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MARKUP OF H.R. _____, THE PIPELINE SAFETY

ACT OF 2016

WEDNESDAY, MARCH 16, 2016

House of Representatives,

Subcommittee on Energy and Power,

Committee on Energy and Commerce

Washington, D.C.

The subcommittee met, pursuant to call, at 10:07 a.m., in Room 2322 Rayburn House Office Building, Hon. Ed Whitfield [chairman of the subcommittee] presiding.

Members present: Representatives Whitfield, Olson, Barton, Shimkus, Pitts, Latta, Harper, McKinley, Pompeo, Kinzinger, Griffith, Johnson, Long, Flores, Mullin, Hudson, Upton (ex officio), McNerney, Tonko, Engel, Green, Capps, Doyle, Sarbanes, Welch, Loeb sack, and Pallone (ex officio).

Staff present: Gary Andres, Staff Director; Will Batson,

Legislative Clerk, Energy and Power and Environment and the Economy; Ray Baum, Senior Policy Advisor for Communications and Technology; Mike Bloomquist, Deputy Staff Director; Rebecca Card, Assistant Press Secretary; Karen Christian, General Counsel; Giulia Giannangeli, Legislative Clerk, Commerce, Manufacturing, and Trade; Tom Hassenboehler, Chief Counsel, Energy and Power; A.T. Johnston, Senior Policy Advisor; Peter Kielty, Deputy General Counsel; Brandon Mooney, Professional Staff Member, Energy and Power; Tim Pataki, Professional Staff Member; Graham Pittman, Legislative Clerk; Annelise Rickert, Legislative Associate; Dan Schneider, Press Secretary; Gregory Watson, Legislative Clerk, Communications and Technology; Jen Berenholz, Minority Chief Clerk; Christine Brennan, Minority Press Secretary; Jeff Carroll, Minority Staff Director; Elizabeth Ertel, Minority Deputy Clerk; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; Alexander Ratner, Minority Policy Analyst; Tim Robinson, Minority Chief Counsel; Andrew Souvall, Minority Director of Communications, Outreach and Member Services; and Tuley Wright, Minority Energy and Environment Policy Advisor.

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Mr. Whitfield. I would like to call this mark-up to order this morning. And I would like to recognize myself for a 5-minute opening statement.

I think all of us are excited that we are ready to mark up a bill to reauthorize the Pipeline and Hazardous Materials Safety Administration's pipeline safety program. We have built upon the draft that we discussed in the legislative hearing and made some improvements.

I might also add that the Senate has passed their pipeline safety authorization bill on a unanimous consent request on the Floor.

The 2011, and many of you will remember that the 2011 Pipeline Safety law included 42 mandates of PHMSA, and 16 of them still remain incomplete today, well beyond the statutorily-imposed deadlines. The discussion draft before us today contains targeted mandates for PHMSA to increase transparency and accountability, complete overdue regulations, and improve safety. I am particularly pleased that one of the most controversial provisions has been struck and no longer appears in the draft, and that is the what I refer to as the "sue and settle" provision.

We do have a provision in this legislation in Section 15 about emergency operational authority for the Department of Transportation. That has proved to be a controversial provision.

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And it is my hope that, recognizing that people have different views on it, that we will certainly discuss it today, but hopefully we can get this bill out and have all of this resolved either before or at the full committee.

So with that, I would like to at this time recognize the gentleman from California Mr. McNerney for his 5-minute opening statement.

[The statement of Mr. Whitfield follows:]

*****COMMITTEE INSERT 1*****

Mr. McNerney. I thank the chairman. I don't think we are quite ready for this mark-up yet. But we are going to proceed and hope that we can work with the other side to come to a final agreement on some of these issues before the bill reaches the Floor.

My comments this morning are on the contradictory nature of what we are trying to accomplish. We have industry on one side wanting to keep costs down. On the other side we have the interests of safety. If you reduce the costs too much then there will be accidents and incidents, people will get hurt or killed, and it will hurt industry in the end.

So we want to balance those two. If we cut too much, then we will be seeing accidents. Nobody wants that. And, again, if we have accidents the whole industry suffers. So let us keep that in mind as we move forward.

I want to, at that point I want to recognize my colleague from Texas Gene Green.

[The statement of Mr. McNerney follows:]

*****COMMITTEE INSERT 2*****

Mr. Green. Thank you. I thank my colleague from California for yielding to me.

I am pleased we are holding this mark-up on the bill. It has still got some work to do on it. And in Texas we have almost as many pipelines as we do roads. In fact, if you look at the map of the United States and see the pipelines you will not see Harris County, Texas, because the pipelines are so prevalent there. So pipeline safety is important in our community.

I have an amendment that I will talk about in a few minutes. But there are a number of amendments that I think that would improve the bill. And I would hope the majority would work with us to see if, to see if we can't do that today then we do it before this bill comes up in full committee.

And so with that I thank, I thank my colleague for yielding to me. And I yield back to him.

[The statement of Mr. Green follows:]

*****COMMITTEE INSERT 3*****

Mr. McNerney. Any other?

Mrs. Capps. Thank you. Thank you, Mr. Chairman, for holding this mark-up on such an incredibly important topic.

There is no question that ensuring the safety of our nation's hazardous liquid and natural gas infrastructure should be one of our top priorities on this committee. And today we have an important opportunity to reexamine and strengthen the laws that govern pipeline safety throughout this country. It is a chance to apply the lessons learned from other unfortunate but untimely, but ultimately inevitable spills, leaks and other disasters that have been associated with our aging infrastructure.

And now is the change to update the safety technologies that have proven to be effective over the years.

So I urge the committee to continue to work together we have on-as we have on previous pipeline safety bills, to fulfill our obligation to apply these lessons, to minimize the occurrence of these disasters, and limit the extent of the damage that occurs when they do. So let's be clear, the damages from these incidents can touch every part of a community. Leaked oil pollutes our land and water, threatens public health, disrupts the local economy, scars the environment.

And we don't have to go far back in time to see the impact of these dangers. As we were reminded in my district last May when a hazardous liquid pipeline spilled 120,000 gallons of crude

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oil along the Central Coast of California and into the Pacific Ocean. As a result, beaches were closed, tourists turned away, on a holiday weekend at that, fisheries were shut down, disrupting the local economy, impact on the environment and wildlife in that area lingered for many weeks.

While we know of the many immediate impacts, the long term impacts are still being unveiled. Everyone here has also heard of the devastating methane leak from the Aliso Canyon underground natural gas storage facility which occurred just south of my district over the last few months. This methane leak, the largest human-caused methane source in U.S. history has spewed almost 100,000 tons of methane into our atmosphere.

In addition to compromising much of the efforts in California to curb the impact of climate change, this leak has sickened many people, forced thousands to leave their homes and relocate outside of the vicinity of the incident. This is more than an inconvenience. This leak has uprooted and displaced an entire community.

These are just two recent examples of many leaks and spills that have affected communities across the country over the years, including our own chairman's district. So we can, we must learn from these tragedies as we work to make our pipelines safer. However, saying we need to incorporate these lessons is one thing; acting on this knowledge is quite different. Unfortunately, this

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bill before us is severely lacking, leading to far too many communities still at risk. And while it includes a start to some important provisions, including emergency order authority, it fails to consider the actual scope of the need for improvement.

So I appreciate that this draft opens the door to discussing several topics. I hope the chairman is open to having serious conversations on how to improve the language of this bill. For example, this draft recognizes that the current inline inspection requirements are insufficient, and the narrow scope of how we define a high consequence area is too narrow, but it neglects to take meaningful action to address this issue. We have an opportunity in front of us.

So I thank you, Mr. Chairman, and I yield back.

[The statement of Mrs. Capps follows:]

*****COMMITTEE INSERT 4*****

Mr. Whitfield. Mr. McNerney's time has expired.

Mrs. Capps. I am sorry.

Mr. Whitfield. At this time I would like to recognize the gentleman from Michigan, Mr. Upton, Chairman of the full committee, for five minutes.

The Chairman. Thank you, Mr. Chairman.

Pipeline safety is indeed something that I know we all take very seriously. And as Chairman, I have made it a priority for this committee. I know the hard-working folks that own and operate the millions of miles of pipelines that crisscross the U.S. are committed to preventing spills. But the reality is that accidents do happen and there is still room for improvement.

The discussion draft before us today takes important steps to strengthen pipeline safety. Pipeline safety is personal to me, just as it is for many members of this committee. A few years ago there was a very serious spill that affected the Kalamazoo River just outside of my district. And in the wake of that accident I worked on a bipartisan basis with my friend John Dingell, in conjunction with our counterparts in the Transportation and Infrastructure Committee to enact the Pipeline Safety Regulatory Certainty and Job Creation Act of 2011.

We should have found a better acronym.

While several new safety mandates from the 2011 Pipeline Safety Act have yet to be fully implemented, the time has come

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to update the law. We have to do better, and I know that we will.

