

**INTERSTATE COMMERCE
COMMISSION**

49 CFR Parts 1057 and 1058

(EX Parte No. MC-41 (Sub-No. 1))

RIN 3120-AB59

Identification of Motor Vehicles**AGENCY:** Interstate Commerce Commission.**ACTION:** Discontinuance of rulemaking proceeding.

SUMMARY: The Commission is discontinuing its proceeding (Proposed Rule, 54 FR 49104, November 29, 1989) to eliminate the vehicle identification regulations at 49 CFR part 1058 that require every for-hire motor carrier operating under authority granted pursuant to the Interstate Commerce Act to display on both sides of each vehicle operated under its own power the name or trade name of the motor carrier under whose authority the vehicle is being operated, as well as the certificate, permit or docket number assigned to such authority and to make necessary adjustments in the leasing regulations at 49 CFR part 1057 as would be required as a result of such action. An overwhelming majority of the participants in this proceeding contend that the Commission should not remove its existing vehicle identification requirements from regulation. These participants have convinced us that the adoption of this proposal could adversely affect shippers, carriers and the public, as well as Federal and State safety enforcement programs.

DATES: The proceeding is discontinued as of July 11, 1990.

FOR FURTHER INFORMATION CONTACT: Roy M. Wilkins, (202) 275-7452, or Heber P. Hardy, (202) 275-7148. [TDD for hearing impaired (202) 275-1721].

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pickup in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721].

Decided: June 22, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-18225 Filed 7-10-90; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**Research and Special Programs
Administration**

49 CFR Part 198

[Docket No. PS-116; Notice 1]

RIN 2137-AB 66

**Grant Regulations: State Adoption of
One-Call Damage Prevention Program**

May 18, 1990.

AGENCY: Office of Pipeline Safety (OPS), RSPA, DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: Congress has directed the Secretary of Transportation to issue regulations that require each State to adopt or seek to adopt a one-call damage prevention program under State law as a condition to receiving a full grant-in-aid for the State's pipeline safety compliance program. The one-call damage prevention program must require that a one-call notification system cover each area of the State that contains underground pipeline facilities in accordance with minimum operational requirements. One-call notification systems, which are in existence throughout the country, are established to prevent excavation damage to underground pipelines and other utilities. They transfer information from excavators about intended excavation activities to the participating operators of underground pipelines and utilities, who then temporarily mark and identify their facilities. The state one-call damage prevention program must compel excavators to use the one-call notification systems and pipeline operators to participate in such systems under the threat of strong civil and criminal penalties for noncompliance. This notice invites interested persons to comment on the proposed regulations.

DATES: Interested persons are invited to submit written comments in duplicate by August 10, 1990. OPS will not consider late filed comments before issuing final regulations in order for States to have as much time as possible before the end of this fiscal year to apply for grant money Congress appropriated to assist them in developing and establishing one-call damage prevention programs.

ADDRESSES: Send comments to the Dockets Unit, room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this

notice. Interested persons should submit as part of their written comments all the material that is considered relevant to any statement of fact or argument made. All comments and materials cited in this document will be available in the docket for inspection and copying in room 8417 between 8 a.m. and 4 p.m. each working day. Non-Federal employee visitors are admitted to DOT headquarters building through the southwest quadrant at Seventh and E Streets.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, (202) 366-2036, regarding the subject matter of this notice, or Dockets Unit (202) 366-4453, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION:**Background**

Year after year statistics show that excavation activities are the largest single cause of accidents on underground gas and hazardous liquid pipelines. One-call notification systems are generally seen as the most effective way to reduce the incidence of excavation damage to pipelines and underground utilities.

