

On Fri, Jun 30, 2017 at 2:08 PM, Appelbaum, David (PHMSA)

[<carl.appelbaum@dot.gov>](mailto:carl.appelbaum@dot.gov) wrote:

Program Manager,

I've been tasked to evaluate your 2016 excavation damage prevention law enforcement program. Attached you will find our updated evaluation checklist and ask that you begin to fill this out. Please take the opportunity to read through the criterion guidance as we have amended/enhanced some of the language. Soon I will schedule a conference call with you to conduct the evaluation. If you would prefer that I conduct the evaluation in person, please let me know as soon as possible so I can get it approved and scheduled. Additionally, please plan on inviting any relevant individuals you feel should participate in the evaluation.

I want to highlight some points of interest on this year's evaluation:

- 1 Criterion 3 and Criterion 7: There will be enhanced scrutiny on the collection, analysis and use of damage data and associated enforcement actions.
- 2 Guidance for Criterion 6.c. will read: "Reporting damages to a one-call center may suffice for contacting the operator directly. PHMSA urges all States to review the definitions for excavators and excavation in their excavation damage prevention law to ensure the law does not exempt anyone from the reporting requirements of 49 USC § 60114 and 49 CFR Part 198.55. "Damage" is defined as 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 49 CFR 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.

Scoring Change Starting in CY 2021: PHMSA will score a State as "needs improvement" if either the State's excavation damage prevention requirements are not explicit on this point or the State's definition of an "excavation" and/or "excavator" allows, or potentially allows,

for certain parties (i.e., individuals covered under an exemption) to be immune from these reporting requirements.”

3 Criterion 6.d.: There will be enhanced scrutiny to ensure your State is aligned with 49 U.S. Code § 60114(d) and explicitly requires an excavator who causes damage to a pipeline facility that results in the release of any PHMSA-regulated natural or other gas or hazardous liquid to promptly report the release to emergency responders by calling the 911 emergency telephone number or another emergency telephone number. It was discovered last year that many states’ regulatory language is ambiguous on this matter and potentially provides an excavator the ability to use discretion on calling 911.

Again, in the near future I’ll contact you to schedule our evaluation. Also, when sending back the above completed checklist, please send me electronic copies of your one call law, procedures, regulations, and other relevant information that are not available online. If you have any questions, please feel free to call me or email.

Best,

**C. David Appelbaum**

State Evaluator – PHP50

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