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112TH CONGRESS
1st Session

SENATE

REPORT
112-30

PIPELINE TRANSPORTATION SAFETY
IMPROVEMENT ACT OF 2011

R E P O R T
OF THE
COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION
ON
S. 275



JULY 7, 2011.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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PIPELINE TRANSPORTATION SAFETY IMPROVEMENT ACT OF 2011

JULY 7, 2011.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 275]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 275) to amend title 49, United States Code, to provide for enhanced safety and environmental protection in pipeline transportation, to provide for enhanced reliability in the transportation of the Nation's energy products by pipeline, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The Pipeline Transportation Safety Improvement Act of 2011 (S. 275) would reauthorize Federal pipeline safety programs under management of the Pipeline and Hazardous Materials Safety Administration (PHMSA) of the U.S. Department of Transportation (DOT) for fiscal years (FYs) 2011 through 2014. These programs provide safety oversight of the Nation's pipeline transportation network.

BACKGROUND AND NEEDS

The United States has approximately 2,500,000 miles of pipelines that transport oil, natural and other gases, and other hazardous liquids through both remotely and densely populated areas. These pipelines are an integral component of the U.S. economy and energy supply, enabling the bulk movement of products to industries, communities, and consumers. The material transported through

pipelines is often flammable or toxic and a release could cause public injury or environmental damage, so ensuring the safety of our Nation's pipelines is essential.

PHMSA, which was created under the Norman Y. Mineta Research and Special Improvements Act of 2004, is the agency within DOT that is responsible for safe transportation of natural gas, petroleum, and other hazardous liquids by pipeline. The mission of PHMSA's Office of Pipeline Safety (OPS) is to ensure compliance with Federal safety standards through physical and programmatic inspections, safety incident investigations, and communication with pipeline operators. PHMSA's enforcement actions, which include administrative actions and civil penalties, are intended to correct safety violations and prevent future problems. PHMSA also promulgates rulemakings as needed to improve safety; facilitates research and development into better pipeline technologies; trains State and Federal pipeline inspectors; and administers grants to States and localities for pipeline inspections, damage prevention, and emergency response.

PHMSA's pipeline safety program is funded primarily by user fees assessed on a per-mile basis on each regulated pipeline operator, but is also funded through the Oil Spill Liability Trust Fund which is comprised of an environmental tax on petroleum and oil spill damage recovery payments. PHMSA's pipeline safety appropriation was \$106,200,000 for FYs 2010 and 2011. The President's FY 2012 budget request includes \$120,900,000 for pipeline safety. At the end of FY 2011, PHMSA employed 206 pipeline safety staff, which includes 103 pipeline inspectors. The budget request calls for 225 staff members in FY 2012.

The pipeline transportation system is a complex, interconnected network that collects products from sources such as wells on land or offshore, or from shipping vessels such as tankers that carry oil or liquefied natural gas, and transports the product to storage and processing facilities. The network is generally comprised of transmission and distribution lines. Transmission pipelines transport large quantities over longer distances. For example, they deliver natural gas to power plants, large industrial customers, and to municipalities for further distribution, or deliver crude oil to refineries or refined products to markets such as airports or depots, where fuel oils and gasoline are loaded into trucks for local delivery. Distribution lines are only used as part of natural gas systems, and range from main lines that move gas to industrial customers down to the smaller service lines that connect to businesses and homes throughout a municipality. Along these pipelines are pump stations for liquids and compressor stations for natural gas, storage and distribution facilities, and automated control facilities to manage the product movement and maintain safety.

PHMSA is responsible for overseeing interstate transmission pipelines, while the States are responsible for monitoring the safety of intrastate pipelines. This State authority is delegated by PHMSA to intrastate pipeline safety offices, and PHMSA also allows State officials to act as "agents" in administering interstate pipeline safety programs (excluding enforcement actions, which are handled by PHMSA directly) for those sections of interstate pipelines within a State's boundaries. However, if a State does not assume oversight responsibility for its intrastate pipelines, whether

they transport hazardous liquids, such as oil, or natural gas, the responsibility for regulation returns to PHMSA. When effectively utilized, State inspectors are valuable resources for PHMSA because they are familiar with local pipeline operations and can increase inspection thoroughness and frequency over what PHMSA itself could accomplish.

In support of these regulatory responsibilities, PHMSA administers grants to States to conduct intrastate gas and hazardous liquid pipeline safety programs; monitors performance of those State agencies participating in the programs; collects, compiles, and analyzes pipeline safety and operating data; and conducts training programs for Government and industry personnel in the application of the pipeline safety regulations. According to a PHMSA estimate, States oversee 90 percent of the total pipeline mileage, largely as a result of the States' authority over local gas distribution lines, which provide natural gas to residential or commercial customers.

Overall, pipelines are a relatively safe mode of transportation compared to other modes. Since the Pipeline Inspection Protection, Enforcement, and Safety Act of 2006 (PIPES Act) was enacted in 2006, approximately 40 serious pipeline incidents involving a fatality or injury requiring in-patient hospitalization have occurred annually. Accidental pipeline releases result from a variety of causes, including third-party excavation (leading cause of accidents), corrosion, mechanical failure, control system failure, and operator error.

Both PHMSA and the National Transportation Safety Board (NTSB) have the authority to investigate pipeline accidents. The NTSB has 1 pipeline-related item on its most wanted list, reducing fatigue, as a result of its accident investigations. NTSB also has 10 outstanding recommendations to PHMSA related to excess flow valves, transportation and reuse of pipes, accident notification and spill estimation standards, and pipe inspection methods. NTSB has categorized PHMSA's response as acceptable to each of the 10 recommendations.

The Natural Gas Pipeline Safety Act of 1968 (P.L. 90-481) and the Hazardous Liquid Pipeline Act of 1979 (P.L. 96-129) established a Federal role in pipeline safety. These Acts give the DOT Secretary authority to regulate the design, construction, testing, operation and maintenance, and emergency response for interstate pipelines and facilities. As long as they uphold minimum Federal standards, States may impose additional standards for intrastate pipelines and facilities.

Previously, pipeline safety generally focused on the pipeline itself, including the physical qualities, supporting systems, and the administration of an operator's inspection program. Beginning in 1997, PHMSA increasingly utilized integrity management programs to oversee pipeline safety. Integrity management programs take a broader view than the pipeline itself, encompassing the environment as well. Pipeline operators are required to know more about the areas their pipeline traverses; the nature of the population in the area; and the existence of environmentally sensitive areas near the pipeline. By focusing on a specific pipeline in a particular area, integrity management programs equip PHMSA with a better understanding of whether people, property, or the environment might be at risk should a pipeline failure occur, and sets priorities for inspections, operations, and maintenance as a result.

Regulations for integrity management of hazardous liquid pipelines have been in effect since 2001.

The Pipeline Safety Improvement Act of 2002 (P.L. 107–355) was signed into law in December 2002. The requirement for risk analysis and integrity management plans in High Consequence Areas, which include population centers, commercially navigable waters, and environmentally sensitive areas for natural gas pipelines, is found in this law. The integrity management programs were required at least every 7 years after the baseline assessment. However, pipeline operators argued that this was too infrequent in some instances and too costly and inefficient in others. In 2006, the Government Accountability Office (GAO) recommended that Congress permit pipeline operators to reassess their transmission integrity management programs at intervals based on risk factors, technical data, and engineering analysis. PHMSA concurred with GAO's recommendation and submitted a legislative proposal to Congress in April 2008 to provide variance from the fixed 7 year interval. This Pipeline Safety Improvement Act also increased public education regarding pipeline safety through implementation of "one-call" excavation notification programs; authorized the DOT to order safety actions for pipelines with potential safety problems; and streamlined the permitting process for emergency pipeline restoration by establishing an interagency committee to ensure a coordinated review of repairs.

Although PHMSA oversees the construction of new pipelines, the siting approval of new gas pipelines is the responsibility of the Federal Energy Regulatory Commission. Similarly, PHMSA's regulatory role over pipelines is limited to transportation. The Occupational Safety and Health Administration regulates pipelines inside energy facilities. PHMSA's regulatory authority of offshore pipelines is limited as well; it begins with the outlet flange or final valve of each offshore production facility and runs to the shore. Prior to such point, the Coast Guard and the Department of Interior's Minerals Management Service have regulatory authority over the pipe. Overall, PHMSA has regulatory authority over approximately 40 percent of offshore pipelines. PHMSA also has regulatory authority over oil spill and response plans for onshore pipelines.

Two substantial pipeline accidents in 2010 and another in 2011 resulted in both significant loss of life and extensive environmental damage. On September 9, 2010, a 30-inch diameter natural gas transmission pipeline owned by Pacific Gas and Electric (PG&E) ruptured in a residential area of San Bruno, California. The escaping natural gas was ignited, resulting in an explosion and large fireball that killed 8 people and destroyed or damaged dozens of homes.

The explosion created a 167 foot long and 26 foot wide hole in the ground. The pipeline—constructed in 1956—had to be shut off manually, because the pipeline was not equipped with automatic shut off valves. Reports estimated that the valve was not closed until 1 hour and 46 minutes after the initial explosion, and that escaping natural gas continued to fuel the fire. The valves are in a secure location, requiring a key to access the area and a handle to move the valve. PG&E has indicated that rush hour traffic and the fires themselves prevented PG&E employees from accessing the

valves immediately. Estimated recovery costs from the accident are nearly \$38,000,000, according to the City of San Bruno.

On July 26, 2010, Enbridge Energy Partners (EEP) reported to the National Response Center that a 30 inch-diameter pipe ruptured in an area 1 mile south of Marshall, Michigan and was spilling oil into a Talmadge Creek, a tributary of the Kalamazoo River. Current estimates indicate the spill released more than 1,000,000 gallons of oil. According to the NTSB, EEP noted severe drops in pressure at their control room the evening of July 25, 2010, but the leak was not confirmed with authorities until 1:29 p.m. the next day. The pipeline leaking was Enbridge pipeline 6B, which was constructed in 1969 to deliver up to 190,000 barrels a day. Investigators are currently concentrating on the effects of corrosion along Line 6B.

On February 9, 2011, a pipeline exploded in the middle of the night underneath a densely populated and urban area of Allentown, Pennsylvania. The explosion killed 5 people and destroyed or severely damaged 8 row houses. The blast happened at 10:45 p.m., but gas flow to the area had to be eliminated via manual shut-off valve, and was not shut off until 3:45 a.m. the following morning. The incident is currently under investigation.

HEARINGS

The Senate Committee on Commerce, Science, and Transportation Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security held 2 hearings focused on pipeline safety oversight in 2010.

The first hearing was held on June 24, 2010, and focused on PHMSA's implementation of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 and what Congress could do to further increase the safety of the Nation's pipeline network in reauthorizing the Federal pipeline safety program. The hearing also examined the coordination between Federal, State, local, and private parties in responding to and investigating pipeline accidents and incidents. Representatives from PHMSA, the NTSB, the Association of Oil Pipelines, the Interstate Natural Gas Association of America, the American Gas Association, and the Pipeline Safety Trust testified.

The second hearing was held on September 29, 2010, and focused on the investigation and implications of the San Bruno, California natural gas pipeline accident that occurred on Thursday, September 9, 2010. In addition, this hearing focused on pipeline safety legislation introduced in the Senate at the time of the hearing and how improvements to pipeline safety can be made to decrease the risk of accidents such as the San Bruno accident and Enbridge Energy Company's crude oil pipeline spill near Marshall, Michigan which released over 1,000,000 gallons of oil. Representatives from PHMSA, the NTSB, the California Public Utilities Commission, PG&E, the city of San Bruno, and the Pipeline Safety Trust testified.

SUMMARY OF PROVISIONS

The Pipeline Transportation Safety Improvement Act of 2011 (PTSI Act) would reauthorize PHMSA, within DOT, for FYs 2011

through 2014. The pipeline safety programs expired at the end of FY 2010 and the PTSI Act includes provisions to enhance pipeline safety efforts. These provisions would also address safety issues identified in recent high-profile pipeline accidents in San Bruno, California and near Marshall, Michigan. This legislation is a broad-based reauthorization that targets known vulnerabilities and outstanding issues in pipeline regulation. Specifically, the legislation would:

- Increase the cap on civil penalties for violators of pipeline regulations, and add civil penalties for obstructing investigations;
- Permit expansion of excess flow valve requirements to include multi-family buildings and small commercial facilities;
- Set more stringent standards on State “One-Call” systems by eliminating all exemptions given to local and State government agencies, and their contractors, on notifying “One-Call” centers before digging;
- Permit the requirement of installation of automatic or remote-controlled shut-off valves on new transmission pipelines;
- Require the Secretary to prescribe regulations that establish time limits on accident and leak notification by pipeline operators to local and State government officials and emergency responders;
- Require the Secretary to evaluate whether integrity management system requirements should be expanded beyond currently defined high consequence areas and establish regulations as appropriate;
- Increase public availability of pipeline information, inspections, and standards by requiring that this information be made available on PHMSA’s public website;
- Authorize additional pipeline inspectors and pipeline safety support employees, through a phased-in increase over the next 4 years;
- Allow PHMSA to recover costs for oversight of large pipeline design and construction projects;
- Require gas transmission pipeline operators to verify records and confirm maximum allowable operating pressure; and
- Authorize appropriations for PHMSA for FYs 2011 through 2014.

LEGISLATIVE HISTORY

S. 275 was introduced by Senator Lautenberg on February 3, 2011 and was referred to the Committee on Commerce, Science, and Transportation. The bill was considered at the Committee’s May 5, 2011 Executive Session, where the Lautenberg substitute was approved by unanimous consent, with 3 additional amend-

ments. First Degree Amendments from Senators Boxer, Thune, and Tom Udall were adopted.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

JUNE 9, 2011.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 275, the Pipeline Transportation Safety Improvement Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 275—Pipeline Transportation Safety Improvement Act of 2011

Summary: The Pipeline and Hazardous Materials Safety Administration (PHMSA) oversees the safety of pipelines that transport gas or hazardous liquids and provides grants to states for programs to ensure pipeline safety. For those activities, S. 275 would authorize the gross appropriation of \$420 million over the 2012–2016 period. CBO expects that about \$365 million of those appropriations would be offset by fees paid by pipeline operators over the three-year period. In addition, subject to provisions in appropriation acts, CBO estimates that the bill would authorize PHMSA to collect and spend about \$10 million over the 2012–2016 period to recover its costs of conducting safety reviews at a pipeline project in the state of Alaska. Altogether, CBO estimates that implementing S. 275 would have a net cost of \$46 million over the 2012–2016 period, assuming appropriation of the necessary amounts.

Pay-as-you-go procedures apply because enacting the legislation could affect revenues. S. 275 would increase certain civil penalties for violating pipeline safety regulations. Civil penalties are recorded in the budget as revenues and deposited in the general fund of the Treasury. However, CBO estimates that any increase in civil penalties would be small and would have no significant effect on the federal budget. Enacting the bill would not affect direct spending.

S. 275 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would impose new requirements on both public and private operators of natural gas pipelines. The bill would impose additional private-sector mandates on operators of hazardous liquid pipelines. Because of the relatively small number of public entities affected, CBO estimates that the aggregate cost of intergovernmental mandates in the bill would fall below the annual threshold established in UMRA (\$71 million in 2011, adjusted annually for inflation).

Based on information from PHMSA and industry sources, CBO estimates that the aggregate cost of the private-sector mandates would exceed the annual threshold established in UMRA (\$142 million in 2011, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 275 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2012	2013	2014	2015	2016	2012–2016
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Spending for Pipeline Safety:						
Estimated Authorization Level	133	138	141	3	5	420
Estimated Outlays	65	117	134	72	23	411
Offsetting Collections for User Fees and Alaska Pipeline Design Review:						
Estimated Authorization Level	-114	-120	-123	-3	-5	-365
Estimated Outlays	-114	-120	-123	-3	-5	-365
Estimated Net Spending:						
Estimated Authorization Level	19	18	18	0	0	55
Estimated Outlays	-49	-3	11	69	18	46

Basis of estimate: For this estimate, CBO assumes that S. 275 will be enacted before the end of fiscal year 2011 and that the specified and necessary amounts authorized over the 2012–2016 period will be appropriated each year. Estimates of spending are based on historical spending patterns for pipeline safety programs.

Spending subject to appropriation

Spending for Pipeline Safety. S. 275 would reauthorize the laws that govern PHMSA's role in pipeline safety. The bill would authorize the appropriation of \$420 million for PHMSA's pipeline safety activities over the 2012–2016 period, CBO estimates. (In 2011, PHMSA's gross appropriation for pipeline safety was \$106 million.) S. 275 would authorize PHMSA to hire 39 new employees to analyze and inspect pipelines over the 2012–2014 period. The bill also would require PHMSA to complete a number of studies, update certain standards, and issue new regulations on pipeline safety more quickly than under current law. CBO estimates that implementing those provisions would cost \$411 million over the 2012–2016 period, assuming appropriation of the specified and necessary amounts.

Offsetting Collections for User Fees and Alaska Pipeline Design Review. Under provisions of the bill, CBO estimates that PHMSA would collect \$365 million in user fees over the 2012–2016 period. Those amounts include user fees authorized under current law and are based on the appropriated level of funding and new fees for PHMSA activities related to the review of a large pipeline project in Alaska.

