

Public Law 96-129
96th Congress

An Act

To amend the Natural Gas Pipeline Safety Act of 1968 to provide for the safe operation of pipelines transporting natural gas and liquefied petroleum gas, to provide standards with respect to the siting, construction, and operation of liquefied natural gas facilities, and for other purposes.

Nov. 30, 1979
[S. 411]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Pipeline Safety
Act of 1979.

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. (a) This Act may be cited as the "Pipeline Safety Act of 1979". 49 USC 1671 note.

(b) The table of contents for this Act is as follows:

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REFERENCES TO NATURAL GAS PIPELINE SAFETY ACT OF 1968

SEC. 2. Except as otherwise expressly provided, whenever in this Act any reference, amendment, or repeal is expressed in terms of a reference or amendment to, or repeal of, a section or other provision, it shall be considered to be made to a section or other provision of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 and following).

TITLE I—NATURAL GAS

SUBTITLE A—GENERAL PROVISIONS

PIPELINE PARTICIPATION IN CERTAIN UTILITY SAFETY PROGRAMS

49 USC 1672.

SEC. 101. (a) Section 3(b) is amended by inserting "(1)" after "(b)", by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), and by adding at the end thereof the following new paragraph:

Ante, p. 989.

"(2) Not later than 12 months after the date of the enactment of the Pipeline Safety Act of 1979, the Secretary shall provide that the Federal minimum safety standards established under this section include a requirement that any operator of pipeline facilities—

"(A) participate in any public safety program—

"(i) which provides for notice to pipeline facility operators of proposed demolition, excavation, tunneling, or construction near or affecting such facility;

"(ii) which requires such operators to identify specific pipeline facilities which may be affected by the proposed demolition, excavation, tunneling, or construction, for the purpose of preventing damage to such facilities; and

"(iii) which the Secretary determines is being carried out in a manner adequate to assure protection against the hazards to that operator's pipeline facilities created by such demolition, excavation, tunneling, or construction; or

"(B) to the extent that such a program is not available, take such steps as the Secretary shall prescribe to provide services to the public with respect to that operator's pipeline facilities which are comparable to those which would be available to the public under such a program."

49 USC 1674.

(b) Section 5(a)(4) is amended by striking out "excavation" and inserting in lieu thereof "demolition, excavation, tunneling, or construction".

49 USC 1672
note.

(c) Requirements under the amendments made by subsection (a) shall not apply with respect to annual certifications under section 5 during the 2-year period which begins on the effective date of such requirements.

TECHNICAL PIPELINE STANDARDS COMMITTEE

SEC. 102. (a) Section 4(a) is amended by striking out "and experience" and inserting in lieu thereof ", experience, or knowledge". 49 USC 1673.

(b) Section 4(b) is amended—

(1) by striking out the first sentence and inserting in lieu thereof the following: "The Secretary shall submit to the Committee any proposed standard under this Act, or any proposed amendment to a standard under this Act, for its consideration. Within 90 days after receipt by the Committee of any proposed standard or amendment, the Committee shall prepare a report on the technical feasibility, reasonableness, and practicability of such standard or amendment. The Secretary may prescribe a final standard or final amendment to a standard at any time after the 90th day after its submission to the Committee, whether or not the Committee has reported on such standard or amendment.";

Report.

(2) by inserting after "published by the Secretary and" the following ", if timely made,"; and

(3) by inserting before the last sentence thereof the following new sentence: "The Committee shall meet with the Secretary (or his designee) not less frequently than once every 6 months.".

(c) Section 4(c) is amended by striking out "not to exceed \$100 per diem" and inserting in lieu thereof "not to exceed the daily equivalent of the maximum annual rate of basic pay then currently payable under the General Schedule under section 5332 of title 5, United States Code, for each day".

5 USC 5332 note.

REPORTING AND MONITORING REQUIREMENTS UNDER STATE SAFETY PROGRAMS

SEC. 103. (a) Section 5(a)(ii) is amended to read as follows: "(ii) all accidents or incidents reported during the preceding 12 months by each such person involving personal injury requiring hospitalization, fatality, property damage exceeding \$5,000 (whether or not sustained by a person subject to the safety jurisdiction of the State agency) and any other accident which the State agency considers significant, together with a summary of the State agency's investigation as to the cause and circumstances surrounding such accident or incident;" 49 USC 1674.

(b)(1) Section 5(b) is amended by inserting "and" at the end of paragraph (1), by striking out the semicolon at the end of paragraph (2) and inserting a period in lieu thereof, and by striking out paragraphs (3) and (4).

(2) Section 5 is further amended—

(A) by striking out subsection (f);

(B) by redesignating subsections (c), (d), and (e) as (d), (e), and (f), respectively; and

(C) by inserting after subsection (b) the following new subsection:

"(c) The Secretary may conduct whatever monitoring may be necessary of any State program established by certification or agreement under this section to assure that such programs are being carried out in compliance with such certification or agreement. State agencies shall cooperate fully in any monitoring of their programs under this subsection."

(3) Section 5(a) is amended by striking out "Except for the fourth sentence of section 3(b), section 12(b), and except as otherwise provided in this section, the provisions of this Act" and inserting in

Infra.
49 USC 1686.

lieu thereof "Except for section 19, and except as otherwise provided in this section, the authority of the Secretary under this Act to prescribe safety standards and enforce compliance with such standards".

ENFORCEMENT POWERS

49 USC 1677.

SEC. 104. (a)(1) Section 8 is amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following new subsection:

"(b)(1) The Secretary may issue orders directing compliance with this Act or any regulation issued under this Act. Any such order shall clearly set forth the particular actions required of the person to whom the order is issued.

"(2) The district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce any such order by appropriate means."

49 USC 1672.

(2) Section 3(d) is amended by inserting "directing or" before "waiving compliance with".

49 USC 1678,
1679, 1680-1686.

(b) The Act is amended by striking out sections 9 and 10, redesignating sections 11 through 17 as sections 13 through 19, respectively, and inserting before section 13 (as redesignated) the following new sections:

"PENALTIES

49 USC 1679a.

"SEC. 11. (a)(1) Any person who is determined by the Secretary to have violated any provisions of section 10(a) or any regulation or order issued under this Act, including any order issued under sections 10(b) and 12(b), shall be liable to the United States for a civil penalty of not more than \$1,000 for each violation for each day that violation persists, except that the maximum civil penalty shall not exceed \$200,000 for any related series of violations.

"(2) The amount of the penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith in attempting to achieve compliance, ability to pay the penalty, and such other matters as justice may require.

"(b) A civil penalty assessed under subsection (a) may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, prior to referral to the Attorney General, it may be compromised by the Secretary. The amount of the penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

"(c)(1) Any person who willfully and knowingly violates section 10(a) or a regulation or order issued under this Act, including any order issued under sections 10(b) and 12(b), shall, upon conviction, be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

"(2) Any person who willfully and knowingly injures or destroys, or attempts to injure or destroy, any interstate transmission facility shall, upon conviction, be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 15 years, or both.

"(d) Nothing in this Act shall be construed to authorize the imposition of penalties for the violation of any regulation and the violation of any order under section 10(b) or 12(b) if both violations are based on the same act.

Ante, p. 992.

"SPECIFIC RELIEF

"SEC. 12. (a)(1) The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief to redress or restrain a violation by any person of a provision of this Act or a regulation issued under this Act. Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

49 USC 1679b.

"(2) In any proceeding for criminal contempt for violation of a mandatory or prohibitive injunction issued under this subsection, which violation also constitutes a violation of this Act, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

Trial by jury.

"(b)(1) If the Secretary finds, after reasonable notice and an opportunity for hearing, that any pipeline facility is hazardous to life or property, he shall, by order, require the person operating the facility to take necessary corrective action. Such corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action, as appropriate.

