49 CFR Part 198 - Regulations for Grants to Aid State Pipeline Safety Programs

History: Current through Amendment 198-7 of January 1, 2016
Authority: 49 U.S.C. 60105, 60106, 60114; and 49 CFR 1.53.
Source: 55 FR 38691, Sept. 20, 1990, unless otherwise noted.

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Subpart A - General (§§1-3)

§198.1 Scope.

This part prescribes regulations governing grants-in-aid for State pipeline safety compliance programs.

§198.3 Definitions.

As used in this part:

Administrator means the Administrator, Pipeline and Hazardous Materials Safety Administration or his or her delegate.

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 underground facilities.

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

One-Call notification system means a communication system that qualifies under this part and the one-call damage prevention program of the State concerned in which an operational center receives notices from excavators of intended excavation activities and transmits the notices to operators of underground pipeline facilities and other underground facilities that participate in the system.

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.

Underground pipeline facilities means buried pipeline facilities used in the transportation of gas or hazardous liquid subject to the pipeline safety laws (49 U.S.C. 60101 et seq.).

Secretary means the Secretary of Transportation or any person to whom the Secretary of Transportation has delegated authority in the matter concerned.

Seeking to adopt means actively and effectively proceeding toward adoption.

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

[55 FR 38691, Sept. 20, 1990, as amended by Amdt. 198-2, 61 FR 18518, Apr. 26, 1996; 68 FR 11750, Mar. 12, 2003; 70 FR 11140, Mar. 8, 2005]

Subpart B - Grant Allocation (§§11-13)

Source: Amdt. 198-1, 58 FR 10988, Feb. 23, 1993, unless otherwise noted.

§198.11 Grant authority.

The pipeline safety laws (49 U.S.C. 60101 et seq.) authorize the Administrator to pay out funds appropriated or otherwise make available up to 80 percent of the cost of the personnel, equipment, and activities reasonably required for each state agency to carry out a safety program for intrastate pipeline facilities under a certification or agreement with the Administrator or to act as an agent of the Administrator with respect to interstate pipeline facilities.

[Amdt. 198-5, 74 FR 62506, Nov. 30, 2009]

§198.13 Grant allocation formula.

(a) Beginning in calendar year 1993, the Administrator places increasing emphasis on program performance in allocating state agency funds under §198.11. The maximum percent of each state agency allocation that is based on performance follows: 1993-75 percent; 1994 and subsequent years-100 percent.

(b) A state's annual grant allocation is based on maximum of 100 performance points derived as follows:

(1) Fifty points based on information provided in the state's annual certification/agreement attachments which document its activities for the past year; and
(2) Fifty points based on the annual state program evaluation.

(c) The Administrator assigns weights to various performance factors reflecting program compliance, safety priorities, and national concerns identified by the Administrator and communicated to each State agency. At a minimum, the Administrator considers the following performance factors in allocating funds:

(1) Adequacy of state operating practices;
(2) Quality of state inspections, investigations, and enforcement/compliance actions;
(3) Adequacy of state recordkeeping;
(4) Extent of state safety regulatory jurisdiction over pipeline facilities;
(5) Qualifications of state inspectors;
(6) Number of state inspection person-days;
(7) State adoption of applicable federal pipeline safety standards; and,
(8) Any other factor the Administrator deems necessary to measure performance.

(d) Notwithstanding these performance factors, the Administrator may, in 1993 and subsequent years, continue funding any state at the 1991 level, provided its request is at the 1991 level or higher and appropriated funds are at the 1991 level or higher.

(e) The Administrator notifies each state agency in writing of the specific performance factors to be used and the weights to be assigned to each factor at least 9 months prior to allocating funds. Prior to notification, PHMSA seeks state agency comments on any proposed changes to the allocation formula.

(f) Grants are limited to the appropriated funds available. If total state agency requests for grants exceed the funds available, the Administrator prorates each state agency's allocation.

[Amdt. 198-1, 58 FR 10988, Feb. 23, 1993, as amended at 70 FR 11140, Mar. 8, 2005]]

Subpart C - Adoption of One-Call Damage Prevention Program (§§31-39)

§198.31 Scope.

This subpart implements parts of the pipeline safety laws (49 U.S.C. 60101 et seq.), which direct the Secretary 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.

[Amdt. 198-2, 61 FR 18518, Apr. 26, 1996]

§198.33 [Reserved]

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

In allocating grants to State agencies under the pipeline safety laws, (49 U.S.C. 60101 et seq.), the Secretary 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.

[Amdt. 198-2, 61 FR 38403, July 24, 1996]

§198.37 State one-call damage prevention program.

A State must adopt a one-call damage prevention program that requires each of 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 one-call notification system that covers the area of each intended excavation activity and provide the following information:

(1) Name of the person notifying the system.
(2) Name, address and telephone number of the excavator.
(3) Specific location, starting date, and description of the intended excavation activity.

However, an excavator must be allowed to begin an excavation activity in an emergency but, in doing so, required to notify the operational center at the earliest practicable moment.

(d) The State must determine whether telephonic and other 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) Except with respect to interstate transmission facilities as defined in the pipeline safety laws (49 U.S.C. 60101 et seq.), operators of underground pipeline facilities must be required to participate in the one-call notification systems that cover the areas of the State in which those pipeline facilities are located.

(f) Operators of underground pipeline facilities participating in the one-call notification systems must be required to respond in the manner prescribed by §192.614(c)(4) through (c)(6) of this chapter to notices of intended excavation activity received from the operational center of a one-call notification system.

(g) Persons who operate one-call notification systems or operators of underground pipeline facilities participating or required to participate in the one-call notification systems 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 persons (including operator's master meters) whose primary activity does not include the production, transportation or marketing of gas or hazardous liquids.

(h) Operators of underground pipeline facilities (other than operators of interstate transmission facilities as defined in the pipeline safety laws (49 U.S.C. 60101 et seq.), and interstate pipelines as defined in §195.2 of this chapter), excavators, and persons who operate one-call notification systems who violate the applicable requirements of this subpart must be subject to civil penalties and injunctive relief that are substantially the same as are provided under the pipeline safety laws (49 U.S.C. 60101 et seq.).

[55 FR 38691, Sept. 20, 1990, as amended by Amdt. 198-2, 61 FR 18518, Apr. 26, 1996; Amdt. 198-6, 80 FR 188, Jan. 5, 2015]

§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 operated by one or more of the following:

(1) A person who operates underground pipeline facilities or other underground facilities.
(2) A private contractor.
(3) A State or local government agency.
(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 operators of underground pipeline facilities to whom the notice will be transmitted.

Subpart D - State Damage Prevention Enforcement Programs (§§51-63)

Source: 80 FR 43868, July 23, 2015, unless otherwise noted.

§ 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.