

## **49 CFR--PART 198**

### **Subpart D—State Damage Prevention Enforcement Programs**

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#### **§198.51 What is the purpose and scope of this subpart?**

This subpart establishes standards for effective State damage prevention enforcement programs and prescribes the administrative procedures available to a State that elects to contest a notice of inadequacy.

#### **§198.53 When and how will PHMSA evaluate State damage prevention enforcement programs?**

PHMSA conducts annual program evaluations and certification reviews of State pipeline safety programs. PHMSA will also conduct annual reviews of State excavation damage prevention law enforcement programs. PHMSA will use the criteria described in §198.55 as the basis for the enforcement program reviews, utilizing information obtained from any State agency or office with a role in the State's excavation damage prevention law enforcement program. If PHMSA finds a State's enforcement program inadequate, PHMSA may take immediate enforcement against excavators in that State. The State will have five years from the date of the finding to make program improvements that meet PHMSA's criteria for minimum adequacy. A State that fails to establish an adequate enforcement program in accordance with §198.55 within five years of the finding of inadequacy may be subject to reduced grant funding established under 49 U.S.C. 60107. PHMSA will determine the amount of the reduction using the same process it uses to distribute the grant funding; PHMSA will factor the findings from the annual review of the excavation damage prevention enforcement program into the 49 U.S.C. 60107 grant funding distribution to State pipeline safety programs. The amount of the reduction in 49 U.S.C. 60107 grant funding will not exceed four percent (4%) of prior year funding (not cumulative). If a State fails to implement an adequate enforcement program within five years of a finding of inadequacy, the Governor of that State may petition the Administrator of PHMSA, in writing, for a temporary waiver of the penalty, provided the petition includes a clear plan of action and timeline for achieving program adequacy.

**§198.55 What criteria will PHMSA use in evaluating the effectiveness of State damage prevention enforcement programs?**

(a) PHMSA will use the following criteria to evaluate the effectiveness of a State excavation damage prevention enforcement program:

(1) Does the State have the authority to enforce its State excavation damage prevention law using civil penalties and other appropriate sanctions for violations?

(2) Has the State designated a State agency or other body as the authority responsible for enforcement of the State excavation damage prevention law?

(3) Is the State assessing civil penalties and other appropriate sanctions for violations at levels sufficient to deter noncompliance and is the State making publicly available information that demonstrates the effectiveness of the State's enforcement program?

(4) Does the enforcement authority (if one exists) have a reliable mechanism (e.g., mandatory reporting, complaint-driven reporting) for learning about excavation damage to underground facilities?

(5) Does the State employ excavation damage investigation practices that are adequate to determine the responsible party or parties when excavation damage to underground facilities occurs?

(6) At a minimum, do the State's excavation damage prevention requirements include the following:

(i) Excavators may not engage in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area.

(ii) Excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.

(iii) An excavator who causes damage to a pipeline facility:

(A) Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and

(B) If the damage results in the escape of any PHMSA regulated natural and other gas or hazardous liquid, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.

(7) 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.

(b) PHMSA may consider individual enforcement actions taken by a State in evaluating the effectiveness of a State's damage prevention enforcement program.

**§198.57 What is the process PHMSA will use to notify a State that its damage prevention enforcement program appears to be inadequate?**

PHMSA will issue a notice of inadequacy to the State in accordance with 49 CFR 190.5. The notice will state the basis for PHMSA's determination that the State's damage prevention enforcement program appears inadequate for purposes of this subpart and set forth the State's response options.

**§198.59 How may a State respond to a notice of inadequacy?**

A State receiving a notice of inadequacy will have 30 days from receipt of the notice to submit a written response to the PHMSA official who issued the notice. In its response, the State may include information and explanations concerning the alleged inadequacy or contest the allegation of inadequacy and request the notice be withdrawn.

**§198.61 How is a State notified of PHMSA's final decision?**

PHMSA will issue a final decision on whether the State's damage prevention enforcement program has been found inadequate in accordance with 49 CFR 190.5.

**§198.63 How may a State with an inadequate damage prevention enforcement program seek reconsideration by PHMSA?**

At any time following a finding of inadequacy, the State may petition PHMSA to reconsider such finding based on changed circumstances including improvements in the State's enforcement program. Upon receiving a petition, PHMSA will reconsider its finding of inadequacy promptly and will notify the State of its decision on reconsideration promptly but no later than the time of the next annual certification review.

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**49 CFR--PART 196**

**PART 196—PROTECTION OF UNDERGROUND PIPELINES FROM EXCAVATION ACTIVITY**

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### **Subpart A—General**

#### **§196.1 What is the purpose and scope of this part?**

This part prescribes the minimum requirements that excavators must follow to protect underground pipelines from excavation-related damage. It also establishes an enforcement process for violations of these requirements.

#### **§196.3 Definitions.**

*Damage or excavation damage* means any excavation activity that results in the need to repair or replace a pipeline due to a weakening, or the partial or complete destruction, of the pipeline, including, but not limited to, the pipe, appurtenances to the pipe, protective coatings, support, cathodic protection or the housing for the line device or facility.