Revenues

S. 275 would increase the maximum penalties PHMSA may impose for certain violations of safety regulations that cause serious environmental damage or result in serious injuries or death. The bill also would permit new penalties to be imposed for obstructing inspections or investigations by PHMSA. Based on PHMSA's past

penalty collections, CBO estimates that those provisions would result in increased revenue of less than \$500,000 over the 2012–2021 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Enacting S. 275 would have a negligible effect on revenues.

Intergovernmental and private-sector impact: S. 275 would impose mandates on public and private entities that operate natural gas pipelines and additional private-sector mandates on operators of hazardous liquid pipelines. Because of the relatively small number of public entities affected, CBO estimates that the aggregate cost of intergovernmental mandates in the bill would fall below the annual threshold established in UMRA (\$71 million in 2011, adjusted annually for inflation); we estimate that the aggregate cost of the private-sector mandates in the bill would exceed the annual threshold established in UMRA (\$142 million in 2011, adjusted annually for inflation).

Mandates that apply to both public and private entities

Operating Pressure. The bill would require operators of transmission pipelines for natural gas in areas at risk of significant damage from spills to confirm safe operating pressures for pipelines. The mandate would require such operators to ensure they have accurate records, test pipelines for which records are not sufficient, and report when pressure exceeds acceptable limits. According to PHMSA, about 24,000 to 30,000 miles of transmission pipelines are in affected areas. Published estimates indicate that the cost of testing pipelines could range from \$150,000 to \$500,000 per mile; according to industry sources, approximately 20 percent of pipelines in areas at risk of significant damage from spills might require testing. Based on that information, CBO expects that compliance cost to pipeline operators in the private sector could total several hundred million dollars or more annually in the first two years the mandate is in effect. Because public entities operate a relatively small fraction of transmission pipelines for natural gas, CBO estimates the cost to state and local governments would total less than \$20 million annually in the first two years after the mandate takes effect.

Integrity Management. S. 275 would extend existing planning, testing, and safety requirements to additional pipelines. CBO cannot determine the costs of the mandates for private-sector entities because they would depend on future regulations. However, based on information from PHMSA and industry sources about the cost to comply with existing standards, the cost of imposing such standards on additional pipelines could be significant. Because of the relatively small number of public entities affected, CBO estimates the cost to state and local governments would be small.

Shut-Off Valves. The bill would impose a mandate on operators of transmission pipelines by requiring them to install shut-off valves in new or entirely replaced transmission pipelines. According to industry sources, such valves currently cost \$100,000 to \$500,000 per valve depending on the size of the pipeline. The number of valves to be installed would depend on the spacing required between valves and areas where operators would have to install

them. Because such requirements would be developed as part of future regulations, CBO has no basis for determining the cost of the mandate to private-sector entities. Because of the relatively small number of public entities affected, CBO estimates the cost to state and local governments would be small.

Reporting Requirements. The bill would require pipeline operators to report additional information to PHMSA. Industry sources indicate the cost of the mandate to private entities would be in the tens of millions of dollars. Based on information from industry sources, CBO estimates the cost of the mandate to publicly owned pipeline operators could be significant because many such operators are small and lack resources to comply with the new reporting requirements. However, CBO estimates the costs to state and local governments would total less than \$15 million annually.

Excess Flow Valves. S. 275 would require operators of distribution pipelines for natural gas to install valves designed to prevent natural gas leakage in areas to be determined by PHMSA. According to industry sources, each valve would add about \$30 to the cost of installation and approximately 200,000 installations per year could require such valves. While the total cost of the mandate would depend on the number of units PHMSA would require to have such valves, CBO estimates that those costs would be relatively small.

Notification Requirements. The bill would require pipeline operators to notify state and local governments and emergency responders of accidents or incidents within specified time limits. CBO estimates that the cost of the mandate to public and private entities would be minimal.

Mandates that apply to private entities only

Leak Detection. The bill would impose a mandate by requiring the operators of hazardous liquid pipelines, such as oil pipelines, to use leak detection technologies where feasible. Under the bill, PHMSA would designate pipelines from a total of 176,000 miles of pipeline. Because the cost of the mandate would depend on such future PHMSA regulations, CBO has no basis for determining the cost of this mandate.

Oil Flow Lines. S. 275 could impose a mandate on pipeline operators that transport oil by allowing PHMSA to collect additional data. Because CBO does not know what information PHMSA would require operators to report, we have no basis for determining the cost of the mandate.

Offshore Gathering Pipelines. S. 275 would impose a mandate by requiring the operators of pipelines used to gather hazardous liquids to follow additional safety requirements. According to industry sources, the mandate would apply to about 5,000 miles of pipeline. Because the cost of the mandate would depend on future PHMSA regulations, CBO has no basis for determining the cost of the mandate.

Fees. The bill would authorize PHMSA to collect new fees on construction projects that are large or use new technology. Based on information from PHMSA on the expenses it would incur because of the bill, CBO estimates that PHMSA would charge an average of \$120 million in additional fees per year to pipeline operators over the 2012–2014 period as a result of enactment of the bill.

Other Requirements. The bill would impose several other new requirements on pipeline operators. Specifically, the bill would impose additional safety requirements on pipelines transporting bio-fuels; require PHMSA to regularly review waivers on safety requirements it provides to pipeline operators; and impose minimum safety standards for pipelines transporting carbon dioxide in a gaseous state. Based on information from industry sources and PHMSA, CBO estimates that the cost of each of those mandates would fall well below the annual threshold established in UMRA.

Estimate prepared by: Federal spending: Sarah Puro; Federal revenues: Kalyani Parthasarathy; Impact on state, local, and tribal governments: Ryan Miller; Impact on the private sector: Samuel Wice.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 275 is intended to reauthorize PHMSA's OPS. The OPS currently has the authority to provide direct oversight of the Nation's interstate pipelines and set minimum standards that the Nation's intrastate pipelines must adhere to. The bill is intended to provide the OPS with additional authority to oversee the pipeline industry. With the exception of providing increased authority to carbon dioxide pipelines and offshore gathering lines in certain cases, the number of pipelines subject to the Office's oversight is not expected to change as a result of this bill.

ECONOMIC IMPACT

S. 275 is not expected to have an adverse economic impact on the Nation. This bill would promote a safer regulatory environment for pipelines, which could ultimately reduce the monetary consequences of leaks and explosions.

PRIVACY

S. 275 would not have any effect on the privacy of individuals' information.

PAPERWORK

S. 275 would require pipeline operators to provide additional information in digital form that they are not currently required to provide. Any additional paperwork burdens would be minimal.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title; Amendment of Title 49, United States Code; Table of Contents.

This section would provide that the Act be cited as the “Pipeline Transportation Safety Improvement Act of 2011,” would reference Title 49, United States Code, and would provide a table of contents.

Section 2. Civil Penalties.

This section would amend section 49 U.S.C. 60122(a) to provide for increased administrative civil penalties for major consequence violations involving deaths, injuries, and major environmental damage. For these types of violations, it would increase the caps from \$100,000 per violation day/\$1,000,000 series to \$250,000 per violation day/\$2,500,000 series. It also would clarify that civil penalties can be assessed for obstruction of investigations. This section also would amend 49 U.S.C. 60120 (a) to confirm that the 49 U.S.C. 60122 caps on administrative civil penalties do not apply to judicial actions under 49 U.S.C. 60120. This section would also add the availability of judicial review of final enforcement orders in the Courts of Appeals. Finally, this section would strike the consideration of a defendant’s ability to pay when determining civil penalties.

Section 3. Pipeline Damage Prevention.

This section would amend State one-call program requirements to eliminate all exemptions for local municipalities, State government agencies, and their contractors. This section would become effective 2 years after the date of enactment of this Act.

Section 4. Offshore Gathering Pipelines.

This section would require the Secretary of Transportation (Secretary) to issue regulations governing offshore hazardous liquid low-stress pipelines and hazardous liquid low-stress gathering pipelines located in the Gulf of Mexico to the same standards as other hazardous liquid gathering pipelines. It would not apply to low-stress distribution pipelines.

Section 5. Automatic and Remote-Controlled Shut-Off Valves.

This section would amend section 49 U.S.C. 60102 to require the Secretary to prescribe regulations requiring the use of remote-controlled shut-off valves, or equivalent technology when economically, technically, and operationally feasible. This would apply to transmission pipelines constructed or replaced after the final rule is issued.

Section 6. Excess Flow Valves.

This section would amend 49 U.S.C. 60109(e)(3) to require the Secretary, within 2 years after the date of enactment of this Act, to prescribe the use of excess flow valves in new or replaced distribution branch services, multi-family facilities, and small commercial facilities where economically and technically feasible.

Section 7. Integrity Management.

This section would require the Secretary to report on whether integrity management system requirements, or elements thereof, should be expanded beyond high consequence areas. The report would examine whether applying integrity management system requirements to additional areas in gas pipeline facilities would mitigate the need for class location requirements, with an emphasis on class 3 and 4 facilities. This section is intended to examine potential redundancy between integrity management requirements and class location requirements on transmission pipelines. The report would examine whether data collected outside high consequence areas as part of integrity management should be included as part of the records required to be maintained by operators. This section would also require the Secretary to prescribe new standards, as appropriate, and collect relevant data necessary to complete the evaluation and for the purposes of any new standards issued, while considering the seismology of the area being evaluated.

Section 8. Public Education and Awareness.

This section would add a new section to 49 U.S.C. 60138 that would require the Secretary to maintain and make available to the public monthly summaries of all pipeline inspections conducted by and reported to PHMSA, information about each pipeline operators' facility response plan, maps of all currently designated high consequence areas, and information about all industry—or professional organization—developed safety standards. The Secretary would be able to satisfy the requirements of this section by making the information available on its public website. The Secretary would not be required to disclose information that is not subject to disclosure under the Freedom of Information Act and other information that is deemed proprietary or security-sensitive.

Section 9. Cast Iron Pipelines.

This section would require the Secretary to conduct a follow-on survey of that required in 49 U.S.C. 60108(d) to determine progress that has been made on the extent to which each operator has adopted a plan to safely manage and replace cast iron pipelines in its system. This section would require that the Secretary perform this survey biannually.

Section 10. Leak Detection.

This section would require the Secretary to submit a report to Congress analyzing the technical limitations of current leak detection systems utilized by hazardous liquid pipelines, and what can be done to foster development of better technologies. This section would require the Secretary to prescribe regulations for use of leak detection technologies on pipelines.

Section 11. Incident Notification.

This section would require the Secretary to prescribe regulations that establish time limits for accident and incident notification by pipeline operators to State and local government officials. It also would require the Secretary to review procedures for pipeline operators and the National Response Center to provide thorough and

coordinated notification to all relevant officials. These procedures would be revised as appropriate.

Section 12. Transportation-Related Onshore Facility Response Plan Compliance and Maximum Penalties.

This section would authorize the Secretary to assess administrative civil penalties or take other enforcement actions for a transportation-related onshore facility's failure to have a facility response plan or for deficiencies in a facility response plan, or for failure to provide notice of spills.

Section 13. Pipeline Infrastructure Data Collection.

This section would amend 49 U.S.C. 60132 to permit the Secretary to collect additional geospatial pipeline data for the National Pipeline Mapping System. The Secretary would not be permitted to disclose data, except as permitted by the Freedom of Information Act.

Section 14. International Cooperation and Consultation.

This section would amend 49 U.S.C. 60117 to authorize PHMSA to engage in activities supporting efforts to exchange expertise on pipeline safety with other governments. This section would also allow PHMSA to consult on the safety of cross-border pipeline operations with Canada and Mexico.

Section 15. Gas and Hazardous Liquid Gathering Lines.

This section would require the Secretary to review all exemptions for gas and hazardous liquid gathering lines and submit a report to Congress recommending any necessary modifications or elimination of such exemptions.

Section 16. Transportation-Related Oil Flow Lines.

This section would amend 49 U.S.C. 60102 to permit the Secretary to gather geospatial, technical, or other data on transportation-related oil flow lines. This section would define a transportation-related oil flow line as a pipeline transporting oil off the grounds of the production facility where it originated across areas not owned by the producer, regardless of the extent to which the oil has been processed.

Section 17. Alaska Project Coordination.

This section would add 49 U.S.C. 60139 to permit the Secretary to provide for enhanced coordination with the State of Alaska, the Joint Pipeline Office, and other agencies and organizations on inspector training programs, oversight of pipeline construction, expansion projects, as well as repair and operation of existing lines.

Section 18. Cost Recovery for Design Reviews.

This section would amend 49 U.S.C. 60117(n) to authorize PHMSA to receive compensation from project applicants for design review, consulting, and field support that the agency performs for eligible new pipeline construction projects. This section would define an eligible project as one that has design and construction costs no less than \$3,400,000,000, or uses new or novel technologies or designs.

Section 19. Special Permits.

This section would amend 49 U.S.C. 60118 to set forth general requirements for review of special permits applications. It would require the Secretary to formally review a special permit after 5 years to determine that permit parameters are still valid, including whether ownership or control of the pipeline has changed, conditions surrounding the pipe have changed, and other factors as appropriate. Waiver applications would be required to be noticed to the public with opportunity for comment.

Section 20. Biofuel Pipelines.

This section would amend 49 U.S.C. 60101(a) to include biofuels and clarify that biofuels transported by pipeline are subject to transportation safety regulations.

Section 21. Carbon Dioxide Pipelines.

This section would amend 49 U.S.C. 60102(i) to require the Secretary to prescribe minimum safety standards for the transportation of carbon dioxide by pipeline in either a liquid or gaseous state.

Section 22. Study of the Transportation of Tar Sands Crude Oil.

This section would require the Secretary to review whether current regulations are sufficient to regulate pipelines transmitting tar sands crude oil. The study would analyze whether tar sands oil presents an increased risk of release.

Section 23. Study of Non-Petroleum Hazardous Liquids Transported by Pipeline.

This section would authorize the Secretary to analyze the extent to which pipelines are being used to transport non-petroleum hazardous liquids (e.g., chlorine) from chemical production facilities across land areas not owned by the producer. This analysis would also identify the extent to which these types of lines are regulated by the States. The Secretary would be required to provide the analysis to Congress.

Section 24. Clarifications.

This section: (1) would remove the word “intrastate” from the first sentence of 49 U.S.C. 60108(a) to clarify that PHMSA’s authority to require operators to amend operating plans and procedures is not limited to intrastate pipeline facilities; (2) would clarify that PHMSA’s authority for purposes of enforcement is not limited to an entity that is both the owner and operator of a pipeline; and (3) would clarify that PHMSA is authorized to enforce its one-call regulations with regard to pipeline operators.

Section 25. Additional Resources.

This section would provide 39 additional full time equivalent positions over 4 years for inspection and enforcement personnel and administrative support personnel.

Section 26. Maintenance of Effort.

This section would amend 49 U.S.C. 60107(b) to permit the Secretary to provide pipeline safety funds to a State authority when

the State authority pays an amount equal the average amount of contributions made in FYs 2004 through 2006 to the costs of its pipeline safety program. A waiver can be granted if a State can demonstrate an inability to maintain or increase its funding share due to economic hardship.

Section 27. Maximum Allowable Operating Pressure.

This section would require gas transmission pipeline operators to conduct a verification of records to confirm these pipelines' physical and operational characteristics and confirm their established maximum allowable operating pressure. Operators would be required to report to the Secretary any pipelines for which they cannot verify such records, and would be required to reconfirm the pipelines' maximum allowable operational pressure as expeditiously as possible, subject to conditions set forth by the Secretary.

Section 28. Administrative Enforcement Process.

This section would require the Secretary to issue regulations that would require a presiding official at all hearings related to corrective action orders, safety orders, compliance orders and waivers, and civil penalties. These regulations would also provide an opportunity for those requesting hearings to request a transcript, and ensure expedited review of corrective action orders. This section would also require a presiding official to be an attorney on the staff of PHMSA's Deputy Chief Counsel that does not engage in investigative or prosecutorial functions. The section would also establish standards for judicial review of agency action.

Section 29. Authorization of Appropriations.

This section would authorize appropriations for FYs 2011 through 2014.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL WATER POLLUTION CONTROL ACT

SEC. 311. OIL AND HAZARDOUS SUBSTANCES LIABILITY

[33 U.S.C. 1321]

* * * * *

(b) CONGRESSIONAL DECLARATION OF POLICY AGAINST DISCHARGES OF OIL OR HAZARDOUS SUBSTANCES; DESIGNATION OF HAZARDOUS SUBSTANCES; STUDY OF HIGHER STANDARD OF CARE INCENTIVES AND REPORT TO CONGRESS; LIABILITY; PENALTIES; CIVIL ACTIONS: PENALTY LIMITATIONS, SEPARATE OFFENSES, JURISDICTION, MITIGATION OF DAMAGES AND COSTS, RECOVERY OF REMOVAL COSTS, ALTERNATIVE REMEDIES, AND WITHHOLDING CLEARANCE OF VESSELS.—

(1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or haz-

ardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act of 1976).

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act of 1976), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500 should be enacted.

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act of 1976), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act of 1976), where permitted under the Protocol of 1978 Relating to the

International Convention for the Prevention of Pollution from Ships, 1973, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. The Federal agency shall immediately notify the appropriate State agency of any State which is, or may reasonably be expected to be, affected by the discharge of oil or a hazardous substance. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both. Notification received pursuant to this paragraph shall not be used against any such natural person in any criminal case, except a prosecution for perjury or for giving a false statement.