18 USC app.

Hazardous facilities, corrective action.

"(2) The Secretary may find a pipeline facility to be hazardous under paragraph (1)—

Hazardous facilities, determinations.

"(A) if under the facts and circumstances he determines the particular facility is hazardous to life or property, or

"(B) if the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which he determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Secretary that under the particular facts and circumstances involved such equipment, material, or technique is not hazardous to life or property.

"(3) In making a determination under paragraph (2), the Secretary shall consider, if relevant—

"(A) the characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction, or assembly;

"(B) the nature of the materials transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such materials are transported, and the pressure required for such transportation;

"(C) the aspects of the areas in which the pipeline facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas;

“(D) any recommendation of the National Transportation Safety Board issued in connection with any investigation conducted by the Board under other provisions of law; and

“(E) such other factors as the Secretary may consider appropriate.

“(4) The district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce orders issued under this subsection by appropriate means.

“(5) The Secretary may waive the requirements for notice and hearing under this subsection and provide for expeditious issuance of an order under this subsection in any case in which he determines that the failure to do so would result in the likelihood of serious harm to life or property. However, the Secretary shall include in such an order an opportunity for hearing as soon as practicable after issuance of an order.”

Ante, p. 992.
49 USC 1672.

(c) Section 3(d) is amended by striking out “all orders” and inserting in lieu thereof “all actions”.

(d) Section 3(e) is amended by inserting “, by order” after “the Secretary may”.

Judicial review.
49 USC 1675.

(e) Section 6 is amended—

(1) by striking out the section heading and inserting in lieu thereof “JUDICIAL REVIEW”;

(2) in subsection (a), by striking out “any order issued under this Act” and inserting in lieu thereof, “any regulation issued under this Act or any order with respect to an application for a waiver under section 3(d)” and by striking out “such order is issued” and inserting in lieu thereof “such regulation or order is issued”; and

(3) in subsections (b) and (c), by striking out “order” and inserting in lieu thereof “regulation or order”.

SIMPLIFICATION OF FILING REQUIREMENTS

Ante, p. 992.
49 USC 1680.

SEC. 105. (a)(1) The first sentence of section 13, as amended and redesignated, is amended by striking out “shall file with the Secretary or, if a certification or an agreement pursuant to section 5 of this Act is in effect, with the appropriate State agency, a plan for inspection and maintenance” and inserting in lieu thereof “shall prepare, maintain at such office or offices of that person as the Secretary determines appropriate, and carry out a written current plan for inspection and maintenance”.

(2) Section 13, as so amended and redesignated, is further amended by inserting after the fourth sentence the following new sentence: “Such plans shall be made available to the Secretary or the appropriate State agency upon request pursuant to section 14.”

Infra.
49 USC 1677.

(b) Section 8(a)(2) is amended by striking out “file and comply with a plan of inspection and maintenance required by section 13” and inserting in lieu thereof “prepare and maintain a plan of inspection and maintenance required by section 13 and comply with such plan”.

ADMINISTRATION

Ante, p. 992.

SEC. 106. Section 14 (relating to records, reports, and inspection for compliance), as redesignated, is amended to read as follows:

“POWERS AND DUTIES OF THE SECRETARY

49 USC 1681.

“SEC. 14. (a) The Secretary may, to the extent necessary to carry out his responsibilities under this Act, conduct investigations, make

reports, issue subpoenas, conduct hearings, require the production of relevant documents and records, take depositions, and conduct, directly or, by contract, or otherwise, research, testing, development, demonstration, and training activities; however, before the Secretary may exercise authority under this section to require testing of portions of pipeline facilities subject to the provisions of this Act which have been involved in or affected by an accident, he shall make every effort to negotiate a mutually acceptable plan with the owner of such facilities and, where appropriate, the National Transportation Safety Board for performing such testing.

"(b) Each person who engages in the transportation of gas or who owns or operates pipeline facilities shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require, and shall submit such reports and shall make such records and information available as the Secretary may request, to enable him to determine whether such person has acted or is acting in compliance with this Act and the standards or orders issued under this Act.

Recordkeeping
and reporting
requirements.

"(c) Officers, employees, or agents authorized by the Secretary, upon presenting appropriate credentials to the person in charge, are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining whether such persons have acted or are acting in compliance with this Act and the standards or orders issued under this Act.

Inspection
and examination
of records and
properties.

"(d) Accident reports made by any officer, employee, or agent of the Department of Transportation shall be available for use in any civil, criminal, or other judicial proceeding arising out of such accident. Any such officer, employee, or agent may be required to testify in such proceedings as to the facts developed in such investigations. Any such report shall be made available to the public in a manner which need not identify individuals. All reports on research projects, demonstration projects, and other related activities shall be public information.

Accident reports,
availability for
judicial proceed-
ings and to
public.

"(e) All information reported to or otherwise obtained by the Secretary or his representative pursuant to subsection (a), (b), or (c) which information contains or relates to a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the Secretary or any officer, employee, or agent under his control, from the duly authorized committees of the Congress."

Trade secret,
confidentiality.

ANNUAL REPORT REGARDING STATE PIPELINE SAFETY INSPECTORS

SEC. 107. Section 16 (relating to annual report), as redesignated, is amended by striking out "and" at the end of paragraph (9), by striking out the period at the end of paragraph (10) and inserting in lieu thereof "; and", and by adding at the end thereof the following:

Ante, p. 992.
49 USC 1683.

"(11) a description of the number and qualifications of State pipeline safety inspectors in each State for which a certification or agreement is in effect under section 5, together with the number of such pipeline inspectors (and their qualifications) which the Secretary recommends for that State."

49 USC 1674.

APPROPRIATIONS AUTHORIZATION

Ante, p. 992.

SEC. 108. Section 17, as redesignated, is amended to read as follows:

"APPROPRIATIONS AUTHORIZED

49 USC 1684.

"SEC. 17. (a) For the purpose of carrying out the provisions of this Act (other than provisions for which funds are authorized to be appropriated under subsection (b)), there are authorized to be appropriated—

"(1) \$6,200,000, for the fiscal year ending September 30, 1980; and

"(2) \$6,900,000, for the fiscal year ending September 30, 1981.

"(b) For the purpose of carrying out the Federal grants-in-aid provisions of section 5(d) of this Act, there are authorized to be appropriated—

"(1) \$4,500,000, for the fiscal year ending September 30, 1980; and

"(2) \$5,500,000, for the fiscal year ending September 30, 1981."

TECHNICAL, CLERICAL, AND CONFORMING AMENDMENTS

49 USC 1671.

SEC. 109. (a) Section 2(7) (relating to the national organization of State commissions) is amended by striking out "part II of the Interstate Commerce Act" and inserting in lieu thereof "subchapter III of chapter 103 of title 49, United States Code".

(b) Sections 2(8) and 2(9) (relating to certain interstate and intra-state facilities) are amended by striking out "Federal Power Commission" and inserting in lieu thereof "Federal Energy Regulatory Commission".

49 USC 1672.

(c) Section 3 (relating to standards), as amended, is amended by striking out subsection (a) and by redesignating subsections (b) through (e) as subsections (a) through (d), respectively.

(d) The first sentence of section 3(a), as redesignated by subsection (c), is amended by striking out all that precedes "establish minimum" and inserting in lieu thereof "The Secretary shall, by regulation,".

(e) Section 3(a), as redesignated by subsection (c), is amended by striking out the fourth sentence in paragraph (1), by inserting in paragraph (1)(B) "or facility" after "pipeline transportation", and by inserting "safety" after "or more stringent".

(f) Section 3(b), as redesignated by subsection (c), is amended by inserting after "period reasonably necessary for compliance" the following: "and such date is specified in the regulation establishing or amending such standard".