The discussion draft before us today, the Pipeline Safety Act of 2016, is a starting point. As we have done before, we are working on a bipartisan basis to identify weaknesses in our pipeline safety and our laws and develop solutions. As today's discussion draft shows, we are finding agreement on ways to increase regulatory transparency of PHMSA, speed the completion of overdue safety regs, tighten standards for underground natural gas storage, and increase inspections for some underwater oil pipelines.

I believe it is particularly important to tighten inspection requirements for certain underwater oil pipelines, such as Line 5, which runs under the Straits of Mackinac, separating Lake Michigan and Lake Huron, the Upper and Lower Peninsula. An accident there would be beyond worst case scenario, which is why every precaution must be pursued.

This is one area where we found agreement but, of course, we still have work to do on a number of other issues. For example, some have argued that PHMSA should have the ability to issue an emergency order to require multiple owners and operators of pipelines to take emergency precautions. While that may be a good idea in theory, we have got to make sure that this powerful new tool is not abused or used in a way that unnecessarily leads to price spikes or weakens grid reliability.

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Taken together, I believe the provisions included within the draft will go a long way towards improving pipeline safety, increasing the public confidence in our nation's energy infrastructure. We can do a better job to improve pipeline safety. While a spill can happen in an instant, the results can take years and, as we have found out the hard way, billions of dollars to clean up.

This draft bill is an important step forward but we still have more work to do. We still have more work to do. And I look forward to continuing to work with all of our colleagues, as well as with the Transportation Infrastructure Committee, as we move ahead to a full committee mark-up at some point in the future.

I yield back.

[The statement of Mr. Upton follows:]

*****COMMITTEE INSERT 5*****

Mr. Whitfield. The gentleman yields back.

At this time we recognize the gentleman from New Jersey, Mr. Pallone, for 5 minutes.

Mr. Pallone. Thank you, Chairman Whitfield.

The vast network of energy pipelines in this country are essentially out of sight, out of mind for most Americans. But when something goes wrong, these facilities can make themselves known in devastating and sometimes deadly ways. Over the last year we have witnessed both the 100,000-gallon crude oil spill into pristine coastline in Representative Capps' district in California, and a massive gas storage facility leak in Los Angeles. The leak forced thousands of people from their homes for long periods of time and released nearly 100,000 metric tons of methane into the atmosphere.

At our legislative hearing two weeks ago on the earlier draft of this legislation I said that the discussion draft released by the committee could and should be much stronger but that I was optimistic because it included Representative Green's direct hire authority language and some important provisions on underground storage pipeline safety technical assistance grants and mandamus.

Unfortunately, we have lost ground since that hearing. The discussion draft before us moves on step forward-that is the one that we have today-moves us one step forward and two steps back from where we were just two weeks ago. And gone from the

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legislation now is a provision that would have restored the ability of the public to compel PHMSA to perform its non-discretionary obligations or simply to do its job when it has yet to act. This provision, which was the top priority for the Safety Committee, is necessary to address an incorrect reading of the 2002 reauthorization by the 9th Circuit. And I believe that the law always contemplated mandamus type suits to ensure PHMSA does its job. And we should make that clear in the statute.

At our hearing last year we all voiced frustration at PHMSA's inaction on a number of funds, which is why it is so important for the public and the industry to have the ability to access the courts to ensure PHMSA is keeping our pipeline system safe and secure.

While the legislation we are making up today retains language from the previous discussion draft to provide a backstop to ensure some level of funding for PHMSA's technical assistance grant, or TAG program, it also contains language that would place additional stringent restrictions on the use of grant funds and limit the universe of non-governmental organizations eligible to receive funds under the TAG program. The new language also directs the Government Accountability Office to audit the grant program. Additional bracketed language will delay the use of any funds derived from user fees to support the TAG program until after GAO has completed its report.

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Unfortunately, industry successfully stopped the TAG grant program from being funded from general revenues in fiscal year 2016. And now the legislation before us places so many unreasonable restrictions on the TAG grants that even if the Secretary uses his discretionary authority to provide the program with some funding, they are not worth applying for. To date, industry has opposed efforts for non-profits to have access to these funds. And they now say they are concerned that non-profits will be using the user fee to lobby against pipelines. And I think that is an outrageous claim.

I would note that there has been at least some progress in one area since the last draft. We now have language in the current bill conferring emergency order authority on PHMSA. Amazingly, PHMSA currently lacks comprehensive emergency order authority to address imminent industry-wide safety hazards, situations that result in unsafe conditions or pose a threat to life or significant harm to property or the environment.

The Pipeline Safety Act provides PHMSA with authority to issue a corrective action order to a single operator. However, an emergency order would apply to all pipeline operators or citizens that face a common imminent hazard.

Now the Democrats will be offering a number of amendments that would address these matters and greatly improve the bill. Since I became the ranking member, the Republican majority on this

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committee has spent a great deal of time trying to find ways to build more pipelines more quickly and, often, at the expense, in my opinion, of private property owners and the environment. I don't agree with these efforts, but if this is going to be the approach that this current majority takes, we should at least assure those people who suddenly have a pipeline running through their backyard that it will operate safely and poses no real danger to their property, well-being or loss.

We should protect all areas of the country from hazardous pipelines, not just a few select areas, a select few pipelines, or even just one running under the Great Lakes. If people don't have confidence in the safety of our pipelines, then the resistance to new pipeline projects will grow exponentially over the next few years.

So, Mr. Chairman, we want to work with you on this reauthorization. I believe we can work together on pipeline safety. And I hope that throughout today's mark-up we will see concrete evidence that the GOP are willing to work with us as full partners to produce the balanced bill that moves us forward on safety.

And I yield back.

[The statement of Mr. Pallone follows:]

*****COMMITTEE INSERT 6*****

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Mr. Whitfield. The gentleman yields back. Thank you very much.

At this time the Chair recognizes the Chairman Emeritus, Mr. Barton, for 3 minutes.

Mr. Barton. Thank you, Mr. Chairman.

Historically, this committee, with the Transportation Committee, has reauthorized the pipeline safety on a regular, routine basis. And this is a good thing. We have the safest pipeline system in the world. Every day we carry millions of barrels of refined petroleum products and crude oil through pipelines, and billions of cubic feet of natural gas and other gas liquids. 99.99 percent of the time they are carried safely, efficiently and effectively.

Occasionally we do have accidents. We tend to focus on those accidents, which is the American way. There is always room for improvement. And in this bill before us, Mr. Chairman, we are attempting to improve an already stellar pipeline safety record.

Having said that, the discussion draft or the draft before the subcommittee includes Section 15 which gives extraordinary emergency orders to the Secretary. It basically gives the Secretary a tool to use, if he or she is so inclined, to blackmail the industry. I am adamantly opposed to that, Mr. Chairman. And I will offer an amendment at the appropriate time to strike the entire Section 15.

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I will tell you though that the subcommittee and full committee chairmen have asked me to offer and withdraw. And I intend to do that in the spirit of bipartisanship which the chairman and subcommittee chairman with the ranking members are attempting to have on this subcommittee. But this is a very serious issue.

I do not intend to put in the statute an ambiguous, open-ended emergency provision that is currently in the draft. So at the appropriate time I will offer the amendment, we will discuss it, and then I will withdraw it. But I fully intend to vigorously work to make sure that the language that is in the draft before us is either dropped or radically changed so that we don't give such open-ended authority to the Secretary.

With that I yield back.

[The statement of Mr. Barton follows:]

*****COMMITTEE INSERT 7*****

Mr. Whitfield. The gentleman yields back. He seeks recognition on this side.

Anyone else? Mr. Olson is recognized for 3 minutes.

Mr. Olson. I thank the Chair.

As I said here only a few weeks ago, pipeline safety is one of those things we have to get right. Failure is not an option. And today's bill is an important step in the right direction.

But like my friend from Texas, Chairman Emeritus Barton, I am concerned about Section 15. We have to respond quickly to a pipeline crisis. But those powers should rarely be used, only in life or death situations.

Mr. Chairman, you were kind enough to include other sections that are important to the people of Texas-22. I look forward to working with you as this bill goes forward to fix Section 15.

Thank you very much. I yield back some more time on our side.
Mr. Griffith.

[The statement of Mr. Olson follows:]

*****COMMITTEE INSERT 8*****

Mr. Griffith. Thank you. I appreciate that.

Mr. Chairman, I am working on some concepts for Congress as a whole. This bill has a possible vehicle on pages 10 through 12 that there is a working group that is advisory in nature. I think in the future we should put some congressional appointees in there.

What I propose is that the group not consist of more than 21 members. Three of these members shall be appointed by the Speaker of the House, two by the minority leader, two by the majority leader in the Senate, one by the majority leader in the Senate, and then not more than 13 by the Secretary. Same categories, not changing the working group's make-up, just saying, hey, Congress needs to be involved in this if we are going to be an equal branch of government on advisory positions or working groups that are doing advisory stuff.

