

RESPONSE AND COMMENTARY to Docket No. NHTSA-2019-0104

Re: Denial of DP 18-001 (ODI case #2020-04384) as it appeared in *Federal Register* 85 (43), March 4, 2020
By J. Kevin Byrne, *Petitioner*
Date: March 22, 2020

Preface: This petitioner's Response and Commentary has six lettered sections (A-F) three of which focus on the DP 18-001 denial document's language. Sections have a title, facts and sometimes actual excerpts from the denial report (usually *in italic* and cited by paragraph [¶] number), and narrative matter under the word **Critique**. The longest part is D which addresses four essential attributes deemed missing in the denial report by the petitioner. The petitioner's Response herewith includes two figures, four tables, three footnotes, and five appendices. The principles underlying this petitioner's Response are derived from best practices pertaining to critical thinking. The role that critical-thinking methodology should play in an ODI analysis is described and supported by the final figure (2) and table (4) in section F (Conclusion); the conclusion's goal is to offer evidence that the petitioner's response has intellectual integrity, something that was in part absent in the ODI DP 18-001 denial document.

A. Issue: Document language pertaining to *defect* and *defect trend*

¶ 4. Prefatory note from this petitioner: in DP 18-001's ¶ 4 an excerpt from **Code of Federal Regulations Title 49 – Transportation §552.6** is offered but there is no mention made in federal regulations here pertaining to the word "defect" or the phrase "defect trend."

¶ 6. *On May 23, 2018, ODI opened DP18-001 to evaluate the petitioner's request for a defect investigation. ODI considers vehicle age, environment, detectability, and severity when assessing whether complaints alleging corrosion-related failures indicate a potential defect trend.*

¶ 9. *After reviewing the concerns raised in the petition, ODI did not find evidence of a defect trend during its evaluation of DP18-001.*

¶ 10. *Similarly, ODI did not find evidence of a defect trend in vehicles that are not equipped with the modified retention shield. ODI identified eighteen (18) complaints alleging complete or partial detachment in the subject vehicles produced before the tank shield modification.*

¶ 11. *After a review of the available data, ODI has not identified evidence of a defect trend for corrosion-related fuel tank detachments in the MY 2004 Isuzu Rodeo or similarly equipped vehicles.*

Additional language: 552.1 specifies with precision the role a "defect" plays in non-compliance as follows:

Code of Federal Regulations Title 49 – Transportation §552.1 Scope. *This part establishes procedures for the submission and disposition of petitions filed by interested persons pursuant to 49 U.S.C. Chapters 301, 305, 321, 323, 325, 327, 329 and 331 to initiate rulemaking or to make a decision that a motor vehicle or item of replacement equipment does not comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety. (Note: the word trend was not in here.)*

Critique: "Defect trend" appears four times in the denial report, in ¶ 6, 9, 10, and 11 above; this points to a perceived need by ODI to conduct some kind of *defect trendspotting*. The word trend is defined by a footnote below.¹ Defect trendspotting is not mandated by federal regulations. Stated another way, at best it might be a "nice-to-have" attribute but it is not a "must-have" by law. Eighteen cases (i.e., "VOQs," specified in ¶ 10 above) factually had verified the existence of a defect by first-hand owners. One VOQ (this petitioner's) was for a late MY (model year), the other VOQs were earlier. Selecting "a sample of one" of eighteen VOQs is hardly a trend, it is simply one incidence of time contrast, late vs. early. ODI offers no evidence to argue that this constitutes the presence or absence of a defect trend. Trends by definition require statistics (see footnote 1). If a percentage was objectively calculated, say a "VOQ per vehicle count by MY," ODI could then offer a modicum of factual evidence (or perhaps it might turn out to be an absence of clear evidence) in order to judge ubiquity and/or acuteness of the appearance of a defect. But ODI did not include any of this in the report as narrative or tabular matter.

B. Issue: Document language pertaining to *corrosion* and *road salt*

¹ Dictionary definitions of the word *trend* are three-part. They start and end with these two: "**a line of development and the general movement over time**" and "**a statistically detectable change.**" <https://www.merriam-webster.com/dictionary/trend> Note: no statistics were offered by the ODI author.

