

STATE EXCAVATION DAMAGE PREVENTION LAW ENFORCEMENT PROGRAM EVALUATION CHECKLIST

Refer to Guidance While Reviewing Checklist

State:

Date:

Determination letter recipients:

The State failed 3.a.1
 TBD on cc: Governor
 Who should letter be addressed to?

Total score:

Introductory discussion of State excavation damage statistics.

Note: Throughout this checklist, PHMSA uses the terms “enforcement authority”, “supporting organization”, and “State” to identify organizations that may have primary responsibility for the action addressed in any specific question. PHMSA recognizes that States/territories have established their own processes and authorities for enforcing their one-call laws.

General – PHMSA to complete G questions and ask State to validate.

G.1.	What is the code citation for the State excavation damage prevention law/requirements? <input type="text" value="Government Code Sections 4216-4216.24"/> Comments: Link: http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=5.&chapter=3.1.&lawCode=GOV&title=1.&article=2
G.2.	When was/were the State excavation damage prevention law/requirements most recently updated? <input type="text" value="Minor changes were made June 27, 2017 (SB 92), supporting the large overhaul made on September 29, 2016 (SB 661)."/> Comments: <input type="text" value="The two recent changes in law (SB92) are considered as part of the same effort and will not be distinguished in the discussion below."/>
G.3.	What recent changes have been made to the State excavation damage prevention law/requirements? <input type="text" value="1) Creation of an investigation and enforcement board 2) Creation of a clear pathway from investigation to enforcement 3) Board coordination of state education & outreach efforts 4) Elimination of notification exemption if facilities “reasonably known” not to be present. 5) Minor changes in liability for damages 6) Required 911 for gas damages and all high priority damages 7) Fine money to be used for education & outreach grant program 8) Various other changes"/> Comments: <input type="text"/>

G.3.: PHMSA is seeking to understand changes in the law pertaining to enforcement procedures,

Guidance reporting, transparency, exemptions, and other relevant topics. Questions G.1. through G.3. are for information only.

Criterion 1—Does the State have the authority to enforce its State excavation damage prevention law using civil penalties and other appropriate sanctions for violations?

<p>1.a.</p>	<p>Does the State have the authority to enforce its State excavation damage prevention law using civil penalties and other appropriate sanctions for violations? If the answer is “No”, enforcement of the State excavation damage prevention law is deemed inadequate.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments:</p> <p>This is codified in Government Code Sections 4216-4216.24.</p>	<p>Pass/Fail</p> <p><u>Pass</u></p>
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<p>1.b.</p>	<p>Cite the portion of the excavation damage prevention law/requirements that enables enforcement.</p> <p>Government Code 4216.6</p> <p>Still included in the Law: (b) An action may be brought by the Attorney General, the district attorney, or the local or state agency that issued the permit to excavate, for the enforcement of the civil penalty pursuant to this section in a civil action brought in the name of the people of the State of California.</p> <p>Comments:</p> <p>California PUC and California State Fire Marshal continue to maintain their existing authority to enforce violations by their respective jurisdictional operators.</p>	<p>Information Only</p>
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Guidance 1.a.: This question is pass/fail. To pass this question, the State must have the authority to issue civil penalties for violations of the State one-call law; they do not have to demonstrate that they have used the authority. If the answer to 1.a. is “No,” the State excavation damage prevention law enforcement program is inadequate. PHMSA does not consider criminal penalties to be “other appropriate sanctions”. Other appropriate sanctions may include, but are not limited to, warning letters, mandatory training, etc.

Criterion 2 - Has the State designated a State agency or other body as the authority responsible for enforcement of the State excavation damage prevention law?