(6) ADMINISTRATIVE PENALTIES.—

(A) VIOLATIONS.—Any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility—

(i) from which oil or a hazardous substance is discharged in violation of paragraph (3), or

(ii) who fails or refuses to comply with any regulation issued under subsection (j) to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by the Secretary of the department in which the Coast Guard is ~~operating or~~ *operating, the Secretary of Transportation, or the Administrator.*

(B) CLASSES OF PENALTIES.—

(i) CLASS I.—The amount of a class I civil penalty under subparagraph (A) may not exceed \$10,000 per violation, except that the maximum amount of any class I civil penalty under this subparagraph shall not exceed \$25,000. Before assessing a civil penalty under this clause, the Administrator or Secretary, as the case may be, shall give to the person to be assessed

such penalty written notice of the Administrator's or Secretary's proposal to assess the penalty and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed penalty. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(ii) CLASS II.—The amount of a class II civil penalty under subparagraph (A) may not exceed \$10,000 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed \$125,000. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code. The Administrator and Secretary may issue rules for discovery procedures for hearings under this paragraph.

(C) RIGHTS OF INTERESTED PERSONS.—

(i) PUBLIC NOTICE.—Before issuing an order assessing a class II civil penalty under this paragraph the Administrator or Secretary, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order.

(ii) PRESENTATION OF EVIDENCE.—Any person who comments on a proposed assessment of a class II civil penalty under this paragraph shall be given notice of any hearing held under this paragraph and of the order assessing such penalty. In any hearing held under this paragraph, such person shall have a reasonable opportunity to be heard and to present evidence.

(iii) RIGHTS OF INTERESTED PERSONS TO A HEARING.—If no hearing is held under subparagraph (B) before issuance of an order assessing a class II civil penalty under this paragraph, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator or Secretary shall immediately set aside such order and provide a hearing in accordance with subparagraph (B)(ii). If the Administrator or Secretary denies a hearing under this clause, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

(D) FINALITY OF ORDER.—An order assessing a class II civil penalty under this paragraph shall become final 30

days after its issuance unless a petition for judicial review is filed under subparagraph (G) or a hearing is requested under subparagraph (C)(iii). If such a hearing is denied, such order shall become final 30 days after such denial.

(E) EFFECT OF ORDER.—Action taken by the Administrator or Secretary, as the case may be, under this paragraph shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act [33 USCS §§ 1251 et seq.]; except that any violation—

(i) with respect to which the Administrator or Secretary has commenced and is diligently prosecuting an action to assess a class II civil penalty under this paragraph, or

(ii) for which the Administrator or Secretary has issued a final order assessing a class II civil penalty not subject to further judicial review and the violator has paid a penalty assessed under this paragraph, shall not be the subject of a civil penalty action under section 309(d), 309(g), or 505 of this Act [33 USCS §§ 1319(d), (g), 1365] or under paragraph (7).

(F) EFFECT OF ACTION ON COMPLIANCE.—No action by the Administrator or Secretary under this paragraph shall affect any person's obligation to comply with any section of this Act [33 USCS §§ 1251 et seq.].

(G) JUDICIAL REVIEW.—Any person against whom a civil penalty is assessed under this paragraph or who commented on the proposed assessment of such penalty in accordance with subparagraph (C) may obtain review of such assessment—

(i) in the case of assessment of a class I civil penalty, in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred, or

(ii) in the case of assessment of a class II civil penalty, in United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business, by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or Secretary, as the case may be, and the Attorney General. The Administrator or Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

(H) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

(i) after the assessment has become final, or
(ii) after a court in an action brought under subparagraph (G) has entered a final judgment in favor of the Administrator or Secretary, as the case may be, the Administrator or Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this subparagraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

(I) SUBPOENAS.—The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this paragraph. In case of contumacy or refusal to obey a subpoena issued pursuant to this subparagraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(7) CIVIL PENALTY ACTION.—

(A) DISCHARGE, GENERALLY.—Any person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3), shall be subject to a civil penalty in an amount up to \$25,000 per day of violation or an amount up to \$1,000 per barrel of oil or unit of reportable quantity of hazardous substances discharged.

(B) FAILURE TO REMOVE OR COMPLY.—Any person described in subparagraph (A) who, without sufficient cause—

(i) fails to properly carry out removal of the discharge under an order of the President pursuant to subsection (c); or

(ii) fails to comply with an order pursuant to subsection (e)(1)(B); shall be subject to a civil penalty in an

amount up to \$25,000 per day of violation or an amount up to 3 times the costs incurred by the Oil Spill Liability Trust Fund as a result of such failure.

(C) FAILURE TO COMPLY WITH REGULATION.—Any person who fails or refuses to comply with any regulation issued under subsection (j) shall be subject to a civil penalty in an amount up to \$25,000 per day of violation.

(D) GROSS NEGLIGENCE.—In any case in which a violation of paragraph (3) was the result of gross negligence or willful misconduct of a person described in subparagraph (A), the person shall be subject to a civil penalty of not less than \$100,000, and not more than \$3,000 per barrel of oil or unit of reportable quantity of hazardous substance discharged.

(E) JURISDICTION.—An action to impose a civil penalty under this paragraph may be brought in the district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to assess such penalty.

(F) LIMITATION.—A person is not liable for a civil penalty under this paragraph for a discharge if the person has been assessed a civil penalty under paragraph (6) for the discharge.

(8) DETERMINATION OF AMOUNT.—In determining the amount of a civil penalty under paragraphs (6) and (7), the Administrator, Secretary, or the court, as the case may be, shall consider the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

(9) MITIGATION OF DAMAGE.—In addition to establishing a penalty for the discharge of oil or a hazardous substance, the Administrator or the Secretary of the department in which the Coast Guard is operating may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

(10) RECOVERY OF REMOVAL COSTS.—Any costs of removal incurred in connection with a discharge excluded by subsection (a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 309(b) of this Act [33 USCS § 1319(b)].

(11) LIMITATION.—Civil penalties shall not be assessed under both this section and section 309 [33 USCS § 1319] for the same discharge.

(12) WITHHOLDING CLEARANCE.—If any owner, operator, or person in charge of a vessel is liable for a civil penalty under this subsection, or if reasonable cause exists to believe that the owner, operator, or person in charge may be subject to a civil penalty under this subsection, the Secretary of the Treasury,

upon the request of the Secretary of the department in which the Coast Guard is operating or the Administrator, shall with respect to such vessel refuse or revoke—

(A) the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91 [46 USCS § 60105]);

(B) a permit to proceed under section 4367 of the Revised Statutes of the United States (46 U.S.C. App. 313); and

(C) a permit to depart required under section 443 of the Tariff Act of 1930 (19 U.S.C. 1443); as applicable. Clearance or a permit refused or revoked under this paragraph may be granted upon the filing of a bond or other surety satisfactory to the Secretary of the department in which the Coast Guard is operating or the Administrator.

* * * * *

(m) ADMINISTRATIVE PROVISIONS.—

(1) FOR VESSELS.—Anyone authorized by the President to enforce the provisions of this section with respect to any vessel may, except as to public vessels—

(A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone,

(B) with or without a warrant, arrest any person who in the presence or view of the authorized person violates the provisions of this section or any regulation issued thereunder, and

(C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(2) FOR FACILITIES.—

(A) RECORDKEEPING.—Whenever required to carry out the purposes of this section, the *Administrator or Administrator, the Secretary of Transportation, or the Secretary of the Department* in which the Coast Guard is operating shall require the owner or operator of a facility to which this section applies to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment and methods, and provide such other information as the *Administrator or Administrator, the Secretary of Transportation, or Secretary*, as the case may be, may require to carry out the objectives of this section.

(B) ENTRY AND INSPECTION.—Whenever required to carry out the purposes of this section, the *Administrator or Administrator, the Secretary of Transportation, or the Secretary of the Department* in which the Coast Guard is operating or an authorized representative of the *Administrator or Administrator, the Secretary of Transportation, or Secretary*, upon presentation of appropriate credentials, may—

(i) enter and inspect any facility to which this section applies, including any facility at which any records are required to be maintained under subparagraph (A); and

(ii) at reasonable times, have access to and copy any records, take samples, and inspect any monitoring equipment or methods required under subparagraph (A).

(C) ARRESTS AND EXECUTION OF WARRANTS.—Anyone authorized by the Administrator or the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this section with respect to any facility may—

(i) with or without a warrant, arrest any person who violates the provisions of this section or any regulation issued thereunder in the presence or view of the person so authorized; and

(ii) execute any warrant or process issued by an officer or court of competent jurisdiction.

(D) PUBLIC ACCESS.—Any records, reports, or information obtained under this paragraph shall be subject to the same public access and disclosure requirements which are applicable to records, reports, and information obtained pursuant to section 308 [33 USCS § 1318].

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PIPELINE SAFETY IMPROVEMENT ACT OF 2002

* * * * *

SEC. 12. PIPELINE INTEGRITY, SAFETY, AND RELIABILITY RESEARCH AND DEVELOPMENT.

[49 U.S.C. 60101 note]

(a) IN GENERAL.—The heads of the participating agencies shall carry out a program of research, development, demonstration, and standardization to ensure the integrity of pipeline facilities.

(b) MEMORANDUM OF UNDERSTANDING.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the heads of the participating agencies shall enter into a memorandum of understanding detailing their respective responsibilities in the program authorized by subsection (a).

(2) AREAS OF EXPERTISE.—Under the memorandum of understanding, each of the participating agencies shall have the primary responsibility for ensuring that the elements of the program within its expertise are implemented in accordance with this section. The Department of Transportation’s responsibilities shall reflect its lead role in pipeline safety and expertise in pipeline inspection, integrity management, and damage prevention. The Department of Energy’s responsibilities shall reflect its expertise in system reliability, low-volume gas leak detection, and surveillance technologies. The National Institute of Standards and Technology’s responsibilities shall reflect its expertise in materials research and assisting in the development of consensus technical standards, as that term is used in section 12(d)(4) of Public Law 104-13 (15 U.S.C. 272 note).

(c) PROGRAM ELEMENTS.—The program authorized by subsection (a) shall include research, development, demonstration, and standardization activities related to—

(1) materials inspection;

(2) stress and fracture analysis, detection of cracks, corrosion, abrasion, and other abnormalities inside pipelines that lead to pipeline failure, and development of new equipment or technologies that are inserted into pipelines to detect anomalies;

(3) internal inspection and leak detection technologies, including detection of leaks at very low volumes;

(4) methods of analyzing content of pipeline throughput;

(5) pipeline security, including improving the real-time surveillance of pipeline rights-of-way, developing tools for evaluating and enhancing pipeline security and infrastructure, reducing natural, technological, and terrorist threats, and protecting first response units and persons near an incident;

(6) risk assessment methodology, including vulnerability assessment and reduction of third-party damage;

(7) communication, control, and information systems surety;

(8) fire safety of pipelines;

(9) improved excavation, construction, and repair technologies; and

(10) other appropriate elements.

(d) PROGRAM PLAN.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary of Transportation, in coordination with the Secretary of Energy and the Director of the National Institute of Standards and Technology, shall prepare and transmit to Congress a 5-year program plan to guide activities under this section. Such program plan shall be submitted to the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee for review, and the report to Congress shall include the comments of the committees. The 5-year program plan shall be based on the memorandum of understanding under subsection (b) and take into account related activities of other Federal agencies.

(2) CONSULTATION.—In preparing the program plan and selecting and prioritizing appropriate project proposals, the Secretary of Transportation shall consult with or seek the advice of appropriate representatives of the natural gas, crude oil, and petroleum product pipeline industries, utilities, manufacturers, institutions of higher learning, Federal agencies, pipeline research institutions, national laboratories, State pipeline safety officials, labor organizations, environmental organizations, pipeline safety advocates, and professional and technical societies.

(3) ONGOING PIPELINE TRANSPORTATION RESEARCH AND DEVELOPMENT.—*After the initial 5-year program plan has been carried out by the participating agencies, the Secretary of Transportation shall prepare a research and development program plan every 5 years thereafter and shall transmit a report to Congress on the status and results-to-date of implementation of the program each year that funds are appropriated for carrying out the plan.*

(e) REPORTS TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the heads of the participating agencies shall transmit jointly to Congress a report

on the status and results to date of the implementation of the program plan prepared under subsection (d).

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) DEPARTMENT OF TRANSPORTATION.—There is authorized to be appropriated to the Secretary of Transportation for carrying out this section \$10,000,000 for each of the fiscal years 2003 through 2006. *2011 through 2014.*

(2) DEPARTMENT OF ENERGY.—There is authorized to be appropriated to the Secretary of Energy for carrying out this section \$10,000,000 for each of the fiscal years 2003 through 2006. *2011 through 2014.*

(3) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—There is authorized to be appropriated to the Director of the National Institute of Standards and Technology for carrying out this section \$5,000,000 for each of the fiscal years 2003 through 2006. *2011 through 2014.*

(4) GENERAL REVENUE FUNDING.—Any sums appropriated under this subsection shall be derived from general revenues and may not be derived from amounts collected under section 60301 of title 49, United States Code.

(g) PIPELINE INTEGRITY PROGRAM.—Of the amounts available in the Oil Spill Liability Trust Fund established by section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509), \$3,000,000 shall be transferred to the Secretary of Transportation, as provided in appropriation Acts, to carry out programs for detection, prevention, and mitigation of oil spills for each of the fiscal years 2003 through 2006.

(h) PARTICIPATING AGENCIES DEFINED.—In this section, the term “participating agencies” means the Department of Transportation, the Department of Energy, and the National Institute of Standards and Technology.

* * * * *

TITLE 49. TRANSPORTATION

SUBTITLE VIII. PIPELINES

CHAPTER 601. SAFETY

§ 60101. Definitions

(a) GENERAL.—In this chapter [49 USCS §§ 60101 et seq.]—

(1) “existing liquefied natural gas facility”—

(A) means a liquefied natural gas facility for which an application to approve the site, construction, or operation of the facility was filed before March 1, 1978, with—

(i) the Federal Energy Regulatory Commission (or any predecessor); or

(ii) the appropriate State or local authority, if the facility is not subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.); but

(B) does not include a facility on which construction is begun after November 29, 1979, without the approval;

(2) “gas” means natural gas, flammable gas, or toxic or corrosive gas;

- (3) “gas pipeline facility” includes a pipeline, a right of way, a facility, a building, or equipment used in transporting gas or treating gas during its transportation;
- (4) “hazardous liquid” means—
- (A) petroleum or a petroleum product; and
 - (B) *non-petroleum fuels, including biofuels that are flammable, toxic, or corrosive or would be harmful to the environment if released in significant quantities; and*
 - (C) a substance the Secretary of Transportation decides may pose an unreasonable risk to life or property when transported by a hazardous liquid pipeline facility in a liquid state (except for liquefied natural gas);
- (5) “hazardous liquid pipeline facility” includes a pipeline, a right of way, a facility, a building, or equipment used or intended to be used in transporting hazardous liquid;
- (6) “interstate gas pipeline facility” means a gas pipeline facility—
- (A) used to transport gas; and
 - (B) subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.);
- (7) “interstate hazardous liquid pipeline facility” means a hazardous liquid pipeline facility used to transport hazardous liquid in interstate or foreign commerce;
- (8) “interstate or foreign commerce”—
- (A) related to gas, means commerce—
 - (i) between a place in a State and a place outside that State; or
 - (ii) that affects any commerce described in subclause (A)(i) of this clause; and
 - (B) related to hazardous liquid, means commerce between—
 - (i) a place in a State and a place outside that State; or
 - (ii) places in the same State through a place outside the State;
- (9) “intrastate gas pipeline facility” means a gas pipeline facility and transportation of gas within a State not subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.);
- (10) “intrastate hazardous liquid pipeline facility” means a hazardous liquid pipeline facility that is not an interstate hazardous liquid pipeline facility;
- (11) “liquefied natural gas” means natural gas in a liquid or semisolid state;
- (12) “liquefied natural gas accident” means a release, burning, or explosion of liquefied natural gas from any cause, except a release, burning, or explosion that, under regulations prescribed by the Secretary, does not pose a threat to public health or safety, property, or the environment;
- (13) “liquefied natural gas conversion” means conversion of natural gas into liquefied natural gas or conversion of liquefied natural gas into natural gas;
- (14) “liquefied natural gas pipeline facility”—

- (A) means a gas pipeline facility used for transporting or storing liquefied natural gas, or for liquefied natural gas conversion, in interstate or foreign commerce; but
- (B) does not include any part of a structure or equipment located in navigable waters (as defined in section 3 of the Federal Power Act (16 U.S.C. 796));
- (15) “municipality” means a political subdivision of a State;
- (16) “new liquefied natural gas pipeline facility” means a liquefied natural gas pipeline facility except an existing liquefied natural gas pipeline facility;
- (17) “person”, in addition to its meaning under section 1 of title 1 (except as to societies), includes a State, a municipality, and a trustee, receiver, assignee, or personal representative of a person;
- (18) “pipeline facility” means a gas pipeline facility and a hazardous liquid pipeline facility;
- (19) “pipeline transportation” means transporting gas and transporting hazardous liquid;
- (20) “State” means a State of the United States, the District of Columbia, and Puerto Rico;
- (21) “transporting gas”—
- (A) means—
- (i) the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in interstate or foreign commerce; and
- (ii) the movement of gas through regulated gathering lines; but
- (B) does not include the gathering of gas, other than gathering through regulated gathering lines, in those rural locations that are located outside the limits of any incorporated or unincorporated city, town, or village, or any other designated residential or commercial area (including a subdivision, business, shopping center, or community development) or any similar populated area that the Secretary of Transportation determines to be a nonrural area, except that the term “transporting gas” includes the movement of gas through regulated gathering lines;
- (22) “transporting hazardous liquid”—
- (A) means—
- (i) the movement of hazardous liquid by pipeline, or the storage of hazardous liquid incidental to the movement of hazardous liquid by pipeline, in or affecting interstate or foreign commerce; and
- (ii) the movement of hazardous liquid through regulated gathering lines; but
- (B) does not include moving hazardous liquid through—
- (i) gathering lines (except regulated gathering lines) in a rural area;
- (ii) onshore production, refining, or manufacturing facilities; or
- (iii) storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities;
- (23) “risk management” means the systematic application, by the owner or operator of a pipeline facility, of management

policies, procedures, finite resources, and practices to the tasks of identifying, analyzing, assessing, reducing, and controlling risk in order to protect employees, the general public, the environment, and pipeline facilities;

(24) “risk management plan” means a management plan utilized by a gas or hazardous liquid pipeline facility owner or operator that encompasses risk management; and

(25) “Secretary” means the Secretary of Transportation.

