

Pipeline and Hazardous Materials Safety Administration (PHMSA) Excavation Enforcement Rule

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

*"To protect people and the environment by advancing the safe transportation of energy
and other hazardous materials that are essential to our daily lives."*



Overview of the Rule

- The Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006 gave PHMSA new enforcement authority over excavators who damage pipelines in States with inadequate excavation damage prevention law enforcement programs.
- PHMSA developed the excavator enforcement rule as a prerequisite to using this new enforcement authority. The rule amends the pipeline safety regulations to establish the following:
 1. The seven criteria and the process PHMSA will use to determine the adequacy of State pipeline excavation damage prevention law enforcement programs;
 2. An administrative process for making State adequacy determinations;
 3. The federal requirements PHMSA will enforce in States with inadequate enforcement programs;
 4. The adjudication process for administrative enforcement proceedings against excavators where federal authority is exercised.



The Rule Creates...

- Part 198, Subpart D
 - Criteria for adequate State DP enforcement programs and process for assessment
 - Administrative procedures for States to contest a notice of inadequacy
- New Part 196
 - Standards for excavators digging near pipelines
 - Adjudication process for excavators cited by PHMSA – Same as for operators cited by PHMSA for violations of pipeline safety regulations



Criteria for Evaluating State DP Enforcement Programs

1. Does the State have enforcement authority (with civil penalties)?
2. Is there a designated enforcement body?
3. Is the State using its authority and making enforcement records available to the public?
4. Does the State have a reliable means of learning about damages?
5. Does the State have damage investigation practices that are adequate to determine the at-fault party when a damage occurs?



Criteria for Evaluating State DP Enforcement Programs

6. At a minimum, does the State require:
 - a. Excavators must call 811 before digging
 - b. Excavators must “respect the marks”
 - c. If damage to a pipeline occurs...
 - i. Excavator must report damage to operator at earliest practical moment
 - ii. If release occurs, excavator must call 911
7. Are exemptions from the DP law limited?
Written justification of exemptions is required.



Federal Standard for Excavators

- Call 811 before excavating
- Wait for pipeline operators to establish and mark the location of underground pipelines before excavating
- Excavate with proper regard for the marks, take all practicable steps to prevent excavation damage
- Make additional use of one-call as necessary
- Any contact with pipelines must be reported to operator at earliest practical moment
- If there is a release, excavator must call 911

NOTE: There are no exemptions in the final rule. PHMSA will be considerate of exemptions in State laws when undertaking federal enforcement action.



PHMSA Implementation – State Evaluations

- Effective Date of Rule is 1/1/2016
- New England State Evaluations Completed
 - Rhode Island – 8/15/2016
 - Massachusetts – 8/16/2016
 - Maine – 9/19/2016
 - New Hampshire – 9/20/2016
 - Vermont – 9/21/2016
- PHMSA Eastern Region Letters Issued to Date
 - Virginia - Adequate
 - Connecticut – Adequate
 - West Virginia - Inadequate



Policy: Enforcement

- PHMSA's enforcement focus will be on serious violations
- PHMSA's standards for excavators are the "floor" or "baseline"; when conducting enforcement, PHMSA will be cognizant of State requirements
- PHMSA and States have existing authority to enforce against non-compliant pipeline operators



PHMSA Implementation – Excavation Enforcement

Notify PHMSA of Excavation Damage

Excavation Damage Complaint Form

Complaint Information

Any person with knowledge of excavation damage to a hazardous liquid or natural gas pipeline subject to [Title 49 Code of Federal Regulations \(CFR\), Part 192 & Part 195](#) may complete this form. PHMSA will use this form as the first step to determine if there was a potential violation of [Title 49 CFR Part 196 - Protection of Underground Pipelines from Excavation Activity](#). PHMSA is not obligated to act on any information that is submitted. PHMSA will only contact you in the event that we decide to investigate the damage.

In what state did the alleged excavation damage occur?

[PHMSA does not have jurisdiction over excavators in States that are not listed here. If the excavation damage occurred in a State that is not listed here, you may wish to contact the excavation damage prevention law enforcement organization in that State.] *

Did the damage occur to a natural gas or hazardous liquid pipeline subject to [Title 49 CFR, Part 192 or Part 195](#)? *

Yes No

Was there excavation damage to the pipeline (see definitions below)? *

Yes No



For More Information

For more information, visit our website at:

<http://phmsa.dot.gov/pipeline/safety-awareness-and-outreach/excavator-enforcement>

Safety Awareness and Outreach	- ABOUT EXCAVATION ENFORCEMENT FINAL RULE
<h2>About Excavation Enforcement Final Rule</h2> <p>On July 13, 2015, the U.S. Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) announced the issuance of a final rule to establish the process for evaluating State excavation damage prevention law enforcement programs and enforcing minimum Federal damage prevention standards in States where damage prevention law enforcement is deemed inadequate or does not exist.</p> <p>This final rule amends the Federal pipeline safety regulations to establish the following:</p> <ul style="list-style-type: none">• Criteria and procedures PHMSA will use to determine the adequacy of State pipeline excavation damage prevention law enforcement programs;• The administrative process PHMSA will use in determining the adequacy of State excavation damage prevention law enforcement programs;	<p>Excavation Damage 80 FR 43836-Final Rule (Federal Register)</p> <p>PHMSA Issues Pipeline Damage Prevention Programs Final Rule (Press Release)</p> <p>+ FREQUENTLY ASKED QUESTIONS (FAQS)</p> <p>STATE EVALUATION SCHEDULE</p> <p>+ RESOURCES</p> <p>CONTACT US</p> <p>NOTIFY PHMSA OF EXCAVATION DAMAGE</p>

Questions can be sent to:

excavation.enforcement@dot.gov

