

The original documents are located in Box 62, folder “10/11/76 HR12168 Natural Gas Pipeline Safety Act Amendments of 1976” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

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APPROVED
OCT 11 1976

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THE WHITE HOUSE
WASHINGTON
October 8, 1976

ACTION
Last Day: October 12

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON *[Signature]*
SUBJECT: H.R. 12168 - Natural Gas Pipeline Safety Act Amendments of 1976

Posted
10/12/76

archive
10/12/76

Attached for your consideration is H.R. 12168, sponsored by Representatives Staggers and Dingell.

The enrolled bill would:

- authorize appropriations of \$17.2 million for the Department of Transportation to carry out its duties relating to natural gas pipeline safety.
- provide for 100% Federal funding of up to three pipeline safety inspectors per State;
- authorize citizens' civil court actions for alleged pipeline safety violations;
- require transporters of gas to conduct a consumer education program.

A detailed explanation of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, Bill Seidman, Max Friedersdorf, Counsel's Office (Kilberg) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 12168 at Tab B.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 6 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 12168 - Natural Gas Pipeline
Safety Act Amendments of 1976
Sponsors - Rep. Staggers (D) West Virginia
and Rep. Dingell (D) Michigan

Last Day for Action

October 12, 1976 - Tuesday

Purpose

Authorizes appropriations of \$17.2 million for the Department of Transportation to carry out its duties relating to natural gas pipeline safety; provides for 100% Federal funding of up to three pipeline safety inspectors per State; authorizes citizens' civil court actions for alleged pipeline safety violations; and requires transporters of gas to conduct a consumer education program.

Agency Recommendations

Office of Management and Budget	Approval
Department of Transportation	Approval
National Transportation Safety Board	Approval
Federal Power Commission	No objection
Department of Justice	Defers

Discussion

H.R. 12168 would authorize appropriations of \$17,164,000 for the transition quarter and fiscal years 1977 and 1978 for the Department of Transportation (DOT) to carry out its activities under the Natural Gas Pipeline Safety Act of 1968. These authorizations are for the administrative and research and development expenses of DOT under this Act, and for a grant-in-aid program providing up to 50% Federal funding to cover State expenses incurred in enforcing Federal gas pipeline safety standards.

The Administration requested authorizations of only \$12.5 million for these activities. The difference of \$4.7 million does not present a serious problem because:

(1) the DOT appropriations act for 1977 provides for only \$2.1 million for administrative and R&D activities, as compared to \$4.7 million authorized by this bill and \$3.5 million requested by the Administration;

(2) appropriations action for the 1978 administrative and R&D authorization, which is \$1.5 million over the Administration's request, can be expected to be similar to that for 1977 and result in a figure closer to the Administration request; and

(3) the remaining \$2 million authorized for 1978 over the Administration's request is intended to be used for a new one-year increase in Federal funding of the grant-in-aid program. For the reasons discussed below, DOT does not think much of this money will actually be spent.

The 1968 Act provides that a State may assume responsibility for enforcing the Federal safety standards with respect to intrastate gas pipelines by means of a certification process, with DOT review of State performance. The Act provides for Federal grants to cover up to 50% of a State's costs related to such enforcement, including costs of State inspectors. The enrolled bill would amend this grant-in-aid program to provide, during fiscal year 1978, for 100% Federal funding (not to exceed \$60,000 per State) of up to three additional full-time safety inspectors for each State for calendar year 1978. States that received the 100% grant would be required to maintain at least the same number of inspectors for the two subsequent calendar years. If the additional inspectors were not funded for two years, the State would be required to reimburse the Federal Government for 50% of the funds it received under the 100% grant, in proportion to the degree to which it failed to meet its obligation. This reimbursement would, in effect, put the provision on the same 50% basis as the current program for those States that do not continue to provide for the additional inspectors. We understand that \$2 million of the 1978 grant-in-aid authorizations are intended to cover the expenses of the 100% Federal funding provision. This provision is intended to help the States upgrade their pipeline safety programs.

In letters to the Senate and to the conference committee, DOT strongly opposed the 100% funding provision because it would create an unwarranted dependence on Federal assistance that is inconsistent with the original intent of the Act to encourage the development of a balanced Federal/State partnership. It could also set an undesirable precedent for such provisions in other programs. DOT stated that there were better incentives for States to upgrade their safety programs, such as the withholding of all or part of their grant funds or the rescission of State authority to enforce the Federal standards. In response to DOT's concerns, the conference committee added the requirement that the States continue the funding of additional inspectors for 2 years. DOT states in its views letter on the enrolled bill that it believes few States will take advantage of the provision because of the requirement to continue the additional inspectors for two years under the regular 50% Federal assistance program. Accordingly, the Department believes "...the anticipated additional Federal cost of the pipeline safety program is minimal, if any."

H.R. 12168 would add a provision to the Act authorizing citizens' civil court actions on alleged violations of the Act. The provision would allow any person to commence a civil court action for mandatory or prohibitive injunctive relief against any person alleged to be in violation of the Act or its rules and regulations. Such action could be taken only after 60 days notice to DOT or the applicable State agency and only if DOT, the Justice Department, or the applicable State were not "diligently pursuing judicial proceedings with respect to such alleged violation." The bill would provide for payment of reasonable attorneys' fees to the plaintiff if the suit is successful or to the defendant if the suit is found to be unreasonable, frivolous, or meritless.

In its attached views letter, DOT claims that this provision "could involve the Department in endless and sometimes unreasonable litigation and thus divert the Department's limited resources from current wide-ranging efforts to improve pipeline safety." In addition, much of the time of the Executive branch and the courts could be expended on civil suits over alleged violations that were already determined to be too insignificant to warrant litigation or were factually unproved. While the provision is undesirable, however, it is alleviated somewhat by the 60 day notice provision.

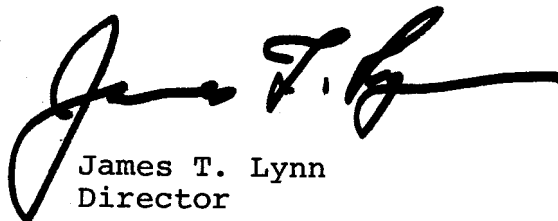
H.R. 12168 would also require anyone who engages in the transportation of gas to conduct a consumer education program about the hazards of natural gas leaks. Current Federal regulations already require that this be done; the provision is unnecessary but not seriously objectionable.

Other provisions in the bill would:

- . add a definition to the Act of "intrastate pipeline transportation"; DOT requested this definition.
- . require State agencies to encourage and promote programs designed to prevent damage to natural gas pipelines and other underground utility equipment as a result of excavation activity.
- . revise the State certification process to allow certification by a State agency although it has not adopted each Federal safety standard established within 120 days before the certification. This was requested by DOT in order to alleviate the administrative burden States have in adopting newly established or amended Federal standards in time for certification.

* * * * *

While the bill contains a number of undesirable provisions, none of them are serious enough, in our opinion, to warrant disapproval. We concur in DOT's statement in its views letter that "although the Department has expressed concern with certain provisions in the enrolled bill, it appears that in administering the natural gas pipeline safety programs, the Department can mitigate that concern to a degree consistent with the proper administration of those programs."



James T. Lynn
Director

Enclosures



THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

OCT 1 1978

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

You have asked for our views on H.R. 12168, an enrolled bill,

"To amend the Natural Gas Pipeline Safety Act of 1968, to authorize additional appropriations, and for other purposes."

While a majority of the amendments in the bill were either proposed or subsequently supported by the Administration, Sections 5(d) and 8 of the bill contain provisions that the Administration has opposed.

Section 5(d) provides for the Secretary of Transportation to pay, during fiscal year 1978, to the natural gas pipeline safety agency in each State 100 percent of the cost (not to exceed \$60,000 for each State agency) of not more than three full-time safety inspectors for calendar year 1978. The inspectors are to be in addition to, and not in lieu of, the number of safety inspectors maintained by that State agency in calendar year 1977. The payments of such funds are to be in accordance with regulations issued by the Secretary taking into account the needs of the respective States.

In addition, Section 5(d) provides that each State agency that receives 100 percent funding must maintain during calendar years 1979 and 1980 not less than the number of full-time safety inspectors which were maintained by such State agency in calendar year 1978 or reimburse the Secretary a certain percentage of the monies received under the 100 percent funding provision.

Under present law, the Federal Government pays out of appropriated amounts up to 50 percent of a State's annual program costs, including costs of State inspectors. The

Department believes that most States will view the temporary additional financial assistance under Section 5(d) as an insufficient incentive to hire additional inspectors. The need to acquire additional State funds which are currently unavailable to fulfill a three year hiring obligation will likely dissuade most States from hiring any additional natural gas pipeline inspectors under Section 5(d). This is particularly true in the smaller States which believe their present pipeline safety staff is adequate. For this reason, the anticipated additional Federal cost of the pipeline safety program is minimal, if any.

Section 5(d) represents a substantially modified and scaled down version of the Senate proposal that would have provided 100 percent Federal funding without time limitations. This Department strongly objected to the Senate proposal on the belief that full Federal funding of certain key personnel in a State program would create an unwarranted dependence on Federal assistance that is inconsistent with the original intent of the Natural Gas Pipeline Safety Act of 1968 (NGPSA) to encourage the development of a balanced Federal/State partnership.

Although that objection is still valid with regard to Section 5(d) of the enrolled bill, Section 5(d) represents the most favorable compromise that was attainable. Because the 100 percent funding concept is limited to fiscal year 1978 and has been modified to obligate the States to fund at least 50 percent of the cost of new inspectors in calendar years 1979 and 1980, dependency on Federal assistance can be considered minimal.

One provision in Section 8 of the enrolled bill would amend the NGPSA by adding to it a new Section 17 permitting any person to commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, against any other person (including any State, municipality, or other governmental entity) alleged to be in violation of the NGPSA or of an order or regulation issued thereunder. Proponents of this citizen's civil action provision found support for their position in other legislation having similar provisions (e.g., the Clean Air Act, 42 USC 1851 et seq. and the Consumer Product Safety Act, 15 USC 2051 et seq.).

This Department has strongly objected to such a citizen's civil action because of the belief that it could involve the Department in endless and sometimes unreasonable litigation and thus divert the Department's limited resources from current wide-ranging efforts to improve pipeline safety.

Moreover, under present law, the enforcement function with regard to gas pipeline safety rests with the Secretary of Transportation and certain State agencies that are certified under the NGPSA to perform such functions. This Department believes that the Section 8 amendment fails to recognize the weight that should be accorded the expertise of the agency that is given the responsibility to enforce the law.

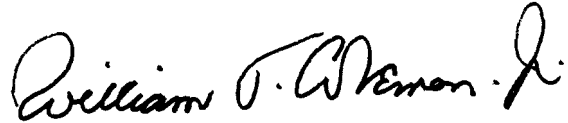
The above concerns are somewhat alleviated by the provision in new Section 17 that a citizen's civil action may not be commenced prior to the expiration of 60 days after the plaintiff has given notice of the alleged violation to the Secretary (or to the applicable State agency in the case of a State being responsible for enforcement) or if the appropriate Federal or State agency has commenced and is diligently pursuing administrative or judicial proceedings with respect to the alleged violation.

Section 2 would authorize for appropriation certain amounts for use by this Department in its pipeline safety programs. For fiscal year 1977, the authorized amount for administrative and R&D expenses exceeds the Administration's proposal by approximately \$1.1 million. For fiscal year 1978, the authorized amount for State grants exceeds the Administration's proposal by \$2 million and the authorized amount for administrative and R&D expenses exceeds the Administration's proposal by \$1.5 million. Although the authorized amounts are larger in these instances than the Administration's authorization requests, the actual amounts appropriated will not necessarily be greater than the amounts recommended by the Administration. For example, \$1,642,000 has been appropriated for administrative and R&D expenses in fiscal year 1977. This amount is consistent with the President's budget for fiscal year 1977.

Although the Department has expressed concern with certain provisions in the enrolled bill, it appears that in administering the natural gas pipeline safety programs, the Department can mitigate that concern to a degree consistent

with the proper administration of those programs. Therefore, the Department of Transportation recommends that the President sign the enrolled bill.

Sincerely,

A handwritten signature in cursive script that reads "William T. Coleman, Jr." The signature is written in black ink and is positioned above the typed name.

William T. Coleman, Jr.



Office of
Chairman

National Transportation Safety Board

Washington, D.C. 20594

September 30, 1976

Mr. James M. Frey
Assistant Director for Legislation
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Dear Mr. Frey:

This is in reply to your request for the National Transportation Safety Board's comments on H. R. 12168, an enrolled bill "To amend the Natural Gas Pipeline Safety Act of 1968 to authorize additional appropriations, and for other purposes".

The Safety Board recommends approval of H. R. 12168.

Your thoughtfulness in soliciting our views is greatly appreciated.

Sincerely yours,

for Kay Bailey
Webster B. Todd, Jr.
Chairman

cc: Honorable Warren G. Magnuson
Honorable Birch Bayh
Honorable Robert E. Jones

Honorable John J. McFall
Honorable Harley O. Staggers
Honorable Jack Brooks

FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426

OCT 1 1976

ENROLLED BILL, H.R. 12168 - 94th Congress
Natural Gas Pipeline Safety Amendments of 1976

Honorable James T. Lynn
Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Miss Martha Ramsey
Legislative Reference Division
Room 7201, New Executive Office Building

Dear Mr. Lynn:

This is in response to Mr. Frey's request of September 29, 1976, for the Commission's views on H.R. 12168 "To amend the Natural Gas Pipeline Safety Act of 1968" to authorize appropriations to the end of fiscal year 1977 for DOT's Office of Pipeline Safety Operations as well as to introduce a series of technical changes regarding state jurisdiction to promulgate safety standards and for other purposes.

In letters to the Interstate and Foreign Commerce Committees of the House and Senate, we supported the inclusion in this legislation of a provision which would have precluded the Federal Power Commission from requiring that applicants for certificates of public convenience and necessity comply with any safety standards for pipeline facilities or the transportation of gas other than those prescribed by the Secretary of Transportation. Such a provision would resolve the problem of overlapping jurisdiction over safety regulation of natural gas transportation between the Federal Power Commission and the Department of Transportation.

In the absence of such a provision, however, we feel that a continuation of "the current spirit of cooperation between DOT and FPC" /as noted in Conference Rept. No. 94-1660, September 22, 1976, page 7/ will do much to alleviate the jurisdictional problems between the two agencies and promote a reasonable and uniform



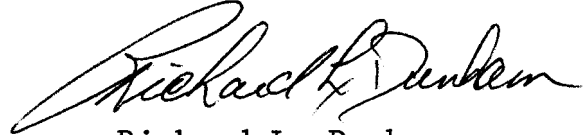
Honorable James T. Lynn

- 2 -

pipeline safety program. The Federal Power Commission expects to continue this cooperation and to keep the Office of Pipeline Safety Operations informed of standards which we consider necessary for pipeline safety. In particular, the Commission can request that DOT adopt different or additional safety standards for a particular project where we think such changes are necessary.

The Commission has no objection to approval of the enrolled bill H.R. 12168.

Sincerely yours,

A handwritten signature in cursive script, reading "Richard L. Dunham". The signature is written in dark ink and is positioned above the printed name and title.

Richard L. Dunham
Chairman

Department of Justice
Washington, D.C. 20530

October 1, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill (H.R. 12168), "To amend the Natural Gas Pipeline Safety Act of 1968 to authorize additional appropriations, and for other purposes."

This bill amends the Natural Gas Pipeline Safety Act of 1968 (the "Act"), 49 U.S.C. §§1671 et seq., authorizing appropriations for the Office of Pipeline Safety Operations within the Department of Transportation. In addition to the authorization of funds, the bill also defines "intrastate pipeline transportation," which presently is undefined under the Act. Included within this definition of "intrastate pipeline transportation" are those pipeline facilities which transport gas from an interstate pipeline to a direct sales customer purchasing gas for its own consumption. The bill also allows certification by a State regulatory agency whether or not it has adopted each Federal safety standard established within 120 days before the date of certification. Additionally, the bill authorizes, regardless of amount in controversy or citizenship, private suits against persons alleged to be in violation of the Act or any order or regulation issued thereunder.

The Act at present does not define "interstate pipeline transportation," instead it uses the phrase "pipeline facilities and the transportation of gas" (not subject to the jurisdiction of the Federal Power Commission under the Act). The bill's definition clarifies the meaning of "intrastate pipeline transportation." The citizen's suit, provided for by the bill, permits a civil action regardless of the amount in controversy or the citizenship of the plaintiff. Without such amendment, litigation under the Act would often be precluded. Nevertheless, in instances where the Attorney General has initiated suit against persons violating the Act or any order or regulation thereunder, the bill further provides that a private citizen's suit would be barred in these circumstances.

The Department of Justice defers to those agencies more directly concerned with the subject matter of the bill as to whether it should receive Executive approval.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael M. Uhlmann". The signature is written in black ink and is positioned above the typed name.

Michael M. Uhlmann
Assistant Attorney General

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 12

Date: October 6

Time: 645pm

FOR ACTION:

Judy Hope *ph*
~~Paul Leach~~
Max Friedersdorf *aa*
Bobbie Kilberg *aa*
Bill Seidman *ca*

cc (for information):

Jack Marsh
Jim Connor
Ed Schmults
Steve McConahey *defec*

FROM THE STAFF SECRETARY

DUE: Date: October 8

Time: 200pm

SUBJECT:

H.R.12168-Natural Gas Pipeline Safety Act Amendments, 1976

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

10

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 7

Time: 1130am

FOR ACTION:

Judy Hope
Paul Leach
Max Friedersdorf
Bobbie Kilberg
Bill Seidman

cc (for information):

Jack Marsh
Jim Connor
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 8

Time: 200pm

SUBJECT:

H.R.12168-Natural Gas Pipeline Safety Act Amendments, 1976

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

no objection Kelly 10/8/76

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If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately

Connor

THE WHITE HOUSE

10

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 7

Time: 1130am

FOR ACTION: Judy Hope
Paul Leach
Max Friedersdorf
Bobbie Kilberg
Bill Seidman

cc (for information): Jack Marsh
Jim Connor
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 8

Time: 200pm

SUBJECT:

H.R.12168-Natural Gas Pipeline Safety Act Amendments, 1976

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

Approval
[Signature]
10/8 - 10 AM.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Cannon

LWS copy
10

THE WHITE HOUSE
WASHINGTON

ACTION MEMORANDUM

LOG NO.:

Date: October 7

Time: 1130am

FOR ACTION: Judy Hope
Paul Leach
Max Friedersdorf
Bobbie Kilberg
Bill Seidman

cc (for information): Jack Marsh
Jim Connor
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 8

Time: 200pm

SUBJECT:

H.R.12168-Natural Gas Pipeline Safety Act Amendments, 1976

ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

please return to judy johnston, ground floor west wing

APPROVE
RB Porter

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

THE WHITE HOUSE

WASHINGTON

October 8, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M.L.F.*
SUBJECT: H.R. 12168 - Natural Gas Pipeline
Safety Act Amendments, 1976

The Office of Legislative Affairs concurs with the agencies
that the Natural Gas Pipeline Safety Act Amendments, 1976
be signed.

