to the thing, that, that  
20 creates a situation whether you are impaired mobility  
21 or if you are just a normal person, where the building  
22 actually adds in, and that was our proposal, where the  
23 building afforded a lot of time and protection as  
24 compared to the 20 people. So, that was some of the  
25 basis. So, it just, it is, you have got a building

1 involved with this decision process, too.

2 MS. GERARD: Could you go back to the number  
3 of people who are unsheltered, what, what do you think  
4 we have agreement on there?

5 MR. BOSS: Twenty.

6 MS. GERARD: Twenty unsheltered people.

7 MR. BOSS: Yes. It is in the existing regs  
8 right now. And we expanded that, realizing that as we  
9 analyze this thing that we needed to go farther, so we  
10 took that same definition we had and expanded it to  
11 cover bigger areas that we have got.

12 MS. GERARD: Do you have a comment, Mr. Drake?

13 MR. DRAKE: Just so I can keep track, there  
14 seem to be three different issues on this table right  
15 now, under identified site. And that is (1) an  
16 identified site is a place where limited mobility  
17 people are residing or convalescing or whatever. (2)  
18 there is a structure where there is enough people of  
19 normal mobility that there are just enough people there  
20 inside a structure. And third, there appears to be an  
21 issue about identified site or just places where people  
22 gather outside normal mobility. Is that the limit of  
23 the identified site?

24 MS. GERARD: No, there is one other, there is  
25 one other issue and that is why we change from the five

1 days a week to the 50 days a year.

2 MR. DRAKE: Those are for the outside  
3 gathering people or those are for anybody?

4 MS. GERARD: The outside gathering people.

5 MR. DRAKE: Okay.

6 MS. GERARD: And I agree, but let's take one  
7 at a time. Let's start with the limited mobility.  
8 Stick with the limited mobility.

9 MS. KELLY: And see what issues surround that  
10 and where we --

11 MS. GERARD: So, I think, I think that what we  
12 have was two choices, to use the number 50 as a  
13 specified threshold or to be unspecified and just say,  
14 none facilities where mobility impaired people  
15 convalescent, using the term facilities to distinguish  
16 from private households. Because I don't think we used  
17 the word facilities before, right, Mike?

18 MR. ISRANI: Well in the --

19 MS. GERARD: In the examples. Where it says  
20 day care facilities, retirement facilities.

21 MR. ISRANI: Yes.

22 MS. GERARD: Okay.

23 MR. ISRANI: Right, in the definition, final  
24 rule definition they are using building but in the  
25 preamble we are explaining as a facility.

1 MS. GERARD: But, it is not in the rule.

2 MR. ISRANI: In the rule we use the same  
3 language which was in the, our Class III location,  
4 which also defines building.

5 MS. GERARD: Right. I am thinking that the  
6 rule language used the word facility to be more clear.

7 MR. DRAKE: I think the concern inside the,  
8 the Petition for Reconsideration regarding that one  
9 element, limited mobility people, was the way the rule  
10 worded is that you can never cross the finished line,  
11 because it says, it doesn't, it doesn't give you any  
12 definitive place where you can say you have done  
13 enough.

14 MS. GERARD: Right, right.

15 MR. DRAKE: To do it. And that is the  
16 problem, is that you never can reach compliance.

17 MS. GERARD: That we were talking about  
18 yesterday.

19 MS. KELLY: Dr. Feigel?

20 DR. FEIGEL: In some attempt to try to  
21 normalize this, has anyone done at least an informal  
22 survey of emergency response folks and maybe some  
23 facility operators to get some calibration on how  
24 quickly they could evacuate X number of people? I  
25 mean, we are just kind of throwing numbers back and

1       forth that don't seem to have any empirical basis at  
2       all. I am just trying to find some criteria we can  
3       apply to make some attempt to normalize this, so we can  
4       say 50 of these are equivalent to 17 of these.

5               MS. GERARD: Why do you feel we have to use  
6       numbers to make an equivalency?

7               DR. FEIGEL: I am not suggesting we have to,  
8       but that is one thing that is on the table here, so, I  
9       must dismiss that out of hand. I am just trying to  
10      find some criteria to rationalize that, that is all,  
11      Stacey.

12              MS. GERARD: Well --

13              MS. KELLY: Licensed facilities that we are  
14      trying to address in this, in Subsection 5?

15              (Pause.)

16              MS. KELLY: What is it, yes, Mr. Lemoff?

17              MR. LEMOFF: Yes. Let me ask a question.  
18      What we are trying to as I understand it, is to say  
19      whenever a certain a building that meets a certain  
20      test, because it has got five, ten, 20, 100 people who  
21      are difficult, not normally mobile. Then we are saying  
22      that is a high consequence area, which means that the  
23      pipeline has to meet tougher rules, period. We are not  
24      saying that the pipeline company has to make sure they  
25      have an evacuation plan. We are not saying that the

1 local fire department has to be, help them evacuate.  
2 So, I think that, it is almost irrelevant how we pick  
3 the number, because all we are doing is talking about  
4 what you do to the pipe.

5 MS. GERARD: It is a priority issue. That is  
6 all this is, is we are trying to have clear  
7 instructions for the operator to prioritize their  
8 integrity actions.

9 MR. LEMOFF: Absolutely. And I, I think it  
10 is, I do agree with the industry that the rule should  
11 be very specific and clear so that everyone understands  
12 because I don't think it is anyone's intent to have  
13 this apply to a home where somebody came home from a  
14 hospital and it is, for two weeks can't walk.

15 MS. GERARD: Right.

16 MS. KELLY: What is the recommended change to  
17 the language, I mean, not from a legal perspective,  
18 but, conceptually, regarding the limited mobility,  
19 mobility?

20 MR. DRAKE: Without trouncing on Paul Woods'  
21 proposed five questions, I think the discussion we had  
22 yesterday about the "and" and the "or" conversation,  
23 about having somebody as the primary focal point for  
24 deciding as a clearinghouse and then other criteria  
25 that you bring in and add to it. It adds a lot of

1 clarity, because it gives a definitive resource as the  
2 focal point and some, some kind of criterion that they  
3 and us can use to decide that is actionable. And that  
4 helps.

5 MS. GERARD: I think the real problem with  
6 this issue is the finished line problem. When is  
7 enough enough? Because what we want to do is keep our  
8 focus on getting to a place where we have the areas  
9 prioritized that more protection has to be brought to,  
10 so you can get on with doing your plan, you know, your  
11 assessment and everything that goes, as part of an  
12 integrity program. And so, as we are talking about  
13 guidance, about what we could do about this, to address  
14 the issue in the petition, for starters, you know, we  
15 could take up the advice we were getting yesterday,  
16 about some sort of sequence and provide some guidance  
17 on that to append to the rule as a starter.

18 MS. BETSOCK: Why don't we put the proposal  
19 back on the table. That will at least give us  
20 something to discuss.

21 MS. GERARD: I think that was that we would  
22 make it clear that we believe that the primary source  
23 for information is the emergency response official, the  
24 public safety official or the LEPC. And that if the  
25 operator used one additional source to sort of verify



1 that that would be kind of a diligent approach to  
2 establishing the location of the identified sites for  
3 their planning purposes. Something like that?

4 MR. DRAKE: I didn't understand the one  
5 additional source. I thought what it was, was that  
6 they were, they were kind of the focal point and then  
7 you looked at this "and" clause of the "or, or, or",  
8 the three criteria, you know, so that you are basically  
9 trying to tell them, we are going to look to you for  
10 this, and then these are criterion that have to be met  
11 on anything that they identify or that we identify,  
12 wherever it comes from, has to meet these three  
13 criteria.

14 MS. GERARD: Okay.

15 MR. DRAKE: Does that make sense? I think  
16 that was the gist of yesterday discussion anyway.

17 MS. GERARD: Okay. Okay.

18 DR. WILKIE: Could you identify those three  
19 criteria? I am, this thing seems to go around, I am  
20 trying to bring it down to something --

21 MS. GERARD: Yes. Identify the place, please?

22 (Pause.)

23 MS. GERARD: So, we can have the full language  
24 for purposes, for the Committee to consider. Is  
25 visiting marked? Is licensed or registered, is on a

1 list or a --

2 DR. WILKIE: Yes.

3 MS. GERARD: So, so, if your, if you were  
4 guided to say that the process of identifying should  
5 begin with, you know, asking emergency response, public  
6 safety, or LAPC, the location of these, and then with  
7 the information you got, you would verify against these  
8 criteria. It is visibly marked. It is licensed or it  
9 on a map, maintained by a federal, state or local  
10 agency.

11 MR. DRAKE: The current, the problem is that  
12 the current way it is worded is all four, those four  
13 issues are all connected together by "or". It will be  
14 the public safety official or registered and licensed,  
15 or marked or on a map or a list. And the problem is is  
16 the fourth criteria, when that is "or" it is any one of  
17 them. So, you go into infinite, because that last  
18 criteria, any list, anywhere, any map, you know, we  
19 can't do that. I mean, it is not practicable. But,  
20 when you change, what you are trying to propose is a  
21 change, is that you say as defined by the local  
22 official, and meaning any of these other things, it  
23 helps make it a conjunctive, which changes the rules of  
24 regulatory construction and makes it have to meet both  
25 criteria and that is much cleaner, I think is what we

1 talked about yesterday. It is actionable. And that is  
2 the problem, in its current form, because or, or, or in  
3 very open ended, you can't get there.

4 MS. KELLY: Any additional comments?

5 Dr. Wilkie does it, does this satisfy your  
6 question?

7 DR. WILKIE: It does, with one question. The  
8 primary source of information, does that apply to all  
9 three situations, impaired mobility, unsheltered people  
10 or this threshold number of --

11 MR. DRAKE: As I understand it, there are two  
12 parts to the definition. And this is only one.

13 MR. ISRANI: Right. That says only to  
14 identified sites. Not the houses.

15 MS. GERARD: It does apply to the mobility  
16 impaired in the areas where people congregate.

17 MR. ISRANI: Correct.

18 MR. THOMAS: It applies to all identified  
19 sites, which would include the mobility impaired,  
20 gathering places, all of those. It is not just for  
21 mobility impaired. I think our discussion has been  
22 mobility impaired, but these things apply to all the  
23 general criteria, including mobility impaired now.

24 MR. DRAKE: Does this include buildings where  
25 more than, however many people of normal mobility

1       congregate? I didn't think it did. I thought it was  
2       just the, I am confused.

3               MS. GERARD: I don't think we would expect  
4       this to be the source of data for places where there  
5       are 20 units in a building or there is 20 units in a  
6       circle or, no.

7               MR. ISRANI: In the final rule, the way we  
8       worded it was the identified site a building outside  
9       area with all these four visibly marked licensed  
10      register, and then occupied by persons who are confined  
11      or of impaired mobility or would be difficult to  
12      evacuate. Or, the second part was, there is evidence  
13      of use of site by at least 20 persons on at least 50  
14      days in a 12 month period. So, both of those  
15      components of the ACA had to meet these four identified  
16      site criteria. There is two components of the house.

17              MS. GERARD: Right. That is basically  
18      mobility impaired and places where people congregate.

19              MR. ISRANI: Congregate, correct.

20              MS. KELLY: Further discussion. Yes, Dr.  
21      Wilkie?

22              DR. WILKIE: Am I to understand that if we put  
23      the "and" in here, public safety officials and these  
24      three criteria, which "or" criteria, which are visibly  
25      marked licensed, or on list or a map, would satisfy the

1 problem?

2 MS. GERARD: Just to be clear, right now we  
3 are talking about addressing the concerns of the  
4 petition. We are not back on the rule. We are not  
5 editing the rule at this moment. We are talking about  
6 guidance that we could put out, at some point we might,  
7 but we are not editing the rule, right, Barb?

8 MS. KELLY: Mr. Leiss?

9 MR. LEISS: Well, keep that in mind, I mean,  
10 we are not editing, but we are in order to make it  
11 clear here as to what we are talking about and I think  
12 that, I am not sure I, I get the same interpretation  
13 exactly the way Andy stated it. But, I think it could  
14 be made clear easily by saying "and one of the  
15 following." So, it is clear that, that, you know, one  
16 of the following is what we are talking about, not all  
17 of them together.

18 MR. BOSS: Could I make a statement?

19 MS. KELLY: Yes.

20 MR. BOSS: The five days, if you add that  
21 criteria, the five days a week, if we stay consistent  
22 with the present regulations, I think that covers it.

23 MS. GERARD: I have a problem with that. And  
24 I tell you why we ended up with the 50 days. Because  
25 and this may be illogical, but the reason why we made

1 that 50 days, was the idea of places that were only  
2 used on weekends. We were going specifically for  
3 places where people congregated on weekends, that may  
4 not be used on a five day week basis at all. We were  
5 going for places outside churches, ball parks, places  
6 where people hang out that may not be parks, that  
7 aren't used Monday through Friday. So, that is why we  
8 made that specific change. That is why we haven't  
9 responded in any way that we support going back to the  
10 five days a week. It was an additional consideration.

11 MR. BOSS: But, the clarification is the  
12 public safety official has to tell you that?

13 MS. GERARD: Yes. If you ask the public  
14 safety official, what do you know about people hanging  
15 out in places, you know, 50 days, like weekends, it  
16 could be week days, but it could be just weekends,  
17 yeah, that is how, that is how you ask that question.

18 MR. BOSS: I am just referring back to the  
19 transcript of two meetings ago.

20 MS. GERARD: Yes.

21 MR. BOSS: That it was stated because a public  
22 safety official tells you that, and Ms. Betsock said,  
23 no, but if you find out otherwise, then you are liable  
24 to do that. And I am seeing --

25 MS. GERARD: Well, I think we are clarifying

1 that here.

2 MR. BOSS: Okay.

3 MS. GERARD: I mean, that is the purpose of  
4 this discussion is to clarify that, that, you know,  
5 what we thought, we are dealing with the issue of the  
6 problem how you know when you are done, and we have had  
7 this discussion in the Advisory Committee meetings, not  
8 the last one, but the one before that, the one in which  
9 we had the vote on the preliminary cost benefit. That  
10 we talked about what would be a reasonable way to know,  
11 and we talked about, you know, if you have to already  
12 patrol and you have to have these relationships and we  
13 are working to support what the emergency responders  
14 know, we think that a reasonable way to find this  
15 information out is by asking that question. You know,  
16 and then that is why we put that question in the, in  
17 the, in the preamble questions, was how we clarify who  
18 that person is, you know. So, what we are saying is,  
19 to clarify this, what is a reasonable to do this, is to  
20 ask these people, you know, fire chief walked in off  
21 the street and doesn't know anything about this, and  
22 you heard what he said, I think, you know, that the  
23 people in that profession have to know this  
24 information. And if they don't know it, in order to  
25 help here, the Federal Government has made a point of

1 adding to our program, an outreach program, where we go  
2 out and talk to state and local officials. And these  
3 people are in our employ today, have their instructions  
4 and they are up and running. In addition to that we  
5 have a cooperate agreement with the fire organizations  
6 to develop a curriculum in which we put this material.  
7 Now, we are trying to zoom in on a way to shore up this  
8 point of information for your plan. It is an approach  
9 and it is a strategy and the point of having this  
10 Committee is to say there is a problem with that  
11 strategy or you can improve that strategy, that is what  
12 we are discussing.

13 MS. KELLY: Mr. Drake.

14 MR. DRAKE: And I appreciate that. And I  
15 think it helps clear up some of the issues. We have  
16 resolved the issue for old churches and things, that  
17 has gotten clarified yesterday. We resolved this  
18 public official issues. And with this, I think we can  
19 clear up some of the criteria around the sites,  
20 especially the mobility sites and the area of the  
21 congregation. But, I just want to make sure I am clear  
22 on the last bucket. We have got three buckets here,  
23 three categories. You have got to --

24 MS. GERARD: Well, we are on the time bucket  
25 now. The time being five days a week versus the 50



1 days, which was confusing, it wasn't clear.

2 MR. DRAKE: I think that is resolved.

3 MS. GERARD: Okay. But --

4 MR. DRAKE: I understand you are looking for  
5 different land user and it is kind of frustrating  
6 because it creates a different burden on us.

7 MS. GERARD: It does create a different  
8 burden.

9 MR. DRAKE: But, as long as the public  
10 official is --

11 MS. GERARD: The test.

12 MR. DRAKE: -- is the test, I think that helps  
13 clear it.

14 MS. KELLY: Let me make one comment on that.  
15 Even though that is the objective test, the company is  
16 always responsible for acting appropriately when it has  
17 actual knowledge.

18 MR. DRAKE: I agree.

19 MS. KELLY: All right.

20 MR. DRAKE: We are not looking to subvert  
21 anything here. I think the current language of the  
22 code works with this continuance, it allows us during  
23 our normal surveillance to find them.

24 MS. KELLY: That is what we were trying to --

25 MR. DRAKE: These kind of people, these kind

1 of land users is a very different kind of land user and  
2 they are going to be very difficult to find. And we  
3 just need to know that. And that is the problem  
4 because the way she has worded it, they can be there at  
5 midnight on Saturday night, we do not do normal patrols  
6 at midnight on Saturday night. But, that is the kind  
7 of land user you are looking for, people that camp on  
8 Saturday night out in the middle of nowhere, in an  
9 unregistered camping site, or people that gather at  
10 college for a party on a farmer's property, and that  
11 was a real example, down at the end of the table, that  
12 is a land user we are looking for. That person, that  
13 kind of land user is not conducive to be found by any  
14 kind of inspections we do.

15 MS. KELLY: So, that has been clarified by --

16 MS. GERARD: I just want to be perfectly  
17 clear. We understood that it was an additional burden.  
18 We considered this in a way in which we were raising  
19 the standard, to get a protection out there for a  
20 possible consequence that was unprotective and we were  
21 asking for you to take on this additional burden. In  
22 order to make it easier for you to take on that burden,  
23 we were helping by hiring people to go out and do  
24 outreach and by establishing a contract and a national  
25 curriculum, which we have advice from your leadership

1 and, and Linda Kelly is also on that committee to work  
2 with the fire marshalls. So, there are state  
3 representatives, so we are really trying to share the  
4 responsibility here. It is, you know, what we learned  
5 from common ground. We can't do this alone. We need  
6 help. And we are dedicated to go out and getting help  
7 to be able to identify these people for whom there this  
8 is this consequence out there that we may not have  
9 provided for previously. That is how we are raising  
10 the safety bar. That is another way we are raising the  
11 safety bar.

12 MS. KELLY: So does the industry feel that the  
13 guidance has just been explained by Stacey Gerard in  
14 identifying these people who use sites that are not  
15 registered for such use is adequate to take care of --

16 MR. BOSS: For clarity, I want to make a  
17 correction. As the rule is now published, the 20 or  
18 more people is not included in the public safety  
19 official section. It is a separate section as it is  
20 written right now. It is incorrect what Mike said.

21 MR. ISRANI: No, I don't -- Are you talking  
22 about the final rule on AC that we put it out?

23 MS. GERARD: There is evidence of use of the  
24 site by at least 20 or more persons on at least 50 days  
25 in a 12 month period.

1           MR. ISRANI: No, but that falls under F  
2 paragraph. These numbers, you know, one, two, three,  
3 four, five.

4           MS. GERARD: And six.

5           MR. ISRANI: Six has a priority over these  
6 numbering system. So, they all fall under F. If you  
7 see, they start at, a, b, c, d, lower case. So, F is  
8 an independent paragraph of that section, has a  
9 priority over these. So, it is a part of that. Yes.

10          MS. KELLY: All right. So, what is the  
11 remaining issue to discuss?

12          MR. DRAKE: My only question, as we were  
13 trying to get there, is we recognize the different land  
14 user and we appreciate the help, because that was the  
15 concern is it was unactionable. We can't possibly be  
16 witness to the right of way, 365 days a year, 24 hours  
17 a day. It is not, we can't find those kind of people.  
18 They are not there when normally we do our inspections  
19 or even reasonably we do our inspections.

20          But, the other issue that is still, I want to  
21 know a little clarity about is, is the issue of, the  
22 third issue, and that is the people that are normal  
23 people, normally mobile people, gathering in a  
24 building, is there a different threshold for those  
25 folks than there is just congregation? Congregation

1 was, I thought intended for outside, which was  
2 Kucowitz's comment about, because they are not  
3 protected by a structure, you know, we are more  
4 concerned about them, so we lowered the threshold for  
5 people congregating outside.

6 MS. GERARD: Yes, and it applies outside.

7 MR. DRAKE: Is there a different number for  
8 people congregating in a building or is it just the  
9 same, it is all the same?

10 MS. GERARD: We didn't address that, yeah, I  
11 mean, it doesn't, there is nothing in there that says  
12 anything about inside. It could be inside or outside.

13 MR. DRAKE: I just wanted to make sure I was  
14 clear where these groups were, how they fit together.

15 MS. GERARD: All the, all the examples we gave  
16 were not outside because a stadium could be, or a  
17 theater, it could be outside, but there could be a  
18 structure which is a shelter. We didn't distinguish a  
19 greater number because they are in a shelter.

20 MR. ISRANI: I would just point out, I know  
21 with that seat mobile and allowing DA and other things,  
22 I think minimizes that problem, too, you know, as  
23 number of more facilities that you would pick up.

24 MS. GERARD: This issue was not about that  
25 issue.

1 MR. ISRANI: Right, right.

2 MS. GERARD: But, about when the action of  
3 identifying was over. We are trying to have a start  
4 and an end to the process of the identification  
5 process.

6 MS. KELLY: Mr. Thomas?

7 MR. THOMAS: Yes, I need to clarify. I  
8 thought we said that the number was 50 for inside  
9 structures, at least we proposed that. And 20 for  
10 outside structures.

11 MS. GERARD: We haven't -- We have not settled  
12 on the number 50 for inside structures. There is  
13 nothing in the rule that talked about inside  
14 structures.

15 MR. THOMAS: Okay.

16 MS. GERARD: I mean, and for us to take up  
17 what you were talking about would have to be a rule  
18 change.

19 MR. THOMAS: Okay. But, is the outside 20, I  
20 have heard that number?

21 MS. GERARD: Yes, the outside is 20.

22 MR. THOMAS: Okay. Well, I did have some  
23 concern when you talked about the 50 days a year. And  
24 I am thinking about rural churches, not as a rural  
25 church rule, but just as a congregating place. And you

1 are sort of implying that there are activities outside  
2 that church. And when we are thinking about routine  
3 usages like on weekend, I immediately think something  
4 like little league ball parks where you have five of  
5 them around, until you have got hundreds of people, you  
6 know, surely that is --

7 MS. GERARD: Right.

8 MR. THOMAS: But, now I am starting to worry  
9 about rural church, where maybe you have got 30 people  
10 that go to church, which is very common in southern  
11 rural areas, and they would not, if they are inside the  
12 church they might not qualify for the rule, but as soon  
13 as they walk outside, they are.

14 MS. GERARD: Well, I thought dealt with rural  
15 churches, yesterday.

16 MR. THOMAS: Well, I am not talking about as a  
17 rural church. I am thinking about this as an outside  
18 activity question. That you were saying the 50 year  
19 means once a week, that is kind of what it translates  
20 into. If they meet once a week, they are going to meet  
21 50 times a year. When you spoke of the church  
22 activities and the outside activities, were you  
23 thinking about --

24 MS. GERARD: I was thinking that was one of  
25 the reasons why we kept our emphasis on providing some

1 protection to rural churches. What is the package we  
2 ended up for rural churches, yesterday? DA.

