

Damage Prevention Update

Utility Public Safety Alliance Annual Meeting

April 2016

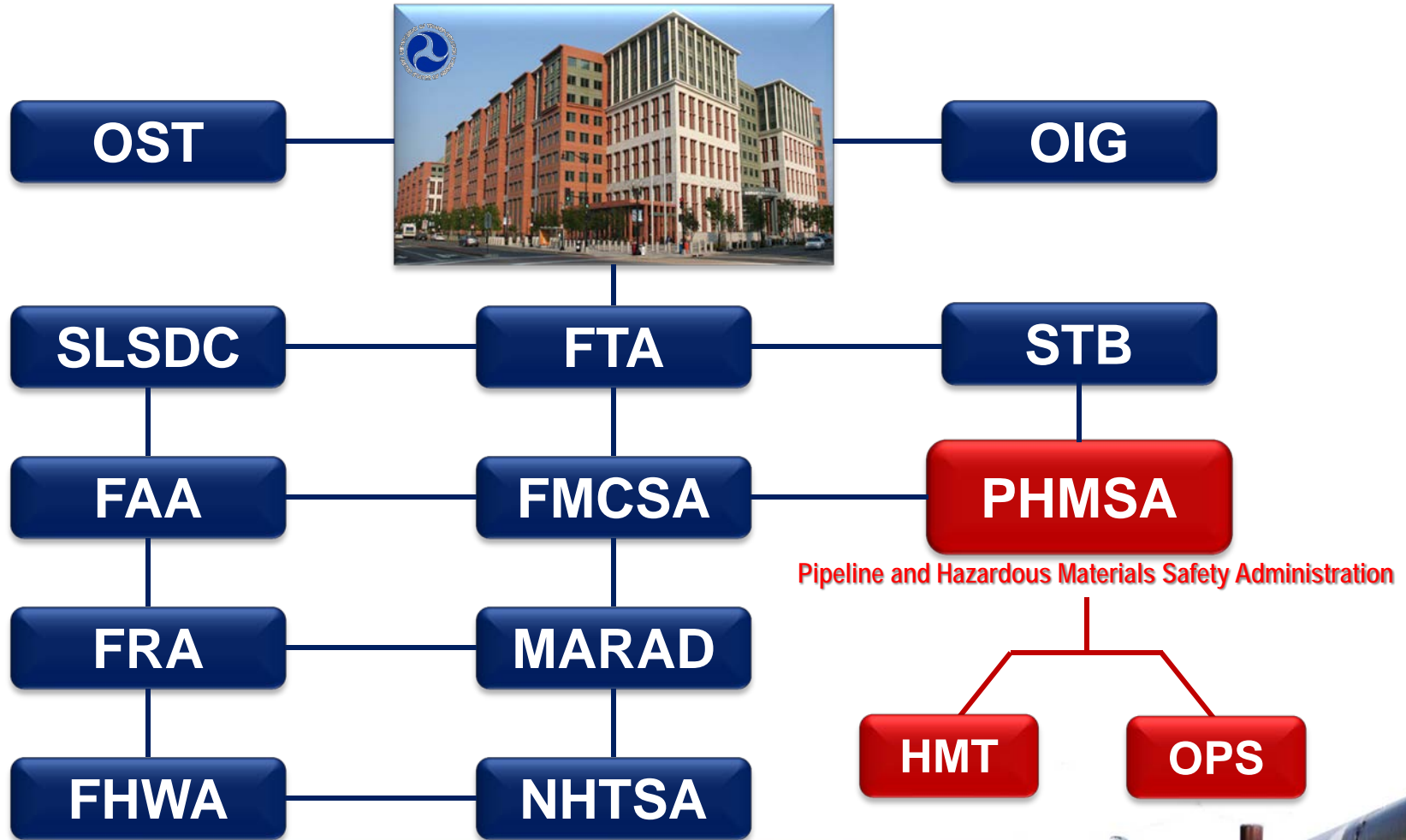


Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration



Who is PHMSA?

U. S. Department of Transportation (DOT)



Vision



PHMSA – The most innovative transportation safety organization in the world.

Mission

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



What We Do

Office of Pipeline Safety

Carries out a national program to ensure the safe, reliable and environmentally sound operation of the Nation's pipeline transportation system.