Attachments

NATURAL GAS PIPELINE SAFETY ACT AMENDMENTS
OF 1976

APRIL 27, 1976.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign
Commerce, submitted the following

REPORT

together with

MINORITY AND DISSENTING VIEWS

[To accompany H.R. 12168]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 12168) to amend the Natural Gas Pipeline Safety Act of 1968 to authorize appropriations for fiscal year 1977, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Natural Gas Pipeline Safety Act Amendments of 1976".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. Section 15 of the Natural Gas Pipeline Safety Act of 1968 is amended—

(1) in subsection (a), by striking out "and" after "June 30, 1975," and by inserting "\$500,000 for the period beginning July 1, 1976, and ending September 30, 1976, and \$4,664,000 for the fiscal year ending September 30, 1977,"; and

(2) in subsection (b), by striking out "and" after "June 30, 1975," and by inserting ", and \$2,500,000 for the fiscal year ending September 30, 1977" after "June 30, 1976".

OTHER AMENDMENTS TO THE NATURAL GAS PIPELINE SAFETY ACT OF 1968

SEC. 3. (a) Section 2 of the Natural Gas Pipeline Safety Act of 1968 is amended—

(1) by striking out "; and" at the end of paragraph (8) and inserting in lieu thereof ", except that it shall not include any pipeline facilities within a State which transport gas from an interstate gas pipeline to a direct sales customer within such State purchasing gas for its own consumption;" , and

(2) by redesignating paragraph (9) as (10), and inserting after paragraph (8) the following new paragraph:

“(9) ‘intrastate pipeline transportation’ means pipeline facilities and transportation of gas within a State which are not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act, except that it shall include pipeline facilities within a State which transport gas from an interstate gas pipeline to a direct sales customer within such State purchasing gas for its own consumption; and”.

(b) Section 3(a) of such Act is amended by striking out “minimum” from the first and last sentences.

(c) Section 3(b) of such Act is amended by striking out “minimum” from the first sentence, and by amending the last sentence to read as follows: “Any State agency may adopt additional or more stringent standards for intrastate pipeline transportation which are compatible with the Federal standards, but may not adopt or continue in force after the Federal standards have become effective any standards applicable to interstate transmission facilities.”.

(d) Section 5(a) of such Act is amended—

(1) in the first sentence, by striking out “pipeline facilities and the transportation of gas (not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act) within a State” and inserting in lieu thereof “intrastate pipeline transportation”;

(2) in clause (1), by striking out “pipeline facilities and transportation of gas” and inserting in lieu thereof “transportation”; and

(3) by striking out “(2) has adopted each Federal safety standard applicable to such pipeline facilities and transportation of gas established under this Act as of the date of the certification,” and inserting in lieu thereof “(2) has adopted, as of the date of the certification, each Federal safety standard established under this Act which is applicable to such transportation or, with respect to each such Federal safety standard established within one hundred and twenty days before the date of the certification, is taking steps pursuant to State law to adopt such standard;”.

(e) Section 5(b) of such Act is amended by striking out “With respect to” and all that follows down through “actions to—” and by inserting in lieu thereof the following: “With respect to any intrastate pipeline transportation for which the Secretary does not receive a certification under subsection (a) of this section, the Secretary is authorized by agreement with a State agency (including a municipality) to authorize such agency to assume responsibility for, and carry out on behalf of the Secretary as it relates to intrastate pipeline transportation the necessary actions to—”.

(f) The first sentence of section 5(d) of such Act is amended to read as follows: “A certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety standards established for intrastate pipeline transportation pursuant to this Act after the date of such certification.”.

Amend the title so as to read:

A bill to amend the Natural Gas Pipeline Safety Act of 1968 to authorize additional appropriations, and for other purposes.

PURPOSE OF THE LEGISLATION

The purpose of this legislation is to authorize appropriations to the end of the fiscal year 1977 for the Office of Pipeline Safety Operations within the Department of Transportation. This legislation amends the Natural Gas Pipeline Safety Act of 1968 to provide for funding of the transitional quarter (July 1, 1976 through September 30, 1976) and for the fiscal year ending September 30, 1977.

A series of amendments in the nature of technical or minor wording changes are also included in the bill. These introduce a definition of “intrastate” into the Act where presently there is none and otherwise refine the language of the Natural Gas Pipeline Safety Act of 1968.

BILL SUMMARY

In addition to providing for the authorization of funds, H.R. 12168 amends the Natural Gas Pipeline Safety Act of 1968 to simplify the statutory language by providing a definition of the term “intrastate pipeline transportation”. Presently, that Act does not define “intrastate” as a specific term; instead it repeatedly uses the phrase “pipeline facilities and the transportation of gas (not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act) within a State.” The change adds a definition of “intrastate pipeline transportation”, as a substitute for the circumlocution presently in use.

Also included within the definition of intrastate pipeline transportation are those pipeline facilities which transport gas from an interstate pipeline to a direct sales customer purchasing gas for its own consumption. At the time of passage of the 1968 Act, it was assumed that such facilities were not subject to the jurisdiction of the Federal Power Commission. In *FPC v. Louisiana Power and Light*, 406 U.S. 621 (1972), the Supreme Court held that direct sales by interstate pipelines were subject to FPC jurisdiction. Many states had regulated direct sales gas lines prior to the Supreme Court ruling, and continued to do so after the decision. This amendment clarifies the right of those states to exercise their regulatory role without Federal preemption.

The bill also allows certification by a State regulatory agency whether or not it has adopted each Federal safety standard established within 120 days before the date of certification. At present, many state agencies have difficulty completing the administrative processes necessary for adoption of newly established or amended Federal standards in time to meet the requirement that all Federal standards be adopted by the State agency as of the date of certification. The proposed change eases this administrative burden, but does not allow State regulatory agencies a free hand in deciding whether or not to comply with minimum Federal standards.

BACKGROUND AND NEED

The Office of Pipeline Safety Operations (OPSO), within the Materials Transportation Bureau of the Department of Transportation, is responsible for the administration of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 *et seq.*). It is also responsible for portions of the Transportation of Explosives Act (18 U.S.C. 831-835), the Hazardous Materials Transportation Act (49 U.S.C. 1801-1812), the Deepwater Port Act of 1974 (33 U.S.C. 1520), the Mineral Leasing Act of 1920 (30 U.S.C. 185), and the International Bridge Act of 1972.

The Natural Gas Pipeline Safety Act of 1968 authorizes the establishment and enforcement of safety standards for the transportation of natural, flammable, toxic, or corrosive gas by pipelines, either in or affecting interstate commerce. It provides for the Federal safety regulation of those facilities utilized in the transportation of natural and other gases by pipeline, or gas storage, in or affecting interstate or foreign commerce. In accordance with Section 5 of that Act, a State agency can assume responsibility for the safety regulations of intrastate pipeline systems under a certificate or by an agreement with the Department of Transportation to assist in the enforcement of Federal

safety standards. Regulatory responsibility under this Act covers more than 2,100 operators of the Nation's gas pipeline network of approximately 1.43 million miles, incorporating some 70,000 miles of gathering lines, 265,000 miles of transmission lines, and 660,000 miles of distribution mains plus an additional 440,000 miles of gas service lines.

Liquid pipeline safety authority is derived from the Transportation of Explosives Act and extends to all hazardous liquids and governs carriers who are engaged in interstate transportation of those hazardous liquids by pipelines. There are some 240,000 miles of such lines transporting crude oil and other liquid petroleum products, liquefied petroleum gas, liquefied anhydrous ammonia, and other hazardous products.

OPSO's safety authority for pipelines on Federal lands, under Section 28 of the Mineral Leasing Act of 1920, as amended, requires OPSO to (1) cause to be examined, at least once a year, all pipeline facilities on Federal lands and cause the prompt reporting of any potential leaks or safety problems; and (2) report annually to the President, the Congress, and other Federal agencies as required by the Act any potential explosives, actual explosions, potential spillage, or actual spillage on Federal lands, and to report the corrective action taken to prevent such explosion or spillage.

The Deepwater Port Act of 1974 requires the Secretary of Transportation, in cooperation with the Secretary of the Interior, to establish and enforce such standards and regulations as may be necessary to assure the safe construction and operation of oil pipelines on the Outer Continental Shelf, and to review all laws and regulations relating to the construction, operation, and maintenance of pipeline on Federal lands and Outer Continental Shelf.

In accordance with the Natural Gas Pipeline Safety Act of 1968, a state may assume responsibility for enforcing gas pipeline safety standards with respect to intrastate facilities by filing a certification or by entering into an agreement with the Department of Transportation to assist in the enforcement of the Federal safety standards. A certifying state agency may adopt additional, or more stringent, standards so long as these are compatible with the Federal standards for those intrastate gas pipeline facilities under its jurisdiction. During 1975, of the 52 jurisdictions (including the 50 states, the District of Columbia and Puerto Rico) that were eligible to participate, 51 actually participated, 44 under Section 5(a) agreement certification and 7 under a Section 5(b) agreement. New Jersey is the only state not currently participating in the program: the pipeline operators in that state are subject to direct OPSO authority.

GRANTS-IN-AID

A key element in the Act relating to state participation is the provision for Federal assistance to cover up to 50% of a state agency's cost of personnel, equipment and activities in carrying out its gas pipeline safety program. For the fiscal year 1976, 43 states requested grants-in-aid and shared in the \$1,650,000 allocated by the Office of Pipeline Safety Operations to cover such activity. The amount authorized by this bill for the grant-in-aid program in fiscal year 1977 would be raised to \$2.5 million.

The level of state participation in gas pipeline safety programs has consistently increased since 1971, when 35 states applied for, and 29 states actually received, federal funds for their 1971 program costs. Thirty-nine states applied in 1974: the same number of states that participated in 1973. Grants-in-aid funds were increased from \$875,000 in 1973 to \$1,175,000 in 1974. In 1975, 41 states applied for financial assistance; in 1976 43 applied. In hearings the Office of Pipeline Safety estimated that the total state costs for participating in this joint Federal/State program will amount to \$4.6 million in 1976, and will increase to about \$5.2 million in 1977.

Failure by a state agency to meet the criteria for inspection and reporting programs may result in OPSO withholding grant-in-aid funds if it determines that a certifying state agency is not meeting the required criteria. Every year each agency must submit a certification based upon past history.

At times, OPSO has been faced with inadequate performance by state agencies. On those occasions it has accepted certifications conditionally upon the inadequacies in a program being eliminated. The Committee was informed that for the first time OPSO was in the process of rejecting a State certification because of a failure to perform satisfactorily. Based upon past performance, OPSO did not consider the District of Columbia to have an adequate program and was considering not accepting its 1976 certification.

FEDERAL POWER COMMISSION

Pipeline safety considerations are primarily the responsibility of OPSO. That Office must promulgate such rules and regulations as may be necessary to insure the adequacy of the Federal standards for the design, construction, operation and maintenance of gas pipeline facilities used in the transportation of gas.

Occasionally, however, safety consideration arise within the context of an application filed with the Federal Power Commission ("FPC"). Section 7 of the Natural Gas Act provides:

no natural gas company * * * shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities or extensions thereof, unless there is in force with respect to such natural gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations. * * *

The FPC has relied upon this authority, when reviewing an application for a certificate, to impose additional safety restrictions upon the applicant pipeline company. This authority, which predated the passage of the Natural Gas Pipeline Safety Act of 1968, was not affected by that legislation.

OPSO, through the Secretary of Transportation, promulgates general regulations establishing appropriate safety standards. The FPC functions in the context of a specific application and may address an issue of safety unique to that application, and can thus impose safety requirements more stringent than those imposed by OPSO regulations.

This squarely raises the issue of double federal safety standards. The Committee received testimony, however, describing only one instance involving FPC safety standards which were in conflict with those of OPSO. The frequency, if any, of these conflicts other than this one instance is unknown.

RESEARCH AND DEVELOPMENT STUDIES

Contract research and development studies conducted by the Office of Pipeline Safety Operations are directed toward the collection and analysis of technical and operational information which will contribute to improving the Federal pipeline safety program. Information gained from these studies is made available to state regulatory agencies, industry and the public in order to promote pipeline safety technology.

For fiscal year 1977, OPSO requested \$2,750,000 to fund some 10 research and development studies. Accompanying this report is a list of the R&D studies proposed by OPSO for FY-77. The Office of Management and Budget cut OPSO's request by \$2,350,000 to \$400,000. The bulk of the funds (\$2,000,000) was to be spent for studies in the area of offshore pipeline technology. Since the majority of our future domestic gas is expected to come from offshore wells and since two deepwater ports will soon be constructed in the Gulf, these studies on offshore pipeline technology are of great importance. However, OMB allowed only \$125,000 for research and development studies in this area. Also accompanying this report is a breakdown of the budget for OPSO's research and development studies as allowed by OMB.

Based on its experience, investigations and monitoring of operations, OPSO has identified the need for the ten studies proposed for fiscal year 1977. H.R. 12168 authorizes the appropriation of \$4,664,000 for fiscal year 1977, of which \$2,750,000 would go for research and development studies. The information provided by these studies will assist OPSO in carrying out its legislative responsibility and will lead to the improvement of Federal and State pipeline safety programs.

OFFICE OF DIRECTOR

Mr. Cesar DeLeon has been Acting Director of the Office of Pipeline Safety Operations since July 1, 1975. Prior to assuming that position, he had held the permanent position of Deputy Director of the Office. His supervisor in the Department of Transportation, Mr. James T. Curtis, Jr., testified that keeping the position of permanent director vacant for some eight months "presents a peculiar staff situation for myself, which I am not pleased with".

This situation is unsatisfactory because it prevents decisions being made which should be made promptly. The Office itself is not given the respect and cooperation necessary to carry out its functions. The person holding the temporary office is himself deprived of the authority to implement a number of decisions while at the same time he is required to shoulder responsibility for the Office's nonperformance.

The practice of not filling the post of permanent Director for long periods of time antedates Mr. DeLeon. The immediate past Director of the Office was Mr. Joseph C. Caldwell. Mr. Caldwell served in

OPSO from its inception. He held the position of Acting Director from August 1970 to April 1972, a period of some twenty-one months.

At the hearing, Mr. Curtis was instructed to convey to the Secretary of Transportation "the very active displeasure of the Chairman of the Subcommittee" that the situation had continued for as long a time as it had and that there should be a permanent head to the office. Mr. Curtis responded that there have been several people under consideration and that action was being taken to fill this position as quickly as possible. This matter will be reviewed by the Committee in the future.

ANALYSIS OF FAILED FACILITIES

Analysis of failed facilities has been an ongoing OPSO program to determine the causes of pipeline failures. The actual laboratory testing and analysis has been performed by the National Bureau of Standards on a contractual basis. Whereas in fiscal year 1976 OPSO allocated \$150,000 to conduct its analysis of failed facilities, it proposed to reduce this amount by one-half to \$75,000 for 1977. OPSO had requested the same amount of money for fiscal 1977 and that amount had been approved by the Department of Transportation. The Office of Management and Budget, however, reduced the overall budget of the OPSO to the point at which substantial cuts had to be made in existing programs. The Committee does not believe the reduction in the amount of funds for inspection is appropriate.

COMMITTEE CONSIDERATION

The bill (H.R. 12168) was introduced on February 26, 1976, by the Chairman of the Committee on Interstate and Foreign Commerce on behalf of himself and the Chairman of the Subcommittee on Energy and Power. Other bills considered by the Subcommittee dealing with OPSO authorization included H.R. 9903 and H.R. 12242. The Subcommittee met on Friday, March 12, 1976 and received testimony from the National Association of Regulatory Utility Commissioners and from the Department of Transportation, including representatives from the Office of Pipeline Safety Operations.

The Subcommittee conducted markup of H.R. 12168 on March 23 and 24. Amendments were adopted which included a definition of "intrastate pipeline transportation" and revision of the state certification process. A proposed amendment to limit the power of the Federal Power Commission to regulate safety matters in connection with the issuance of certificates of convenience and necessity was rejected.

On March 30, 1976, the Full Committee met to mark up H.R. 12168. Whereas the Subcommittee had considered \$5,100,000 for the fiscal year 1977, it reduced that amount to \$4,664,000. The Committee adopted the bill as reported by the Subcommittee. The bill was ordered favorably reported to the House by voice vote, a quorum of the Committee being present.

REPORT OF THE COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to Clause 2(b)(2) of rule X of the Rules of the House of Representatives, the Committee states that no report has been received from the Committee on Government Operations respecting

oversight findings and recommendations on this matter. The Committee is cognizant of the Report in the last Congress of the Special Subcommittee on Investigations of the House Committee on Interstate and Foreign Commerce entitled "Legislative Issues Relating to the Safety of Liquefied Natural Gas Storage" March 1974. That report which deals with matters considered by the Subcommittee on Energy and Power during the course of its hearing and markup sessions concluded:

1. OPS and FPC are engaged in overlapping regulation of LNG storage safety. This has led to duplication of effort, fragmentation of responsibility and inefficient administration.
2. At present, neither OPS nor FPC possess sufficient funding or manpower to adequately regulate LNG storage safety.
3. The respective functions of OPS and FPC should be separated by consolidating responsibility for LNG storage safety exclusively in OPS; additional resources provided for LNG storage safety should be allocated to OPS. FPC should concentrate on its principal task, economic regulation.
4. OPS, FPC and USCG should jointly agree on measures to alleviate interagency conflicts within the full range of LNG handling and storage matters, and report on their progress to the Subcommittee. If these agencies are unable to agree, Congress should act to resolve the problem.

The Subcommittee on Oversight and Investigations has conducted no oversight investigations during this Congress.

REPORT FROM CBO

The Committee has not received any estimate and comparison respecting budgetary matters relative to the provisions of H.R. 12168 from the Director of the Congressional Budget Office under Section 403 of the Congressional Budget Act of 1974.

AGENCY REPORTS

At the time of the filing of this report, no official agency reports have been received on H.R. 12168. A letter from the Federal Power Commission is appended to the Minority Views.

INFLATIONARY IMPACT STATEMENT

The Committee does not foresee any inflationary impact of a material nature as a result of the provisions of H.R. 12168. Any additional spending as a result of the projected increase in staff should have no material inflationary impact. The increase in the grant-in-aid program is less than one million dollars and should have no discernible impact upon the economy.

COST ESTIMATE

In accordance with Section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-510), the Committee estimates the follow-

ing costs will be incurred in administering the provisions and carrying out the requirements of this bill:

Administration during transitional quarter.....	\$500,000
Administration during fiscal year 1977.....	7,164,000

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italics, existing law in which no change is proposed is shown in roman):

NATURAL GAS PIPELINE SAFETY ACT OF 1968

* * * * *

DEFINITIONS

SEC. 2. As used in this Act—

- (1) * * *
- (8) "Interstate transmission facilities" means the pipeline facilities used in the transportation of gas which are subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act [; and], *except that it shall not include any pipeline facilities within a State which transport gas from an interstate gas pipeline to a direct sales customer within such State purchasing gas for its own consumption;*
- (9) "*intrastate pipeline transportation*" means *pipeline facilities and transportation of gas within a State which are not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act, except that it shall include pipeline facilities within a State which transport gas from an interstate gas pipeline to a direct sales customer within such State purchasing gas for its own consumption; and*
- [(9)](10) "Secretary" means the Secretary of Transportation.

STANDARDS ESTABLISHED

SEC. 3. (a) As soon as practicable but not later than three months after the enactment of this Act, the Secretary shall, by order, adopt as interim [minimum] Federal safety standards for pipeline facilities and the transportation of gas in each State the State standards regulating pipeline facilities and the transportation of gas within such State on the date of enactment of this Act. In any State in which no such standards are in effect, the Secretary shall, by order, establish interim Federal safety standards for pipeline facilities and the transportation of gas in such State which shall be such standards as are common to a majority of States having safety standards for the transportation of gas and pipeline facilities on such date. Interim standards shall remain in effect until amended or revoked pursuant to this section. Any State agency may adopt such addition or more stringent standards for pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act as are not incompatible with the Federal [minimum] standards, but may not adopt or continue in force after the interim standards provided for above become effective any such standards applicable to interstate transmission facilities.