3 MR. THOMAS: Well, are you thinking to have  
4 outside activities once, you know, every, every Sunday,  
5 a picnic or something, is that the idea?

6 MS. GERARD: Yes, I am. I am. That is why we  
7 included them in the package yesterday. Mike, what is  
8 it?

9 MR. ISRANI: Well, number is 20, you know,  
10 that was our final number. But, the two things that we  
11 considered for DA, since DA has no more condition that  
12 it can be used for all facilities including rural  
13 churches area. So, you are not imposed with the  
14 earlier concern that you would be doing miles and miles  
15 of pipeline with small or other things, even for small  
16 little rural church. You will be concentrating or  
17 focusing only on that small little six hundred -- put  
18 out DA.

19 But, there was one reason, secondly was  
20 the --

21 MS. GERARD: What was the language that was,  
22 what they voted on yesterday?

23 MR. ISRANI: The language we had --

24 (Pause.)

25 MR. ISRANI: -- was that treat like any other



1 area where people congregate. That was our current  
2 position.

3 MR. DRAKE: And I think that perhaps, the  
4 thing that maybe Eric and I were a little confused is  
5 that the building criteria, we were thinking was  
6 different for congregating in a structure which was why  
7 no one, I didn't have any problem with the HCA, or the  
8 rural church definition, was it will be treated as a  
9 HCA when it meets the identified site criteria. Okay.  
10 That makes sense.

11 MS. GERARD: That is what we are talking  
12 about.

13 MR. DRAKE: Just because it is a rural church  
14 it is defined under the current class scheme, does not  
15 necessarily mean it is an HCA, it has to meet the  
16 identified site criteria.

17 MS. GERARD: Yes.

18 MR. DRAKE: Well, now we are here talking  
19 about identified site criteria and we see we have a  
20 different understanding of what that means. And that  
21 is where we are rubbing.

22 MS. GERARD: I guess we were surprised how  
23 smooth the rural church thing went yesterday.

24 MR. ISRANI: But, Stacey, let me point out the  
25 one thing. If you go 50 for rural churches, I think

1 it would practically eliminate all the rural churches.

2 MS. GERARD: We haven't gone to 50. We are at  
3 20 people outside area. That is what we are saying.

4 MR. ISRANI: No, but, I know, but they are  
5 bringing the question about the number inside the  
6 facility should be 20, sheltered facility.

7 MS. GERARD: What Eric said was, what was said  
8 yesterday was the reason why we were including rural  
9 churches is because of what we, all the discussions we  
10 had about it is really important to protect the  
11 unsheltered. And that at rural churches there is a lot  
12 of activities where outside the church people play  
13 bingo, and have church bazaars and that sort of thing  
14 fairly frequently. That was why. So, where the  
15 proposal was, treat rural churches the same way as  
16 other areas where people congregate. Meaning that on  
17 at least 50 days a year, 20 or more people are hanging  
18 out outside the church. So, that is --

19 MR. THOMAS: This might be a paranoid  
20 question. You are not talking about church just  
21 letting out, people going to their cars and going home,  
22 right? You are talking about an organized activity  
23 that is over a significant period of time.

24 MS. GERARD: Right.

25 MR. THOMAS: Okay.

1 MS. GERARD: I guess I am confused, if 20  
2 people come there, I mean, if everybody agreed 20  
3 people come there for church bazaars and bingo very  
4 often.

5 MR. THOMAS: Well, they really don't. I mean,  
6 they don't do it 50 days a year.

7 MS. GERARD: Okay. Okay. So what you are  
8 thinking is --

9 MR. THOMAS: It is only decent weather and you  
10 know.

11 MS. GERARD: So, what you are thinking is  
12 there is not that many rural churches that meet this  
13 test.

14 MR. THOMAS: I don't think so, no.

15 MS. GERARD: Okay.

16 MR. THOMAS: Not, not an organized activity  
17 that takes a significant amount of time. I mean,  
18 churches let out, people for a half hour congregate and  
19 socialize and all that.

20 MS. GERARD: That is about what we were  
21 thinking.

22 MR. THOMAS: I want to make sure we are not --

23 MS. GERARD: No, we are specifically talking  
24 about organized activities outside.

25 MS. KELLY: Let me say this. First of all, we

1 are spending some time talking about an action that we  
2 have already closed.

3 Secondly, we have got 10 minutes to talk  
4 about this. So, let's only talk about new stuff. And  
5 that relates specifically to the action at hand.

6 MR. DRAKE: I would like to agree with you,  
7 but I am afraid I can't. The vote on my part yesterday  
8 was predicated on an understanding of the identified  
9 site. So, to the degree that it is predicated on a  
10 reasonable understanding of what an identified site is,  
11 it is related.

12 MS. GERARD: Right. I --

13 MR. DRAKE: The definition as currently on the  
14 table means every rural church that I had on my  
15 database is now an HCA, period. Just because there is  
16 a presumed outdoor activity related to its presence,  
17 which is not real.

18 MS. GERARD: Okay. That is why I said what I  
19 said yesterday about the church bazaars and all that.  
20 And I was surprised that this thing went the way it  
21 went yesterday. So, if there is a misunderstanding, I  
22 really want to clear it up. Because this is a big  
23 item. And it was an item in the petition. We  
24 specifically asked the question, we put this one on the  
25 agenda, not you, because we were worried that we really

1 hadn't talked about it. In all of our meetings, we  
2 really hadn't talked about it. So, I am happy to  
3 reopen this issue because I really don't want this  
4 confusion. And if, now that you know what we were  
5 thinking was that it was, you know, there is a test.  
6 Either they regularly have a lot of outdoor activities  
7 there or they don't. If it doesn't meet the test,  
8 really, and if they don't have bingo there every week,  
9 it wouldn't meet the test. You know, and so, and the  
10 test is, you know, why do you --

11 MR. DRAKE: I think that is, that isn't that  
12 far away from what I understood. If the, if they have  
13 those activities, and they are verified. Then it is.

14 MS. GERARD: Right.

15 MR. DRAKE: But, just by the presence of the  
16 church does not mean that that happens. And going to  
17 and from their car doesn't, doesn't meet the  
18 description of outside gathering.

19 MS. GERARD: Right. So, when he wrote the  
20 shorthand consideration, treat rural churches the same  
21 way as any other area where people congregate. Where  
22 people congregate is subject to the test. What do  
23 local officials know about is this a place where people  
24 hang out or not? The answer is yes, it is in, if the  
25 answer is no, it is out.

1 MR. ISRANI: You know, it is --

2 MS. GERARD: That is what you wrote.

3 MR. ISRANI: We say that people congregate  
4 because that, examples of such places are churches,  
5 rural churches. It doesn't mean that those people to  
6 have an activity outside the church or, you know.

7 MR. DRAKE: This is fundamentally back to the  
8 three categories issue. We thought there were three  
9 categories, identified sites. The issues about  
10 mobility, impaired folks, outdoor gathering, and then  
11 people gathering normally, normally mobile in a  
12 building. And there have been discussions on this  
13 docket about different number for each different issue,  
14 or different criteria for each of those three  
15 categories. And that fundamentally is why there is a  
16 misunderstanding about yesterday's vote, on my part,  
17 about the rural churches. A church is a structure  
18 which we thought having different threshold that  
19 flashed it as an HCA.

20 MS. GERARD: What threshold is that?

21 MR. DRAKE: We have talked about 50 on this  
22 docket.

23 MS. GERARD: You proposed 50 on the docket.

24 MR. DRAKE: We talked about it. We haven't  
25 closed it. It isn't closed.

1 MS. GERARD: Do you see that it is addressed  
2 someplace else or that it is not addressed at all,  
3 specifically?

4 MR. DRAKE: In what, the rulemaking?

5 MS. GERARD: Yes, in the rulemaking

6 MR. DRAKE: It is open right now and that is  
7 the problem.

8 MS. GERARD: We didn't ask any questions about  
9 people in a building in this NPRM, it goes back to the  
10 HCA rule. We didn't open up, oh, no, we did ask  
11 question about rule change.

12 MR. DRAKE: Yes, you did. It is on the  
13 docket.

14 MS. GERARD: I mean, it is in the NPRM. What  
15 was the question in the NPRM that is listed as the  
16 answer? Mike, what was the question we asked in the  
17 NPRM?

18 MR. ISRANI: I will pull it out right now.

19 (Pause.)

20 MS. KELLY: Is the question whether Section F,  
21 Subsection F applies to activities within a building?

22 MS. GERARD: I think that is the question. I  
23 think there is a clarity problem here.

24 What was the question in NPRM?

25 MR. ISRANI: Okay. The question was should

1 the rural buildings, example, rural churches, be  
2 designated as moderate risk areas requiring only CDAs  
3 or enhanced preventive and mitigated measures. That  
4 was the question.

5 MS. GERARD: So, the question implied that we  
6 were considering taking the rural church outside the  
7 high consequence area. And what you were saying with  
8 the 50, was that you make the criteria for whether it  
9 is high consequence area be, if 50 people are inside of  
10 it.

11 MR. DRAKE: Fundamentally, one of the elements  
12 of the Petition for Reconsideration is this issue  
13 about the structures. And I think in the original rule  
14 and the preamble and the discussions around its, the  
15 word outside appears and it gives the clear, the clear  
16 context and it was all written around the issue about  
17 Carlsbad, outside gathering areas.

18 MS. GERARD: Right.

19 MR. DRAKE: The word outside was fundamental.

20 MS. GERARD: Right.

21 MR. DRAKE: In discerning that land use.

22 MS. GERARD: Right and that is what we have  
23 been talking about, is people congregating outside.

24 MR. DRAKE: Churches are people congregating  
25 in a structure. The structure provides protection.



1       Kucowitz is on record, everybody that has talked about  
2       this, is on record about structures are different than  
3       outside gathering.

4               MS. GERARD: Right.

5               MR. DRAKE: The rule was talking about outside  
6       gathering. Part of the problem is that when the final  
7       rule came back out, one of the elements of the Petition  
8       for Reconsideration is it brought up the issue about  
9       structures, which had never been discussed in the  
10      public venue under that rulemaking. And that was a  
11      break, a break in regulatory process. You can't add a  
12      requirement that was never vetted in the public  
13      discussion or on the docket in the final rulemaking.  
14      Adding of those structures, just what Mike is doing  
15      here.

16              MS. GERARD: Right.

17              MR. DRAKE: Was a break in the logic of the  
18      development of the rule. And that is what we are, what  
19      we are wrestling with.

20              MS. GERARD: Right. I think --

21              MR. DRAKE: It was about outside areas.

22              MS. GERARD: Right, I agree.

23              MR. DRAKE: People of limited mobility. Now  
24      we are talking about people congregating inside  
25      building. Well, that is all of a sudden a whole bunch

1 of different stuff that was not what we talked about  
2 when we built the original rule, the HCA rule, and that  
3 is fundamentally one of the conditions of the Petition  
4 for Reconsideration, is that the regulatory process was  
5 violated.

6 MS. GERARD: What was it that we wrote in the  
7 HCA rule that brought rural churches up? Because I  
8 know we didn't bring rural churches up when we were  
9 writing the HCA. What was it that brought rural  
10 churches up that you petitioned about it?

11 MR. DRAKE: There was a concern that rural  
12 churches under a different section of the code, are  
13 identified as Class III. That some of those things  
14 meet that criteria. And that they would come into the  
15 rule, but they don't meet the intent of the rule. And  
16 so you asked the question.

17 MS. GERARD: But, you all said, something we  
18 wrote meant that all the rural churches were in because  
19 we said, we didn't specifically think about rural  
20 churches, nor did we know how many of them there were.  
21 And without knowing how many there were, we didn't  
22 know how much mileage we were adding.

23 MR. DRAKE: I believe one of the examples that  
24 was in the final rule on HCAs was churches. And I  
25 might be wrong, but I think that was. But, when that

1 occurred, when that, when it said that, it changed the  
2 entire definition. Because a church is a structure.  
3 The other examples and all of the discussions that  
4 happened prior to that, were outside gathering areas.

5 MS. GERARD: Yes, but where did it say church?

6 MS. KELLY: -- is your concern -- Well, is  
7 your concern in F because it does not indicate, number  
8 six, does not indicate that it is limited to outside  
9 structures? Is that the concern?

10 MS. GERARD: I don't see churches.

11 MS. KELLY: Well, the intro to F says an  
12 identified site of a building or outside area. And  
13 number six says there is evidence of use of the site.  
14 So, is that the issue, questioning whether site means  
15 building or outside area?

16 MR. DRAKE: The Petition for Reconsideration  
17 is, the Petition for Reconsideration is about the  
18 regulatory process that was used to develop the final  
19 rule. So you are reading the final rule. The concern  
20 about the Petition, the concern the Petition for  
21 Reconsideration raises is that everything we saw prior  
22 to that final rule that you are reading right now, did  
23 not mention structures.

24 MS. KELLY: But, the questions, where do you  
25 see that it is captured? Is this the section that is

1 of your concern?

2 MR. BOSS: Okay. Under 192.7621 as it is  
3 presently written, there is a thing that says religious  
4 facilities.

5 MR. ISRANI: Right. That is still valid as  
6 Linda pointed out that we have a lead sentence there,  
7 is a building or outside area, so this is a building.  
8 That is why it is included under six. I don't know  
9 what the problem is, because this has been checked all  
10 the way to the entire Federal Register, and everybody,  
11 the structures, okay, the structure of the rulemaking.

12 MS. KELLY: I mentioned this to see if this is  
13 where the problem is. Is this where, is this the place  
14 where you see that rural churches can be picked up,  
15 because of Subsection six of Section F?

16 MR. DRAKE: Yes.

17 MS. GERARD: Is it six or is F? Is it F or  
18 F-6?

19 MR. BOSS: It is F, the beginning of F where  
20 it says identified site is a building or outside area,  
21 and then you go down to six, if, if what Mike says is  
22 that it is one of the six, we would like to have an  
23 either/or, so that it is clarified for us. But, and  
24 then it is down in religious facilities. So, religious  
25 facility that is a building in F, it looks it is

1 covered.

2 MR. ISRANI: Yes, it is covered.

3 MS. GERARD: What are you saying, Mike?

4 MR. ISRANI: Just now what he said, Terry  
5 mentioned that, when we had the lead sentence starting  
6 with the paragraph F, and F covers all of these six.

7 MS. GERARD: You are saying that six could be  
8 a building.

9 MR. ISRANI: Six could be a building, yes.

10 MS. GERARD: And, and so the rural church  
11 comes in because there could be 20 people inside the  
12 rural church, is that it?

13 MR. ISRANI: Absolutely, yeah, because that is  
14 part of the six.

15 MS. GERARD: Okay.

16 MR. MOORE: The problem here was when the  
17 August 6 HCA final rule came out, when it was noticed  
18 in the NPRM for that rule back in March of 2002.

19 MS. GERARD: The word building didn't appear.

20 MR. MOORE: There was no discussion of  
21 buildings at that point. And it magically appeared  
22 here without comment. That is where the regulatory  
23 construction fell apart.

24 MS. GERARD: Okay. Now, I understand. So,  
25 what you are saying is because of all of the discussion

1 on the docket, our priority is outside areas. The  
2 number 20 for outside areas makes sense. But, the  
3 number 20 for building, which didn't appear in the  
4 NPRM, is not, does not seem appropriate to have 20  
5 people, that is what you are challenging, is 20 people  
6 in one building. There is lots and lots of buildings  
7 that held 20 people for rural churches. That is what  
8 you are saying, that there wasn't due process on that.  
9 The building showed up in the final rule with the  
10 number 20 under it.

11 MS. KELLY: So, the suggestion would be to  
12 adjust Subsection 6 to clarify that that applies only  
13 to outside areas, is that the concern?

14 MS. GERARD: That is what they, we asked the  
15 question in addressing the petition, we asked the  
16 question should rural buildings be designated as MRAs,  
17 not HCAs. Okay. And what we said yesterday is we are  
18 treating rural churches the same way as any other area  
19 where people congregate it. And Mike is saying, he  
20 interprets the word building to include that. I said  
21 outside areas, because that is what I was thinking six  
22 applied to. And Mike said it applies to the building.  
23 And this is the problem we have.

24 MR. DRAKE: Exactly, that is exactly what the  
25 issue is.

1 MS. GERARD: Okay. So, we had a  
2 misunderstanding when we voted yesterday, because I  
3 said outdoor areas, and you all hear outdoor areas,  
4 okay. So, we have to go back and deal with this  
5 question again.

6 MR. DRAKE: If the church has an outside event  
7 that meets these criteria, it is an HCA. But, just  
8 because it is a church, does not mean it is an HCA.

9 MS. GERARD: That is what I thought we voted  
10 on.

11 MS. KELLY: Well, I guess the main question is  
12 it necessary to have a separate provision regarding  
13 rural churches?

14 MS. GERARD: Yes, because they raised it in  
15 their petition and we asked the question in the NPRM.  
16 And we say should there be --

17 MS. KELLY: But, at this point, you are  
18 suggesting then refabricating the way rural churches  
19 are, are treated.

20 MS. GERARD: The building.

21 MS. KELLY: So, that for outside activities  
22 they are covered by Subsection F.

23 MR. DRAKE: Yes.

24 MS. KELLY: But --

25 MS. GERARD: But, inside activities we should

1 revote on should they be designated as a moderate risk  
2 area, which means it is not a high consequence area  
3 just for being a building.

4 MR. DRAKE: I don't know that it requires a  
5 revote of yesterday's vote on rural churches. What it  
6 requires is clarification on what an identified site  
7 is, which is exactly what we are talking about here.  
8 Because if you clarify that an identified site,  
9 including rural churches, I mean, any, anything, meets  
10 the criteria of an identified site, outside, mobility  
11 impaired, all those things.

12 MS. GERARD: Right.

13 MR. DRAKE: Then it is a HCA. And that is  
14 what I thought we were voting on yesterday.

15 MS. GERARD: Right. But, that is not what  
16 Mike thought you were voting on and that is not how  
17 other people might have read this. They may have read  
18 it just like Mike read it. So, we have to clarify  
19 this. And I, and I think we should split it by indoor,  
20 and outdoor. You all voted on interpreting this as  
21 outdoor, as six meant outdoor. And Mike thought it  
22 meant indoor. And so, now we need to ask the question,  
23 if it doesn't meet the outdoor test, what you all  
24 proposed was the indoor test, should these 50 people  
25 inside it, to set a threshold for whether or not it



1 should be an HCA or not.

2 MR. MORRIS: And the point of clarification, I  
3 never said inside or outside. I said that people  
4 congregate.

5 MS. GERARD: All right.

6 MR. DRAKE: But, Stacey said outside.

7 MS. GERARD: Okay. Let's, let's, let's do  
8 this. I think we have identified the issue in the  
9 identified site. And it has to do with the structure  
10 of the provision, which may be different from what the  
11 understanding of the people around this table had at  
12 the time you looked at it. When we looked at it with  
13 respect to rural churches and perhaps in discussions  
14 that were held yesterday with respect to this.

15 Let me ask the Committee, other the Committee  
16 members for comments with respect to using what is  
17 current in the proposed rule, that last number six,  
18 which has to do with use by 20 or more people. Any  
19 comments on that being applied only to outside  
20 activity.

21 MS. KELLY: Yes.

22 MR. LEMOFF: I would just like to make a  
23 comment that may be somewhat relevant. NFPA publishes  
24 life safety code, which is widely used for mainly  
25 safety and exiting a building, is one of the major

1 uses. It treats churches and certain classes of  
2 buildings less stringently than others, because in a  
3 church you have people who are very familiar with the  
4 building. They go there every week, they know where  
5 the exits are. It is not like, let's say a movie  
6 theater, where it gets dark and they can't find the  
7 exit or a doctor's office, they are back in the back,  
8 and don't know how to get out. So, there is, there are  
9 good logical reasons that have been in codes for a long  
10 time to say that the people in churches, let's say  
11 schools are, can be more easily evacuated than in  
12 buildings that they are unfamiliar with, that they go  
13 to infrequently.

14 MS. KELLY: All right, so we can move this  
15 along then.

16 In terms of yesterday's vote, regarding rural  
17 churches, first of all, we need to reopen that vote.  
18 Is there a motion to reopen that? Second. All right,  
19 that item is reopened.

20 Now, let's discuss how we would like to  
21 proceed with that. What is OPS's current position and  
22 recommended position?

23 MS. GERARD: OPS asks the question should  
24 rural building, i.e., rural churches, be designated as  
25 MPRAs, i.e., they are not a high consequence area, but

1 we would require some lesser level of protection, like  
2 just a CDA or enhanced prevention and mitigation  
3 measures. What we proposed was to treat rural churches  
4 as an HCA. The same as other areas where people  
5 congregate. And that is what Mike meant when he wrote  
6 it. That meant that the protections that would be  
7 provided would the bifurcated option, will ensure that  
8 only facilities that actually lay within the impact  
9 circle, would be within, and remove the constraints on  
10 the use of direct assessment, so that you could use it  
11 for any threat for which was applicable. Meaning, you  
12 don't have to pig it, you don't have hydro it, you  
13 could direct assess the rural church. This will, that  
14 is what Mike's proposal was, to treat it as an HCA,  
15 that you would have to assess in 10 years and reassess.

16 Yes, he didn't write HCA. He wrote, but that is what  
17 he meant, treat rural churches the same way as any  
18 other area where people congregate. So, Mike's  
19 proposal is it is an HCA that you could use direct  
20 assessment on as your baseline, have to do it within 10  
21 years, unless you meet the credit that we talked about  
22 yesterday. And then you have to retest it. That is  
23 what Mike proposed. The Committee can accept that  
24 position or recommend another position.

25 MS. KELLY: Dr. Wilkie?

1 DR. WILKIE: I would like to direct Andy's  
2 direction, before I do this, let me move that we accept  
3 that, to resolve the issue by asking whether or not  
4 this location meets any of the outdoor tests, the  
5 outside tests? Or whether it meet test for buildings?  
6 And exclude the whole consideration of churches as a  
7 separate item.

8 MR. BOSS: I just want to clarify. In the  
9 present rules right now, rule --

10 MS. GERARD: You mean Part 192 that exists?

11 MR. BOSS: Yes, or 192, right now, religious  
12 facilities is used an example of the subset of  
13 buildings. So, you are talking about the total  
14 buildings of 20 people. Not just rural churches.  
15 Rural churches is an example.

16 MS. GERARD: So, what you are saying is it  
17 would take 20 people in the building to meet the test?

18 MR. BOSS: Right now that is the way it is  
19 written. If you congregate with 20 people in a  
20 building and a religious facility is an example, so --

21 MS. GERARD: It would be a Class III.

22 MR. BOSS: No. It is as listed as an HCA  
23 under 761. It is an outside area or a building and  
24 then religious facilities used as an example.

25 MS. GERARD: Right, but, in the proposal we

1 opened it up and asked the question, should it not be  
2 considered an HCA. We created the term MCA. Some  
3 added protection but not the full boat.