Points: 20

<p>2.a.</p>	<p>Does the State excavation damage prevention law designate an authority or authorities responsible for State-wide enforcement of the State excavation damage prevention requirements? If the answer is “No”, enforcement of the State excavation damage prevention law is inadequate.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments:</p> <p>4216.6 (c) The requirements of this article may also be enforced following a recommendation of the California Underground Facilities Safe Excavation Board by the following agencies, that shall act to accept, amend, or reject the recommendations of the board as follows: (1) The Registrar of Contractors of the Contractors’ State License Board shall enforce the provisions of this article on contractors, as defined in Article 2 (commencing with Section 7025) of Chapter 9 of Division 3 of the Business and Professions Code, and telephone corporations, as defined in Section 234 of the Public Utilities Code, when acting as a contractor, as defined in Article 2 (commencing with Section 7025) of Chapter 9 of Division 3 of the Business and Professions Code. Nothing in this section affects the California Public Utilities Commission’s existing authority over a public utility. (2) The Public Utilities Commission shall enforce the provisions of this article on gas corporations, as defined in Section 222 of the Public Utilities Code, and electrical corporations, as defined in Section 218 of the Public Utilities Code, and water corporations, as defined in Section 241 of the Public Utilities Code. (3) The Office of the State Fire Marshal shall enforce the provisions of this article on operators of hazardous liquid pipeline facilities, as defined in Section 60101 of Chapter 601 of Subtitle VIII of Title 49 of the United States Code.</p>	<p>Pass/Fail</p> <p><u>Pass</u></p>
<p>2.b.</p>	<p>Cite the portion of the law that designates enforcement authority to a State agency or other organization.</p> <p>Government Code 4216.6</p> <p>Comments:</p>	<p>Information Only</p>
<p>2.c.</p>	<p>What organization(s) is the designated authority? If more than one, list them.</p> <p>California Underground Facilities Safe Excavation Board (UFSEB), California Public Utilities Commission (CPUC), Office of the State Fire Marshal (OSFM), Contractors’ State License Board (CSLB), Attorney General (AG), and others. Attorneys</p> <p>Comments:</p> <p>“Others” includes district attorneys and local or state agencies issuing permit to excavate.</p>	<p>Information Only</p>
<p>2.d.</p>	<p>How long has/have the designated organization(s) had enforcement authority?</p> <p>All but the UFSEB have had authority since at least the previous major revision to the law in 1989.</p>	<p>Information Only</p>

	<p>Additional authority to add the Board and roles of the other agencies was added in 2016.</p> <hr/> <p>Comments:</p> <p>CSLB's enforcement, however, has historically been complaint-based, which will change with enforcement referrals made by UFSEB.</p>	
2.e.	<p>What are the enforcement and supporting and responsibilities of each organization involved in managing a statewide excavation damage prevention law enforcement program?</p> <p>Specifics of the new process are in development, but generally UFSEB investigates dig-in incidents and forwards investigations and enforcement recommendations to CPUC, OSFM, CSLB depending on violator.</p> <p>Timing for developing the rules, conduct investigations, refer cases to supporting organizations beginning 2019.</p> <p>(e) Commencing July 1, 2020, the California Underground Facilities Safe Excavation Board shall enforce the provisions of this article on persons other than those listed in subdivisions (c) and (d).</p> <p>Discussing with the CSLB on how to make referrals. Anyone now has the authority to file a complaint against an excavator, but the process for true enforcement won't be until July 2020.</p> <p>Comments:</p> <p>California PUC and California State Fire Marshal continue to maintain their existing authority to investigate incidents or accidents and enforce violations by their respective jurisdictional operators.</p>	Information Only
2.f.	<p>What positions/roles are responsible for enforcement and supporting activities within each enforcement or supporting organization?</p> <p>UFSEB: Chief of Investigations makes recommendations to UFSEB Board. Program Managers at CPUC and OSFM continue to maintain their existing authority to investigate incidents or accidents and take enforcement actions. violations by their respective jurisdictional operators.</p> <p>Comments:</p>	Information Only
2.g.	<p>Does the enforcement process include a stakeholder advisory committee?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments:</p> <p>California Underground Facilities Safe Excavation Board serves the function of an advisory committee due to its composition of industry stakeholders.</p>	Information Only
2.h.	<p>What parties are subject to enforcement under the state excavation damage prevention requirements?</p> <p>All excavators and operators are subject to state-level enforcement except exempt & municipalities.</p> <p>Only the AG 4216.6 is able to take enforcement action against a municipality.</p> <p>Comments:</p> <p>Accidents involving municipalities will be investigated, and recommendations made to</p>	Score (points x weight) <u>20</u>

their governing boards. References: Government Code Sections 4216.6, 4216.8. UFSEB to enforce over PHMSA jurisdictional operators.