(b) Not later than twenty-four months after the enactment of this Act, and from time to time thereafter, the Secretary shall, by order, establish [minimum] Federal safety standards for the transportation of gas and pipeline facilities. Such standards may apply to the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Standards affecting the design, installation, construction, initial inspection, and initial testing shall not be applicable to pipeline facilities in existence on the date such standards are adopted. Whenever the Secretary shall find a particular facility to be hazardous to life or property, he shall be empowered to require the person operating such facility to take such steps necessary to remove such hazards. Such Federal safety standards shall be practicable and designed to meet the need for pipeline safety. In prescribing such standards, the Secretary shall consider—

- (1) relevant available pipeline safety data;
- (2) whether such standards are appropriate for the particular type of pipeline transportation;
- (3) the reasonableness of any proposed standards; and
- (4) the extent to which such standards will contribute to public safety.

Any State agency may adopt [such] additional or more stringent standards for [pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act as are not incompatible with the Federal minimum standards, but may not adopt or continue in force after the minimum Federal safety standards referred to in this subsection become effective any such] *intrastate pipeline transportation which are compatible with the Federal standards, but may not adopt or continue in force after the Federal standards have become effective any standards applicable to interstate transmission facilities.*

* * * * *

STATE CERTIFICATIONS AND AGREEMENTS

SEC. 5. (a) Except for the fourth sentence of section 3(b), section 12(b), and except as otherwise provided in this section, the provisions of this Act shall not apply to [pipeline facilities and the transportation of gas (not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act) within a State] *intrastate pipeline transportation* when the safety standards and practices applicable to same are regulated by a State agency (including a municipality) which submits to the Secretary an annual certification that such State agency (1) has regulatory jurisdiction over the safety standards and practices of such [pipeline facilities and transportation of gas] *transportation*; (2) has adopted [each Federal safety standard applicable to such pipeline facilities and transportation of gas established under this Act as of the date of the certification: [as of the date of the certification, each Federal safety standard established under this Act which is applicable to such transportation or, with respect to each such Federal safety standard established within one hundred and twenty days before the date of the certification, is taking steps pursuant to State law to adopt such standard]; (3) is enforcing each such standard; and (4) has the authority to require record maintenance, reporting, and inspection substantially the same as are provided under section 12 and the filing

for approval of plans of inspection and maintenance described in section 11; and that the law of the State makes provision for the enforcement of the safety standards of such State agency by way of injunctive and monetary sanctions substantially the same as are provided under sections 9 and 10; except that a State agency may file a certification under this subsection without regard to the requirement of injunctive and monetary sanctions under State law for a period not to exceed five years after the date of enactment of this Act. Each annual certification shall include a report, in such form as the Secretary may by regulation provide, showing (i) name and address of each person subject to the safety jurisdiction of the State agency; (ii) all accidents or incidents reported during the preceding twelve months by each such person involving personal injury requiring hospitalization, fatality, or property damage exceeding \$1,000, together with a summary of the State agency's investigation as to the cause and circumstances surrounding such accident or incident; (iii) the record maintenance, reporting, and inspection practiced by the State agency to enforce compliance with such Federal safety standards, including a detail of the number of inspections made of pipeline facilities by the State agency during the preceding twelve months; and (iv) such other information as the Secretary may require. The report included with the first annual certification need not show information unavailable at that time. If after receipt of annual certification, the Secretary determines that the State agency is not satisfactorily enforcing compliance with Federal safety standards, he may on reasonable notice and after opportunity for hearing, reject the certification or take such other action as he deems appropriate to achieve adequate enforcement including the assertion of Federal jurisdiction. When such notice is given by the Secretary, the burden of proof shall be upon the State agency to show that it is satisfactorily enforcing compliance with Federal safety standards.

[(b) With respect to any pipeline facilities and transportation of gas (not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act) for which the Secretary does not receive an annual certification under subsection (a) of this section, the Secretary is authorized by agreement with a State agency (including a municipality) to authorize such agency to assume responsibility for, and carry out on behalf of the Secretary as it relates to pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act the necessary actions to—]

(b) *With respect to any intrastate pipeline transportation for which the Secretary does not receive a certification under subsection (a) of this section, the Secretary is authorized by agreement with a State agency (including a municipality) to authorize such agency to assume responsibility for, and carry out on behalf of the Secretary as it relates to intrastate pipeline transportation the necessary actions to—*

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

(2) establish procedures for approval of plans of inspection and maintenance substantially the same as are required under section 11;

(3) implement a compliance program acceptable to the Secretary including provision for inspection of pipeline facilities used in such transportation of gas; and

(4) cooperate fully in a system of Federal monitoring of such compliance program and reporting under regulations prescribed by the Secretary.

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

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

(2) Funds authorized to be appropriated by section 15(b) of this Act shall be allocated among the several States for payments to aid in the conduct of pipeline safety programs in accordance with paragraph (1) of this section.

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

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

(d) A certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety [standard for pipeline facilities or the transportation of gas, not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act, established] *standards established for intrastate pipeline transportation* pursuant to this Act after the date of such certification. The provisions of this Act shall apply to any such new or amended Federal safety standard until the State agency has adopted such standard and has submitted an appropriate certification in accordance with the provisions of subsection (a) of this section.

(e) Any agreement under this section may be terminated by the Secretary if, after notice and opportunity for a hearing, he finds that the State agency has failed to comply with any provision of such agreement. Such finding and termination shall be published in the Federal Register, and shall become effective no sooner than fifteen days after the date of publication.

* * * * *

APPROPRIATIONS AUTHORIZED

SEC. 15. (a) There are authorized to be appropriated \$2,000,000 for the fiscal year ending June 30, 1975, [and] \$500,000 for the period beginning July 1, 1976, and ending September 30, 1976, and \$4,664,000 for the fiscal year ending September 30, 1977, \$2,850,000 for the fiscal year ending June 30, 1976, for the purpose of carrying out the provisions of this Act, except that the funds appropriated pursuant to this subsection shall not be used for Federal grants-in-aid.

(b) For the purpose of carrying out the provisions of section 5(c) of this Act, there are authorized to be appropriated for Federal grants-in-aid, \$1,800,000 for the fiscal year ending June 30, 1975, [and] \$2,500,000 for the fiscal year ending June 30, 1976, and \$2,500,000 for the fiscal year ending September 30, 1977.

* * * * *

APPENDIX

THE OFFICE OF PIPELINE SAFETY OPERATIONS

Funds for the transition quarter

Salaries and expenses	\$275,000
Contract research and development	225,000
Grant-in aid program	0
Total funds	500,000

NOTE.—No additional funds are required for the Grant-In-Aid Program for the period July 1, 1976 to September 30, 1976. Fiscal year 1976 appropriated funds are used to fund the States' pipeline safety programs for the calendar year 1976, which covers the period of the transition quarter.

THE OFFICE OF PIPELINE SAFETY OPERATIONS FISCAL YEAR 1977 BUDGET

	Actual fiscal year 1976	OPSO re- quest to DOT	DOT request to OMB	President's budget	As proposed in H.R. 12168
Number of personnel	40	58	50	50	160
Funds for:					
Salaries and expenses	\$1,202,000	\$2,019,000	\$1,759,000	\$1,243,000	\$1,914,000
Contract R. & D. studies	400,000	2,750,000	900,000	400,000	2,750,000
Grant-in-aid program	1,650,000	2,500,000	2,500,000	2,500,000	2,500,000
Total funds	3,252,000	7,269,000	5,159,000	4,143,000	7,164,000

† There are no provisions in H.R. 12168 regarding the number of personnel to be hired by OPSO. However, the funds authorized by H.R. 12168 would permit OPSO to employ 60 people.

THE OFFICE OF PIPELINE SAFETY OPERATIONS—AUTHORIZATIONS FOR APPROPRIATIONS

	Fiscal year	Amount authorized
Public Law 90-481	1969	\$500,000
Do.	1970	2,000,000
Do.	1971	4,000,000
Public Law 92-401	1972	3,000,000
Do.	1973	3,800,000
Do.	1974	5,000,000
Public Law 93-403, salaries, expenses, and contract R. & D. studies	1975	2,000,000
Grant-in-aid program		1,800,000
Total authorization		3,800,000
Public Law 93-403, salaries, expenses, and contract R. & D. studies	1976	2,850,000
Grant-in-aid program		2,500,000
Total authorization		5,350,000
As proposed in H.R. 12168, salaries, expenses, and contract R. & D. studies	1977	4,664,000
Grant-in-aid program		2,500,000
Total authorization		7,164,000

THE OFFICE OF PIPELINE SAFETY OPERATIONS—APPROPRIATIONS FOR THE GRANT-IN-AID PROGRAM

	Fiscal year	Amount appropriated
Public Law 92-74.....	1971	\$500,000
Public Law 92-398.....	1972	750,000
Public Law 93-98.....	1973	875,000
Public Law 93-391.....	1974	1,175,000
Public Law 94-134.....	1975	1,200,000
	1976	1,650,000

Fiscal year 1977 research and development studies

<i>Title of study</i>	<i>Estimated cost</i>
(a) Analysis of failed facilities.....	\$150,000
(b) Evaluate pipeline coating materials.....	200,000
(c) Characteristics of liquefied natural gas vapor cloud dispersion.....	300,000
(d) Development of additional training programs for Federal, State, and industry personnel.....	100,000
(e) Investigation into the areas of offshore pipeline technology:	
1. Safety equipment.....	300,000
2. Safety practices and procedures.....	300,000
3. Pipelaying techniques.....	500,000
4. Inspecting and monitoring.....	300,000
5. Offshore natural hazards.....	300,000
6. Underwater pipe repair.....	300,000
Total estimated costs.....	2,750,000

NOTE.—OPSO requested \$2,750,000 for fiscal year 1977 to contract for the R. & D. Studies listed above. H.R. 12168 authorizes the \$2,750,000 needed to contract for these studies.

Fiscal year 1977 research and development studies as provided for in the President's budget

<i>Title of study</i>	<i>Dollars budgeted</i>
(a) Analysis of failed facilities.....	\$75,000
(b) Characteristics of liquefied natural gas vapor cloud dispersion.....	200,000
(c) Investigation into the areas of offshore pipeline technology.....	125,000
Total dollars budgeted.....	400,000

NOTE.—OMB cut OPSO's request for funds for R. & D. Studies by \$2,350,000. The biggest cuts were the funds for studies on Offshore Pipeline Technology. OPSO requested \$2,000,000 and OMB budgeted \$125,000.

THE OFFICE OF PIPELINE SAFETY OPERATIONS
STATISTICS ON SIGNIFICANT PIPELINE FAILURES

Calendar year	Natural gas pipelines ¹		Liquid pipelines ²	
	Number of significant failures	Number of deaths	Number of significant failures	Number of deaths
1970.....	1,019	22	347	4
1971.....	1,287	45	308	1
1972.....	1,293	54	309	8
1973.....	1,364	59	273	7
1974.....	1,477	24	256	10
1975.....	1,373	14		

¹ There are approximately 1,430,000 miles of natural gas pipelines within the boundaries of the United States.

² There are approximately 240,000 miles of liquid pipelines transporting crude oil and other liquid petroleum products liquefied petroleum gas, liquefied anhydrous ammonia, and other hazardous products.

THE OFFICE OF PIPELINE SAFETY OPERATIONS
NUMBER OF PERSONNEL

Fiscal year:	Washington office	Regions	Total
1969.....	20	0	20
1970.....	22	3	25
1971.....	24	3	27
1972.....	23	3	26
1973.....	23	3	26
1974.....	22	3	25
1975.....	26	15	41
1976.....	25	15	40

Note: The funds authorized by H.R. 12168 would permit OPSO to hire 20 additional people for fiscal year 1977, thus increasing the total OPSO staff to 60. Possibly 10 of these new people would be placed in the regions.

MINORITY VIEWS

H.R. 12168 would authorize appropriations of \$4,664,000 for the fiscal year ending September 30, 1977, an increase of \$1,814,000 over fiscal year 1976 authorizations. The bulk of this additional money is to go to salaries and other expenses associated with the expansion of the staff of the Office of Pipeline Safety from its present size of 40 to 60 in just one year on the theory that these people are needed to inspect pipeline facilities coming within the jurisdiction of OPS.

Although the Office of Pipeline Safety has been given additional responsibility since its establishment in 1968, its staff already has increased by 100% from 1969 to 1975. With the staff increase authorized by this bill, the OPS will have tripled in size in just eight years. These figures are nothing short of remarkable in view of the fact that under the Natural Gas Pipeline Safety Act, the major responsibility for pipeline inspection was, presumably, to be reposed in the States.

In comparison with most other federal programs, the total amount of dollars involved here is relatively small. However, even though the sum is small in absolute terms, it is nonetheless significant because its inexorable growth sets a dangerous precedent at a time when Congress should be exercising fiscal responsibility. It is disappointing to see authorization increases of a magnitude of 64% when there is only limited justification for any increase at all.

It is encouraging that the bill contains several amendments to the Natural Gas Pipeline Safety Act which would make administration of the Act easier. Most notable of these changes is a provision which would revise the State certification process to allow certification of a State agency even though it has not adopted each and every federal safety standard established within 120 days before the date of certification. The primary reason that this amendment is necessary is that many state agencies have difficulty completing the administrative process necessary for adoption of newly established or amended federal standards in time to meet the existing requirement that all federal standards be adopted by the State agency as of the date of certification.

Not included in these amendments, however, is a provision which was offered in the Subcommittee which would have amended the Pipeline Safety Act to clarify the intent of Congress that the standards promulgated by the Office of Pipeline Safety are the only pipeline safety standards an interstate pipeline operator need meet. Since enactment of the Pipeline Safety Act, there has been some confusion as to whether the Federal Power Commission also possesses some jurisdiction to regulate safety matters in connection with the issuance of certificates of convenience and necessity, or whether the Office of Pipeline Safety's regulatory authority is exclusive.

Clarification of the regulatory authority between the OPS and FPC is necessary and was recommended by the Special Subcommittee on Investigations of the House Committee on Interstate and Foreign

Commerce in the 93rd Congress in its report, "Legislative Issues Relating to the Safety of Liquefied Natural Gas Storage," March, 1974. It should also be noted that Richard L. Dunham, Chairman, Federal Power Commission, stated in a March 22, 1976, letter to Chairman Dingell that he would welcome a legislative clarification of the safety jurisdiction of the respective agencies. A copy of this letter is attached to these views. Unfortunately, the legislation still leaves the question in the air and invites confusion among those who must comply with federal pipeline safety standards as well as administrators at the Federal Power Commission and the Office of Pipeline Safety.

CLARENCE J. BROWN.
JOHN Y. McCOLLISTER.
NORMAN F. LENT.
CARLOS J. MOORHEAD.

FEDERAL POWER COMMISSION,
Washington, D.C., March 22, 1976.

HON. JOHN D. DINGELL,
Chairman, Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CHAIRMAN DINGELL: This letter is in response to your request of March 16, 1976, for my views on H.R. 12242, a bill to amend the Natural Gas Pipeline Safety Act of 1968.

Section 6 of H.R. 12242 would preclude the Federal Power Commission from requiring that applicants for certificates of convenience and necessity comply with any safety standard for pipeline facilities or the transportation of gas other than those prescribed by the Secretary of Transportation. This provision would resolve the problem of overlapping jurisdiction over safety regulation of natural gas transportation between the Federal Power Commission and the Department of Transportation.

Under the provisions of the Natural Gas Act the Federal Power Commission has long exercised authority over pipeline safety and conditioned the grant of certificates for the public convenience and necessity upon the applicant's compliance with certain safety requirements. With the enactment of the Natural Gas Pipeline Safety Act in 1968, regulatory authority over pipeline safety was placed in the Department of Transportation. The Act did not specify whether this regulatory authority was to be exclusive or whether the Federal Power Commission could still add to certificates of public convenience and necessity safety standards beyond those established by the Department of Transportation. I welcome a legislative clarification of the safety jurisdiction of the respective agencies.

I believe that it is better public administration for the responsibility for pipeline safety to be lodged in one agency. As the Department of Transportation has primary responsibilities with respect to the safe transportation of hazardous materials, I have no objection to exclusive regulation of safety standards by DOT's Office of Pipeline Safety Operations.

The Federal Power Commission and Department of Transportation have in the past coordinated on the reasonableness and practicability of proposed safety regulations. We expect to continue this cooperation and to keep the Office of Pipeline Safety Operations informed of standards which we consider necessary for pipeline safety. In particular the Commission can request that DOT adopt different or additional safety standards for a particular project where we think such changes are necessary.

Sincerely yours,

RICHARD L. DUNHAM,
Chairman.

DISSENTING VIEWS

This Bill provides an increase under Section 2 (1) of 64% in authorization and there is no need for this increased financing. Most of the work is done by the States and Section 2(2) which covers the States' work and the States' participation remains unchanged.

Under Section 2(1), this Bill provides for an increase in authorization of \$1.814 million. This is an increase of 64% over the amount covered in the past allocation.

The Office of Pipeline Safety has an excellent record of safety on the job. The record of deaths from accidents during 1975 was only 14; in 1974, there were only 24 deaths, and in 1973, there were 59 deaths. This shows a continued record of improvement. The statistics are an amazing tribute to efficiency, when one considers that the regulatory responsibility includes 1.4 million miles of pipeline.

The regulatory responsibility under this Act covers more than 2,100 operators of the Nation's gas pipeline network of approximately 1.43 million miles which includes some 70,000 miles of gathering lines, 265,000 miles of some transmission lines, and 660,000 miles of distribution mains plus an additional 440,000 miles of gas service lines.

Collectively, these lines transport more than one-third of the Nation's energy supply which serves approximately 44.2 million customers.

This additional funding under H.R. 12168 would simply mean more Bureaucracy, with more Bureaucrats interfering with the successful operation of Private Industry, which already has every incentive to maintain top safety. All these additional Bureaucrats would provide is more paperwork, more regulations, and more time-consuming, needless Government intervention.

JAMES M. COLLINS.

(23)

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NATURAL GAS PIPELINE SAFETY ACT
AMENDMENTS OF 1976

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE

ON

S. 2042

TO AMEND AND STRENGTHEN THE NATURAL GAS PIPELINE
SAFETY ACT OF 1968, AND TO AUTHORIZE ADDITIONAL
APPROPRIATIONS THEREFOR



MAY 13, 1976.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1976

CONTENTS

	Page
Summary and description.....	1
Background and need.....	3
Section-by-section analysis	9
Changes in existing law.....	11
Estimated costs	20
Text of S. 2042, as reported.....	20
Agency comments	24

(III)

NATURAL GAS PIPELINE SAFETY ACT AMENDMENTS
OF 1976

MAY 13, 1976.—Ordered to be printed

Mr. HARTKE, from the Committee on Commerce
submitted the following

REPORT

[To accompany S. 2042]

The Committee on Commerce to which was referred the bill S. 2042, to amend and strengthen the Natural Gas Pipeline Safety Act of 1968, and to authorize additional appropriations therefor, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amended title and recommends that the bill, as amended, do pass.

SUMMARY AND DESCRIPTION

The purpose of this legislation is to authorize additional appropriations to implement the Natural Gas Pipeline Safety Act of 1968 and to make certain changes and improvements which are designed to provide greater protection to the public from hazards associated with natural gas pipelines.