4 MR. BOSS: I am saying it is if you use the  
5 word instead of rural church, a building, use a more  
6 broader word. Because it is --

7 MS. GERARD: Rural building is what he said.  
8 Should rural buildings be designated as moderate risk  
9 areas?

10 MR. DRAKE: I know we have created quite a  
11 mess here. I think it just --

12 MS. GERARD: I apologize.

13 MR. DRAKE: So do I. You know, we waited too  
14 long to resolve this. But, I think part of the problem,  
15 just as a little bit of history comes up in that.  
16 Historically, the regulations recognize the very  
17 different use and nature of rural churches. And  
18 typically, they don't meet the criteria for Class III  
19 environments because they are used very seldom, one day  
20 a week or two days a week. But, very, even on those  
21 days, typically very isolated. There is not a lot of  
22 people there all the time. And the code create,  
23 recognized that very unusual use pattern and  
24 distinguished them and did not require us to address  
25 them with Class III, you know, design criteria and all

1 our operating practices. There are other types of  
2 structures, schools, manufacturing facilities, shopping  
3 malls, where people are gathering in a large building  
4 that we do have designed criteria and operating  
5 practices for. Because they are used on a much more  
6 prevalent basis than a couple of hours a week.

7 This discussion is kind of and I agree with,  
8 we need to stop for a second and shore this discussion  
9 up before we erode our credibility here. We have  
10 discussed the mobility, the limited mobility people. I  
11 think we have got that issue clarified and it seems  
12 reasonably practicable and actionable. We talked about  
13 outside gathering areas. Now the issue about certain  
14 structures out on the right of way, that meet, you  
15 know, some kind of different land use criteria, is  
16 where we are dancing around right now. The current,  
17 the current code requires us to do a lot of things and  
18 look for people in the structure on a certain schedule.

19 The churches is a very unusual phenomenon. I don't  
20 want to, you know, to pass the red face test here, I  
21 don't want to see us dismiss all buildings where people  
22 congregate inside. I don't think that is credible,  
23 just because they are in a building. I don't think  
24 that is reasonable. The code doesn't recognize,  
25 differentiates those guys, those kind of uses now. And

1 I think this rule needs to incorporate that. But, the  
2 concern was and specific, around the rural churches,  
3 that they would meet the criteria under this new HCA  
4 definition, land use type. But, they are still very,  
5 very seldom used.

6 MS. GERARD: We understand that.

7 MR. DRAKE: And that type of structure should  
8 be differentiated from even this rule, just like the  
9 current code differentiates that type of use. And I  
10 think that when it comes down to that third category  
11 and that is structures, that we should try to separate  
12 it from these other things. If it doesn't warrant a  
13 different criteria, that is fine. You know, I think we  
14 can live with that. I think that is reasonable. I  
15 think it is a mistake to try to pick up places where  
16 these, places where these land, these facilities are  
17 used an hour or two a week or whatever. The church  
18 precedent was set many, many years ago. And I think  
19 that was not the intent. I don't think it should be  
20 the intent here. But, we don't want to create an  
21 action item here, that undermines the coverage of  
22 single structures that do have a lot of people in them,  
23 many, many days a week, just because they are not  
24 outside. And I am not trying to infinitively  
25 complicate this thing by any means. I think there is a

1 way through the woods here, and perhaps on structures,  
2 you go back to the code as it is worded now, and say,  
3 if you meet the multiple occupancy criteria for a  
4 structure, currently, inside your impact zone, it is an  
5 HCA. It fits with the people we have currently  
6 identified. It recognizes the differentiation from  
7 very seldom land users like churches, and it has a  
8 criteria that is actionable and it fits in with the HCA  
9 definition.

10 And I am, I am looking out here to see if I  
11 am going to get killed when I walk out of this room.  
12 But, I think that protects the intent and the  
13 precedence of the original code, and offers coverage to  
14 structures as well, but doesn't step on the slippery  
15 slope of these places that were obviously identified as  
16 non heavy land use facilities, historically, and were  
17 differentiated historically.

18 MS. GERARD: Are you saying do nothing for  
19 buildings that don't meet rural buildings, like rural  
20 churches, do nothing for the rural church, the  
21 structure, unless it meets the outdoor test?

22 MR. DRAKE: I don't want to say nothing. I  
23 think that it undermines the current code, but --

24 MS. GERARD: No, I meant nothing additional to  
25 the current code, because what we asked, the question



1 we asked in the NPRM was should we designate them as a  
2 moderate risk area, which means they don't meet the  
3 test for an HCA. They don't have to have everything  
4 that an HCA gets but some lesser package. And then  
5 what Mike proposed in his thing was, in his paper to  
6 you, was to treat them as an HCA. But, we asked the  
7 question, so it is within the scope of the rulemaking  
8 that we were voting on yesterday, to change the level  
9 of protection from an HCA to something else for the  
10 rural church. And what you are saying is don't make  
11 it an HCA unless it meets the outdoor test and don't  
12 make it an MRA either, don't do a CDA, don't do  
13 enhanced mitigation measures.

14 MR. DRAKE: I think that --

15 MS. GERARD: Is that what you are saying?

16 MR. DRAKE: I think that, maybe I am just  
17 confused a little bit here, but I think the intent of  
18 the issue about segments covered, you know, the  
19 coverage of segments outside the HCA is based on  
20 information learned inside the HCA, provide the  
21 protection inside the format of the SME everywhere.  
22 And I think that is a value added everywhere, including  
23 these sites.

24 MS. GERARD: You are saying it gets picked up  
25 that provision that looks beyond.

1           MR. DRAKE: And I think is very powerful  
2 moving forward provision, and I am looking to Paul Wood  
3 and people like that to see if that is credible. I  
4 want to protect our credibility here. I don't want,  
5 you know, we need to make sure that we are doing  
6 something that is consistent with the code, consistent  
7 with our regulatory precedent, and --

8           MS. KELLY: Consistent with public safety.

9           MR. DRAKE: Consistent with public safety,  
10 that moves forward. And I don't want to see us, just  
11 say, well, if it is structure, we are not going to talk  
12 about it at all. That is not, I don't want anybody  
13 here to think that we are trying to discount structures  
14 completely. We just don't want to see something happen  
15 here that undermines a precedence that was set in the  
16 regulations years ago, because it recognizes the  
17 difference of that kind of land use.

18          MS. KELLY: Mr. Andrews?

19          MR. ANDREWS: Yeah, I have always hear that  
20 the rural churches is a rural church exemption, not a  
21 definition of rural church. And it is in 192.5. I  
22 will just read part of it.

23                 "Or other places public assembly that is  
24 occupied by 20 or more persons on at least five days a  
25 week for 10 weeks in any 12 month period. Days of the

1 week need not be consecutive."

2 I am not sure if the rub here is you are  
3 changed to 50 consecutive days, more than anything  
4 else. I think when we talk about rural church  
5 exemption, this is the definition we are talking about.

6 And I am not sure if we hadn't just simply made a  
7 crossover to that definition.

8 MS. GERARD: We have the opportunity here to  
9 do anything we want on the rural church. We could  
10 treat it as an HCA, we could treat it as a case by  
11 itself, where it is, we created the term "moderate risk  
12 area" in this proposal in response to your Petition to  
13 say, you know, we didn't mean, we didn't know, we never  
14 talked about rural churches in all of the stuff before,  
15 and so, we didn't know what we were doing with that  
16 building thing that we are picking up all these rural  
17 churches. You called it to our attention. But, since  
18 you called it to our attention, how about a lesser  
19 package?

20 MR. HERETH: We have been biting our tongues  
21 back here and I apologize. It is Mark Hereth from PIC.

22 Rural churches are not mentioned in the  
23 petition. It is an issue you brought up in the  
24 preamble and you brought up in public meetings. That  
25 is not an issue in the petition.

1 MS. KELLY: Mike?

2 MR. ISRANI: Stacey, can I address that?

3 I want to start with questions brought up by  
4 the rural churches. It was not in the proposed rule of  
5 HCA and came in the final rule. We did have places  
6 and places that people congregate that included  
7 buildings also. And the building example we are  
8 giving was museums, as one of the building places that  
9 people congregate. We did not write rural churches as  
10 an example there, an example. We don't write the  
11 rural, what we hear from a couple of local people are,  
12 you know, large companies. We had comments from all  
13 over. And the comments we received from number of  
14 other groups was that examples should also include  
15 rural churches. And that is why it was picked up in  
16 the final rule. It wasn't just brought out of air. We  
17 considered their position also. This was given as an  
18 example of places that people congregate and the  
19 building was already included in the definition. So,  
20 we are not wrong from the regulation point of view.

21 As far as Petition is concerned, your  
22 petition was filed on September 6, our rule was already  
23 at OMB by that date. OMB brought in several questions  
24 about the areas, where they are concerned, because of  
25 the petition they saw. And rural churches, they

1 brought in also a question. So this is how certain  
2 things got picked up in the final rule, in the proposed  
3 rule of this.

4 MR. LEMOFF: Can I recommend we take a break  
5 and invite the concerned parties to come back with  
6 something we can vote on?

7 MR. DRAKE: I would like to second that.

8 MS. KELLY: All right, but let's, let's make  
9 it a 10 minute break. And let me make this point.  
10 There are several other things on the agenda. I  
11 believe the discussion is beginning to repeat itself.  
12 We only need to talk about issues that we haven't  
13 talked about, and I just can't think of anything  
14 regarding these matters that we have not addressed.

15 What I would request is that you do not go  
16 far, because people will be traveling today. This will  
17 be a 10 minute break. Please be back in 10 minutes.  
18 And we will have 10 minutes more of discussion, that is  
19 it.

20 (Whereupon, a short recess was taken.)

21 MS. KELLY: Is there a proposal?

22 MR. DRAKE: I would like to make a motion and  
23 I have to say it before I forge it. It is very  
24 consistent with the discussions that we have had thus  
25 far. And I will try to do my best to summarize it.

1           I think back to the three criteria. We have  
2 dealt with the limited mobility and outside gathering  
3 areas. And underneath those two, we are focusing on  
4 the function of the local officials to help us identify  
5 this different land use type and frequency and the  
6 criteria of the and's and or's. And we don't need to  
7 go through that. But, for that, for those two of  
8 three, it is, it is as we have voted. So, there isn't  
9 much action left, I don't think.

10           For this third issue about structures, what  
11 we are proposing is that we use the current code to  
12 define structures as they are defined in the current  
13 code, it is a multiple occupancy. But, we think that  
14 that definition needs to be expanded to include  
15 multiple occupancy or facilities that meet the multiple  
16 occupancy criteria, out to the impact zone, because  
17 currently it is restricted to 300 feet. So, that that  
18 criteria would be expanded to the breath of your impact  
19 zone. If it meets that criteria for a multiple  
20 occupancy, it is an HCA, period. It is very clean. It  
21 uses all the requirements, all the definitions inside  
22 the current code. It doesn't violate any of the  
23 precedents that have been set in the current  
24 requirements of those type land uses.

25           MS. KELLY: And that would capture the rural

1 churches?

2 MR. DRAKE: It recognizes the precedent that  
3 is set with rural church type land use. It doesn't  
4 violate it or counteract it. Which is one of the  
5 cruxes of our discussion and our concern with the  
6 Petition for Reconsideration.

7 MS. KELLY: And what is the balance of the  
8 motion, that is it?

9 MR. DRAKE: That is it. I can turn it to  
10 anybody out here who feels more comfortable  
11 articulating it, but I think that is it.

12 MS. KELLY: Yes, Mr. Moore?

13 MR. MOORE: Thank you, Ms. Kelly.

14 I want to go through each piece to make sure  
15 we can summarize the first two parts that Andrew just  
16 spoke to.

17 There are three parts, the HCA, the HCA  
18 definition of identified sites. Impaired mobility  
19 facilities, outside areas and buildings. Impaired  
20 mobility, facility housing people of impaired mobility.

21 The public safety officials would be --

22 MS. GERARD: Hold it right there, because all  
23 we are talking about, all we opened it up to was rural  
24 buildings. So, what you, so, I am -- Rural buildings,  
25 an identified site is a building. So, we are just

1 talking about rural building, right?

2 MR. MOORE: Yes. It is a holistic definition  
3 that ties directly into the rural church discussion  
4 from yesterday. Because when the Committee voted  
5 yesterday that rural churches were not going to be  
6 MRAs, but could be HCAs it ties directly to the  
7 definition of --

8 MS. GERARD: But, what I was questioning, were  
9 the categories in here, because when we wrote the rule,  
10 we said an identified site is a building. We didn't  
11 say rural building, but when we asked the question in  
12 the preamble, we said, should rural buildings. All we  
13 are talking, all we are able to talk about is rural  
14 buildings.

15 MS. KELLY: Let's be sure we are on the right  
16 thing. We had just reopened before the break, we had  
17 reopened the motion regarding treatment of rural  
18 churches. Is your motion, Mr. Drake, to take care of  
19 a new vote on that provision?

20 MR. DRAKE: I think we are just trying to  
21 clarify the identified site issue. The identified site  
22 issue is very much a problem, because the introduction  
23 of the word "structures" in our opinion violated the  
24 regulatory process between the rule development and the  
25 final rule.



1 MS. GERARD: I am just trying to --

2 MR. DRAKE: And that is the function of the  
3 Petition for Reconsideration.

4 MS. GERARD: All right, but we are not talking  
5 about the petition now. We are talking about the rule.

6 We are back on the rule and the part of the rule that  
7 we can change because we brought it up in the preamble.

8 So, we are only talking about right now the rule  
9 change on --

10 MR. DRAKE: Yes.

11 MS. GERARD: Should rural buildings be  
12 designated as moderate risk areas.

13 MR. DRAKE: I think this addresses that  
14 concern.

15 MS. GERARD: Okay.

16 MR. DRAKE: Because it uses the previous  
17 regulatory construction to preclude them and that is  
18 what we are trying to attach ourselves.

19 MS. GERARD: Right.

20 MR. DRAKE: Is some sort of regulatory  
21 precedence to deal with the issue. And I know this is  
22 very winding, but, we don't want to just do something  
23 real quick here.

24 MS. GERARD: Right, right.

25 MR. DRAKE: That really is something else.

1 MS. GERARD: I am just making the distinction  
2 between when we talked about the identified sites  
3 before, we weren't talking about a rule change. We  
4 were talking about guidance for the petition. Here we  
5 are talking about the rule, itself.

6 MR. MOORE: And the reason we can talk about  
7 the rule for identified sites wholly is because the  
8 rural church discussion yesterday crosses all three of  
9 the lines we have discussed. Rural churches could,  
10 rural churches could house impaired mobility people,  
11 clearly. Rural churches could have outside areas for  
12 bazaars, playgrounds, whatever, clearly. And rural  
13 churches are a building which could house 20 people or  
14 more, clearly. So, it crosses all three lines in the  
15 identified site definition wholly, has to be addressed  
16 wholly or we are going to piecemeal it, and wind up  
17 with a piece of garbage that is unenforceable,  
18 uncompliant, and don't make any technical sense.

19 MS. GERARD: From the standpoint of the  
20 petition that is true. From the standpoint of what we  
21 are talking about here, this exact moment, in the  
22 agenda, we are talking about the NPRM on Gas-M which  
23 has in it as a question that we can address the rural  
24 churches. So, I just want to make sure you are  
25 understanding. What we talked about earlier, was about

1 the petition, which has a different series of  
2 procedures to make the corrections. This we are on  
3 the simple matter of how we write the final rule on  
4 GAS-M and cover rural churches. I am just trying to  
5 stay correct procedurally.

6 MR. DRAKE: I will --

7 MS. GERARD: And you are dealing with the  
8 large --

9 MR. DRAKE: I will try to hit your question.

10 MS. GERARD: Okay. And that is going to be a  
11 pain here, I just don't want to violate any of the  
12 regulations.

13 MR. DRAKE: No, no, I don't either. We want  
14 to be clear here, because this thing has to stand the  
15 public scrutiny. And it has to stand up over time.  
16 It also has to be practicable, and that is where we are  
17 trying to wrestle all those issues.

18 MS. GERARD: Right.

19 MR. DRAKE: And I know we have a few minutes  
20 here to try to summarize this.

21 The proposal that is on the table does  
22 directly deal with the issue of rural churches. It  
23 also adds more structures into this rule clearly. So,  
24 it goes beyond that. It is designed to address that  
25 concern, but you get two birds with one stone here,

1 because it also resolves the issue of the Petition for  
2 Reconsideration, which is how to deal with structures,  
3 period. Any structure. So, it is in that interest  
4 that we are trying to do this because yesterday we got  
5 some yellow sheet of paper that said we need to resolve  
6 some of these issues around the Petition for  
7 Reconsideration as guidance material. Okay. Today we  
8 are kind of hearing, no, we don't want to do that. We  
9 just want to talk about churches. Well, this issue  
10 deals with the church issue, period. It also clarifies  
11 how structures are considered for application in this  
12 rule, which is ambiguous in the current rule and that  
13 is our concern.

14 MS. KELLY: All right, we have a motion on the  
15 floor to use the current code to define structures but,  
16 expand it to include multiple occupancy facilities out  
17 to the impact zone, which would then be included in  
18 HCA.

19 MR. MOORE: Using the existing regulatory  
20 language of 20 people for five days a week, ten weeks  
21 out of the year, the weeks need not be consecutive.

22 MS. KELLY: That is captures it when you say  
23 using the current code.

24 MR. MOORE: That is correct.

25 MS. KELLY: Is there a second to that?

1 UNIDENTIFIED SPEAKER: Second.

2 MS. KELLY: Okay. Now we can discuss, but let  
3 me ask. By this then, you are saying contrary to what  
4 was proposed yesterday, that we not create a new  
5 moderate risk area?

6 MR. MOORE: Either an HCA or it is not.

7 MR. ANDREWS: We didn't create a moderate risk  
8 area yesterday, you created treating rural church,  
9 which is a bad term because it is not in the code.  
10 But, as you do any other structures and that is what we  
11 are trying to do with this motion.

12 MR. DRAKE: I agree with Mr. Andrews. What we  
13 are doing here does not undermine yesterday's vote at  
14 all. It just clarifies what is, yesterday's vote  
15 basically said if a church meets the criteria for an  
16 identified site, it will be treated as an HCA. Fine,  
17 no one argues that. That is why I didn't argue it  
18 yesterday. Today we are finding out what is an  
19 identified site. If the church yesterday that we  
20 defined meets that criteria that we are working on  
21 right now, it is an HCA, period. There is no such  
22 thing as an MRA. It is either in or it is out.

23 MR. ISRANI: On the goal where industry is  
24 leading it, their main goal is to get 50 people inside  
25 and they are finding all different ways to --

1 MR. DRAKE: No, we are not.

2 MR. ISRANI: Okay. Okay. Let me clarify --

3 MR. DRAKE: The current code reads 20.

4 MR. ISRANI: Okay. And current code also says,  
5 that is the point I want to bring out here. The  
6 current code also says these are the places where  
7 people gather at least five days a week for 10 weeks.  
8 That eliminates all these religious facilities. That  
9 is why I am bringing that question up here. That is a  
10 part of that goal currently of what we have. And that  
11 is what we changed to allow all these other facilities  
12 like, you know, religious facilities and other  
13 recreational facilities and others.

14 MR. BOSS: Let Mr. Moore summarize the whole  
15 thing and we will see that it is covered. We have got  
16 it. But, let him summarize the whole thing and listen  
17 carefully.

18 MR. ISRANI: Yes.

19 MS. KELLY: Hold on a second.

20 (Pause.)

21 MS. KELLY: Mr. Moore, do you want to  
22 summarize?

23 MR. MOORE: Yes, again, I think it is a whole  
24 issue of identified site definition. And I think the  
25 motion that Mr. Drake has on the table is this.

1           For facilities, housing, impaired mobility  
2 persons, the public safety officials tells us, the  
3 pipeline operators, where they are and then we go out  
4 and look for the three piece test that is already in  
5 the NPRM, (1) if it is visibly marked or if it is  
6 licensed or registered by the state, federal or local  
7 agency, or if it is a list or maps supplied by the  
8 state, federal or local agency, meets one of those  
9 three, just one, and the public safety officials told  
10 us it is there, that is an HCA. That is the definition  
11 for impaired mobility facilities.

12           MS. GERARD: That is a recommendation for  
13 guidance that we will put out.

14           MR. MOORE: That is one piece out of three of  
15 the identified site definition.

16           Piece 2 out of the 3 covers outside areas.  
17 In this case, again, the public safety officials would  
18 tell us where they are. They would help us with  
19 campgrounds we don't know about or places that have  
20 seen incidents in the past, outside area that house or  
21 contain 20 or more people for 50 or more days, to take  
22 care of the outside area issues that Mr. Israni has  
23 elucidated for us.

24           MS. GERARD: So, everything in six is an  
25 outside area.

1           MR. MOORE: Outside area would be public  
2 safety official tells it is there. We go and  
3 investigate those sites for usage by 20 or more people,  
4 50 days a year, which is directly in line with what the  
5 existing NPRM says. That is the second part of the  
6 identified site definition.

7           MS. GERARD: Except that the existing NPRM, it  
8 related to buildings and outside. What you talked  
9 about yesterday is its outside area.

10           MR. MOORE: And Part 3 addresses exactly what  
11 you just said, Ms. Gerard, which is the building issue.  
12 Part 3 of that identified site definition would be  
13 buildings. In this case if the building is occupied in  
14 line with the existing regulations by 20 or more  
15 people, five days a week, 10 weeks a year, the weeks  
16 need not be consecutive, but you are looking for these  
17 buildings, all the way out to the edge of your PIC,  
18 your impact zone.

19           MS. GERARD: Could you --

20           MR. MOORE: Not just the 300 feet as existing  
21 regulations has today.

22           MS. GERARD: Could you say it slower, say what  
23 you just said a little slower?

24           MR. MOORE: Today the existing regulations  
25 require us to look for what Mr. Drake has called



1 multiple occupancy buildings out to 300 feet from the  
2 pipeline, that are occupied by 20 or more people, five  
3 days a week, 10 weeks a year, the weeks need not be  
4 consecutive. That is direct regulatory language.

5 MS. GERARD: Five days a week.

6 MR. MOORE: Ten weeks a year. The weeks need  
7 not be consecutive. And that is directly out of the  
8 existing pipeline safety regulations.

9 What we are proposing and this is for the  
10 third part of the identified site definition.

11 MS. GERARD: Right. Right.

12 MR. MOORE: Is that any building or multiple  
13 occupancy building out to the PIC distance, not just  
14 300 feet, but out to the PIC distance, occupied by 20  
15 or more people, 10 weeks, five days a week, 10 weeks a  
16 year, the weeks need not be consecutive. It is  
17 consistent. It is enforceable. It is understandable.

18 MS. GERARD: It is with the existing Part 192,  
19 but it is not consistent with the time frame that would  
20 pick up weekends, that was just --

21 MR. MOORE: Remember the second part --

22 MS. GERARD: We are picking people up and I am  
23 just going over the logic. We pick up outside people  
24 on weekends and we pick up inside people only on week  
25 days.

1           MR. MOORE: That is right. No, not just week  
2 days, five days a week. That includes weekends.

3           MS. GERARD: So it could be --

4           MR. MOORE: 7-11 stores, businesses,  
5 warehouses.

6           MS. GERARD: But, it has to be five days a  
7 week. It could be Thursday, Friday, Saturday, and  
8 Sunday, but it has to be five of them.

9           MR. MOORE: And that is for buildings that  
10 offer as we described in gross detail in prior public  
11 meetings, buildings that offer protection to people.  
12 We know that pipelines get shut off with a given amount  
13 of time, and the fire goes down. We know that it takes  
14 X amount of time for buildings to ignite and create a  
15 safety hazard for the occupants within them. That is  
16 why the definition ought to be what we are proposing.  
17 For outside areas, where people do not have those  
18 protections offered to them.