Not offering it as an amendment, but if we can work forward to doing that type of thing in this bill and others I would greatly appreciate it. I think it is good for Congress as a whole, not just Democrats or Republicans but Congress as a whole.

With that, Mr. Chairman, I yield. I yield back to Mr. Olson.

[The statement of Mr. Griffith follows:]

*****COMMITTEE INSERT 9*****

Mr. Olson. Thank you. Anybody else wants some time on my side now? Democrats?

Mr. Whitfield. Thank you, Mr. Olson.

Okay, seeing no one seeking recognition for an opening statement, at this point I would like to call up the discussion draft and ask the Clerk to report.

[The text of the discussion draft follows:]

*****INSERT 10*****

The Clerk. "Discussion draft to amend title 49, United States Code, to provide enhanced safety in pipeline transportation, and for other purposes.@"

Mr. Whitfield. Without objection, the first reading of the bill is dispensed with and the bill will be open for amendment at any point. So ordered.

Are there any bipartisan amendments to the bill?

[No response.]

Mr. Whitfield. Seeing no bipartisan amendments, are there any other amendments?

The gentlelady, for what purpose does the gentlelady from California seek recognition?

Mrs. Capps. Mr. Chairman, I have an amendment at the desk.

Mr. Whitfield. The gentlelady is recognized. What is the number?

Mrs. Capps. Number 9.

Mr. Whitfield. Number 9.

The Clerk will report the amendment.

[The Amendment offered by Mrs. Capps follows:]

*****INSERT 11*****

The Clerk. "Amendment to the Pipeline Safety Act of 2016 offered by Ms. Capps."

Mr. Whitfield. The gentlelady is recognized to explain the amendment.

Mrs. Capps. Thank you, Mr. Chairman.

The dangers associated with pipeline and infrastructure failure are real. We on the Central Coast of California can tell you that the occurrence of pipeline failure is not a matter of when-is a matter of when, not if. These failures threaten individuals, they threaten ecosystems with spills that impact public health, the economy and the environment. And while a spill or a leak anywhere is dangerous, the impact on some environments and locations are much greater. Therefore, these locations rightly need and deserve more attention.

Current regulations highlight so-called high consequence areas, or HCAs, in areas that are densely populated, near drinking water sources, in navigable waters, or deemed environmentally sensitive or significant. However, this designation currently fails to specifically recognize and identify many areas that are equally as important and sensitive to an oil spill.

The draft language recognizes one of these missing areas, the Great Lakes, which are unquestionably important to the local people, the economies and cultures of that region. However, while this draft inexplicably addresses this shortcoming of the

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existing high consequence area designation by including the Great Lakes, it fails to include other similarly important environments around the country. My amendment helps to close this gap by also including coastal recreational waters, the lands adjacent to them as being critically important and sensitive to these infrastructure failures.

Coastal recreation waters include not only the Great Lakes but also coastal marine and estuary waters that have been designated by our states for use for swimming, for bathing, surfing or fishing or similar water activities. These areas are not only locations where public health is particularly important, but they are the economic backbone of the communities that surround them, providing key tourist attractions or recreational opportunities that fuel local economies.

My amendment will simply include all high coastal recreation waters, or all coastal recreation waters, not just those in the Great Lakes, as high consequence areas for purposes of pipeline regulation. The coastal recreation waters are already designated in the Federal Water Pollution Control Act where our nation has recognized that the cleanliness and health of coastal recreation waters is important and deserves protection.

My amendment would simply continue this distinction so that we can be more confident that troubles with pipelines in these areas could be spotted sooner, before disaster strikes. So I urge

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the adoption of this amendment. And I --

Mr. Whitfield. And I --

Mr. Pallone. Will the gentlelady yield.

Mr. Whitfield. I am sorry, I wanted --

Mr. Pallone. I was just going to ask her to yield to me.

Did somebody else want the time?

Mr. Whitfield. No, no. She has 1 minute left, 1 minute 50 seconds left. So you yield to Mr. Pallone?

Mrs. Capps. If you would like me to yield to you, I yield.

Mr. Pallone. Yes. Are you finished or are you --

Mrs. Capps. I am finished, yes.

Mr. Pallone. Okay. I just, just for the sake of saving time, Mr. Chairman, I would just like to speak in favor of the Capps amendment.

As she said, this amendment simply includes coastal recreation waters as defined in the Clean Water Act and a list of considerations for areas that are unusually sensitive to environmental damage if there were to be a pipeline accident. And our coastal communities rely on the economic benefits of tourism.

Every year thousands of tourists travel to visit the beaches of my district on the Jersey Shore and in Mrs. Capps' district on the California coast. So we must ensure that coastal recreation waters are included in the definition of unusually sensitive areas so that they can be further protected from the

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dangers of a spill like the one that caused serious damage in Mrs. Capps' district last year.

So I urge my colleagues to vote yes on this important amendment. And appreciate the Congresswoman Capps putting this forward.

Thank you. I yield back.

Mr. Whitfield. The gentleman yields back.

And her amendment would add a new Section 17. It is my understanding that the chairman-

The Chairman. Yes. Yes, I might ask that we just strike the last word.

Mr. Whitfield. The gentleman is recognized.

The Chairman. I just want to say to my friend Mrs. Capps, you and I have talked about discussing the importance of ensuring that we have a strong bipartisan bill. And I want to pledge that we will continue to work very closely on this issue. We talked about it when you had the break in your district as to how PHMSA can best respond to help protect your community and every community's coastal areas as we go to the full committee mark-up.

But I would suggest that we look at to make sure that it is all directives are carefully tailored and targeted. You know, we only received the amendment last night. I know your intentions are solid and good. This change should carry-should not carry unintended implications. Due to security concerns, PHMSA does

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not have public-does not provide public access to unusually sensitive areas.

And I would ask that if you consider withdrawing your amendment, I will absolutely commit to working with you between now and when we get to full committee mark-up in the next number of weeks. We haven't set a date yet. But that we will individually sit down and figure out what might be the best course to do.

I know that this is important to both of us, to our constituents, and I just want to make sure that we do it right. And would ask that you might withdraw it at this point so we can further discuss it in the weeks ahead.

Mrs. Capps. Thank you. If I could respond?

The Chairman. I yield.

Mrs. Capps. Since this is the first reading of the proposed legislation I know that it is much stronger. And I believe it is actually the case that this is a bipartisan issue in our country and would welcome the chairman's interest in working together between now and the full mark-up of the committee.

So if I have your assurance that we-

The Chairman. Yes.

Mrs. Capps. -that we can do that, produce a stronger, by virtue of the fact that it is bipartisan, but keeping the strength of what we have proposed in the legislation, we will work together.

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And I appreciate the offer.

I will withdraw.

Mr. Whitfield. And the gentlelady withdraws her amendment.

Mr. Upton, you still have 2 minutes and 50 seconds.

The Chairman. I yield back.

Mr. Whitfield. The gentleman yields back.

Are there any additional amendments to be offered this morning?

Mr. Tonko. Mr. Chair.

Mr. Whitfield. The gentleman from New York seeks recognition.

Mr. Tonko. I have an amendment at the desk. I believe it is number 7.

Mr. Whitfield. The Clerk will report amendment 7.

[The Amendment offered by Mr. Tonko follows:]

*****INSERT 12*****

The Clerk. "Amendment to the Pipeline Safety Act of 2016 offered by Mr. Tonko."

Mr. Whitfield. The gentleman is recognized for 5 minutes to explain his amendment.

Mr. Tonko. Thank you, Mr. Chair.

This amendment addresses PHMSA's ability to impose adequate civil penalties against pipeline operators for violating safety regulations.

In recent years, PHMSA has attempted to reduce safety violations through tougher enforcement. The Pipeline Safety Regulatory Certainty and Job Creation Act of 2011 doubled the maximum civil penalty PHMSA is able to impose against pipeline operators for violating safety regulations from \$100,000 to \$200,000 for each violation, and from \$1 million to \$2 million for a related series of violations. These increased maximum penalties took effect in September of 2013.

This amendment would once again double those penalties by increasing the maximum penalty to \$400,000, and the maximum for a related series of violations to \$4 million.

While the number of serious incidents has held steady, there are still far too many that cause serious injuries, deaths and environmental harm. We have seen major incidents in Michigan and California in recent years where the amount of environmental destruction stands in sharp contrast to the relatively small

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penalties that PHMSA can assess. The damage and cost of clean-up can be tens of millions or even hundreds of millions of dollars for these serious incidents.

Civil penalties exist to hold operators accountable and help keep people safe. An increase in penalties would more accurately reflect the scope of damage that has occurred in the absolute worst pipeline catastrophes. We have to take these issues seriously. Higher penalties should be an option in order to hold non-compliant pipeline operators accountable for their given actions.

With that, I ask for support of my amendment, Mr. Chair, and yield back the balance of my time, unless someone would like to speak to the amendment.