The amendments would improve program administration by including a definition for the term "intrastate pipeline transportation" to avoid referring throughout the act to intrastate pipeline transportation as that not subject to the jurisdiction of the Federal Power Commission (FPC) under the Natural Gas Act. Also included within the definition of intrastate pipeline transportation would be those pipeline facilities which transport gas from an interstate pipeline to a direct sales customer purchasing gas for its own consumption.

The legislation would also provide that among the standards which the Secretary may establish under the Natural Gas Pipeline Safety Act of 1968 are standards relating to emergency plans and procedures.

With respect to the Technical Pipeline Safety Standards Committee created under section 4 of the act, S. 2042 would require that the committee meet at least twice during each calendar year.

The legislation would also revise the State certification process to allow certification by a State agency, although it has not adopted each Federal safety standard established within 120 days of the date of certification. Additionally, an amendment to section 5 of the act would require States, which are certified under this act, to encourage and promote programs designed to prevent natural gas pipelines and sub-surface utility equipment from being damaged as a result of excavation.

Section 5 of the Natural Gas Pipeline Safety Act would be further amended by increasing the amount of Federal contribution to State efforts to enforce Federal natural gas pipeline safety standards. S. 2042 would authorize the Secretary to make available to the States 100 percent (but not to exceed \$60,000 for each State) of the cost of up to three full-time inspectors. It would continue the existing authority of the Secretary of Transportation to pay up to 50 percent of the cost of such other personnel, equipment, and activities of a State agency reasonably required under a certification or an agreement with the State to act as an agent of the Secretary with respect to interstate transmission lines. The new authority to make 100 percent payments for inspectors would require the State to maintain its contribution under a certification or an agreement at a level equal to or in excess of the average of the State's contribution for the 2 fiscal years preceding the fiscal year for which the State has made application for 100 percent payments.

S. 2042 also would clarify the jurisdictional dispute between the Department of Transportation (DOT) and the FPC would provide for uniform, consistent Federal regulation of interstate transmission facilities. An amendment to section 7 of the Natural Gas Pipeline Safety Act would make clear that the DOT's pipeline safety standards are the only Federal pipeline safety standards that an interstate pipeline operator is required to meet. It would provide that the FPC may not attach any condition to the issuance of a certificate of public convenience and necessity, or to the exercise or rights granted under such a certificate, which require the applicant to comply with any safety standards for pipeline facilities or for the transportation of gas, other than the standards prescribed by the Secretary of Transportation.

The legislation would amend section 14 of the Natural Gas Pipeline Safety Act which currently requires the Secretary to prepare and submit to the President for transmittal to Congress on March 17 of each year, a comprehensive report on the administration of the Natural Gas Pipeline Safety Act. The amendment would require the Secretary to include in his report a full compilation of natural gas pipeline leaks occurring during the year for which the report has been prepared.

The act would be further amended by adding two new sections. One section would require each person who engages in the transportation of natural gas, in accordance with regulations prescribed by the Secretary, to conduct a program to educate the public on the hazards associated with gas leaks and on the importance of reporting gas odors and leaks to the gas pipeline owner. The Secretary is authorized to develop materials suitable for use in such a consumer education program.

The legislation would also add a new section authorizing citizens' civil actions. Under this authority, any person could commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, whenever such action constitutes a case or controversy against any person who is alleged to be in violation of a provision of the Natural Gas Pipeline Safety Act or an order or regulation issued under the act. No civil action may be commenced prior to 60 days after the moving party has given notice of the alleged violation to the Secretary and to any alleged violator or if the Attorney General has commenced and is diligently pursuing judicial proceedings or the Secretary has commenced and is diligently pursuing administrative proceedings with respect to such alleged violations. The Secretary of Transportation or the Attorney General may intervene as a matter of right, and the court, may in the interest of justice, award the costs of suit, including reasonable attorneys fees and reasonable expert witnesses fees to a prevailing plaintiff or in some circumstances, to a prevailing defendant.

Finally, the legislation would authorize to be appropriated for implementation of the Natural Gas Pipeline Safety Act, other than the State grant-in-aid program not to exceed \$2,850,000 for the fiscal year ending June 30, 1976; not to exceed \$650,000 for the transitional fiscal period ending September 30, 1976; not to exceed \$4,500,000 for the fiscal year ending September 30, 1977; and not to exceed \$5 million for the fiscal year ending September 30, 1978. The legislation would also authorize for the purpose of carrying out section 5(c) of the act relating to the State grant-in-aid program, not to exceed \$2,500,000 for the fiscal year and fiscal transition period ending September 30, 1976; not to exceed \$4,500,000 for the fiscal year ending September 30, 1977; and not to exceed \$4,500,000 for the fiscal year ending September 30, 1978.

BACKGROUND AND NEED

The Office of Pipeline Safety Operations (OPSO) of the Materials Transportation Bureau has responsibility for safety regulation of all natural gas pipelines which are subject to the requirements of the Natural Gas Pipeline Safety Act of 1968. This involves more than 2,100 operators of the Nation's gas pipeline network of approximately 1.43 million miles. According to the DOT, these gas pipeline systems transport more than one-third of the Nation's energy supply while serving approximately 44.2 million customers. Thus, an effective natural gas pipeline safety program at both the State and Federal levels is necessary to protect the public from this great risk of exposure to a gas pipeline disaster.

The safety record for distribution, transmission, and gathering lines has been mixed in recent years. In 1970 there were 1,019 failures in distribution, transmission, and gathering lines. In 1974, the number of failures had increased to 1,477. Since 1970, the annual number of injuries ranged from a low of 218 in 1970 to a high of 389 in 1971. In 1974, there were 334 injuries. Likewise, the number of fatalities ranged from a low of 22 in 1970 to a high of 45 in 1971. In 1974, there were 24 fatalities. While there has been a downward trend in the number of

fatalities and injuries, the National Transportation Safety Board (NTSB) that there is no reason to believe that this trend is anything other than random. In fact, since the number of pipeline failures has increased 45 percent from 1970 to 1974, there is cause for concern.

The OPSO has begun to make some progress in resolving the problems which have concerned the Committee. OPSO has promulgated revisions to appendixes A and B which consist of consensus standards originally incorporated by reference into the Federal regulations. Those regulations, which include specifications for manufacturing, testing, and marking pipe, flanges, fittings, and valves were sorely in need of upgrading. OPSO has also published a notice of proposed rulemaking for offshore pipeline facilities and published rulemaking procedures needed to advise the public and to govern the conduct of OPSO personnel.

But the Committee's oversight hearings revealed that there are still several problems sorely in need of OPSO regulatory attention. Of primary concern to the Committee is the failure of the OPSO to upgrade its requirements for liquefied natural gas (LNG) facilities. The predecessor of OPSO, the Office of Pipeline Safety (OPS), adopted the present liquid natural gas regulation in October 1972, by incorporating by reference a regulation of the National Fire Protection Association—"NFPA 59A—Storage and Handling of Liquefied Natural Gas, 1971 edition." In the preamble which accompanied the adoption of NFPA 59A, the Office of Pipeline Safety stated that it was "adopting the NFPA standard only as an interim measure while developing permanent regulations specifically applicable to LNG facilities." Early in 1974, OPS gave a consulting contract to Arthur D. Little, Inc., to study LNG hazards and assess the adequacy of the LNG safety standards developed by governmental entities and professional safety societies. The final report was delivered to OPS in December 1974. Since that time, there has been silence from the OPSO in upgrading the LNG facilities requirements. Due to the anticipated increase in the transportation of liquefied natural gas, the Committee considers it to be of the highest priority for OPSO to upgrade its LNG facilities requirements. The Committee may consider legislation to upgrade LNG requirements if the OPSO does not act soon.

The compliance and enforcement activities of OPSO also continue to be of concern to the Committee. Since the enactment of the Natural Gas Pipeline Safety Act in 1968 through July 1975, the DOT had brought only 68 enforcement actions (that is, a failure to comply with the regulations which subjects a gas pipeline operator to a penalty). In a 7-year period, a total of only \$93,510 in fines had been assessed and only \$2,150 had been collected (the balance was still pending, had been compromised, or was no longer sought). Even more surprising was the fact that of the 68 enforcement actions initiated, more than 61 percent of those actions were for failure to file an annual report. Clearly, with this kind of an enforcement effort by the OPSO, it would appear that the Nation is relying primarily on the good faith of gas pipeline operators to comply with the Federal standards.

Jurisdictional disputes between the DOT and other Federal agencies still continue to plague the OPSO. One such dispute would be resolved statutorily by S. 2042. The dispute stems from the fact that the FPC

regulates the interstate sale of natural gas for resale through a certification process. In so doing, it has from time to time imposed safety conditions on those natural gas facilities over which it has authority. As a result, natural gas facility operators are currently being regulated for safety by both the DOT and the FPC under different standards. This legislation would provide that the FPC may not attach to the issuance of a certificate of public convenience and necessity or to the exercise of rights granted thereunder, a condition that the applicant comply with safety standards for pipeline facilities or the transportation of gas, other than those prescribed by the Secretary of Transportation.

The second jurisdictional dispute has not yet been resolved. This dispute between the DOT and the Department of the Interior, has occurred with regard to oil and gas pipelines on the Outer Continental Shelf. Acting under the Outer Continental Shelf Lands Act, the Department of Interior has proposed to regulate the safety of offshore pipelines and related platforms in the Gulf of Mexico and other areas. In its seventh annual report on the administration of the Natural Gas Pipeline Safety Act of 1968, the DOT indicated that the two Departments were conducting discussions to eliminate differences in carrying out respective safety responsibilities on the Outer Continental Shelf. However, this jurisdictional dispute has not yet been resolved. The Committee urges the two Departments to resolve their differences or else the Congress will be forced to provide a statutory resolution of the dispute.

The adequacy of the OPSO's regulations relating to emergency plans is also of concern to the Committee. In its testimony at the oversight hearings, the National Transportation Safety Board (NTSB) noted that in some of the accidents the NTSB investigated, gas company personnel failed to take the proper action in emergency situations. The Board said:

In at least 5 of 20 accidents reported, we found that company personnel were on the scene, in response to reported gas leaks, for varying periods of time before the explosion occurred. In none of these cases was the flow of gas turned off, and in 4 of the accidents nearby buildings were not checked for the presence of gas before the explosions. Company emergency personnel were on the scene in these cases from 10 to 90 minutes before the explosion. As a result of these accidents, 19 persons died.

The Committee urges the OPSO to evaluate, and upgrade where appropriate, its regulations regarding emergency plans, particularly with respect to the responsibilities of employees at the site of a gas leak. Among the issues the OPSO should consider is the need for instructions to employees on when and how to: (1) search for gas migration to determine the full extent of the area of hazard; (2) evacuate premises within the area of hazard; (3) ventilate affected premises; (4) eliminate sources of ignition within the area of hazard; (5) stop the flow of gas to the site of the emergency; (6) notify company supervisory personnel as to the kind and degree of emergency; (7) seek assistance from public officials such as fire and police officers; and (8) block off the area of hazard and reroute traffic.

The siting of liquefied natural gas facilities is another problem which the Committee plans to address in the near future. The issue which this Nation faces is whether LNG facility sites should be determined by governmental entities or whether industry should select its own sites subject to Government performance or design standards. The Port of Rotterdam has not only opted to select the sites for LNG facilities, but it also has segregated these sites from all other port facilities. The Department is evaluating the policy relating to the siting of LNG facilities and it is anticipated that a decision on this matter will be made in the near future. This is a matter of prime interest and concern to the Committee and an expeditious resolution of this question is needed.

The provisions of S. 2042 authorizing appropriations reflects the Committee's belief that there is a need to dedicate greater resources to natural gas pipeline safety. Information submitted by the Department of Transportation to the Committee indicates that the Materials Transportation Bureau, requested \$2,750,000 for transportation planning, research, and development for the OPSO. The DOT reduced this amount to \$900,000 in its request to the Office of Management and Budget. The President's budget further decreased the amount of appropriations available for this purpose to \$400,000—less than one-sixth that requested by the Materials Transportation Bureau. Likewise, the bureau had requested 58 staff positions for OPSO; the DOT requested 50 positions and the budget submitted to Congress allocates only 40 positions.

The provision of S. 2042 requiring the Technical Pipeline Safety Standards Committee to meet at least twice during each calendar year is in response to the failure of the Secretary to convene regular meetings of the committee. According to information submitted to the Committee, the Secretary of Transportation sought the advice of the Technical Committee on only an infrequent basis since its creation. In 1970, the committee met three times; in 1971, 1972, 1974, and 1975, the committee met only once. In 1973, the Technical Committee failed to meet at all. This amendment is designed to insure that the Secretary consults with the Technical Committee on a regular basis.

S. 2042 seeks to improve program administration by including a definition for the term "intrastate pipeline transportation" to avoid referring throughout the act to intrastate pipeline transportation as that not subject to the jurisdiction of the FPC under the Natural Gas Act. Also included within the definition of intrastate pipeline transportation would be those pipeline facilities which transport gas from an interstate pipeline to a direct sales customer purchasing gas for its own consumption. The Supreme Court has held that such facilities are subject to the jurisdiction of the FPC. Many States had regulated direct sales lines prior to the Supreme Court's decision, and this amendment would clarify that they may continue to do so without Federal preemption under the Natural Gas Pipeline Safety Act.

Another provision of S. 2042 would revise the State certification process to allow certification by a State agency, although it has not adopted each Federal safety standard established within 120 days before the date of certification. Many State agencies have difficulty completing the administrative process necessary for adoption of newly established or amended Federal standards in time to meet the existing requirement that all Federal standards be adopted by the State agency

as of the date of certification. The proposed change would alleviate this administrative burden.

The bill also would authorize additional Federal resources to be paid to the States for the purpose of hiring up to three full-time inspectors. Presently, some States are putting forth a limited effort in insuring the compliance of gas pipelines with the Federal gas pipeline safety standards. The following is a summary of the expenditure, by State, for gas pipeline safety activities:

CALENDAR YEAR 1974

State	Total gas PL safety expenses	Federal reimbursement	Percent of total represented by Federal Funds	Additional Federal funds needed to provide 50 percent funding
Alabama	\$133,109.00	\$58,100.00	43	\$8,455.00
Alaska	20,426.65	10,213.32	50	0
Arizona	28,746.56	14,373.28	50	0
Arkansas	39,723.30	24,861.64	50	0
California	80,486.05	40,243.03	50	0
Colorado	48,097.54	24,048.77	50	0
Connecticut	20,575.00	10,287.00	50	0
Delaware ¹	5,000.00	0	0	0
Florida ¹	165,000.00	0	0	0
Georgia	108,324.80	54,162.40	50	0
Hawaii	9,570.00	4,785.00	50	0
Idaho	32,214.00	10,107.00	50	0
Illinois	80,543.86	40,271.93	50	0
Indiana	79,558.90	36,627.00	46	3,153.00
Iowa	24,286.52	12,143.26	50	0
Kansas	48,914.52	24,457.26	50	0
Kentucky	74,977.64	37,488.82	50	0
Louisiana ¹	126,456.00	0	0	0
Maine	33,188.00	16,594.31	50	0
Maryland	10,493.09	5,246.55	50	0
Massachusetts ¹	19,500.00	0	0	0
Michigan	142,026.00	66,860.00	47	4,153.00
Minnesota	49,425.00	24,712.00	50	0
Mississippi	80,788.60	40,394.30	50	0
Missouri ¹	69,503.03	0	0	0
Montana	26,288.92	13,144.46	50	0
Nebraska	50,824.85	25,412.42	50	0
Nevada	25,362.00	12,681.00	50	0
New Hampshire	20,520.49	10,260.25	50	0
New Jersey ²	0	0	0	0
New Mexico ¹	80,000.00	0	0	0
New York	604,963.00	170,212.99	28	132,268.51
North Carolina	50,586.00	25,293.00	50	0
North Dakota	4,000.00	0	0	0
Ohio	72,621.90	36,310.95	50	0
Oklahoma ¹	34,301.00	0	0	0
Oregon	33,845.30	16,922.65	50	0
Pennsylvania	101,667.81	50,833.90	50	0
Rhode Island	42,978.00	21,489.00	50	0
South Carolina ¹	85,000.00	0	0	0
South Dakota	9,179.29	4,589.64	50	0
Tennessee	122,823.58	55,858.00	45	5,553.00
Texas ¹	55,418.00	0	0	0
Utah	23,282.52	11,225.00	48	416.00
Vermont	31,697.00	11,940.00	37	3,900.00
Virginia ¹	38,000.00	0	0	0
Washington	29,091.46	10,465.00	35	4,080.00
West Virginia	98,396.80	48,050.00	49	148.00
Wisconsin	72,281.59	35,754.00	49	387.00
Wyoming	52,806.00	26,403.00	50	0
District of Columbia ¹	1,500.00	0	0	0
Puerto Rico ¹	24,040.00	0	0	0

¹ Did not request Federal funding.

² Does not participate in OPSO program.

The Committee further learned that 13 States do not have even a single full-time inspector enforcing the gas pipeline regulations.

The purpose of allowing the Secretary to pay 100 percent of the cost of hiring up to three full-time inspectors is to insure adequate enforcement and compliance efforts in the Federal-State gas pipeline safety partnerships.

Another provision of S. 2042 which is designed to assist the Department in its enforcement and compliance activities is one which authorizes citizens' civil actions. Under this provision, any person may commence a civil action for mandatory or prohibitive injunctive relief, whenever such action constitutes a case or controversy against any person who is alleged to be in violation of a provision of this act or an order or regulation issued under the act. This provision would not supplant the Secretary's efforts for enforcement and compliance. Before a person may file such a civil action, he must inform the Secretary of his intention to do so. If the Attorney General has commenced and is diligently pursuing judicial proceedings or the Secretary has commenced and is diligently pursuing administrative proceedings with respect to the alleged violation, then the person may not commence the civil action.

The legislation would allow the court, in the interest of justice, to award the costs of suit, including reasonable attorneys' fees and reasonable expert witnesses' fees to a prevailing plaintiff or, if the action is unreasonable, frivolous, or without merit, to a prevailing defendant.

The purpose of the provision allowing the award of attorneys' fees is to insure effective enforcement and compliance with the Natural Gas Pipeline Safety Act. In determining whether it is in the interest of justice to award such costs, there are various factors which the court should consider, including but not limited to the resources of the party or parties seeking such costs and the benefit which has accrued to the public by the litigation.

The standard for awarding costs to a prevailing defendant is not the same as for a plaintiff because, if it were, the risk of bringing suit under these sections could be so great as to frustrate the purposes of this section. However, in exceptional circumstances, costs might be awarded to defendants where they must "defend against unreasonable, frivolous, meritless, or vexatious actions * * *", *United States Steel Corp. v. United States*, 385 F. Supp. 346, 348 (W.D. Pa. 1974). Where plaintiff's proceeding is brought in good faith or on the advice of competent counsel, costs would ordinarily be denied to a prevailing defendant. *Richardson v. Hotel Corporation of America*, 332 F. Supp. 519 (E.D. La. 1971), aff'd 468 F. 2d 951 (5th Cir. 1972).

Reasonable attorneys' fees should not be reduced merely because the attorneys are salaried employees of public interest or foundation-funded law firms. Nor should the fee award be limited to the amount actually paid or owed to an attorney. It may well be that counsel will agree to take a case because counsel believes the case furthers a public interest and litigation of this sort should not have to rely on the charity of counsel. The fee should represent the reasonable value of the services rendered, taking into account all the surrounding circumstances, including, but not limited to, the time and labor required on the case, the benefit to the public, the skill demanded by the novelty or complexity of the issues, and the incentive factor.