19           MS. GERARD: I understand the distinction  
20 between inside and outside. The problem I have is with  
21 having two different time standards, because I am just  
22 trying to make sure there is a logic there. Because --

23           (Unidentified speaker off mike)

24           MS. GERARD: I know, I know. But, I am just  
25 saying, you know, I am just trying to say, is there a

1 logic to saying that people hang out outdoors on  
2 weekends, that is why we have a weekend time frame for  
3 outdoor and we have a weekday for in the building.

4 MR. MOORE: The 50 days a week was brought up  
5 in the NPRM as a direct response to an incident in New  
6 Mexico. And that is what we are continuing to capture  
7 here, directly addressing what your need was.

8 Mr. Drake?

9 MR. DRAKE: Thank you, Mr. Moore. That was a  
10 new precedent.

11 I think its important, you are asking us  
12 about rural churches, okay. The code definition for  
13 multiple occupancy and that frequency was built to  
14 recognize that issue, period. If you don't elect to  
15 use that, I really think we need to revisit the current  
16 code. The issue here --

17 MS. GERARD: I think we are revisiting the  
18 current code. We are adding layers of protection to  
19 the code. That is what this was about, was raising --

20 MR. DRAKE: You are asking me about rural  
21 churches.

22 MS. GERARD: Yes.

23 MR. DRAKE: I am telling you the land use  
24 defined in multiple occupancy was geared to recognize  
25 that unusual land use pattern by the DOT. That

1 precedent exists. I think you ought to use it for  
2 structures. The issue, I think, Darren is correct  
3 about the issue about we were under the impression that  
4 the primary thrust of the different land user was not  
5 about churches, because the original rule as we saw it  
6 in proposal form, did not include churches or  
7 structures. It was about outside areas.

8 MS. GERARD: And I understand that there is a  
9 procedural problem, because buildings was added  
10 between NPRM and --

11 MR. DRAKE: There is a procedural problem in  
12 adding buildings in the final rulemaking. It was not  
13 discussed in public.

14 MR. MOORE: I would strongly caution the  
15 Agency against introducing something in that  
16 environment that may cost literally millions of dollars  
17 without process.

18 MR. ISRANI: -- because we did propose  
19 building, but we did not give rural churches as an  
20 example. We did give museum as an example. And that  
21 we, in the final rule, we did say the museums we are  
22 going to eliminate for different reasons, we said.

23 MS. KELLY: All right, now, we are not going  
24 to argue the petition. We are going to look at the  
25 issue that is currently before us, which is a motion

1 that and based upon the discussion, I am not sure that  
2 the motion fully captures it, but part of the  
3 discussion picked it up, but in terms of the identified  
4 site, I don't believe we have taken a position on the  
5 public officials and one of the alternatives. But, it  
6 is understood, I believe, in what is presented here,  
7 that that would be one way of determining the criteria.

8 The other would be, the second then would be  
9 addressing the limited mobility component.

10 MS. GERARD: And both of those are guided by  
11 the public official test. This is not guided by the  
12 public official test. What this does is take the  
13 existing code for buildings and apply it outside of the  
14 impact zone. All we are doing here is adding the  
15 geography. The impact zone as identified.

16 MS. KELLY: The other item then is the outside  
17 area determination based upon the use of 20 or more  
18 persons, 50 days a year, in a 12 month period, the  
19 outside area issue. And then the last being this new  
20 issue which has to do with buildings, would suggest  
21 that we go back to the current code, which again is 20  
22 people, five days a week, 10 weeks a year, which need  
23 not be consecutive. Use that to define the structures,  
24 expand it to include multiple occupancy facilities,  
25 taking it out to the impact zone, and defining that as

1 an HCA. Does that capture the current thinking or at  
2 least the position on the table?

3 (Pause.)

4 MS. KELLY: Other comments by members of the  
5 Committee? Mr. Leiss?

6 MR. LEISS: Well, I mean, I have no concern  
7 basically with the way that is stated, other than, if,  
8 if the intent of the regulation is to somehow treat as  
9 a result of the recent Act, certain kinds of structures  
10 differently from the way they would be treated under  
11 the current regulation, then I don't see how this does  
12 that. In other words, if we are still trying to treat  
13 rural churches in some way different from what is  
14 currently or was under the regulation of multiple  
15 occupancy buildings or structures, I don't see how this  
16 would cover that.

17 MS. GERARD: I don't think that, you know, the  
18 law that we are responding to here builds on laws that  
19 have been written in the past, which we were asked by  
20 the Congress to decide those places where there should  
21 be periodic testing requirements. We expanded that  
22 when we wrote the Liquid Integrity Rule to go beyond  
23 testing and add some other things, and then the new law  
24 sort of picked up the concept of integrity management  
25 and said, do it for gas transmission facilities. It

1 left it to us to decide where those places would be.  
2 We were asked to define high consequence areas. So,  
3 the question that we are asking here is really is there  
4 a high consequence for people inside the structure of  
5 rural buildings. This, we are going back to here the  
6 question of is it, what is a high enough consequence to  
7 apply protection to? That is really the question we  
8 are asking here. Should rural buildings be decided as  
9 high consequence areas or as we said moderate risk  
10 areas. We didn't actually say high consequence or  
11 nothing.

12 MS. KELLY: Are you suggesting that adequate  
13 protection by this proposal is not made available to  
14 rural churches?

15 MS. GERARD: We are just, we are asking the  
16 question should there be added protections? That is  
17 really what the question is. The code exists,  
18 everybody knows what the code is. We were calling out  
19 the question, do rural churches deserve added  
20 protection or not? And I think the answer that the  
21 proposal on the table is no. They are in a structure,  
22 they don't, unless they, unless they have people  
23 outdoors, who would be unsheltered. And in fairness  
24 the discussions we have had in the public meetings,  
25 there was some public comment, you know, coming out the

1 Bellingham community, that they would rather put their  
2 eggs in the basket of the unsheltered. It was more  
3 important to protect the unsheltered, you know. So,  
4 from that standpoint, if we listen to the public  
5 comment there, they would rather see more protection go  
6 to the unsheltered and the vote of yesterday did go to  
7 protect the unsheltered. And what the proposal on the  
8 table here is saying, the shelter provides a  
9 protection. It shouldn't be such a high priority, but  
10 it will get, it has a chance of getting some protection  
11 from the vote on the look beyond provision, where we  
12 said, we are going to look beyond the high consequences  
13 areas. If there are situations that are similar  
14 outside the high consequence areas to what is inside,  
15 where there could be a problem, we should learn to  
16 protect. That went beyond what the law did also.

17 So, I mean, I think those are arguments that  
18 have been made here. So, what we are voting on is  
19 whether the rural church, inside, should be a higher  
20 level of protection than what the code provides today  
21 or not. And the proposal says probably not.

22 MS. KELLY: Mr. Thomas?

23 MR. THOMAS: I think you responded to John's  
24 question. I will try to very briefly. I think you  
25 have to no there is no intent in this proposal to



1 specifically call out rural churches for extra  
2 protection. However, to the extent those buildings  
3 qualify under the guidance, they will receive extra  
4 protection because there will be an HCA there and there  
5 will be heightened activity.

6 I would say my experience with churches is  
7 that some will qualify. There are some very active  
8 churches that do have activities five days a week, and  
9 have a lot of people in them. That is not the very  
10 small rural churches with 30 members, but --

11 MS. GERARD: And that would say, it is the  
12 higher consequence because there are more people in  
13 there, more active.

14 MR. THOMAS: And that just goes to the fact,  
15 it doesn't really matter if it is a church or not, it  
16 is a building that has this kind of activity and  
17 qualifies for the higher protection.

18 MS. KELLY: Mr. Drake?

19 MR. DRAKE: I just want to make sure we are  
20 clear. It sounds like you are kind of minimizing the  
21 amount of structures that get added under this  
22 provision that is on the table right now. The current  
23 multiple occupancy --

24 MS. GERARD: I really have no idea. You know,  
25 I think we wrote in the preamble, we really didn't know

1       how many of these there are.  It is hard for us to  
2       quantify that.

3               MR. DRAKE:  It is --

4               MR. MOORE:  I can give you a number.

5               MR. DRAKE:  The current regulations on  
6       multiple occupancy incorporates a great number of very  
7       small facilities, little restaurants, little, I mean,  
8       there is a lot of these structures out there.  I think  
9       Eric Thomas makes a very good point.  A lot of the  
10      churches fall into that definition.  You asked us  
11      specifically about rural churches.  And you said, you  
12      have already solved that.  It was decided back in the  
13      '70s, when you set the land use criteria for multiple  
14      occupancy.  It was geared to not get wrapped around the  
15      axle about little rural churches that aren't real  
16      frequent users.

17              MS. GERARD:  I have to say, you know, I agree  
18      that we have to look at what the public record is.  And  
19      the public record on this, the public comment did say  
20      protect the un, put more priority on the unsheltered.  
21      That is a response to our question from public.  There  
22      is not a lot of public people here.  But, we did get  
23      that input.  I brought it up.

24              MR. DRAKE:  And we are anchored in on that.  
25      We are committed to that.

1 MS. GERARD: Okay.

2 MR. DRAKE: And we have been all along, I  
3 think.

4 MS. GERARD: I do feel that in responding to  
5 the law of 1996, and the law of 2002, Congress asked us  
6 the question again, they said, go out and identify  
7 those places, after the code was in place. Consider it  
8 again. So, I don't feel like we have to just rely on  
9 the code. I think it is our job to look at the  
10 question fresh in light of current day knowledge. So,  
11 you are saying, let's look at the past, and I am  
12 saying, let's look at the present, and see what makes  
13 sense today. So, I don't, just because it is in the  
14 code, I don't necessarily think it is, because we have  
15 said we are raising standards here. We are not keeping  
16 standards. Now, we have raised them by adding the  
17 geography out to the impact zone. That is one way we  
18 are raising it. We have raised it by protecting the  
19 unsheltered. Now we are asking the question is, is  
20 there any need to raise it also inside the building.  
21 You are saying no. Mr. Leiss asked the question.

22 MR. DRAKE: No, that is not what I am saying.  
23 That is fundamentally not what I am saying.

24 MS. GERARD: Okay. Inside, if it meets a  
25 certain test, no, if it doesn't meet a certain test.

1           MR. DRAKE: I am saying that you are asking us  
2 about rural churches. I am telling you you have  
3 already come up with criteria --

4           MS. GERARD: Some do.

5           MR. DRAKE: -- on how to deal with that issue.

6           MS. GERARD: Thirty years ago.

7           MR. DRAKE: And I think it still works.

8           MS. GERARD: That is what we are asking, does  
9 it?

10          MR. DRAKE: And I think it still works.

11          MS. GERARD: Okay.

12          MR. DRAKE: And that is what we are trying to  
13 propose, is stay consistent with that logic.

14          MS. GERARD: I just want --

15          MR. DRAKE: And expand the added protection  
16 issue as expands the criteria for multiple occupancy to  
17 deal with the current way of identifying our impact  
18 zone, which goes all the way out to the width of your  
19 impact zone, not to 300 feet. That certainly is an  
20 added issue.

21          MS. GERARD: Right. The only thing I am  
22 differing with you is whether or not everybody agrees  
23 that what worked 30 years ago, still works. That is  
24 the question. Maybe it does. Maybe everybody agrees  
25 with you.

1                   MR. DRAKE: I agree. I think that is a fair  
2 question.

3                   MR. LEMOFF: I am not, don't live in a rural  
4 area, am not that familiar with rural churches, but it  
5 is my understanding that we are talking about buildings  
6 that could be occupied by 10 or 15, 20 people or in the  
7 minimal case, a hour and a half, two hours a week. And  
8 if I look exposure to the public, I mean, that is not  
9 even 20 houses. And however, on the other hand, I can  
10 say that there is most probably these buildings are not  
11 going to be, certainly in the south, heated or  
12 insulated, that they going to be just like wooden  
13 tents, so to speak, because of the use. So, the  
14 protection they offer is less than the typical, what we  
15 think of as a building.

16                   Nevertheless, I think in view of every thing  
17 we have done, the low potential to the public has to be  
18 considered. And as was said, there has been, the  
19 current code does have a rural, rural church exemption.

20                   Industry is proposing rural church exemption, and I  
21 must say there is some sense to it.

22                   MS. GERARD: That is what we are here to  
23 answer.

24                   MS. KELLY: Any further discussion by  
25 Committee members? Are you ready for the vote?

1 All in favor?

2 (Whereupon, a chorus of ayes was heard.)

3 MS. KELLY: Any opposed? Any extensions?

4 Thank you. This has been extensive  
5 discussion. Certainly the purpose is to provide the  
6 guidance that OPM is seeking, recognizing as with all  
7 of its activities, it will do what it thinks is  
8 appropriate. Some questions were raised in the end,  
9 which seem to raise issues more based on available data  
10 than opinions. And so, we would have to certainly rely  
11 on OPS to develop or use other sources to gather that  
12 data that may show that a different option may need to  
13 be considered in the future. But, I have to assume  
14 that the action taken by the Committee today is based  
15 upon the evidence and information available today.

16 Cost benefit analysis based upon the --

17 I am sorry, do you have a comment?

18 MR. ANDREWS: We voted to reconsider the rural  
19 church, yesterday and it doesn't matter what it is or  
20 isn't with this. But, we probably need to close that.

21 MS. GERARD: Yes, we do.

22 MS. KELLY: Yes, I believe, we reopened  
23 yesterday's vote, but we didn't do anything with it.

24 MS. GERARD: I assume that it gets --

25 MR. ANDREWS: It is immaterial.

1 MS. KELLY: It is captured.

2 MS. GERARD: Yes.

3 MR. ANDREWS: It is captured but we still  
4 have --

5 MS. KELLY: Does everyone feel comfortable  
6 that it is captured in this vote that we just took?

7 MR. ANDREWS: It is still up for  
8 reconsideration and I would, it doesn't matter if it  
9 is.

10 MS. GERARD: I believe what we are saying is  
11 the vote that we just took -- Amended the vote of  
12 yesterday.

13 Any more questions about that or concerns?

14 Good.

15 All right, and again, this presentation --

16 (Pause.)

17 MR. FELL: Good morning. I am Marvin Fell. I  
18 am the economist with the Office of Pipeline Safety.

19 I brought a couple of special guests here,  
20 and one of them has to leave. Mr. Charlie Maresca for  
21 Small Business Administration Office of Advocacy. And I  
22 brought him specifically because they had some concerns  
23 about impact to small business in general. And I just  
24 wanted to say that we are working very closely with Mr.  
25 Maresca and his office. And if there are any concerns

1 with small, any small businesses, we are very  
2 interested. We spoke with John Ericsson of the  
3 American Public Gas Association. And talked with Phil  
4 Bennett of American Gas Association. But, I just want  
5 to introduce him to you. And he will speak for a minute  
6 or two and tel you if you have any issues with us, that  
7 you can speak with him, whether on this issue or  
8 others.

9 And also Denise Johnson, an economist, on  
10 loan for the Small Business Administration from RISPA.

11 You can also speak to here. She will probably give  
12 you a card later, or whatever, and tell you how to  
13 contact here.

14 Mr. Maresca?

15 MR. MARESCA: Our office, the Office of  
16 Advocacy is located in the Small Business  
17 Administration, but when the Chief Counsel of Advocacy  
18 takes a position, it is not the position of SBA or even  
19 of the Administration. It is a position that we think  
20 represents the position of small businesses around the  
21 country. And our, our office has been in existence  
22 since 1976.

23 Basically, what we do is we work with the  
24 Regulatory Flexibility Act, which requires every agency  
25 to measure the impact of the regulations as they are



1 writing them on small businesses. If that impact is a  
2 significant economic impact on a substantial number of  
3 small entities, then those are the magic words that we  
4 work with. Then the Agency is required to consider  
5 alternatives that would minimize those impacts, while  
6 still achieving the regulatory goal.

7 So, we work with virtually every agency in  
8 the Federal Government. We have a Regulatory  
9 Flexibility Act guide that we have been developing and  
10 is now being distributed to agencies. And we have been  
11 meeting with agencies including RISPAs to introduce that  
12 guide and also to maintain some kind of relationship so  
13 that we don't have to come in at a late stage in  
14 rulemaking and say, well, your regulation is going to  
15 have a big impact. You have got to go back to Square 1  
16 or at least develop some new alternatives.

17 And that kind of approach has been working  
18 very well. Our chief counsel, Mr. Thomas Sullivan,  
19 has insisted that we have a collaborative approach with  
20 every agency that we work with. And that has been  
21 working out quite well.

22 I have the responsibility for safety issues,  
23 that includes pipeline safety. So, if you have any  
24 questions about the Regulatory Flexibility Act or  
25 anything like that, I am the person to talk to. Mr.

1 Fell has all of my contact information. And if, I  
2 would be happy to answer a question or two right now,  
3 otherwise.

4 MS. KELLY: Thank you. We may have some in a  
5 minute. Oh, you have one now.

6 MR. LEMOFF: Yes. The laid in for this  
7 suggested that there are issues concerning small  
8 business, that you wanted to bring to our attention.

9 MR. MARESCA: Right. Well, I have brought to,  
10 to RISPA's attention and when you go through a  
11 regulatory flexibility analysis, first of all, you have  
12 to know who the small businesses are and then where  
13 they are and find out what the impact of your  
14 particular regulation is going to be on them. We have  
15 SBA, the, has a table of CY standards, which is what we  
16 refer to. And in pipeline industry, some of the CY  
17 standards vary. Some are set by the number of  
18 employees, some are set by volume, I believe. And  
19 those were some of the issues that we, that we  
20 addressed, have already addressed with the Agency.  
21 Where are the small businesses who are being impacted?

22 When an agency thinks their rule is not going to have  
23 an impact, they can certify that the rule will not have  
24 that kind of an impact. And then they don't have to do  
25 the full regulatory economic analysis that the

1 Regulatory Flexibility Act would otherwise require.  
2 When an agency certifies, though, it has to be a  
3 factual basis. And in, it not just RISPA by the way, I  
4 would say the majority, well, I can't say the majority  
5 of agencies, but a lot of agencies don't certify  
6 correctly. And factual basis is now subject to  
7 juridical review, which means your regulation can be  
8 challenged, in court, simply because it didn't conform  
9 with the Regulatory Flexibility Act. And that is new  
10 since 1996. And it is really what gives our work a  
11 new sense of urgency. So, that is another reason why  
12 we are going around to the agencies to prevent that  
13 kind of a problem. Where there have been in the last  
14 three years, several regulations of other agencies  
15 successfully challenged for not complying with  
16 Regulatory Flexibility Act.

17 MS. KELLY: Mr. Lemoff?

18 MR. LEMOFF: When you say small businesses,  
19 are you referring to small pipeline businesses?

20 MR. MARESCA: Small businesses as defined by  
21 the Small Business Administration in the pipeline  
22 industry. And that would be, it is done according to  
23 North American Industrial Classification System Codes,  
24 so, whatever code you are working in. I am not an  
25 expert on the pipeline industry.

1 MR. LEMOFF: Let me restate the question.

2 MR. MARESCA: Sure.

3 MR. LEMOFF: Are you talking about a small  
4 pipeline company or a small company of another industry  
5 that is near a pipeline?

6 MR. MARESCA: Small pipeline companies. There  
7 is, there is a technical discussion that goes on,  
8 whether the effect that you are measuring is a direct  
9 effect or an indirect effect. If the regulation  
10 regulates pipeline companies, that is who we are  
11 talking about.

12 MR. DRAKE: I guess I took it as a little bit  
13 different. I thought that you were telling us that  
14 we, when we are dealing with the regulation, have to  
15 consider our impact on small businesses, regardless of  
16 what they do, but more germane to how this rule can  
17 affect them, regardless of how, if we pass a rule that  
18 increased the cost of gas threefold and that would  
19 drive small businesses into a bind, then we have to  
20 consider that, is kind of what I am hearing here.

21 MR. MARESCA: It depends on whether, it  
22 depends on how you write the rule. Whether it is a  
23 direct effect. Whether you are charging, well, we  
24 don't do rates, so, we can't, we don't, we don't deal  
25 with regulations that deal with rates or charges.

1           MR. DRAKE: Well, if we passed a rule that  
2           required everybody that had a gas service to do some  
3           activity and it was an unfair burden on small  
4           businesses as oppose to big businesses.

5           MR. MARESCA: You mean, if they pass that cost  
6           on, that is an indirect effect, I think. I am just  
7           talking off the top of my head there.

8           MR. DRAKE: Yes, something like that.

9           MR. MARESCA: Yes.

10          MR. DRAKE: Excess flow valves, for example,  
11          we said excess flow valves, we are going to pass that,  
12          and excess flow valves, the cost that has to be borne  
13          by the business operator, the meter owner, then, then  
14          we have to consider that because that could be an  
15          unfair burden on the small business. I guess, I don't  
16          understand --

17          MR. MARESCA: I don't know. It sounds like  
18          that a direct effect. It sounds like that is a direct  
19          effect and yes, you would have to consider that.

20          MS. KELLY: Mr. Lemoff?

21          MR. LEMOFF: Well, just to follow up and  
22          certainly there are two sides to this sort. But, if a  
23          small operator basically runs a five mile pipeline, he  
24          is tapping off one of the major pipelines and feeding a  
25          city five miles away and he has got one employee, would

1 that make him a small business for like that?

2 MR. MARESCA: Oh, sure, he is a small  
3 business, yes.

4 MR. FELL: Well, the reason I brought Mr.  
5 Maresca, he was, we are open. We are representing the  
6 public. We are public servants. Mr. Maresca is a  
7 public servant, representing the Small Business  
8 Administration. We haven't done that good a job and he  
9 hinted at it. It is not that we have had an effect or  
10 not have effect. We haven't found the small  
11 businesses. So, we haven't done a good job in  
12 identifying who would even be impacted. And we are  
13 going to try to do a better job in the future, then we  
14 will decide whether we have an impact. We don't even  
15 know who the small business are, but I have done some  
16 work recently and I like mentioned, I am working with  
17 the American Public Gas Association. We believe that  
18 is where most of the small businesses are. There may  
19 be a few others. And if they can identify themselves,  
20 if we find them, you know, we will try.

21 Do you want to say something, Mr. Boss?

22 MS. KELLY: Mr. Boss.

23 MR. BOSS: Yes, Terry Boss from Ingar.

24 Natural gas supplies 25 percent of the energy  
25 for the U.S., that includes all residential, industrial

1 and commercial users. As we have found a lot of  
2 information on this, they will be some impact due to  
3 the direct cost of the company being passed on to the  
4 rate payers, which are the commercial and industrial  
5 customers. Plus, there will be reduction in capacity,  
6 which will cause an increase of prices for those folks.

7 And so, there is an impact on this rule. And I would  
8 also state that the present firm contracts that folks  
9 use to buy their gas and therefore, is not as much  
10 effect, more of a long term effect, is not prevalent as  
11 much on the industrial and commercial users. The  
12 industrial commercial users in a lot of cases to save  
13 costs are dealing with marketing companies,  
14 interruptible rates, so there is a more of an effect on  
15 the smaller industrial and commercial owners than there  
16 is on the residential users when some capacity does get  
17 restricted. So, there is definitely an indirect effect  
18 on this rule as it affects those folks.

19 MS. KELLY: One more question.

20 MR. ANDREWS: The American Public Gas  
21 Association members were mentioned, does, in fact, the  
22 Small Business Administration apply to a political  
23 subdivision of a state or is that under the unfunded  
24 mandate regulation?