- ❖ Identify and evaluate risks of pipeline systems
- ❖ Develop inspection and enforcement standards for design, construction, operations, and maintenance of pipelines carrying hazardous gas and liquids
- ❖ Respond to and investigate pipeline accidents/incidents
- ❖ Educate system operators, emergency responders and the general public
- ❖ Conduct research on promising technologies and knowledge needed to improve standards
- ❖ Provide grants to states in support of their pipeline safety programs (inspection/enforcement, damage prevention, public education)



What We Regulate

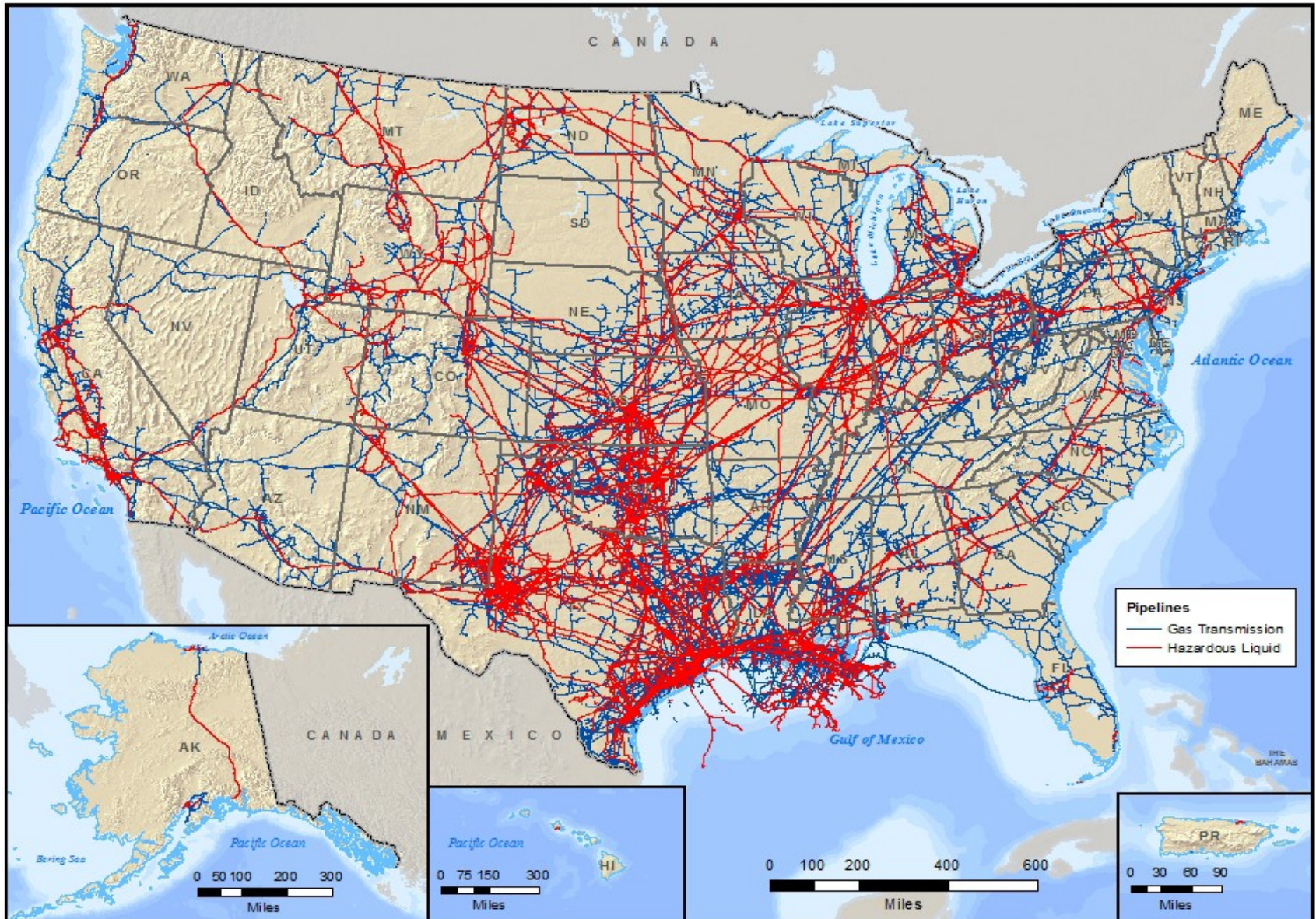
Pipeline Miles by System Types – as of 8/2/2015			
System Type	Miles	%Total	# Operators
Hazardous Liquid	198,764	7%	437
Gas Transmission	301,705	11%	1004
Gas Gathering	17,620	1%	357
Gas Distribution (Mains & Services)	2,166,145	81%	1334
Total	2,684,234		<i>Some Operators have multiple System Types</i>
Liquefied Natural Gas	115 Plants	205 Tanks	83