S. 2042 would amend section 5 of the Natural Gas Pipeline Safety Act by requiring States which receive certification under the act to encourage and promote programs designed to prevent natural gas pipelines and subsurface utility equipment from being damaged as a result of excavation. The Committee determined during its hearings

that excavation damage is the largest single cause of pipeline accidents. In fact, in recent years excavation has caused more than 40 percent of all gas pipeline accidents and 30 percent of liquid pipeline accidents. This provision does not specify a specific program or approach for reducing excavation damage. Instead, the States are encouraged to promote programs which best meet the particular needs of the specific State.

SECTION-BY-SECTION ANALYSIS

Section 1

The short title of this bill is the "Natural Gas Pipeline Safety Act Amendments of 1976".

Section 2

Section 2(a) of the Natural Gas Pipeline Safety Act of 1968 would be amended by providing that the definition of "interstate transmission facilities" does not include any facility which transports gas from an interstate gas pipeline to a direct sales customer purchasing gas for its own consumption. It further would modify section 2 of the act by incorporating a definition of "intrastate pipeline transportation." Such term would be defined to mean pipeline facilities and transportation of gas within a State which are not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act, except that such terms shall include pipeline facilities within a State which transports gas from an interstate pipeline to a direct sales customer within such State purchasing gas for its own consumption.

Section 3

Section 3(b) of the Natural Gas Pipeline Safety Act of 1968 would be amended by providing that among the standards which the Secretary may promulgate under this act are standards relating to emergency plans and procedures.

The last sentence of section 3(b) would be rephrased as a result of the new definition of intrastate pipeline transportation so as to avoid referring to intrastate pipeline transportation as that not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act.

Section 4

Section 4 of the Natural Gas Pipeline Safety Act of 1968 would be amended to require that the Technical Pipeline Safety Standards Committee meet at least twice during each calendar year.

Section 5

Section 5 of the Natural Gas Pipeline Safety Act of 1968 would be modified due to the inclusion in the act of a definition for "intrastate pipeline transportation," thus avoiding the necessity of referring throughout the section to intrastate pipeline transportation as that not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act. Section 5 of the act would be further amended by revising the State certification process to allow certification by a State agency although it has not adopted each Federal safety standard established within 120 days before the date of certification.

This section would also authorize the Secretary to reimburse a State for the entire cost of up to three full-time inspectors. In order for a State to receive such funding, the State must contribute funds equal to or exceeding the average level of expenditure by the State on its gas pipeline safety program for the last 2 fiscal years preceding the fiscal year for which the State agency is making application for payments.

Section 6

Section 7 of the Natural Gas Pipeline Safety Act would be amended to provide that the Federal Power Commission may not attach any condition to the issuance of a certificate of public convenience and necessity, or to the exercise of rights granted under such a certificate, if such condition requires the applicant to comply with any safety standards for pipeline facilities or for the transportation of gas other than safety standards prescribed by the Secretary of Transportation.

Section 7.

Section 11 of the Natural Gas Pipeline Safety Act of 1968 would be rephrased due to the incorporation of a definition for "intrastate pipeline transportation," thus avoiding the need to refer throughout the section to intrastate pipeline transportation as that not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act.

Section 8

Section 14 of the Natural Gas Pipeline Safety Act of 1968 would be amended to require the Secretary, in his annual report to Congress, to include a thorough compilation of leak repairs occurring in the reporting year with a statement of cause whenever investigated and determined by the National Transportation Safety Board.

Section 9

Two new sections would be added to the Natural Gas Pipeline Safety Act of 1968 under section 9 of S. 2042.

First, a new section 15 would require each person who engages in the transportation of natural gas, in accordance with regulations prescribed by the Secretary of Transportation, to conduct a program to educate the public on the possible hazards associated with gas leaks and on the importance of reporting gas odors and leaks to appropriate authorities. The Secretary would also be authorized to develop materials suitable for use in such education programs.

Second, a new section 16 would allow any person to commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, whenever such action constitutes a case or controversy against any person who is alleged to be in violation of a provision of the Natural Gas Pipeline Safety Act of 1968, or an order or regulation issued under the act. The district courts of the United States would be given jurisdiction over such actions without regard to the amount in controversy or the citizenship of the parties. However, no civil action may be commenced (1) prior to 60 days after the moving party has given notice of the alleged violation to the Secretary and to any alleged violator or (2) if the Attorney General has commenced and is diligently pursuing judicial proceedings or the Sec-

retary has commenced and is diligently pursuing administrative proceedings with respect to such alleged violation. In any action under this section, the Attorney General or the Secretary (with the concurrence of the Attorney General) may intervene as a matter of right. Nothing in this provision would restrict any right which any person may have under any statute or common law to seek enforcement of any provision, order, or regulation or to seek any other relief.

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

Section 10

Section 10 of S. 2042 would authorize to be appropriated for the purpose of carrying out the provisions of the act, other than the State grant-in-aid program, not to exceed \$2,850,000 for the fiscal year ending June 30, 1976; not to exceed \$650,000 for the transitional fiscal period ending September 30, 1976; not to exceed \$4,500,000 for the fiscal year ending September 30, 1977; and not to exceed \$5 million for the fiscal year ending September 30, 1978. There would be authorized to be appropriated for the purpose of carrying out the State grant-in-aid program not to exceed \$2,500,000 for the fiscal year and the transitional fiscal period ending September 30, 1976; not to exceed \$4,500,000 for the fiscal year ending September 30, 1977; and not to exceed \$4,500,000 for the fiscal year ending September 30, 1978.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX 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 matter is printed in italics, existing law in which no change is proposed is shown in roman) :

NATURAL GAS PIPELINE SAFETY ACT OF 1968

SEC. 2

SEC. 2. As used in this Act—

(1) * * *

(8) "Interstate transmission facilities" means pipeline facilities used in the transportation of gas which are subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act [] and [], *except that it shall not include any facility which transports gas from an interstate gas pipeline to a direct sales customer purchasing gas for its own consumption;*

(9) "Intrastate pipeline transportation" means pipeline facilities and transportation of gas within a State which are not subject to the

jurisdiction of the Federal Power Commission under the Natural Gas Act, except that such term shall include pipeline facilities within a State which transport gas from an interstate pipeline to a direct sales customer within such State purchasing gas for its own consumption; and

[(9)] (10) "Secretary" means the Secretary of Transportation.

SEC. 3

SEC. 3. (a) * * *

(b) Not later than twenty-four months after the date of enactment of this Act, and from time to time thereafter, the Secretary shall, by order, establish minimum Federal safety standards for the transportation of gas pipeline facilities. Such standards may apply to the design, installation, inspection, testing, *emergency plans and procedures*, construction, extension, operation, replacement, and maintenance of pipeline facilities. Standards affecting the design, installation, construction, initial inspection, and initial testing shall not be applicable to pipeline facilities in existence on the date such standards are adopted. Whenever the Secretary shall find a particular facility to be hazardous to life or property, he shall be empowered to require the person operating such facility to take such steps necessary to remove such hazards. Such Federal safety standards shall be practicable and designed to meet the need for pipeline safety. In prescribing such standards, the Secretary shall consider—

- (1) relevant available pipeline safety data;
- (2) whether such standards are appropriate for the particular type of pipeline transportation;
- (3) the reasonableness of any proposed standards; and
- (4) the extent to which such standards will contribute to public safety.

[Any State agency may adopt such additional or more stringent standards for pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act as are not incompatible with the Federal minimum standards, but may not adopt or continue in force after the minimum Federal safety standards referred to in this subsection become effective any such standards applicable to interstate transmission facilities.] *Any State agency may adopt additional or more stringent standards for intrastate pipeline transportation if such standards are compatible with the Federal standards. No State agency may adopt or continue in force any standards applicable to interstate transmission facilities, after the Federal standards become effective.*

SEC. 4

SEC. 4. (a) The Secretary shall establish a Technical Pipeline Safety Standards Committee. The Committee shall be appointed by the Secretary, after consultation with public and private agencies concerned with the technical aspect of the transportation of gas or the operation of pipeline facilities, and shall be composed of fifteen members each of whom shall be experienced in the safety regulation of the transportation of gas and of pipeline facilities or technically qualified by train-

ing and experience in one or more fields of engineering applied in the transportation of gas or the operation of pipeline facilities to evaluate gas pipeline safety standards, as follows:

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

(2) Four members shall be selected from the natural gas industry after consultation with industry representatives, not less than three of whom shall be currently engaged in the active operation of natural gas pipelines; and

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

The Committee shall meet at least twice during each calendar year.

(b) * * *

SEC. 5

SEC. 5. (a) Except for the fourth sentence of section 3(b) of this Act, section 12(b) of this Act, and except as otherwise provided in this section, the provisions of this Act shall not apply to [pipeline facilities and the transportation of gas (not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act) within a State] *intrastate pipeline transportation* when the safety standards and practices applicable to same are regulated by a State agency (including a municipality) which submits to the Secretary an annual certification that such State agency (1) has regulatory jurisdiction over the safety standards and practices of such [pipeline facilities and transportation of gas] *transportation*; (2) [has adopted each Federal safety standard applicable to such pipeline facilities and transportation of gas established under this chapter as of the date of the certification] *has adopted each Federal safety standard established under this Act as of the date of the certification which is applicable to such transportation or, with respect to each such standard which was established less than 120 days before the date of such certification, is taking such steps as are necessary under State law to adopt such standard*; (3) is enforcing each such standard; [and] (4) is *encouraging and promoting programs designed to prevent damage to natural gas pipelines and other subsurface utility equipment as a consequence of any excavation activity*; and [(4)] (5) has the authority to require record maintenance, reporting, and inspection substantially the same as are provided under section 12 of this Act and the filing for approval of plans of inspection and maintenance described in section 11 of this Act; and that the law of the State makes provision for the enforcement of the safety standards of such State agency by way of injunctive and monetary sanctions substantially the same as are provided under sections 9 and 10 of this Act; except that a State agency may file a certification under this subsection without regard to the requirement of injunctive and monetary sanctions under State law for a period not to exceed five years after the date of enactment of this Act. Each annual certification shall include a report, in such form as the Secretary may by regulation provide, showing (i) name and address of each person subject to the safety jurisdiction of the State agency; (ii) all accidents or incidents reported

during the preceding twelve months by each such person involving personal injury requiring hospitalization, fatality, or property damage exceeding \$1,000, together with a summary of the State agency's investigation as to the cause and circumstances surrounding such accident or incident; (iii) the record maintenance, reporting, and inspection practiced by the State agency to enforce compliance with such Federal safety standards, including a detail of the number of inspections made of pipeline facilities by the State agency during the preceding twelve months; and (iv) such other information as the Secretary may require. The report included with the first annual certification need not show information unavailable at that time. If after receipt of annual certification, the Secretary determines that the State agency is not satisfactorily enforcing compliance with Federal safety standards, he may, on reasonable notice and after opportunity for hearing, reject the certification or take such other action as he deems appropriate to achieve adequate enforcement including the assertion of Federal jurisdiction. When such notice is given by the Secretary, the burden of proof shall be upon the State agency to show that it is satisfactorily enforcing compliance with Federal safety standards.

(b) [With respect to any pipeline facilities and transportation of gas (not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act) for which the Secretary does not receive an annual certification under subsection (a) of this section, the Secretary is authorized by agreement with a State agency (including a municipality) to authorize such agency to assume responsibility for, and carry out on behalf of the Secretary as it relates to pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act the necessary actions to—] *With respect to any intrastate pipeline transportation for which the Secretary does not receive a certification under subsection (a) of this section, the Secretary may, by agreement with a State agency (including a municipality) authorize such agency to assume responsibility for, and carry out on behalf of the Secretary as it relates to intrastate pipeline transportation the necessary actions to—*

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

(2) establish procedures for approval of plans of inspection and maintenance substantially the same as are required under section 1680 of this title;

(3) implement a compliance program acceptable to the Secretary including provision for inspection of pipeline facilities used in such transportation of gas; and

(4) cooperate fully in a system of Federal monitoring of such compliance program and reporting under regulations prescribed by the Secretary.

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

(c) [(1) Except as otherwise provided in this section, if an application is submitted not later than September 30 in any calendar year, the

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

(1) *Except as otherwise provided in this section, if an application is submitted not later than September 30 in any calendar year, the Secretary shall pay out of funds appropriated or otherwise made available—*

(A) *one hundred percent (but not to exceed \$60,000 for each State) of the cost of not more than three full-time inspectors, as determined by regulations issued by the Secretary taking into account the needs of the respective States, and*

(B) *up to 50 percent of the cost of such other personnel, equipment, and activities of a State agency reasonably required, during the following calendar year to carry out a safety program under a certification under subsection (a) or an agreement under subsection (b) of this section or to act as agent of the Secretary with respect to interstate transmission facilities.*

(2) *The Secretary may, after notice and consultation with a State agency, withhold all or any part of the funds for a particular State agency if he determines that such State agency—*

(A) *is not satisfactorily carrying out a safety program under a certification under subsection (a) or an agreement under subsection (b) of this section, or*

(B) *is not satisfactorily acting as agent of the Secretary with respect to interstate transmission facilities.*

No such payment may be made unless the State agency making application under this subsection gives assurances satisfactory to the Secretary that the State agency will provide the remaining cost of a safety program and that the aggregate expenditures of funds of the State, exclusive of Federal grants, for gas safety programs will be maintained at a level which does not fall between the average level of expenditures for the last two fiscal years—

(A) *preceding the fiscal year for which the State agency is making application for payments made pursuant to subsection*

(c) (1) (A) *of this section, or*

(B) preceding the date of enactment of this section with respect to payments for which the State agency is making application pursuant to subsection (c)(1)(B) of this section.

[(2)] (3) Funds authorized to be appropriated by [section 15(b)] section 17(b) of this Act shall be allocated among the several States for payments to aid in the conduct of pipeline safety programs in accordance with [paragraph (1)] paragraphs (1) and (2) of this subsection.

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

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

(d) [A certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety standard for pipeline facilities or the transportation of gas, not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act, established pursuant to this chapter after the date of such certification.] *A certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety standards established after the date of such certification for intrastate pipeline transportation pursuant to this Act.* The provisions of this chapter shall apply to any such new or amended Federal safety standard until the State agency has adopted such standard and has submitted an appropriate certification in accordance with the provisions of subsection (a) of this section.

(e) * * *

* * * * *

SEC. 7

SEC. 7. Whenever the establishment of a standard or action upon application for waiver under the provisions of this chapter, would affect continuity of any gas services, the Secretary shall consult with and advise the Federal Power Commission or State commission having jurisdiction over the affected pipeline facility before establishing the standard or acting on the waiver application and shall defer the effective date until the Federal Power Commission or any such commission has had reasonable opportunity to grant the authorizations as it deems necessary. In any proceedings under section 717 of title 15 for authority to establish, construct, operate, or extend a gas pipeline which is or will be subject to Federal or other applicable safety standards, any applicant shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain the pipeline facilities in accordance with Federal and other applicable safety standards and plans for maintenance and inspection. Such certification shall be binding and conclusive upon the Commission unless the relevant enforcement agency has timely advised the Commission in writing that the applicant has violated safety standards established pursuant to this chapter. *The Commission may not attach any condition to the issuance of a*

certificate of public convenience and necessity, or to the exercise of rights granted under such a certificate, if such condition requires the applicant to comply with any safety standards for pipeline facilities or for the transportation of gas other than safety standards prescribed by the Secretary.

* * * * *

SEC. 11

[Each person who engages in the transportation of gas or who owns or operates pipeline facilities not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act shall file with the Secretary or, where a certification or an agreement pursuant to section 5 of this title is in effect, with the State agency, a plan for inspection and maintenance of each such pipeline facility owned or operated by such person, and any changes in such plan, in accordance with regulations prescribed by the Secretary or appropriate State agency.] *Each person who engages in intrastate pipeline transportation shall file with the Secretary or, to the appropriate State agency if a certification or an agreement pursuant to section 5 of this Act is in effect, a plan for inspection and maintenance of each such pipeline facility owned or operated by such person, and any changes in such plan, in accordance with regulations prescribed by the Secretary or appropriate State agency.* The Secretary may, by regulation, also require persons who engage in the transportation of gas or who own or operate pipeline facilities subject to the provisions of this chapter to file such plans for approval. If at any time the agency with responsibility for enforcement of compliance with the standards established under this chapter finds that such plan is inadequate to achieve safe operation, such agency shall, after notice and opportunity for a hearing, require such plan to be revised. The plan required by the agency shall be practicable and designed to meet the need for pipeline safety. In determining the adequacy of any such plan, such agency shall consider—

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

SEC. 14

SEC. 14. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress on March 17 of each year a comprehensive report on the administration of this chapter for the preceding calendar year. Such report shall include—

- (1) a thorough compilation of the [accidents] *leak repairs, accidents and casualties occurring in such a year with a statement of cause whenever investigated and determined by the National Transportation Safety Board;*
- (2) a list of Federal gas pipeline safety standards established or in effect in such year with identification of standards newly established during such year;

(3) a summary of the reasons for each waiver granted under section 1672(e) of this title during such year;

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

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

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

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

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

(9) a compilation of—

(A) certifications filed by State agencies (including municipalities) under section 1674(a) of this title which were in effect during the preceding calendar year, and

(B) certifications filed under section 1674(a) of this title which were rejected by the Secretary during the preceding calendar year, together with a summary of the reasons for each such rejection; and

(10) a compilation of—

(A) agreements entered into with State agencies (including municipalities) under section 1674(b) of this title which were in effect during the preceding calendar year, and

(B) agreements entered into under section 1674(b) of this title which were terminated by the Secretary during the preceding calendar year, together with a summary of the reasons for each such termination.

(b) * * *

SEC. 15

SEC. 15. (a) There are authorized to be appropriated \$2,000,000 for the fiscal year ending June 30, 1975, and \$2,850,000 for the fiscal year ending June 30, 1976, for the purpose of carrying out the provisions of this chapter, except that the funds appropriated pursuant to this subsection shall not be used for Federal grants-in-aid.

(b) For the purpose of carrying out the provisions of section 5(c) of this title, there are authorized to be appropriated for Federal grants-in-aid, \$1,800,000 for the fiscal year ending June 30, 1975, and \$2,500,000 for the fiscal year ending June 30, 1976.]

SEC. 16

CONSUMER EDUCATION

SEC. 15. Each person who engages in the transportation of gas shall, in accordance with the regulations prescribed by the Secretary, conduct a program to educate the public on the possible hazards associ-

ated with gas leaks and on the importance of reporting gas odors and leaks to appropriate authorities. The Secretary is authorized to develop materials suitable for use in such education programs.

SEC. 16

CITIZEN'S CIVIL ACTION

SEC. 16. (a) Except as provided in subsection (b), any person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, whenever such action constitutes a case or controversy against any person who is alleged to be in violation of a provision of this Act or of an order or regulation issued under this Act. The district courts of the United States shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) No civil action may be commenced (1) prior to 60 days after the moving party has given notice of the alleged violation to the Secretary and to any alleged violator in such manner as the Secretary may by regulation require; or (2) if the Secretary has commenced and is diligently pursuing administrative proceedings or the Attorney General has commenced and is diligently pursuing judicial proceedings with respect to such alleged violation.