25 MR. MARESCA: It probably be working with

1 unfunded mandates at that point. But, yes, to the  
2 extent that a federal regulation has an impact, we  
3 would be involved. But, if it is not a federal.

4 MR. ANDREWS: Even a publicly owned municipal?

5 MR. MARESCA: Oh, yeah. Yeah.

6 MR. FELL: I am sorry, I should used the term  
7 small entity, not small business.

8 MR. MARESCA: Yes.

9 MR. FELL: I am sorry.

10 MR. MARESCA: Small entities include small  
11 businesses, small municipalities, and small non profit  
12 organization, actually all non profit organizations.

13 MS. KELLY: Any further questions of Mr.  
14 Maresca? Well, thank you so much for coming here and  
15 sharing this information with us.

16 MR. MARESCA: Thanks for the opportunity.

17 MS. KELLY: Thank you.

18 PRESENTATION BY MARVIN FELL:

19 MR. FELL: I apologize for just passing out  
20 that material now.

21 The first one, the Out of the Box Analysis  
22 was just to add a little bit of levy to a pretty long  
23 meeting. I thought you deserved a laugh. But, the  
24 other thing it illustrated, I wanted to illustrate the  
25 limits of cost benefit analysis.



1           I hope nobody is offended. It is always a  
2 risk if you use a little bit of humor.

3           But, the point I wanted to say and this rural  
4 church thing demonstrated. Cost benefit analysis is a  
5 relevantly crude tool. It can't distinguish whether,  
6 whether the rural churches should be protected, whether  
7 10 people, whether 50 people. These are policy  
8 decisions. And I want to applaud and honor all the  
9 people who sit at this meeting all day, every hour,  
10 which I couldn't possibly do, that you are making these  
11 decisions. And I hope this little sense of humor  
12 illustrates that this not the role of cost benefit  
13 analysis. I remember taking a graduate school course  
14 in Eco Metrics, when the teacher said, you have a  
15 problem with your data, a lot of you understand, you  
16 have done a lot of work in graduate school with data,  
17 the data doesn't show or has problems, you can always  
18 get more data, but sometimes that is expensive. The  
19 alternative is you tell a story. So, fortunately I am  
20 better at telling stories than getting more data.

21           And sometimes the data is just not there to  
22 make these distinguishes. And let's say that the  
23 industry, the public, and I sort of disagree with some  
24 of my conclusions, but, I want to stand by the analysis  
25 I did. I think we may have underestimated some things.

1        Maybe several things. We may have overestimated.  
2        But, I think we are in the right ball park. I think a  
3        lot of the changes here, I can't judge them. Like I  
4        said, I don't want to judge them. I don't have the  
5        tools to judge them. But, probably will lower the  
6        costs. I don't know what it will do to the benefits,  
7        probably lower them a little bit. But, I don't have  
8        the tool to incrementally tell you if it is a better  
9        rule or not a better rule. I just applaud you as a  
10       member of the public, myself, for taking this effort  
11       on.

12                But, the reason I gave you this article,  
13        here, this was done about a year ago, in the early  
14        version of the rule. And it said that this rule was an  
15        impact on the cost of gas. I want to strenuously, but  
16        respectfully disagree that this will have any impact on  
17        the cost of gas. If it will, it will be minor. I will  
18        admit that I may have underestimated the cost of the  
19        rule, but let's talk about interruptible, let's talk  
20        about plan versus unplanned gas interruption.

21                I put some material in the docket. I am a  
22        little disorganized, I will find it later. But, it  
23        suggested that the Carlsbad accident, which was an  
24        unplanned accident, cost the rate payers of California  
25        15 million dollars a day. I suggest this to you that

1 this is a case of an unplanned accident. It is going  
2 to be infinitely higher than the cost of planned  
3 maintenance. I think what we are talking here damage  
4 assessment, I am sorry, direct assessment and internal  
5 inspection, or planned maintenance. I respect planned  
6 maintenance, but this will seriously dispute the line,  
7 even as an economist I would say I don't see too many  
8 doing hydrostatic testing. And the choice is yours, it  
9 is not mine.

10 But, I have talked to pig vendors, and the  
11 people who run the pigs, and they say you can run the  
12 pigs with the product still in the line. It may reduce  
13 the flow, and clearly if you are running a pig in the  
14 middle of winter, in the State of Maine, it may have a  
15 little impact. But, you have five to 10 years to plan  
16 this. I think there are other lines. You could bring  
17 in LNG facilities. Another thing that is sort of not  
18 stated, is talking about the price on the spot market.

19 I have an article here and I can pick it out later,  
20 that shows that 85 percent of all gas operators buy  
21 forward contracts. They will make arrangements. I  
22 think this requires a little bit of creativity on the  
23 part of very intelligent group of people. I think the  
24 operators, they know that, they make some mistakes.  
25 Everybody makes some mistakes. It is clearly things

1       happening. Transitions happening in the gas  
2       transmission business. And I am not going to lecture  
3       you about that. You know them better than I do. But,  
4       you, people, are in the business to make decisions.  
5       This may require greater levels of cooperation. And  
6       the pig vendors in their comment to the docket, also  
7       suggest this.

8               I had prepared a presentation of all my costs  
9       and benefits, but I don't think you really need to see.

10       I think the rule is going to be significantly changed.

11       If you want to show the hourly rate, I am willing to  
12       go through the slides, but, I would rather entertain  
13       questions and say that most of the issues you have are  
14       not cost benefit issues. If you reduce the rule, it  
15       will cost less, if you make it wider, it will cost  
16       more. We understand that. That is not the decision.

17       The decision is made over interpretations. You think  
18       it is a good rule, is it protecting the public. I will  
19       leave that and I will leave that to experts greater  
20       than myself.

21               But, I want to say and it is unfair for me to  
22       give this to you and I apologize, but the, our  
23       analysis, energy impact analysis was not peer reviewed  
24       once. It was peer reviewed twice, which is  
25       unprecedented in my 23 years of Government. It was

1 peer reviewed by the Volpe Center, by a Ph.D.  
2 economist. And in here it was peer reviewed by the  
3 Department of Energy. So, I want to say that, to say  
4 this has a greater impact than unplanned accidents, I  
5 just don't buy it. But, I want to respectfully say we  
6 disagree.

7           And as far as property damage is concerned,  
8 property damage does not capture all the cost of an  
9 accident. I was warned not to use specific incidents,  
10 so I won't, but, sometimes you have an accident and it  
11 involves a fatal accident. The property damage may be  
12 minor. There is one accident, a multiple fatality  
13 accident. The property damage isn't really invalid.  
14 That probably, it may ever be correct, but, I suggest  
15 to you, it cost that company a hell of a lot more than  
16 a million dollars just to investigate and respond to  
17 that accident. Our accident form does not capture  
18 that. It was not designed to capture that. So, for,  
19 for you to say that this is not cost beneficial based  
20 on the property damage, it may or may not be  
21 meaningful. I think that accidents are clearly much  
22 higher than that. I have tried to err on the side of  
23 conservative. If I don't know what the cost is, I am  
24 not going to estimate it. I don't, I won't estimate  
25 the impact of an unplanned accident, at a major

1 pipeline in the State of California, on the spot  
2 market. That is way beyond my ability. You,  
3 engineers, out there know my confidence intervals would  
4 be so large that it would be a meaningless thing. I  
5 just suggest to you that it is a bad thing and cost a  
6 lot of money.

7           And as far as public confidence is concerned,  
8 I still have to an analysis. I will just mention it to  
9 you because I talked to Buck Furrow in my office and he  
10 had some issues with it. But, let's state that  
11 transmission companies in this, in this market, are  
12 large ones. Their stock prices have gone down  
13 severely. They are not the only ones, but a lot of  
14 other companies. And they certainly could use a shot  
15 in the arm in public confidence. I don't want to put a  
16 number. I don't want to say this will increase their  
17 stock price five percent if this rule passes, because  
18 that is lubricious. I have no way of saying that. It  
19 certainly would be better rather than worse. And they  
20 can use a shot in the arm. The stockholders could use  
21 a shot in the arm. Some of you probably own stock in  
22 those companies and wish the price went up. But, I  
23 would suggest to you that a major benefit is public  
24 confidence and the uninterruptedability of gas.

25           I will stop now and say, we have probably

1        underestimated some cost. But, in the future I would  
2        like to make a suggestion that some of the people here,  
3        particularly Dr. Wilkie, he worked with me in  
4        developing a cost benefit framework and we are suppose  
5        to work together. And someone told me, possibly it was  
6        our fault, we didn't work together, we didn't give you  
7        enough time. We didn't solicit your advice. Rather  
8        than us going up here and saying, this is one billion,  
9        you say it is 50 billion, it turns out to be 10  
10       billion, in the future we will work together and get  
11       the 10 billion dollar figure first. This would help us  
12       both out.

13                    I will take a mera culpable on that. Maybe  
14        industry will take one also. That is up to them. But,  
15        I suggest, it is a good rule and you probably did your  
16        best to improve it and I applaud you for that. I am  
17        willing to take any questions.

18                    MS. GERARD: Marvin, wasn't there a tremendous  
19        amount of information provided on costs as part of the  
20        public meetings?

21                    MR. FELL: Well, nothing that I verified, but,  
22        that is another thing I was going to say, I could, I  
23        would enjoy going outside the office and looking at a  
24        couple of pig runs, myself, since I have never seen  
25        any. But, I would suggest some of it, some of it, they

1 gave antidotal evidence and then transferred from  
2 antidotal to extrapolate from antidotal.

3 MS. GERARD: But, what about the charts that  
4 were provided at the last of those --

5 MR. FELL: I didn't verify them. They were  
6 giving me numbers, I didn't see where they came from.  
7 They gave them, my numbers you can all see, and right  
8 there. No, I didn't see where they came from. They  
9 would say, a pipeline said they cost this much. All  
10 right, maybe they did. A few pipelines said it. That  
11 may be true or may not be.

12 MS. KELLY: Mr. Lemoff.

13 MR. LEMOFF: Madam Chairman, and with all due  
14 respect to Mr. Fell, I think you have summarized the  
15 issue, but, I don't see this as a cost benefit. The  
16 rule is for safety. And to me, period. Now, yes, we  
17 don't want to impose any ridiculous costs such as  
18 forcing pipelines to shut down in their heavy season.  
19 And I think that has been brought out. Other than  
20 that, I mean, I don't see anything that is going to be  
21 a giant killer in terms of costs. I assume the  
22 analysis shows that. I mean, undoubtedly it is going  
23 to cost more and that is something the public has  
24 expressed the willingness to pay for. So, what is the  
25 action item and I don't, are we mandated to vote on



1 cost benefit?

2 MS. KELLY: We are. And there was no action  
3 item today.

4 MR. LEMOFF: Okay.

5 MS. KELLY: As I mentioned yesterday, Mr. Fell  
6 will be updating his cost benefit analysis based upon  
7 the changes to the rule that the Committee advises. We  
8 will receive that in enough time to consider and then  
9 vote by telephone. The purpose of today's presentation  
10 was to get a summary from Mr. Fell regarding the cost  
11 benefit analysis and for the Committee to add its  
12 thoughts regarding any particular inputs that perhaps  
13 he should take into account that perhaps he had not.

14 MR. FELL: I happen to agree to that, but --  
15 Sorry.

16 MS. KELLY: Excuse me. Dr. Wilkie?

17 DR. WILKIE: Let me see if I can make it a  
18 little bit easier for Marvin and also for the Committee  
19 with a couple of comments.

20 It is very difficult, we do have, we do have  
21 do a benefit cost analysis and we do have to come to  
22 some terms on it, and I acknowledge that there is going  
23 to be some work to include some of the provisions.  
24 But, here is my comment. It is very, very difficult to  
25 quantify all the benefits and all the costs. And I

1 would hate to be in Marvin's shoes in the sense that it  
2 is almost impossible to fully quantify all the benefits  
3 and all the costs that should go into a rule. And  
4 what you may end up with is a large unquantifiable  
5 benefit, and more quantifiable costs. So it becomes  
6 difficult to judge whether or not the rule is truly  
7 cost beneficial. One way to get around that is to say  
8 that the statute requires it, or that it is for public  
9 safety. But, what you are really doing is, is adding  
10 an unquantifiable benefits of one form or another.

11 Let me suggest, though, that there is another  
12 way to look at the analysis that, from my personal  
13 perspective. I think we are talking about incremental  
14 costs and incremental benefits when compared to the  
15 next possible alternative. And that is the  
16 consideration. It is not absolute benefits and  
17 absolute costs for this rule. It is the incremental  
18 costs and the incremental benefits of the next best  
19 alternative. We fail to understand at times what the  
20 next best alternative is. In this case, since we are  
21 responding to a statute, the next best alternative may  
22 be other ways of interpreting that statute. I think we  
23 have worked very hard in this Committee to find ways to  
24 make the statute more operationally easy to implement  
25 or easy to enforce. And to enhance public safety in

1 the same process. I don't think we have all tried to  
2 enhance public safety in the whole process, but find  
3 ways to work to that process, so we don't come to  
4 unreasonable disagreements about what we should be  
5 doing.

6 So, I am going to suggest here that, Marvin,  
7 that one comment would be that you look at the next,  
8 look at this in terms of this being a better  
9 alternative than other alternatives we may have had to  
10 consider.

11 To emphasis another point you made, however,  
12 is that benefit cost analysis is a crude tool. It is a  
13 very blunt instrument. And there are going to be,  
14 there are some very sharp local effects here. And I am  
15 going to, to the Chair, I would like to apologize, I am  
16 going to go a little bit off subject here for the  
17 moment but I don't know how to bring it in any other  
18 way. There are the potential in the application of  
19 this rule for some very large local effects. Effects  
20 that wouldn't be ever measurable on a national scale,  
21 in terms of benefits of cost, but taking out a major  
22 plant or a city, because that is the only line that may  
23 go into that city, could create huge effects on that.  
24 Now, those effects may be warranted by the fact that  
25 public safety is compromised to the extent that we have

1 to take a line out of service and find another means.  
2 But, I want to suggest that those are effects that you  
3 cannot measure in benefit costs analysis. And it is,  
4 as Marvin says, it is impossible to even try.

5 But, I think that if we were sitting in a  
6 different kind of commission, looking at this issue,  
7 from a different perspective, the subject of impact on  
8 consumers would be a bigger issue than we have  
9 addressed here.

10 So, that is, I don't know if it can be  
11 addressed benefit costs, but, it is an issue I don't  
12 think we have adequately addressed.

13 MS. KELLY: Mr. Drake?

14 MR. DRAKE: I would agree with Dr. Wilkie.  
15 There are significant intangible benefits and costs  
16 associated with this rule. And that we look at the  
17 alternative here, we are under a statutory mandate to,  
18 to come up with something here, and we have done the  
19 best we can. And, and, I think the industry can speak  
20 for that, that stakeholder supports this rulemaking.  
21 We are on record with Secretary Manetta that we support  
22 this initiative. And I think that to the degree that  
23 we have gone through all these rigors and discussions  
24 and votes, and we have done the best we can to make  
25 this a reasonable and practicable rulemaking. But, I

1 think there is a purpose here that we have to guard as  
2 well, and that is we have certainly to try to document  
3 those intangibles as best we can for a legacy value.

4 And I think that one of the issues of the  
5 cost benefit is to communicate to other regulatory  
6 entities and to work with other regulatory entities  
7 about the potential for impact. And I think that as a  
8 part of this discussion, I think it is reckless and  
9 negligent to completely disregard the potential impact  
10 on consumers of this rulemaking. I think that is very  
11 dangerous. That the event that we are about to  
12 undergo, while we all support it, is unprecedented.  
13 And I think that we put other stakeholders in harm's  
14 way by saying there is no impact on them. I think we  
15 owe it to the cost benefit. And I will say, one thing  
16 that I think you need to consider, Marvin, is that many  
17 people here, it is the phenomena that we have seen,  
18 many of us have operated these kind of risk programs a  
19 long time. And it is the unknown that always surprises  
20 you. Most people are considering, I think now, and it  
21 sounds like you as well, in their business models on  
22 the impact of this rule, the cost of making their  
23 facilities inspectable, conducting the risk assessments  
24 and performing the inspections. Most of the cost  
25 associated with this kind of activity are related to

1 mitigation. It has the most significant impact on  
2 through put.

3 Now, the companies have agreed in the cost  
4 benefit to completely discount the cost of mitigation,  
5 the physical action of fixing the pipe. It is a  
6 maintenance activity and it is germane to the longevity  
7 of the pipe. But, I don't think you can discount the  
8 impact on interruption of service for the mitigation  
9 activities. And those are very significant. And I  
10 think we need to make sure that we at least put that  
11 place holder out there, that this activity on this  
12 magnitude is unprecedented. And that we need to be  
13 very carefully working and very explicitly working with  
14 DOT, DOE, FERC, together to try to keep an eye on this.

15 And to try to come up with proactively methods of  
16 minimizing impact if we see impact going beyond a  
17 certain threshold. And I think that, that is just a  
18 prudent plan forward.

19 But, I will tell you this, Marvin, I think  
20 when you look at one incident, the California incident  
21 that you cited here, and it is an impact on the market.

22 Now, I am certain that FERC is much more qualified to  
23 talk about this than I am, is not a comparable model to  
24 10 percent of the system capacity of the U.S. grid  
25 being interrupted in a year. Those are two completely

1 different events, because the local market in  
2 California has only got one supply source interrupted.  
3 It is not 10 percent of their fuel capacity  
4 interrupted. That is the kind of precedence that you  
5 are talking about under this rule making. So, be very  
6 careful here about how we do it. And I understand,  
7 Marvin, that there is no precedence to this. This  
8 hasn't happened on this magnitude, period. We haven't  
9 don't that. We all entered this knowing that. But, I  
10 think it is, we have to at least set the placeholder  
11 that we don't know, but the risk is there and so it is  
12 prudent on our behalf to put together some kind of  
13 cooperative effort and some sort of plan forward that  
14 if it surfaces, we have a plan, an agreement among us  
15 of how to deal with it. And, so, that doesn't help  
16 you with specific numbers for cost benefit, but I think  
17 one of the functions of cost is to at least identify  
18 it. And if you discount it, I think that is very  
19 dangerous.

20 MS. KELLY: Any other, yes, Mr. Comstock.

21 MR. COMSTOCK: -- to agree with Dr. Wilkie on  
22 some of his comments regarding small systems and their  
23 ability to be affected by outages in single source  
24 feeds to those systems. The American Public Gas  
25 Association represents a number of those facilities

1 around the country. And I will say that, Dr. Wilkie,  
2 and just going a little bit off of what you said, those  
3 costs are justifiable and quantifiable. We can tell  
4 you what it cost to relight a service. We can tell you  
5 if we lose a city of 30,000 people because of an  
6 outage, what that cost would be. We can put numbers to  
7 that. There are quantifiable numbers. This is not  
8 about, I think our position at the table, a time that  
9 we dedicate talks to our concern about the safety  
10 issue, but the number of quantifiable on the customer  
11 and on the company alone. And most of these companies  
12 through the American Public Gas Association, who work  
13 off of single source feeds to their, to their  
14 operation, can provide numbers for you in regards to  
15 that. Those costs are quantifiable .

16 MS. KELLY: Thank you.

17 Mr. Thomas?

18 MR. THOMAS: Yeah, my comment is on process.  
19 First, I am encouraged by and would like to compliment  
20 OPS, Marvin on the obvious interagency coordination  
21 with Small Business and the DOE.

22 And that regard, I think that the ultimately  
23 results would be enhanced by reviewing comment by the  
24 appropriate section of the FERC. As you have heard, we  
25 are most concerned about commercial impacts of the rule



1 on our customers and on deliverability. I think that  
2 is the agency that most, is charged within the  
3 Government for looking after those things. So, that  
4 would be my suggestion.

5 MS. KELLY: Thank you. Mr. Wunderlin.

6 MR. WUNDERLIN: Yes. I would like to follow  
7 up and I would like to say I agree with some of the  
8 industry comments here. I think I would like to  
9 reemphasize the, that there will be impacts to our  
10 customers out there. And I will give an example right  
11 now in Arizona in our service territory. The El Pascal  
12 Transmission Company that supplies our gas is going  
13 through an inspection process in Arizona right now, and  
14 that is our sole supplier in Arizona for the  
15 Metropolitan areas of Phoenix and Tucson. They are in  
16 the process of working with us to mitigate and minimize  
17 the impact to our customers so that they don't hit the  
18 cold weather times of year and when they are actually  
19 going to be taking major stations out of service. And  
20 we are working with them to do that, but we have  
21 already been provided with some estimates in the  
22 hundreds of thousands of dollars of LNG and standby  
23 fuel that it is going to cost us and eventually our  
24 customers for taking those stations out of service to  
25 do those inspections. So, there is a direct impact.

1 And there is an impact that is going to be handed down  
2 to our customers in the cost of gas. It is real and it  
3 is there and it is going to be happening all over the  
4 country.

5 MS. GERARD: Really good comments. The first  
6 thing on the issue of alternatives, I thought that was  
7 a very helpful comment. And one of the things I would  
8 like you guys to think about, you know, it is, it makes  
9 the obvious how we have ended up at the point we have  
10 ended up today, but, you know, the last several years  
11 of work, believe me it wasn't obvious.

12 We listened very much to the recommendations  
13 of the National Transportation Safety Board. And  
14 talked to them two or three times a week, sometimes  
15 twice a day. Yesterday was one of those twice a day  
16 days, you know, and they are listening and watching how  
17 it is going. And, you know, here is a case where what  
18 they propose to us would be one alternative. And their  
19 alternative is the entire line, apply this to the  
20 entire line, or apply it to any place where it is not  
21 obvious, where it is obvious that there aren't a lot of  
22 people. You know, we have been slicing the salami  
23 really thin here for the last few days in terms of in,  
24 out, what kind of tests, and all of that. But, so,  
25 one alternative would have been to listen to the NTSB

1 recommendation, apply it to the entire line.

2 Another approach, which is what we started  
3 out with, was to apply this requirement to, the same,  
4 same way we did the liquid one and we started out  
5 thinking, let's use the U.S. Census. What the law said  
6 was high density population areas. And we could have  
7 gone to the Census like we did with liquid and just put  
8 those places on a map, and shaded it and said, here is  
9 where to place. That would have been a lot more gross,  
10 and we didn't take that approach.

11 We could have gone with our existing  
12 approach, which would have been Class III and IV. And  
13 that would have obviously, that might have been less,  
14 that might have been less than the other two approaches  
15 then what we have ended up with. But, you know, we are  
16 somewhere between those, the existing approach and the  
17 other two. You know, possibly even a more cost  
18 beneficial approach than Class III and IV, I don't  
19 know.

20 But, so, clearly, we considered other  
21 alternatives and we could probably make some  
22 projections on what it would have cost had we taken the  
23 NTSB recommendation, which is, you know, a very serious  
24 recommendation, what we did with the liquid industry,  
25 or the existing Class III and IV.

1           On the outage, you know, I take the outage  
2 issue very seriously. And we brought up many times in  
3 meetings that we need to work on a process to make our  
4 waivers expeditious. Since that is the tool we have to  
5 avoid outages and I would ask for your help in thinking  
6 about at another committee meeting, another agenda  
7 item, how we can do a better job in preparing everybody  
8 to apply for waivers according to criteria that will  
9 make sense, that we can process and train people to  
10 handle a lot more expeditiously and save time to avoid  
11 the outage issue. The fact that we have a clearance, a  
12 clearinghouse process that is working for liquid, a  
13 little different, but, we can look at that and  
14 understand we are making the efforts and have practiced  
15 a clearinghouse approach, which Roger Houston  
16 described.

