



U.S. Department of Transportation
Pipeline and Hazardous Materials
Safety Administration



Damage Prevention Update



SD/ND/WY Pipeline Safety Seminar
Rapid City, SD
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Presentation Overview

- **PHMSA's Damage Prevention Efforts**
 - 811/Safe Digging Month
 - Exemptions
 - Enforcement Rulemaking
- **Discussion**



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DOT 811 Campaign

- **Secretary LaHood: Make 811 as well-known as 911**
- **Funding uncertain for 2013 Campaign. Focus areas for 2013 include:**
- **Letters : State Governors, State Utility Commissions, Trade Associations, State DOTs**
- **Emergency responders as target audience**



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Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011: Damage Prevention Components

- Two major directives – both aimed at exemptions
 - Exemptions as a criteria for certain grant eligibility
 - DOT to study impact of all exemptions involving mechanical equipment
 - Effective January 2014





Two Grant Programs – Similar Purposes

- **One Call Grants:**
 - State pipeline safety offices are eligible applicants
 - Maximum award = \$45,000 per year
 - Funding available to assist in improving damage prevention programs
- **State Damage Prevention Grants:**
 - State Authority designated by Governor of state is eligible applicant
 - Maximum award = \$100,000 per year
 - Funding to assist states in aligned with one or more of the 9 Elements of Effective Damage Prevention





PHMSA Public Forum on Exemptions

- March 14, 2013. Topics covered:
- Discussion of what we know and don't know concerning exemptions based on existing data
- Stakeholder panel discussions: Perspectives from a broad array of panelists, including operators, excavators, one call centers, agriculture, railroad...
- Webcast of meeting/presentations available at:
- <https://primis.phmsa.dot.gov/meetings>
- Comments can be filed on this topic at www.regulations.gov under docket #Docket No. PHMSA–2013–0029.
- Information gathered will be used in drafting study for Congress





Exemptions and Grant Eligibility

- **EXEMPTIONS PROHIBITED.—**
- This applies to both One Call Grants and State Damage Prevention Grants.
- States affected classified as probably or potentially ineligible, and informally notified. Developing process for next steps
- Exemption Study
- Report to Congress on results of this study due January 3, 2014





Pipeline Damage Prevention Programs - Enforcement Rule

- Title: "Pipeline Damage Prevention Programs"
- Docket No. PHMSA-2009-0192, www.regulations.gov
- PHMSA video on the NPRM:
 - <http://www.phmsa.dot.gov/pipeline/regs>
- Comment period closed July 9, 2012
- Final rule by early 2014





Intent of the NPRM

NPRM seeks to revise Pipeline Safety Regulations to:

1. Establish criteria and procedures for determining adequacy of state pipeline excavation damage prevention law enforcement programs
2. Establish the administrative process for making adequacy determinations
3. Establish the Federal requirements PHMSA will enforce in states with inadequate enforcement programs
4. Establish the adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised



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Criteria for Adequate Enforcement

(see NPRM for complete language)

1. Does the state have enforcement authority with civil penalties?
2. Has the state designated an agency or other body as the responsible enforcement authority?
3. Is the state using its enforcement authority and making information publicly available that demonstrates the effectiveness of enforcement?
4. Does the state have a reliable mechanism for learning about excavation damage?
5. Does the state use damage investigation practices that are adequate to determine the at-fault party?



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Criteria for Adequate Enforcement

(see NPRM for complete language)

6. Does the state's damage prevention law require:

- a) Excavators must call the one-call before excavating;
- b) Excavators may not excavate in disregard of the marked location of pipelines;
- c) An excavator who causes damage to a pipeline:
 - i. Must report the damage to the owner/operator of the pipeline, and;
 - ii. Must call 911 or another emergency telephone number if the damage results in a release.