(b) GATHERING LINES.—

(1)(A) Not later than October 24, 1994, the Secretary shall prescribe standards defining the term “gathering line”.

(B) In defining “gathering line” for gas, the Secretary—

(i) shall consider functional and operational characteristics of the lines to be included in the definition; and

(ii) is not bound by a classification the Commission establishes under the Natural Gas Act (15 U.S.C. 717 et seq.).

(2)(A) Not later than October 24, 1995, the Secretary, if appropriate, shall prescribe standards defining the term “regulated gathering line”. In defining the term, the Secretary shall consider factors such as location, length of line from the well site, operating pressure, throughput, and the composition of the transported gas or hazardous liquid, as appropriate, in deciding on the types of lines that functionally are gathering but should be regulated under this chapter [49 USCS §§ 60101 et seq.] because of specific physical characteristics.

(B)(i) The Secretary also shall consider diameter when defining “regulated gathering line” for hazardous liquid.

(ii) The definition of “regulated gathering line” for hazardous liquid may not include a crude oil gathering line that has a nominal diameter of not more than 6 inches, is operated at low pressure, and is located in a rural area that is not unusually sensitive to environmental damage.

§ 60102. Purpose and general authority

(a) PURPOSE AND MINIMUM SAFETY STANDARDS.—

(1) PURPOSE.—The purpose of this chapter [49 USCS §§ 60101 et seq.] is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation.

(2) MINIMUM SAFETY STANDARDS.—The Secretary shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities. The standards—

(A) apply to owners and operators *any or all of the owners or operators* of pipeline facilities;

(B) may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities; and

(C) shall include a requirement that all individuals who operate and maintain pipeline facilities shall be qualified to operate and maintain the pipeline facilities.

(3) QUALIFICATIONS OF PIPELINE OPERATORS.—The qualifications applicable to an individual who operates and maintains

a pipeline facility shall address the ability to recognize and react appropriately to abnormal operating conditions that may indicate a dangerous situation or a condition exceeding design limits. The operator of a pipeline facility shall ensure that employees who operate and maintain the facility are qualified to operate and maintain the pipeline facilities.

(b) PRACTICABILITY AND SAFETY NEEDS STANDARDS.—

(1) IN GENERAL.—A standard prescribed under subsection (a) shall be—

- (A) practicable; and
- (B) designed to meet the need for—
 - (i) gas pipeline safety, or safely transporting hazardous liquids, as appropriate; and
 - (ii) protecting the environment.

(2) FACTORS FOR CONSIDERATION.—When prescribing any standard under this section or section 60101(b), 60103, 60108, 60109, 60110, or 60113 [49 USCS § 60101(b), 60103, 60108, 60109, 60110, or 60113], the Secretary shall consider—

- (A) relevant available—
 - (i) gas pipeline safety information;
 - (ii) hazardous liquid pipeline safety information; and
 - (iii) environmental information;
- (B) the appropriateness of the standard for the particular type of pipeline transportation or facility;
- (C) the reasonableness of the standard;
- (D) based on a risk assessment, the reasonably identifiable or estimated benefits expected to result from implementation or compliance with the standard;
- (E) based on a risk assessment, the reasonably identifiable or estimated costs expected to result from implementation or compliance with the standard;
- (F) comments and information received from the public; and
- (G) the comments and recommendations of the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as appropriate.

(3) RISK ASSESSMENT.—In conducting a risk assessment referred to in subparagraphs (D) and (E) of paragraph (2), the Secretary shall—

- (A) identify the regulatory and nonregulatory options that the Secretary considered in prescribing a proposed standard;
- (B) identify the costs and benefits associated with the proposed standard;
- (C) include—
 - (i) an explanation of the reasons for the selection of the proposed standard in lieu of the other options identified; and
 - (ii) with respect to each of those other options, a brief explanation of the reasons that the Secretary did not select the option; and
- (D) identify technical data or other information upon which the risk assessment information and proposed standard is based.

(4) REVIEW.—

(A) IN GENERAL.—The Secretary shall—

(i) submit any risk assessment information prepared under paragraph (3) of this subsection to the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as appropriate; and

(ii) make that risk assessment information available to the general public.

(B) PEER REVIEW PANELS.—The committees referred to in subparagraph (A) shall serve as peer review panels to review risk assessment information prepared under this section. Not later than 90 days after receiving risk assessment information for review pursuant to subparagraph (A), each committee that receives that risk assessment information shall prepare and submit to the Secretary a report that includes—

(i) an evaluation of the merit of the data and methods used; and

(ii) any recommended options relating to that risk assessment information and the associated standard that the committee determines to be appropriate.

(C) REVIEW BY SECRETARY.—Not later than 90 days after receiving a report submitted by a committee under subparagraph (B), the Secretary—

(i) shall review the report;

(ii) shall provide a written response to the committee that is the author of the report concerning all significant peer review comments and recommended alternatives contained in the report; and

(iii) may revise the risk assessment and the proposed standard before promulgating the final standard.

(5) SECRETARIAL DECISION MAKING.—Except where otherwise required by statute, the Secretary shall propose or issue a standard under this Chapter only upon a reasoned determination that the benefits of the intended standard justify its costs.

(6) EXCEPTIONS FROM APPLICATION.—The requirements of subparagraphs (D) and (E) of paragraph (2) do not apply when—

(A) the standard is the product of a negotiated rulemaking, or other rulemaking including the adoption of industry standards that receives no significant adverse comment within 60 days of notice in the Federal Register;

(B) based on a recommendation (in which three-fourths of the members voting concur) by the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as applicable, the Secretary waives the requirements; or

(C) the Secretary finds, pursuant to section 553(b)(3)(B) of title 5, United States Code, that notice and public procedure are not required.

(7) REPORT.—Not later than March 31, 2000, the Secretary shall transmit to the Congress a report that—

(A) describes the implementation of the risk assessment requirements of this section, including the extent to which those requirements have affected regulatory decision-making and pipeline safety; and

(B) includes any recommendations that the Secretary determines would make the risk assessment process conducted pursuant to the requirements under this chapter a more effective means of assessing the benefits and costs associated with alternative regulatory and nonregulatory options in prescribing standards under the Federal pipeline safety regulatory program under this chapter [49 USCS §§ 60101 et seq.].

(c) PUBLIC SAFETY PROGRAM REQUIREMENTS.—

(1) The Secretary shall include in the standards prescribed under subsection (a) of this section a requirement that an operator of a gas pipeline facility participate in a public safety program that—

(A) notifies an operator of proposed demolition, excavation, tunneling, or construction near or affecting the facility;

(B) requires an operator to identify a pipeline facility that may be affected by the proposed demolition, excavation, tunneling, or construction, to prevent damaging the facility; and

(C) the Secretary decides will protect a facility adequately against a hazard caused by demolition, excavation, tunneling, or construction.

(2) To the extent a public safety program referred to in paragraph (1) of this subsection is not available, the Secretary shall prescribe standards requiring an operator to take action the Secretary prescribes to provide services comparable to services that would be available under a public safety program.

(3) The Secretary may include in the standards prescribed under subsection (a) of this section a requirement that an operator of a hazardous liquid pipeline facility participate in a public safety program meeting the requirements of paragraph (1) of this subsection or maintain and carry out a damage prevention program that provides services comparable to services that would be available under a public safety program.

(4) PROMOTING PUBLIC AWARENESS.—

(A) Not later than one year after the date of enactment of the Accountable Pipeline Safety and Accountability Act of 1996 [enacted Oct. 12, 1996], and annually thereafter, the owner or operator of each interstate gas pipeline facility shall provide to the governing body of each municipality in which the interstate gas pipeline facility is located, a map identifying the location of such facility.

(B)(i) Not later than June 1, 1998, the Secretary shall survey and assess the public education programs under section 60116 [49 USCS § 60116] and the public safety programs under section 60102(c) [49 USCS § 60102(c)] and determine their effectiveness and applicability as components of a model program. In particular, the survey shall include the methods by which operators notify residents of the location of the facility and its right of way, public in-

formation regarding existing One-Call programs, and appropriate procedures to be followed by residents of affected municipalities in the event of accidents involving interstate gas pipeline facilities.

(ii) Not later than one year after the survey and assessment are completed, the Secretary shall institute a rule-making to determine the most effective public safety and education program components and promulgate if appropriate, standards implementing those components on a nationwide basis. In the event that the Secretary finds that promulgation of such standards are not appropriate, the Secretary shall report to Congress the reasons for that finding.

(d) FACILITY OPERATION INFORMATION STANDARDS.—The Secretary shall prescribe minimum standards requiring an operator of a pipeline facility subject to this chapter [49 USCS §§ 60101 et seq.] to maintain, to the extent practicable, information related to operating the facility as required by the standards prescribed under this chapter [49 USCS §§ 60101 et seq.] and, when requested, to make the information available to the Secretary and an appropriate State official as determined by the Secretary. The information shall include—

(1) the business name, address, and telephone number, including an operations emergency telephone number, of the operator;

(2) accurate maps and a supplementary geographic description, including an identification of areas described in regulations prescribed under section 60109 of this title [49 USCS § 60109], that show the location in the State of—

(A) major gas pipeline facilities of the operator, including transmission lines and significant distribution lines; and

(B) major hazardous liquid pipeline facilities of the operator;

(3) a description of—

(A) the characteristics of the operator's pipelines in the State; and

(B) products transported through the operator's pipelines in the State;

(4) the manual that governs operating and maintaining pipeline facilities in the State;

(5) an emergency response plan describing the operator's procedures for responding to and containing releases, including—

(A) identifying specific action the operator will take on discovering a release;

(B) liaison procedures with State and local authorities for emergency response; and

(C) communication and alert procedures for immediately notifying State and local officials at the time of a release; and

(6) other information the Secretary considers useful to inform a State of the presence of pipeline facilities and operations in the State.

(e) PIPE INVENTORY STANDARDS.—The Secretary shall prescribe minimum standards requiring an operator of a pipeline facility subject to this chapter [49 USCS §§ 60101 et seq.] to maintain for the

Secretary, to the extent practicable, an inventory with appropriate information about the types of pipe used for the transportation of gas or hazardous liquid, as appropriate, in the operator's system and additional information, including the material's history and the leak history of the pipe. The inventory—

(1) for a gas pipeline facility, shall include an identification of each facility passing through an area described in regulations prescribed under section 60109 of this title [49 USCS § 60109] but shall exclude equipment used with the compression of gas; and

(2) for a hazardous liquid pipeline facility, shall include an identification of each facility and gathering line passing through an area described in regulations prescribed under section 60109 of this title [49 USCS § 60109], whether the facility or gathering line otherwise is subject to this chapter [49 USCS §§ 60101 et seq.], but shall exclude equipment associated only with the pipeline pumps or storage facilities.

(f) STANDARDS AS ACCOMMODATING “SMART PIGS”.—

(1) MINIMUM SAFETY STANDARDS.—The Secretary shall prescribe minimum safety standards requiring that—

(A) the design and construction of new natural gas transmission pipeline or hazardous liquid pipeline facilities, and

(B) when the replacement of existing natural gas transmission pipeline or hazardous liquid pipeline facilities or equipment is required, the replacement of such existing facilities be carried out, to the extent practicable, in a manner so as to accommodate the passage through such natural gas transmission pipeline or hazardous liquid pipeline facilities of instrumented internal inspection devices (commonly referred to as “smart pigs”). The Secretary may extend such standards to require existing natural gas transmission pipeline or hazardous liquid pipeline facilities, whose basic construction would accommodate an instrumented internal inspection device to be modified to permit the inspection of such facilities with instrumented internal inspection devices.

(2) PERIODIC INSPECTIONS.—Not later than October 24, 1995, the Secretary shall prescribe, if necessary, additional standards requiring the periodic inspection of each pipeline the operator of the pipeline identifies under section 60109 of this title [49 USCS § 60109]. The standards shall include any circumstances under which an inspection shall be conducted with an instrumented internal inspection device and, if the device is not required, use of an inspection method that is at least as effective as using the device in providing for the safety of the pipeline.

(g) EFFECTIVE DATES.—A standard prescribed under this section and section 60110 of this title [49 USCS § 60110] is effective on the 30th day after the Secretary prescribes the standard. However, the Secretary for good cause may prescribe a different effective date when required because of the time reasonably necessary to comply with the standard. The different date must be specified in the regulation prescribing the standard.

(h) SAFETY CONDITION REPORTS.—

(1) The Secretary shall prescribe regulations requiring each operator of a pipeline facility (except a master meter) to submit to the Secretary a written report on any—

(A) condition that is a hazard to life, property, or the environment; and

(B) safety-related condition that causes or has caused a significant change or restriction in the operation of a pipeline facility.

(2) The Secretary must receive the report not later than 5 working days after a representative of a person to which this section applies first establishes that the condition exists. Notice of the condition shall be given concurrently to appropriate State authorities.

(i) CARBON DIOXIDE REGULATION.—The Secretary shall regulate carbon dioxide transported by a hazardous liquid pipeline facility. The Secretary shall prescribe standards related to hazardous liquid to ensure the safe transportation of carbon dioxide by such a facility.

(i) PIPELINES TRANSPORTING CARBON DIOXIDE.—*The Secretary shall prescribe minimum safety standards for the transportation of carbon dioxide by pipeline in either a liquid or gaseous state.*

(j) EMERGENCY FLOW RESTRICTING DEVICES.—

(1) Not later than October 24, 1994, the Secretary shall survey and assess the effectiveness of emergency flow restricting devices (including remotely controlled valves and check valves) and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures and minimize product releases from hazardous liquid pipeline facilities.

(2) Not later than 2 years after the survey and assessment are completed, the Secretary shall prescribe standards on the circumstances under which an operator of a hazardous liquid pipeline facility must use an emergency flow restricting device or other procedure, system, or equipment described in paragraph (1) of this subsection on the facility.

(3) REMOTELY CONTROLLED VALVES.—

(A) Not later than June 1, 1998, the Secretary shall survey and assess the effectiveness of remotely controlled valves to shut off the flow of natural gas in the event of a rupture of an interstate natural gas pipeline facility and shall make a determination about whether the use of remotely controlled valves is technically and economically feasible and would reduce risks associated with a rupture of an interstate natural gas pipeline facility.

(B) Not later than one year after the survey and assessment are completed, if the Secretary has determined that the use of remotely controlled valves is technically and economically feasible and would reduce risks associated with a rupture of an interstate natural gas pipeline facility, the Secretary shall prescribe standards under which an operator of an interstate natural gas pipeline facility must use a remotely controlled valve. These standards shall include, but not be limited to, requirements for high-density population areas.

(k) Low-stress Hazardous Liquid Pipelines.—

(1) **MINIMUM STANDARDS.**—Not later than December 31, 2007, the Secretary shall issue regulations subjecting low-stress hazardous liquid pipelines to the same standards and regulations as other hazardous liquid pipelines, except as provided in paragraph (3). The implementation of the applicable standards and regulatory requirements may be phased in. The regulations issued under this paragraph shall not apply to gathering lines. *Not later than 1 year after the date of enactment of the Pipeline Transportation Safety Improvement Act of 2011, the Secretary shall issue regulations, after notice and an opportunity for a hearing, subjecting offshore hazardous liquid gathering pipelines and hazardous liquid gathering pipelines located within the inlets of the Gulf of Mexico to the same standards and regulations as other hazardous liquid gathering pipelines. The regulations issued under this paragraph shall not apply to lowstress distribution pipelines.*

(2) **GENERAL PROHIBITION AGAINST LOW INTERNAL STRESS EXCEPTION.**—Except as provided in paragraph (3), the Secretary may not provide an exception to the requirements of this chapter [49 USCS §§ 60101 et seq.] for a hazardous liquid pipeline because the pipeline operates at low internal stress.

(3) **LIMITED EXCEPTIONS.**—The Secretary shall provide or continue in force exceptions to this subsection for low-stress hazardous liquid pipelines that—

(A) are subject to safety regulations of the United States Coast Guard; or

(B) serve refining, manufacturing, or truck, rail, or vessel terminal facilities if the pipeline is less than 1 mile long (measured outside the facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation, until regulations issued under paragraph (1) become effective. After such regulations become effective, the Secretary may retain or remove those exceptions as appropriate.