¶ 6. On May 23, 2018, ODI opened DP18-001 to evaluate the petitioner's request for a defect investigation. ODI considers vehicle age, environment, detectability, and severity when assessing whether complaints alleging **corrosion**-related failures indicate a potential defect trend.

¶ 7. The vehicle has been registered in the Saint Paul, Minnesota, metropolitan area, a region with high winter **road salt** use, for almost all its service life.

Critique: Isuzu and NHTSA in joint accordance and historically have acknowledged the ubiquity of corrosion in ¶ 6 and 7 above, and in figure 1 below (figure 1 is discussed in detail later). If it was Isuzu's intention to sell vehicles in the United States this petitioner offers the assumption that such a business strategy would have to include 22 states with road salt – together with the manufacturing implications thereto. It is not sufficient that a manufacturer gets to ignore technical considerations for corrosion; neither a manufacturer nor NHTSA can assert that age or high mileage is an industry-wide mitigating circumstance or an avenue to dismiss DOT mandated safety requirements for proper and durable vehicle engineering. The report author's phrase "*older vehicles*" (¶ 10) is subjective and speculative.

Figure 1. Wording by Isuzu announcing a recall campaign (#13V-547, discussed later) for a smaller subset of vehicles mentioned in DP 18-001. Note wording of a) "Rust Campaign," in yellow, b) that 22 "Salt Belt" states were specified, in yellow, and c) the phrase "in accordance with... [NHTSA] Safety Act," see footnote 3 for the relevant U.S.C.

SUZU

Change Of Ownership / Address

13V-547 UA-UE-UP **Rust Campaign**

Never owned _____ Date _____

Previous owner _____ Date _____

Totalled/scrapped _____ Date _____

Moved, new address below _____

Sold vehicle, new owner / address below _____

Signature _____

4S2DM _____

Saint Paul, MN 55113-5312

NEW ADDRESS INFORMATION

Name ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Address ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

City ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ Saint Paul, MN 55102

Phone (☐☐☐) ☐ ☐ ☐ ☐ ☐ ☐ ☐

Zip ☐ ☐ ☐ ☐ ☐ ☐

To mail card, tear at both perforations & remove this piece.

"IMPORTANT SAFETY RECALL"

This notice applies to your vehicle, 4S2DM _____

DECEMBER 13, 2013

Dear Isuzu Customer,

This notice is sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act. Isuzu Motors Limited has decided that a defect which relates to motor vehicle safety exists in certain model year (MY) 2003 Rodeo Sport, 2003-2004 Rodeo and 2003-2004 Axiom vehicles originally or currently registered in the following states (the "Salt Belt"): Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, the District of Columbia, West Virginia, Ohio, Indiana, Kentucky, Michigan, Illinois, Wisconsin, Minnesota, Iowa, and Missouri.

WHAT IS THE CONDITION?

Certain Isuzu vehicles that have experienced sustained exposure to highly corrosive materials used in some jurisdictions for road deicing purposes may experience excessive corrosion in the vicinity of the forward mounting point bracket for the left or right rear suspension lower link prematurely. In certain extreme cases, excessive corrosion in this vicinity may result in a lower link bracket becoming detached from the frame, which can affect vehicle handling and potentially cause a crash.

C. Issue: Document language pertaining *speculative and subjective* phrasing

Critique: Four of the document's 12 paragraphs favor speculative arguments. The word speculation is defined as "the activity of guessing possible answers to a question without having enough information to be certain."² Total speculative and subjective verbs and phrasing numbered ten. See table 1. Speculations per paragraph in the DP 18-001 report were a mean (\bar{x}) of 0.83. Petitioner's question: why are these paragraphs littered with "speculation"? Facts are required for *confidence of reason* when an author conducts a critical-thinking analysis, see figure 2.

² <https://dictionary.cambridge.org/us/dictionary/english/speculation>

Table 1. Subjective and speculation-centered language.

Speculation-centered language (<i>italic</i>), by count	Its location by ¶ #
<i>usually</i> , 1	6
<i>more likely</i> , 1	6
<i>has the potential</i> , 1	6
<i>may indicate</i> , 1	6
<i>may contribute</i> , 1	6
<i>can help</i> , 1	6
<i>appears to have caused</i> , 1	8
<i>may have occurred</i> , 1	9
<i>may result</i> , 2	6, 11
Speculations per paragraph = mean (\bar{x}) of 0.83.	

