

## PHMSA Requirements for State One-Call Legislation

From the Notice of Proposed Rulemaking, below is a summary of the criteria PHMSA will use to evaluate Montana's One Call Law. This will be at Title 49, USC, Part 198, Subpart D.

PHMSA conducts annual program evaluations and certification reviews of state pipeline safety programs, i.e., the Montana PSC's certification with PHMSA. PHMSA will also conduct annual reviews of state damage prevention programs. PHMSA will use the following criteria as the basis for the damage prevention reviews.

- 1) Does the state have enforcement authority through the use of civil penalties?
- 2) Has the state designated a state agency or other body responsible for the enforcement of the damage prevention law?
- 3) Is the state assessing civil penalties for violations at sufficient levels to ensure compliance and is information being made publically available to demonstrate the effectiveness of this enforcement program?
- 4) Does the state enforcement body have a reliable mechanism for learning about excavation damages to underground facilities (i.e., pipelines)?
- 5) Does the state employ investigation practices that are adequate to determine the at fault party when an excavation damage occurs. (I believe this only means determining who violated the law, either the excavator or the facility owner, and who should receive the prescribed fine. This has nothing to do with determining the dollar amount of damages to the facility)?
- 6) The law, at a minimum, must require:
  - a.) Excavators to use an available one call system before engaging in any excavation activity.
  - b.) Excavators to not engage in any digging activity in disregard of the marked location.
  - c.) Any excavator who causes damage to a facility must report the damage to the facility owner immediately and must also alert authorities via 911 if there is a release of product, gas or liquid.
- 7) Does the state limit the number of exemptions from the one call law? Any exemption including municipalities unless written justification is given to PHMSA.

PHMSA may also consider individual enforcement actions taken by a state in evaluating effectiveness.

If PHMSA finds a state's program inadequate, PHMSA may take immediate enforcement actions against any excavator in the state. The state will have 5 years from the date of the finding of inadequacy to make program improvements to meet PHMSA's requirements. A state that fails to establish an adequate program within 5 years may be subjected to reduced grant funding (up to 10% of the prior year funding) for their pipeline safety program. This is the program that the Montana Public Service Commission currently carries out with jurisdiction over intrastate natural gas operators.

This is a summary of the NOPR. There are other mechanisms in the NOPR for states to protest, petition and file for reconsideration, but this is how it will work.

## Potential Disparities in Proposed One-Call Bill and PHMSA NOPR Requirements

### Issue #1

Does the state enforcement body have a reliable mechanism for learning about excavation damages to pipelines?

**Stakeholders Bill Draft:** Limited. The proposed underground pipeline protection board would receive incident reports pursuant to existing law, 69-4-514, MCA. However, there is no enforcement contemplated for failure to report.

**Proposed Cure:** Language being drafted to address deficiency.

### Issue #2

Does the state employ investigation practices that are adequate to determine the at fault party when an excavation damage occurs? This has nothing to do with determining the dollar amount of damages to the facility.

**Stakeholders Bill Draft:** No. The proposed board would not conduct investigations. An excavator or underground facility owner could appeal the board's decision to district court.

**Proposed Cure:** Language being drafted to provide investigating powers to Board, but investigation would be limited to those cases where a pipeline incident led to the damage of real or personal property of a third party or the injury, disability or death of any person.

### Issue #3

A One-Call law, at a minimum, must require:

- A. Excavators to not engage in any digging activity in disregard of the marked location.

**Stakeholders Bill Draft:** Implied but not explicit.

**Proposed Cure:** Language is being drafted to make the law explicit.

- B. Any excavator who causes damage to a facility must report the damage to the facility owner immediately and must also alert authorities via 911 if there is a release of product, gas or liquid.

**Stakeholders Bill Draft:** No.

**Proposed Cure:** Language is being drafted to require the necessary 911 call.