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

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

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

(f) As used in this section the term "person" includes a governmental entity.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 17 (a) There are authorized to be appropriated for purposes of carrying out this Act (other than section 5(c) of this Act) not to exceed \$2,850,000 for the fiscal year ending June 30, 1976; not to exceed \$650,000 for the transitional fiscal period ending September 30, 1976; not to exceed \$4,500,000 for the fiscal year ending September 30, 1977; and not to exceed \$5,000,000 for the fiscal year ending September 30, 1978.

(b) *There are authorized to be appropriated for purposes of carrying out section 5(c) of this Act, not to exceed \$2,500,000 for the fiscal year ending June 30, 1976, and the transitional fiscal period ending September 30, 1976; not to exceed \$4,500,000 for the fiscal year ending September 30, 1977; and not to exceed \$4,500,000 for the fiscal year ending September 30, 1978.*

ESTIMATED COSTS

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-510), the costs of the legislation, in the form of new authorization for appropriations, is \$6 million for the fiscal year and the transitional fiscal period ending September 30, 1976; \$9 million for the fiscal year ending September 30, 1977; and \$9,500,000 for the fiscal year ending September 30, 1978.

TEXT OF S. 2042, AS REPORTED

A BILL To amend the Natural Gas Pipeline Safety Act of 1968, to authorize additional appropriations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That this Act may be cited as the "Natural Gas Pipeline Safety Act Amendments of 1976".

SEC. 2. Section 2 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671) is amended—

(1) by striking out “; and” at the end of paragraph (8) thereof and inserting in lieu thereof the following: “, except that it shall not include any facility which transports gas from an interstate gas pipeline to a direct sales customer purchasing gas for its own consumption;”;

(2) by redesignating paragraph (9) thereof as (10) thereof; and

(3) by inserting after paragraph (8) thereof the following new paragraph:

“(9) ‘Intrastate pipeline transportation’ means pipeline facilities and transportation of gas within a State which are not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act, except that such term shall include pipeline facilities within a State which transport gas from an interstate pipeline to a direct sales customer within such State purchasing gas for its own consumption; and”.

SEC. 3. Section 3(b) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1672(b)), is amended—

(1) by adding before the word “testing,” in the second sentence thereof, the following: “emergency plans and procedures;”;

(2) by amending the last sentence thereof to read as follows: “Any State agency may adopt additional or more stringent standards for intrastate pipeline transportation if such standards are compatible with the Federal standards. No State agency may adopt or continue in force any standards applicable to interstate transmission facilities, after the Federal standards become effective.”.

SEC. 4. Section 4(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1673) is amended by adding the following new sentence at the end thereof: “The Committee shall meet at least twice during each calendar year.”.

SEC. 5. (a) Section 5(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1674(a)) is amended—

(1) by striking out “pipeline facilities and the transportation of gas (not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act) within a State” in the first sentence thereof and inserting in lieu thereof “intrastate pipeline transportation”;

(2) by striking out “pipeline facilities and transportation of gas” in clause 1 thereof and inserting in lieu thereof “transportation”;

(3) by amending clause (2) thereof to read as follows: “has adopted each Federal safety standard established under this Act as of the date of the certification which is applicable to such transportation or, with respect to each such standard which was established less than 120 days before the date of such certification, is taking such steps as are necessary under State law to adopt such standard;”;

(4) by striking out “and” at the end of clause (3) thereof;

(5) by redesignating clause (4) thereof as clause (5) thereof; and

(6) by inserting the following new clause immediately after clause (3) thereof:

“(4) is encouraging and promoting programs designed to prevent damage to natural gas pipelines and other subsurface utility equipment as a consequence of any excavation activity; and”.

(b) Section 5(b) of such Act (49 U.S.C. 1674(b)) is amended by striking out all that begins with “With respect to” and ends with “actions to—” and inserting in lieu thereof the following: “With respect to any intrastate pipeline transportation for which the Secretary does not receive a certification under subsection (a) of this section, the Secretary may, by agreement with a State agency (including a municipality) authorize such agency to assume responsibility for, and carry out on behalf of the Secretary as it relates to intrastate pipeline transportation the necessary actions to—”.

(c) Section 5(c) of such Act (49 U.S.C. 1674(c)) is amended—

(1) by redesignating paragraphs (2), (3), and (4) thereof as paragraphs (3), (4), and (5) respectively;

(2) by striking out “Section 15(b)” and inserting in lieu thereof “Section 17(b)”, and by striking out “paragraph (1)” and inserting in lieu thereof “paragraphs (1) and (2)” in newly redesignated paragraph (3) thereof; and

(3) by striking out paragraph (1) thereof and inserting in lieu thereof the following two new paragraphs immediately after “(c)”:

“(1) Except as otherwise provided in this section, if an application is submitted not later than September 30 in any calendar year, the Secretary shall pay out of funds appropriated or otherwise made available—

"(A) 100 percent (but not to exceed \$60,000 for each State) of the cost of not more than three full-time inspectors, as determined by regulations issued by the Secretary taking into account the needs of the respective States, and

"(B) up to 50 percent of the cost of such other personnel, equipment, and activities of a State agency reasonably required, during the following calendar year to carry out a safety program under a certification under subsection (a) or an agreement under subsection (b) of this section, or to act as agent of the Secretary with respect to interstate transmission facilities.

"(2) The Secretary may, after notice and consultation with a State agency, withhold all or any part of the funds for a particular State agency if he determines that such State agency—

"(A) is not satisfactorily carrying out a safety program under a certification under subsection (a) or an agreement under subsection (b) of this section, or

"(B) is not satisfactorily acting as agent of the Secretary with respect to interstate transmission facilities.

No such payment may be made unless the State agency making application under this subsection gives assurances satisfactory to the Secretary that the State agency will provide the remaining cost of such a safety program and that the aggregate expenditures of funds of the State, exclusive of Federal grants, for gas safety programs will be maintained at a level which does not fall below the average level of expenditures for the last 2 fiscal years—

"(A) preceding the fiscal year for which the State agency is making application for payments made pursuant to subsection (c) (1) (A) of this section, or

"(B) preceding the date of enactment of this section with respect to payments for which the State agency is making application pursuant to subsection (c) (1) (B) of this section."

(d) The first sentence of section 5(d) of such Act (49 U.S.C. 1674 (d)) is amended to read as follows: "A certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety standards established after the date of such certification for intrastate pipeline transportation pursuant to this Act."

Sec. 6. Section 7 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1676) is amended by adding at the end thereof the following new sentence: "The Commission may not attach any condition to the issuance of a certificate of public convenience and necessity, or to the exercise of rights granted under such a certificate, if such condition requires the applicant to comply with any safety standards for pipeline facilities or for the transportation of gas other than safety standards prescribed by the Secretary."

Sec. 7. The first sentence of section 11 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1680) is amended to read as follows: "Each person who engages in intrastate pipeline transportation shall file with the Secretary or, with the appropriate State agency if a certification or an agreement pursuant to section 5 of this Act is in effect, a plan for inspection and maintenance of each such pipeline facility owned or operated by such person, and any changes in such plan, in

accordance with regulations prescribed by the Secretary or appropriate State agency."

Sec. 8. Section 14(a) (1) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1683(a) (1)) is amended by striking out "accidents" and inserting in lieu thereof "leak repairs, accidents".

Sec. 9. The Natural Gas Pipeline Safety Act of 1968 is amended by redesignating section 15 thereof as section 17 thereof and by inserting the following two new sections after section 14 thereof:

"CONSUMER EDUCATION

"Sec. 15. Each person who engages in the transportation of gas shall, in accordance with regulations prescribed by the Secretary, conduct a program to educate the public on the possible hazards associated with gas leaks and on the importance of reporting gas odors and leaks to appropriate authorities. The Secretary is authorized to develop materials suitable for use in such education programs.

"CITIZEN'S CIVIL ACTION

"Sec. 16. (a) Except as provided in subsection (b), any person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, whenever such action constitutes a case or controversy against any person who is alleged to be in violation of a provision of this Act or of an order or regulation issued under this Act. The district courts of the United States shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

"(b) No civil action may be commenced (1) prior to 60 days after the moving party has given notice of the alleged violation to the Secretary and to any alleged violator in such manner as the Secretary may by regulation require; or (2) if the Secretary has commenced and is diligently pursuing administrative proceedings or the Attorney General has commenced and is diligently pursuing judicial proceedings with respect to such alleged violation.

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

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

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

rate prevailing for the provision of similar services with respect to actions brought in the court which is awarding such fee.

"(f) As used in this section the term 'person' includes a governmental entity."

SEC. 10. Section 17 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1684), as redesignated under section 9 of this Act, is amended to read as follows:

"AUTHORIZATION FOR APPROPRIATIONS

"SEC. 17. (a) There are authorized to be appropriated for purposes of carrying out this Act (other than section 5(c) of this Act) not to exceed \$2,850,000 for the fiscal year ending June 30, 1976; not to exceed \$650,000 for the transitional fiscal period ending September 30, 1976; not to exceed \$4,500,000 for the fiscal year ending September 30, 1977; and not to exceed \$5,000,000 for the fiscal year ending September 30, 1978.

"(b) There are authorized to be appropriated for purposes of carrying out section 5(c) of this Act, not to exceed \$2,500,000 for the fiscal year ending June 30, 1976 and the transitional fiscal period ending September 30, 1976; not to exceed \$4,500,000 for the fiscal year ending September 30, 1977; and not to exceed \$4,500,000 for the fiscal year ending September 30, 1978."

AGENCY COMMENTS

S. 2042, as reported, contains provisions of S. 2042 as introduced and S. 2183, a bill to amend the Natural Gas Pipeline Safety Act of 1968, as amended, to authorize additional appropriation authorizations, and for other purposes. The Committee on Commerce requested appropriate agencies to submit comments on each bill. The following are the agency comments received by the Committee on S. 2042 and S. 2183:

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 23, 1975.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has asked for the views of this Department concerning S. 2042, a bill "To amend and strengthen the Natural Gas Pipeline Safety Act of 1968, and to authorize additional appropriations therefor."

The Department's position on each substantive section of the bill is set forth below.

Section 2.—The Department believes the proposed amendments to subsection 3(b) of the Natural Gas Pipeline Safety Act of 1968 (the Act) (49 U.S.C. 1671 *et seq.*) are unnecessary.

Section 2(1).—Existing Federal gas pipeline safety standards require that pipe be designed with sufficient wall thickness or that it be installed with adequate protection to withstand anticipated external pressures and loads likely to be imposed on the pipe after installation. Specific design requirements have not been prescribed for pipe lo-

cated in areas where subsequent excavation may occur because it is not economically practicable to require all of the pipe located in such areas to be, in effect, oversized in order to withstand the relatively infrequent possibility of disturbance by excavation equipment. Moreover, when pipelines, expected to have an operating life of several decades, are installed, it is often difficult to predict their possible exposure to subsequent excavation activity.

Rather than imposing expensive design requirements, the Office of Pipeline Safety Operations (OPSO), within the Department, is attacking the problem of excavation damage on other fronts. OPSO recently issued a comprehensive regulation on the marking of pipelines to identify them and thereby reduce the possibility of excavation damage. That regulation also includes incentive for operators to promote passage of laws and adoption of programs by local government bodies to prevent interference with underground pipelines. The problem of excavation and other third party damage and the effectiveness of the various programs for reducing such damage are currently being studied by an OPSO contractor. Finally, OPSO is now reviewing the results of a recently completed contract on the gas pipeline industry's capability for rapid shutdown of pipelines which have failed.

Section 2(2).—Under section 3(b) of the Act, as it now exists, the Department, through OPSO, already requires each gas pipeline operator to have written emergency procedures (49 CFR 192.615). In addition, a currently outstanding notice of proposed rule making would expand the present requirements for emergency plans and procedures (40 FR 13317, March 26, 1975).

Section 2(3).—In exercising its authority under section 3(b) of the Act, OPSO regularly considers the reports and recommendations of the National Transportation Safety Board (NTSB) in promulgating pipeline safety standards. A number of the provisions of the existing safety standards (49 CFR Part 192) and many of the proposed amendments thereto are based on NTSB safety recommendations. Additionally, the Secretary of Transportation is required by section 307 of the Independent Safety Board Act of 1974 (ISB Act) (49 U.S.C. 1901 *et seq.*) to respond formally to NTSB on each NTSB recommendation to the Secretary.

Section 3.—The Department does not support the proposed amendments to section 4 of the Act to require the Technical Pipeline Safety Standards Committee to meet at least twice annually and at one of those meetings to consider NTSB recommendations relating to pipeline safety and the Secretary's response thereto. At present, the Committee advises the Secretary on the technical feasibility, reasonableness, and practicability of standards and amendments proposed for adoption. The process of standards development would not easily match a fixed schedule for review by the Committee. The existing law is preferable in that it allows the Secretary flexibility to schedule Committee meetings when there is sufficient material for the Committee to consider.

Further, the Committee now considers NTSB recommendations and OPSO responses when in the form of a proposed rule. We fail to see the benefit of the Committee's reviewing NTSB recommendations that

the Department has refused to adopt and stated its reasons therefor under the 90-day time frame of section 307 of the ISB Act.

Section 4.—The Department opposes amendment of section 5(a) of the Act to require the Secretary to condition certification of State agencies on the establishment of a State-wide utility coordinating council which encourages and promotes (1) the establishment of local utility councils, and (2) damage prevention programs relating to excavation projects. The Department is already encouraging the adoption of State legislation to prevent damage to buried pipelines and utility lines. In November 1974, the Secretary sent to the Governor of each State a model statute designed to protect underground pipelines and utilities from excavation damage, which he urged each Governor to consider and support for adoption at the State and local level.

Since the councils required by the proposed amendment would only encourage and promote the desired goals, the establishment of pipeline damage prevention programs would remain largely voluntary. The Department does not advocate a mandatory excavation damage protection program as a condition to certification because it believes many of the States could not readily meet such a requirement. The burden of determining whether a particular State meets the proposed, extremely subjective requirements for certification and for enforcing the safety of gas pipelines in those States unable to certify would fall on the Federal Government.

Additionally, the amendment would be technically inconsistent with the provision in section 5(a) permitting municipality certification. Municipalities which may otherwise qualify for certification would as a practical matter be unable to meet the proposed new requirement of establishing a State-wide utility coordinating council.

The Department does not support the amendment of section 5(c) of the Act to require the Secretary to pay up to 100 percent (but not to exceed \$85,000 for each State) of the cost of a full-time engineer, and not less than one or more than three full-time inspectors, as determined by regulations issued by the Secretary. The pipeline safety needs of some States do not justify the employment of a full-time engineer who would devote all of his time to the gas safety program. For example, in New Hampshire, which has relatively few gas customers, hiring a full-time engineer and inspector would be excessive.

Moreover, the existing law provides for Federal funding of the cost of State personnel and allows the Secretary flexibility in determining the basis for allocating those funds.

Additionally, the Department is concerned about the merits of funding more than 50 percent of the cost of State personnel. The purpose of the existing limit on funding is to expand and improve existing State programs rather than provide a new source of funds. Since the amendment does not require an applicant to maintain its present level of pipeline safety program expenditures in order to be eligible for the grant, a State agency may reduce its own spending by funding the total cost of professional personnel from the Federal grant. Consequently, the effect of 100 percent funding could be greater Federal spending without the desired improvement in the quality of State pipeline safety programs.

Section 5.—The Department considers unnecessary the amendment of sections 8 and 11 of the Act to require operators to file with OPSO

or a certified State agency emergency plans and plans for the education of its customers on the importance of reporting gas odors.

The Federal gas pipeline safety standards currently require each operator to establish and carry out written emergency plans and plans for an educational program for customers (49 CFR 192.615). These plans are required to be kept available for OPSO inspection and copying which enables OPSO to determine whether the operator's plans are in compliance with the Act and the standards established thereunder.

The Department also opposes the amendment of section 11 of the Act to require an operator to maintain a log which shows the receipt and handling of each leak and emergency report.

Due to the variety of operating conditions throughout the nation, OPSO does not believe the proposed log requirement to be an adequate technique for addressing the problem of operator response to leaks and emergencies. Rather the problem should be dealt with in the manner now being undertaken by OPSO through improved requirements for emergency response procedures and by giving priority treatment to those topics in training programs and during monitoring visits.

Further, the Department believes it unnecessary to amend section 11 of the Act to specifically include the reports and recommendations of the NTSB among the items to be considered in determining the adequacy of inspection and maintenance plans.

Under the existing section 11, OPSO may, and in practice does, consider NTSB recommendations in determining the adequacy of inspection and maintenance plans.

Section 6.—The Department considers unnecessary the amendment of section 12(b) of the Act to require the Secretary to monitor and evaluate in depth the performance of at least two States, one urban and one rural, each year. Section 12 now provides adequate authority for monitoring and in-depth evaluations. OPSO, in fiscal year 1975, examined in-depth two rural States, Alabama and Wyoming, and three urban States, California, Maryland, and New York, to determine the adequacy of program controls used to ensure compliance with pipeline safety standards and of financial management controls over pipeline safety activities.

Section 7.—The Department considers unnecessary and overly restrictive the amendment of section 13 of the Act to require the Secretary to conduct research, testing, and development in specifically defined areas. The Act now gives the Secretary ample authority to conduct such studies. All of the specific areas of study suggested are currently in the OPSO research and development program or are proposed for future action. Additionally, the amendment would not allow the Secretary to conduct any of the studies within the Department but only through grants or contracts with persons or institutions outside the Department. The amendment would also require the Secretary to continuously study by grant or contract the specific subjects even though further study may not be merited during a particular period.

The Department believes it unnecessary to amend section 13 of the Act to give the Secretary specific authority to provide for specialized training of pipeline safety personnel and to develop minimum qualifications for inspectors and other field personnel. The Secretary now has broader, general authority under section 13 to provide training. Under this authority over 200 State agency personnel and over 2,000

industry personnel have received training sponsored by the Department. The curriculum for these training activities concentrates on the qualifications of inspectors and other important field personnel.

Section 8.—The Department opposes amendment of section 14 of the Act to require the annual report to include a compilation of gas pipeline leaks in addition to accidents and casualties. OPSO has not observed any significant correlation between the number of gas leaks and the number of accidents and casualties.

Moreover, compiling leak totals in time to include data in the report required to be submitted by March 17 may not be possible. Annual leak reports for the preceding calendar year are required to be filed with OPSO by February 15 of each year. Unless section 14 is amended as suggested by section 7 of S. 2183 (the Department's proposed bill) by changing the due date of the annual report from March 17 to June 15, it would be logistically extremely difficult to compile a leak report in time to meet the March 17 date.

The Department opposes amendment of section 14 of the bill to require the annual report to contain a complete list of NTSB recommendations and the responses of the Secretary thereto. Section 305 of the ISB Act (49 U.S.C. 1904) already provides that the NTSB shall give the Congress each year "an appraisal in detail of the accident investigation and accident prevention activities of other government agencies charged by Federal or State law with responsibility in this field."

The Department believes that the proposed amendment of section 14 would result in a duplication of effort without achieving the goal of better informing Congress concerning pipeline safety problems.

Section 9.—The Department believes that the appropriations proposed for authorization by section 8 of S. 2183 are adequate for an effective Federal gas pipeline safety program.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report to the Congress.

Sincerely,

JOHN HART ELY.

NATIONAL TRANSPORTATION SAFETY BOARD,
Washington, D.C., September 12, 1975.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of July 15, 1975, requesting the National Transportation Safety Board's comments on S. 2042, a bill "To amend and strengthen the Natural Gas Pipeline Safety Act of 1968, and to authorize additional appropriations therefor."