(4) **RELATIONSHIP TO OTHER LAWS.**—Nothing in this subsection shall be construed to prohibit or otherwise affect the applicability of any other statutory or regulatory exemption to any hazardous liquid pipeline.

(5) **DEFINITION.**—For purposes of this subsection, the term “low-stress hazardous liquid pipeline” means a hazardous liquid pipeline that is operated in its entirety at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe.

(6) **EFFECTIVE DATE.**—The requirements of this subsection shall not take effect as to low-stress hazardous liquid pipeline operators before the effective date of the rules promulgated by the Secretary under this subsection.

(l) **UPDATING STANDARDS.**—The Secretary shall, to the extent appropriate and practicable, update incorporated industry standards that have been adopted as part of the Federal pipeline safety regulatory program under this chapter [49 USCS §§ 60101 et seq.].

(m) **INSPECTIONS BY DIRECT ASSESSMENT.**—Not later than 1 year after the date of the enactment of this subsection [enacted Dec. 17, 2002], the Secretary shall issue regulations prescribing standards for inspection of a pipeline facility by direct assessment.

(n) *AUTOMATIC AND REMOTE-CONTROLLED SHUTOFF VALVES.*—Not later than 2 years after the date of enactment of the Pipeline Transportation Safety Improvement Act of 2011, the Secretary shall by regulation, after notice and an opportunity for a hearing, require the use of automatic or remote-controlled shut-off valves, or equivalent technology, where economically, technically, and operationally feasible on transmission pipelines constructed or entirely replaced after the date on which the Secretary issues a final rule.

(o) *TRANSPORTATION-RELATED OIL FLOW LINES.*—

(1) *DATA COLLECTION.*—The Secretary may collect geospatial, technical, or other pipeline data on transportation-related oil flow lines, including unregulated transportation-related oil flow lines.

(2) *TRANSPORTATION-RELATED OIL FLOW LINE DEFINED.*—In this subsection, the term “transportation-related oil flow line” means a pipeline transporting oil off of the grounds of the well where it originated across areas not owned by the producer regardless of the extent to which the oil has been processed, if at all.

(3) *LIMITATION.*—Nothing in this subsection authorizes the Secretary to prescribe standards for the movement of oil through production, refining, or manufacturing facilities, or through oil production flow lines located on the grounds of wells.

§ 60107. State pipeline safety grants

(a) *GENERAL AUTHORITY.*—If a State authority files an application not later than September 30 of a calendar year, the Secretary of Transportation shall pay not more than 80 percent of the cost of the personnel, equipment, and activities the authority reasonably requires during the next calendar year—

(1) to carry out a safety program under a certification under section 60105 of this title [49 USCS § 60105] or an agreement under section 60106 of this title [49 USCS § 60106]; or

(2) to act as an agent of the Secretary on interstate gas pipeline facilities or interstate hazardous liquid pipeline facilities.

(b) *PAYMENTS.*—After notifying and consulting with a State authority, the Secretary may withhold any part of a payment when the Secretary decides that the authority is not carrying out satisfactorily a safety program or not acting satisfactorily as an agent. The Secretary may pay an authority under this section only when the authority ensures the Secretary that it will provide the remaining costs of a safety program and that the total State amount spent for a safety program (excluding grants of the United States Government) will at least equal the average amount spent for gas and hazardous liquid safety programs for the 3 fiscal years prior to the fiscal year in which the Secretary makes the payment, except when the Secretary waives this requirement.

(b) *PAYMENTS.*—After notifying and consulting with a State authority, the Secretary may withhold any part of a payment when the Secretary decides that the authority is not carrying out satisfactorily a safety program or not acting satisfactorily as an agent. The Secretary may pay an authority under this section only when the authority ensures the Secretary that it will provide the remaining costs of a safety program and that the total State amount spent for a

safety program (excluding grants of the United States Government) will at least equal the average amount spent for gas and hazardous liquid safety programs for fiscal years 2004 through 2006, except when the Secretary waives the requirements of this subsection. The Secretary shall grant such a waiver if a State can demonstrate an inability to maintain or increase the required funding share of its pipeline safety program at or above the level required by this subsection due to economic hardship in that State.

(c) APPORTIONMENT AND METHOD OF PAYMENT.—The Secretary shall apportion the amount appropriated to carry out this section among the States. A payment may be made under this section in installments, in advance, or on a reimbursable basis.

(d) ADDITIONAL AUTHORITY AND CONSIDERATIONS.—

(1) The Secretary may prescribe—

(A) the form of, and way of filing, an application under this section;

(B) reporting and fiscal procedures the Secretary considers necessary to ensure the proper accounting of money of the Government; and

(C) qualifications for a State to meet to receive a payment under this section, including qualifications for State employees who perform inspection activities under section 60105 or 60106 of this title [49 USCS § 60105 or 60106].

(2) The qualifications prescribed under paragraph (1)(C) of this subsection may—

(A) consider the experience and training of the employee;

(B) order training or other requirements; and

(C) provide for approval of qualifications on a conditional basis until specified requirements are met.

§ 60108. Inspection and maintenance

(a) PLANS.—

(1) Each person owning or operating an intrastate gas pipeline facility or hazardous liquid pipeline facility shall carry out a current written plan (including any changes) for inspection and maintenance of each facility used in the transportation and owned or operated by the person. A copy of the plan shall be kept at any office of the person the Secretary of Transportation considers appropriate. The Secretary also may require a person owning or operating a pipeline facility subject to this chapter [49 USCS §§ 60101 et seq.] to file a plan for inspection and maintenance for approval.

(2) If the Secretary or a State authority responsible for enforcing standards prescribed under this chapter [49 USCS §§ 60101 et seq.] decides that a plan required under paragraph (1) of this subsection is inadequate for safe operation, the Secretary or authority shall require the person to revise the plan. Revision may be required only after giving notice and an opportunity for a hearing. A plan required under paragraph (1) must be practicable and designed to meet the need for pipeline safety and must include terms designed to enhance the ability to discover safety-related conditions described in section 60102(h)(1) of this title [49 USCS § 60102(h)(1)]. In deciding on the adequacy of a plan, the Secretary or authority shall consider—

- (A) relevant available pipeline safety information;
 - (B) the appropriateness of the plan for the particular kind of pipeline transportation or facility;
 - (C) the reasonableness of the plan; and
 - (D) the extent to which the plan will contribute to public safety and the protection of the environment.
- (3) A plan required under this subsection shall be made available to the Secretary or State authority on request under section 60117 of this title [49 USCS § 60117].
- (b) INSPECTION AND TESTING.—
- (1) The Secretary shall inspect and require appropriate testing of a pipeline facility subject to this chapter [49 USCS §§ 60101 et seq.] that is not covered by a certification under section 60105 of this title [49 USCS § 60105] or an agreement under section 60106 of this title [49 USCS § 60106]. The Secretary shall decide on the frequency and type of inspection and testing under this subsection on a case-by-case basis after considering the following:
- (A) the location of the pipeline facility.
 - (B) the type, size, age, manufacturer, method of construction, and condition of the pipeline facility.
 - (C) the nature and volume of material transported through the pipeline facility.
 - (D) the pressure at which that material is transported.
 - (E) climatic, geologic, and seismic characteristics (including soil characteristics) and conditions of the area in which the pipeline facility is located.
 - (F) existing and projected population and demographic characteristics of the area in which the pipeline facility is located.
 - (G) for a hazardous liquid pipeline facility, the proximity of the area in which the facility is located to an area that is unusually sensitive to environmental damage.
 - (H) the frequency of leaks.
 - (I) other factors the Secretary decides are relevant to the safety of pipeline facilities.
- (2) To the extent and in amounts provided in advance in an appropriation law, the Secretary shall decide on the frequency of inspection under paragraph (1) of this subsection. The Secretary may reduce the frequency of an inspection of a master meter system.
- (3) Testing under this subsection shall use the most appropriate technology practicable.
- (c) PIPELINE FACILITIES OFFSHORE AND IN OTHER WATERS.—
- (1) In this subsection—
- (A) “abandoned” means permanently removed from service.
 - (B) “pipeline facility” includes an underwater abandoned pipeline facility.
 - (C) if a pipeline facility has no operator, the most recent operator of the facility is deemed to be the operator of the facility.
- (2)(A) Not later than May 16, 1993, on the basis of experience with the inspections under section 3(h)(1)(A) of the Natural Gas Pipeline Safety Act of 1968 or section 203(l)(1)(A) of

the Hazardous Liquid Pipeline Safety Act of 1979, as appropriate, and any other information available to the Secretary, the Secretary shall establish a mandatory, systematic, and, where appropriate, periodic inspection program of—

- (i) all offshore pipeline facilities; and
- (ii) any other pipeline facility crossing under, over, or through waters where a substantial likelihood of commercial navigation exists, if the Secretary decides that the location of the facility in those waters could pose a hazard to navigation or public safety.

(B) In prescribing standards to carry out subparagraph (A) of this paragraph—

- (i) the Secretary shall identify what is a hazard to navigation with respect to an underwater abandoned pipeline facility; and
- (ii) for an underwater pipeline facility abandoned after October 24, 1992, the Secretary shall include requirements that will lessen the potential that the facility will pose a hazard to navigation and shall consider the relationship between water depth and navigational safety and factors relevant to the local marine environment.

(3)(A) The Secretary shall establish by regulation a program requiring an operator of a pipeline facility described in paragraph (2) of this subsection to report a potential or existing navigational hazard involving that pipeline facility to the Secretary through the appropriate Coast Guard office.

(B) The operator of a pipeline facility described in paragraph (2) of this subsection that discovers any part of the pipeline facility that is a hazard to navigation shall mark the location of the hazardous part with a Coast-Guard-approved marine buoy or marker and immediately shall notify the Secretary as provided by the Secretary under subparagraph (A) of this paragraph. A marine buoy or marker used under this subparagraph is deemed a pipeline sign or right-of-way marker under section 60123(c) of this title [49 USCS § 60123(c)].

(4)(A) The Secretary shall establish a standard that each pipeline facility described in paragraph (2) of this subsection that is a hazard to navigation is buried not later than 6 months after the date the condition of the facility is reported to the Secretary. The Secretary may extend that 6-month period for a reasonable period to ensure compliance with this paragraph.

(B) In prescribing standards for subparagraph (A) of this paragraph for an underwater pipeline facility abandoned after October 24, 1992, the Secretary shall include requirements that will lessen the potential that the facility will pose a hazard to navigation and shall consider the relationship between water depth and navigational safety and factors relevant to the local marine environment.

(5)(A) Not later than October 24, 1994, the Secretary shall establish standards on what is an exposed offshore pipeline facility and what is a hazard to navigation under this subsection.

(B) Not later than 6 months after the Secretary establishes standards under subparagraph (A) of this paragraph, or October 24, 1995, whichever occurs first, the operator of each off-

shore pipeline facility not described in section 3(h)(1)(A) of the Natural Gas Pipeline Safety Act of 1968 or section 203(l)(1)(A) of the Hazardous Liquid Pipeline Safety Act of 1979, as appropriate, shall inspect the facility and report to the Secretary on any part of the facility that is exposed or is a hazard to navigation. This subparagraph applies only to a facility that is between the high water mark and the point at which the subsurface is under 15 feet of water, as measured from mean low water. An inspection that occurred after October 3, 1989, may be used for compliance with this subparagraph if the inspection conforms to the requirements of this subparagraph.

(C) The Secretary may extend the time period specified in subparagraph (B) of this paragraph for not more than 6 months if the operator of a facility satisfies the Secretary that the operator has made a good faith effort, with reasonable diligence, but has been unable to comply by the end of that period.

(6)(A) The operator of a pipeline facility abandoned after October 24, 1992, shall report the abandonment to the Secretary in a way that specifies whether the facility has been abandoned properly according to applicable United States Government and State requirements.

(B) Not later than October 24, 1995, the operator of a pipeline facility abandoned before October 24, 1992, shall report to the Secretary reasonably available information related to the facility, including information that a third party possesses. The information shall include the location, size, date, and method of abandonment, whether the facility has been abandoned properly under applicable law, and other relevant information the Secretary may require. Not later than April 24, 1994, the Secretary shall specify how the information shall be reported. The Secretary shall ensure that the Government maintains the information in a way accessible to appropriate Government agencies and State authorities.

(C) The Secretary shall request that a State authority having information on a collision between a vessel and an underwater pipeline facility report the information to the Secretary in a timely way and make a reasonable effort to specify the location, date, and severity of the collision. Chapter 35 of title 44 [44 USCS §§ 3501 et seq.] does not apply to this subparagraph.

(7) The Secretary may not exempt from this chapter [49 USCS §§ 60101 et seq.] an offshore hazardous liquid pipeline facility only because the pipeline facility transfers hazardous liquid in an underwater pipeline between a vessel and an on-shore facility.

(d) REPLACING CAST IRON GAS PIPELINES.—

(1) The Secretary shall publish a notice on the availability of industry guidelines, developed by the Gas Piping Technology Committee, for replacing cast iron pipelines. Not later than 2 years after the guidelines become available, the Secretary shall conduct a survey of gas pipeline operators with cast iron pipe in their systems to establish—

(A) the extent to which each operator has adopted a plan for the safe management and replacement of cast iron;

(B) the elements of the plan, including the anticipated rate of replacement; and

(C) the progress that has been made.

(2) Chapter 35 of title 44 [44 USCS §§ 3501 et seq.] does not apply to the conduct of the survey.

(3) This subsection does not prevent the Secretary from developing Government guidelines or standards for cast iron gas pipelines as the Secretary considers appropriate.

(4) *The secretary shall conduct a follow-up survey to measure progress of plan implementation biannually.*

§ 60109. High-density population areas and environmentally sensitive areas

(a) IDENTIFICATION REQUIREMENTS.—Not later than October 24, 1994, the Secretary of Transportation shall prescribe standards that—

(1) establish criteria for identifying—

(A) by operators of gas pipeline facilities, each gas pipeline facility (except a natural gas distribution line) located in a high-density population area; and

(B) by operators of hazardous liquid pipeline facilities and gathering lines—

(i) each hazardous liquid pipeline facility, whether otherwise subject to this chapter [49 USCS §§ 60101 et seq.], that crosses waters where a substantial likelihood of commercial navigation exists or that is located in an area described in the criteria as a high-density population area; and

(ii) each hazardous liquid pipeline facility and gathering line, whether otherwise subject to this chapter [49 USCS §§ 60101 et seq.], located in an area that the Secretary, in consultation with the Administrator of the Environmental Protection Agency, describes as unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident; and

(2) provide that the identification be carried out through the inventory required under section 60102(e) of this title [49 USCS § 60102(e)].

(b) AREAS TO BE INCLUDED AS UNUSUALLY SENSITIVE.—When describing areas that are unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident, the Secretary shall consider areas where a pipeline rupture would likely cause permanent or long-term environmental damage, including—

(1) locations near pipeline rights-of-way that are critical to drinking water, including intake locations for community water systems and critical sole source aquifer protection areas; and

(2) locations near pipeline rights-of-way that have been identified as critical wetlands, riverine or estuarine systems, national parks, wilderness areas, wildlife preservation areas or refuges, wild and scenic rivers, or critical habitat areas for threatened and endangered species.

(c) RISK ANALYSIS AND INTEGRITY MANAGEMENT PROGRAMS.—

(1) REQUIREMENT.—Each operator of a gas pipeline facility shall conduct an analysis of the risks to each facility of the operator located in an area identified pursuant to subsection (a)(1) and defined in chapter 192 of title 49, Code of Federal Regulations, including any subsequent modifications, and shall

adopt and implement a written integrity management program for such facility to reduce the risks.

(2) REGULATIONS.—

(A) IN GENERAL.—Not later than 12 months after the date of enactment of this subsection [enacted Dec. 17, 2002], the Secretary shall issue regulations prescribing standards to direct an operator's conduct of a risk analysis and adoption and implementation of an integrity management program under this subsection. The regulations shall require an operator to conduct a risk analysis and adopt an integrity management program within a time period prescribed by the Secretary, ending not later than 24 months after such date of enactment. Not later than 18 months after such date of enactment, each operator of a gas pipeline facility shall begin a baseline integrity assessment described in paragraph (3).

(B) AUTHORITY TO ISSUE REGULATIONS.—The Secretary may satisfy the requirements of this paragraph through the issuance of regulations under this paragraph or under other authority of law.

(3) MINIMUM REQUIREMENTS OF INTEGRITY MANAGEMENT PROGRAMS.—An integrity management program required under paragraph (1) shall include, at a minimum, the following requirements:

(A) A baseline integrity assessment of each of the operator's facilities in areas identified pursuant to subsection (a)(1) and defined in chapter 192 of title 49, Code of Federal Regulations, including any subsequent modifications, by internal inspection device, pressure testing, direct assessment, or an alternative method that the Secretary determines would provide an equal or greater level of safety. The operator shall complete such assessment not later than 10 years after the date of enactment of this subsection [enacted Dec. 17, 2002]. At least 50 percent of such facilities shall be assessed not later than 5 years after such date of enactment. The operator shall prioritize such facilities for assessment based on all risk factors, including any previously discovered defects or anomalies and any history of leaks, repairs, or failures. The operator shall ensure that assessments of facilities with the highest risks are given priority for completion and that such assessments will be completed not later than 5 years after such date of enactment.

