

§ 60104. Requirements and limitations

(a) OPPORTUNITY TO PRESENT VIEWS.—The Secretary of Transportation shall give an interested person an opportunity to make oral and written presentations of information, views, and arguments when prescribing a standard under this chapter.

(b) NONAPPLICATION.—A design, installation, construction, initial inspection, or initial testing standard does not apply to a pipeline facility existing when the standard is adopted.

(c) PREEMPTION.—A State authority that has submitted a current certification under section 60105(a) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation. Notwithstanding the preceding sentence, a State authority may enforce a requirement of a one-call notification program of the State if the program meets the requirements for one-call notification programs under this chapter or chapter 61.

(d) CONSULTATION.—(1) When continuity of gas service is affected by prescribing a standard or waiving compliance with standards under this chapter, the Secretary of Transportation shall consult with and advise the Federal Energy Regulatory Commission or a State authority having jurisdiction over the affected gas pipeline facility before prescribing the standard or waiving compliance. The Secretary shall delay the effective date of the standard or waiver until the Commission or State authority has a reasonable opportunity to grant an authorization it considers necessary.

(2) In a proceeding under section 3 or 7 of the Natural Gas Act (15 U.S.C. 717b or 717f), each applicant for authority to import natural gas or to establish, construct, operate, or extend a gas pipeline facility subject to an applicable safety standard shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain a gas pipeline facility under those standards and plans for inspection and maintenance under section 60108 of this title. The certification is binding on the Secretary of Energy and the Commission except when an appropriate enforcement agency has given timely written notice to the Commission that the applicant has violated a standard prescribed under this chapter.

(e) LOCATION AND ROUTING OF FACILITIES.—This chapter does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1308; Pub. L. 107–355, §3(a), Dec. 17, 2002, 116 Stat. 2986.)

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
60104(b) .....	49 App.:2002(g). 49 App.:1672(a)(1) (6th sentence).	Nov. 30, 1979, Pub. L. 96–129, §§202(4) (28th–last words), 203(c) (last sentence), (g), 93 Stat. 1003, 1004, 1005. Aug. 12, 1968, Pub. L. 90–481, §3(a)(1) (6th, 9th, last sentences), 82 Stat. 721; Oct. 11, 1976, Pub. L. 94–477, §4(2), 90 Stat. 2073; Nov. 30, 1979, Pub. L. 96–129, §§101(a), 109(c), (e), 93 Stat. 990, 996; Oct. 24, 1992, Pub. L. 102–508, §116, 106 Stat. 3298.
60104(c) .....	49 App.:2002(c) (last sentence). 49 App.:1672(a)(1) (9th, last sentences). 49 App.:2002(d).	Nov. 30, 1979, Pub. L. 96–129, §203(d), 93 Stat. 1004; Oct. 24, 1992, Pub. L. 102–508, §215, 106 Stat. 3305.
60104(d) .....	49 App.:1676(a).	Aug. 12, 1968, Pub. L. 90–481, §9(a), 82 Stat. 725; Nov. 30, 1979, Pub. L. 96–129, §§109(i), 152(a), (b)(3), 93 Stat. 997, 999, 1001; Oct. 30, 1988, Pub. L. 100–561, §105(1), 102 Stat. 2807.
60104(e) .....	49 App.:1671(4) (33d–last words). 49 App.:2001(4) (28th–last words).	Aug. 12, 1968, Pub. L. 90–481, §2(4) (33d–last words), 82 Stat. 720.

Subsection (a) is substituted for 49 App.:1672(c) (last sentence) and 2002(g) (last sentence) to eliminate unnecessary words. The text of 49 App.:1672(c) (1st sentence) and 2002(g) (1st sentence) is omitted as unnecessary because 5:ch. 5, subch. II applies unless otherwise stated.

In subsection (c), the words “prescribed under this chapter” are added for clarity. The words “after the Federal minimum standards become effective” in 49 App.:1672(a) (last sentence) are omitted as obsolete.