49 USC 1674.

(g) Section 5(a) (relating to State certifications and agreements) is amended by striking out "; except that a State agency may file a certification under this subsection without regard to the requirement of injunctive and monetary sanctions under State law for a period not to exceed five years after the date of enactment of this Act".

(h)(1) Section 5(a) is amended by striking out "section 12", "section 11", and "sections 9 and 10" and inserting in lieu thereof "section 14", "section 13", and "sections 11 (other than subsection (a)(3) thereof) and 12", respectively.

(2) Section 5(b)(2) is amended by striking out "section 11" and inserting in lieu thereof "section 13".

(3) Section 5(d)(2), as redesignated, is amended by striking out "section 15(b)" and inserting in lieu thereof "section 17(b)".

(4) Section 8 (relating to compliance) is amended by striking out "section 12" and inserting in lieu thereof "section 14".

Ante, p. 994.*Ante*, p. 992, 993.*Supra*.

49 USC 1677.

(i) Section 7 (relating to cooperation with Federal Power Commission and State commissions) is amended, in the section heading, by striking out "FEDERAL POWER COMMISSION" and inserting in lieu thereof "FEDERAL ENERGY REGULATORY COMMISSION" and, in the text, by striking out "Federal Power Commission" each place it appears and inserting in lieu thereof "Federal Energy Regulatory Commission". 49 USC 1676.

(j) Section 15 (relating to administration), as redesignated, is amended— *Ante*, p. 992.
49 USC 1682.

(1) by striking out the section heading and inserting "NATURAL GAS SAFETY COOPERATION AND COORDINATION"; and

(2) by striking out subsection (a) and redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively.

(k) Section 15(a), as redesignated, is amended by striking out "Federal Power Commission" and inserting in lieu thereof "Federal Energy Regulatory Commission".

(l) Section 16(a)(3) (relating to annual reports), as redesignated, is amended by striking out "section 3(e)" and inserting in lieu thereof "section 3(d)". *Ante*, p. 992.
49 USC 1683.

(m) Section 16 (relating to annual report), as redesignated, is amended by striking out "March 17" and inserting in lieu thereof "June 15".

COST-BENEFIT ANALYSIS OF INCREASED PIPELINE SAFETY REGULATION

SEC. 110. (a) Within 12 months after the date of the enactment of this section, the Secretary of Transportation, after affording an opportunity for consultation and comment by persons operating pipeline facilities, State and local regulatory authorities with jurisdiction over pipeline safety, and consumers shall conduct and complete a cost-benefit analysis to determine whether additional Federal legislation on pipeline safety is beneficial and submit a report of his findings to the Congress.

Report to
Congress.
49 USC 1682
note.

(b) As part of the cost-benefit analysis required by subsection (a), the Secretary of Transportation shall conduct a study of the adequacy and effectiveness of existing pipeline safety regulations. In addition to existing pipeline safety regulations, the study shall address the following issues:

(1) whether pipeline safety could be significantly enhanced in a cost-effective manner by regulations requiring pipeline facility operators to prepare and maintain a general description of their pipeline facilities, including—

(A) the location of the pipeline and the pipeline facilities;

(B) the type, age, manufacturer, and method of construction of such pipeline and facilities;

(C) the nature of the materials transported, the sequence in which they are transported, and the pressure at which they are transported; and

(D) the climatic, geologic, seismic, and conditions (including soil characteristics) associated with the areas in which the pipeline facilities are located, and the existing and projected population and demographic characteristics associated with such areas;

(2) the cost-effectiveness, feasibility, and potential benefits of establishing in the Department of Transportation a program for use in an electronic data-processing system, which would be used to process and maintain pipeline-safety information obtained under existing and future Federal laws and regulations;

(3) whether it is necessary and cost-effective to amend existing Federal law and regulations on the reporting of pipeline leaks to require the reporting of any such future leak which—

(A) the person owning or operating the pipeline facility knew or reasonably should have known existed;

(B) was not caused by operation, inspection, or adjustment procedures which were properly carried out; and

(C) posed a threat to public health or safety, property, or the environment.

REPORT ON IMPLEMENTATION EFFORTS REGARDING DISTRIBUTION OF GAS IN CONNECTION WITH THE RENTAL OR LEASE OF REAL PROPERTY

Report to
Congress.
49 USC 1682
note.

SEC. 111. (a) Not later than 18 months after the date of the enactment of this Act, the Secretary of Transportation shall prepare and transmit to each House of the Congress a report on how, when, and to what extent the Department of Transportation intends to implement its safety jurisdiction over the distribution of gas by any person in connection with the rental or lease of real property by that person, particularly in instances in which the gas being distributed to the renter or lessee is not separately metered.

(b) The Secretary shall provide reasonable notice and an opportunity for public comment in connection with the preparation of the report required under subsection (a).

EFFECTIVE DATE

49 USC 1671
note.

SEC. 112. (a) The provisions of this subtitle, including amendments made by such provisions, shall take effect on the date of the enactment of this Act.

(b) Suits, actions, or other proceedings pending upon the date of the enactment of this subtitle shall not be affected by the provisions of this subtitle and shall be completed as if this title had not been enacted, unless the Secretary makes a determination that the public safety otherwise requires.

SUBTITLE B—LNG FACILITIES

DEFINITIONS

49 USC 1671.

SEC. 151. Section 2 is amended by striking out “and” at the end of paragraph (9), by striking out the period at the end of paragraph (10) and inserting a semicolon in lieu thereof, and by adding at the end thereof the following new items:

“(11) ‘LNG’ means natural gas in a liquid or semisolid state;

“(12) ‘LNG facility’ means any pipeline facility used for the transportation or storage of LNG, or for LNG conversion, in interstate or foreign commerce, but does not include any structure or equipment (or portion thereof) located in navigable waters (as defined in section 3(8) of the Federal Power Act (16 U.S.C. 796(8)));

“(13) ‘LNG conversion’ means conversions of natural gas into LNG (liquefaction or solidification) or the conversion of LNG into natural gas (vaporization);

“(14) ‘Existing LNG facility’ means any LNG facility for which an application for the approval of the siting, construction, or operation of such facility was filed before March 1, 1978, with—

“(A) the Department of Energy or any predecessor organization of the Department, or

“(B) the appropriate State or local agency, in the case of any facility not subject to the jurisdiction of the Department of Energy under the Natural Gas Act,

except that such term does not include any facility the construction of which commences on or after the date of the enactment of this paragraph and such construction is not pursuant to such an approval;

“(15) ‘New LNG facility’ means any LNG facility other than an existing LNG facility;

“(16) ‘LNG accident’ means any release, burning, or explosion of LNG resulting from—

“(A) a rupture or other failure of a storage tank, pipeline, or other LNG facility;

“(B) natural hazards (including earthquakes, hurricanes, and high winds);

“(C) sabotage; or

“(D) any other cause;

other than any such release, burning, or explosion which, as determined in accordance with regulations prescribed by the Secretary, does not pose a threat to public health or safety, property, or the environment; and

“(17) ‘Interstate or foreign commerce’ means any trade, traffic, transportation, exchange, or other commerce—

“(A) between any State and any place outside of such State, or

“(B) which affects any trade, transportation, exchange, or other commerce described in subparagraph (A).”.

SITING AND SAFETY STANDARDS

SEC. 152. (a) The Act is amended by redesignating sections 6, 7, and 8 as sections 8, 9, and 10, respectively, and by inserting after section 5 the following new section:

49 USC
1675-1677.
49 USC 1674.

“STANDARDS FOR LNG FACILITIES

“SEC. 6. (a)(1) Not later than 180 days after the date of the enactment of this section, the Secretary shall establish, by regulation—

Regulations.
49 USC 1674a.