The Chairman. Would the gentleman yield?

Mr. Tonko. Yes, sir, Mr. Chair.

The Chairman. I would just say that we all take safety violations very seriously. We want to be as tough as we can on safety violators but we have got to consider changes to the law very carefully.

And again I would ask if you would consider withdrawing the amendment, I will again commit to working with you on the issue before we get to full committee to see what we can do to hold bad actors accountable for breaking safety laws. So would ask that you withdraw at this point.

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Mr. Tonko. Mr. Chair, I appreciate and respect your commitment to work on the issue. And with that commitment, I would withdraw the amendment.

The Chairman. Thank you.

Mr. Whitfield. The gentleman withdraws the amendment.

Are there any additional amendments to be offered this morning?

For what purpose does the gentleman from Texas seek recognition?

Mr. Green. Mr. Chairman, I have an amendment at the desk.

Mr. Whitfield. Clerk, what is the number on the amendment?

Mr. Green?

Mr. Green. Only amendment.

Mr. Whitfield. Only amendment. Okay.

Clerk will report the Green amendment.

[The Amendment offered by Mr. Green follows:]

*****INSERT 13*****

The Clerk. "Amendment to the Pipeline Safety Act of 2016 offered by Mr. Gene Green of Texas.@

Mr. Whitfield. The gentleman is recognized to explain the amendment.

Mr. Green. Mr. Chairman, thank you.

I am pleased the committee is holding this mark-up. Like I said earlier, we have almost as many pipelines in Texas as we do roads, so it is critical that we get this stuff right.

The bill is a decent draft of attempts to lay down concrete rules in the industry, while hiring more inspectors and studying what the future might look like. Unfortunately, when the time comes there is an incident involving a pipeline we need to act with speed, efficiency and resolution.

My amendment addresses Section 15 of the bill. In Section 15, the Secretary may issue an emergency order not to exceed 30 days. The Secretary may extend that emergency order for additional time should the situation warrant. However, Section 15 also contains a provision that provides an opportunity for review under Section 554 of the Administrative Procedures Act.

The language states that if the Secretary does not act on a request for review under the APA within 30 days, the emergency order is no longer effective.

My concern is that if the emergency order and request for review are done concurrently within the same 30-day time frame,

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we will remove the very secretarial authority we are trying to provide. The key to this provision is that emergency authority. Some emergencies resolve quicker than others. And I do not want us to burden the Secretary with the first 30 days of an emergency.

My amendment clarifies that if the Secretary, acting within an emergency, issues a 30-day order, a request for review cannot be accommodated until the 31st day. At that point the Secretary may not extend the emergency authority, and product movement can resume.

If the Secretary determines the situation warrants an extension, an applicant may request a hearing. I want our executive agencies on the scene ensuring we are protecting the people and the environment, and believe my amendment adds this certainty. And I ask my colleagues to support the amendment.

And I will be glad to answer any questions.

And since it is protocol now, I will be happy to withdraw it but we look forward to working with you before we get on to full mark-up.

Mr. Whitfield. So is the gentleman withdrawing the amendment?

Mr. Green. I will withdraw the amendment.

Mr. Whitfield. Okay.

Mr. Green. Hopefully we will work it out before we get to the full mark-up. Thank you.

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Mr. Whitfield. What a wonderful spirit here this morning.
Are there any additional amendments to be offered?

Mr. Barton. Mr. Chairman.

Mr. Whitfield. The gentleman from Texas. What purpose?

Mr. Barton. I have an amendment at the desk. It is the only
amendment I have.

Mr. Whitfield. Okay. The Clerk will report the amendment.

[The Amendment offered by Mr. Barton follows:]

*****INSERT 14*****

The Clerk. "Amendment to the Pipeline Safety Act of 2016 offered by Mr. Barton of Texas."

Mr. Whitfield. The gentleman is recognized for 5 minutes.

Mr. Barton. As has already been pointed out, I am going to discuss this, Mr. Chairman, and then withdraw it.

The Section 15 as currently written for the first time gives the Secretary of Transportation the authority to shut down a pipeline if necessary. And he gets to do it without having a hearing. He really doesn't have to have any standard of evidence. He simply has to advise the owners and operators of the pipeline that there is, in his or her opinion, a potential emergency situation. He does, he or she does have to issue a compliance order of some sort. But then they can shut it down.

Now, there is no notice. There is no prior notice required. There is no opportunity for a hearing required. You simply advise them what you are going to do, issue a compliance order, and you shut the pipeline down. That is extraordinary in my opinion, Mr. Chairman. And it is also totally unnecessary.

At a bare minimum, I believe, you should at least give the owners and operators the opportunity to have a hearing, to make their case, and give them some time to try to remedy the alleged infraction or safety condition. This is like you are guilty before you have even committed a crime.

And as I have pointed out in my opening statement, the United

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States pipeline industry has one of the best safety records, if not the best safety record in the world. We are not talking about a bunch of bootleg operators. I mean the cost and capital needed to build and operate a main line pipeline is in most cases in the billions of dollars. And it is in any case in the hundreds of millions of dollars.

I have pipelines crisscrossing my congressional district. I am not in the league that Gene Green's district is. He probably leads the world in pipelines. But I have a lot in my district and I want them to operate safely and effectively. And I want there to be a very rigorous safety oversight. But I do not want to give a government bureaucracy the unilateral ability to take control and tell them how to operate the pipeline, and in some cases shut it down because of an alleged problem.

So the solution in my opinion is just to strike this section. Now, I know that raises the hair on the back of the necks of my friends on the minority side, and that is why I am going to withdraw it, so that we can have an opportunity to negotiate in good faith and see if there is not some middle ground between now and full committee. But I am fully prepared to offer it at full committee if there is not a successful resolution to the problem. And I have a suspicion that if I do offer it, I will be successful.

So I hope, Mr. Chairman and Ranking Members, that we use the time between now and full committee to work out, work on it and

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see if we can't reach a middle ground.

With that-

Mr. Shimkus. Would the gentleman yield for one second?

Mr. Barton. Be happy to yield.

Mr. Shimkus. I want to thank my colleague. And I hope members have got a chance to, after the hearing we had got a chanced to see the pig that runs through the pipe. And of course there are different sizes. And the technology now and, you know, after it was explained what all these little things were gauging and the vents and the intensity, I mean it was just a pretty amazing piece of equipment, that used properly and regularly has helped have this industry have one of the best safety records of any really bulk commodity moving product, liquid product. So this is an important bill.

But I also-there is a bazillion more success stories than failure stories, and so I think we need to keep it in balance.

And I yield back to my colleague from Texas.

Mr. Barton. I will yield to Gene, Mr. Green, Congressman Green.

Mr. Whitfield. Well, first of all let me, Mr. Pallone wanted recognition to make a comment and then we will get to you.

So, Mr. Pallone.

Mr. Barton. I will yield to who is going to say something nice.

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Mr. Whitfield. He has 13 seconds left, so.

Mr. Barton. I yield to Mr. Green.

Mr. Green. In my 8 seconds. Joe, I would like to work with you. But as you know, when there is a pipeline explosion or something I can't imagine a company not responding and doing anything. But I agree with you, if it is a safety issue and they get notice and they have a hearing but if there is an emergency situation we really need to have, you know, the ability to get out there and get it done, not just from the Federal Government but also from the-

Mr. Barton. Well, when you-

Mr. Green. I would like to work with you.

Mr. Barton. In the negative 20 seconds that I have, don't you admit that if somebody comes forward to one of the pipeline operators in your district and says you have got this potential problem here, aren't they going to work, aren't they going to work to solve it? Or are they going to just blow it off and say, oh yeah, let's wait until we have an explosion.

Mr. Green. Don't like to use the term "blowing things off" in a pipeline. But I can't imagine-

Mr. Barton. Ignore then. Let's use a proper term.

Mr. Green. I can't imagine them ignoring it. So I agree that there may be a way that we can define emergencies, you know, that will take care of that. I just don't want to get bottled

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up in bureaucratic problems.

Mr. Barton. You and I are on the same page.

Mr. Green. Bureaucratic or-

Mr. Whitfield. The gentleman's time has expired. And the gentleman from New Jersey is recognized for 5 minutes.

Mr. Pallone. Thank you, Mr. Chairman.

I don't know if I am being smart in interrupting this Texas love fest here but I know that when I went to Gene Green's district all I saw were hospitals. I didn't see any pipelines. He brought me to the hospitals.

Mr. Barton. They are underground, Mr. Pallone.

Mr. Pallone. Oh, they are underground.

Anyway, let me just say, I just wanted to say briefly why I think that this emergency order authority is important. Obviously things are now currently lax, comprehensive emergency order authority to address situations that result in unsafe conditions on more than one pipeline system. And these are situations that pose a threat to life, in my opinion, or significant harm to property and the environment.