A one-call notification system provides a telephonic communication link between excavators (persons intending to move or disturb the ground) and operators of underground pipeline and utilities. The heart of the system is an operational center whose main function is to transfer information from excavators about their intended excavation activities to the operators of underground pipelines and utilities participating in the system. Excavators have to make only a single call to an operational center to start the process, thus the name "one-call." Upon receipt of the information, operators of pipelines and utilities that could be affected by the excavation activity arrange for the timely identification and temporary marking of underground facilities that are in the vicinity of the intended activity. When necessary the underground operators inspect the site being excavated and advise the excavator of the need for special measures to protect buried or exposed facilities. One-call notification systems may perform various other functions relevant to protecting underground pipelines and utilities from damage, such as recordkeeping and public awareness programs.

In a closely related approach to the excavation damage problem, OPS has required gas pipeline operators to conduct excavation damage prevention programs in urban areas (see 49 CFR

192.614), and has proposed to extend this requirement to rural areas and to adopt a similar requirement for hazardous liquid pipelines (see 53 FR 24747; June 30, 1988). Both the existing and proposed damage prevention program requirements essentially parallel the features of one-call notification systems. In fact, they allow pipeline operators to perform program objectives by participating in such systems.

Currently, there are approximately 105 one-call notification systems operating in 49 States and the District of Columbia. Generally, one-call notification systems have been set up voluntarily by operators of underground utilities. Approximately, 40 States and the District of Columbia have damage prevention laws that are designed to protect underground facilities from damage by excavation activities.

The State laws require excavators to give operators of underground pipelines and utilities advance notice of their excavation activities. Additionally, about 21 States require operators of underground pipelines and utilities to participate in one-call notification systems and temporarily mark and identify their underground facilities when the one-call center notifies them of a pending excavation in the vicinity of the facilities. Most of the State laws that require excavators to advise one-call notification systems of their intended activities have penalty clauses for violations.

Now Congress has officially recognized the safety benefit of State laws regarding the establishment, operation, and use of one-call notification systems. In a new section 20 of the Natural Gas Pipeline Safety Act of 1968 (NGPSA), as added by section 303 of the Pipeline Safety Reauthorization Act of 1988 (Pub. L. No. 100-561; October 31, 1988), Congress required the Secretary of Transportation to issue regulations that are intended to prompt States without one-call laws to enact them and to provide commonality among all such laws. The regulations are to require that each State adopt or seek to adopt a one-call damage prevention program under State law for protection

of underground pipeline facilities as a condition to receiving a full grant-in-aid for its pipeline safety compliance program under section 5 of the NGPSA (49 U.S.C. app. 1674) and section 205 of the Hazardous Liquid Pipeline Safety Act of 1970 (HLPESA) (49 U.S.C. app. 2004). The new section 20 lays out nine requirements that are to be included in the regulations and form the core of each State's one-call damage prevention program.

In enacting these new requirements, Congress was aware that a one-call notification system operates most effectively when all underground pipelines and utilities in the region covered by the system participate in the system. Only in this way can excavators truly use one call to reach operators of all potentially affected underground facilities. However, among the various types of underground facilities, Congress applied its new requirements only to pipeline facilities that are subject to the NGPSA and the HLPESA. OPS does not have independent authority to require the States to include other underground utilities. Consequently, under the regulations proposed by this notice, a State's one-call damage prevention program would not be disqualified if it were applied just to underground pipeline facilities. However, for maximum effectiveness, OPS urges the States to include in their one-call damage prevention programs all other underground utilities. These utilities include water mains, storm sewers, sanitary sewers, steam lines, electric power cables, telephone cables, fiber optic cables, and television cables.

Proposed Regulations

The proposed regulations emulate the nine requirements prescribed by Congress. Those requirements are repeated below for the convenience of the reader, and the corresponding proposed regulations are cited in brackets.

1. [§ 198.37(a)] A requirement that the system or systems apply to all areas of the State containing underground pipeline facilities.

2. [§§ 198.33 and 198.37(c)] A requirement that any person intending

to engage in any activity, as determined by the Secretary, which could cause physical damage to an underground pipeline facility must contact the appropriate one-call notification system to determine if there are underground pipeline facilities present in the area of the intended activity.