“(A) minimum safety standards for determining the location of any new LNG facility, and

“(B) minimum safety standards for the design, installation, construction, initial inspection, and initial testing of any new LNG facility.

“(2) After the date standards first take effect under this section, no new LNG facility may be constructed other than in accordance with the applicable standards prescribed under this section. The Secretary shall ensure that the facility is constructed and operated in compliance with such standards.

“(3) No new LNG facility may be operated unless the person operating such facility has previously submitted a contingency plan which sets forth those steps which are to be taken in the event of an LNG accident and which is determined to be adequate by the Department of Energy or the appropriate State agency, in the case of any facility not subject to the jurisdiction of the Department under the Natural Gas Act.

15 USC 717w.

“(b) Not later than 270 days after the date of the enactment of this subsection, the Secretary shall establish minimum standards to be

maintained with respect to the operation and maintenance of any LNG facility.

"(c)(1)(A) Except to the extent provided under subparagraph (B), any standard issued under this Act after March 1, 1978, affecting the design, location, installation, construction, initial inspection, or initial testing shall not apply to an existing LNG facility either—

"(i) under the authority of this Act; or

"(ii) under the authority of any other Federal law if such standard was not issued at the time such authority was exercised.

"(B) Any such standard (other than one affecting location) may be made applicable under the provisions of such standard to any replacement component or part thereof of an LNG facility if that component or part is placed in service after the date of the issuance of that standard, but only if such applicability—

"(i) would not render such component or part incompatible with the other components or parts of the facility involved; or

"(ii) would not otherwise be impracticable.

No standard issued under this Act after March 1, 1978, affecting location shall apply to any replacement component or part thereof of an existing LNG facility.

"(2) Nothing in this section shall preclude the application of standards under section 3 to pipeline facilities (other than LNG facilities) associated with LNG facilities.

"(3) Standards affecting the design, installation, construction, initial inspection, and initial testing shall not be applicable to LNG facilities in existence on the date such standards are adopted.

"(d) In prescribing general safety standards under subsections (a) and (b), the Secretary shall take into consideration—

"(1) with respect to standards relating to the location of any new LNG facility—

"(A) the nature of the use of the facility;

"(B) the existing and projected population and demographic characteristics associated with the location involved;

"(C) the existing and proposed land uses near such location;

"(D) the meteorological, geological, topographical, seismic, and other natural physical aspects of such location;

"(E) the medical, law enforcement, and fire prevention capabilities existing near such location to cope with risks created by such a facility; and

"(F) the need to encourage remote siting;

"(2) with respect to standards applicable to the design, installation, construction, initial inspection, and initial testing of any new LNG facility—

"(A) the thermal resistance and other characteristics of materials to be used in the construction of such facility as compared to alternative materials;

"(B) design factors (such as multiple diking, insulated concrete, and vapor containment barriers);

"(C) the characteristics of the LNG to be stored or converted at, or transported by, such facility (for example, whether it is to be in a liquid or semisolid state); and

"(D) the public safety factors of the design as compared to alternative designs (particularly the ability under such a design to prevent and contain an LNG spill); and

“(3) with respect to standards for the operation and maintenance of any LNG facility—

“(A) the conditions, features, and type of equipment and structures which comprise, or which are used in connection with, such facility;

“(B) the fire prevention and containment equipment at such facility;

“(C) the security measures to be used with respect to the operation of such facility for the prevention of sabotage or other intentional acts which could cause an LNG accident;

“(D) maintenance procedures and equipment;

“(E) the training of personnel with respect to the equipment, structures, measures, and procedures described in subparagraphs (A), (B), (C), and (D); and

“(F) other factors and conditions relating to the safe handling of LNG.

“(e) At any time after the effective date of standards initially prescribed under subsections (a) and (b), the Secretary shall, on his own motion or on the motion of any person, amend such standards to the extent he considers necessary to reflect changes in technology or to otherwise carry out the purposes of this section.

“(f) The provisions of the last two sentences of subsection (a)(1) of section 3 and of subsections (b), (c), and (d) of section 3 shall apply with respect to standards prescribed under this section in the same manner as they apply to standards prescribed under section 3.”

Ante, p. 992.
49 USC 1672.

(b)(1) Section 2(3) (definition of transportation of gas) is amended by striking out “or affecting”.

49 USC 1671.

(2) Section 3(d) (relating to waiver of standards), as redesignated, is amended by inserting after “in the same manner” the following: “and to the same extent”.

Ante, p. 992.
49 USC 1672.

(3) Section 9 (relating to cooperation with Federal Energy Regulatory Commission), as redesignated, is amended—

Ante, p. 999.
49 USC 1676.

(A) by inserting “section 3 or” after “proceedings under”;

(B) by inserting “to import natural gas or” after “authority”;

(C) by striking out “a gas pipeline which is” and inserting in lieu thereof “pipeline facilities which are”; and

(D) by inserting “the Department of Energy and” before “the Commission unless”.

FINANCIAL RESPONSIBILITY

SEC. 153. The Act, as amended by section 152 of this Act, is further amended by inserting after the new section 6 the following new section:

Ante, p. 999.

“FINANCIAL RESPONSIBILITY FOR CERTAIN LNG ACTIVITIES; STUDIES

“SEC. 7. (a) Not later than 270 days after the date of the enactment of this section, the Secretary shall—

49 USC 1674b.

“(1) conduct a study of—

“(A) the risks associated with the production, transportation, and storage of LNG;

“(B) the risks associated with the production, transportation, and storage of liquefied petroleum gas;

“(C) the methods of assuring adequate financial responsibility for those engaged in any such activity; and

“(2) prepare and transmit to each House of the Congress a report on the results of such study, together with the recommen-

Report to Congress.

dations of the Secretary for such legislative or administrative action as he considers appropriate.

"(b)(1) Whenever the Secretary has reason to believe that any operator of an LNG facility is not maintaining adequate insurance or otherwise does not have adequate financial responsibility with respect to such facilities, he may issue and serve upon such operator notice thereof, together with a statement of the amount of the financial responsibility that the Secretary would consider adequate.

Hearing.

"(2) Any person issued notice under paragraph (1) shall have a right to hearing on the record in accordance with section 554 of title 5, United States Code, to be held not later than 30 days after notice under paragraph (1), at which such person has the right to show cause as to why an order should not be issued by the Secretary requiring such person to demonstrate and maintain financial responsibility at or above the amount indicated in the notice under paragraph (1).

"(3) After an opportunity for hearing under paragraph (2), the Secretary may, if he determines it is justified in the public interest, order the person issued notice of such hearing to demonstrate and maintain financial responsibility at or above an amount determined appropriate by the Secretary, taking into account any information, data, and views presented in such hearing.

Judicial review.

"(4)(A) Any person aggrieved by an order issued under paragraph (3) may seek judicial review of such order only by filing a petition for review in the appropriate court of appeals of the United States within 60 days after such order is issued.

"(B) Upon receipt of notice of the filing of such petition, the Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing, the court may affirm, modify, remand, or set aside the order of the Secretary, and may enforce the order to the extent that such order is affirmed and issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pendente lite. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

Review by Supreme Court.

"(C) The judgment and decree of the court shall be final, except that such judgment and decree shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

"(c) For purposes of subsection (b) of this section, financial responsibility may be maintained by any one of, or a combination of, the following methods acceptable to the Secretary:

"(1) evidence of insurance,

"(2) surety bonds,

"(3) qualification as a self-insurer, or

"(4) other evidence of financial responsibility."

ENFORCEMENT OF STANDARDS AND FINANCIAL RESPONSIBILITY REQUIREMENTS

49 USC 1679a.
Ante, p. 992.

SEC. 154. Section 11(a) (relating to penalties), as added by section 104, is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

Ante, p. 999,
1001.