This authority would allow PHMSA to implement necessary safety actions across the sector without going through an often lengthy rulemaking process. And the Department of Transportation has emergency order authority under its other statutes, but PHMSA does not currently have this critical tool

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for pipelines. Right now PHMSA can only take action on a pipeline by pipeline basis.

And DOT used its emergency authority last year to limit the speed of oil trains traveling through major cities. This action was taken because of increased shipments of crude oil by rail, as well as a number of train explosions across the United States and Canada that have caused fatalities and serious damage.

So I believe emergency order authority will allow PHMSA to take swift action to address dangerous situations impacting the whole industry that are endangering the environment and putting people in harm's way. I understand the gentleman Mr. Barton is going to withdraw this. But, you know, but we do believe that this emergency authority that was put into the bill since the draft is a major improvement. So, hopefully, we can work on this and still have this type of action.

Yes, I will yield now to the gentlewoman from California.

Mrs. Capps. Thank you. I appreciate the ranking member's yielding. Just want to make a quick comment in response to our good friend, the former chairman of the committee Mr. Barton.

I agree with you that the pipeline safety, the pipeline industry is a whole lot safer today than it was. And that is something to be celebrated.

On the other hand it is like so many other things, it just takes one. If it is in your backyard, if it is in your life, if

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it is disrupting your business, your ability to enjoy the coastline, it is a precious resource, a precious commodity and, inherently, this is a business, oil. We depend on it. But it is dangerous. It is dirty. And, frankly, it is too expensive to be used and treated the way it is.

So I just hope we can continue this conversation and come out with a product that is adequately responsive to the pipeline safety issues.

Thank you. And I will yield to any colleague or I will yield back.

Mr. Whitfield. It is Mr. Pallone's time.

Mr. Pallone. Yes. I will yield back, Mr. Chairman.

Mr. Barton. I would like to ask a question of the gentleman from New Jersey.

Mr. Pallone. Sure.

Mr. Barton. Are you or any of the committee staff on the minority side aware today of a situation, a real world situation where there is imminent danger and potential for loss of lives on any pipeline system here in the United States, right now?

Mr. Pallone. Well, I think the answer to that is, as Mrs. Capps said, I mean we just don't know. I mean I have-I mean it goes back now 20 years-but I had a major explosion in the Durham Woods in Edison, which is my largest municipality, in the 1990s. And no one thought at the time that there was any safety problem

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at all. And all of a sudden, you know, a huge apartment complex blew up. We fortunately only lost one person from a heart attack. But ever since then I have been very wary about, you know, the level of safety.

So I think what we are basically saying here is, the way I understand it, is that right now they only have, PHMSA only has authority over, you know, that particular situation. There may very well be situations where there is an industry wide problem that needs to be addressed with an emergency order.

Mr. Barton. That, but that is-it is your time so I shouldn't interrupt you.

Mr. Pallone. No, I can't, I mean I think that we, you know, I would like to think that what you are saying is true, that everything is beautiful and-

Mr. Barton. No, I am not saying that. I am not saying everything is beautiful. But what I am saying is under this language, without prior notice, without a possibility of a hearing you can, you can take operational control, you can shut down. And it is all subjective. It is all in the mind of the Secretary of Transportation and his or her designees who are advising.

And my point is, if we know of a problem we can address the problem. And the pipeline industry I think, without exception, will, would expeditiously address it.

Mr. Pallone. No, I don't argue-

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Mr. Barton. So at least let's-

Mr. Pallone. I don't argue with that.

Mr. Barton. -if we are not going to just strike this language, let's work before we go to full committee to put some due process ahead of the, of the, of the order so that we can begin to do exactly what you and Mrs. Capps want to do. That is all.

Mr. Pallone. Well, let's talk about it further. I understand what the gentleman is saying. I think that is fair. Let's take a look at it.

But I am glad that we have the language in there now. And I am also glad you are withdrawing it. But, sure, we should spend the time between now and full committee seeing if we can address you concerns. Sure.

Mr. Barton. With that, if I have the opportunity I will withdraw the amendment. When I have the opportunity,.

Mr. Whitfield. Well, it is Mr. Pallone's time. So do you have anything else? You want to yield back.

So I will recognize the gentleman from Texas for the purpose of withdrawing.

Mr. Barton. With great exuberance, Mr. Chairman, I withdraw the amendment.

Mr. Whitfield. Thank you so much.

Okay, any other amendments at this point? The gentlelady from California has an amendment.

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Mrs. Capps. Thank you, Mr. Chairman. I do have an amendment at the desk.

Mr. Whitfield. Will the Clerk report the amendment.

[The Amendment offered by Mrs. Capps follows:]

*****INSERT 15*****

Mrs. Capps. Number 3.

The Clerk. "Amendment to the Pipeline Safety Act of 2016 offered by Mrs. Capps."

Mr. Whitfield. And the gentlelady is recognized for 5 minutes to explain the amendment.

Mrs. Capps. Thank you, Mr. Chairman.

You know, pipelines crisscross our nation through every state and most of our districts. They are the arteries and veins for our nation's oil and natural gas industry. They were developed at a time when we did not know the full implications of what burning fossil fuels really meant. However, we now know that the threats associated with fossil fuels are many and they are diverse.

And while we would ideally ensure that every mile of pipeline, no matter where it is, has the best possible technology to protect from spills and leaks, the least we can do is to ensure that the pipelines running through the most sensitive environments, those located close to densely-settled areas, areas important to the safety of our drinking water supplies or home to ecologically sensitive and important environments, that these have the most effective safety equipment available.

However, instead of using the best available technology, federally-regulated pipelines often rely on outdated and underperforming technologies that are placing our communities at

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unnecessary risk. And it doesn't have to be this way. We do have the technology to automatically detect and respond to changes in pressure and leaks in our pipeline infrastructure. Shutting down pipelines at the very start of a spill can minimize the potential damages. This technology is the automatic shut-off valve and is in use in many non-federal pipelines.

My amendment would simply require that if a pipeline runs through a high consequence area, as defined in the existing law, that pipeline would be required to install automatic shut-off valves. This requirement would minimize the impacts resulting from the lag time it takes for operators to detect and shut down a compromised pipeline.

The Plains spill in my district again is a perfect example of the impacts of this lag time. In the time that it took to recognize the issue and carry out the shutdown, over 100,000 gallons of crude oil spilled into a high consequence area. While the other pipelines in the area, regulated by the State of California, all have these automatic shut-off valves.

So this spill shut down the beach and threatened the economy and health of my constituents, in addition to the environmental damage that it caused. And I find this to be simply unacceptable.

My amendment would help ensure that this type of accident is much less likely to happen in the future. We know how to mitigate the impact of spills. It is now time that we do something

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about it.

So I urge my colleagues to accept this common sense amendment. And I am prepared to yield to anyone or?

Mr. Pallone. I could-

Mrs. Capps. Yes.

Mr. Pallone. -if you would yield to me.

Mrs. Capps. I will.

Mr. Pallone. I guess there is only less than a minute left. But I just wanted to say that I support Representative Capps' amendment. Last year, as you know, in her district we had leakage of thousands of gallons of oil. And this pipeline did not have an automatic shut-off valve.

The same was true in my case in Durham Woods. That was a natural gas pipeline at the time. But there was clear evidence that if we had an automatic shut-off valve we would have avoided the catastrophe and the economic and environmental damage in Edison that resulted. And this language would only require this technology in high consequence areas where spills could impact highly populated areas, drinking water sources and environmentally sensitive areas.

I think we should be doing everything possible to detect and shut down spills in these high priority areas as quickly as possible. And this amendment would put us a step closer to limiting the damage in these unfortunate scenarios. So I urge

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support for her amendment.

Mr. Whitfield. The gentlelady's time has expired. I recognize myself for 5 minutes to discuss this amendment.

The 2011 Pipeline Safety Act did contain a specific provision relating to emergency shut-off valves. Section 4 of the 2011 law required the use of automatic or remote-controlled shut-off valves on pipelines, if appropriate.

Now, are all frustrated with PHMSA because they have not finished everything they are supposed to be doing. And this is one of those areas that they have not really completed. And we are a little bit concerned about one size fits all. But one question that I would have for legal counsel, unless Mrs. Capps can answer the question, you are defining a high consequence area as defined in Section 195.450 of Title 49 of the Code of Federal Regulations.

Is there anyone at our desk that can read that definition to us?

Mr. Mooney. Sir, we don't have the code with us at the desk.

Mr. Whitfield. Okay. Do you have the definition, Mrs. Capps?

Mrs. Capps. I don't have the definition.

Mr. Whitfield. Well, what I would like to propose then is because we have this spirit of cooperation and we are working together in so many areas, if you wouldn't mind withdrawing it

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and we will have our staff and Fred will explore in more detail with you to see if there is a possibility of doing something about these automatic valves and shut-off areas.