D. Issue: Five essential attributes missing from the document

1. Proper timing

¶ 4. Pursuant to 49 CFR 552.1 ([/select-citation/2020/03/04/49-CFR-552.1](#)), interested persons may petition NHTSA requesting that the Agency initiate an investigation to determine whether a motor vehicle or an item of replacement motor vehicle equipment fails to comply with applicable motor vehicle safety standards or contains a defect that relates to motor vehicle safety...

Additional language not raised in the DP 18-001 report:³ § 552.8 sets the duration at 120 days, details here: **Code of Federal Regulations Title 49 – Transportation § 552.8, Notification of agency action on the petition.** After considering the technical review conducted under § 552.6, and taking into account appropriate factors, which may include, among others, allocation of agency resources, agency priorities and the likelihood of success in litigation which might arise from the order, the Administrator will grant or deny the petition. NHTSA will notify the petitioner of the decision to grant or deny the petition within 120 days after its receipt of the petition

Critique: 120 days is four months. The duration of DP 18-001 from petition to denial was nearly 24 months. Though the federal shutdown fell with this period what transpired was two years instead of four months, or 6 times the length specified by law. A delayed analysis like DP 18-001 offers the reader a perception that the report languished for many months. Isuzu was confirmed as meeting its data submission deadline (which was extended by ODI by one month), Appendix I p. 1. Why ODI's delay? Delays like this were a) non-compliant with U.S.C. regulations and b) extended timelines into an unsafe future for Isuzu Rodeo owners with fuel-tank defects. As this petitioner remarked, several years back (August 2018) in correspondence to Matthew Martens (ODI vehicle defects investigator assigned to this case), "Any delay afforded [Isuzu] will just add a month that merely serves them as another mechanism to argue for vehicle age (or other excuse/s) as cause/s for a premature dismissal of DP 18-001," see Appendix I, p.3. The subsequent denial which is the finding of DP 18-001 report bore this petitioner's prediction out.

2. Priorities

¶ 5. ...vehicle should be covered by NHTSA Recall Number 13V-547..., ¶ 7. petitioner notes that his vehicle is covered by NHTSA Recall Number 13V-547..., ¶ 8. While Recall Number 13V-547... vehicle and...not covered by Recall Number 13V-547..., and ¶ 12. ...not within the scope of NHTSA Recall Number 13V-547.

Critique: The DP 18-001 report continually references NHTSA Recall 13V-547 (¶ 5, 7, 8 above) but its relevance is merely slight. The petitioner's letter had indeed mentioned, having just over two dozen words on the topic, one excerpt here:: "The rust of support brackets that resulted in NHTSA's campaign 13V-547 is clearly at work here" (see Appendix I, p. 3.) The petitioner only raised this due to language used pertaining to "rust recall" and "salt belt states." The rusted point bracket cited in Recall 13V-547 is a mere inches adjacent to the rusted fuel-tank saddle and straps specified this petitioner's DP 18-001. This is a fact that was left unnoticed and/or unmentioned by the DP 18-001 author, thus ODI's priority to "over-argue" this topic is amiss.

³ One other important regulation was not cited in DP 18-001, notably **Safety Act (Chapter 301 of Title 49 of the United States Code, 49 U.S.C. 30101)** defines motor vehicle safety as "the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle." This relates to the petitioner's **Critiques 3 and 4, Actions requested, and table 4, row 7** pertaining to fuel-tank defect.

3. Evidence of efficacy of vehicle “design change”

¶ 9. *Design change information provided by Isuzu indicates that the fuel tank retention shield used to secure the tank to the vehicle was modified in 2001 to improve the corrosion resistance of the part. The modification was implemented as a running change in early MY 2002 production.*

Critique: This petitioner is in possession of a letter from ODI sent to Isuzu Technical Center of America, Inc. provided to him by ODI as a courtesy, nine pages long and dated June 8, 2018, two relevant pages are in Appendix III, p. 11, with excerpts as follows:

- Letter’s p. 8, “Describe all assessments...that relate to ... the alleged defect [with] the following information: ...a summary of the findings and/or conclusions resulting from the action.”
- p. 9, “Describe all the modifications ... in the design ... which relate to ... the alleged defect [along with] the approximate date on which the modification...was incorporated into the vehicle production.”