3. [§ 198.37(e)(1)] A requirement that all operators of underground pipeline facilities participate in an appropriate one-call notification system.

4. [§§ 198.37(b) and 198.39] Qualifications for operation of such a system whether by operators of pipeline facilities, private contractors, or State or local agencies.

5. [§ 198.37(f)] Procedures for advertisement and notice of the availability of such a system.

6. [§ 198.37(c)] Requirements for the information to be provided by persons contacting the system under paragraph 2.

7. [§§ 198.39(b), (c), (d), and (e) and 198.37(e)(2)] Requirements for the response of the operator of such notification system and of the operator of the pipeline facility after contact by a person under this subsection.

8. [§ 198.37(d)] A requirement that each State determine whether the notification system will be toll free or not.

9. [§ 198.37(g)] Requirements for sanctions substantially the same as are provided under sections 11 and 12 of this Act.

A few of the proposed regulations refer to certain provisions of the existing gas pipeline damage prevention program rule in 49 CFR 192.614. Parts of the gas damage prevention rule are comparable to requirements Congress specified for the one-call notification systems. Since State agencies participating in OPS's pipeline safety program have already adopted this rule or are familiar with it, referencing this rule in the proposing regulations should facilitate State adoption of a one-call damage prevention program under the Congressional requirements.

The following sections in the proposed regulations refer to § 192.614, and the referenced text is set forth verbatim to facilitate comments:

| Section | Reference | Text |
|---------|-----------|---|
| 198.33 | 192.614 | For the purpose of this section, "excavation activities" include excavation, blasting, boring, tunneling, backfilling, the removal of above ground structures by either explosive or mechanical means, and other earth moving operations. |

| Section | Reference | Text |
|--------------|------------------------|---|
| 198.37(f) | 192.614(b) (1) and (2) | (b) The damage prevention program required by paragraph (a) of this section must, at a minimum: (1) Include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located. (2) Provide for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (b)(1) of the following as often as needed to make them aware of the damage prevention program: (i) The program's existence and purpose; and (ii) How to learn the location of underground pipelines before excavation activities are begun. |
| 198.37(e)(2) | 192.614 (b) (4)-(6) | (b) The damage prevention program required by paragraph (a) of this section must, at a minimum: (4) If the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings. (5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins. (6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities: (i) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and (ii) In the case of blasting, any inspection must include leakage surveys. |

Impact on Grants-In-Aid for State Pipeline Safety Programs

Under section 5 of the NGPSA and section 205 of the HLPSSA, OPS annually reimburses State agencies up to 50 percent of the cost of their pipeline safety programs, using funds that Congress appropriates for this purpose. Reimbursement amounts are determined by applying a grant-allocation formula, which weights certain factors related to the size and adequacy of the program and performance of the agency.

The new section 20 of the NGPSA affects these determinations by requiring a reduction in the reimbursement of any State that does not adopt or seek to adopt a one-call damage prevention program under the regulations to be issued in this proceeding. Congress left the amount of such reduction to OPS's discretion, and it will be calculated by modifying the current performance factors. OPS will assign performance points to each of the 9 requirements prescribed by Congress. These points will be assigned as to the importance of each requirement and will not necessarily be equal. (The present performance portion of the grant allocation that addresses one-call damage prevention is comprised of four out of 27 points for the gas program and four out of 17 points for the liquid program.) OPS will work with its State partners through the National Association of Pipeline Safety Representatives (NAPSR) and the National Association of Regulatory Utility Commissioners (NARUC) to implement this modification of the performance criteria of the grant allocation. The earliest that these modifications will effect the participating State agencies is the grant allocation for Calendar Year 1991. OPS will review the status of each State's

one-call damage program under the final regulations in connection with the annual Federal grant-in-aid reimbursements.