"(2) Any person who is determined by the Secretary to have violated any standard or order under section 6 or 7(b) shall be subject to a civil penalty of not to exceed \$50,000, which penalty shall be in addition to any other penalties to which such person may be subject under this subsection."

INTERVENTION BY THE SECRETARY IN SAFETY PROCEEDINGS

SEC. 155. (a) Section 15, as redesignated, is amended by adding at the end thereof the following new subsection:

Ante, p. 992.
49 USC 1682.

“(d) The Secretary may as a matter of right intervene or otherwise participate in any proceeding before the Federal Energy Regulatory Commission, or any State agency, which involves safety requirements relating to LNG facilities. The Secretary shall comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof.”.

(b) Section 15(a), as redesignated, is amended by inserting “, or any appropriate State agency,” after “Commission”.

EFFECTIVE DATE

SEC. 156. The provisions of this subtitle, including amendments made by such provisions, shall take effect on the date of the enactment of this Act.

49 USC 1671
note.

TITLE II—LIQUID PIPELINE SAFETY

Hazardous
Liquid Pipeline
Safety Act of
1979.

SHORT TITLE

SEC. 201. This title may be cited as the “Hazardous Liquid Pipeline Safety Act of 1979”.

49 USC 2001
note.

DEFINITIONS

SEC. 202. As used in this title—

49 USC 2001.

(1) “person” means any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof;

(2) “hazardous liquid” means—

(A) petroleum or any petroleum product, and

(B) any substance or material which is in liquid state (excluding liquefied natural gas) when transported by pipeline facilities and which, as determined by the Secretary, may pose an unreasonable risk to life or property when transported by pipeline facilities;

(3) “transportation of hazardous liquids” means the movement of hazardous liquids by pipeline, or their storage incidental to such movement, in or affecting interstate or foreign commerce; except that it shall not include any such movement through gathering lines in rural locations or onshore production, refining, or manufacturing facilities or storage or in-plant piping systems associated with any of such facilities;

(4) “pipeline facilities” includes, without limitation, new and existing pipe, rights-of-way, and any equipment, facility, or building used or intended for use in the transportation of hazardous liquids but “rights-of-way” as used in this title does not authorize the Secretary to prescribe the location or the routing of any pipeline facility;

(5) “interstate pipeline facilities” means the pipeline facilities used in the transportation of hazardous liquids in interstate or foreign commerce;

(6) “intrastate pipeline facilities” means pipeline facilities which are not interstate pipeline facilities;

(7) "interstate or foreign commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof;

(8) "State" includes each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico;

(9) "municipality" means a city, county, or other political subdivision of a State;

(10) "national organization of State commissions" means the national organization of the State commissions referred to in subchapter III of chapter 103 of title 49, United States Code; and

(11) "Secretary" means the Secretary of Transportation.

REGULATIONS GOVERNING HAZARDOUS-LIQUID PIPELINE FACILITIES

Federal
safety standards,
establishment.
49 USC 2002.

SEC. 203. (a) The Secretary shall, by regulation, establish minimum Federal safety standards for the transportation of hazardous liquids and pipeline facilities. The standards shall apply to each person who engages in the transportation of hazardous liquids or who owns or operates pipeline facilities. The standards shall be practicable and designed to meet the need for safe transportation of hazardous liquids.

(b) In prescribing standards under this section, the Secretary shall consider—

(1) relevant available pipeline data;

(2) whether the standards are appropriate for the particular type of pipeline transportation or facility;

(3) the reasonableness of any proposed standards; and

(4) the extent to which the standards will contribute to public safety.

(c) Standards under this section may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Any standard issued under this section affecting the design, installation, construction, initial inspection, and initial testing shall not be applicable to pipeline facilities in existence on the date such standard is adopted.

(d) Any State agency may adopt additional or more stringent safety standards for intrastate pipeline facilities and the transportation of hazardous liquids associated with such facilities, if such standards are compatible with the Federal standards issued under this title. No State agency may adopt or continue in force any safety standards applicable to interstate pipeline facilities or the transportation of hazardous liquids associated with such facilities.

(e) The Secretary may provide that the Federal minimum safety standards established under this section include a requirement that any operator of pipeline facilities—

(1) participate in any public safety program—

(A) which provides for notice to pipeline facility operators of proposed demolition, excavation, tunneling, or construction near or affecting such facility;

(B) which requires such operators to identify specific pipeline facilities which may be affected by the proposed demolition, excavation, tunneling, or construction, for the purpose of preventing damage to such facilities; and

(C) which the Secretary determines is being carried out in a manner adequate to assure protection against the hazards

to that operator's pipeline facilities created by such demolition, excavation, tunneling, or construction; or

(2) establish and carry out a damage prevention program which provides services to the public with respect to that operator's pipeline facilities which are comparable to those which would be available to the public under a program described in paragraph (1).

(f) Any standards prescribed under this section, and amendments thereto, shall become effective thirty days after the date of issuance of such standards unless the Secretary, for good cause recited, determines an earlier or later effective date is required as a result of the period reasonably necessary for compliance and such date is specified in the regulation establishing or amending such standard.

Effective date.

(g) The provisions of subchapter II of chapter 5 of title 5 of the United States Code shall apply to all actions establishing, amending, revoking, or directing or waiving compliance with, any standard established under this Act. The Secretary shall afford interested persons an opportunity to participate fully in the establishment of such safety standards through submission of written data, views, or arguments with opportunity to present oral testimony and argument.

5 USC 551
et seq.

(h) Upon application by any person engaged in the transportation of hazardous liquids or the operation of pipeline facilities, the Secretary may, by order, after notice and opportunity for hearing and under such terms and conditions and to such extent as he deems appropriate, waive in whole or in part compliance with any standard established under this title, if he determines that a waiver of compliance with such standard is not inconsistent with pipeline safety. The Secretary shall state his reasons for any such waiver. A State agency, with respect to which there is in effect a certification pursuant to section 205(a) or an agreement pursuant to section 205(b), may waive compliance with a safety standard in the same manner and to the same extent as the Secretary, provided such State agency gives the Secretary written notice at least sixty days prior to the effective date of the waiver. If, before the effective date of a waiver to be granted by a State agency, the Secretary objects in writing to the granting of the waiver, any State agency action granting the waiver will be stayed. After notifying such State agency of his objection, the Secretary shall afford such agency a prompt opportunity to present its request for waiver, with opportunity for hearing, and the Secretary shall determine finally whether the requested waiver may be granted.

Waiver.

TECHNICAL HAZARDOUS-LIQUID PIPELINE SAFETY STANDARDS COMMITTEE

SEC. 204. (a) Not later than 12 months after the date of the enactment of this Act, the Secretary shall establish a Technical Hazardous-Liquid Pipeline Safety Standards Committee and appoint the initial members of the Committee. The Committee shall be appointed by the Secretary, after consultation with public and private agencies concerned with the technical aspect of the transportation of hazardous liquids or the operation of pipeline facilities, and shall be composed of fifteen members each of whom shall be experienced in the safety regulation of the transportation of hazardous liquids and of pipeline facilities or technically qualified by training, experience, or knowledge in one or more fields of engineering applied in the transportation of hazardous liquids or the operation of pipeline facilities to evaluate pipeline safety standards, as follows:

Establishment.
49 USC 2003.

Membership.

(1) five members shall be selected from governmental agencies, including State and Federal Governments, two of whom, after consultation with representatives of the national organization of State commissions, shall be State commissioners;

(2) four members shall be selected from the hazardous liquids industry after consultation with industry representatives, not less than three of whom shall be currently engaged in the active operation of pipeline facilities; and

(3) six members shall be selected from the general public.

Proposed
standard
or amendment.
Report.