Guidance

2.a.: This question is pass/fail. If the answer to this question is “No,” enforcement of the State excavation damage prevention law is inadequate. This question pertains to pipelines regulated under 49 CFR Parts 192 and 195. The State law may designate more than one organization as the excavation damage prevention law enforcement authority. **PHMSA expects enforcement to be fairly applied to all geographic areas of the State and all PHMSA regulated pipelines, both interstate and intrastate, within the State.**

2.e.: PHMSA is seeking an explanation of the process, not the names of the people personally responsible for various enforcement actions.

2.f.: PHMSA is seeking titles/roles, not names.

2.g.: Stakeholder advisory committees vary in composition and responsibilities. Typically, a committee consists of members representing damage prevention stakeholders, including underground utility operators, locators, excavators, the one call, and possibly the excavation damage enforcement authority. Some States use a committee to conduct a desk review/investigation of excavation damages and review cases/complaints and make enforcement recommendations to the State enforcement authority.

2.h.: PHMSA is seeking to understand which parties can be fined or sanctioned (e.g., locators, excavators, regulated interstate and intrastate pipeline operators, the one-call, etc.). At a minimum, PHMSA expects that both pipeline operators and non-exempt excavators be subject to enforcement under the State excavation damage prevention law. **PHMSA expects enforcement to be applied to all PHMSA regulated pipelines, both interstate and intrastate, within the State.**

Scoring guidance for question 2.h.:

2 = Satisfactory; Both pipeline operators and non-exempt excavators are subject to enforcement under the excavation damage prevention law.

0 = Unsatisfactory; Either pipeline operators or non-exempt excavators (or both) are not subject to enforcement under the excavation damage prevention law.

Question weight: 10

Criterion 3 –(a) Is the State assessing civil penalties and other appropriate sanctions for violations (b) at levels sufficient to deter noncompliance and (c) is the State making publicly available information that demonstrates the effectiveness of the State’s enforcement program?

Points:

<p>3.a.1.</p>	<p>In the previous calendar year, did the enforcement authority assess civil penalties and/or other sanctions for violations of the excavation damage prevention law involving regulated pipelines? If the answer is “No”, enforcement of the State excavation damage prevention law is inadequate.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments:</p> <p>The state initially responded "yes" to this question but after further review, the following enforcement actions were conducted by the CPUC under CFR authority. UFSEB was created by legislation late 2016. The formation of the authority and its process is underway; however, the CPUC issued 12 NOPVs in CY 2016.</p>	<p>Pass/Fail</p> <p><u>Fail</u></p>
<p>3.b.1.</p>	<p>What levels of civil penalties (dollar amounts) are enabled by law?</p> <p>Up to \$10K (\$50K for knowing & willful violations)</p> <p>Comments:</p> <p>Reference: GOV 4216.6. CPUC and OSFM continue to maintain their existing authority to investigate and assess penalties, per their respective agency limits, for violations by their respective jurisdictional operators.</p>	<p>Information Only</p>
<p>3.b.2.</p>	<p>a. How many pipeline excavation damages occurred in the State in the previous calendar year?</p> <p>According to data reported to the CPUC, there were 5,256 excavation related damages to natural gas facilities. OSFM had no excavation related damages.</p> <p>b. How many notifications of excavation damage to pipelines and/or violations of the excavation damage prevention law did the State enforcement authority or supporting organization receive in the previous calendar year?</p> <p>UFSEB was created by legislation in late 2016. The formation of the authority and its process is underway; however, CPUC received 87 telephonic reports of excavation damages in 2016.</p> <p>c. How many of the complaints or reports of pipeline excavation damage were investigated by the State for violations of the State excavation damage prevention law?</p> <p>CPUC investigated the 87 received telephonic reports of excavation damages. Most are conducted in the office.</p> <p>d. How many of the investigations were referred for some type of enforcement action?</p> <p>Of the 87 reports investigated, 12 were issued a NOPV letter.</p> <p>e. Total number of civil penalties assessed in previous calendar year involving regulated pipelines:</p> <p>None assessed in 2016</p>	<p>Information Only</p>