17           And then another aspect of the outages and  
18 the costs would be the difficulty in getting permits,  
19 which we haven't talked about and that we are working  
20 hard with the other federal agencies to come up with  
21 approaches to expedite getting the permits for  
22 mitigation so that you don't have to have pressure  
23 reductions, which would be another cost. You know, so  
24 I think we are doing a lot of things to control the  
25 efficiency of repair and making that happen quickly.

1           The last point I wanted to mention in terms  
2 of impact. One thing that we could do is compare to  
3 the one existing experience that we have is how many  
4 lines have we required to be out of service or at a  
5 pressure reduction at any one time in past history. To  
6 my knowledge, that number is 12 total for the United  
7 States, liquid and gas. So, you mentioned 10 percent,  
8 that is 10 percent of gas. It doesn't account for the  
9 repairs and the modification, that is just the testing,  
10 you know. So, there a percentage there in going back  
11 and looking at, at no time have there been more than 12  
12 pipelines at a reduced pressure in the United States as  
13 a result of a requirement or a regulation. So, now we  
14 can take 10 percent for sure of the liquid and whatever  
15 the seven percent is for, seven percent for liquid, 10  
16 percent for gas, then add in those lapping years where  
17 it won't be 10 percent for sure, and I think we can  
18 also look at the time for required modification, which  
19 isn't the test. So, it is really three down times. It  
20 is the modification time, the test time and the  
21 mitigation time. And compare that to past history.  
22 So, those are just my comments.

23           MS. KELLY: Mr. Fell.

24           MR. FELL: I am sitting here, Mike is running  
25 as a string on my neck, you might not see it, so, he

1 told me not to get into debates with people smarter  
2 than I am. So, I won't rebut this. But, Andy, I was  
3 not disrespecting when I was looking, I was thinking  
4 of, like looking for the answer and trying to rebut  
5 you, but Mike reminded me not to do that.

6 So, I just want to say that, I would just  
7 lose, but, I just want to say that we have some  
8 disagreements on the cost impact, reasonable people can  
9 disagree and I can disagree even being unreasonable and  
10 this is probably not the forum. But, we have heard  
11 your comments, and we will consider them.

12 I just want to mention in passing, that I  
13 didn't make an agreement that I would do these changes,  
14 but I work for Stacey, so if she made an agreement  
15 that, I guess I will do that. The only reason I say  
16 that --

17 MS. GERARD: So, the correct answer is you  
18 will make the changes.

19 MR. FELL: No, I just want to -- That is the  
20 correct answer, but I just want to add that I think  
21 that, I just want to reiterate that, you know, I will  
22 do the best job I can, but the rule, you have made the  
23 best policy decisions and I am reminded of H. L.  
24 Mencken, the two things you don't want to see being  
25 made is sausages and legislature, I think I can add

1 pipeline safety regulations to that list.

2 But, I want to say that, you know, I will try  
3 to do it as quickly as I can, but, hopefully it will  
4 help you, but, I think the regulation does not rise and  
5 fall on the cost benefit, but, you know that. I just  
6 wanted to add that I will do the best job I can. And  
7 hopefully, you won't rush me too much, knowing the  
8 ideas that you know what I am doing, I will just have  
9 some better cost estimates.

10 MS. KELLY: Any other comments by members of  
11 the Committee? Any comments or questions by members of  
12 the public?

13 MR. BOSS: Yeah, Terry Boss with Ingar.

14 I think we have tried to work positively  
15 through this whole process. We have spent a lot of  
16 time and money trying to gather costs, formulate those.  
17 Very specifically our comments were designed to inform  
18 the Committee and also OPS on these different  
19 alternatives and how they do affect both consumer costs  
20 and both the pipeline costs, that do get passed onto  
21 the consumer. So, we are using this more or less as an  
22 interim to realizing there is a lot of benefit out  
23 there that we can't quantify and we realize that it has  
24 to, has to be done on those things. But, that is why  
25 we are trying to use it as tool.

1           So, I do want to say that we are trying to  
2 move this forward positively by providing this  
3 information as much as we can. But, since we are a  
4 recipient and then the customer is the recipient of our  
5 service, we do see the interaction between the  
6 different regulatory functions that are going on. And  
7 the concern that was being voiced by these different  
8 groups is, is that it is essentially an unprecedented  
9 situation that we are getting into here in the future.

10       We have tried to do some modeling of that to figure  
11 out what is going on, but we have a pipeline safety  
12 type regulation arena that we are trying to satisfy.

13           The states operate under 50 different kinds  
14 of rules from a public utility commission type point of  
15 view. We are regulated by the Federal Energy  
16 Commission that has set up a competitive environment  
17 that essentially doesn't permit the smooth flow of  
18 information back and forth between companies. So,  
19 essentially with that regulatory environment where we  
20 cannot necessarily cooperate and share information to  
21 give enough information for a waiver process, we may be  
22 testing or a company may be testing the same time as  
23 another company is testing, as the same time that the  
24 LDC is testing or they all happen right after another.

25       We just don't know because of the conflicting



1 regulatory environment that is going on here. And that  
2 is the things that we are worried about.

3           There will be significant consumer impacts  
4 here and it has shown up in the past, yes. I mean,  
5 Marvin mentioned about an outage or something like  
6 that, yes, there is an outage and the question is with  
7 this study, because there was, given a particular  
8 incident, there was an incident, there was a policy  
9 decision to keep the reduction on pressure in that  
10 system for two years. Physically constructing that,  
11 verifying the site, probably have taken less than a  
12 month to get that back in service and getting full  
13 pressure. But, there was a policy decision for two  
14 years to keep a reduced pressure. Now, the question  
15 is, does this program in itself give the regulatory  
16 community, the public, the confidence that we could  
17 restore that pressure in a quicker circumstance so that  
18 you don't have that pickup? So, there is a lot of  
19 interaction going on here. It is unprecedented. We are  
20 not sure exactly how all this has worked. We are  
21 trying to give you as much information as we can  
22 through a crystal ball, but, as far as our information  
23 is, we are trying to give you the best we can  
24 understand. We are just warning you, we don't know  
25 exactly how this thing is going to work. Okay. And we

1 don't want to mislead anybody on this situation. We  
2 just don't know know what is happening.

3 MS. KELLY: I believe it is clear that there  
4 are a number of unknowns that have to be taken into  
5 account in developing the cost benefit analysis. Some  
6 of the comments that have come out here, I believe for  
7 Mr. Fell to include, even those costs and benefits that  
8 may not be actually quantifiable, but, that certainly  
9 we acknowledge exist. So, those should be included.

10 And in terms of the issues with the  
11 competitive nature of the business, and the ability to  
12 talk and share information, I would only say I would  
13 hope and actually I am fairly sure that the industry  
14 will come up with a way to take care of the  
15 responsibilities that it has to take care of with the  
16 least negative impact on customers. You may not know  
17 exactly how you are going to do it, but, I am sure that  
18 that is one of your goals.

19 Yes?

20 MR. JOHNSON: Dave Johnson with Enron.

21 Yeah, I think what, what I thought I heard  
22 here in the last few minutes, was kind of a downplaying  
23 of the importance of the cost benefit analysis. And I  
24 don't think it can in any way, shape or form be taken  
25 lightly. Does the rule, is the rule going to succeed

1 or fail based on this, going forward? No. We have  
2 worked and committed to that. But, I think we can't  
3 make light of the cost benefit analysis or treat it  
4 lightly for a regulation that is going to cost  
5 individual companies hundreds of millions of dollars to  
6 implement. It is important to understand that. So, I  
7 have got a couple of questions and then a couple of  
8 other comments.

9 MS. KELLY: I am going to give you two  
10 minutes.

11 MR. JOHNSON: Plenty of time.

12 First, will the information that was passed  
13 out to the Committee today be available publicly so we  
14 can see it?

15 Second question is does this information  
16 reflect the TPSSC's guidance on this matter, the last  
17 time they heard about this to go back and make some  
18 revisions and change some assumptions and make some  
19 corrections in the analysis?

20 I will reiterate what Terry said, that  
21 coordination with our customers and as Jim pointed out,  
22 coordination with customers is vital. We have to do  
23 that. Coordination with our competitors on system  
24 outages, that is a different issue. And there are a  
25 lot of other agencies that would weigh on that. We

1 can't do that.

2           Finally, I think the cost benefit analysis is  
3 particularly important because it sets the level of  
4 expectations for the costs that people are going to  
5 have to pay for this rule, and the benefits that are  
6 going to be realized. If we miss by very much on  
7 either one of those, we are going to be viewed as  
8 having failed, because missed the expectations. So, we  
9 have to get this right. Thank you.

10           MS. KELLY: Thank you.

11           Everything that is presented or said here is  
12 a matter of public record. You can talk with staff  
13 after in terms of how you have access to it.

14           And with respect to the importance of the  
15 cost benefit analysis, this Committee takes our  
16 responsibilities very seriously with respect to  
17 everything that we are charged to review and comment on  
18 under the Statute.

19           And with respect to the information that the  
20 Committee has requested that Mr. Fell do in the future  
21 for our vote, I am certain he will also take that into  
22 account and whatever is available will be a matter of  
23 public record.

24           Mr. Bennett, and again I am going to ask for  
25 two minutes.

1 MR. BENNETT: Okay. Phil Bennett, AGA.

2 AGA believes that the cost benefit analysis,  
3 like the other speakers, is very important. And one of  
4 things we want to do is work with OPS to make the cost  
5 benefit analysis as accurate as possible. It is almost  
6 impossible to do a cost benefit analysis in an accurate  
7 way before or doing the rule making process. This rule  
8 has changed so much over the last nine months, that it  
9 doesn't even resemble what, what it was nine months  
10 ago. Nine months ago we thought we wouldn't have, we  
11 would exclude transmission lines under 20 percent of  
12 SYMP(ph) because they didn't provide the threats and it  
13 was only a functional definition. They are now in the  
14 rule. It is things like that that have completely  
15 changed the rule. And we urge Marvin to take the  
16 information that INGAR has put on the docket and AGA  
17 and APGA, use that information to revise the cost  
18 benefit analysis as accurately as possible for the TPSC  
19 to review. And we have submitted information and tried  
20 to break it down, give our assumptions to help OPS to  
21 make those changes.

22 An important thing, the cost benefit  
23 framework that OPS approved several years ago, and I  
24 was part of that committee and Ted went to a lot of  
25 those meetings, it is a very good document. One of the

1 things that it talked about is that a cost benefit  
2 analysis should be a living document. It almost never  
3 is in any setting, Government or private sector. You  
4 write the rule, the regulation, you say I am done and  
5 that is it. One of the things that we have done with  
6 this integrity management rule, is we, as industry, and  
7 OPS as a regulatory body and the states are making a 20  
8 year commitment to fundamentally change the way we do  
9 business. And it is going to be huge. And one of the  
10 things we need to do is continue to update the cost  
11 benefit analysis and track the real cost. And that is  
12 a hard job. Marvin is going to need some help from OPS  
13 and from industry to really look at the costs.

14 One of the things that we, we, a big one that  
15 is coming up in about seven years is the overlap. And  
16 we estimate that, it is going to cost an extra 1.5  
17 billion dollars just to AGA companies. And we need to  
18 track the costs in the early years so that we can take  
19 the information back to Congress and say, it is not a  
20 good idea for these overlapping assessment to take more  
21 than 20 percent of the pipeline capacity out.

22 MS. KELLY: Thank you, Mr. Bennett.

23 MR. BENNETT: Thank you very much. And those  
24 are our comments.

25 MS. KELLY: Thank you.

1           Are there any other comments from the public?

2           Any other comments from Committee members?

3           DR. WILKIE: One quick comment. I would like  
4           to say that the best use of benefit cost analysis has,  
5           was in effect the data we got on the different  
6           alternatives, in which costs were presented to us.  
7           That was a case where the strong differences in costs  
8           based on the different alternatives that we could have  
9           taken, made a strong impression on me, as to what was  
10          appropriate and what was inappropriate. I think that  
11          is where benefit cost analysis is a very powerful  
12          instrument, as it is.

13          MS. KELLY: Any further comments? Did you  
14          have a comment?

15          MS. GERARD: As to next steps, you know, we  
16          are going to be making these changes, sending you a  
17          document for a vote. The vote on this is an essential  
18          step in producing the final rule. And, you know, I  
19          think we are going to be targeting about three weeks to  
20          get a document back to you, three, four weeks,  
21          something like that, so you can read it in preparation  
22          for a phone call, which we will have to put an  
23          announcement in the Federal Register almost  
24          immediately. So, I am focused on preparing for the  
25          next event right now.

1           We have talked about the difficulties, the  
2           cost benefit analysis will be reviewed by OMB and one  
3           of the most difficult steps that we will have to face,  
4           is getting OMB to clear it. And what they have asked  
5           in the past is why does the pipeline industry support  
6           this? It is clear that the pipeline industry supports  
7           it, but, why do they support it? And I would ask that  
8           in preparation for the next committee action, there  
9           were some statements as to why you, you know, supported  
10          it, but, if you could each think about why you support  
11          it and the non industry members of the Committee, it  
12          will be helpful, because it is the qualitative approach  
13          that will clear this, not a quantitative approach. And  
14          OMB accepts a qualitative approach if we can document  
15          it well enough. So, that is another way that you can  
16          help us with this.

17                 And going back to what Phil said about the  
18                 cost benefit framework we worked on years ago, it was  
19                 organized around a statement of the problem, you know,  
20                 which we haven't been talking about very much in this  
21                 meeting or the last several meetings. And what is the  
22                 problem we were trying to solve? It isn't just about  
23                 addressing a congressional mandate. We were trying to  
24                 improve safety. We are also trying to address a lack  
25                 of public confidence in management of the pipeline



1 infrastructure. And Terry alluded to that a few  
2 minutes ago. I personally think that the greatest  
3 benefit we have is going to go in that area. Your  
4 ability to be able to manage your business without  
5 inference. The, the bringing up of the incident where  
6 we have had to keep a pipeline at a pressure reduction  
7 for years as a result of local officials confidence  
8 problem, that the problem was addressed, being able to  
9 resolve that by having the better basis of  
10 understanding of the condition of the pipeline, that we  
11 will have and be able to explain a rational basis to  
12 the public for our decisions. These are part of the  
13 problem we are trying to solve. And for you to be able  
14 to express things in both terms, more safety, and the  
15 public confidence issue and how it affects your  
16 business and being able to build more pipelines for  
17 FERC to be able to meet the Administration's needs and  
18 throwing the pipeline infrastructure. These are  
19 problems we are solving with this program. And we need  
20 to find a way to get input from you to describe that in  
21 order for Marvin to complete the task, get through OMB  
22 and come out the other end.

23 So, we need your help.

24 MS. KELLY: Are you suggesting brief  
25 submissions regarding the, what we will call the non

1 financially quantifiable benefits of the rule from  
2 interested stakeholders including the public interest,  
3 the environmental industry and --

4 MS. GERARD: I was suggesting as part of the  
5 preparation for the meeting and the transcript that we  
6 will have of that call, if you could just say in the  
7 phone call what you think about the benefits as we are  
8 voting on it, that we would have a record that way.

9 MS. KELLY: Then I suggest that it would be  
10 helpful if each of the various stakeholders would  
11 either be present on the call or otherwise provide that  
12 kind of information for the record.

13 MS. KELLY: Mr. Fell?

14 MR. FELL: A couple of, first I want to  
15 apologize to Phil, I didn't, I should have known that  
16 you were, you were here. I wasn't thinking. He was a  
17 very active member on the benefit committee.

18 About the papers I handed out here, there are  
19 already in the docket except my joke, and I can find  
20 you a copy of my joke later. Someone was suppose to  
21 give it to you. But, these are all materials I have  
22 given, that I already have in the docket and I had a  
23 stack, so I just want to say everything I do is always  
24 available. We try to make everything transparent. It  
25 doesn't have to be good, but at least you can tell if

1 it is no good.

2 And then I just want to end with a final  
3 little sermon. Integrity management resembles to me a  
4 revolution in ways of thinking about safety. Now, it  
5 is not just you have a regulation, you follow it. Now,  
6 you have to do something about your pipeline. I  
7 remember George Tenely was sort of a predecessor of  
8 this, Rich Felter now, Stacey Gerard and this is a new  
9 way of thinking. We should do new ways of thinking  
10 about cost benefit. We should work together as we work  
11 together, and maintain the integrity of pipelines. So,  
12 being on the Economic staff, and I am going to finish  
13 this in a few weeks, I look for whatever help you give  
14 me. Thank you.

15 MS. KELLY: We look forward to your product.

16 The next item on the agenda is LNG, Mr. Buck  
17 Furrow.

18 (Pause.)

19 MS. KELLY: While we set up, if you would like  
20 to take a 10 minute break.

21 (Whereupon, a short recess was taken.)

22 MS. KELLY: Back on the record.

23 The next item is the presentation of LNG.

24 PRESENTATION OF BUCK FURROW:

25 MR. FURROW: It is still time to say good

1 morning. My name is Buck Furrow. I had something to do  
2 with the Notice of Proposed Rulemaking on Liquefied  
3 Natural Gas Facilities, clarifying and updating safety  
4 standards.

5 This originally started off as correction  
6 document, but, because of the time span between the  
7 document we were trying to correct and the present  
8 time, and because we were changing things that people  
9 may not have been aware of originally, we decided to  
10 put a Notice of Proposed Rule Making and invite further  
11 public participation.

12 The date there is the date the NPRM was  
13 published. Let me back up just a moment to ask all the  
14 Committee members, I assume have a copy of the NPRM,  
15 hopefully, also a copy of an outline that we provided,  
16 which gives you some help in following along with the  
17 various changes that we propose.

18 This slide called Highlights, is just a  
19 synopsis of what the NPRM covered. The primary, the  
20 primary item has to do with clarifying, clarifying that  
21 Part 193, the LNG standards, applies retroactively in  
22 the areas of operation, maintenance and fire  
23 protection. The present wording, one of the sections,  
24 I believe it was 2005 and I will get to that on a  
25 subsequent slide, indicates that it may not. So, if

1 everybody understands it.

2           The second item that we are trying to change  
3 here deals with revising incorrect cross references.  
4 In a final rule, that was published March 1, 2000,  
5 which dealt with largely incorporating by reference the  
6 1996 edition of 59(a) for design, construction, siting  
7 of LNG plants. And also fire protection. We failed to  
8 remove from Part 193 certain cross references to the  
9 fire protection subpart and perhaps at least one other  
10 section in Part 193 that were removed by that final  
11 rule. So, that is a big change and it has caused  
12 problems in enforcement. People trying to decide,  
13 well, what is this cross reference refer to.

14           The third item on this list clarified the  
15 meaning of fire drill, has to do with training  
16 requirements for operation and maintenance personnel.  
17 Those requirements deal with procedures which must  
18 include a fire drill. And there have been some  
19 occasions where people actually did not conduct what we  
20 might think of as an actual fire drill. They did a  
21 tabletop fire drill. And we felt that was not  
22 adequate. It doesn't meet a common understanding of  
23 the word fire drill. So, the proposal dealing with  
24 fire drills would add a little meat to the bare bones  
25 of the word fire drill.

1           The next item there require annual reviews of  
2 plans and procedures. Currently operators of LNG  
3 plants do not have to, under Part 193, review and  
4 update their plans and procedures. And through  
5 enforcement there have been occasions where some of the  
6 plans and procedures are a little stale, you might say.

7       So, this merely would bring Part 193 up to the same  
8 level of requirement that we have now for gas pipelines  
9 and hazardous liquid pipeline where operators have to  
10 annually update their plans and procedures.

11           The last item, which I am sure a number of  
12 people in the industry will be pleased with, and that  
13 is an update from the current reference of the 1996  
14 edition to the 2001 edition. And there are some, some  
15 changes in that, which I can get to. Okay.

16           Starting out, I will just run through these  
17 briefly. The applicability section, the column on the  
18 left is the present requirement. It is not really a  
19 requirement, it is, it is more of a statement in Part  
20 193 explaining what the regulations in Part 193 cover.

21           The column on the right is the way it is  
22 proposed to changed. The focus, the focus is that if  
23 you look on the left, you will see that, it refers to  
24 items on fire protection, operation and maintenance,  
25 changes in Part 193 dealing with those subjects would

1 not apply to any facilities, except those placed in  
2 service after March 31, 2000. It creates at least a  
3 strong inference that those items on fire protection,  
4 operation and maintenance might not apply to facilities  
5 that were in existence on that date. And we feel that  
6 is an incorrect inference.

7 The revised wording would make it clear that  
8 the facilities standards on LNG facilities dealing with  
9 siting, design, construction, do not apply to any  
10 existing facility at the time those standards take  
11 effect under Part 193. And that is consistent with a  
12 historical practice of applying Part 193 in a  
13 prospective way for standards dealing with siting,  
14 design and construction. Also historically, the  
15 standards on fire protection, operation, maintenance  
16 have applied to all LNG facilities regardless of the  
17 time of construction.

18 Okay. The next item deals with a correction.

19 This has to do with the incorrect cross references.  
20 And this, in Section 195, 193.2503, we are proposing to  
21 delete Paragraph H which refers to compliance with  
22 2805, which no longer exists. 2805 dealt with a fire  
23 prevention plan, which operators under Part 193 no  
24 longer have to provide. I couldn't find anything that  
25 was similar to 2805 in 59(a). So, that is the reason

1 for the deletion.

2 The next correction dealing with erroneous  
3 cross reference is 2507. And here because there is  
4 simply a reference to 2805, that no longer exists, we  
5 are proposing to delete that underlying text. So, that  
6 the regulation would, would read or the proposed  
7 regulation would read as I have it here in the left  
8 column, but without the underlying text.

9 2509, there again we are proposing to delete  
10 the underlying text.

11 If anybody has any questions, please feel  
12 free to raise them as we go along or I will just speed  
13 through these, because they are very similar.

14 Again, dealing with the incorrect cross  
15 reference, we are proposing to delete the underlying  
16 text, 2605, maintenance procedures.

17 2705, here rather than just delete underlying  
18 text, we propose to replace the underlying text with  
19 the wording you see on the right, construction  
20 installation and testing duties required by Part 193.  
21 And the reason for that is that 2307, before it was  
22 changed required that operators conduct inspections in  
23 those areas. And the proposed text is really just a  
24 shorthand way of referring to the duties under what  
25 previously existed in 2307.



1                   2717, there are a number of changes here.  
2           Mostly deleting underlying text in relation to  
3           incorrect cross references to sections that no longer  
4           exist.

5                   And the last one, Item 4, the underlying text  
6           would be replaced with a reference to the only section  
7           we have now, subpart I, dealing with fire protection,  
8           which is 2801. 2801 incorporates by reference FPA  
9           59(a). The provisions in 59(a) deal with, I believe  
10          the reference is fire prevention and fire control.

11                   Training and fire protection, this has to do  
12          with the plant drills that I was speaking about  
13          earlier. As you can see in the column on the left,  
14          operators have to have procedures for training their  
15          operation and maintenance personnel and trained in  
16          accordance with, sorry, I have to back up here. I am  
17          not making sense out of it.

18                   (Pause.)