In subsection (d)(1), the words “waiving compliance” are substituted for “action upon application for waiver” and “acting on the waiver application” to eliminate unnecessary words. The words “the provisions of” are omitted as surplus. The word “authority” is substituted for “commission” for consistency in the revised title and with other titles of the Code.

In subsection (d)(2), the words “and conclusive” are omitted as being included in “binding”. The words “Secretary of Energy” are substituted for “Department of Energy” because of 42:7231.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–355 inserted at end “Notwithstanding the preceding sentence, a State authority may enforce a requirement of a one-call notification program of the State if the program meets the requirements for one-call notification programs under this chapter or chapter 61.”

§ 60105. State pipeline safety program certifications

(a) GENERAL REQUIREMENTS AND SUBMISSION.—Except as provided in this section and sections 60114 and 60121 of this title, the Secretary of Transportation may not prescribe or enforce safety standards and practices for an intrastate pipeline facility or intrastate pipeline transportation to the extent that the safety standards and practices are regulated by a State authority (including a municipality if the standards and practices apply to intrastate gas pipeline transportation) that submits to the Secretary annually a certification for the facilities and transportation that complies with subsections (b) and (c) of this section.

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
60104(a) .....	49 App.:1672(c).	Aug. 12, 1968, Pub. L. 90–481, §3(c), 82 Stat. 721; Nov. 30, 1979, Pub. L. 96–129, §§104(a)(2), (c), 109(c), 93 Stat. 992, 994, 996.

(b) CONTENTS.—Each certification submitted under subsection (a) of this section shall state that the State authority—

(1) has regulatory jurisdiction over the standards and practices to which the certification applies;

(2) has adopted, by the date of certification, each applicable standard prescribed under this chapter or, if a standard under this chapter was prescribed not later than 120 days before certification, is taking steps to adopt that standard;

(3) is enforcing each adopted standard through ways that include inspections conducted by State employees meeting the qualifications the Secretary prescribes under section 60107(d)(1)(C) of this title;

(4) is encouraging and promoting the establishment of a program designed to prevent damage by demolition, excavation, tunneling, or construction activity to the pipeline facilities to which the certification applies that subjects persons who violate the applicable requirements of that program to civil penalties and other enforcement actions that are substantially the same as are provided under this chapter, and addresses the elements in section 60134(b);

(5) may require record maintenance, reporting, and inspection substantially the same as provided under section 60117 of this title;

(6) may require that plans for inspection and maintenance under section 60108 (a) and (b) of this title be filed for approval; and

(7) may enforce safety standards of the authority under a law of the State by injunctive relief and civil penalties substantially the same as provided under sections 60120 and 60122(a)(1) and (b)–(f) of this title.

(c) REPORTS.—(1) Each certification submitted under subsection (a) of this section shall include a report that contains—

(A) the name and address of each person to whom the certification applies that is subject to the safety jurisdiction of the State authority;

(B) each accident or incident reported during the prior 12 months by that person involving a fatality, personal injury requiring hospitalization, or property damage or loss of more than an amount the Secretary establishes (even if the person sustaining the fatality, personal injury, or property damage or loss is not subject to the safety jurisdiction of the authority), any other accident the authority considers significant, and a summary of the investigation by the authority of the cause and circumstances surrounding the accident or incident;

(C) the record maintenance, reporting, and inspection practices conducted by the authority to enforce compliance with safety standards prescribed under this chapter to which the certification applies, including the number of inspections of pipeline facilities the authority made during the prior 12 months; and

(D) any other information the Secretary requires.

(2) The report included in the first certification submitted under subsection (a) of this section is only required to state information available at the time of certification.

(d) APPLICATION.—A certification in effect under this section does not apply to safety standards prescribed under this chapter after the date of certification. This chapter applies to each applicable safety standard prescribed after the date of certification until the State authority adopts the standard and submits the appropriate certification to the Secretary under subsection (a) of this section.

(e) MONITORING.—The Secretary may monitor a safety program established under this section to ensure that the program complies with the certification. A State authority shall cooperate with the Secretary under this subsection.