Gas Transmission and Hazardous Liquid Pipelines in the United States

National Pipeline Mapping System



Where We Are Located

PHMSA Regional Offices



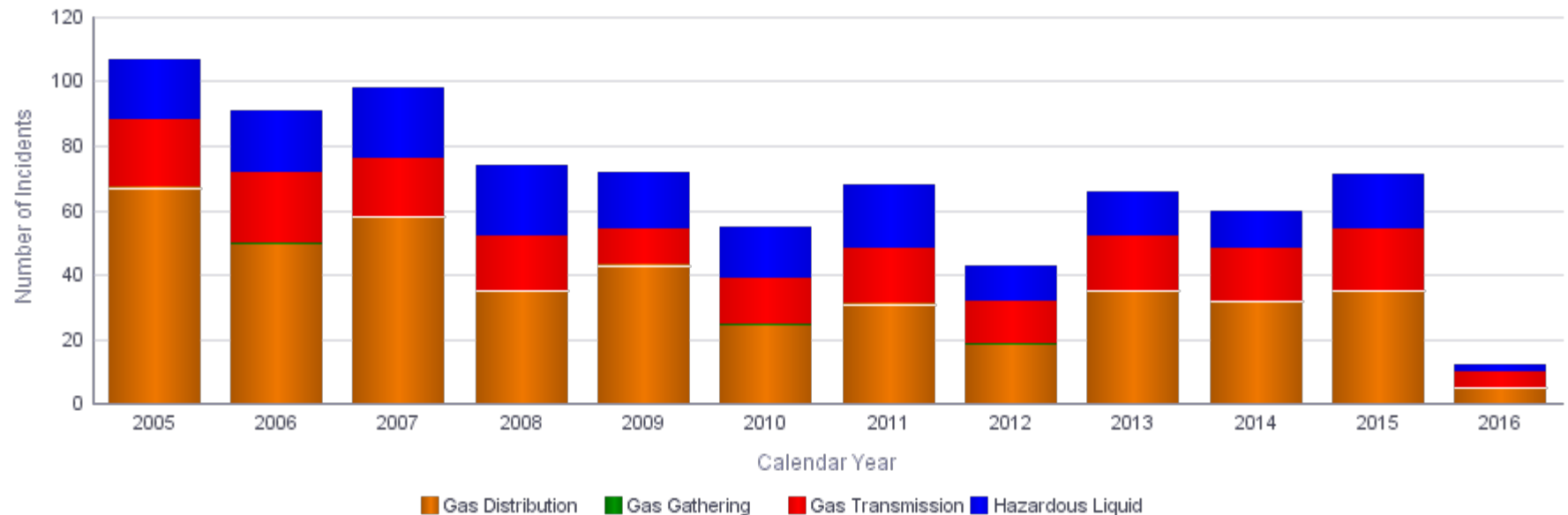
What We Want to Prevent



Damage Prevention

Pipeline Incidents Caused by Excavation Damage 2005-2016

Since 2005, pipeline operators have reported excavation damage as the cause of **817** incidents, resulting in **38** fatalities, **159** injuries requiring in-patient hospitalization, and **\$276,637,067** of property damage.



Damage Prevention

Key Drivers - PHMSA's Damage Prevention Program

- ❖ Safety – #1 Priority
- ❖ Perceived gaps in damage prevention
- ❖ Congressional mandates
- ❖ Administration priorities
- ❖ Significant pipeline events
- ❖ NTSB, GAO, and OIG oversight recommendations
- ❖ Support of Common Ground Alliance and state, local, regional efforts



Damage Prevention

2016 Top Priorities - Damage Prevention Program

- ❖ **Influencing Change at the State Level**
- ❖ **Advocating Change through Transparency**
- ❖ **Serving as Damage Prevention Resource to Empower Stakeholders**
- ❖ **Promoting Broad Damage Prevention Awareness**





PHMSA Excavator Enforcement Rule



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

To Protect People and the Environment From the Risks of
Hazardous Materials Transportation



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 damage prevention 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**



Evaluating State Damage Prevention Enforcement 49 CFR Part 198 – New Subpart D

- Evaluation of State damage prevention law enforcement programs as part of annual review of State pipeline safety programs
- State damage prevention law enforcement authority – if it exists – is not always with pipeline safety enforcement agency



Criteria for Evaluating State Damage Prevention 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 Damage Prevention Enforcement Programs