19                   MR. FURROW: Well, I think the reason I can't  
20          make sense out of it, is the entire section is not  
21          displayed there. I will just, there was only room to  
22          show the part that is being changed. I think it is  
23          sufficient to say that operators have to as part of  
24          their training for operation and maintenance personnel,  
25          conduct fire drills. So, what we are proposing there

1 is paragraphs, to add a new Paragraph C that would make  
2 it clear that a fire drill has to include some actual  
3 evacuation of buildings and personnel performing fire  
4 control duties. I think that is probably consistent  
5 with what is normally done in a fire drill.

6 MR. ANDREWS: May I ask a question?

7 MR. FURROW: Sure.

8 MR. ANDREWS: (Inaudible) on 2717 --

9 MR. FURROW: If you go back to the slide, I  
10 would be in good shape.

11 (Pause.)

12 MR. FURROW: Leaving in A-1, yes, the only,  
13 there is no change to Paragraph A in 2717.

14 MR. ANDREWS: Okay. It has got a reference to  
15 2805(b).

16 MR. FURROW: Well, I believe that may be in an  
17 earlier slide. This is -- 2717(a)(1), would  
18 essentially be deleted.

19 MR. ANDREWS: Okay. Thank you.

20 MR. FURROW: Yes.

21 But, as far as fire drills, there is no  
22 change in relation to the fire drill proposal.

23 Okay. The next one, 2017, this deals with the  
24 change I mentioned on annual review of plans and  
25 procedures. There are several sections in Part 193

1 that call for operators to have either plans or  
2 procedures to do something, like operating procedures,  
3 maintenance procedures, security procedures. I think  
4 in 59(a), the reference to 59(a) for fire protection  
5 includes some type of procedures as well. So, this  
6 would touch on every place that operator is suppose to  
7 have plans and procedures. Keep them up to date at  
8 least on an annual basis.

9 Question?

10 MR. THOMAS: Yeah, I don't have any problem  
11 with the annual review, I might with the word "update",  
12 it presumes that a change must be made each time it is  
13 reviewed. To me the perspective item would be rather a  
14 review had been conducted. It could be like a  
15 documentary of the review. In other words, it is not  
16 be looking for changes, we ought to be looking for that  
17 a review was made and a decision was made whether to  
18 change or not change. So, I am just kind of quibbling  
19 a bit of over what does update mean? If update can  
20 mean confirming what I have, then I am okay with that.

21 MR. FURROW: You mean change only if  
22 necessary.

23 MR. THOMAS: Right. Yes.

24 MR. FURROW: That sounds like a good comment  
25 to me.

1           I think, I am not sure, there is at least a  
2 couple more, a couple more slides.

3           (Pause.)

4           MR. FURROW: No, this is the last slide.

5           And this slide merely shows how we are  
6 changing the listing in Appendix A of 59(a) from the  
7 1996 edition to the 2001 edition.

8           And I did want to mention the notice, the  
9 notice lists some, some of the features of the 2001.  
10 And the primary one, I believe in the, of the features  
11 and I am sorry I don't have a copy of the 2001. I am  
12 hoping that some of you here are much more familiar  
13 with it than I am. But, I had asked our representative  
14 of the 59(a) committee, Mike is running, to give me a  
15 brief highlight of what the changes were. And the  
16 primary one has to do with the design basis for the  
17 design criteria. That has been a change there to using  
18 the concept of maximum credible earthquake. And I  
19 compared that before coming, to the 1996 edition and  
20 there are different earthquake, they don't call it a  
21 maximum credible earthquake there. I think it is  
22 called a safe shutdown earthquake. Or maybe some other  
23 type of earthquake. But, they all involve probable  
24 determinations, where the data is available, looking  
25 back in the history of the movement of ground, perhaps

1 as far as 10,000 years. Now, I don't know if the  
2 design basis earthquake goes that far or not. But,  
3 that seemed to be the most significant change.

4 Some of these other changes that are listed  
5 here and were listed in the NPRM, let me say, don't  
6 seem to have much bearing. And one of them, for  
7 example, allows the use of new vapor dispersement model  
8 in 59(a), but that model is already allowed under Part  
9 193. It increases the frequency of inspecting and  
10 testing LNG relief valves. We don't incorporate any  
11 part of Part 59(a) for operation or maintenance. And  
12 that is sounds like an operation or a maintenance  
13 requirement to me. But, I don't think that would have  
14 any bearing on or proposing to adopt the 2001.

15 Enhanced Chapter 10 requirements for plans  
16 for less than 300 gallons. And we apparently do not  
17 incorporate Chapter 10 at present.

18 Other changes to operation and maintenance  
19 requirements, as I said, we don't incorporate 59(a) for  
20 operation and maintenance at present.

21 Adds an appendix that refers actually to Part  
22 193, we are doing some cross referencing now. And that  
23 is good. Part 193 on training and security.

24 So, it looks, if there is any concern, it  
25 looks to me like the only one would have to do with the

1 use of a design basis for sizing criteria.

2 MS. KELLY: I would like to raise one question  
3 and maybe Mr. Lemoff can help me properly phrase the  
4 question. My pipeline safety official reviewed this,  
5 and suggested that perhaps this change that is being  
6 made to Appendix A, that the parathetical might more  
7 accurately reflect the intent of the rule if you add  
8 the 2001 edition except for Chapter 10. And that was  
9 to make it clear that as indicated in the preamble,  
10 that Chapter 10 did not apply to this provision, Mr.  
11 Lemoff.

12 MR. LEMOFF: And perhaps Mike would be a  
13 better person, but, as I understand it, that is already  
14 clearly stated in the current Part 193. And not  
15 affected by this change, however, if added, it would be  
16 the saying the same things in two places, which is --

17 MR. ISRANI: If I could add to that. The  
18 change would be that we replaced with 2001 edition,  
19 except Chapter 10, as operation and maintenance  
20 requirements, which are not being added to this current  
21 rulemaking. So, operation and maintenance requirements  
22 were new. They were added in 2001 edition. So, we are  
23 not adding those by this proposed rule. And Chapter  
24 10, which is already existing, we do not still want to  
25 add that in this. There were certain issues which we

1 were not satisfied with.

2 MR. FURROW: I would like to ask Mr. Lemoff,  
3 if he could clarify what you meant by Part 193 already  
4 excludes Chapter 10. Did I understand you correctly  
5 there and where in Part 193?

6 MR. LEMOFF: Well, Mike is more familiar with  
7 193 than I am, but, when it was adopted clearly Chapter  
8 10 being a totally new concept, in terms of different  
9 types of tanks was not accepted. And we just, okay, we  
10 will come back in the future.

11 MR. FURROW: Yes, it is just that in, in my  
12 reading of it, the references to 59(a) are usually a  
13 general reference. They are not specific to particular  
14 sections or chapters. For example, it says in the fire  
15 protection provision, follow the fire prevention and  
16 fire control provisions of 59(a). And you might find  
17 those anywhere. It is not all that clear. So, I was  
18 just wondering if there is something in Part 193 that  
19 says something in particular with respect to small LNG  
20 tanks such as you are talking about here, what, 300,000  
21 gallons or less.

22 MR. ISRANI: Perhaps I could clarify that.  
23 When we adopted 59(a) '96 edition, we specifically  
24 called for what sections are being replaced, you know,  
25 siting, design, construction, equipment. And Chapter

1 10 was referencing to small, which we did not mention  
2 throughout. So, there is no specific reference to  
3 Chapter 10, has not been adopted, but, we did not  
4 include that. We cited what sections are being  
5 adopted.

6 MS. KELLY: All right. Any other comments or  
7 questions? Mr. Wunderlin?

8 MR. WUNDERLIN: Yes. In preparation for this  
9 meeting, the American Gas Association solicited its  
10 member, those that had LNG plants, for comment.  
11 And -- Gas was one of those companies. We provided  
12 comments to American Gas Association and I would like  
13 to have Paul Gustilo give the Committee a summary of  
14 what those comments were, if that is appropriate now.

15 MS. KELLY: Yes.

16 MR. GUSTILO: Paul Gustilo, AGA. I have a  
17 procedural question first, though.

18 Is the comment, the comment period does not  
19 close until June 30 of this year, which is one month  
20 from today, is the Committee voting to approve this  
21 proposed rule even though, even though the comments are  
22 not in the docket yet?

23 MS. GERARD: That is what we were suggesting.

24 MR. GUSTILO: Okay. Well, okay, let me tell  
25 you the key, we are just putting our comments together,



1 so we don't have our full comments. Statistics, there  
2 are 93 LNG plants roughly that submit or pay user fees  
3 to OPS, about 79 of them are LDCs and 14 of them are  
4 pipeline companies.

5 Initially, the initial review, the major  
6 concern is the retroactive, making Chapter 9 of 59(a),  
7 2001, the fire protection, a retroactive to all  
8 existing plants. Now, in the 2000 revision of the  
9 rule, you didn't adopt that and that was what the  
10 industry supported. They did not support adoption of  
11 fire protection to existing plants. So, now with this  
12 new proposed rule you are proposing to make Chapter 9  
13 retroactive to all existing plants. And that could  
14 have some costs impact. Now we have not done a through  
15 review of the comparison, but initial review, Chapter 9  
16 references many other chapters of the 59(a) standard.  
17 So, there may be some conflicts in that. That is one.

18 The other one is the review of procedures. I  
19 am not sure how big an issue, of an issue is right now,  
20 but, you do, you are requiring annual reviews, some of  
21 the operators are saying maybe it is better to do that  
22 every two years rather than annual, because every two  
23 years plant operators are suppose to go through  
24 training. And part of that training is to review the  
25 procedures. So, it may be consistent there. And that

1 will be reflected in our comments.

2 The other, the other thing that was mentioned  
3 is the fire drills. The proposed rule specifically  
4 says a fire drill should include evacuation of a  
5 building and some members have some concern about  
6 mandating an evacuation of a building.

7 So, those are the three general areas that we  
8 have come up with so far. And like I said, we still  
9 felt that we had 30 more days to provide you  
10 substantial comments to the proposed rule. That is all  
11 I have.

12 MS. GERARD: When we, we scheduled this  
13 meeting dominated by our statutory deadlines on Gas M,  
14 and we didn't think that we, since we have already had  
15 two meetings within the last few months, we didn't  
16 think we would be having another meeting of the  
17 Committee, and we didn't want to hold up the update on  
18 this LNG, you know, due to a lot of applications and  
19 issues coming up. But, since we now have to have  
20 another, at least a phone meeting of the Committee, we  
21 can, you know, add this to the agenda for that.

22 MR. GUSTILO: Okay. Would that be before June  
23 30, most likely?

24 MS. GERARD: It would probably be in early  
25 July. We probably, you know, we have several things

1 that we need to interact with the Committee that deal  
2 with the statutory deadline of December, including the  
3 R&D plan. And so, if we don't take up and get these  
4 actions done no later than the second week in July, I  
5 don't think we will have enough time to make, complete  
6 all the other clearance steps.

7 MR. GUSTILO: Okay. Thank you.

8 MS. KELLY: Any further comments? Yes, Mr.  
9 Lemoff.

10 MR. LEMOFF: Just on, speaking for myself,  
11 personally and for NFPA, I wanted to congratulate, to  
12 positively comment on this action, because it keeping  
13 the reference current, with the current American  
14 National Standard, which complies with, I believe it is  
15 Public Law 106 and I just wanted to go on record as  
16 that.

17 MS. KELLY: Thank you.

18 Is the Committee comfortable with and --

19 MR. FURROW: I have a few comments. Yes, I  
20 just wanted to comment on Paul's statement about our  
21 proposing to apply the fire protection standards  
22 retroactively. Actually, we have considered them to  
23 apply retroactively since the time Part 193 was adopted  
24 and we look at the wording change that was put out in  
25 Part 193 as an error. So, it is not exactly correct

1 to say that for the first time we are proposing to  
2 apply fire protection requirements retroactively. If  
3 you take a look at the statutory provisions that  
4 authorize us to write fire protection requirements, it  
5 is pretty clear that Congress wants the fire protection  
6 to be applied retroactively.

7 The other point is that in the reference to  
8 59(a) for fire protection, we don't reference Section 9  
9 or, yeah, Section 9 of 59(a). It is a broader  
10 reference to fire prevention and fire control  
11 requirements in 59(a), wherever they may be, although  
12 they are generally located in Section 9, since that is  
13 labeled fire protection. But, one thing to keep in  
14 mind there, is that for some reason, the fire  
15 protection section of 59(a) includes a provision on  
16 emergency shutdown. Now emergency shutdown is already,  
17 has long been considered in Part 193 to be an equipment  
18 or a design feature, not a fire protection feature. So  
19 that might be a reason for some people to be confused  
20 about exactly what fire protection covers. And if  
21 anything, I think it would help if we were to clarify  
22 exactly what fire prevention and fire control refers to  
23 in the reference to 59(a), to avoid some of these  
24 potential hardships involving retroactive applications.  
25 For example, if an existing plant doesn't have a, it

1 has been grandfathered and does not have an emergency  
2 shutdown facility, we are not contemplating requiring  
3 that they have one, really because Section 9 and 59(a)  
4 says they have to have one.

5 The other thing is, and the other reason I  
6 would like to see the Committee vote on this, today, is  
7 that there has been quite a need out there. I have  
8 had several calls from designers around the country  
9 asking how quickly we can adopt the 2001 edition,  
10 because they are in the process now of designing LNG  
11 plants, and it is to their benefit to follow the 2001  
12 edition, not the 1996 edition. Not only is it out of  
13 print, but, there is going to be some, as I mentioned  
14 earlier, changes that they could take advantage of in  
15 the seismic area, and it only leads to confusion if the  
16 industry is left, say on the lurch, not knowing which  
17 way to go. So, I think it would be in the interest of  
18 the industry and ourselves, if the Committee were to  
19 decide to vote on this, with the understanding that any  
20 of these changes that we have heard that may be  
21 necessary, would be taken care of, through a later,  
22 later review of the comments.

23 MS. GERARD: Yes, I was going to say that we  
24 have heard an awful lot of organizations about the need  
25 to update these. We have an awful lot of activities

1 on our plate right now, 44 items from the new law, 20  
2 some from past laws, and the fact that we move this up  
3 on our regulatory schedule, that brought it to  
4 committee, has to do with the amount of activity that  
5 FERC has spoken to us about, the fact that MERADD, in  
6 the Department now has the responsibility for  
7 permitting, I think it is Port Pelican. And we, you  
8 know, we really wanted to make these standards as good  
9 as they could be because of a lot of activity. So,  
10 that is why and we really didn't think it was all that  
11 much of a difficult process for the Committee to  
12 consider these, these items that Buck had put up there.

13 So, I mean, one option would be to consider  
14 that we will make changes consistent with the comments  
15 on the docket, but, that the general concept is  
16 something that the Committee could support.

17 MS. KELLY: Yes, if you would identify  
18 yourself for the record, please.

19 MS. OUTTRIM: Yes, Ma'am, thank you. Pat  
20 Outtrim, I am with PTL Associates. We are an  
21 engineering consulting for the LNG industry and have  
22 been involved in the NFPA 59(a) committee and other  
23 standards code committees.

24 We are hearing from industry on a daily basis  
25 and helping in the design of these facilities. It is

1 extremely difficult to try to use three different  
2 codes, both the '96 version and the 2001 version of  
3 59(a) and trying to figure out which way you need to  
4 go, especially in the seismic area because there have  
5 been significant changes in that particular section.

6 Those changes bring the 59(a) code up to what  
7 is currently being done in building codes around the  
8 United States and around the world. So, it is a very  
9 positive change. And it is one that the industry, the  
10 LNG industry would support. It is not, it doesn't have  
11 any negative impacts on the industry, but actually  
12 augments public safety because it does bring it in line  
13 with current science and what is being utilized.

14 So, I would urge the Committee, if at all  
15 possible, to at least move on that portion. I am not  
16 sure if that is possible, but these editions need to be  
17 addressed as soon as possible because as you know there  
18 is a lot of facilities that are in the design phase  
19 right now, expect to have several more on the FERC  
20 docket before the end of the year. So, it is very  
21 timely to do it now as opposed to later, if at all  
22 possible. Thank you.

23 MS. KELLY: Thank you.

24 Any other comments from the Committee? Mr.  
25 Lemoff?

1           MR. LEMOFF: Yes, on the seismic issue, I  
2 would just like to make the Committee aware that what  
3 the 59(a) has done in the 2001 edition, is adopted the  
4 requirements of the FEMA's National -- National  
5 Earthquake Hazard Reduction Program. This is  
6 consistent with the state of the art of seismic  
7 engineering and is entirely consistent and is basically  
8 staying current with, as I said, building codes are  
9 using NEHRP, so we are just saying current with  
10 everything and it makes it a lot easier for everybody.

11           MR. GUSTILO: Paul Gustilo again. I just want  
12 to, I didn't mention it initially, but there is no  
13 argument that the design siting, construction portions  
14 of the 59(a), 2001 edition, is a benefit to the  
15 industry. So, there is no question there. I mean, the  
16 incorporation of that right away is a positive thing.

17           The concern I mentioned was the fire  
18 protection, which has some retroactive issues, that is  
19 an area where we have concern. And those two other  
20 areas. But, on the design, siting, construction, there  
21 is no, is no debate on that.

22           MS. GERARD: Well, could we ask the Committee  
23 then to vote to support this action with the caveat  
24 that we consider strongly the AGA's comments that are  
25 going on the docket prior to our finalizing the rule?



1 MS. KELLY: Are you asking the Committee or  
2 are you asking the gentleman who spoke?

3 MS. GERARD: I was asking the Committee. I  
4 would ask the Committee to consider making a motion to  
5 that effect, given that we really are under tremendous  
6 pressure to move on this. And when we have our next  
7 vote, meeting, we will have a lot of things to be  
8 discussing at that time, and it really can't be for  
9 another six weeks.

10 MS. KELLY: Mr. Wunderlin?

11 MR. WUNDERLIN: I will make a motion to that  
12 effect, Stacey, to go ahead with the vote with the  
13 understanding that OPS will give serious consideration  
14 to the comments that were made by AGA.

15 MS. KELLY: Mr. Leiss?

16 MR. LEISS: I second.

17 MS. KELLY: Is there any further discussion?

18 MR. COMSTOCK: Should we vote, if we go ahead  
19 and vote on this today, what mechanism would we have in  
20 place should something against what we believe is the  
21 correct thing to rescind our vote at that point? How  
22 would, how would that procedure work?

23 MS. GERARD: Barbara, would one option be that  
24 we would put a question in the final rule that says  
25 have we adequately, you know, give an additional 30

1 days for comment on that one portion of the fire, the  
2 fire issue, just to, like we did with Section H in  
3 Liquid M, where you had another 30 days to remain open?

4 MS. BETSOCK: No, the question as I understand  
5 it, is whether the Committee could withdraw its vote.  
6 That isn't really an option. You certainly could  
7 suggest revisiting it at the next meeting and that  
8 certainly is an option. That is not rescind of the  
9 vote, that is a request to revisit. But, given the  
10 close of the comment period, which is June 30, we  
11 won't, we won't have even a draft probably by the next  
12 meeting. So, it would probably be the meeting after  
13 that. But, certainly at the next meeting, we could  
14 probably tell you what we are likely to be doing.

15 MS. KELLY: Mr. Drake?

16 MR. DRAKE: This Committee is scheduled to  
17 meet, I think within a month on a telephone call to  
18 review the cost benefit statement for Integrity  
19 Management Rule, is it not?

20 MS. KELLY: Probably six weeks.

21 MR. DRAKE: The commenting period for the rule  
22 we are currently talking about, won't even be closed by  
23 then. Is there, would it possibly be more constructive  
24 to charge the AGA and the DOT to try to work a  
25 resolution to mitigate or minimize the impact on that

1 issue, and present a, some sort of proposal at the next  
2 meeting and we can vote on it, close it completely at  
3 the next meeting with no caveats and vote on it --

4 MS. BETSOCK: Andy, that isn't really  
5 acceptable. We are in an open rulemaking now and it  
6 does not allow us to negotiate with potential  
7 commentators or --

8 MR. DRAKE: Then I could make --

9 MS. KELLY: Let me ask, I am sorry, but, the  
10 question I have then, what is it that the Committee is  
11 voting on? Yes, but you are saying this isn't the,  
12 this is not actually the proposal that OPS will have,  
13 because OPS has not considered the public comments.

14 MR. FURROW: I presented the proposal, the  
15 proposal may change --

16 MS. GERARD: The Committee always votes --

17 MR. FURROW: -- the final rule.

18 MS. GERARD: The Committee always votes on a  
19 proposal. They don't vote on the final rule. They  
20 make recommendations that we consider and they can vote  
21 on the proposal with comments that we will pick up.  
22 And the reason I am asking for the vote, for the vote,  
23 is because I know Buck is working very hard on it. And  
24 if he knows that, you know, he has got a vote, you  
25 know, with the recommendation that we provide strong

1        comments, strong consideration, the AGA comments, it  
2        sort of spurs him into action to, you know, there is  
3        certain work he can be doing to expedite getting this  
4        thing complete.

5                MS. KELLY: You had another comment, Mr.  
6        Drake?

7                MR. DRAKE: I guess, it seems kind of  
8        premature for us to try to vote on it when we can't see  
9        this issue. I appreciate your need to move forward.

10               MS. GERARD: You mean, you can't see all the  
11        comments?

12               MR. DRAKE: We can't see what the concern is  
13        and how it is going to be resolved. We are voting very  
14        open ended, which I don't think is helpful to either  
15        party. I guess, we are meeting as a group on the  
16        telephone. This meeting actually is a public meeting,  
17        is it not? So, we are not violating exparte in talking  
18        about the rule or comments here.

19               MS. KELLY: No, absolutely not. In the  
20        meetings we can discuss, the Committee can discuss  
21        these comments.

22               MR. DRAKE: And we wouldn't be --

23               MS. KELLY: On the proposal.

24               MR. DRAKE: Right. And we wouldn't be  
25        violating exparte at the next meeting, either. So,

1 sitting at this meeting, we just said, it is important  
2 for AGA or the industry group to articulate the  
3 specifics of their concern and perhaps Buck can come at  
4 the next meeting with proposed language. That doesn't,  
5 I don't know how that violates exparte because we are  
6 in the public meeting. It is just like we done on the  
7 Integrity Rule for the last three years.

8 MS. GERARD: Well, Buck can't come with  
9 proposed language. The Committee would have to make a  
10 recommendation, because you are voting our proposal and  
11 how you can comment on how you would change it. But,  
12 you are always voting on an NPRM.

13 MR. DRAKE: I understand that. Then perhaps  
14 we should follow the protocols that we have set for  
15 ourselves on the Integrity Rule. And that is we  
16 suspend, we do not vote on this issue, but what we do  
17 is we table it until the next meeting, when an  
18 amendment can be brought to this group and this group  
19 can decide whether to adopt Buck's proposal as written  
20 to amend it as proposed by somebody, I don't care who.  
21 The DOT throughout this process we have been talking  
22 about on Integrity Management has brought all kinds of  
23 amendments to the, to the proposed NPRM.

24 MS. GERARD: No, we just told you what we are  
25 considering, which is kind of unusual for us to go to

1 the extent we did to tell you how much we were  
2 considering on so many issues.