Mrs. Capps. I understand that the Chairman, in a very generous-hearted way, is saying let's find out exactly what this implies. And if it is in the code and it is defined in a way, and I believe that it does include an area like the one-

Mr. Whitfield. Yeah.

Mrs. Capps. -on the Gaviota Coast of California, then it is a matter of expanding the reach, but in consistency with what the law would, how it would fit.

Mr. Whitfield. Yes.

Mrs. Capps. Some of that is going to be subject to interpretation.

Mr. Whitfield. Yes.

Mrs. Capps. But I am willing to take the steps.

Mr. Whitfield. Yes. Well, I would like to, because as I mentioned in my remarks, PHMSA is undertaking a more in-depth analysis of this entire subject. You know, they have got the Oak Ridge study that is going. And it is a little bit complicated now trying to do one size fits all.

So with the lack of knowledge of the definition, and waiting to get more clarification on their study, and having additional discussions with them, if you will withdraw it then we will work

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with you as we move it toward full committee.

Mrs. Capps. I would be happy to do that because I actually believe that we need more definition. And, unfortunately, we have a pattern of sometimes learning from examples that we wish hadn't happened, but that this could prevent the next one if we get a better sense of what the definition would be.

Mr. Whitfield. Okay, thank you.

Mrs. Capps. Happy to withdraw.

Mr. Whitfield. Thank you.

Mrs. Capps. And then but on the assurance that we will work in a bipartisan way to understand the definition.

Is my ranking member in agreement?

Mr. Pallone. Surely.

Mrs. Capps. All right.

Mr. Whitfield. Thank you very much. Thank you.

Other? The gentleman from California seeks recognition. I think you have an amendment?

Mr. McNerney. Yes. Mr. Chairman, I have an amendment at the desk; 15.

Mr. Whitfield. And the Clerk will report the Amendment 15.

[The Amendment offered by Mr. McNerney follows:]

*****INSERT 16*****

The Clerk. "Amendment to the Pipeline Safety Act of 2016 offered by Mr. McNerney."

Mr. Whitfield. The gentleman is recognized for 5 minutes.

Mr. McNerney. Thank you, Mr. Chairman.

We have heard about this process that PHMSA is behind a schedule on 42 of the mandates created in the Pipeline Safety Act of 2011. The discussion draft before us today aims to ensure that PHMSA prioritizes the remaining 26 that have not been completed. Obviously more work needs to be done.

The rulemaking process is, by its nature, long and burdensome. And yet, we are requiring a duplication of efforts at PHMSA on rules that this Congress and others agree are critical to the public and environmental health, and for business certainty.

We heard at our recent legislative hearing on this discussion draft that PHMSA is essentially required to go through two cost/benefit analyses. One is required by Section 60102 of Title 49, and the other at OMB as mandated under executive order. This results in an unnecessary duplication of efforts that significantly delays the process.

My amendment helps to remove these overlaps at PHMSA so that it is able to issue rulemakings in an efficient and timely manner. The amendment strikes the risk assessment and cost/benefits requirements under Section 60102 because they are already being

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done at OMB. PHMSA regulations would still be subject to cost/benefit analysis and appropriate transparency.

We would all like to see PHMSA move forward quickly on the remaining 26 rules, as well as any future rulemaking, and continue focusing on strong oversight and guidelines that will protect our environment, the public health, and allow our nation to take advantage of its energy resources.

I urge the adoption of this amendment. And I yield back.

Mr. Pallone. Will the gentleman yield?

Mr. McNerney. I will yield to the ranking member of the full committee.

Mr. Pallone. I just want to speak in favor of Mr. McNerney's amendment.

All of the, as he said, all of the regulations promulgated by PHMSA already go through risk assessment and cost/benefit analysis at OMB's Office of Information and Regulatory Affairs. And so I think these procedures are duplicative. They do nothing to improve PHMSA's regulation. They waste the agency's time and resources. And, ultimately, they delay the implementation of necessary safety measures.

My recollection, and I could be wrong, is that, you know, these things were added like 20 years ago. And I remember at the time that we were making the same point that they were simply a waste of time and resulted in delay. And I think that what's

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happened over the last 20 years has clearly indicated that.

So, again, I would support this amendment to eliminate these wasteful reviews and streamline PHMSA's process.

I yield back to the gentleman.

The Chairman. Would the gentleman yield, Mr. McNerney?

Mr. McNerney. Yes. I yield to the chairman.

The Chairman. You know, I would just say it is one thing to ask PHMSA to prioritize. I don't think anyone would object to that. I can remember at the hearing, last year I want to say, when we made a change that they had to report spills within 24 hours, and it seemed like it took 3 years to get the reg promulgated on that. Obviously we don't want a duplication. But there are a lot of concerns on our side as it relates to the cost/benefit analysis.

And again, we just saw the amendment. I know you have been talking about it for a while. We just saw the amendment last night. And I would just see if we might be able to get a better balance than this amendment and would ask maybe that you withdraw and we see if we can come to some accommodation between now and the full committee mark-up. Because otherwise we have some concerns that we would, I would ask our members to oppose your amendment at this point.

But I think there is an opportunity to move forward with getting something that might be agreeable to both sides.

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Mr. McNerney. Reclaiming my time.

The Chairman. I yield back.

Mr. McNerney. I mean this is binary. It is either going to be two or it is going to be one cost-benefit analysis. So if you could give me some idea how that could be compromised, I would appreciate that.

The Chairman. Our staff just saw your wording of it last night. And it is I would just like a little more time to figure it out. And maybe we can, maybe we can come to some accommodation. Obviously you have the right to offer the amendment in full committee when we get there. But we have got some concerns with it the way that it is now written.

Mr. McNerney. Reluctantly, in the spirit of cooperation, Mr. Chairman, I will withdraw this. And I look forward to perhaps-

The Chairman. Yes.

Mr. McNerney. -offering it in the full committee.

The Chairman. Yes. Thank you.

Mr. Whitfield. So the gentleman withdraws the amendment.

I do want to-he is withdrawing the amendment. I do want to ask one question of legal counsel though.

I have been looking at this amendment establishing a new Section 17, and it says the amending at page 25 after line 11. And on that, that is paragraph 2 that goes from 4, line 4 through

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line 11. And they are amending Section 60102(b) in the amendment. And I don't see anything in lines 4 through 11 that relate in any way to 60102(b).

Am I misreading this? Or is this amendment in the right place from your perspective?

Mr. Mooney. It appears this amendment would insert a new section. It is the section amends.

Mr. Whitfield. Well, but it is striking subparagraph D and E. Where are those paragraphs that it is striking?

Mr. Mooney. Those appear in the statute. And they appear in 60102. And 60102(b) is Practicability and Safety Needs Standards. It sets out the factors for consideration.

Mr. Whitfield. Okay.

Mr. Mooney. The factors for consideration that are being struck are D and E.

D reads, "Based on a risk assessment, the reasonably identifiable and estimated benefits expected to result from the implementation or compliance with the standard.@

And E is, "Based on a risk assessment, the reasonably identified or estimated costs expected to result from implementation or compliance with the standard.@

Mr. Whitfield. Okay.

Mr. Mooney. Those two provisions would be struck in the underlying substitute-

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Mr. Whitfield. Okay.

Mr. Mooney. -for 60102.

Mr. Whitfield. Okay. Well, the gentleman has withdrawn. And I wanted to give legal counsel the opportunity to do a little work this morning, so.

So are there any other amendments to be offered at this time?

Well, seeing none-Oh, for what purpose does the gentleman from New Jersey seek recognition?

Mr. Pallone. To offer my Amendment 01.

Mr. Whitfield. Will the Clerk report the amendment.

[The Amendment offered by Mr. Pallone follows:]

*****INSERT 17*****

The Clerk. "Amendment to the Pipeline Safety Act of 2016 offered by Mr. Pallone.@

Mr. Whitfield. The gentleman is recognized for 5 minutes.

Mr. Pallone. Thank you, Mr. Chairman.

You will be happy to know that I intend to withdraw this even before you or Mr. Upton say anything. But I would, the amendment basically would add back the mandamus provision that was in the original discussion draft.

My amendment would restore the ability of the public to compel PHMSA to perform its non-discretionary obligations under the Pipeline Safety Act. And this provision is necessary to address an incorrect reading of the 2002 reauthorization by the 9th Circuit.

It is clear to me that the 9th Circuit's reading of the Pipeline Safety Act with regard to mandamus was just plain wrong. The law always contemplated mandamus processes to ensure PHMSA does its job. And the mandamus language added to the statute in 2002 as part of the whistleblower protection provision was always intended to be in addition to what was already in the statute, not in the middle of the existing language, as the court incorrectly stated.

And this was the safety community's top issue. I am not exactly sure why the industry has chosen to throw down the gauntlet over it. In the last 20 years, there has only been one mandamus

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suit, and that was by the City and County of San Francisco in the wake of the San Bruno pipeline disaster, a cause which the plaintiffs lost.