Final standard
or amendment.

(b) After the Committee has been established and its members appointed, the Secretary shall submit to the Committee any proposed standard under this title, or any proposed amendment to a standard under this title, for its consideration. Within 90 days after receipt by the Committee of any proposed standard or amendment, the Committee shall prepare a report on the technical feasibility, reasonableness, and practicability of such standard or amendment. The Secretary may prescribe a final standard or a final amendment to a standard at any time after the 90th day after its submission to the Committee, whether or not the Committee has reported on such standard or amendment. Each report by the Committee, including any minority views, shall be published by the Secretary and, if timely made, form a part of the proceedings for the promulgation of standards. In the event that the Secretary rejects the conclusions of the majority of the Committee, he shall not be bound by such conclusions but shall publish his reasons for rejection thereof. The Committee may propose safety standards for pipeline facilities and the transportation of hazardous liquids to the Secretary for his consideration. The Committee shall meet with the Secretary (or his designee) not less frequently than once every 6 months. All proceedings of the Committee shall be recorded and the record of each proceeding shall be available for public inspection.

Safety
standards,
proposal.

Compensation.

5 USC 5332 note.
Travel expenses.

(c) Members of the Committee other than Federal employees may be compensated at a rate to be fixed by the Secretary at not to exceed the daily equivalent of the maximum annual rate of basic pay then currently payable under the General Schedule under section 5332 of title 5, United States Code, for each day (including traveltime) when engaged in the actual duties of the Committee. All members, while away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

STATE CERTIFICATIONS AND AGREEMENTS

Safety
standards,
enforcement.
49 USC 2004.

SEC. 205. (a) Except for section 215 and except as otherwise provided in this section, the authority of the Secretary under this Act to prescribe safety standards and enforce compliance with such standards shall not apply to intrastate pipeline facilities or the transportation of hazardous liquids associated with those facilities, when the safety standards and practices applicable to same are regulated by a State agency which submits to the Secretary an annual certification that such State agency—

(1) has regulatory jurisdiction over the safety standards and practices of intrastate pipeline facilities and the transportation of hazardous liquids associated with those facilities;

(2) has adopted, as of the date of the certification, each Federal safety standard established under this title which is applicable to intrastate pipeline facilities and the transportation of hazardous liquids associated with those facilities or, with respect to each such Federal safety standard established within 120 days before the date of certification, is taking steps pursuant to State law to adopt such standard;

(3) is enforcing each such standard;

(4) is encouraging and promoting programs designed to prevent damage to pipeline facilities as a consequence of demolition, excavation, tunneling, or construction activity; and

(5) has the authority to require record maintenance, reporting, and inspection substantially the same as are provided under section 211 and the filing for approval of plans of inspection and maintenance described in section 210 and that the law of the State makes provision for the enforcement of the safety standards of such State agency by way of injunctive and monetary sanctions substantially the same as are provided under sections 208 (other than subsection (a)(2) thereof) and 209.

Each annual certification shall include a report, in such form as the Secretary may by regulation provide, showing (i) name and address of each person subject to the safety jurisdiction of the State agency; (ii) all accidents or incidents reported during the preceding 12 months by each such person involving personal injury requiring hospitalization, fatality, or property damage exceeding \$5,000 (whether or not sustained by a person subject to the safety jurisdiction of the State agency) and any other accident which the State agency considers significant, together with a summary of the State agency's investigation as to the cause and circumstances surrounding such accident or incident; (iii) the record maintenance, reporting, and inspection practiced by the State agency to enforce compliance with such Federal safety standards, including a detail of the number of inspections made of pipeline facilities by the State agency during the preceding 12 months; and (iv) such other information as the Secretary may require. The report included with the first annual certification need not show information unavailable at that time.

Report.

(b) With respect to any intrastate pipeline facilities or transportation of hazardous liquids associated with those facilities for which the Secretary does not receive an annual certification under subsection (a), the Secretary may, by agreement with a State agency authorize such agency to assume responsibility for, and carry out on behalf of the Secretary as it relates to those facilities or associated transportation, the necessary actions to—

(1) establish an adequate program for record maintenance, reporting, and inspection designed to assist compliance with Federal safety standards; and

(2) establish procedures for approval of plans for inspection and maintenance substantially the same as are required under section 210.

Any agreement executed pursuant to this subsection shall require the State agency promptly to notify the Secretary of any violation or probable violation of a Federal safety standard which it discovers as a result of its program.

Safety standard violation or probable violation, notification.
State program, monitoring.

(c) The Secretary may conduct whatever monitoring may be necessary of any State program established by certification or agreement under this section to assure that such programs are being carried out in compliance with such certification or agreement. State agencies

shall cooperate fully in any monitoring of their programs under this subsection.

(d)(1) Except as otherwise provided in this section, if an application submitted not later than September 30 in any calendar year, the Secretary shall pay out of funds appropriated or otherwise made available up to 50 percent of the cost of the personnel, equipment, and activities of a State agency reasonably required during the following calendar year to carry out a safety program under a certification under subsection (a) or an agreement under subsection (b) of this section; or to act as agent of the Secretary with respect to interstate pipeline facilities. The Secretary may, after notice and consultation with a State agency, withhold all or any part of the funds for a particular State agency if he determines that such State agency (A) is not satisfactorily carrying out a safety program under a certification under subsection (a) or an agreement under subsection (b) of this section, or (B) is not satisfactorily acting as agent of the Secretary with respect to interstate pipeline facilities. No such payment may be made unless the State agency making application under this subsection gives assurances satisfactory to the Secretary that the State agency will provide the remaining cost of such a safety program and that the aggregate expenditures of funds of the State, exclusive of Federal grants, for hazardous liquid pipeline safety programs will be maintained at a level which does not fall below the average level of such expenditures for the last 2 fiscal years preceding the date of enactment of this section.

(2) Funds authorized to be appropriated by section 214 of this title shall be allocated among the several States for payments to aid in the conduct of pipeline safety programs in accordance with paragraph (1) of this subsection.

(3) Payments under this section may be made in installments, in advance or by way of reimbursement, with necessary adjustments on account of overpayments and underpayments.

(4) The Secretary may, by regulation, provide for the form and manner of filing of applications under this section, and for such reporting and fiscal procedures as he deems necessary to assure the proper accounting for Federal funds.

(e) A certification which is in effect under subsection (a) shall not apply with respect to any new or amended Federal safety standard established for intrastate pipeline facilities or transportation of hazardous liquids associated with those facilities pursuant to this title after the date of such certification. The provisions of this title shall apply to any such new or amended Federal safety standard until the State agency has adopted such standard and has submitted an appropriate certification in accordance with provisions of subsection (a).

(f) If after receipt of annual certification under subsection (a), the Secretary determines that the State agency is not satisfactorily enforcing compliance with Federal safety standards, he may, on reasonable notice and after opportunity for hearing, reject the certification or take such other action as he deems appropriate to achieve adequate enforcement including the assertion of Federal jurisdiction. When such notice is given by the Secretary, the burden of proof shall be upon the State agency to show that it is satisfactorily enforcing compliance with Federal safety standards.

(g) Any agreement under subsection (b) may be terminated by the Secretary if, after notice and opportunity for a hearing, he finds that the State agency has failed to comply with any provision of such agreement. Such finding and termination shall be published in the

Funds
withholding.

Funds
allocation.

Payment
methods.

Certification,
applicability.

Notice;
hearing.

Agreement
termination.

Publication
in Federal
Register.

Federal Register and shall become effective no sooner than 15 days after the date of publication.

JUDICIAL REVIEW

SEC. 206. (a) Any person who is or will be adversely affected or aggrieved by any regulation issued under this title or any order issued relating to an application for waiver under section 203(h) may at any time prior to the 60th day after such regulation or order is issued file a petition for a judicial review with the United States Court of Appeals for the District of Columbia or for the circuit wherein such petitioner is located or has his principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose.

