

*Mission Statement:*

*Sections Mission*



# Washington Utilities and Transportation Commission

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## PHMSA

## Advance Notice of Proposed Rulemaking (ANPRM)

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# ANPRM?

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- Notice filed when a government agency announces it is going to create or update a rule.
  - First step in the rulemaking process.
    - No rules are proposed at this time
    - Signals the agency intends to create a new rule or update an existing rule

# Purpose of the ANPRM

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- PHMSA is soliciting feedback and comments regarding:
  - (1) The criteria for determining the adequacy of a state's enforcement program;
  - (2) the procedures PHMSA will use to make this determination;

# Purpose of the ANPRM

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- PHMSA is soliciting feedback and comments regarding:
  - (3) the federal standards to be enforced against an excavator in the event PHMSA determines a state to have inadequate enforcement; and
  - (4) the administrative process for imposing fines or penalties on an excavator alleged to have violated the applicable standards.

# PIPES Act

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- These rules will allow the Secretary of Transportation to take enforcement action when excavators\*:
    - (1) Fail to use a one-call system before excavating,
    - (2) Fail to regard the location information or markings established by a pipeline facility operator
    - (3) Cause damage to a pipeline facility and fail to promptly report the damage and fail to call 911
- ❖ Authority granted in PIPES Act of 2006

# PHMSA and UTC

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- PHMSA believes states should have primary responsibility to enforce damage prevention laws.
- PHMSA has to follow Congressional direction and assume responsibility if a state is not doing so adequately.

# Determining the Adequacy of State Programs

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- PHMSA is seeking comments and feedback on several issues they may use to evaluate the enforcement component of state programs.
- An important threshold will be if the state has established and exercised its authority to assess civil penalties for violations of its one-call laws.

# Administrative Process

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- PHMSA seeks comment on the administrative procedures if a state contests a notice of inadequacy.
- The procedures would likely involve a “paper hearing” process where PHMSA would notify a state that it considers its damage prevention enforcement inadequate (*i.e.*, following its annual review), and the state would then have an opportunity to submit written materials and explanations.

# Federal Standard for Excavators

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- PHMSA is seeking comment on the establishment of the federal standards for excavators
  - Should the federal standards for excavators be minimum requirements or should they be more detailed and extensive?
  - Are there suggested alternatives to these standards?

# Adjudication Process

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- PHMSA also seeks comment from the excavator community on the adjudication process that would be used if an excavator were cited by PHMSA
  - Hearings would likely be held at a PHMSA regional offices or via teleconference.
  - The hearing officer would be an attorney from the PHMSA Office of Chief Counsel.

# Existing Requirements for Pipeline Owners and Operators

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- Commenters are also invited to submit their feedback and comments on the adequacy of PHMSA's existing requirements for pipeline operators to participate in one-call organizations, respond to dig tickets, and perform their locating and marking responsibilities.

# Existing Requirements for Pipeline Owners and Operators

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- Should PHMSA should making the existing regulatory requirements more detailed and explicit in terms of:
  - The amount of time for responding to locate requests,
  - The accuracy of facility locating and marking, or
  - Making operator personnel available to consult with excavators following receipt of an excavation notification.



# Questions?

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