The broad purpose of S. 2042 is to strengthen the Natural Gas Pipeline Safety Act (Act) by eight substantive amendments designed to enhance pipeline safety. Our comments with respect to these amendments, reflected in the numbered paragraphs below, are as follows:

1. The amendment of section 3(b)—(49 U.S.C. 1672) of the Act would amplify the authority of the Secretary of Transportation to set pipeline transportation safety standards for pipeline design in locations where subsequent excavation is likely to occur, and for emergency plans and procedures.

The Board has found that excavation pipeline accidents are a major problem, and that emergency plans and procedures are inadequate to cope with the dangers inherent in these accidents. Therefore, standards are necessary, both from the design aspect of such pipelines to insure their protection from excavation damage, and to correct the known safety deficiencies, which we have observed in the emergency plans and procedures of pipeline companies.

2. The amendment of section 3(b)(1) of the Act would require the Secretary to consider "relevant available pipeline safety data . . . including the reports and recommendations of the National Transportation Safety Board."

The Board would welcome this amendment and believes that its reports and recommendations would add a beneficial dimension to the Secretary's initial development of pipeline safety standards, or amendments thereto.

3. The amendment of section 4 of the Act (49 U.S.C. 1673) would revise subsection (b) thereof to provide for at least two meetings annually of the Technical Pipeline Safety Standards Committee (TPSSC), and require that the reports and recommendations of this Board be reviewed during one such meeting.

We agree that at least two meetings a year are required for a proper functioning of TPSSC, since this committee generates recommendations for standards. It is also important that the committee should consider Board reports and recommendations before proposing standards to the Secretary.

4. The amendment of section 5 of the Act (49 U.S.C. 1674) would require the establishment of a statewide utility coordinating council to encourage and promote the formation of local councils in locations where excavation damage to pipelines represents a significant problem, and establish appropriate damage prevention programs through notification to pipeline companies by excavators and marking of underground lines.

The Board believes that such programs at the local level would unquestionably minimize excavation damage to underground pipelines.

A second amendment to section 5 would require the States to employ a full-time pipeline safety engineer and from one to three full-time pipeline inspectors.

The Board strongly supports this amendment, since without qualified State officials it would appear that the safety programs and the enforcement thereof could not be fully effectuated.

5. The amendment of sections 8 and 11 of the Act (49 U.S.C. 1677, 1680) would revise and expand the requirements upon certain pipeline transportation operators to file with the Secretary all plans relating to inspection, maintenance, emergency procedures, and customers' reports of gas odors and leaks. Operators must maintain a log showing receipt and processing of all reports of odors, leaks, and emergencies, and, if so required, file such plans for approval.

The Board supports these requirements pertaining to pipeline transportation operators. The processing requirement for odor and leaks reports should insure that the operators follow up such reports immediately by appropriate safety actions. The operators' safety response can then be ascertained through inspection of his records. Such a requirement should lead to increasingly effective corrective measures by the operators.

6. The amendment of section 12 of the Act (49 U.S.C. 1681) would require additional monitoring of the performance of at least two States annually by the Secretary, and an evaluation report by the Secretary with respect thereto.

The Board supports this amendment as a method of improving the States' enforcement of pipeline safety standards and programs.

7. The amendment of section 13 of the Act (49 U.S.C. 1682) would authorize various new Secretarial activities in research and development for pipeline safety problems, such as gas odorization and migration, excavation damage and prevention, offshore and Arctic pipeline safety, etc. A special program would also be authorized to provide training and develop minimum qualifications for inspectors and other field personnel engaged in pipeline operations.

The Board is convinced that each of the areas enumerated presently needs research and development. Such needs are fully supported by Safety Board reports and recommendations. With respect to operational safety training, the Board's reports indicate that such training is badly needed and essential to attaining any improved level of pipeline safety operations.

8. The amendment of section 14 of the Act (49 U.S.C. 1683) would require that the Secretary's annual report to Congress include a list of the Board's recommendations and the corrective actions taken by the Department of Transportation respecting such recommendations.

The Board supports this amendment as an effective means of assuring the responsiveness of the Department to the Board's pipeline safety recommendations.

Based on the foregoing analysis, the Safety Board recommends enactment of S. 2042.

Sincerely yours,

JOHN H. REED, *Chairman.*

U.S. ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION,
Washington, D.C., March 11, 1976.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate*

DEAR MR. CHAIRMAN: Thank you for the opportunity to comment on S. 2042, a bill "[t]o amend and strengthen the Natural Gas Pipeline Safety Act of 1968, and to authorize additional appropriations therefor."

The Energy Research and Development Administration (ERDA) defers to the Department of Transportation for its views on the proposed legislation.

The Office of Management and Budget has advised us that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

LEONARD RAWICZ,
for R. TENNEY JOHNSON,
General Counsel.

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., July 9, 1975.

HON. NELSON A. ROCKEFELLER,
*President of the Senate,
Washington, D.C.*

DEAR MR. PRESIDENT: There is transmitted a draft of a proposed bill "To amend the Natural Gas Pipeline Safety Act of 1968, as amended, to authorize additional appropriation authorizations, and for other purposes".

The proposed bill would amend the Natural Gas Pipeline Safety Act (Act) to authorize appropriations for the pipeline safety program for the July-September 1976 transition period and for fiscal year 1977. In addition, certain amendments are proposed to improve the administration of the program, especially as it relates to State agencies. The Act was last amended in August of 1974, by P.L. 93-403 which authorized appropriations for fiscal years 1975 and 1976, and provided that authorizations for grants-in-aid to the States be stated separately from those required for administration of the program.

The amendments proposed herein to improve program administration would make several changes, including the addition of a definition for the term "intrastate pipeline transportation" to avoid referring throughout the Act to intrastate pipeline transportation as that not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act. Also included within the definition of intrastate pipeline transportation would be those pipeline facilities which transport gas from an interstate pipeline to a direct sales customer purchasing gas for its own consumption. The Supreme Court has held that such facilities are subject to the jurisdiction of the Federal Power Commission. Many States had regulated direct sales lines prior to the Supreme Court's ruling, and this amendment would clarify that they may continue to do so without Federal preemption under the Act.

Another proposed change would revise the State certification process to allow certification by a State agency although it has not adopted each Federal safety standard established within 120 days before the date of certification. Many State agencies have difficulty completing the administrative process necessary for adoption of newly established or amended Federal standards in time to meet the existing requirement that all Federal standards be adopted by the State agency as of the date of certification. The proposed change would alleviate this administrative burden.

A further change would clarify the intent of Congress to provide for uniform, consistent Federal regulation of interstate transmission

facilities. Since enactment of the Natural Gas Pipeline Safety Act in 1968, there has been considerable question whether the Federal Power Commission possesses appropriate jurisdiction to regulate safety matters in connection with the issuance of certificates of convenience and necessity, or whether this Department's safety regulatory authority is exclusive. The change proposed herein, would make clear that this Department's pipeline safety standards are the only Federal pipeline safety standards that an interstate pipeline operator need meet. This amendment would be consistent with the recommendations of the Special Subcommittee on Investigations of the House Committee on Interstate and Foreign Commerce in its report, Legislative Issues Relating to the Safety of Liquefied Natural Gas Storage, March 1974, and it would prevent applicants being compelled to comply with two different—and conceivably conflicting—sets of Federal requirements on the same subject matter.

Finally, the date for submission of the Department's annual report to Congress would be changed from March 17 to June 15. The current March 17 requirement does not provide sufficient time to collect and process data necessary to prepare the report. The annual report must include calendar year accident and casualty data which is not required to be submitted to this Department until January 20 of the succeeding year. The March 17 submission date allows the Department less than 2 months in which to compile and process that data for inclusion in its report, and to prepare the report in final form for submission to the Congress. Moving the submission date forward to June 15 would allow sufficient time and permit more comprehensive coverage and analysis.

It would be appreciated if you would lay the proposed bill before the Senate. A similar bill has been transmitted to the House of Representatives.

The Office of Management and Budget has advised that there would be no objection to the submission of this proposal to the Congress.

Sincerely,

WILLIAM T. COLEMAN, JR.

FEDERAL POWER COMMISSION,
Washington, October 16, 1975.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing in response to your recent request for a Commission report on S. 2183, a bill: "To amend the Natural Gas Pipeline Safety Act of 1968 as amended, to authorize additional appropriations, and for other purposes."

On September 26, 1975, I testified on S. 2183 and related legislative issues at hearings before the Senate Commerce Committee's Subcommittee on Surface Transportation. Please consider my September 26, 1975 prepared statement (attached hereto) as the Commission's report on S. 2183.

Sincerely,

JOHN N. NASSIKAS,
Chairman.

Enclosure.

STATEMENT SUBMITTED BY JOHN N. NASSIKAS, CHAIRMAN, FEDERAL
POWER COMMISSION

I am pleased to respond to your invitation to discuss issues of natural gas pipeline safety in relation to the Federal Power Commission's responsibilities under the Natural Gas Act and related statutes, and the proposal on S. 2183 to grant exclusive jurisdiction to the Secretary of Transportation through the Office of Pipeline Safety over the safety of natural gas pipeline transportation and facilities, as well as imports of liquefied natural gas.

You have also requested my views concerning S. 2042. The Commission believes that the enlargement of the Department of Transportation's functions primarily in the area of gas leak detection and prevention, as well as to upgrade standards and training for safety inspection at the state level, and for the establishment of utility coordinating councils to prevent excavation damage to underground utility lines and establish research priorities in lead detection, are desirable features and accordingly we favor the enactment of S. 2042.

The Federal Power Commission opposes the enactment of S. 2183 because the bill would oust this Commission's safety jurisdiction and place exclusive regulatory authority for the safety of transmission facilities for natural gas under the jurisdiction of the Department of Transportation. The bill would eliminate any safety responsibility by the Federal Power Commission in certifying a natural gas pipeline or facility for the transportation of natural gas or liquefied natural gas by pipeline under Section 7 of the Natural Gas Act, or the importation of natural gas or liquefied natural gas under Section 3 of the Natural Gas Act.

I believe the public is entitled to a review by this Commission as to whether a proposed project under our jurisdiction will serve the "public interest" or the "public convenience and necessity" by an independent determination as to safety as one of the relevant factors in arriving at a decision.

The proposed legislation would absolve the Federal Power Commission from any accountability in the event a project were to be certified and there was subsequent damage to life or property caused by inadequate safety precautions. If pipelines are responsible for compliance with our regulatory requirements relating to certificate proceedings I believe that there is greater assurance that the public will be protected from hazards or dangers of pipeline transportation and storage than if such pipelines are accountable solely to the Department of Transportation.

S. 2183 is intended to resolve the continuing jurisdictional dispute over interstate natural gas pipeline and associated liquefied natural gas (LNG) facilities safety between the Federal Power Commission and the Department of Transportation. Though I believe it desirable for Congress to resolve this jurisdictional dispute, I do not believe that S. 2183 provides a workable answer.

I want to call your attention to my testimony before the Committee on Commerce on June 14, 1974, on S. 2064, Committee Print No. 93-108, pp. 234-266, where I described the jurisdiction of the Federal Power Commission in the regulation of the importation of liquefied natural gas (LNG) including the safety aspects of the transportation

and handling of LNG, and the Commission's authority over the siting, construction and operation of LNG facilities.

FPC JURISDICTION OVER SAFETY REGULATION

As you know, the Federal Power Commission's mandate to engage in safety regulation is derived largely from the Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.*

Under the provisions of the Natural Gas Act no person may engage in the sale for resale or transportation of natural gas in interstate commerce without a certificate of public convenience and necessity issued by the FPC for the construction and operation of the facilities as are necessary for the effectuation of such sale or transportation. Similarly, authorization must first be received from the FPC before anyone may engage in the importation into or the exportation from the United States of natural gas. The FPC has the authority to attach to the issuance of any such certificates and the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require. It is the public convenience and necessity standard of § 7(c)¹ and the public interest standard of § 3² which have been held to authorize the Commission to impose safety standards on the transportation of natural gas. Under these statutory provisions the Federal Power Commission has long exercised its authority over pipeline safety and conditioned the grant of certificates upon the applicant's compliance with certain safety requirements.

In addition to our responsibility for the safety aspect of any facility in our certification procedure under § 7(c) of the Natural Gas Act and the safety aspects of imports and exports under the "public interest" standard of § 3 of the Natural Gas Act, safety is also a primary concern in the Commission's evaluation of applications under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*

Safety aspects are evaluated during all phases of any proposal: construction, operation (including transportation, unloading, storage and regasification), and routine and emergency maintenance.

In 1968, Congress enacted the Natural Gas Pipeline Safety Act, 49 U.S.C. 1671, *et seq.*, which requires the Department of Transportation, acting through the Office of Pipeline Safety (OPS), to establish minimum federal safety standards for the transportation of natural gas and for the safety of pipeline and appurtenant facilities

¹ (c) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations. (15 U.S.C. 717f(c)).

² We are required by § 3 to authorize the import or export of natural gas, and this includes LNG imports or exports, "unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate." (15 U.S.C. 717b)

used in such transportation in interstate and intrastate commerce. Section 3(b) of the Safety Act directs the Secretary of Transportation to establish minimum Federal safety standards applicable to the "design, installation, inspection, testing, construction, extension, operation, replacement and maintenance of pipeline facilities."³ Since the passage of the Pipeline Safety Act the Federal Power Commission has made its own independent safety reviews in order to decide what additional safety conditions should be prescribed in addition to those required by DOT.

There is no indication in the Pipeline Safety Act itself or in its legislative history that Congress, by enacting the Natural Gas Pipeline Safety Act intended to curtail the jurisdiction exercised by the Federal Power Commission in the field of pipeline safety. On the contrary, the legislative history of the Natural Gas Pipeline Safety Act is clear in illustrating that the intent of Congress, upon enactment of the Safety Act, was that the Commission has retained authority to implement, in jurisdictional proceedings, safety standards of a more stringent nature than those standards promulgated by OPS:

The general scheme of the act is to provide broad safety powers to the Secretary in gas pipeline transportation. The Federal Power Commission presently has certain safety regulatory authority over interstate transmission lines under the Natural Gas Act. The FPC is required to consider and take action on some elements of the safety of transmission proposals in acting on applications for new or extended authority and it is not intended that this act will diminish the authority and responsibility of the FPC. In order, however, that the FPC not be placed in the position of having to determine whether the construction and operation details of a proposed service conform to the Secretary's standards, an applicant may certify to this effect and the certification will be conclusive on FPC. But if the relevant State or Federal enforcement agency has information that the applicant has violated safety standards in the past (thus possibly calling in question the applicant's compliance disposition) and notifies FPC in writing the certification will not be binding. It is not intended by the committee that this process of certification of compliance with the Secretary's standards will bar FPC from continuing to consider safety in the same fashion it presently does in connection with awarding certificates of public convenience and necessity. (Emphasis added.)⁴

Since 1968, therefore, both the Commission and the Department of Transportation have operated in this field and a jurisdictional dispute has developed between them as to their respective responsibilities for the safety regulation of natural gas transportation and natural gas facilities.

³ The term "pipeline facilities" is defined in Section 2(4) of the Safety Act to mean "without limitation, . . . any equipment, facility or building used in the transportation of gas". Section 2(3) of the Safety Act defines "transportation of gas" as "the gathering, transmission or distribution of gas by pipeline or its storage in or affecting interstate or foreign commerce." 49 U.S.C. 1671(4) and (3).

⁴ See the respective House and Senate Commerce Committee reports on S. 1166, the Safety Act bill passed by Congress in 1968: S. Rep. No. 733, 90th Cong., 1st Sess., at 12 (1967), and H. Rep. No. 1390, 90th Cong., 2d Sess., at 34-35 (1968).

It is undisputed that DOT's Office of Pipeline Safety has authority to promulgate minimum safety standards and regulations under the Natural Gas Pipeline Safety Act with respect to facilities subject to our jurisdiction and such minimum standards and regulations must be met by applicants seeking approval from this Commission for any natural gas facility. But this Commission's authority to determine the safety of the siting and routing of natural gas pipeline and LNG facilities is not limited by the Natural Gas Pipeline Safety Act and, therefore, both the Commission and DOT's Office of Pipeline Safety are charged with safety regulation of these natural gas facilities. The Safety Act, while not completely clear on the extent of each agency's safety jurisdiction provides that an applicant for a certificate under Section 7 of the Natural Gas Act shall certify that it will: "design, install, inspect, test, construct, operate, replace and maintain pipeline facilities in accordance with Federal and other applicable safety standards * * * Such certification shall be binding and conclusive upon the Commission unless the relevant enforcement agency has timely advised the Commission in writing that the applicant has violated safety standards established pursuant to this Act." This procedure was designed to eliminate the need for the FPC to verify an applicant's conformity with DOT's minimum Federal safety standards. The question that has been the subject of the jurisdictional dispute is whether under the public convenience and necessity standards of § 7 of the Natural Gas Act and under the public interest standard of § 3 of the Natural Gas Act, the safety aspects of a pipeline or an LNG storage tank facility are subject to Commission determination as to whether a higher or different safety standard than imposed by the minimum safety standard prescribed by DOT may be necessary.

The Federal Power Commission and the Department of Transportation have been trying to resolve this continuing jurisdictional dispute over their respective responsibility for safety pertaining to transportation of natural gas through interagency negotiations. The negotiations were prompted by recommendations made in a March, 1974, report on the safety of liquefied natural gas storage by the Special Subcommittee on Investigations, chaired by Congressman Harley O. Staggers of the House Committee on Interstate and Foreign Commerce.⁵

After considerable effort, however, we were unable to secure DOT concurrence in a proposed Memorandum of Understanding which, while it could not have removed statutory conflicts, would have, in our opinion, minimized the likelihood of interagency conflict. The Commission's letter of November 27, 1974, to Congressman Staggers, explaining the results of our efforts to achieve an understanding with DOT is attached for the information of the Committee (Attachment A). While I believe that the built-in conflicts in our respective legisla-

⁵ OPS, FPC and USCG [United States Coast Guard] should jointly agree on measures to alleviate interagency conflicts within the full range of LNG handling and storage matters, and report on their progress to the Subcommittee. If these agencies are unable to agree, Congress should act to resolve the problem. (*Legislative Issues Relating to the Safety of Liquefied Natural Gas Storage*, Report by the Special Subcommittee on Investigation of the Committee on Interstate and Foreign Commerce, House of Representatives, 93d Congress, 2d Session, March 1974, page 3).

tive mandates could be avoided in perhaps every instance by coordination and consultation between FPC and DOT, there is no doubt a legislative solution would provide the most clearcut resolution of this problem. Therefore, the Federal Power Commission favors corrective legislation.

ANALYSIS OF S. 2183 AND FPC'S RESOLUTION OF JURISDICTIONAL CONFLICTS

The solution offered by S. 2183 is to vest exclusive regulatory authority over safety of interstate transmission facilities for natural gas in the Department of Transportation.

The effect of S. 2183 would be to prohibit the FPC from denying or conditioning a pipeline certificate on the basis of safety criteria perceived by the FPC, but not contained in the safety requirements of DOT's Office of Pipeline Safety.

However, S. 2183 is not the only solution to the jurisdictional conflict. I offer the attached draft bill (Attachment B) as a possible legislative solution to the problem of jurisdiction over pipeline safety. My bill proposes amendments to the Natural Gas Pipeline Safety Act and the Natural Gas Act which would clearly define the jurisdiction of the Department of Transportation and the Federal Power Commission. The solution proposed by me would preserve the status quo: OPS would still have the authority to promulgate minimum Federal safety standards; and the FPC, when the public interest so dictates, would retain the authority to apply more stringent safety requirements upon a proper showing.