So I also want to point out to my Republican colleagues who are concerned that this is sue and settle, as they like to call it, that this is different. This is not a public health or environmental law; this is a safety statute. If the agency doesn't do its job, property gets damaged and, more importantly, people get hurt or killed, as we have seen time and again in places like Bellingham, Washington; Marshall, Michigan; Carlsbad, New Mexico; Santa Barbara, California; and as I mentioned before, Edison, New Jersey.

Again, I, you know, I want to bring this out. I do intend to withdraw it. Both sides of the aisle and the industry have all repeatedly voiced frustration at PHMSA's inaction on a number of fronts. We even have a provision in this bill designed to make PHMSA finish the rulemakings from the 2010 act because it didn't do the job we told it to.

But not everything can be handled all the time by specific new provisions of law like Section 3. So I think it is still important for the public to have the ability to access the courts to ensure PHMSA is keeping our pipeline system safe.

I don't know if any, you know, if anybody on the other side would want to address this. But, you know, prior to my

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withdrawing it, if any of you would like to comment on it?

Mr. Whitfield. Does anyone want to make a comment?

I don't see any.

Mr. Pallone. Okay. But I will ask at this time unanimous consent to withdraw my amendment and yield back my time.

Mr. Whitfield. The gentleman withdraws his amendment and yields back his time.

Is there anyone else seeking recognition to offer an amendment.

Mr. Tonko. Mr. Chair.

Mr. Whitfield. For what purpose does the gentleman from New York seek recognition?

Mr. Tonko. Mr. Chair, I have an amendment at the desk. I offer Amendment Number 4.

Mr. Whitfield. The Clerk will report the amendment.

[The Amendment offered by Mr. Tonko follows:]

*****INSERT 18*****

The Clerk. "Amendment to the Pipeline Safety Act of 2016 offered by Mr. Tonko.@

Mr. Whitfield. The gentleman is recognized for 5 minutes.

Mr. Tonko. Thank you, Mr. Chair.

This amendment provides an important change to the criminal penalty section of the statute. We all know that it is rare that a pipeline operator violates the law in a way that would be considered criminal, but it does happen. At our legislative hearing we heard how Mr. Weimer's organization, the Pipeline Safety Trust, was born out of one such event, the fatal tragedy in Bellingham, Washington, in 1999.

And while these types of events are rare, we should not create unnecessary barriers to shield reckless behavior that may put lives at risk. There are already well-established circumstances under which criminal penalties may be taken, for example: if a person willfully and knowingly destroys an interstate pipeline facility; if a person willfully and knowingly damages or removes a pipeline sign or right-of-way marker; or if a person willfully and knowingly violates a pipeline safety requirement or the conditions of an order generally.

The current language sets an unusually high bar for holding companies accountable for criminal behavior. This amendment would simply change the current "willfully and knowingly@ standard to "willfully, knowingly or recklessly.@ This proposed

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language should not be new to anyone. It is the same standard used by HAZMAT rules under PHMSA's operations. This standard can be found in the statute, Section 5124 of Title 49. This amendment harmonizes the code and criminal penalty standards across PHMSA.

Again, I want to stress that it is very rare that pipeline operators act criminally. Thankfully, there have been only a few, a handful of incidents in recent memory. But I believe we should not create barriers that make it difficult to hold companies accountable when they knowingly or recklessly ignore the laws meant to keep people safe. A deliberate indifference or disregard for the consequences, whether they be public safety or environmental, is simply unacceptable. The law should reflect that. In these rare circumstances, reckless behavior must be held accountable.

With that, I urge support for this amendment. And, Mr. Chair, I yield back-

Mr. Pallone. Will the gentleman yield?

Mr. Tonko. I will yield to the gentleman from New Jersey.

Mr. Pallone. Thank you. Just briefly, as the gentleman from New York said, criminal prosecutions under the current Pipeline Safety statute require that the violation be committed knowingly and willfully. Now that is the highest, most stringent standard among criminal statutes. And that high standard has resulted in numerous pipeline safety cases being declined for

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prosecution by the U.S. Department of Justice, and many other cases not even being referred for criminal investigation because PHMSA concluded there was insufficient evidence to establish a criminal violation.

Mr. Tonko, by amending the standard to "knowingly, willfully or recklessly" would mirror the criminal standard already used in the prosecution of violations of PHMSA's hazardous materials transportation laws. And I think this really is an important change that will increase PHMSA's ability to hold accountable pipeline operators who violate the law.

So I urge my colleagues to vote yes, and yield back to the gentleman.

Mr. Tonko. And, Mr. Chair, unless there is anyone on my side that wants to utilize the last 2.5 minutes.

Seeing none, I will yield back.

Mr. Whitfield. The gentleman yields back. I will recognize myself for 5 minutes.

As has already been stated, this amendment would change the standard for bringing a criminal action from "knowingly and willingly" to "knowingly, willingly or recklessly," is the way I understand it. And I personally for myself, not being an expert in criminal law, although I was, I am a lawyer and did have some criminal cases, I don't like to expand the opportunities to bring criminal charges myself personally. And so I personally oppose

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this amendment.

However, we have this spirit today on almost every issue being willing to talk about it. If we had to vote today, I would oppose it myself. But if the gentleman wants to consider withdrawing it and we will add that to the litany of other issues and try to look into it in more detail in consultation with the Judiciary Committee and so forth.

Mr. Tonko. Mr. Chair, I appreciate the effort to look more closely at this. I think it is important for us to offer standardization for PHMSA, so that "recklessly" has an important component of making certain that the general public and the environment is safeguarded is an important thing.

So with that offer to review it more closely, I would withdraw the amendment. And encouraged by the effort to sit down and discuss this more completely and thoroughly.

Mr. Whitfield. Well, thank you very much, Mr. Tonko. We appreciate your withdrawing that amendment.

And are there any additional amendments this time?

The gentlelady from California is recognized. Would the Clerk report her amendment.

Mrs. Capps. Number 8.

Mr. Whitfield. Clerk will report.

[The Amendment offered by Mrs. Capps follows:]

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*****INSERT 19*****

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The Clerk. "Amendment to the Pipeline Safety Act of 2016 offered by Mrs. Capps.@

Mr. Whitfield. The gentlelady is recognized for 5 minutes.

Mrs. Capps. Thank you.

Mr. Chairman, this amendment addresses the problems of pipelines aging, and with weather as well, to become more prone to failure. These incidents result in leaks and spills that impact public health, the economy and the environment. And while it is impossible to prevent and predict every pipeline failure, the more we know about the condition of a pipeline, the better we are able to correct an issue before it becomes a problem.

Detecting these anomalies is the job of pipeline inspectors who use a variety of techniques to assess the quality of the entire pipeline inside and out. In an ideal world we would be able to automatically assess every mile of pipeline everywhere, and know the condition of these pipelines in real time. But the truth of the matter is that we are still reliant on these periodic in-line and on-the-ground inspections.

So I applaud the authors of this draft language who recognize that the current inspection time line for pipelines in high consequence areas are insufficient. However, the draft takes an incredibly narrow approach, carving out a small subsection of high consequence areas as worthy of greater attention from inspectors, with little justification as to what makes these areas more

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important than others. All high consequence areas across the nation are threatened by the possibility of a pipeline safety failure. And we must treat them equally as we work to improve inspection frequency.

This amendment would do just that. It would simply extend and increase inspection frequency of once per 12 months to all hazardous pipelines located within high consequence areas, no matter where they are located in the country and not just the narrow subset listed in the current draft.

My congressional district, again, knows the impact of this all too well. The Plains pipeline spill along the Central Coast of California occurred less than 2 weeks after being inspected. This inspection, which unfortunately had not been analyzed in time to avoid the tragedy, occurred less than 3 years from the prior inspection, over 2 years earlier than the current standard for pipelines within HCAs.

So in this instance even the pipeline operator agreed that 5 years is too long to wait between inspections on pipelines running through these sensitive areas. If the pipeline operators had known of the declining condition of the pipelines prior to the spill they could have addressed the issue and, hopefully, prevented the spill from occurring, which once it did was way more costly for them to address than the increased frequency of inspections.

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So this demonstrates that even 3 years is too long to wait between inspections. And with the aging infrastructure that makes up the majority of our nation's pipelines-and I can't underscore how significant that aging infrastructure is-this problem is only going to become worse. It makes sense that we should do all we can to protect these high consequence areas in every way possible. And at the top of the list, along with using the best available technology, should be having accurate enough to gain knowledge of the condition of the pipeline.

So this amendment helps operators to know the current condition of their pipelines by increasing the frequency of inspections to every year for high consequence areas, rather than hoping that nothing happens in the 5-year interval that they are currently waiting.

I urge my colleagues to recognize that all high consequence areas require increased inspection, and pass this common sense amendment.

I thank you. And I will yield to anyone. Yes, I yield to Mr. Pallone.