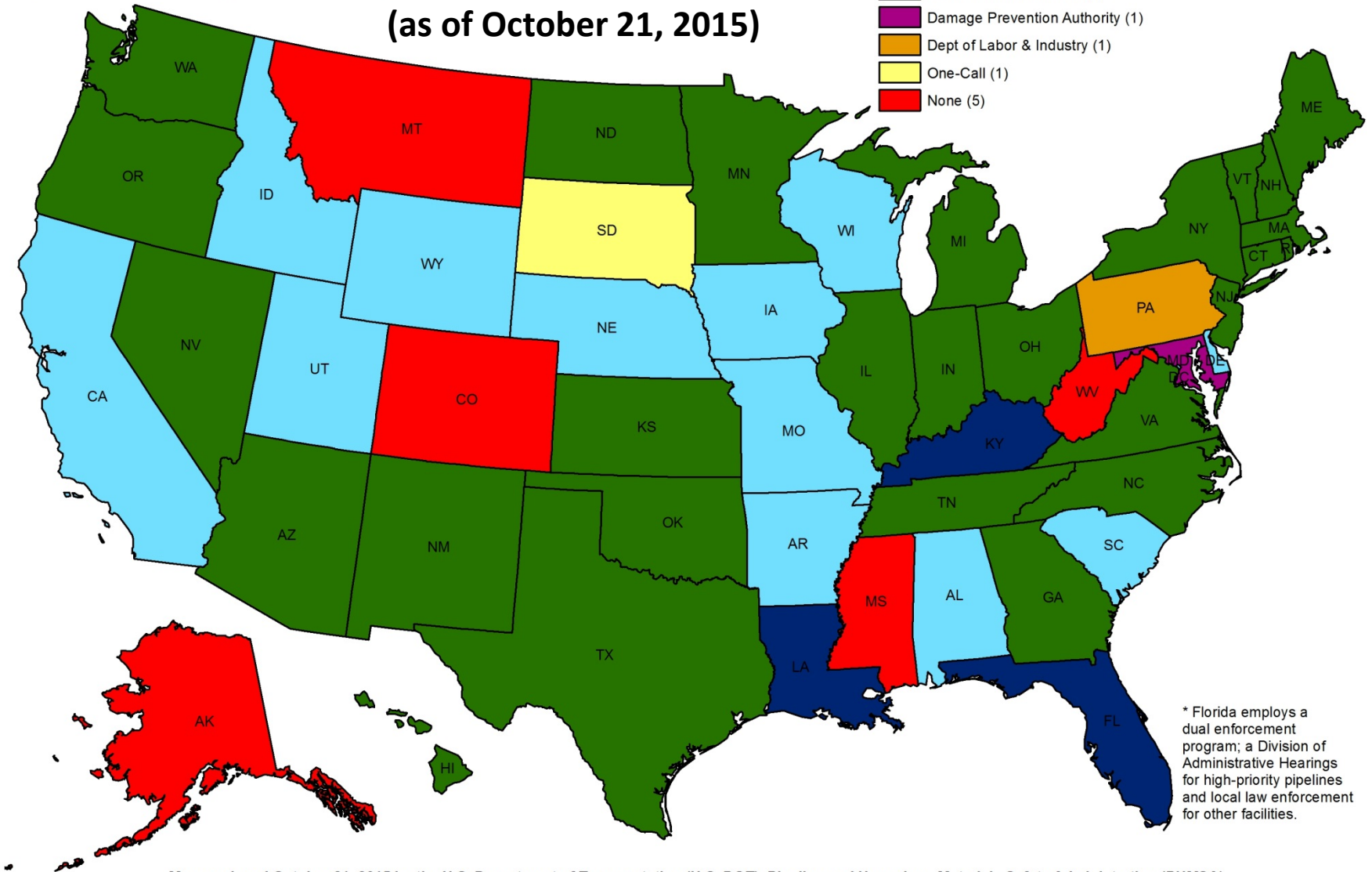
6. At a minimum, does the State require:
 - a. Excavators to call 811 before digging
 - b. Excavators to “respect the marks”
 - c. If damage to a pipeline occurs...
 - i. Excavator must report damage to operator at earliest practical moment
 - ii. If release occurs, excavator must call 911
7. Are exemptions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



Organizations with Enforcement Authority for State Excavation Damage Prevention Laws Involving Pipelines Regulated by PHMSA or the State

(as of October 21, 2015)

- PUC/Pipeline Safety Office (27)
- Attorney General/District or Prosecuting Attorney/Local Court (13)
- Local Law Enforcement (3)*
- Damage Prevention Authority (1)
- Dept of Labor & Industry (1)
- One-Call (1)
- None (5)



* Florida employs a dual enforcement program; a Division of Administrative Hearings for high-priority pipelines and local law enforcement for other facilities.

Map produced October 21, 2015 by the U.S. Department of Transportation (U.S. DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA)
 Map provided as a reference only. PHMSA makes no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or availability with respect to this map for any purpose. PHMSA expressly disclaims liability for errors and omissions in the contents of this map.