Petition filing.
49 USC 2005.

(b) Upon the filing of the petition referred to in subsection (a), the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5 of the United States Code and to grant appropriate relief as provided in such chapter.

5 USC 701
et seq.

(c) The judgment of the court affirming or setting aside, in whole or in part, any such regulation or order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

Review by
Supreme Court.

(d) Any action instituted under this section shall survive, notwithstanding any change in the person occupying the office of the Secretary or any vacancy in such office.

(e) The remedies provided for in this section shall be in addition to and not in substitution for any other remedies provided by law.

COMPLIANCE

SEC. 207. (a) Each person who engages in the transportation of hazardous liquids or who owns or operates pipeline facilities shall—

49 USC 2006.

(1) at all times after the date any applicable safety standard established under this title takes effect comply with the requirements of such standard;

(2) establish and maintain a plan of inspection and maintenance required by section 210 and comply with such plan; and

(3) permit access to or copying of records, and make reports or provide information, and permit entry or inspection, as required under section 211.

(b)(1) The Secretary may issue orders directing compliance with this Act or any regulation issued under this Act. Any such order shall clearly set forth the particular actions required of the person to whom the order is issued.

(2) The district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce any such order by appropriate means.

U.S. jurisdiction.

(c) Nothing in this title shall affect the common law or statutory liability of any person.

PENALTIES

SEC. 208. (a)(1) Any person who is determined by the Secretary to have violated any provisions of section 207(a) or any regulation or order issued under this title, including any order issued under section 207(b) or 209(b), shall be liable to the United States for a civil penalty of not more than \$1,000 for each violation for each day that violation

49 USC 2007.

persists, except that the maximum civil penalty shall not exceed \$200,000 for any related series of violations.

Penalty
assessment.

(2) The amount of the penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith in attempting to achieve compliance, ability to pay the penalty, and such other matters as justice may require.

Recovery.

(b) A civil penalty assessed under subsection (a) may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, prior to referral to the Attorney General, it may be compromised by the Secretary. The amount of the penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(c)(1) Any person who willfully and knowingly violates section 207(a) or a regulation or order issued under this title, including any order issued under section 207(b) or 209(b), shall, upon conviction, be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

(2) Any person who willfully and knowingly injures or destroys, or attempts to injure or destroy, any interstate pipeline facility shall, upon conviction, be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 15 years, or both.

(d) Nothing in this title shall be construed to authorize the imposition of penalties for the violation of any regulation and the violation of any order under section 207(b) or 209(b) if both violations are based on the same act.

SPECIFIC RELIEF

Redress
or restraint
of violation.
49 USC 2008.

SEC. 209. (a)(1) The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief to redress or restrain a violation by any person of a provision of this title or a regulation issued under this title. Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

Trial.

(2) In any proceeding for criminal contempt for violation of a mandatory or prohibitive injunction issued under this subsection, which violation also constitutes a violation of this Act, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

18 USC app.

(b)(1) If the Secretary finds, after reasonable notice and an opportunity for hearing, that any pipeline facility is hazardous to life or property, he shall, by order, require the person operating the facility to take necessary corrective action. Such corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action, as appropriate.

(2) The Secretary may find a pipeline facility to be hazardous under paragraph (1)—

(A) if under the facts and circumstances he determines the particular facility is hazardous to life or property, or

(B) if the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which he determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Secretary that under the particular facts and circumstances involved such equipment, material, or technique is not hazardous to life or property.

(3) In making a determination under paragraph (2), the Secretary shall consider, if relevant—

(A) the characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction, or assembly;

(B) the nature of the materials transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such materials are transported, and the pressure required for such transportation;

(C) the aspects of the areas in which the pipeline facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas;

(D) any recommendation of the National Transportation Safety Board issued in connection with any investigation conducted by the Board under other provisions of law; and

(E) such other factors as the Secretary may consider appropriate.

(4) The district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce orders issued under this subsection by appropriate means.

U.S. jurisdiction.

(5) The Secretary may waive the requirements for notice and hearing under this subsection and provide for expeditious issuance of an order under this subsection in any case in which he determines that the failure to do so would result in the likelihood of serious harm to life or property. However, the Secretary shall include in such an order an opportunity for hearing as soon as practicable after issuance of an order.

Notice and hearing, waiver.

INSPECTION AND MAINTENANCE

SEC. 210. (a) Each person who engages in the transportation of hazardous liquids or who owns or operates pipeline facilities shall prepare, maintain at such office or offices of that person as the Secretary determines appropriate, and carry out a current written plan for inspection and maintenance of each facility used in that transportation and owned or operated by that person in accordance with regulations prescribed by the Secretary or, where a certification or agreement pursuant to section 205 of this title is in effect, by the appropriate State agency. The Secretary may, by regulation, also require persons who engage in the transportation of hazardous liquids or who own or operate pipeline facilities subject to the provisions of this title to file such plans for approval. A plan required by this subsection shall be practicable and designed to meet the need for pipeline safety and shall be made available to the Secretary or appropriate State agency upon request pursuant to section 211.

Written plan.
49 USC 2009.

Plans, filing for approval.

Plan revision.

(b) If the Secretary or appropriate State agency finds that a plan required under this section is inadequate to achieve safe operation of pipeline facilities, the Secretary or appropriate State agency shall, after notice and opportunity for a hearing, require the plan to be revised. In determining the adequacy of a plan filed under this section, the Secretary or appropriate State agency shall consider—

- (1) relevant available pipeline safety data;
- (2) whether the plan is appropriate for the particular type of pipeline transportation or facility;
- (3) the reasonableness of the plan; and
- (4) the extent to which such plan will contribute to public safety.

POWERS AND DUTIES OF THE SECRETARY

49 USC 2010.

SEC. 211. (a) The Secretary may, to the extent necessary to carry out his responsibilities under this title, conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents and records, take depositions, and conduct, directly or, by contract, or otherwise, research, testing, development, demonstration, and training activities; however, before the Secretary may exercise authority under this section to require testing of portions of pipeline facilities subject to the provisions of this title which have been involved in or affected by an accident, he shall make every effort to negotiate a mutually acceptable plan with the owner of such facilities and, where appropriate, the National Transportation Safety Board for performing such testing.

(b) Each person who engages in the transportation of hazardous liquids or who owns or operates pipeline facilities shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require, and shall submit such reports and shall make such records and information available as the Secretary may request, to enable him to determine whether such person has acted or is acting in compliance with this title and the standards or orders issued under this title.

(c) Officers, employees, or agents authorized by the Secretary, upon presenting appropriate credentials to the person in charge, are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining whether such persons have acted or are acting in compliance with this title and the standards or orders issued under this title.

Accident reports,
availability for
any judicial
proceeding and
general public.

(d) Accident reports made by any officer, employee, or agent of the Department of Transportation shall be available for use in any civil, criminal, or other judicial proceeding arising out of such accident. Any such officer, employee, or agent may be required to testify in such proceedings as to the facts developed in such investigations. Any such report shall be made available to the public in a manner which need not identify individuals. All reports on research projects, demonstration projects, and other related activities shall be public information.

Trade secret,
confidentiality.

(e) All information reported to or otherwise obtained by the Secretary or his representative pursuant to subsection (a), (b), or (c) which information contains or relates to a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this title or when relevant in any proceeding under this title. Nothing in this section shall authorize the withholding of

information by the Secretary or any officer, employee, or agent under his control, from the duly authorized committees of the Congress.