7. Does the state limit exemptions for excavators from its excavation damage prevention law?



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Procedures for Evaluating States

(see NPRM for complete language)

- Annual review using proposed criteria summarized on previous slides
- Review will encompass information from any state agency or office with a role in the enforcement program
- PHMSA may take immediate enforcement action against excavators in a state upon a finding of inadequacy
- States have five years from a finding of inadequacy to implement an adequate program
 - After five years, state is subject to a reduction in “base grant” funding established under 49 U.S.C. 60107





Technical Advisory Committees Vote

- Statutorily-mandated committees that advise PHMSA on proposed safety standards and policies
- PHMSA uses these votes when drafting regulations but is not required to adopt all recommendations
- Committee met in December, 2012 to vote on:
 - (1) the Criteria for Evaluating State Enforcement Programs;
 - (2) the Federal Excavation Standard; and
 - (3) the Incentives for States to Implement Adequate Enforcement Program.





Technical Advisory Committee Vote: Effectiveness of state enforcement

- Vote: Criteria for evaluating states
- Proposed rule is technically feasible, reasonable, cost-effective, and practicable if the following changes are considered:
- PHMSA develops a policy, incorporated into the preamble of the final rule that clarifies the scope and applicability of the state evaluation criteria. The policy will address the relative importance and intent of each of the criteria and the three items identified by the committee during the meeting.





Effectiveness of states

- TAC Vote - Three items added were:
- PHMSA should look beyond enforcement actions in evaluating a state damage prevention program considering factors such as state's investigation processes, standards for excavators, excavator education efforts, and commitment to continued improvement.
- The criteria to determine whether a state damage prevention program is deemed adequate should also include consideration of whether the state's one call centers are required to provide a mandatory positive response to locate requests.
- the administrative process for determining adequacy should be amended to include public comment.





Excavator Standards

- Technically feasible, reasonable, cost-effective, and practicable if the following changes are considered:
 - Eliminate the homeowner exemption.
 - PHMSA develops a policy, incorporated into the preamble of the final rule that clarifies the scope and applicability. The policy will address triggers for federal enforcement, how PHMSA will consider state exemptions in enforcement decisions, and how the federal excavation standard will be applied in states with inadequate enforcement programs.
 - In addition the following items be considered for incorporation into the final rule (including the policy as appropriate)





Excavator Standards

- Additional items recommended for consideration:
 - “Upon calling the 911 emergency telephone number, the excavator may exercise discretion as to whether to request emergency response personnel be dispatched to the damage site.” PHMSA should eliminate the discretion of the excavator in determining whether emergency personnel should be dispatched.
 - PHMSA should edit Section 196.103, which lists an excavator’s obligations to protect underground pipelines from excavation-related damage. Section 196.103 should read “Prior to commencing excavation activity where an underground gas or hazardous liquid pipeline may be present...the excavator must:”



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Excavator Standards

- Incorporate a “stop work” provision, consistent with CGA BP 5-25
- Require that an excavator may not backfill a site where damage or a near miss has occurred until the operator has been provided an opportunity to inspect
- Excavators should “promptly” report releases to 911 – no upper timeframe



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Incentives for States

- Technically feasible, reasonable, cost-effective, and practicable if the following changes are considered:
 - Retain the potential penalty to base grants, but consider lowering the percentage that may be affected
 - PHMSA develops a policy, incorporated into the preamble of the final rule that clarifies how base grants will be calculated by including the state program evaluation criteria defined in the final rule.
 - (Reduce grace period (198.53) from five years to three years.)
 - Ensure the Governors of states with inadequate enforcement are directly informed of PHMSA's findings