Mr. Pallone. Yes, I mean I, look, I am not going to -- I think that Congresswoman Capps has described very well the intention here. And that it just seems that we just have one pipeline here, what is it, that is located more than 150 feet below the surface that is going to be inspected at least once per year.

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And the reality is that a lot of the pipelines in these high consequence areas should be inspected at least once per year, not just this one.

So I mean, obviously, we, I know that Mr. Whitfield, Mr. Chairman, you have said that you are going to spend time between now and the full committee looking at this, but I think this is one area that we definitely need to broaden so it is not just limited to one pipeline.

But I yield back to the gentlewoman.

Mrs. Capps. I yield back.

Mr. Whitfield. The gentlelady yields back.

Well, like so many of the other issues we understand that these pipelines are a safe way to move a lot of products to market. And right now in these high consequence areas they do use a risk-based schedule. And we are going to be requiring them to go from a risk-based schedule to an annual inspection of these pipelines.

I personally am opposed to this as well. But in my talking points that they gave me it says that while I share my colleague's concern, I would ask that the amendment be withdrawn so we continue working on this particular amendment as well.

Mrs. Capps. Add it to the list.

Mr. Whitfield. So if you are willing to do that, then we will-that is, you know, we are talking about high consequence,

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we are talking about the definition of high consequence and going from risk-based to annual. So if you want to vote now, we can vote now. If you want to withdraw it and we will continue to work on it.

Mr. Pallone. Mr. Chairman, can I-

Mrs. Capps. Of course.

Mr. Pallone. -just ask a question, if you will yield to me.

You know, obviously the spirit here today has been that we are going to try to work together on these things. It is hard for us to prioritize which things are more important than others and how successful we are going to be.

But I just would like to have a commitment before the gentlewoman decides to withdraw that, you know, we are probably going to be another month at least because we have got the Easter recess. We really want a commitment from you and Mr Upton, speaking for him if you could, that we are going to really spend the time over the next month, you know, sitting down and seriously trying to accommodate these amendments.

This is the last amendment. That is why I am saying this-

Mr. Whitfield. Yes.

Mr. Pallone. -at this time. Because if all we do is come back in a month and just offer these amendments without any, you know, additional work to try to come to a consensus, that is not going to be helpful.

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I always take you guys at your word. I am not suggesting otherwise. But I do think that we need to spend some time and really sit down with the staff and work on this, if I could get that commitment.

Mr. Whitfield. Right. Well, I think Mr. Upton made that commitment. Mr. Barton said on the Section 15 that he definitely wants to sit down and be involved in it. And on the other ones our staff and Fred and I will sit down with you all before the mark-up and try to see what we can agree on, what we cannot agree on, and clearly define it.

Mr. Pallone. I don't even know whose time it is.

Mr. Whitfield. It is your time.

Mr. Pallone. It is my time?

Mr. Whitfield. Oh, it is my time. So I will yield to the gentleman from California.

Mr. McNerney. Well, I thank the Chairman.

The amendments that we proposed this morning are not message amendments. They are reasonable. We want to make the pipeline industry safer and reduce risk for the industry itself.

So I do urge the committee Republicans to work with us. We don't want to have to go through this every time.

Mr. Whitfield. Fine. Are you acknowledging that sometimes you do have message amendments?

Mr. McNerney. We have message bills, yes. But let's work

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together and find a bipartisan.

We were all very disappointed on the Energy Bill. It looked like we worked together very hard and we all made compromises, painful.

Mr. Whitfield. Yes.

Mr. McNerney. And at the very last minute it turned into a message bill. So let's not let that happen this time.

Mr. Whitfield. Yes, go ahead.

Mrs. Capps. Well, if I could just add. This, we are going to have another incident that is going to perhaps be worse. I think we, I agree, we can do something. But this is going to have to have teeth in it because these communities that have been devastated are not going away. And the time that it takes to recover is so much more expensive than whatever preventative work. The technology is there.

The industry in my opinion, and I am not from Texas, but I believe the industry is almost waiting for us. They know how to do, they know how to make this business safer. I don't mean to pick on you.

Mr. Barton. But you are going to.

Mrs. Capps. No. But I was looking because you have been, so you have been gracious to work together. But I believe we do have the clock ticking. And I know the public is with-my community are going to demand that we act, if not today, very

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quickly, because this, they are still recovering. The fisherman still don't have their fish back.

Mr. Whitfield. Well, you know, as I said-Did you want to respond, Mr. Barton?

Mr. Barton. Well, we can do it at full committee.

I will say this: nobody in the pipeline industry is aware of a hazard and is not acting on it.

Mrs. Capps. Right.

Mr. Barton. I mean they, they want the pipelines to be operating safely. They have divisions in every pipeline company that that is all they do is focus on safety. So to make the statement that they know how to make pipelines safe and they are just not doing it, I guess at the margin if you have a very old pipeline with a very marginal product line, and you know there is newer technology, you could argue that maybe they should go ahead and use the newer technology to replace the pipeline even though it is not cost effective. So you might have an argument there.

But to just generically say, hey, they know how to make them safe and they are just not doing it, that is just not true. I mean it is just not true.

Mrs. Capps. Well, let's see how far we can go together.

Mr. Barton. Okay. I would ask you, is there going to be an automobile accident in your district somewhere today? And the

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answer is people drive in California, and some Californians drive crazy, and somebody is going to have an automobile accident somewhere in your congressional district today, just as they are in mine. We know it is going to happen. But we really, unless we say everybody take the bus, you are not going to prevent it from happening.

But we will work together.

Mr. Whitfield. The gentleman yields back.

At this time the Chair recognizes the gentleman from New York for the purpose of offering an amendment.

Mr. Engel. Thank you, Mr. Chairman.

Mr. Whitfield. Are you withdrawing?

Mr. Engel. Yes, I will.

I will introduce an amendment I will withdraw. But I have an amendment at the desk, Amendment Number 20.

Mr. Whitfield. The Clerk will report the amendment.

[The Amendment offered by Mr. Tonko follows:]

*****INSERT 20*****

The Clerk. "Amendment to the Pipeline Safety Act of 2016 offered by Mr. Engel."

Mr. Whitfield. The gentleman is recognized for 5 minutes.

Mr. Engel. Thank you, Mr. Chairman.

Recent reports say that the Department of Justice is getting ready to indict several hackers allegedly backed by the Iranian Government for their role in a cyber attack on a dam in Rye, New York, just north of New York City, on the borderline of my district and Nita Lowey's district.

Terrorists and hostile foreign actors are looking for vulnerabilities in our infrastructure every day. So we have to be vigilant about these threats, which is why I am glad that the committee is talking about pipeline security today. We need to have a comprehensive approach to every stage of a pipeline's life, from siting it to designing it to monitoring it to operating it.

This bill gets at some of these issues. But I want to make sure that my colleagues understand that this cannot be the end of the conversation when it comes to securing our nation's energy infrastructure. My biggest concern today is what happens in the run-up to the construction of the pipeline? Where do we build these pipelines? As we design and incorporate adequate safeguards against terrorism or cyber attack, are the right people answering these questions?

Most of my colleagues here are familiar with the Indian Point

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Energy Center. This is the long-troubled nuclear power plant that sits just a few miles north of New York City, and just west of the dam in Rye that was allegedly compromised by the Iranians. I have been working with concerned New Yorkers for the last few months to try to stop the construction of a compressed natural gas pipeline right alongside it.

When we were looking closely at the permitting process I was shocked to learn that the Department of Homeland Security had zero say at all in this. Nobody asked DHS whether this pipeline's proximity to a leaking nuclear power plant made it a bigger terrorist target. It seems obvious to me that the Department of Homeland Security should have some sort of actual say in decisions about how and where these pipelines are built if we are going to be serious about securing our energy infrastructure.

My amendment will create a mandatory role for the Department of Homeland Security in siting new LNG pipelines and certifying that new LNG pipelines will be hardened against cyber threats and terrorist before they are built rather than waiting until after.

I am going to withdraw the amendment, but I wanted to make sure that my colleagues understand that the conversation about pipeline security doesn't end with this bill here today because we need to be thinking long and hard about security before a pipeline is even built. And we have a responsibility to make sure that the folks that know best get a seat at the table.

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So I hope we can address those issues soon. I withdraw my amendment and yield back my time. And I thank you, Mr. Chairman.

Mr. Whitfield. The gentleman withdraws the amendment.

Thank you for your comments.

And are there any additional amendments at this point?

Seeing none, the question would now occur on forwarding the discussion draft to the full committee, recognizing that we have a lot of work to do and we did make that commitment and look forward to having additional meetings with you all and your staff to go over these issues.

So all those in favor of reporting the discussion draft, say aye.

All those opposed, nay.

The ayes appear to have it. The ayes have it. And the bill is favorably forwarded.

And that concludes today's mark-up. Thank you all very much. And we look forward to working with you.

[Whereupon, at 11:34 a.m., the subcommittee was adjourned.]

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