PIPELINE SAFETY COORDINATION AND COOPERATION

SEC. 212. (a) Upon request, the Secretary shall furnish to the Federal Energy Regulatory Commission or any appropriate State agency, with respect to matters under their jurisdiction, any information he has concerning the safety of any materials, operations, devices, or processes relating to the transportation of hazardous liquids or the operation of pipeline facilities.

Information
to Federal
Energy Regu-
latory
Commission.
49 USC 2011.

(b) The Secretary is authorized to advise, assist, and cooperate with other Federal departments and agencies and State and other interested public and private agencies and persons, in the planning and development of (1) Federal safety standards relating to hazardous liquids, and (2) methods for inspecting and testing to determine compliance with Federal safety standards relating to hazardous liquids.

(c) The Secretary is authorized to consult with, and make recommendations to, other Federal departments and agencies, State and local governments, and other public and private agencies or persons, for the purpose of developing and encouraging activities, including the enactment of legislation, to assist in the implementation of this title and to improve State and local pipeline safety programs relating to hazardous liquids.

Consultation
and
recommenda-
tions.

ANNUAL REPORT

SEC. 213. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress on June 15 of each year a comprehensive report on the administration of this title for the preceding calendar year. Such report shall include—

Report to
President for
transmittal
to Congress.
49 USC 2012.

(1) a thorough compilation of the leak repairs, accidents, and casualties occurring in such year with a statement of cause whenever investigated and determined by the National Transportation Safety Board;

(2) a list of Federal hazardous liquid pipeline safety standards established or in effect in such year with identification of standards newly established during such year;

(3) a summary of the reasons for each waiver granted under section 203(h) during such year;

(4) an evaluation of the degree of observance of applicable safety standards for the transportation of hazardous liquids and pipeline facilities including a list of enforcement actions, and compromises of alleged violations by location and company name;

(5) a summary of outstanding problems confronting the administration of this title in order of priority;

(6) an analysis and evaluation of research activities, including the policy implications thereof, completed as a result of Government and private sponsorship and technological progress for safety achieved during such year;

(7) a list, with a brief statement of the issues, of completed or pending judicial actions under the title;

(8) the extent to which technical information was disseminated to the scientific community and consumer-oriented information was made available to the public;

(9) a compilation of—

(A) certifications filed by State agencies (including municipalities) under section 205(a) which were in effect during the preceding calendar year, and

(B) certifications filed under section 205(a) which were rejected by the Secretary during the preceding calendar year, together with a summary of the reasons for such rejection; and

(10) a compilation of—

(A) agreements entered into with State agencies (including municipalities) under section 205(b) which were in effect during the preceding calendar year, and

(B) agreements entered into under section 205(b) which were terminated by the Secretary during the preceding calendar year, together with a summary of the reasons for each such termination.

(11) a description of the number and qualifications of State pipeline safety inspectors in each State for which a certification or agreement is in effect under section 205, together with the number of such pipeline inspectors (and their qualifications) which the Secretary recommends for that State.

(b) The report required by subsection (a) shall contain such recommendations for additional legislation as the Secretary deems necessary to promote cooperation among the several States in the improvement of hazardous liquid pipeline safety programs.

(c) The Secretary is authorized to submit one annual report in satisfaction of the report requirements of this section and of section 16 of the Natural Gas Pipeline Safety Act of 1968.

Annual report.

49 USC 1683.

APPROPRIATIONS AUTHORIZED

49 USC 2013.

SEC. 214. (a) For the purpose of carrying out the provisions of this title (other than provisions for which funds are authorized to be appropriated under subsection (b)), there are authorized to be appropriated—

(1) \$1,800,000, for the fiscal year ending September 30, 1980; and

(2) \$2,100,000, for the fiscal year ending September 30, 1981.

(b) For the purpose of carrying out the Federal grants-in-aid provisions of section 205 of this title, there are authorized to be appropriated—

(1) \$500,000, for the fiscal year ending September 30, 1980; and

(2) \$535,000, for the fiscal year ending September 30, 1981.

CITIZENS CIVIL ACTION

Mandatory
or prohibitive
injunctive
relief.
49 USC 2014.

SEC. 215. (a) Except as provided in subsection (b), any person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, against any other person (including any State, municipality, or other governmental entity to the extent permitted by the eleventh amendment to the Constitution, and the United States) who is alleged to be in violation of this title or of any order or regulation issued under this title. The district courts of the United States shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) No civil action may be commenced under subsection (a) with respect to any alleged violation of this title or any order or regulation issued under this title—

(1) prior to the expiration of 60 days after the plaintiff has given notice of such alleged violation to the Secretary (or to the applicable State agency in the case of a State which has been certified under section 205(a) and in which the violation is alleged to have occurred), and to any person who is alleged to have committed such violation; or

(2) if the Secretary (or such State agency) has commenced and is diligently pursuing administrative proceedings or the Attorney General of the United States (or the chief law enforcement officer of such State) has commenced and is diligently pursuing judicial proceedings with respect to such alleged violation.

Notice under this subsection shall be given in such manner as the Secretary shall prescribe by regulation.

(c) In any action under subsection (a), the Secretary (with the concurrence of the Attorney General) or the Attorney General may intervene as a matter of right.

(d) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or at common law to seek enforcement of this title or any order or regulation under this title or to seek any other relief.

(e) In any action under this section the court may, in the interest of justice, award the costs of suit, including reasonable attorney's fees and reasonable expert witnesses fees, to a prevailing plaintiff. Such court may, in the interest of justice, award such costs to a prevailing defendant whenever such action is unreasonable, frivolous, or meritless. For purposes of this subsection, a reasonable attorney's fee is a fee (1) which is based upon (A) the actual time expended by an attorney in providing advice and other legal services in connection with representing a person in an action brought under this section, and (B) such reasonable expenses as may be incurred by the attorney in the provision of such services, and (2) which is computed at the rate prevailing for the provision of similar services with respect to actions brought in the court which is awarding such fee.

Reasonable
attorney's
fee.

(f) For purposes of this section, a violation of any safety standard or practice of any State shall be deemed to be a violation of this title or of any order or regulation under this title only to the extent that such standard or practice is not more stringent than the comparable Federal safety standard.

CONFORMING AMENDMENTS

SEC. 216. (a) Section 112(c) of the Hazardous Materials Transportation Act (49 U.S.C. 1811(c)) is amended by striking out "chapter 39 of title 18, United States Code" and inserting in lieu thereof "Hazardous Liquid Pipeline Safety Act of 1979".

(b) Sections 831 through 835 of chapter 39 of title 18, United States Code, are repealed.

Repeal.

EFFECTIVE DATE

SEC. 217. The provisions of this title shall take effect on the date of enactment.

49 USC 2001
note.

SAVINGS PROVISIONS

SEC. 218. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges which have been issued, made, granted, or allowed to become effective under the provisions of chapter 39 of title 18, United States Code repealed by this title and which are in effect at the time this title takes effect,

18 USC 831 note.

Supra.

shall continue in effect as though issued, made, granted, or allowed to become effective under the authority of this title, according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary, by any court of competent jurisdiction, or by operation of law.

(b) Suits, actions, or other proceedings pending upon the date of enactment of this title shall not be affected by the provisions of this title and shall be completed as if this title had not been enacted, unless the Secretary makes a determination that the public safety otherwise requires.

Approved November 30, 1979.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 96-201, Pt. 1 (Comm. on Interstate and Foreign Commerce) and No. 96-201, Pt. II (Comm. on Public Works and Transportation), both accompanying H.R. 51.

SENATE REPORT No. 96-182 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 125 (1979):

June 4, considered and passed Senate.

Sept. 17, 18, H.R. 51 considered and passed House; passage vacated and S. 411, amended, passed in lieu.

Nov. 14, Senate concurred in House amendments with an amendment.

Nov. 15, House concurred in Senate amendment.