3 MR. DRAKE: Your current position definition  
4 wasn't really a change, then, I guess. I don't, I am  
5 missing the nuance there, but, somebody could come with  
6 an amendment at the next meeting. And I think that  
7 would be much more constructive for the Committee,  
8 because you are not voting blind. At least you see  
9 what the recommendation is. It is more specific than  
10 just go out there and try to deal with it, because I  
11 think that is a little bit too open ended, but --

12 MS. KELLY: Mr. Lemoff, you had a comment?

13 MR. LEMOFF: I was just going to say that  
14 since the comments seem to all, all be directed to  
15 operation and maintenance, perhaps we can split the  
16 vote and take a partial vote now on the design and  
17 construction portions, so that it clear, that has been  
18 clear to everyone and then leave the other until the  
19 next meeting, it would certainly reduce the potential  
20 of what we are going to discuss next time. And there,  
21 as Paul has indicated, there may or may not be  
22 comments, which is fine, and I think if we can get  
23 these on the record in time for the next meeting, that  
24 would, I think be, would work.

25 MS. KELLY: Dr. Wilkie, do you accept that as

1 an amendment to your motion? I am sorry, Mr.  
2 Wunderlin?

3 MR. WUNDERLIN: Yes.

4 MS. KELLY: Is that satisfactory? Is there  
5 any further comment?

6 MR. FURROW: I can only say I don't see how a  
7 partial vote would facilitate our working toward a  
8 final rule, unless we were to put out a partial final  
9 rule and we don't have that on our agenda right now.

10 MR. DRAKE: This is, I think this is just for  
11 the purposes of clarifying what we are going to do at  
12 the next meeting. The comment period is still open. I  
13 mean --

14 MS. KELLY: Yes, we have a comment here.

15 MS. RICHARDSON: My name is Julia Richardson,  
16 I am with the Law Firm of Banest, Feldman, we represent  
17 a number of the companies that are attempting to design  
18 new facilities at this time. And one of the things that  
19 I think we should all recognize is this is a very  
20 sensitive period of time this Summer of 2003, because  
21 the majority of the new facilities to be built in this  
22 country are being designed right now. And if we don't  
23 get some sort of clarity in these rules, such that the  
24 designers can go ahead with those plans, we could put  
25 ourselves back by six months, maybe even more, maybe a

1 year in development of these facilities.

2 So, I like this idea of having one part, the  
3 non controversial part of the rule, proposal, adopted  
4 today and we would like to endorse that. Thank you.

5 MS. GERARD: Well, then I would like to say in  
6 response to that, that is consistent with the amount of  
7 activity and pressure we have seen on this. And while  
8 it is unusual to do this, we have been doing a lot of  
9 unusual things lately. I would ask to split the vote,  
10 so that the record will reflect what the Committee's  
11 action has been taken on the large part of the area, in  
12 order to give guidance to all those people who are  
13 working on these right now. I think it supports what  
14 the President is trying to do and what the Secretary of  
15 Energy is trying to do to move on the development of  
16 these facilities.

17 MS. KELLY: With it being clear that the  
18 balance would be taken up at the telephone meeting  
19 scheduled in the next several weeks.

20 MR. BOSS: Just a quick note. I mean, what  
21 this is doing is, there is not a new rule out there, it  
22 is reducing the risk that the rule may not exist the  
23 way they think it is. But, this is making a rule today.  
24 It still has to be done. But, it reducing the risk  
25 that something may be different. I just want to be



1       sure that is clear to everybody.

2                   MS. GERARD: What we are doing is having a  
3 public record that everybody can see of what the advice  
4 of this Committee is, which we either take or have a  
5 really good reason not to take. And so, what the  
6 Committee advises us is a very, very, very strong  
7 likelihood of what the final rule is going to say.

8                   MS. KELLY: Any further discussion? All in  
9 favor?

10                   (Whereupon, a chorus of ayes was heard.)

11                   MS. KELLY: Any opposed? Any extensions?  
12 Mr. Lemoff has sustained.

13                   MS. GERARD: Because you have to, because it  
14 is your standard, okay.

15                   MR. LEMOFF: That is correct.

16                   MS. KELLY: Yes, thank you.

17                   And Mr. Furrow, thank you very much.

18                   MR. FURROW: Okay.

19                   MS. KELLY: For the presentation and hopefully  
20 we have given you some guidance so that you can proceed  
21 and we will look on the next piece of it at our next  
22 meeting.

23                   And the last item is a presentation regarding  
24 Excess Flow Valve Cost Benefit Analysis. And I might  
25 indicate that this will cover everything on the agenda

1       except Mapping. Which will not be dealt with today.

2               MR. HURIAUX: This is the last salami we are  
3 going to slice today for sure.

4               (Pause.)

5               PRESENTATION BY RICHARD HURIAUX:

6               MR. HURIAUX: I am Richard Hurliaux, Office of  
7 Pipeline Safety.

8               As many of you know the subject of excess  
9 flow values and their application in gas service lines  
10 has been on the agenda of NTSB and OPS on and off for  
11 many, many years. Most recently, the NTSB after an  
12 investigation of an accident, did a fresh  
13 recommendation on the subject of EFVs, let me just read  
14 it.

15               "Require that excess flow valves be installed  
16 in all new and renewed gas service lines, regardless of  
17 the customer's classification when the operating  
18 conditions are compatible with readily available  
19 valves."

20               The short form of that is the NTSB is  
21 recommending that all residential and commercial  
22 service lines for which a valve is available, have the  
23 valve installed at the first construction opportunity.

24               In response to this recommendation, we  
25 commissioned a study by the Volpe Center, on the cost

1 benefit of implementing the whole recommendation. We  
2 have received many comments on this study. Some folks  
3 pointed out some alternative approaches, some pointed  
4 out mathematical errors. Unfortunately, the person who  
5 is primarily responsible for the study, Paul Zebe, of  
6 the Volpe Center is sick and unable to be here today.  
7 But, I wanted to brief you anyway on where we are and  
8 where we are likely to be heading to the extent we know  
9 it at this time.

10 And we do have an excess flow valve  
11 regulation most of you are familiar, are familiar with  
12 at 192.381 and 383. Just to give you the two sentence  
13 summary of each one of those.

14 Three, eighty one requires a performance  
15 standard. For the first time set a publicly available  
16 performance standard for excess flow valves.

17 Three, eighty three requires every company to  
18 inform customers who are about to receive a new service  
19 line or a replaced a renewed service line, that they  
20 have an option to pay for the installation of an EFV if  
21 they choose.

22 Now, of course, notification isn't required  
23 if the company decides on its own to go ahead and  
24 install excess flow valves, as many have.

25 Now, that was about six to seven years ago

1 that we were drafting those, those two pieces of the  
2 rule. In 1998, we adopted them as final rules. Since  
3 then quite a lot of has changed. Of course, we have  
4 had additional NTSB investigations and recommendations.

5 Technology and cost of the EFVs have clearly improved  
6 in this time. Also, most distribution companies, let  
7 me rephrase that, most new and renewed service lines  
8 are getting a EFV installed by their, by their operator  
9 at this time. And perhaps most importantly, from my  
10 point of view, we now have recognized national  
11 standards on EFVs. We have ASTM F 2138, the standard  
12 specification for EFVs in natural gas service. And we  
13 have ASTM F 1802, test method for performance testing of  
14 the EFVs.

15 So, we have a more solid technological base  
16 than we had five or more years ago.

17 Now, at this time I want to make clear, OPS  
18 does not have a policy proposal or a regulatory  
19 proposal on the table. So, we are getting ahead of the  
20 curve a little bit here from the regulatory point of  
21 view. But, we wanted to make sure that this Committee  
22 had the opportunity to have as much input as possible  
23 and we will certainly be bringing this up at the next  
24 meeting as well. This is an opportunity for the  
25 comment, or I should say we published the draft cost

1 benefit study and I have received many comments on it.

2 I guess I did say that. We are looking forward to  
3 receiving more comments and comments from this  
4 Committee, not just at this meeting, but at future  
5 meetings. And this all will help inform our final  
6 policy decision on how we respond to the NTSB  
7 recommendation, and the changes that have taken place  
8 in the environment surrounding the EFVs over the last  
9 half dozen years.

10 I would like at this time to introduce Marvin  
11 Fell, who will give a briefing on the kinds of comments  
12 we have been getting on the draft cost benefit study.  
13 And the kinds of questions we still have. And we hope  
14 at the next meeting, to perhaps not at the meeting in  
15 June by phone, but, at the next regular meeting, to  
16 have Paul Zebe from Volpe to be here to provide it in  
17 more details.

18 Thank you.

19 PRESENTATION BY MARVIN FELL:

20 MR. FELL: Good afternoon.

21 We had quite a few comments, somewhere in the  
22 high 30s. And there was a various, several different  
23 groups and I will try to characterize the group  
24 manufacturers of excess flow valves, fire chiefs, and a  
25 lot of, two association, two trade associations, Merck

1 Public Gas and Merck Gas Association, and several  
2 operators. And the range of comments were comments  
3 criticizing our, we asked several questions  
4 particularly about whether our assumptions were well  
5 founded, whether a methodology was correct, etc. Oh,  
6 additional comments were from people who had worked  
7 also for the public and NTSB. And the range of  
8 comments went from very good, we like what you are  
9 doing. Your assumptions are correct. Your assumptions  
10 are incorrect. You haven't proven your case. And your  
11 methodology, and then there were specific questions  
12 about the methodology we used, about normalizing the  
13 data. And whether we used the right assumptions on, on  
14 accidents.

15 So, it ran the gambit. And I could answer  
16 more specific questions of it. If I would characterize  
17 it, some of the public members were in favor and the  
18 manufacturers of excess flow valves, naturally were in  
19 favor of it. And the operators felt that the cost  
20 benefit was done incorrectly, wasn't there. And you  
21 should not mandate the use of excess flow valves. I  
22 would say that. And we are examining it and I will, I  
23 will tell you candidly that I spoke with Paul Zebe a  
24 couple of days ago, and one of the, there were some  
25 flaws in our methodology. And we will go back and look

1 at them, so. We said the ratio cost benefit just on  
2 the published information was five to one. That looks  
3 like that is not correct on them based on some of the  
4 calculations. And I like I said, other forums or  
5 further. He was more prepared to speak to that issue.

6 But, I will say this is a draft report, as Richard  
7 Huriaux said, and we are still undergoing changes. We  
8 appreciate your comments. And we will take any other  
9 further comments.

10 MR. HURIAUX: The fact we have labeled it a  
11 draft report, does not necessarily imply that there  
12 were, that there will ever be a final report. We have  
13 not adopted this as a policy position, because we don't  
14 have a proposal on the table. However, we are hoping  
15 that this exercise will improve the cost benefit, if we  
16 do make a proposal, which I think we will be making  
17 some sort of proposal, but, if we do make a proposal,  
18 this will help give us a leg up. It will help inform  
19 us on some of the problems with cost benefit and some  
20 of the non quantifiable benefits in costs as well.

21 So, I think this report, ensuing the number  
22 of comments we got and we hope to get, has really  
23 served its purpose by stimulating the discussion and  
24 putting excess flow valves in their application back on  
25 the table for discussion by everyone involved.

1                   MS. KELLY: Any questions, comments by members  
2 of the Committee? Yes, Mr. Comstock?

3                   MR. COMSTOCK: In preparation for this  
4 meeting, American Public Gas Association did a review  
5 of the draft study and Mr. John Erickson is here from  
6 the APGA to give us a brief synopsis of what their  
7 review of the study found. And I would like to ask him  
8 to come forward and give us a brief statement.

9                   MS. KELLY: All right, first we will hear from  
10 Mr. Wunderlin and then I will ask him to come forward.

11                   MR. WUNDERLIN: I am interested in hearing Mr.  
12 Erickson, too, but, some comments. And I haven't heard  
13 Mr. Erickson, but, we did comment on the economics that  
14 we think that there could be some improvement in that  
15 and there should be some improvement in the cost  
16 benefit. In fact, Marvin has been in contact with me  
17 separately and asked for some specific cost benefit  
18 from our company, as how we go through our decision  
19 making and how we have done our cost benefit  
20 internally. And I have provided those to Marvin.

21                   One thing that as I read the draft, and I am  
22 not sure where this exactly fits, but, I saw in the  
23 proposal that in addition to residential, there is a  
24 proposal for commercial and industrial customers, who  
25 also would be retrofitted with excess flow valves. I



1 would say that that completely changes the situation in  
2 our mind, once you start getting, say large commercial  
3 or industrial manufacturers, etc., you are talking  
4 about the risk of shutting down large plants, with  
5 large manufacturing, potentially hundreds of people  
6 going home, affecting some large operations and  
7 millions of dollars worth of product. I know there is  
8 a risk as far as gas leaking and causing a problem, but  
9 there is also if there is a false operation of an  
10 excess flow valve, causing large problems with  
11 industrial or large commercial plants. So, my advice  
12 would be to separate the residential from the  
13 commercial and industrial operation as far as the  
14 future look at this.

15 MS. KELLY: All right, Mr. Erickson.

16 PRESENTATION BY JOHN ERICKSON:

17 MR. ERICKSON: The only thing between us and  
18 lunch and I will be brief, because you can tell I don't  
19 miss many meals.

20 We basically have three comments about the  
21 study. We think you did a great job of qualitatively  
22 describing the cost and the benefits. The problem is  
23 quantifying them and frankly, there is not a lot of  
24 data on a lot of them. The one place there is real  
25 good data is avoiding incidents on service lines

1 operating about 10 pounds pressure. We have got 30  
2 years of incident data, for some reason, OPS did not  
3 use that data in looking at how many incidents could be  
4 avoided. We think you ought to use the incident data,  
5 the method that you used actually comes up with an  
6 estimate of 10 times more incidents would be prevented  
7 that actually occurred in the last 30 years.

8 The interest rate, 3.9 percent, SoCal filed  
9 some comments that said, OMB is actually saying use a  
10 different rate. So, look at that.

11 And lastly, the cost, we have heard, they are  
12 all over the board. I think we ought to look at, it is  
13 not just the purchase cost, there are other costs  
14 involved, installing, additional fusions, couplings.  
15 So, those are our three main comments on the study.

16 MS. KELLY: Thank you. Thank you.

17 Any other comments by, yes, Mr. Lemoff.

18 MR. LEMOFF: Thank you. I want to first state  
19 positively, the National Fire Protection Association is  
20 in favor of all safety devices that provide safety.  
21 The reason I say that is because we all recognize that  
22 an excess flow valve is a less than perfect device. It  
23 is less than perfect in that it will, in fact, operate  
24 with a complete line failure. It is well known and  
25 there is no argument that it is a flow based device and

1 if you get a little hole versus a big hole, it might  
2 say, oh, well, that is normal, because it doesn't know  
3 that it is the furnace versus the leak. And I would,  
4 and this is well known. Yet, there is nothing else.  
5 So, it certainly has been used by engineers for many  
6 years.

7 For higher pressures they clearly work very  
8 well. At the seven inch pressure, which we are talking  
9 for residential services, it is very difficult to size  
10 them properly. And that has been issue, because they  
11 can be oversized.

12 My concern is that, it is my experience and  
13 these are used in propane and I am involved with  
14 propane because of NFPA 58, there are many cases where  
15 they have been promoted to solve every problem, which  
16 we all know is false. There have been many cases where  
17 a supposed number of incidents and when you get into  
18 the incidents, they are true incidents, but, in fact,  
19 an excess flow valve would not have prevented the  
20 accident. So, I would like to ask the staff to be  
21 extremely diligent in verifying that if they are going  
22 to propose incidents, they make sure that, in fact,  
23 they are the type that excess flow valve would have  
24 prevented. I have seen some statements that in my  
25 belief tend to lump data that is not appropriate.

1           So, I would like to look at the real facts.  
2           Have us look at the real facts. Thank you.

3           MS. KELLY: Thank you. Any other, yes, Dr.  
4           Wilkie?

5           DR. WILKIE: I would also like to say that I  
6           think the conceptional analysis was good. There is a  
7           lot of question about the data. I would like to make  
8           the sharp point that the benefit cost analysis as it is  
9           currently constructed, applies only to residential  
10          service lines. And it should not be used to construe  
11          anything about commercial or other large, very large  
12          lines. I would agree that they probably are well  
13          known to work well, but we need to think about the  
14          benefit cost in different framework.

15          The activation rates are probably overstated.  
16          The installation costs are probably understated. And  
17          you can get any results you want if you choose the  
18          right discount rate. So, in fact, if you lower the  
19          discount rate to zero, you can almost always get a  
20          benefit that exceeds the cost.

21          So, I just caution you that this is a highly  
22          uncertain and very sensitive business. I am going to  
23          suggest, by the way, I did the first benefit cost  
24          analysis on this about 10 or 15 years ago. I am going  
25          to suggest that we are probably going to argue forever

1       whether or not the benefits exceed the cost or not.  
2       But, it is going to hover around that, that break even  
3       point. I am going to also suggest that what we need to  
4       hear from the industry is whether or not, now the tide  
5       has shifted in favor of the excess flow valves for two  
6       reason. One is that the performance standards and the  
7       equipment is better, so we have a better idea what the  
8       false activation rate is going to be and the cost of  
9       reactivating it.

10               And secondly, whether or not public  
11       confidence, I mean, the drum beat that we heard from  
12       the fire marshall yesterday is not going to go away.  
13       The drum beat from the National Transportation Safety  
14       Board is not going to go away. So, I think it would  
15       be useful for the industry regardless of the benefit  
16       cost analysis, to come forward with an opinion as to  
17       whether or not public confidence justifies a rule for  
18       residential use.

19               MS. KELLY: Any further comments? Any  
20       comments from the public? Mr. Fell?

21               MR. FELL: I want to apologize, that comment  
22       about the industrial versus the single resident did  
23       come up several times and I am sorry I didn't, I didn't  
24       mention it.

25               MS. KELLY: Thank you.

1           MR. HURIAUX: I would like to leave you with  
2           one final thought, which I think you touched on in the  
3           last cost benefit discussion today, but, we have, even  
4           if and when we make a proposal on this, this cost  
5           benefits study will not be what supports that. There  
6           will be a fresh cost benefit study. This is an  
7           exploration and we need everyone to provide information  
8           now, as this is when you can really affect the process  
9           rather than later. That is for sure. The earlier the  
10          better. We also want to ensure, assure everyone that  
11          cost benefit in any rule is never the only  
12          consideration. It is one of the things that we should  
13          consider and in fact, are required by law to consider,  
14          as you are required to review our cost benefit.

15                 It is cost benefit of excess flow valves is  
16          very, extraordinarily sensitive to all the assumptions  
17          that Ted Wilkie and several others pointed out. And I  
18          think you really hit on why we have come forward so  
19          early in the process with this kind of analysis and ask  
20          the questions that needed to be asked. Thank you.

21                 MS. KELLY: Thank you.

22                         Any further comments from the Committee?

23                         Any other business to come before the  
24          Committee?

25                 UNIDENTIFIED SPEAKER: I would really like to

1 compliment the staff from the last meeting to this  
2 meeting on getting out a lot of good information and  
3 taking into consideration everything that was said last  
4 time. And also I think we need to offer  
5 congratulations to the Chair, for getting us through  
6 this early.

7 (Applause.)

8 MR. HURIAUX: I would just like to make one  
9 comment in line with that. I would like to thank  
10 especially Cheryl Whetsel, who has done a lot of the  
11 work on these meetings, supported by several of the  
12 other staff members in our office and Jean Milan.

13 (Applause.)

14 MR. HURIAUX: Believe me, preparing for one of  
15 these meetings and getting all that information out to  
16 everyone is a full time job for weeks at a crack. So,  
17 it is quite a job and we are glad to have Cheryl and  
18 the rest of the staff to take of it. Thanks.

19 MS. KELLY: Dr. Wilkie?

20 DR. WILKIE: I would also like to thank and  
21 commend the Chair, Ms. Kelly for getting us through  
22 this. But, I think it is also true that without the  
23 flexibility and the issues of Stacey Gerard and, we  
24 wouldn't have gotten through it. But, thank you.

25 MS. KELLY: Thank you. Any other comments?

1           Well, I am sure that those comments are  
2           reflective of the feelings of every member of the  
3           Committee including those who had to leave early. And  
4           so, that I would like also for them and for myself to  
5           let the record reflect our thanks for the very, very  
6           hard work of Staff. These were monumental issues. And  
7           all of the staff and we can name them, I think they  
8           have all been named, have done an excellent job of  
9           preparing us, giving us the information we needed in  
10          advance so that we could deliberate appropriately here.

11          And Jean Milan, who doesn't show up at the meetings,  
12          she is the one who gets us here. She does our  
13          transportation. So, we certainly appreciate, we  
14          certainly appreciate her role in this activity, too.

15                 I had mentioned earlier how effective it is  
16          to our deliberation to have the input of so many  
17          different stakeholders and I will just in closing  
18          repeat that. I mean, having had input from the public  
19          interest groups, maybe even at prior meetings, the  
20          environmental interest, the industry, and the industry  
21          is broken into several parts. And we are hearing from  
22          all of them. And even beyond that, certainly the  
23          input from the members of the Committee. I think, I  
24          mean, I appreciate your thanks to me for being the  
25          chair, but it wouldn't work if we didn't have effective



1 members who do their homework, who bring in strong  
2 ideas and opinions that the balance of the Committee  
3 can work on. So, I thank all of you and it has been a  
4 pleasure working with you. But, we are not done. We  
5 have got plenty of meetings. Stacey will keep us going  
6 on here.

7 So, before we close, I would like to turn it  
8 over to Associate Administrator, Stacey Gerard. And  
9 thank her also, personally, for the effectiveness of  
10 the role that she is playing.

11 MS. GERARD: Thanks very much, Linda Kelly.

12 You know, I would like to just put the  
13 meeting in a little bit of perspective. We, you know,  
14 this has got to be one of the most difficult meetings  
15 we have ever had or will ever have. And, you know, I  
16 know we worked hard, and I thought, you know, we did  
17 sail through about 14 items, you know, really, really  
18 easily considering their difficulty. And then there  
19 were some other items that were really tough and I  
20 wanted to apologize for not anticipating and putting  
21 them on the agenda, so that you could be prepared.  
22 But, really was a complicated initiative to dissect and  
23 identify, you know, every, every, every item and  
24 prepare you on them. So, I apologize for the confusion  
25 on the identified sites in not having fared that out

1 from the docket.

2           Being a member of this Committee isn't the  
3 job that it used to be. Because the work that we have  
4 isn't what it used to be, although our staffing level  
5 and from a policy and regulatory standpoint, is even  
6 less than it was in 1995. We are increasing our field  
7 presence and we really have less people in the  
8 Headquarters to take on the tasks. And so,  
9 unfortunately, we have a lot more work for you this  
10 year to meet the statutory deadline, even though we  
11 have already had two full committee meetings just in  
12 the last couple of months. And so, we do need to come  
13 back to you on research. We are going to have to come  
14 back to you on direct assessment. We are going to  
15 have to come back to you on operator qualification. We  
16 are going to have to come back to you on LNG, you know,  
17 and soon, you know, and so, I want to thank you for how  
18 hard you are working. And pipeline safety is obviously  
19 is a lot more important to the American public than it  
20 used to be. We can't do this without you. I really  
21 appreciate how much time you are spending on this, and  
22 you know, please stay with us, because we have a lot  
23 more things to get across the goal line this year. And  
24 we are committed to making these deadlines.

25           So, I appreciate your enterprise, creativity

1 and flexibility and, you know, we will be in touch with  
2 you soon about the date for the next meeting.

3 MS. KELLY: We are adjourned.

4 (Whereupon, at 12:55 p.m., the meeting was  
5 concluded.)