*Excavation* refers to excavation activities as defined in §192.614, and covers all excavation activity involving both mechanized and non-mechanized equipment, including hand tools.

*Excavator* means any person or legal entity, public or private, proposing to or engaging in excavation.

*One-call* means a notification system through which a person can notify pipeline operators of planned excavation to facilitate the locating and marking of any pipelines in the excavation area.

*Pipeline* means all parts of those physical facilities through which gas, carbon dioxide, or a hazardous liquid moves in transportation, including, but not limited to, pipe, valves, and other appurtenances attached or connected to pipe (including, but not limited to, tracer wire, radio frequency identification or other electronic marking system devices), pumping units, compressor units, metering stations, regulator stations, delivery stations, holders, fabricated assemblies, and breakout tanks.

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## **Subpart B—Damage Prevention Requirements**

### **§196.101 What is the purpose and scope of this subpart?**

This subpart prescribes the minimum requirements that excavators must follow to protect pipelines subject to PHMSA or State pipeline safety regulations from excavation-related damage.

### **§196.103 What must an excavator do to protect underground pipelines from excavation-related damage?**

Prior to and during excavation activity, the excavator must:

- (a) Use an available one-call system before excavating to notify operators of underground pipeline facilities of the timing and location of the intended excavation;
- (b) If underground pipelines exist in the area, wait for the pipeline operator to arrive at the excavation site and establish and mark the location of its underground pipeline facilities before excavating;
- (c) Excavate with proper regard for the marked location of pipelines an operator has established by taking all practicable steps to prevent excavation damage to the pipeline;
- (d) Make additional use of one-call as necessary to obtain locating and marking before excavating to ensure that underground pipelines are not damaged by excavation.

### **§196.105 [Reserved]**

### **§196.107 What must an excavator do if a pipeline is damaged by excavation activity?**

If a pipeline is damaged in any way by excavation activity, the excavator must promptly report such damage to the pipeline operator, whether or not a leak occurs, at the earliest practicable moment following discovery of the damage.

### **§196.109 What must an excavator do if damage to a pipeline from excavation activity causes a leak where product is released from the pipeline?**

If damage to a pipeline from excavation activity causes the release of any PHMSA regulated natural and other gas or hazardous liquid as defined in part 192, 193, or 195 of this chapter from the pipeline, the excavator must promptly report the release to appropriate emergency response authorities by calling the 911 emergency telephone number.

### **§196.111 What if a pipeline operator fails to respond to a locate request or fails to accurately locate and mark its pipeline?**

PHMSA may enforce existing requirements applicable to pipeline operators, including those specified in 49 CFR 192.614 and 195.442 and 49 U.S.C. 60114 if a pipeline operator fails to properly respond to a locate request or fails to accurately locate and mark its pipeline. The limitation in 49 U.S.C. 60114(f) does not apply to enforcement taken against pipeline operators and excavators working for pipeline operators.

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## **Subpart C—Administrative Enforcement Process**

### **§196.201 What is the purpose and scope of this subpart?**

This subpart describes the enforcement authority and sanctions exercised by the Associate Administrator for Pipeline Safety for achieving and maintaining pipeline safety under this part. It also prescribes the procedures governing the exercise of that authority and the imposition of those sanctions.

### **§196.203 What is the administrative process PHMSA will use to conduct enforcement proceedings for alleged violations of excavation damage prevention requirements?**

PHMSA will use the existing administrative adjudication process for alleged pipeline safety violations set forth in 49 CFR part 190, subpart B. This process provides for notification that a probable violation has been committed, a 30-day period to respond including the opportunity to request an administrative hearing, the issuance of a final order, and the opportunity to petition for reconsideration.

### **§196.205 Can PHMSA assess administrative civil penalties for violations?**

Yes. When the Associate Administrator for Pipeline Safety has reason to believe that a person has violated any provision of the 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder, including a violation of excavation damage prevention requirements under this part and 49 U.S.C. 60114(d) in a State with an excavation damage prevention law enforcement program PHMSA has deemed inadequate under 49 CFR part 198, subpart D, PHMSA may conduct a proceeding to determine the nature and extent of the violation and to assess a civil penalty.

### **§196.207 What are the maximum administrative civil penalties for violations?**

The maximum administrative civil penalties that may be imposed are specified in 49 U.S.C. 60122.

### **§196.209 May other civil enforcement actions be taken?**

Whenever the Associate Administrator has reason to believe that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of 49 U.S.C. 60101 *et seq.*, or any regulations issued thereunder, PHMSA, or the person to whom the authority has been delegated, may request the Attorney General to bring an action in the appropriate U.S. District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, civil penalties, and punitive damages as provided under 49 U.S.C. 60120.

### **§196.211 May criminal penalties be imposed?**

Yes. Criminal penalties may be imposed as specified in 49 U.S.C. 60123.