




## Exemptions and Grant Eligibility

- EXEMPTIONS PROHIBITED.—In order to qualify for a grant, a State one-call notification program may not exempt municipalities, State agencies, or their contractors from the one-call notification system requirements of the program.
- This applies to both One Call Grants and State Damage Prevention Grants.
- PHMSA analyzed state one call laws and developed list of affected states. Goal: Maximize state eligibility
- Affected states have been notified via letters, working with states on a case-by-case basis





## Exemption Study

Section 3 requires a study of the impact of excavation damage on pipeline safety. The study shall include:

- An analysis of the frequency and severity of different types of excavation damage incidents;
- An analysis of exemptions to the one-call notification system requirements in each State;
- A comparison of exemptions to the one-call notification system requirements in each State to the types of excavation damage incidents in that State; and
- An analysis of the potential safety benefits and adverse consequences of eliminating all exemptions for mechanized excavation from State one-call notification systems.

Report to Congress on results of this study due January 3, 2014.  
Study is completed and routing through approval process.






## PHMSA Public Forum on Exemptions

- March 14, 2013, 9:30 – 5:30 pm
- West Palm Beach Convention Center
- Webcasted
- Agenda included...
  - Discussion of what we know and don't know concerning exemptions based on available data
  - Stakeholder panel discussions: 23 panelists' perspectives representing a broad array of those affected by exemptions
  - Information about meeting/link:
    - <http://www.phmsa.dot.gov/pipeline>





## PHMSA Exemption Forum – Some Key Take-aways

- Data is scarce; more data is needed; (PHMSA reporting requirements and DIRT)
- Analysis of data to determine if exemptions were a contributing factor is likely to be complex. Anecdotal info may be important to analysis.
- Allowing excavator exemptions contradicts the message of "Call before you dig."
- Exemptions should be justified with data and based on activities (rather than entities).
- Training and outreach are needed
- Next steps: Study completed, currently routing through federal approval process





**Exemptions - more**

- From the 2012 National report on damage data, sponsored by the Common Ground Alliance (Issued 9/12/2013):  
*The average damage rate per 1,000 tickets is 108% greater for the states with five or more notice exemptions (7.33 vs. 3.52).*



**Exemptions – More**

- Exemptions also included in proposed criteria for evaluating state one call enforcement programs in PHMSA rulemaking:  
**“Does the state limit exemptions for excavators from its excavation damage prevention law? A state must provide to PHMSA a written justification for any exemptions for excavators from state damage prevention requirements. PHMSA will make the written justifications available to the public.**




## Pipeline Damage Prevention Programs - Enforcement Rule

- Title: "Pipeline Damage Prevention Programs"
- Docket No. PHMSA-2009-0192, [www.regulations.gov](http://www.regulations.gov)
- PHMSA video on the Notice of Proposed Rulemaking:
  - <http://www.phmsa.dot.gov/pipeline/regs>
- Comment period closed July 9, 2012
- Final rule: Drafting and routing through approval process. Anticipate a 2014 publication. **Upon publication, PHMSA will promptly begin evaluating state enforcement programs.**





## 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 process for enforcement proceedings against excavators where Federal authority is exercised



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## Criteria for Adequate Enforcement

**(PROPOSED. 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

**(Proposed)**

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?