Availability of grants for States to adopt one-call damage prevention programs

Section 20(c) of the NGPSA authorizes DOT to make grants to States for development and establishment of one-call damage prevention programs that are consistent with the regulations to be issued in this proceeding. Congress appropriated \$672,000 (after mandated Fiscal Year 1990 adjustments) for these supplemental grants, but restricted disbursement of this amount to fiscal-year 1990, which ends September 30, 1990 (Pub. L. 101-164).

Due to mandated ceilings prescribed in the NGPSA and the HLPSSA, only those States that have received less than 50 percent reimbursement are eligible to apply for the supplemental grants. Because the period between issuance of final regulations and September 30, 1990, will be brief, OPS will have little time to evaluate any grant applications received. Therefore, eligible States should submit applications as soon as possible after the final regulations are issued, demonstrating how their development and implementation actions will result in one-call damage prevention programs consistent with the regulations. States wishing more information about grant applications should contact OPS's State Programs Officer, Tom Fortner, at (202) 366-4564.

Impact Assessment

There are approximately 105 one-call notification systems in operation in forty-nine States and the District of Columbia. Additionally, there are some 40 States and the District of Columbia that have damage prevention programs that are designed to protect underground

facilities from damage by excavators. This proposal would merely specify minimum requirements for a State to receive a full grant-in-aid for its pipeline safety compliance program. The proposed regulations parallel the general features of one-call notification systems and provide flexibility for most States with one-call damage prevention programs to meet the requirements, although additional laws will be necessary in those few States without one-call damage prevention programs. Therefore, this proposal is considered to be nonmajor under Executive Order 12291 and nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since the proposed rule should require minimal compliance expense, it does not warrant preparation of a Draft Evaluation. Also, based on the facts available concerning the impact of this proposal, I certify under Section 605 of the Regulatory Flexibility Act that it would not, if adopted as final, have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking would require collection of information under proposed §§ 198.37 and 198.39. This proposal will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chap. 35). Persons desiring to comment on these information collection requirements should submit their comments to the Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, Attention: Desk Officer, Research and Special Programs Administration (RSPA). Persons submitting comments to OMB are also

requested to submit a copy of their comments to OPS as indicated above under ADDRESSES.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. OPS has determined that it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 198.

Grant programs—Transportation, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, OPS requests comments on the following proposed amendments to chapter I of title 49 of the Code of Federal Regulations.

Part 198 would be added to read as follows:

PART 198—REGULATIONS FOR GRANTS TO AID STATE PIPELINE SAFETY PROGRAMS.

Subpart A—General

Sec.

198.1 Scope.

198.3 Definitions.

Subpart B—[Reserved]

Subpart C—Adoption of One-Call Damage Prevention Program

198.31 Scope.

198.33 Definitions.

198.35 Grants conditioned on adoption of one-call damage prevention program.

198.37 State one-call damage prevention program.

198.39 Qualifications for operation of one-call notification system.

Authority: 49 app. U.S.C. 1674, 1687, and 2004; 49 CFR 1.53.

Subpart A—General

§ 198.1 Scope.

This part prescribes regulations governing grants to aid State pipeline safety compliance programs.

§ 198.3 Definitions.

As used in this part:

Person means any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint stock association, and including any trustee, receiver, assignee, or personal representative thereof.

Pipeline facility means a pipeline facility under the Natural Gas Pipeline Safety Act of 1968 (49 app. U.S.C. 1671 *et seq.*) or the Hazardous Liquid Pipeline Safety Act of 1975 (49 app. U.S.C. 2001 *et seq.*).

State means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

Subpart B—[Reserved]

Subpart C—Adoption of One-Call Damage Prevention Program.

§ 198.31 Scope.

This subpart implements section 20 of the Natural Gas Pipeline Safety Act of 1968 (49 app. U.S.C. 1687), which directs the Secretary of Transportation to require each State to adopt a one-call damage prevention program as a condition to receiving a full grant-in-aid for its pipeline safety compliance program.