Policies: State Program Evaluations and the Enforcement Standard

- The preamble outlines two policies:
 1. How the State program **evaluation criteria** will be applied
 2. How the excavator **enforcement standard** will be applied

The policies are not part of the rule; they are flexible and can evolve as the rule is implemented.



Policy: State Evaluations – Criterion 1 & 2

1. Does the State have enforcement authority (with civil penalties)?
 2. Is there a designated enforcement body?
- A ‘no’ to either of these questions will result in a State being deemed inadequate.



Policy: State Evaluation – Criterion 3

- Is the State using its authority and making enforcement records available to the public?
 - Lack of documentation showing enforcement = likely inadequate
 - Information about enforcement/statistics should be available through a web site, but noncompliance with this alone will not result in overall inadequate rating
 - PHMSA will seek records to show the extent to which enforcement is impacting damage rate, but noncompliance with this alone will not result in overall inadequate rating



Policy: State Evaluation – Criterion 4

- Does the State have a reliable means of learning about damages?
 - PHMSA will review how States learn about damages, the extent to which there is parity so that both excavators and operators may be held accountable, and the methods used to make stakeholders aware of the process
 - Noncompliance with this alone will not result in an overall inadequate rating



Policy: State Evaluation – Criterion 5

- Does the State have damage investigation practices that are adequate to determine the at-fault party when a damage occurs?
 - PHMSA will look for policies, enforcement patterns that reflect consistent, fair and balanced enforcement
 - Noncompliance with this alone will not result in overall inadequate rating



Policy: State Evaluation – Criterion 6

At a minimum, does State law 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
- PHMSA will review State requirements for compliance. Noncompliance with this alone will not result in overall inadequate rating



Policy: State Evaluation – Criterion 7

- Are exemptions from the DP law limited?
Written justification of exemptions is required
 - PHMSA will expect documentation for all notification exemptions, including the basis for the exemption, to include available data
 - Noncompliance with this alone will not result in overall inadequate rating



Policy: State Program Evaluation – General

(This policy is subject to changes)

- Noncompliance with criteria 1, 2 = State program deemed inadequate
- Noncompliance with criterion 3 = State program likely deemed inadequate
- Noncompliance with other criteria = will not, alone, be deemed inadequate, but several noncompliances in combination could result in a State program being deemed inadequate



Administrative Process for States to Contest Notices of Inadequacy

- PHMSA issues a notice of inadequacy to the State in accordance with 49 CFR 190.5
- State will have 30 days to submit written response
- PHMSA issues final decision
- States may petition PHMSA to reconsider at any time following a finding of inadequacy; PHMSA will respond no later than the date of the next review
- **States that fail to establish an adequate enforcement program within five years of a finding of inadequacy may be subject to 4% reduction in base grant funding**



Federal Standard for Excavators in States Deemed Inadequate

- 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.



Policy: Enforcement

- PHMSA's enforcement focus will be on serious violations
- PHMSA will learn about violations through a variety of ways; the rule does not create a reporting requirement
- 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



Status of Implementation

- Effective Date of Rule – January 1, 2016
- Conducting state evaluations
 - 8 states completed
- Drafting state evaluation determination letters
- Developing process and procedures for screening, screening criteria, and investigation



More Information

- For more information, visit our website at <http://phmsa.dot.gov/pipeline/safety-awareness-and-outreach/excavator-enforcement>
- Contact: excavation.enforcement@dot.gov



Damage Prevention

Importance of PHMSA's Damage Prevention Program



Know what's **below**.
Call before you dig.



[https://www.youtube.com/watch?v= VaT0g-76bl&list=PL4wHDsuQ-uKIT8ZWakbm-vpoQ-KzBuY7K&index=2](https://www.youtube.com/watch?v=VaT0g-76bl&list=PL4wHDsuQ-uKIT8ZWakbm-vpoQ-KzBuY7K&index=2)



Resources

<http://primis.phmsa.dot.gov/comm/>

Includes damage prevention initiatives, information on grants, incident and mileage data, and more.

<http://www.phmsa.dot.gov/pipeline>

Includes pipeline information, forms, regulatory actions, and more.



www.phmsa.dot.gov



Careers in Pipeline Safety

PHMSA's FY15 budget appropriated 109 new positions.

OPS is hiring inspectors, investigators, and transportation specialists in our five regions.

Visit our website at: <http://www.phmsa.dot.gov/careers>

- Learn more about OPS**
- Find out how to apply**
- View current job openings**
- Sign up for job alerts**



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Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

“Your Safety, Our Mission”