Under the present procedure FPC has never attempted to overrule OPS in the imposition of any safety standard, but has found it necessary on certain occasions to impose safety standards on the siting of pipeline and LNG facilities that were more stringent than those required by OPS. The mandates of the Natural Gas Act and the broad public interest standard impose on the Federal Power Commission a statutory obligation not only to establish safety standards for construction and operation within the site-plant but beyond the facility itself and to consider and provide for the safety of people, property and environmental values in the vicinity of any natural gas facility. I am convinced that these actions by the FPC have been in the public interest. I believe that the FPC is in a better position than OPS to make such decisions, since FPC, unlike OPS, is required to weigh not only the safety factors, but also all economic, market demand and other broad public interest factors related to each of its certificate decisions.

The FPC's draft bill also proposes to amend Section 3 of the Natural Gas Act to make clear that the FPC has safety authority with respect to the importation of LNG.⁶ Further, the draft bill proposes to amend Section 6 of the Safety Act, 49 U.S.C. 1676, the judicial review provision of that statute, to provide for finality of DOT deci-

⁶ This amendment is a codification of the decision in *Distrigas Corporation v. Federal Power Commission*, 495 F. 2d 1057 (D.C. Cir. 1974), *cert. denied*, 419 U.S. 834 (1974).

sions in proceedings before this agency. There has been some concern that parties who participate in proceedings under Sections 3 and 7 of the Natural Gas Act might contest a minimum Federal standard prescribed by DOT under the Safety Act and thus cause unnecessary delay in this Commission's proceedings. Our amendment would prevent such an occurrence.

It is in light of these considerations that S. 2183 should be analyzed. Even if the Commission's authority over safety would be curtailed under the provisions of the Natural Gas Pipeline Safety Act, we would continue to have the responsibility under NEPA as construed by case law to conduct our own safety evaluation as part of applicable statutory review procedure.⁷

As I pointed out earlier, it is indeed desirable to correct the ambiguity which the Natural Gas Pipeline Safety Act created. But this should not be done by enacting S. 2183 which would compel the Federal Power Commission to accept the judgment of the Department of Transportation on public safety of natural gas pipelines. It is my recommendation that Congress resolve the jurisdictional dispute by confirming the Congressional mandate of the FPC to set safety standards which are necessary for the public convenience and necessity. I believe that the overriding public interest in gas safety is best served by continuing the present arrangement under which two Federal agencies, rather than one, have authority over gas facilities which have an inherent potential for catastrophic property damage and loss of life.

I, therefore, recommend that the jurisdictional conflict between the Federal Power Commission and the Department of Transportation be resolved by clarifying the Natural Gas Pipeline Safety Act as proposed in my draft bill.

JURISDICTION OF FPC OVER LNG

Now let me turn to the more general question as to the need for additional legislation for offshore pipelines or liquefied natural gas transportation, siting and storage.

In the view of the Federal Power Commission no special legislation is needed to regulate safety standards for liquefied natural gas importation, sale for resale or transportation subject to Federal Power Commission jurisdiction.

As I outlined in my testimony before the Senate Committee on Commerce on June 14, 1974, the Federal Power Commission held in the March 1972 *Distrigas* proceeding, 47 FPC 752, that liquefied natural gas (LNG) is natural gas as that term is defined in Section 2 of the Natural Gas Act and that *Distrigas'* proposed LNG import was subject to our regulatory jurisdiction under Section 3 of the Natural Gas Act. (Hearings before the Senate Committee on Commerce, 94th Cong., 2d Sess., Committee transcript at pp. 234-266). The Commission's safety jurisdiction over LNG based on Section 3 authority over the importation of natural gas has been upheld by the United States Court of Appeals for the District of Columbia in *Distrigas Corpora-*

⁷ Cf. *Calvert Cliffs Coordinating Committee v. Atomic Energy Commission*, 449 F.2d 1109 (D.C. Cir. 1971).

tion, et al., v. Federal Power Commission, 495 F.2d 1057 (D.C. Cir. 1974) cert. denied, 419 U.S. 834 (1974).⁸

As a result of our action in the *Distrigas* proceeding, confirmed by court review, the Commission now asserts complete jurisdictional control over the importation and exportation of LNG, as well as its sale for resale and transportation in interstate commerce.

FPC review of safety concerns in processing an application for the approval of LNG facilities is well illustrated in the March 30, 1973 order in the *Columbia* LNG proceeding. That order contained the following pertinent safety requirements:

"(B) The authorization granted herein shall not take effect until all necessary Federal, State, and local authorizations have been secured. Such authorizations shall be required with respect to all facilities constructed pursuant to Opinions No. 622 and 622-A and this Order. A copy of each such authorization shall be submitted to the Commission prior to the commencement of construction. Such authorizations shall include, but are not limited to, building permits, Coast Guard clearances of vessels and harbor operations, and statements of compliance with applicable Government and industry safety codes governing the design, installation, inspection, testing, construction, operation, replacement, and maintenance of facilities.

"(C) The Petitioners shall file certificates of compliance with section 7 of the Natural Gas Pipeline Safety Act and the regulations of the Office of Pipeline Safety of the Department of Transportation issued pursuant thereto, shall advise the Commission of all changes in design and construction techniques, and shall advise the Commission of any safety standards adopted by the Petitioners which impose a higher or different safety standard than is required by such regulations of the Department of Transportation."

Columbia LNG Corp., et al., 49 FPC 809, 815-817 outlined our evaluation of all safety aspects of the proposed project. These include worker-safety problems, safety aspects of tunnel design, construction and maintenance, the safety checks provided in the facility's operations and communications system, the adequacy of the proposed facility's staffing needs from a safety standpoint, the adequacy of power supply emergency backup systems to guarantee the availability of essential equipment, fire detection devices and procedures, emergency shut down and evacuation systems and procedures, leak detection procedure, and the safety of the facilities and procedures to be used in unloading LNG from the tankers.

The Commission has also required the presentation of more detailed information on safety for LNG facility certification under guidelines

⁸ The court held that the Commission could impose on *Distrigas* the equivalent of section 7 requirements as a proper exercise of its section 3 authority if the Commission found that the application of such requirements to imports was necessary or appropriate to the public interest. The Commission had ordered *Distrigas*, an LNG importer, to file with the FPC applications for consideration and determination under Section 7 of the Natural Gas Act for authorization to construct and operate, as appropriate, their LNG terminal, storage, regasification and related facilities at Staten Island, New York and Everett, Massachusetts.

of the National Environmental Policy Act (NEPA) of 1969, 42 USCA 4321 *et seq.*⁹

It is thus clear that LNG facilities and transportation must satisfy at least equivalent safety requirements and undergo the same procedure as other natural gas facilities in order to receive the Commission's certification under Section 7(c) of the Natural Gas Act. We are equally concerned with the safety aspects of LNG imports and exports under Section 3 of the Natural Gas Act. It follows that our present authority for regulation in this field is ample and no additional legislation for liquefied natural gas transportation, siting, and storage is necessary to implement our safety jurisdiction over transportation of LNG by pipeline or LNG facilities.

We have not assumed jurisdiction over the transportation of LNG in interstate commerce by any means other than pipeline, such as by truck or barge. (Docket No. R-377, Order Terminating Proposed Rulemaking Proceeding, May 4, 1973.)

DOT also assumed jurisdiction over LNG storage facilities under the Natural Gas Pipeline Safety Act. In October 1972, the Secretary of Transportation amended Part 192 of the Safety Act regulations to establish Federal safety standards for facilities. Any amendments to the Natural Gas Pipeline Safety Act, would therefore, extend equally to liquefied natural gas, thus ousting FPC jurisdiction to review the safety aspects of LNG imports.

The transportation of LNG on vessels is subject to the jurisdiction of the U.S. Coast Guard. The "Ports and Waterways Safety Act of 1972" (Waterways, Act, Pub. L. 340, July 10, 1972) directs the Coast Guard to supervise and control the movement of vessels, the

⁹ The following specific information regarding proposed LNG facilities is required from applicants by Order No. 485 in order to facilitate the safety evaluation by staff in the preparation of environmental impact statements and for the ultimate evaluation of the Commission in carrying out its certifying responsibilities under public convenience and necessity standards defined in Section 7 of the Natural Gas Act:

"9.4.1 Liquefied Natural Gas Facilities—Provide detailed design specifications for all facilities to be used for the liquefaction, transport, storage and regasification of liquefied natural gas. Provide information on the flammability and flame resistance of all tank lining and insulation materials. Describe all construction, maintenance, and operational procedures with particular emphasis on procedures to protect public and worker safety and health. Identify and describe all pertinent safety regulations and codes and any revisions thereto including the Department of Transportation Regulations issued by the Office of Pipeline Safety as Amendment 192-10 (Liquefied Natural Gas Systems) to Part 192, "Transportation of Natural and other Gas by Pipeline: Minimum Federal Safety Standards" and by the U.S. Coast Guard as 33 CFR 6.14-1 (safety measures for waterfront facilities and vessels in port), 33 CFR 124.14 (notice in advance of arrival of a vessel laden with a dangerous cargo), 33 CFR, Part 126 (permits for handling of dangerous cargoes within or contiguous to waterfront facilities), and 46 CFR, Subchapter D (regulations governing tank vessels). Describe detailed procedures that will be used to comply with these safety regulations and codes. Identify all Federal, regional, state, and local Government agencies that have responsibilities for assuring compliance with these construction, maintenance, and operation regulations and codes. Describe safety reporting procedures, schedules, and recipients.

"9.4.2 Ancillary Facilities—Provide detailed design specifications for all ancillary facilities, owned and operated either by applicant or other parties, which will be constructed or operated in relation to the proposed project, such as processing plants and docking facilities. Describe all construction, maintenance, and operational procedures with particular emphasis on procedures to protect public and worker safety and health. Identify and describe all pertinent safety regulation and codes and describe detailed procedures that will be used to comply with these safety regulations and codes. Identify all Federal, regional, state and local Government agencies that have responsibilities for assuring compliance with these construction, maintenance, and operation regulations and codes. Describe safety reporting procedures, schedules, and recipients."

transportation, handling, loading, discharging, stowage, and storage of explosives, inflammable or combustible liquids in bulk, and other dangerous cargoes. The Waterways Act also gives the Coast Guard the authority to approve facilities for the handling of such cargoes, and to prescribe such conditions and restrictions relating to the safety of waterfront facilities and vessels in port.

In order to be able to fulfill the statutory mandate to the Federal Power Commission to provide for the safety of LNG imports, exports, sale for resale and pipeline transportation, the staff of the Commission strives to work closely with the Coast Guard, Environmental Protection Agency and the Office of Pipeline Safety in the Department of Transportation to benefit from advanced environmental safety concepts being evolved by these agencies. Federal Power Commission staff members are also participating in an interagency LNG safety study sponsored by the Council on Environmental Quality. Information is exchanged among the participants concerning current Federal programs in LNG safety in order to improve the effectiveness of all safety and environmental aspects of LNG regulation.

We also have a working agreement with the Cryogenics Division of the National Bureau of Standards under which personnel of that agency supplement the expertise of the Commission's staff. Among other contributions, the Bureau of Standards provides staff with a comprehensive review and analysis of the cryogenic safety and design aspects of each LNG facility application pursuant to both Sections 3 and 7 of the Natural Gas Act.

Comments have been requested with respect to the efficiency and usefulness of the Technical Pipeline Safety Standards Committee.

I am told by my staff that this Committee has served a significant role in providing to the Department of Transportation's Office of Pipeline Safety Operations a broad and informed overview of the technical feasibility, reasonableness and practicability of proposed regulations.

Prior to adoption of any new regulation or modification of any existing regulation the Committee has met and thoroughly evaluated all proposals and has provided advice and guidance to the Director of the Office of Pipeline Safety Operations which has resulted in modification of proposals, additional scope to regulations and in some cases withdrawal of proposed regulations.

The Committee has suggested new areas of consideration for expansion of the scope of regulations.

It appears that the Committee is serving a necessary and useful function in its role as presently defined by the Pipeline Safety Act of 1968. It is the view of my agency that the Committee should be continued as presently mandated by the law.

NATIONAL TRANSPORTATION SAFETY BOARD,
Washington, D.C., October 7, 1975.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Thank you for your letter of September 22, 1975, inviting the comments of the National Transportation Safety Board on S. 2183, a bill, "To amend the Natural Gas Pipeline Safety Act of 1968 as amended, to authorize additional appropriations, and for other purposes."

We have reviewed the proposed legislation and determined that we have no official comments to offer at this time. Your thoughtfulness in soliciting our views is greatly appreciated.

Sincerely yours,

JOHN H. REED, *Chairman.*

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Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To amend the Natural Gas Pipeline Safety Act of 1968 to authorize additional appropriations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Natural Gas Pipeline Safety Act Amendments of 1976".

SEC. 2. Section 15 of the Natural Gas Pipeline Safety Act of 1968 is amended—

(1) in subsection (a) thereof, by striking out "and" after "June 30, 1975," and by inserting "\$500,000 for the period beginning July 1, 1976, and ending September 30, 1976, \$4,664,000 for the fiscal year ending September 30, 1977, and \$5,000,000 for the fiscal year ending September 30, 1978," after "June 30, 1976,"; and

(2) in subsection (b) thereof, by striking out "5(c)" and inserting in lieu thereof "5(c) and (f)", and by striking out "and" after "June 30, 1975," and by inserting ", \$2,500,000 for the fiscal year ending September 30, 1977, and \$4,500,000 for the fiscal year ending September 30, 1978" after "June 30, 1976".

SEC. 3. Section 2 of the Natural Gas Pipeline Safety Act of 1968 is amended—

(1) by striking out "; and" at the end of paragraph (8) and inserting in lieu thereof ", except that it shall not include any pipeline facilities within a State which transport gas from an interstate gas pipeline to a direct sales customer within such State purchasing gas for its own consumption,"; and

(2) by redesignating paragraph (9) as paragraph (10), and inserting after paragraph (8) the following new paragraph:

"(9) 'Intrastate pipeline transportation' means pipeline facilities and transportation of gas within a State which are not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act, except that it shall include pipeline facilities within a State which transport gas from an interstate gas pipeline to a direct sales customer within such State purchasing gas for its own consumption; and".

SEC. 4. Section 3(b) of the Natural Gas Pipeline Safety Act of 1968 is amended—

(1) by inserting "emergency plans and procedures," after "inspection," in the second sentence thereof; and

(2) by amending the last sentence thereof to read as follows: "Any State agency may adopt additional or more stringent standards for intrastate pipeline transportation if such standards are compatible with the Federal minimum standards. No State agency may adopt or continue in force any such standards applicable to interstate transmission facilities, after the Federal minimum standards become effective."

SEC. 5. (a) Section 5(a) of the Natural Gas Pipeline Safety Act of 1968 is amended—

(1) in the first sentence thereof, by striking out “pipeline facilities and the transportation of gas (not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act) within a State” and inserting in lieu thereof “intrastate pipeline transportation”;

(2) in clause (1) thereof, by striking out “pipeline facilities and transportation of gas” and inserting in lieu thereof “transportation”;

(3) by striking out “(2) has adopted each Federal safety standard applicable to such pipeline facilities and transportation of gas established under this Act as of the date of the certification;” and inserting in lieu thereof “(2) has adopted, as of the date of the certification, each Federal safety standard established under this Act which is applicable to such transportation or, with respect to each such Federal safety standard established within one hundred and twenty days before the date of the certification, is taking steps pursuant to State law to adopt such standard;”;

and
(4) by striking out “and (4)” and inserting in lieu thereof “(4) is encouraging and promoting programs designed to prevent damage to pipeline facilities as a consequence of excavation activity; and (5)”.

(b) Section 5(b) of such Act is amended by striking out “With respect to” and all that follows down through “actions to—” and by inserting in lieu thereof the following: “With respect to any intrastate pipeline transportation for which the Secretary does not receive an annual certification under subsection (a) of this section, the Secretary may, by agreement with a State agency (including a municipality) authorize such agency to assume responsibility for, and carry out on behalf of the Secretary as it relates to intrastate pipeline transportation the necessary actions to—”.

(c) The first sentence of section 5(d) of such Act is amended to read as follows: “A certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety standard established for intrastate pipeline transportation pursuant to this Act after the date of such certification.”

(d) Section 5 of such Act is amended by adding at the end thereof the following new subsection (f):

“(f) (1) During the fiscal year ending September 30, 1978, the Secretary shall, in accordance with regulations issued by the Secretary taking into account the needs of the respective States, pay to each State agency out of funds appropriated or otherwise made available one hundred percent of the cost (not to exceed \$60,000 for each State agency) of not more than three full-time natural gas pipeline safety inspectors in addition to, and not in lieu of, the number of natural gas pipeline safety inspectors maintained by such State agency in calendar year 1977.

“(2) Not later than September 30, 1977, any State may apply to receive funds under paragraph (1) for the calendar year 1978.

“(3) Each State agency which receives funds under paragraph (1) shall continue to maintain during calendar years 1979 and 1980 not less than the number of full-time natural gas pipeline safety inspectors which were maintained by such State agency in calendar year 1978.

“(4) Any State in which the State agency fails to meet its obligations under paragraph (3) shall reimburse the Secretary for a sum equal to 50 percent of the funds received by such State under this subsection in proportion to which such State agency has failed to meet its obligations.”.

SEC. 6. The first sentence of section 11 of the Natural Gas Pipeline Safety Act of 1968 is amended to read as follows: "Each person who engages in the transportation of gas or who owns or operates intrastate pipeline transportation facilities shall file with the Secretary or, if a certification or an agreement pursuant to section 5 of this Act is in effect, with the appropriate State agency, a plan for inspection and maintenance of each facility used in such transportation and owned or operated by such person, and any changes in such plan, in accordance with regulations prescribed by the Secretary or appropriate State agency."

SEC. 7. Section 14(a) (1) of the Natural Gas Pipeline Safety Act of 1968 is amended by striking out "accidents" and inserting in lieu thereof "leak repairs, accidents."

SEC. 8. The Natural Gas Pipeline Safety Act of 1968 is amended by adding at the end thereof the following:

"CONSUMER EDUCATION

"SEC. 16. Each person who engages in the transportation of gas shall, in accordance with the regulations prescribed by the Secretary, conduct a program to educate the public on the possible hazards associated with gas leaks and on the importance of reporting gas odors and leaks to appropriate authorities. The Secretary may develop materials suitable for use in such education programs.

"CITIZEN'S CIVIL ACTION

"SEC. 17. (a) Except as provided in subsection (b), any person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, against any other person (including any State, municipality, or other governmental entity to the extent permitted by the eleventh amendment to the Constitution, and the United States) who is alleged to be in violation of this Act or of any order or regulation issued under this Act. The district courts of the United States shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

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

"(1) prior to the expiration of 60 days after the plaintiff has given notice of such alleged violation to the Secretary (or to the applicable State agency in the case of a State which has been certified under section 5(a) and in which the violation is alleged to have occurred), and to any person who is alleged to have committed such violation; or

"(2) if the Secretary (or such State agency) has commenced and is diligently pursuing administrative proceedings or the Attorney General of the United States (or the chief law enforcement officer of such State) has commenced and is diligently pursuing judicial proceedings with respect to such alleged violation. Notice under this subsection shall be given in such manner as the Secretary shall prescribe by regulation.

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

H. R. 12168—4

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

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

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

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*