The data above which would have specified “design change modifications” that Isuzu made to the fuel-tank components were said to be provided to ODI by Isuzu on or before August 31, 2018, see Appendix I, p. 1

Questions: where is that data within the denial report, what was its wording? Answer, nowhere, none. Why?

4 Vehicle inspection by ODI

¶ 6. *...Although a manufacturing or design defect may contribute to premature corrosion-related failures to vehicle underbody components, a severe operating environment or improper care and maintenance can also cause such failures. Annual inspections, monthly cleaning, and detecting and repairing problems early can help to prevent such problems or lessen impact.*

¶ 11. *The damage that may result in tank retention concerns appears to occur progressively over many years with ample opportunity for detection and repair.*

Petitioner’s vehicle was not inspected by ODI. Of the petition denials from 2015-2020, five petitioner’s vehicles were inspected, four were not. See table 2, column 8. Additionally, Appendix IV features Ramsey County (MN) court case exhibits that included photographs signed by the vehicle mechanic (p. 18) that precisely illustrated the substandard fuel-tank condition status as of September 2018. ODI didn’t know this but would have with a firsthand examination.

Critique: Awareness and acknowledgement of the real-world status of the petitioner’s fuel-tank components were absent, after fuel-tank failure and its repair; its status was deemed insignificant. Historically, firsthand inspection of vehicles by ODI is inconsistent, see table 2 below, row G. If there is a trend that the analyst might seek to raise it is that there were *fewer* firsthand inspections post-2016. ¶ 6 and 11 hint that “*improper care and maintenance*” and a missed “[*ample*] opportunity for detection and repair” are owners’ behavior that may be responsible for tank failure. These statements are speculative, subjective and disingenuous in the absence of firsthand inspection.

Table 2. Analysis of analyses, ODI DP denials, 2015 - present. Goal: petitioner’s assessment of ODI analyses consistency.

	A. Denial reports #, <i>DP # in italic?</i>	B. Author, aka “Associate Administrator”?	C. Support matter by count: <i>tables, figures, photos, citations, and appendices?</i>	D. Notes?	E. Report duration ≥24 months?	F. Disclaimer* wording offered in final report paragraph?	G. Each petitioner’s own vehicle inspected?	H. Support data from <i>mfr.</i> (as opposed to ODI’s) are shown?
1	2015-20380, <i>DP15-003</i>	Frank S. Borris II	t=1, c=3	tot. support matter = 4		Y	Y	**
2	2015-20949, <i>DP15-005</i>	Frank S. Borris II	t=5, fig=1, c=19	tot. support matter = 25		Y	Y	
3	2016-04605, <i>DP15-007</i>	Frank S. Borris II	t=2, c=10	tot. support matter = 12		Y	Y	
4	2016-26289, <i>DP12-004</i>	Jeffrey M. Guiseppe	fig=2, p=10, c=5, ap=1	tot. support matter = 10		Y	Y	
5	2018-10404, <i>DP17-002</i>	Jeffrey M. Guiseppe	none	zero support matter = 0	Y, ~58 months	N	N, but tested similar vehicle	
6	2018-13307, <i>DP15-001</i>	Jeffrey M. Guiseppe	t=2, c=24	tot. support matter = 26	Y, ~40 months	N	N	Y (Ford)
7	2018-18506, <i>DP17-001</i>	Jeffrey M. Guiseppe, et al.	none	zero support matter		Y	N	Y (Michelin)
8	2019-11188, <i>DP15-009</i>	Jeffrey M. Guiseppe	c=5	tot. support matter = 5	Y, ~57 months,	N	Y	N

9	2020-04384, DP18-001	Jeffrey M. Guisepppe	none	zero support matter	Y, ~24 months	N	N	N
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*Disclaimer wording in 1, 2, 3, 4, and 8 discovered above typically reads “*This action does not constitute a finding by NHTSA that a safety related defect does not exist.*” Once again a **question**: why does this disclaimer exist in some *earlier* denial reports but not in others *later*?

**Not examined carefully by this petitioner as it is a complex endeavor not deemed relevant for this Response.

5. Consistency of analysis methodology across time

See tables 2 and 3. They feature six years (most recent) of petitions that were posted on the *Federal Register*.