(f) REJECTIONS OF CERTIFICATION.—If after receiving a certification the Secretary decides the State authority is not enforcing satisfactorily compliance with applicable safety standards prescribed under this chapter, the Secretary may reject the certification, assert United States Government jurisdiction, or take other appropriate action to achieve adequate enforcement. The Secretary shall give the authority notice and an opportunity for a hearing before taking final action under this subsection. When notice is given, the burden of proof is on the authority to demonstrate that it is enforcing satisfactorily compliance with the prescribed standards.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1309; Pub. L. 104–304, §20(a), Oct. 12, 1996, 110 Stat. 3804; Pub. L. 109–468, §2(b)(1), Dec. 29, 2006, 120 Stat. 3487.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
60105(a) .....	49 App.:1674(a) (1st sentence words before “that such State agency”).	Aug. 12, 1968, Pub. L. 90–481, §5(a), 82 Stat. 722; Aug. 22, 1972, Pub. L. 92–401, §1, 86 Stat. 616; Oct. 11, 1976, Pub. L. 94–477, §5(a), 90 Stat. 2073; Nov. 30, 1979, Pub. L. 96–129, §§101(b), 103(a), (b)(3), 109(g), (h)(1), 93 Stat. 990, 991, 996; Jan. 14, 1983, Pub. L. 97–468, §104, 96 Stat. 2543; Oct. 31, 1988, Pub. L. 100–561, §§103, 303(b)(1), 102 Stat. 2807, 2816; Oct. 24, 1992, Pub. L. 102–508, §§110(a), 111, 106 Stat. 3295.
	49 App.:2004(a) (1st sentence words before “that such State agency”).	Nov. 30, 1979, Pub. L. 96–129, §205(a), 93 Stat. 1006; Oct. 31, 1988, Pub. L. 100–561, §203, 102 Stat. 2810; Oct. 24, 1992, Pub. L. 102–508, §§209(a), 210, 106 Stat. 3304.
60105(b) .....	49 App.:1674(a) (1st sentence words after “an annual certification”).	
	49 App.:2004(a) (1st sentence words after “an annual certification”).	
60105(c) .....	49 App.:1674(a) (2d, 3d sentences).	
	49 App.:2004(a) (2d, last sentences).	
60105(d) .....	49 App.:1674(e).	Aug. 12, 1968, Pub. L. 90–481, §5(e), 82 Stat. 724; Oct. 11, 1976, Pub. L. 94–477, §5(c), 90 Stat. 2074; Nov. 30, 1979, Pub. L. 96–129, §103(b)(2)(B), 93 Stat. 991.
	49 App.:2004(e).	Nov. 30, 1979, Pub. L. 96–129, §205(c) (related to certification), (e), (f), 93 Stat. 1007, 1008.
60105(e) .....	49 App.:1674(c) (related to certification).	Aug. 12, 1968, Pub. L. 90–481, 82 Stat. 720, §5(c) (related to certification); added Nov. 30, 1979, Pub. L. 96–129, §103(b)(2)(C), 93 Stat. 991.

## HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
60105(f) .....	49 App.:2004(c) (related to certification). 49 App.:1674(a) (4th, last sentences). 49 App.:2004(f).	

In subsection (a), the words “applicable to same” are omitted as surplus. The words “for the facilities and transportation that complies with subsections (b) and (c) of this section” are added for clarity.

In subsections (b) and (c), the words “to which the certification applies” and “to whom the certification applies” are added because of the restatement.

In subsection (b)(2), the words “Federal safety” and “pursuant to State law” are omitted as surplus.

In subsection (b)(7), the words “injunctive relief and civil penalties” are substituted for “injunctive and monetary sanctions” for clarity and consistency.

In subsection (c)(1), before clause (A), the word “annual” is omitted as surplus. The words “in such form as the Secretary may by regulation provide” are omitted as surplus because of 49:322(a). In clause (B), the words “or loss” are added for consistency in the revised title and with other titles of the United States Code. In clause (C), the words “a detail of” are omitted as surplus.