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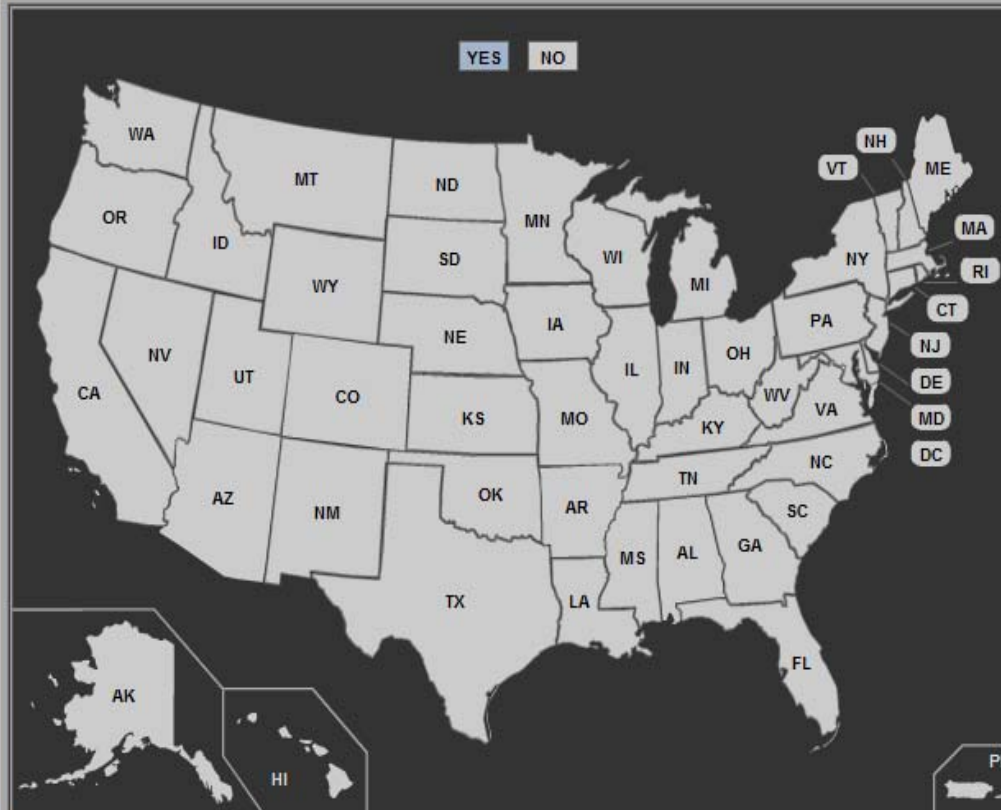
North American Telecommunications Damage Prevention Council (NTDPC)

Select a Category:

- ☒ Excavator
☐ Operator
☐ Other

Mouseover  for additional information

-  Excavator Notice to One Call Required
-  White-Line Required
-  Hand Dig / Vacuum Excavate within Tolerance Zone
-  Preserve / Maintain Marks Required
-  Call Again if no Response from Operator or Signs of Unmarked Facilities
-  Re-Notification Required
-  Special Language Re Trenchless Technology
-  Non-Delegable Duty
-  Notify Operator of Damage Required
-  Notify One Call Center of Damage Required
-  Call 911 if Hazardous Materials Released
-  Notice Exemptions



Select a Category:

- ☒ Excavator
☐ Operator
☐ Other

-- Select a State --

Alabama

excavation or demolition shall give written, telephonic, or electronic notice of such intent to excavate or demolish to the underground facility operator or a "One-Call Notification System" acting on behalf of the operator at least two but not more than ten working days prior to the start of the proposed excavation and at least two working days but not more than thirty calendar days prior to the start of demolition or any blasting operations for either excavation or demolition. Written notice shall be by registered mail and shall be valid only upon receipt of the written information required by this chapter by the operator or by a "One-Call Notification System" acting on behalf of the operator."

Ticket Life(# of days)

14 days (Excavation); 30 days (Demolition)

White-Line Required

Yes, but only in the event the location requirements of AL Code Section 37-15-4, Subsection (c) cannot be met.

Tolerance Zone

18"

Special Digging Requirements within Tolerance Zone



State Damage Prevention Program

	Element								
	1	2	3	4	5	6	7	8	9
CO	1	2	2	1	2	1	3	2	1
MN	1	1	1	1	1	1	1	1	1
MT	1	2	1	1	1	3	3	1	1
NE	1	1	1	1	1	2	1	1	1
ND	1	1	1	1	1	1	1	1	1
SD	1	1	1	3	1	1	1	1	3
WY	1	1	1	1	1	2	2	1	2



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Resources

- PHMSA web sites:
 - <http://primis.phmsa.dot.gov/comm/>
 - Includes damage prevention initiatives, info on grants, incident information and more – resource links based on audience
 - <http://www.phmsa.dot.gov/pipeline>
 - Includes PHMSA-wide, HazMat and Pipeline information, forms, regulatory actions, etc.
 - Sites are linked
 - Annmarie Robertson
(317) 253-1622
annmarie.robertson@dot.gov



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Thank You!!!

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