§ 198.33 Definitions.

As used in this subpart:

Adopt means establish under State law by statute, regulation, license, certification, order or any combination of these legal means.

Excavation activity means an excavation activity defined in § 192.614(a) of this chapter, other than a specific activity the State determines would not be expected to cause physical damage to an underground pipeline facility.

Excavator means any person intending to engage in an excavation activity.

One-call notification system means a system of telephonic communication in which an operational center receives notices from excavators of intended excavation activities and transmits the notices to operators of pipeline facilities and any other utilities that participate in the system.

Seeking to adopt means actively and effectively proceeding toward adoption.

§ 198.35 Grants conditioned on adoption of one-call damage prevention program.

In allocating grants to State agencies under section 5 of the NGPSA and under section 205 of the HLPESA, the Office of Pipeline Safety considers whether a State has adopted or is seeking to adopt a one-call damage prevention program in accordance with § 198.37. If a State has not adopted or is not seeking to adopt such program, the State agency may not receive the full reimbursement to which it would otherwise be entitled.

§ 198.37 State one-call damage prevention program.

A State must adopt a one-call damage prevention program that requires the following at a minimum:

(a) Each area of the State that contains underground pipeline facilities must be covered by a one-call notification system.

(b) Each one-call notification system must be operated in accordance with § 198.39.

(c) Excavators must be required to notify the operational center of the appropriate one-call notification system of each intended excavation activity, giving the following information:

(1) Name of the person notifying the system.

(2) Name, address and telephone number of the excavator.

(3) Location, starting date, and description of the intended excavation activity.

However, in an emergency excavators may be allowed to begin an excavation activity if they are required to notify the operational center at the earliest practicable moment.

(d) The State must determine whether telephonic communications to the operational center of a one-call notification system under paragraph (c) of this section are to be toll free or not.

(e) Operators of underground pipeline facilities must be required to—

(1) Participate in the one-call notification systems that cover the areas of the State in which those pipeline facilities are located; and

(2) Respond in the manner prescribed by § 192.614 (b)(4) through (b)(8) of this chapter to notices of intended excavation activity received from the operational center of a one-call notification system.

(f) Either persons who control one-call notification systems or operators of underground pipeline facilities must be required to notify the public and known excavators in the manner prescribed by §§ 192.614 (b)(1) and (b)(2) of this chapter of the availability and use of one-call notification systems to locate underground pipeline facilities. However, this paragraph does not apply to condominium or cooperative associations or to operators who only own or operate gas distribution systems in connection with the leasing of real property.

(g) Operators of underground pipeline facilities, excavators, and persons who control one-call notification systems must be subject to civil penalties and injunctive relief for violations of applicable program requirements adopted under this section that are substantially the same as are provided under sections 11 and 12 of the Natural Gas Pipeline Safety Act of 1968 (49 app. U.S.C. 1679a and 1679b).

§ 198.39 Qualifications for operation of one-call notification system.

A one-call notification system qualifies to operate under this subpart if it complies with the following:

(a) It is controlled by—

- (1) One or more persons who operate underground pipelines or other underground utilities;
- (2) Private contractors;
- (3) A State or local government agency; or

(4) A person who is otherwise eligible under State law to operate a one-call notification system.

(b) It receives and records information from excavators about intended excavation activities.

(c) It promptly transmits to the appropriate operators of underground pipeline facilities the information received from excavators about intended excavation activities.

(d) It maintains a record of each notice of intent to engage in an excavation activity for the minimum

time set by the State or, in the absence of such time, for the time specified in the applicable State statute of limitations on tort actions.

(e) It tells persons giving notice of an intent to engage in an excavation activity the names of participating pipeline facility operators to whom the notice will be transmitted.

Issued in Washington, DC on July 5, 1990.

George W. Tenley, Jr.,

Director, Office of Pipeline Safety.

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