(B) Subject to paragraph (5), periodic reassessment of the facility, at a minimum of once every 7 years, using methods described in subparagraph (A).

(C) Clearly defined criteria for evaluating the results of assessments conducted under subparagraphs (A) and (B) and for taking actions based on such results.

(D) A method for conducting an analysis on a continuing basis that integrates all available information about the integrity of the facility and the consequences of releases from the facility.

(E) A description of actions to be taken by the operator to promptly address any integrity issue raised by an eval-

uation conducted under subparagraph (C) or the analysis conducted under subparagraph (D).

(F) A description of measures to prevent and mitigate the consequences of releases from the facility.

(G) A method for monitoring cathodic protection systems throughout the pipeline system of the operator to the extent not addressed by other regulations.

(H) If the Secretary raises a safety concern relating to the facility, a description of the actions to be taken by the operator to address the safety concern, including issues raised with the Secretary by States and local authorities under an agreement entered into under section 60106 [49 USCS § 60106].

(4) TREATMENT OF BASELINE INTEGRITY ASSESSMENTS.—In the case of a baseline integrity assessment conducted by an operator in the period beginning on the date of enactment of this subsection [enacted Dec. 17, 2002] and ending on the date of issuance of regulations under this subsection, the Secretary shall accept the assessment as complete, and shall not require the operator to repeat any portion of the assessment, if the Secretary determines that the assessment was conducted in accordance with the requirements of this subsection.

(5) WAIVERS AND MODIFICATIONS.—In accordance with section 60118(c) [49 USCS § 60118(c)], the Secretary may waive or modify any requirement for reassessment of a facility under paragraph (3)(B) for reasons that may include the need to maintain local product supply or the lack of internal inspection devices if the Secretary determines that such waiver is not inconsistent with pipeline safety.

(6) STANDARDS.—The standards prescribed by the Secretary under paragraph (2) shall address each of the following factors:

(A) The minimum requirements described in paragraph (3).

(B) The type or frequency of inspections or testing of pipeline facilities, in addition to the minimum requirements of paragraph (3)(B).

(C) The manner in which the inspections or testing are conducted.

(D) The criteria used in analyzing results of the inspections or testing.

(E) The types of information sources that must be integrated in assessing the integrity of a pipeline facility as well as the manner of integration.

(F) The nature and timing of actions selected to address the integrity of a pipeline facility.

(G) Such other factors as the Secretary determines appropriate to ensure that the integrity of a pipeline facility is addressed and that appropriate mitigative measures are adopted to protect areas identified under subsection (a)(1).

In prescribing those standards, the Secretary shall ensure that all inspections required are conducted in a manner that minimizes environmental and safety risks, and shall take into account the applicable level of protection established by national consensus standards organizations.

(7) **ADDITIONAL OPTIONAL STANDARDS.**—The Secretary may also prescribe standards requiring an operator of a pipeline facility to include in an integrity management program under this subsection—

(A) changes to valves or the establishment or modification of systems that monitor pressure and detect leaks based on the operator's risk analysis; and

(B) the use of emergency flow restricting devices.

(8) **LACK OF REGULATIONS.**—In the absence of regulations addressing the elements of an integrity management program described in this subsection, the operator of a pipeline facility shall conduct a risk analysis and adopt and implement an integrity management program described in this subsection not later than 24 months after the date of enactment of this subsection [enacted Dec. 17, 2002] and shall complete the baseline integrity assessment described in this subsection not later than 10 years after such date of enactment. At least 50 percent of such facilities shall be assessed not later than 5 years after such date of enactment. The operator shall prioritize such facilities for assessment based on all risk factors, including any previously discovered defects or anomalies and any history of leaks, repairs, or failures. The operator shall ensure that assessments of facilities with the highest risks are given priority for completion and that such assessments will be completed not later than 5 years after such date of enactment.

(9) **REVIEW OF INTEGRITY MANAGEMENT PROGRAMS.**—

(A) **REVIEW OF PROGRAMS.**—

(i) **IN GENERAL.**—The Secretary shall review a risk analysis and integrity management program under paragraph (1) and record the results of that review for use in the next review of an operator's program.

(ii) **CONTEXT OF REVIEW.**—The Secretary may conduct a review under clause (i) as an element of the Secretary's inspection of an operator.

(iii) **INADEQUATE PROGRAMS.**—If the Secretary determines that a risk analysis or integrity management program does not comply with the requirements of this subsection or regulations issued as described in paragraph (2), has not been adequately implemented, or is inadequate for the safe operation of a pipeline facility, the Secretary may conduct proceedings under this chapter [49 USCS §§ 60101 et seq.].

(B) **AMENDMENTS TO PROGRAMS.**—In order to facilitate reviews under this paragraph, an operator of a pipeline facility shall notify the Secretary of any amendment made to the operator's integrity management program not later than 30 days after the date of adoption of the amendment. The Secretary shall review any such amendment in accordance with this paragraph.

(C) **TRANSMITTAL OF PROGRAMS TO STATE AUTHORITIES.**—The Secretary shall provide a copy of each risk analysis and integrity management program reviewed by the Secretary under this paragraph to any appropriate State authority with which the Secretary has entered into an agreement under section 60106 [49 USCS § 60106].

(10) STATE REVIEW OF INTEGRITY MANAGEMENT PLANS.—A State authority that enters into an agreement pursuant to section 60106 [49 USCS § 60106], permitting the State authority to review the risk analysis and integrity management program pursuant to paragraph (9), may provide the Secretary with a written assessment of the risk analysis and integrity management program, make recommendations, as appropriate, to address safety concerns not adequately addressed by the operator's risk analysis or integrity management program, and submit documentation explaining the State-proposed revisions. The Secretary shall consider carefully the State's proposals and work in consultation with the States and operators to address safety concerns.

(11) APPLICATION OF STANDARDS.—Section 60104(b) [49 USCS § 60104(b)] shall not apply to this section.

(d) EVALUATION OF INTEGRITY MANAGEMENT REGULATIONS.—Not later than 4 years after the date of enactment of this subsection [enacted Dec. 17, 2002], the Comptroller General shall complete an assessment and evaluation of the effects on public safety and the environment of the requirements for the implementation of integrity management programs contained in the standards prescribed as described in subsection (c)(2).

(e) DISTRIBUTION INTEGRITY MANAGEMENT PROGRAMS.—

(1) MINIMUM STANDARDS.—Not later than December 31, 2007, the Secretary shall prescribe minimum standards for integrity management programs for distribution pipelines.

(2) ADDITIONAL AUTHORITY OF SECRETARY.—In carrying out this subsection, the Secretary may require operators of distribution pipelines to continually identify and assess risks on their distribution lines, to remediate conditions that present a potential threat to line integrity, and to monitor program effectiveness.

(3) EXCESS FLOW VALVES.—

(A) IN GENERAL.—The minimum standards shall include a requirement for an operator of a natural gas distribution system to install an excess flow valve on each single family residence service line connected to such system if—

(i) the service line is installed or entirely replaced after June 1, 2008;

(ii) the service line operates continuously throughout the year at a pressure not less than 10 pounds per square inch gauge;

(iii) the service line is not connected to a gas stream with respect to which the operator has had prior experience with contaminants the presence of which could interfere with the operation of an excess flow valve;

(iv) the installation of an excess flow valve on the service line is not likely to cause loss of service to the residence or interfere with necessary operation or maintenance activities, such as purging liquids from the service line; and

(v) an excess flow valve meeting performance standards developed under section 60110(e) of title 49, United States Code, is commercially available to the operator, as determined by the Secretary.

(B) DISTRIBUTION BRANCH SERVICES, MULTI-FAMILY FACILITIES, AND SMALL COMMERCIAL FACILITIES.—Not later than 2 years after the date of enactment of the Pipeline Transportation Safety Improvement Act of 2011, the Secretary shall prescribe regulations, after notice and an opportunity for hearing, to require the use of excess flow valves, where economically and technically feasible, on new or entirely replaced distribution branch services, multi-family facilities, and small commercial facilities.

ε(B) (C) REPORTS.—Operators of natural gas distribution systems shall report annually to the Secretary on the number of excess flow valves installed on their systems under subparagraph (A).

(4) APPLICABILITY.—The Secretary shall determine which distribution pipelines will be subject to the minimum standards.

(5) DEVELOPMENT AND IMPLEMENTATION.—Each operator of a distribution pipeline that the Secretary determines is subject to the minimum standards prescribed by the Secretary under this subsection shall develop and implement an integrity management program in accordance with those standards.

(6) SAVINGS CLAUSE.—Subject to section 60104(c) [49 USCS § 60104(c)], a State authority having a current certification under section 60105 [49 USCS § 60105] may adopt or continue in force additional integrity management requirements, including additional requirements for installation of excess flow valves, for gas distribution pipelines within the boundaries of that State.

(f) CERTIFICATION OF PIPELINE INTEGRITY MANAGEMENT PROGRAM PERFORMANCE.—The Secretary shall establish procedures requiring certification of annual and semiannual pipeline integrity management program performance reports by a senior executive officer of the company operating a pipeline subject to this chapter [49 USCS §§ 60101 et seq.]. The procedures shall require a signed statement, which may be effected electronically in accordance with the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.), certifying that—

- (1) the signing officer has reviewed the report; and
- (2) to the best of such officer's knowledge and belief, the report is true and complete.

§ 60114. One-call notification systems

(a) MINIMUM REQUIREMENTS.—The Secretary of Transportation shall prescribe regulations providing minimum requirements for establishing and operating a one-call notification system for a State to adopt that will notify an operator of a pipeline facility of activity in the vicinity of the facility that could threaten the safety of the facility. The regulations shall include the following:

- (1) a requirement that the system apply to all areas of the State containing underground pipeline facilities.
- (2) a requirement that a person, including a government employee or contractor, intending to engage in an activity the Secretary decides could cause physical damage to an underground facility must contact the appropriate system to establish if there are underground facilities present in the area of the intended activity.

(3) a requirement that all operators of underground pipeline facilities participate in an appropriate one-call notification system.

(4) qualifications for an operator of a facility, a private contractor, or a State or local authority to operate a system.

(5) procedures for advertisement and notice of the availability of a system.

(6) a requirement about the information to be provided by a person contacting the system under clause (2) of this subsection.

(7) a requirement for the response of the operator of the system and of the facility after they are contacted by an individual under this subsection.

(8) a requirement that each State decide whether the system will be toll free.

(9) a requirement for sanctions substantially the same as provided under sections 60120 and 60122 of this title [49 USCS §§ 60120 and 60122].

(b) **MARKING FACILITIES.**—On notification by an operator of a damage prevention program or by a person planning to carry out demolition, excavation, tunneling, or construction in the vicinity of a pipeline facility, the operator of the facility shall mark accurately, in a reasonable and timely way, the location of the pipeline facilities in the vicinity of the demolition, excavation, tunneling, or construction.

(c) **RELATIONSHIP TO OTHER LAWS.**—This section and regulations prescribed under this section do not affect the liability established under a law of the United States or a State for damage caused by an activity described in subsection (a)(2) of this section.

(d) **PROHIBITION APPLICABLE TO EXCAVATORS.**—A person who engages in demolition, excavation, tunneling, or construction—

(1) may not engage in a demolition, excavation, tunneling, or construction activity in a State that has adopted a one-call notification system without first using that system to establish the location of underground facilities in the demolition, excavation, tunneling, or construction area;

(2) may not engage in such demolition, excavation, tunneling, or construction activity in disregard of location information or markings established by a pipeline facility operator pursuant to subsection (b); and

(3) and who causes damage to a pipeline facility that may endanger life or cause serious bodily harm or damage to property—

(A) may not fail to promptly report the damage to the owner or operator of the facility; and

(B) if the damage results in the escape of any flammable, toxic, or corrosive gas or liquid, may not fail to promptly report to other appropriate authorities by calling the 911 emergency telephone number.

(e) **PROHIBITION APPLICABLE TO UNDERGROUND PIPELINE FACILITY OWNERS AND OPERATORS.**—Any owner or operator of a pipeline facility who fails to respond to a location request in order to prevent damage to the pipeline facility or who fails to take reasonable steps, in response to such a request, to ensure accurate marking of the location of the pipeline facility in order to prevent damage

to the pipeline facility shall be subject to a civil action under section 60120 [49 USCS § 60120] or assessment of a civil penalty under section 60122 [49 USCS § 60122].

(f) LIMITATION.—The Secretary may not conduct an enforcement proceeding under subsection (d) for a violation within the boundaries of a State that has the authority to impose penalties described in section 60134(b)(7) [49 USCS § 60134(b)(7)] against persons who violate that State's damage prevention laws, unless the Secretary has determined that the State's enforcement is inadequate to protect safety, consistent with this chapter, and until the Secretary issues, through a rulemaking proceeding, the procedures for determining inadequate State enforcement of penalties. *This subsection does not apply to proceedings against persons who are pipeline operators.*

(g) TECHNOLOGY DEVELOPMENT GRANTS.—The Secretary may make grants to any organization or entity (not including for-profit entities) for the development of technologies that will facilitate the prevention of pipeline damage caused by demolition, excavation, tunneling, or construction activities, with emphasis on wireless and global positioning technologies having potential for use in connection with notification systems and underground facility locating and marking services. Funds provided under this subsection may not be used for lobbying or in direct support of litigation. The Secretary may also support such technology development through cooperative agreements with trade associations, academic institutions, and other organizations.

§ 60117. Administrative

(a) GENERAL AUTHORITY.—To carry out this chapter [49 USCS §§ 60101 et seq.], the Secretary of Transportation may conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of records, take depositions, and conduct research, testing, development, demonstration, and training activities and promotional activities relating to prevention of damage to pipeline facilities. The Secretary may not charge a tuition-type fee for training State or local government personnel in the enforcement of regulations prescribed under this chapter [49 USCS §§ 60101 et seq.].

(b) RECORDS, REPORTS, AND INFORMATION.—To enable the Secretary to decide whether a person owning or operating a pipeline facility is complying with this chapter [49 USCS §§ 60101 et seq.] and standards prescribed or orders issued under this chapter [49 USCS §§ 60101 et seq.], the person shall—

- (1) maintain records, make reports, and provide information the Secretary requires; and
- (2) make the records, reports, and information available when the Secretary requests.

The Secretary may require owners and operators of gathering lines to provide the Secretary information pertinent to the Secretary's ability to make a determination as to whether and to what extent to regulate gathering lines.

(c) ENTRY AND INSPECTION.—An officer, employee, or agent of the Department of Transportation designated by the Secretary, on display of proper credentials to the individual in charge, may enter premises to inspect the records and property of a person at a reasonable time and in a reasonable way to decide whether a person

is complying with this chapter [49 USCS §§ 60101 et seq.] and standards prescribed or orders issued under this chapter [49 USCS §§ 60101 et seq.].

(d) CONFIDENTIALITY OF INFORMATION.—Information related to a confidential matter referred to in section 1905 of title 18 [18 USCS § 1905] that is obtained by the Secretary or an officer, employee, or agent in carrying out this section may be disclosed only to another officer or employee concerned with carrying out this chapter [49 USCS §§ 60101 et seq.] or in a proceeding under this chapter [49 USCS §§ 60101 et seq.].

(e) USE OF ACCIDENT REPORTS.—

(1) Each accident report made by an officer, employee, or agent of the Department may be used in a judicial proceeding resulting from the accident. The officer, employee, or agent may be required to testify in the proceeding about the facts developed in investigating the accident. The report shall be made available to the public in a way that does not identify an individual.

(2) Each report related to research and demonstration projects and related activities is public information.

(f) TESTING FACILITIES INVOLVED IN ACCIDENTS.—The Secretary may require testing of a part of a pipeline facility subject to this chapter [49 USCS §§ 60101 et seq.] that has been involved in or affected by an accident only after—

(1) notifying the appropriate State official in the State in which the facility is located; and

(2) attempting to negotiate a mutually acceptable plan for testing with the owner of the facility and, when the Secretary considers appropriate, the National Transportation Safety Board.

(g) PROVIDING SAFETY INFORMATION.—On request, the Secretary shall provide the Federal Energy Regulatory Commission or appropriate State authority with information the Secretary has on the safety of material, operations, devices, or processes related to pipeline transportation or operating a pipeline facility.

(h) COOPERATION.—The Secretary may—

(1) advise, assist, and cooperate with other departments, agencies, and instrumentalities of the United States Government, the States, and public and private agencies and persons in planning and developing safety standards and ways to inspect and test to decide whether those standards have been complied with;

(2) consult with and make recommendations to other departments, agencies, and instrumentalities of the Government, State and local governments, and public and private agencies and persons to develop and encourage activities, including the enactment of legislation, that will assist in carrying out this chapter [49 USCS §§ 60101 et seq.] and improve State and local pipeline safety programs; and

(3) participate in a proceeding involving safety requirements related to a liquefied natural gas facility before the Commission or a State authority.

(i) PROMOTING COORDINATION.—

(1) After consulting with appropriate State officials, the Secretary shall establish procedures to promote more effective co-

ordination between departments, agencies, and instrumentalities of the Government and State authorities with regulatory authority over pipeline facilities about responses to a pipeline accident.