Critique: *Trend spotting* was important to DP 18-001’s author so this petitioner decided to do an analysis of ODI’s own analyses methodology from 2015-2020 in order to discern various counts for the purpose of judging 1) trends and 2) consistency, see table 2, above, and table 3, below. This petitioner’s findings reveal trends that point to inconsistent analysis, one column of which was previously mentioned – in critique 4. Other salient and troubling trends that illustrate flaws are too numerous to comment upon due to space but are self-evident in tables 2 and 3.

Table 3. Summary of counts and means, DP denials, 2015 - present. Two authors aggregate data compared. Note “means per author” differ.

Authors / durations	Counts totaled for all documents per author, <i>mean per document (\bar{x}) in italic/boldface</i>				
	Tables	Figures	Citations	Photos	Appendices
Mx. Borris, two years of analyses	8, $\bar{x} = 2.7$ (<i>per denial doc.</i>)	3, 1	22, 7.3	10, 3.3	1, 0.33
Mx. Guisepppe et al., five years of analyses	2, 0.33	0, 0	29, 4.8	0, 0	0, 0

E. Actions requested in detail, justified by previous critiques as lettered A – D, “flaws regarding...” as follows:

- A. Flaw regarding *accuracy* – the fuel-tank defect described in the petition was confirmed by ODI in its ¶ 10 by 18 VOQs. Defect *trend* is not a rule of law; thus, the petition’s denial was not supported by its analysis of this topic nor was there sufficient *confidence in reason* – correct the analysis accordingly
- B. *Precision* – redo the analysis to include factual counts et al. with appropriate statistics to judge defects.
- C. *Logic*, points of view – review the report for its flawed inferences, implications, and assumptions pertaining to proper vehicle engineering on the part of Isuzu regarding its “salt belt” customers and the presence of corrosion of fuel tanks, – then correct the analysis accordingly.
- D. *Reason, depth* – examine the analysis for its high count of speculations-per-paragraph and reduce this by way of re-analyzing such that facts are brought forward as substituted for speculations – then correct.
- A-D. *Integrity* regarding timing, priorities, design change evidence, firsthand vehicle inspection, and analysis consistency – examine these flaws and correct accordingly.

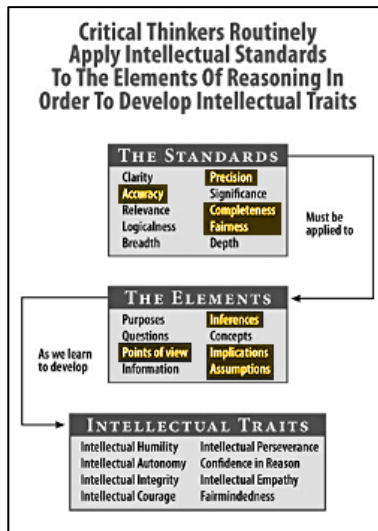
Lastly, *Points of view* (fig. 2) – The report phrase “*crashes, fires, injuries, or fuel leaks associated with fuel tank retention failure*” (DP 18-001 report, ¶ 9) denotes the presence of these as important ODI evaluation criteria that are somehow “unmet” as ODI requirements and, by extension, that the petition warrants refusal. Medicine has its own metaphor for this, “comorbidity.” ODI seems to require ample enough fires and deaths (as “comorbid”) in order to justify a DP approval. Key questions left unanswered, what are the salient points of view, that is, *who is at risk here*? It is not *Isuzu the manufacturer*, rather it is *vehicle owners with unsafe fuel-tanks*. The petitioner finds this “comorbidity-centered” perspective disingenuous given that a government agency whose stated “values commitment” is – at core – this: “[We serve] as the catalyst for addressing critical safety issues that affect the motor vehicle and highway safety communities.” (<https://nhtsa.gov/about-nhtsa/nhtsas-core-values>) Arguments offered (e.g., *vehicle age*) do not suffice.