In subsection (d), the words “with respect” and “new or amended Federal” are omitted as surplus.

In subsection (e), the words “conduct whatever . . . may be necessary” and “fully” are omitted as surplus. The words “with the Secretary” are substituted for “in any monitoring of their programs” for clarity.

In subsection (f), the words “prescribed under this chapter” are added for clarity. The word “reasonable” is omitted as surplus.

## AMENDMENTS

2006—Subsec. (b)(4). Pub. L. 109-468 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “is encouraging and promoting programs designed to prevent damage by demolition, excavation, tunneling, or construction activity to the pipeline facilities to which the certification applies;”.

1996—Pub. L. 104-304 substituted “State pipeline safety program certifications” for “State certifications” in section catchline.

**§ 60106. State pipeline safety agreements**

(a) AGREEMENTS WITHOUT CERTIFICATION.—If the Secretary of Transportation does not receive a certification under section 60105 of this title, the Secretary may make an agreement with a State authority (including a municipality if the agreement applies to intrastate gas pipeline transportation) authorizing it to take necessary action. Each agreement shall—

(1) establish an adequate program for record maintenance, reporting, and inspection designed to assist compliance with applicable safety standards prescribed under this chapter; and

(2) prescribe procedures for approval of plans of inspection and maintenance substantially the same as required under section 60108 (a) and (b) of this title.

(b) AGREEMENTS WITH CERTIFICATION.—

(1) IN GENERAL.—If the Secretary accepts a certification under section 60105 and makes the determination required under this subsection, the Secretary may make an agreement with a State authority authorizing it to participate in the oversight of interstate pipe-

line transportation. Each such agreement shall include a plan for the State authority to participate in special investigations involving incidents or new construction and allow the State authority to participate in other activities overseeing interstate pipeline transportation or to assume additional inspection or investigatory duties. Nothing in this section modifies section 60104(c) or authorizes the Secretary to delegate the enforcement of safety standards for interstate pipeline facilities prescribed under this chapter to a State authority.

(2) DETERMINATIONS REQUIRED.—The Secretary may not enter into an agreement under this subsection, unless the Secretary determines in writing that—

(A) the agreement allowing participation of the State authority is consistent with the Secretary’s program for inspection and consistent with the safety policies and provisions provided under this chapter;

(B) the interstate participation agreement would not adversely affect the oversight responsibilities of intrastate pipeline transportation by the State authority;

(C) the State is carrying out a program demonstrated to promote preparedness and risk prevention activities that enable communities to live safely with pipelines;

(D) the State meets the minimum standards for State one-call notification set forth in chapter 61; and

(E) the actions planned under the agreement would not impede interstate commerce or jeopardize public safety.

(3) EXISTING AGREEMENTS.—If requested by the State authority, the Secretary shall authorize a State authority which had an interstate agreement in effect after January 31, 1999, to oversee interstate pipeline transportation pursuant to the terms of that agreement until the Secretary determines that the State meets the requirements of paragraph (2) and executes a new agreement, or until December 31, 2003, whichever is sooner. Nothing in this paragraph shall prevent the Secretary, after affording the State notice, hearing, and an opportunity to correct any alleged deficiencies, from terminating an agreement that was in effect before enactment of the Pipeline Safety Improvement Act of 2002 if—

(A) the State authority fails to comply with the terms of the agreement;

(B) implementation of the agreement has resulted in a gap in the oversight responsibilities of intrastate pipeline transportation by the State authority; or

(C) continued participation by the State authority in the oversight of interstate pipeline transportation has had an adverse impact on pipeline safety.

(c) NOTIFICATION.—

(1) IN GENERAL.—Each agreement shall require the State authority to notify the Secretary promptly of a violation or probable violation of an applicable safety standard discovered as a result of action taken in carrying out an agreement under this section.

(2) RESPONSE BY SECRETARY.—If a State authority notifies the Secretary under paragraph