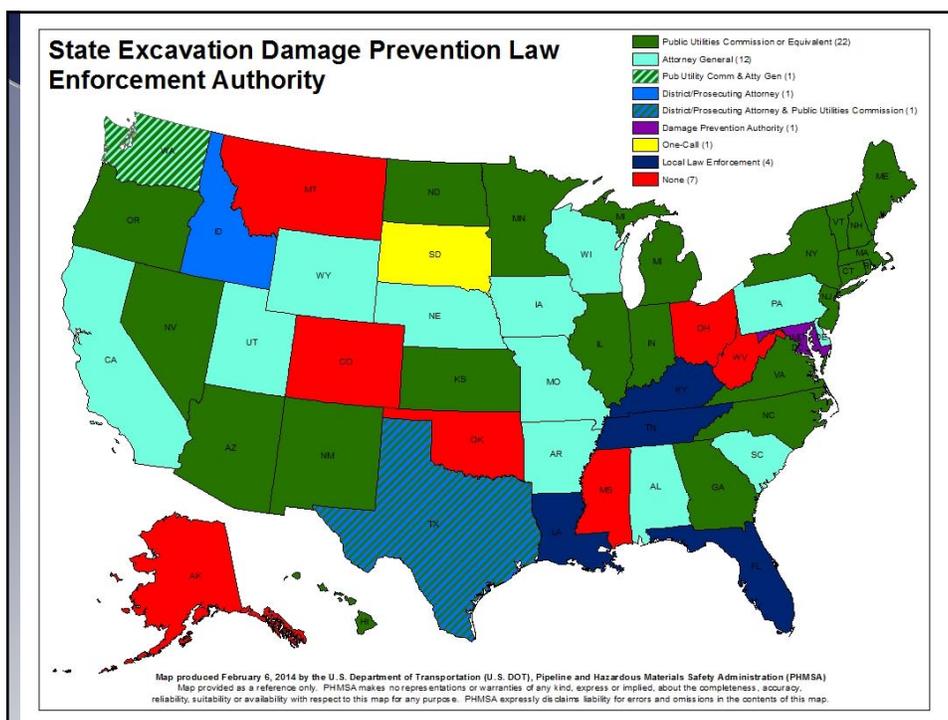


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## Procedures for Evaluating States (Proposed)

- 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
  - Will be public and excavators may face significant fines
- States have five years from a finding of inadequacy to implement an adequate program, after which state is subject to a reduction in “base grant” funding established under 49 U.S.C. 60107

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## Federal Requirements for Excavators

(Proposed in Rulemaking)

Before commencing excavation activity, excavators must:

1. Call an available one-call system to notify pipeline operators of the timing and location of intended excavation;
2. If pipelines exist in the area, wait for the operator(s) to arrive at the excavation site and mark the location of the pipeline(s);
3. Excavate with proper regard for the marked location of the pipeline(s) and take all practicable steps to prevent excavation damage to the pipeline, and;
4. Make additional use of the one-call as necessary.



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## Federal Requirements for Excavators

(Proposed)

- If a pipeline is damaged in any way by excavation activity, excavator must report the damage to the pipeline operator, whether or not a leak occurs
- If a damage causes release of flammable, toxic, or corrosive gas or liquid that may endanger life or cause serious bodily harm or damage to property or the environment, excavator must call 911
- Homeowners using only hand tools, as opposed to mechanized excavating equipment, on their own property are exempt from these requirements.






## Requirements for Pipeline Operators

(see NPRM for complete language)

- PHMSA may enforce existing damage prevention requirements applicable to pipeline operators if a pipeline operator fails to respond to a locate request or fails to accurately locate and mark its pipeline.
  - 49 CFR 192.614
  - 49 CFR 195.442
  - 49 U.S.C. § 60114





## PHMSA's Enforcement Process

(Proposed - see NPRM for complete language)

- To conduct enforcement proceedings for alleged violations of excavation damage prevention requirements, PHMSA proposes to use the existing process for alleged pipeline safety violations:
  - Notice of probable violation;
  - 30-day period to respond, including the opportunity to request an administrative hearing;
  - Issuance of final order;
  - Opportunity to petition for reconsideration.






## Civil and Criminal Penalties

(see NPRM for complete language)

- PHMSA may assess civil penalties for violations of the excavation damage prevention requirements proposed in the NPRM
  - Only in states with inadequate enforcement programs
- The maximum administrative civil penalties that may be imposed are specified in 49 U.S.C. § 60122.
  - Max of \$200,000 per violation per day, up to to \$2,000,000 for a related series of violations
- Criminal penalties may be imposed as specified in 49 U.S.C. § 60123 (this is an existing law).





## Enforcement Works

	New York	Connecticut	Minnesota	Oregon	Virginia	Georgia	Nevada
<b>Year</b>							
<b>2003</b>	6.53	5.68	3.47	9.20	2.30	1.48	10.85
<b>2004</b>	5.75	5.77	3.00	9.90	2.10	1.72	10.28
<b>2005</b>	5.59	5.36	3.04	11.10	2.46	1.74	7.26
<b>2006</b>	4.21	4.41	2.95	11.40	2.28	1.82	6.94
<b>2007</b>	3.76	4.18	2.73	8.40	2.39	1.97	4.56
<b>2008</b>	2.80	4.15	2.51	8.15	1.98	2.39	4.52
<b>2009</b>	2.39	3.27	2.50	6.04	1.69	1.54	4.84
<b>2010</b>	2.29	1.6	2.16	3.98	1.67		4.05
<b>2011</b>	2.14	1.3	2.19	4.5	1.49		4.23
<b>2012</b>		1.6		3.2	1.50		3.78

Gas damages per 1000 excavation tickets