(2) In consultation with the Occupational Safety and Health Administration, the Secretary shall establish procedures to notify the Administration of any pipeline accident in which an excavator that has caused damage to a pipeline may have violated a regulation of the Administration.

(j) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

(k) AUTHORITY FOR COOPERATIVE AGREEMENTS.—To carry out this chapter [49 USCS §§ 60101 et seq.], the Secretary may enter into grants, cooperative agreements, and other transactions with any person, agency, or instrumentality of the United States, any unit of State or local government, any educational institution, or any other entity to further the objectives of this chapter [49 USCS §§ 60101 et seq.]. The objectives of this chapter [49 USCS §§ 60101 et seq.] include the development, improvement, and promotion of one-call damage prevention programs, research, risk assessment, and mapping.

(l) SAFETY ORDERS.—

(1) IN GENERAL.—Not later than December 31, 2007, the Secretary shall issue regulations providing that, after notice and opportunity for a hearing, if the Secretary determines that a pipeline facility has a condition that poses a pipeline integrity risk to public safety, property, or the environment, the Secretary may order the operator of the facility to take necessary corrective action, including physical inspection, testing, repair, or other appropriate action, to remedy that condition.

(2) CONSIDERATIONS.—In making a determination under paragraph (1), the Secretary, if relevant and pursuant to the regulations issued under paragraph (1), shall consider—

(A) the considerations specified in paragraphs (1) through (6) of section 60112(b) [49 USCS § 60112(b)];

(B) the likelihood that the condition will impair the serviceability of a pipeline;

(C) the likelihood that the condition will worsen over time; and

(D) the likelihood that the condition is present or could develop on other areas of the pipeline.

(m) RESTORATION OF OPERATIONS.—

(1) IN GENERAL.—The Secretary may advise, assist, and cooperate with the heads of other departments, agencies, and instrumentalities of the United States Government, the States, and public and private agencies and persons to facilitate the restoration of pipeline operations that have been or are anticipated to become disrupted by manmade or natural disasters.

(2) SAVINGS CLAUSE.—Nothing in this section alters or amends the authorities and responsibilities of any department, agency, or instrumentality of the United States Government, other than the Department of Transportation.

¿(n) COST RECOVERY FOR DESIGN REVIEWS.—

¿(1) IN GENERAL.—If the Secretary conducts facility design safety reviews in connection with a proposal to construct, expand, or operate a liquefied natural gas pipeline facility, the Secretary may require the person requesting such reviews to pay the associated staff costs relating to such reviews incurred by the Secretary in section 60301(d) [49 USCS § 60301(d)]. The Secretary may assess such costs in any reasonable manner.

¿(2) DEPOSIT.—The Secretary shall deposit all funds paid to the Secretary under this subsection into the Department of Treasury account 69-5172-0-2-407 or its successor account.

¿(3) AUTHORIZATION OF APPROPRIATIONS.—Funds deposited pursuant to this subsection are authorized to be appropriated for the purposes set forth in section 60301(d) [49 USCS § 60301(d)].

(n) *COST RECOVERY FOR DESIGN REVIEWS.*—

(1) *IN GENERAL.*—

(A) *REVIEW COSTS.*—*For any project described in subparagraph (B), if the Secretary conducts facility design safety reviews in connection with a proposal to construct, expand, or operate a new gas or hazardous liquid pipeline or liquefied natural gas pipeline facility, including construction inspections and oversight, the Secretary may require the person or entity proposing the project to pay the costs incurred by the Secretary relating to such reviews. If the Secretary exercises the cost recovery authority described in this section, the Secretary shall prescribe a fee structure and assessment methodology that is based on the costs of providing these reviews and shall prescribe procedures to collect fees under this section. This authority is in addition to the authority provided in section 60301 of this title, but the Secretary may not collect fees under this section and section 60301 for the same design safety review.*

(B) *PROJECTS TO WHICH APPLICABLE.*—*Subparagraph (A) applies to any project that—*

(i) has design and construction costs totaling at least \$3,400,000,000; or

(ii) uses new or novel technologies or designs.

(2) *NOTIFICATION.*—*For any new pipeline construction project in which the Secretary will conduct design reviews, the person or entity proposing the project shall notify the Secretary and provide the design specifications, construction plans and procedures, and related materials at least 120 days prior to the commencement of construction.*

(3) *DEPOSIT AND USE.*—*There is established a Pipeline Safety Design Review Fund in the Treasury of the United States. The Secretary shall deposit funds paid under this subsection into the Fund. Funds deposited under this section are authorized to be appropriated for the purposes set forth in this chapter. Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts.*

(4) *NO ADDITIONAL PERMITTING AUTHORITY.*—*Nothing in this subsection shall be construed as authorizing the Secretary to require a person to obtain a permit before beginning design and*

construction in connection with a project described in paragraph 2 (1)(B).

(o) *INTERNATIONAL COOPERATION AND CONSULTATION.—*

(1) *INFORMATION EXCHANGE AND TECHNICAL ASSISTANCE.—If the Secretary determines that it would benefit the United States, subject to guidance from the Secretary of State, the Secretary may engage in activities supporting cooperative international efforts to share information about the risks to the public and the environment from pipelines and means of protecting against those risks. Such cooperation may include the exchange of information with domestic and appropriate international organizations to facilitate efforts to develop and improve safety standards and requirements for pipeline transportation in or affecting interstate or foreign commerce.*

(2) *CONSULTATION.—To the extent practicable, subject to guidance from the Secretary of State, the Secretary may consult with interested authorities in Canada, Mexico, and other interested authorities, as needed, to ensure that the respective pipeline safety standards and requirements prescribed by the Secretary and those prescribed by such authorities are consistent with the safe and reliable operation of cross-border pipelines.*

(3) *DIFFERENCES IN INTERNATIONAL STANDARDS AND REQUIREMENTS.—Nothing in this section requires that a standard or requirement prescribed by the Secretary under this chapter be identical to a standard or requirement adopted by an international authority.*

§ 60118. Compliance and waivers

(a) **GENERAL REQUIREMENTS.**—A person owning or operating a pipeline facility shall—

(1) comply with applicable safety standards prescribed under this chapter [49 USCS §§ 60101 et seq.], except as provided in this section or in section 60126 [49 USCS § 60126];

(2) prepare and carry out a plan for inspection and maintenance required under section 60108(a) and (b) of this title [49 USCS § 60108(a) and (b)];

(3) allow access to or copying of records, make reports and provide information, and allow entry or inspection required under section 60117(a)-(d) of this title [49 USCS § 60117(a)-(d)]; and

(4) conduct a risk analysis, and adopt and implement an integrity management program, for pipeline facilities as required under section 60109(c)[49 USCS § 60109(c)].

(b) **COMPLIANCE ORDERS.**—The Secretary of Transportation may issue orders directing compliance with this chapter [49 USCS §§ 60101 et seq.], an order under section 60126 [49 USCS § 60129], or a regulation prescribed under this chapter [49 USCS §§ 60101 et seq.]. An order shall state clearly the action a person must take to comply.

(c) **WAIVERS BY SECRETARY.**—

⊃(1) **NONEMERGENCY WAIVERS.**—

⊃(A) **IN GENERAL.**—On application of an owner or operator of a pipeline facility, the Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter [49 USCS §§ 60101 et seq.]

with respect to such facility on terms the Secretary considers appropriate if the Secretary determines that the waiver is not inconsistent with pipeline safety.

¿(B) HEARING.—The Secretary may act on a waiver under this paragraph only after notice and an opportunity for a hearing.

(1) ISSUANCE OF WAIVERS.—

(A) IN GENERAL.—*On application of an owner or operator of a pipeline facility, the Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter with respect to the facility on terms the Secretary considers appropriate, if the Secretary determines that the waiver is not inconsistent with pipeline safety.*

(B) CONSIDERATIONS.—*In determining whether to grant a waiver, the Secretary shall consider—*

(i) the fitness of the applicant to conduct the activity authorized by the waiver in a manner that is consistent with pipeline safety;

(ii) the applicant's compliance history;

(iii) the applicant's accident history; and

(iv) any other information or data the Secretary considers relevant to making the determination.

(C) EFFECTIVE PERIOD.—*A waiver of one or more pipeline operating requirements shall be reviewed by the Secretary 5 years after its effective date. In reviewing a waiver, the Secretary shall consider any change in ownership or control of the pipeline, any change in the conditions around the pipeline, and other factors as appropriate. The Secretary may modify, suspend, or revoke a waiver after such review under subparagraph (E).*

(D) PUBLIC NOTICE AND HEARING.—*The Secretary may act on a waiver under this section only after public notice and an opportunity for a hearing, which may consist of publication of notice in the Federal Register that an application for a waiver has been filed and providing the public with the opportunity to review and comment on the application. If a waiver is granted, the Secretary shall state in the order and associated analysis the reasons for granting it.*

(E) NONCOMPLIANCE AND MODIFICATION, SUSPENSION, OR REVOCATION.—*After notice to a holder of a waiver and opportunity to show cause, the Secretary may modify, suspend, or revoke a waiver issued under this section for failure to comply with its terms or conditions, intervening changes in Federal law, a material change in circumstances affecting safety, including erroneous information in the application, or any other reason. If necessary to avoid a significant risk of harm to persons, property, or the environment, the Secretary may waive the show cause procedure and make the action immediately effective.*

(2) EMERGENCY WAIVERS.

(A) IN GENERAL.—*The Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter [49 USCS §§ 60101 et seq.] on*

terms the Secretary considers appropriate without prior notice and comment if the Secretary determines that—

- (i) it is in the public interest to grant the waiver;
- (ii) the waiver is not inconsistent with pipeline safety; and
- (iii) the waiver is necessary to address an actual or impending emergency involving pipeline transportation, including an emergency caused by a natural or manmade disaster.

(B) PERIOD OF WAIVER.—A waiver under this paragraph may be issued for a period of not more than 60 days and may be renewed upon application to the Secretary only after notice and an opportunity for a hearing on the waiver. The Secretary shall immediately revoke the waiver if continuation of the waiver would not be consistent with the goals and objectives of this chapter [49 USCS §§ 60101 et seq.].

(3) STATEMENT OF REASONS.—The Secretary shall state in an order issued under this subsection the reasons for granting the waiver.

(d) WAIVERS BY STATE AUTHORITIES.—If a certification under section 60105 of this title [49 USCS § 60105] or an agreement under section 60106 of this title [49 USCS § 60106] is in effect, the State authority may waive compliance with a safety standard to which the certification or agreement applies in the same way and to the same extent the Secretary may waive compliance under subsection (c) of this section. However, the authority must give the Secretary written notice of the waiver at least 60 days before its effective date. If the Secretary makes a written objection before the effective date of the waiver, the waiver is stayed. After notifying the authority of the objection, the Secretary shall provide a prompt opportunity for a hearing. The Secretary shall make the final decision on granting the waiver.

(e) OPERATOR ASSISTANCE IN INVESTIGATIONS.—If the Secretary or the National Transportation Safety Board investigate an accident involving a pipeline facility, the operator of the facility shall make available to the Secretary or the Board all records and information that in any way pertain to the accident (including integrity management plans and test results), and shall afford all reasonable assistance in the investigation of the accident. *The Secretary may impose a civil penalty under section 60122 of this title on a person who obstructs or prevents the Secretary from carrying out inspections or investigations under this chapter.*

(f) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed to infringe upon the constitutional rights of an operator or its employees.

§ 60119. Judicial review

¿(a) REVIEW OF REGULATIONS AND WAIVER ORDERS.— (a) REVIEW OF REGULATIONS, ORDERS, AND OTHER FINAL AGENCY ACTIONS.—

- (1) Except as provided in subsection (b) of this section, a person adversely affected by a regulation prescribed under this chapter [49 USCS §§ 60101 et seq.] or an order issued ¿about an application for a waiver under section 60118(c) or (d) of

under this title may apply for review of the regulation or order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 89 days after the regulation is prescribed or order is issued. The clerk of the court immediately shall send a copy of the petition to the Secretary of Transportation.

(2) A judgment of a court under paragraph (1) of this subsection may be reviewed only by the Supreme Court under section 1254 of title 28 [28 USCS § 1254]. A remedy under paragraph (1) is in addition to any other remedies provided by law.

(b) REVIEW OF FINANCIAL RESPONSIBILITY ORDERS.—

(1) A person adversely affected by an order issued under section 60111 of this title [49 USCS § 60111] may apply for review of the order by filing a petition for review in the appropriate court of appeals of the United States. The petition must be filed not later than 60 days after the order is issued. Findings of fact the Secretary makes are conclusive if supported by substantial evidence.

(2) A judgment of a court under paragraph (1) of this subsection may be reviewed only by the Supreme Court under section 1254(1) of title 28 [28 USCS §§ 1254(1)].

(3) *All judicial review of agency action under this section shall apply the standards of review established in section 706 of title 5.*

§ 60120. Enforcement

(a) CIVIL ACTIONS.—

(1) CIVIL ACTIONS TO ENFORCE THIS CHAPTER.—At the request of the Secretary of Transportation, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter [49 USCS §§ 60101 et seq.], including section 60112 [49 USCS § 60112], or a regulation prescribed or order issued under this chapter [49 USCS §§ 60101 et seq.]. The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties, considering the same factors as prescribed for the Secretary in an administrative case under section 60122 [49 USCS § 60122]. *The maximum amount of civil penalties for administrative enforcement actions under section 60122 of this title shall not apply to enforcement actions under this section.*

(2) CIVIL ACTIONS TO REQUIRE COMPLIANCE WITH SUBPOENAS OR ALLOW FOR INSPECTIONS.—At the request of the Secretary, the Attorney General may bring a civil action in a district court of the United States to require a person to comply immediately with a subpoena or to allow an officer, employee, or agent authorized by the Secretary to enter the premises, and inspect the records and property, of the person to decide whether the person is complying with this chapter [49 USCS §§ 60101 et seq.]. The action may be brought in the judicial district in which the defendant resides, is found, or does busi-

ness. The court may punish a failure to obey the order as a contempt of court.

(b) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating an injunction issued under this section, the violation of which is also a violation of this chapter [49 USCS §§ 60101 et seq.], the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(c) EFFECT ON TORT LIABILITY.—This chapter [49 USCS §§ 60101 et seq.] does not affect the tort liability of any person.

§ 60122. Civil penalties

(a) GENERAL PENALTIES.—

(1) A person that the Secretary of Transportation decides, after written notice and an opportunity for a hearing, has violated section 60114(b), 60114(d), or 60118(a) of this title [49 USCS § 60114(b), 60114(d), or 60118(a)] or a regulation prescribed or order issued under this chapter [49 USCS §§ 60101 et seq.] is liable to the United States Government for a civil penalty of not more than \$100,000 for each violation. A separate violation occurs for each day the violation continues. The maximum civil penalty under this paragraph for a related series of violations is \$1,000,000.

(2) A person violating a standard or order under section 60103 or 60111 of this title [49 USCS § 60103 or 60111] is liable to the Government for a civil penalty of not more than \$50,000 for each violation. A penalty under this paragraph may be imposed in addition to penalties imposed under paragraph (1) of this subsection.

(3) A person violating section 60129 [49 USCS § 60129], or an order issued thereunder, is liable to the Government for a civil penalty of not more than \$1,000 for each violation. The penalties provided by paragraph (1) do not apply to a violation of section 60129 [49 USCS § 60129] or an order issued thereunder.

(b) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under this section—

(1) the Secretary shall consider—

(A) the nature, circumstances, and gravity of the violation, including adverse impact on the environment;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on ability to continue doing business; and

(C) good faith in attempting to comply; and

(2) the Secretary may consider—

(A) the economic benefit gained from the violation without any reduction because of subsequent damages; and

(B) other matters that justice requires.

(c) PENALTIES FOR MAJOR CONSEQUENCE VIOLATIONS.—

(1) IN GENERAL.—A person that the Secretary of Transportation decides, after written notice and an opportunity for a hearing, has committed a major consequence violation of section 60114(b), 60114(d), or 60118(a) of this title or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than

\$250,000 for each violation. A separate violation occurs for each day the violation continues. The maximum civil penalty under this paragraph for a related series of major consequence violations is \$2,500,000.

(2) *PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty for a major consequence violation under this subsection, the Secretary shall consider the factors prescribed in subsection (b).*

(3) *MAJOR CONSEQUENCE VIOLATION DEFINED.—In this subsection, the term “major consequence violation” means a violation that contributed to an incident resulting in—*

(A) 1 or more deaths;

(B) 1 or more injuries or illnesses requiring in-patient hospitalization; or

(C) environmental harm exceeding \$250,000 in estimated damage to the environment including property loss other than the value of natural gas or hazardous liquid lost, or damage to pipeline equipment.

⊃(c) *(d) COLLECTION AND COMPROMISE.—*

(1) The Secretary may request the Attorney General to bring a civil action in an appropriate district court of the United States to collect a civil penalty imposed under this section.

(2) The Secretary may compromise the amount of a civil penalty imposed under this section before referral to the Attorney General.