Action, summary: Redo DP 18-001 with proper accordance documented in A-E (and *points of view*) then publish a revision within 120 days, by July 22, 2020. *Suggested order of priority*: commission a re-analysis to review DP 18-001’s findings and assess why a high “confidence in reason” trait for and by use of tables, figures, citations, photos, and/or appendices during 2015-2017 yet was so absent in 2018-2020. Be very transparent about evidence that Isuzu submitted on August 31, 2018 (see Appendix I, p 1.) now still missing. Examine fig. 1 and act on an actual physical inspection of the petitioner’s vehicle rather than speculate on its current corrosion status. Answer why the report took two years to complete. (This Response took just days to author.) Such a delay had introduced a serious barrier to the likelihood of approving a defect petition since time passed over recent months and years while vehicles were removed from the highway; intrinsic to such logic is that vehicles remaining have fuel tanks that are increasingly unsafe, see Appendix IV, p. 18.

F. Conclusion: Many analysis tasks done in the DP 18-001 report were done correctly, many were not. This

petitioner closes with a final figure (2) and table (4). These offer evidence of the petitioner's push for *intellectual integrity, perseverance, and confidence in reason*. Figure 2 shows analysis methods in whole or in part that were used in this Response. Of 18 possible intellectual strengths and/or weaknesses in the report *eight flaws are evident* (some significant, some less so), the most salient pertain to *accuracy, precision, completeness, fairness, points of view, inferences, implications, and assumptions* (marked for emphasis in yellow). Lastly, table 4 features the *Federal Register's* own critical-thinking tips used to self-evaluate this petitioner's Response document. The table's findings are factual and self-evident. Please act in accordance for a re-analysis requested in E above.

Figure 2. Critical thinking standards and elements applied to ODI DP 18-001 denial report (yellow highlighted).



Above diagram courtesy Linda Elder and Richard Paul from <https://www.criticalthinking.org>, lasted visited in March 2020.

Table 4. Self-critique. This petitioner applied "tips" derived from [regulation.gov](https://www.regulation.gov) to his own Response and Commentary.

Tips = <i>Federal Register's</i> criteria*	How	Where	Notes
"Reach out to agency with questions"	Done by petitioner via correspondence dated March 5, 2020 (App. I) and August 2018 (App. V)	Appendix I and Appendix V	Petitioner directed questions to Mx. Martens (vehicle defects investigator) and later Mx. Guiseppe (author), see Appendices I and V. Mx. Guiseppe had not responded as of March 21, 2020.
"Be concise"	Petitioner's response as narrative matter herewith is six pages in length. (This excludes figures, tables, and appendices.)	NA	DP 18-001 report sent by certified mail by the author to petitioner was six pages in length. (There were no figures, tables, et al. <i>This petitioner's response thus exactly matched the ODI author's level of conciseness in terms of page count.</i>
"Suggest an alternative"	Via petitioner's Action requested (section E)	See <How	Five critiques were offered to support the action requested.
"Distinguish your comments from others"	(I am the original petitioner.)	NA	Petitioner is a certified completer of HE-APPQMR coursework for use in Quality Matters Assurance System (and other) principles. (This pertains to <i>critical thinking skills in academia.</i>)
"Support with substantive data, facts, and/or expert opinions"	By way of three figures, four tables, three footnoted citations, and five appendices	Response, p. 2 - 6	See <How
"...Examples of how the proposed rule would impact you"	Fuel-tank repair in 2017 has aged <i>ungracefully</i> : owners still at risk	Section E, Appendix IV, p. 18	The Y2020 status of this petitioner's fuel tank has not been established by ODI due to lack of inspection but was seen and photographed by petitioner's mechanic on September 21, 2018 and presented in a court case.
"Consider other points of view, and respond to them with facts and sound reasoning"	For details see <i>Points of View</i> narrative matter in this Response, p. 5	Section F	NHTSA values – "[We serve] as the catalyst for addressing critical safety issues that affect the motor vehicle and highway safety communities" – are not fully supported.

*Criteria excerpted from *Federal Register's TIPS FOR SUBMITTING EFFECTIVE COMMENTS*, 3 pp., from [regulation.gov](https://www.regulation.gov), downl'd Mar. 2020.

Appendices (note: some but not all appendices are properly redacted, so these are declared not for public release)

I., eCorrespondence, 4 pp.

II., PetitionLetter, 1 p.

III., ExhZ-CourtCase, 16 pp.

IV., ExhF-CourtCase, 19 pp.

V., eCorrespondence, 1 p.