⊃(d) *(e) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.*

⊃(e) *(f) DEPOSIT IN TREASURY.—Amounts collected under this section shall be deposited in the Treasury as miscellaneous receipts.*

⊃(f) *(g) PROHIBITION ON MULTIPLE PENALTIES FOR SAME ACT.—Separate penalties for violating a regulation prescribed under this chapter [49 USCS §§ 60101 et seq.] and for violating an order under section 60112 or 60118(b) of this title [49 USCS § 60112 or 60118(b)] may not be imposed under this chapter [49 USCS §§ 60101 et seq.] if both violations are based on the same act.*

§ 60125. Authorization of appropriations

(a) **GAS AND HAZARDOUS LIQUID.—**

(1) **IN GENERAL.—**To carry out the provisions of this chapter related to gas and hazardous liquid and section 12 of the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60101 note; Public Law 107-355), the following amounts are authorized to be appropriated to the Department of Transportation from fees collected under section 60301 in each respective year:

⊃(A) For fiscal year 2007, \$60,175,000 of which \$7,386,000 is for carrying out such section 12 and \$17,556,000 is for making grants.

⊃(B) For fiscal year 2008, \$67,118,000 of which \$7,586,000 is for carrying out such section 12 and \$20,614,000 is for making grants.

⊃(C) For fiscal year 2009, \$72,045,000 of which \$7,586,000 is for carrying out such section 12 and \$21,513,000 is for making grants.

⊃(D) For fiscal year 2010, \$76,580,000 of which \$7,586,000 is for carrying out subsection 12 and \$22,252,000 is for making grants.

(A) for fiscal year 2011, \$92,206,000, of which \$9,200,000 is for carrying out such section 12 and \$36,958,000 is for making grants;

(B) for fiscal year 2012, \$96,144,000, of which \$9,600,000 is for carrying out such section 12 and \$39,611,000 is for making grants;

(C) for fiscal year 2013, \$99,876,000, of which \$9,900,000 is for carrying out such section 12 and \$41,148,000 is for making grants; and

(D) for fiscal year 2014, \$102,807,000, of which \$10,200,000 is for carrying out such section 12 and \$42,356,000 is for making grants.

(2) Trust fund amounts. In addition to the amounts authorized to be appropriated by paragraph (1) the following amounts are authorized from the Oil Spill Liability Trust Fund to carry out the provisions of this chapter related to hazardous liquid and section 12 of the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60101 note; Public Law 107-355):

⊃(A) For fiscal year 2007, \$18,810,000 of which \$4,207,000 is for carrying out such section 12 and \$2,682,000 is for making grants.

⊃(B) For fiscal year 2008, \$19,000,000 of which \$4,207,000 is for carrying out such section 12 and \$2,682,000 is for making grants.

⊃(C) For fiscal year 2009, \$19,500,000 of which \$4,207,000 is for carrying out such section 12 and \$3,103,000 is for making grants.

⊃(D) For fiscal year 2010, \$20,000,000 of which \$4,207,000 is for carrying out such section 12 \$3,603,000 is for making grants.

(A) for fiscal year 2011, \$18,905,000, of which \$7,562,000 is for carrying out such section 12 and \$7,864,000 is for making grants;

(B) for fiscal year 2012, \$19,661,000, of which \$7,864,000 is for carrying out such section 12 and \$7,864,000 is for making grants;

(C) for fiscal year 2013, \$20,000,000, of which \$8,000,000 is for carrying out such section 12 and \$8,000,000 is for making grants; and

(D) for fiscal year 2014, \$20,000,000, of which \$8,000,000 is for carrying out such section 12 and \$8,000,000 is for making grants.

(b) EMERGENCY RESPONSE GRANTS.—

(1) IN GENERAL.—The Secretary may establish a program for making grants to State, county, and local governments in high consequence areas, as defined by the Secretary, for emergency response management, training, and technical assistance. To the extent that such grants are used to train emergency responders, such training shall ensure that emergency responders have the ability to protect nearby persons, property, and the environment from the effects of accidents or incidents in-

volving gas or hazardous liquid pipelines, in accordance with existing regulations.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$10,000,000 for each of fiscal years ~~2007 through 2010~~ *2011 through 2014* to carry out this subsection.

(c) CREDITING APPROPRIATIONS FOR EXPENDITURES FOR TRAINING.—The Secretary may credit to an appropriation authorized under subsection (a) amounts received from sources other than the Government for reimbursement for expenses incurred by the Secretary in providing training.

(d), (e) [Redesignated]

§ 60130. Pipeline safety information grants to communities

(a) GRANT AUTHORITY.—

(1) IN GENERAL.—The Secretary of Transportation may make grants for technical assistance to local communities and groups of individuals (not including for-profit entities) relating to the safety of pipeline facilities in local communities, other than facilities regulated under Public Law 93-153 (43 U.S.C. 1651 et seq.). No grants may be awarded under section 60114(g) [49 USCS § 60114(g)] until the Secretary has established competitive procedures for awarding grants under this section and criteria for selecting grant recipients. The amount of any grant under this section may not exceed ~~2~~\$50,000 *\$100,000* for a single grant recipient. The Secretary shall establish appropriate procedures to ensure the proper use of funds provided under this section.

(2) DEMONSTRATION GRANTS.—At least the first 3 grants awarded under this section shall be demonstration grants for the purpose of demonstrating and evaluating the utility of grants under this section. Each such demonstration grant shall not exceed \$25,000.

(3) DISSEMINATION OF TECHNICAL FINDINGS.—Each recipient of a grant under this section shall ensure that—

(A) the technical findings made possible by the grants are made available to the relevant operators; and

(B) open communication between the grant recipients, local operators, local communities, and other interested parties is encouraged.

(4) TECHNICAL ASSISTANCE DEFINED.—In this subsection, the term “technical assistance” means engineering and other scientific analysis of pipeline safety issues, including the promotion of public participation in official proceedings conducted under this chapter [49 USCS §§ 60101 et seq.].

(b) PROHIBITED USES.—Funds provided under this section may not be used for lobbying or in direct support of litigation.

(c) ANNUAL REPORT.—

(1) IN GENERAL.—Not later than 90 days after the last day of each fiscal year for which grants are made by the Secretary under this section, the Secretary shall report to the Committees on Commerce, Science, and Transportation and Energy and Natural Resources of the Senate and the Committees on Transportation and Infrastructure and Energy and Commerce of the House of Representatives on grants made under this section in the preceding fiscal year.

(2) CONTENTS.—The report shall include—

(A) a listing of the identity and location of each recipient of a grant under this section in the preceding fiscal year and the amount received by the recipient;

(B) a description of the purpose for which each grant was made; and

(C) a description of how each grant was used by the recipient.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Transportation for carrying out this section \$1,000,000 for each of the fiscal years 2003 through 2010. 2011 through 2014. Such amounts shall not be derived from user fees collected under section 60301 [49 USCS § 60301].

§ 60132. National pipeline mapping system

(a) INFORMATION TO BE PROVIDED.—Not later than 6 months after the date of enactment of this section [enacted Dec. 17, 2002], the operator of a pipeline facility (except distribution lines and gathering lines) shall provide to the Secretary of Transportation the following information with respect to the facility:

(1) Geospatial data appropriate for use in the National Pipeline Mapping System or data in a format that can be readily converted to geospatial data.

(2) The name and address of the person with primary operational control to be identified as its operator for purposes of this chapter [49 USCS §§ 60101 et seq.].

(3) A means for a member of the public to contact the operator for additional information about the pipeline facilities it operates.

(4) *Any other geospatial, technical, or other related pipeline data, including design and material specifications, that the Secretary determines is necessary to carry out the purposes of this section. The Secretary shall give reasonable notice to operators that the data are being requested.*

(b) UPDATES.—A person providing information under subsection (a) shall provide to the Secretary updates of the information to reflect changes in the pipeline facility owned or operated by the person and as otherwise required by the Secretary.

(c) TECHNICAL ASSISTANCE TO IMPROVE LOCAL RESPONSE CAPABILITIES.—The Secretary may provide technical assistance to State and local officials to improve local response capabilities for pipeline emergencies by adapting information available through the National Pipeline Mapping System to software used by emergency response personnel responding to pipeline emergencies.

(d) *PUBLIC DISCLOSURE LIMITED.—The Secretary may not disclose information collected pursuant to subsection (a) except to the extent permitted by section 552 of title 5.*

§ 60134. State damage prevention programs

(a) IN GENERAL. The Secretary may make a grant to a State authority (including a municipality with respect to intrastate gas pipeline transportation) to assist in improving the overall quality and effectiveness of a damage prevention program of the State authority under subsection (e) if the State authority—

(1) has in effect an annual certification under section 60105 [49 USCS § 60105] or an agreement under section 60106 [49 USCS § 60106]; and

(2) (A) has in effect an effective damage prevention program that meets the requirements of subsection (b); or

(B) demonstrates that it has made substantial progress toward establishing such a program, and that such program will meet the requirements of subsection (b). (b); and

(3) does not provide any exemptions to municipalities, State agencies, or their contractors from its one-call notification system requirements.

(b) DAMAGE PREVENTION PROGRAM ELEMENTS.—An effective damage prevention program includes the following elements:

(1) Participation by operators, excavators, and other stakeholders in the development and implementation of methods for establishing and maintaining effective communications between stakeholders from receipt of an excavation notification until successful completion of the excavation, as appropriate.

(2) A process for fostering and ensuring the support and partnership of stakeholders, including excavators, operators, locators, designers, and local government in all phases of the program.

(3) A process for reviewing the adequacy of a pipeline operator's internal performance measures regarding persons performing locating services and quality assurance programs.

(4) Participation by operators, excavators, and other stakeholders in the development and implementation of effective employee training programs to ensure that operators, the one-call center, the enforcing agency, and the excavators have partnered to design and implement training for the employees of operators, excavators, and locators.

(5) A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities.

(6) A process for resolving disputes that defines the State authority's role as a partner and facilitator to resolve issues.

(7) Enforcement of State damage prevention laws and regulations for all aspects of the damage prevention process, including public education, and the use of civil penalties for violations assessable by the appropriate State authority.

(8) A process for fostering and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications, underground pipeline locating capability, and gathering and analyzing information about the accuracy and effectiveness of locating programs.

(9) A process for review and analysis of the effectiveness of each program element, including a means for implementing improvements identified by such program reviews.

(c) FACTORS TO CONSIDER.—In making grants under this section, the Secretary shall take into consideration the commitment of each State to ensuring the effectiveness of its damage prevention program, including legislative and regulatory actions taken by the State.

(d) APPLICATION.—If a State authority files an application for a grant under this section not later than September 30 of a calendar year and demonstrates that the Governor (or chief executive) of the State has designated it as the appropriate State authority to receive the grant, the Secretary shall review the State's damage prevention program to determine its effectiveness.

(e) USE OF FUNDS.—A grant under this section to a State authority may only be used to pay the cost of the personnel, equipment, and activities that the State authority reasonably requires for the calendar year covered by the grant to develop or carry out its damage prevention program in accordance with subsection (b).

(f) NONAPPLICABILITY OF LIMITATION.—A grant made under this section is not subject to the section 60107(a) [49 USCS § 60107(a)] limitation on the maximum percentage of funds to be paid by the Secretary.

(g) LIMITATION ON USE OF FUNDS.—Funds provided to carry out this section may not be used for lobbying or in direct support of litigation.

(h) DAMAGE PREVENTION PROCESS DEFINED.—In this section, the term "damage prevention process" means a process that incorporates the principles described in sections 60114(b), 60114(d), and 60114(e) [49 USCS § 60114(b), (d), and (e)].

(i) AUTHORIZATION OF APPROPRIATIONS.—*There are authorized to be appropriated to the Secretary to provide grants under this section \$2,000,000 for each of fiscal years 2011 through 2014. The funds shall remain available until expended.*

§ 60138. Public education and awareness

(a) IN GENERAL.—*Not later than 1 year after the date of enactment of the Pipeline Transportation Safety Improvement Act of 2011, the Secretary shall—*

(1) maintain a monthly updated summary of all completed and final natural gas and hazardous liquid pipeline inspections conducted by or reported to the Pipeline and Hazardous Materials Safety Administration that includes—

(A) identification of the operator inspected;

(B) the type of inspection;

(C) the results of the inspection, including any deficiencies identified; and

(D) any corrective actions required to be taken by the operator to remediate such deficiencies;

(2) maintain—

(A) a status indication of the review and approval of each gas emergency response plan pursuant to section 60102(d)(5) of this title and of each hazardous liquid pipeline operator's response plan pursuant to part 194 of title 49, Code of Federal Regulations;

(B) a comprehensive description of the requirements for such plans; and

(C) a detailed summary of each approved plan written by the operator that includes the key elements of the plan, but which may exclude—

(i) proprietary information;

(ii) security-sensitive information, including as referenced in section 1520.5(a) of title 49, code of Federal Regulations;

(iii) specific response resources and tactical resource deployment plans; and

(iv) the specific amount and location of worst-case discharges, including the process by which an operator determines the worst discharge.

(3) excluding any proprietary or security-sensitive information, as part of the National Pipeline Mapping System maintain a map of all currently designated high consequence areas in which pipelines are required to meet integrity management safety regulations and update the map annually; and

(4) maintain a copy or, at a minimum, a detailed summary of any industry-developed or professional organization pipeline safety standards that have been incorporated by reference into regulations, to the extent consistent with fair use.

(b) PUBLIC AVAILABILITY.—The requirements of subsection (a) shall be considered to have been met if the information required to be made public is made available on the Pipeline and Hazardous Materials Safety Administration's public Web site.

(c) RELATIONSHIP TO FOIA.—Nothing in this section shall be construed to require disclosure of information or records that are exempt from disclosure under section 552 of title 5.

§ 60139. Alaska project coordination

The Secretary may provide technical assistance to the State of Alaska for the purpose of achieving coordinated and effective oversight of the construction, expansion, or operation of pipeline systems in Alaska. The assistance may include—

(1) conducting coordinated inspections of pipeline systems subject to the respective authorities of the Department of Transportation and the State of Alaska;

(2) consulting on the development and implementation of programs designed to manage the integrity risks associated with operating pipeline systems in the unique conditions of Alaska;

(3) training inspection and enforcement personnel and consulting on the development and implementation of inspection protocols and training programs; and

(4) entering into cooperative agreements, grants, or other transactions with the State of Alaska, the Joint Pipeline Office, other Federal agencies, and other public and private agencies to carry out the objectives of this section.

TITLE 49. TRANSPORTATION

SUBTITLE III. GENERAL AND INTERMODAL PROGRAMS

CHAPTER 61. ONE-CALL NOTIFICATION PROGRAMS

§ 6103. Minimum standards for State one-call notification programs

¿(a) MINIMUM STANDARDS.—In order to qualify for a grant under section 6106 [49 USCS § 6106], a State one-call notification program shall, at a minimum, provide for—

- ε(1) appropriate participation by all underground facility operators, including all government operators;
- ε(2) appropriate participation by all excavators, including all government and contract excavators; and
- ε(3) flexible and effective enforcement under State law with respect to participation in, and use of, one-call notification systems.

(a) *MINIMUM STANDARDS.*—

(1) *IN GENERAL.*—*In order to qualify for a grant under section 6106, a State one-call notification program shall, at a minimum, provide for—*

(A) *appropriate participation by all underground facility operators, including all government operators;*

(B) *appropriate participation by all excavators, including all government and contract excavators; and*

(C) *flexible and effective enforcement under State law with respect to participation in, and use of, one-call notification systems.*

(2) *EXEMPTIONS PROHIBITED.*—*A State one-call notification program may not exempt municipalities, State agencies, or their contractors from its one-call notification system requirements.*

(b) *APPROPRIATE PARTICIPATION.*—*In determining the appropriate extent of participation required for types of underground facilities or excavators under subsection (a), a State shall assess, rank, and take into consideration the risks to the public safety, the environment, excavators, and vital public services associated with—*

(1) *damage to types of underground facilities; and*

(2) *activities of types of excavators.*

(c) *IMPLEMENTATION.*—*A State one-call notification program also shall, at a minimum, provide for and document—*

(1) *consideration of the ranking of risks under subsection (b) in the enforcement of its provisions;*

(2) *a reasonable relationship between the benefits of one-call notification and the cost of implementing and complying with the requirements of the State one-call notification program; and*

(3) *voluntary participation where the State determines that a type of underground facility or an activity of a type of excavator poses a de minimis risk to public safety or the environment.*

(d) *PENALTIES.*—*To the extent the State determines appropriate and necessary to achieve the purposes of this chapter, a State one-call notification program shall, at a minimum, provide for—*

(1) *administrative or civil penalties commensurate with the seriousness of a violation by an excavator or facility owner of a State one-call notification program;*

(2) *increased penalties for parties that repeatedly damage underground facilities because they fail to use one-call notification systems or for parties that repeatedly fail to provide timely and accurate marking after the required call has been made to a one-call notification system;*

(3) *reduced or waived penalties for a violation of a requirement of a State one-call notification program that results in, or could result in, damage that is promptly reported by the violator;*

- (4) equitable relief; and
- (5) citation of violations.

§ 6107. Authorization of appropriations

(a) FOR GRANTS TO STATES.—There are authorized to be appropriated to the Secretary to provide grants to States under section 6106 [49 USCS § 6106] \$1,000,000 for each of fiscal years *¿*2007 through 2010. *2011 through 2014.* Such funds shall remain available until expended.

(b) FOR ADMINISTRATION.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out sections 6103, 6104, and 6105 [49 USCS §§ 6103, 6104, and 6105] for fiscal years *¿*2007 through 2010. *2011 through 2014.*

¿(c) GENERAL REVENUE FUNDING.—Any sums appropriated under this section shall be derived from general revenues and may not be derived from amounts collected under section 60301 of this title.