f. Dollar range of actual civil penalties assessed:

None			
Party	Number of Penalties	Total Amount	Comments
Excavators			
Pipeline Operators			
One-call			
Locators			
Comments:			

3.b.3.

What other sanctions for violations of the law are available to the State?
 Statute authorizes notification and information letters and direction to attend relevant education (GOV 4216.19). 19 is new language added in 2016

Comments:
 CPUC and CASFM -- NOPVs w/ w/o citations, penalties, order Corrective Actions, disallowances in rates require formal commission action (all the tools available to PHMSA)

CSLB uses a complaint process. The Board can issue citations, suspend/revoke license.
 ***Tony will send me the types of penalties by CSLB for violations of other laws.

Information Only

3.b.4.

In the previous calendar year, did the State assess sanctions other than civil penalties for damages to regulated pipelines?
 Yes No

Information Only

Type of Sanction	Excavators	Operators	Locators	One-Call
Warning letters				
Training				
Other				
Comments:				

3.b.4.1

Has the State assessed civil penalties against pipeline operators for violations of 49 CFR 192.614 or 49 CFR 195.442?
 Yes No

Information Only

Party	Number of Penalties	Total Amount	Comments
Pipeline Operators	12		

	<p>Comments:</p>	
3.b.5.	<p>Are enforcement actions progressive (increasingly severe for repeat offenses)? <input type="checkbox"/> Yes <input type="checkbox"/> No Comments:</p> <p>Specifics of the new process are in development, but generally UFSEB intends to pursue progressive enforcement actions starting with education and moving to increasing monetary penalties for repeat violations (4216.19(e).</p> <p>***Tony will see if the CSLB has a graduated process as well.</p> <p>The Board will need to work with the other involved agencies in developing a matrix. CPUC will likely look for consistency within the CPUC, and not necessarily across the other supporting agencies.</p>	Information Only
3.b.6.	<p>How does the enforcement authority or supporting organization assess the effectiveness of enforcement actions over time using data and other relevant information? See guidance.</p> <p>UFSEB expects to develop a baseline of state damage prevention performance using damage data, solicitations from stakeholders, and other contextual data in 2018.</p> <p>The Board will use DOT reportable data, VPD which has 5,000 damages by cause, housing starts, construction spending -- expect to identify what data they don't have. Not going to have data which identifies how big of a problem are caused by certain exemptions. Starting March 2018 CPUC will increase the amount of info collecting.</p> <p>***Sunil will provide a form of the data collected on excavation damages reporting requirements.. -- Provided</p> <p>General Order No. 112-F Section 123.2(h) Excavation Damage Prevention Related Data</p> <ol style="list-style-type: none"> 1. Number of excavation damages and related costs involving homeowners; 2. Number of damages and related costs involving agencies (i.e., Caltrans, non-pressurized sewer, etc.) excluded per California Government Code 4216 (GC4216); 3. Number of person-days, along with total costs, devoted to: i) excavation field meetings (per GC4216); and ii) stand-by activities for preventing damage to subsurface facilities during an excavation; 4. Number of person-days, along with total costs, devoted to: i) mark and locate activities (per GC 4216); and ii) all other subsurface damage prevention activities excluding those from paragraph 3 above. <p>Comments:</p>	<p>Score (points x weight) Points to increase in CY 18</p> <p style="text-align: center;"><u>10</u></p>
3.b.7.	<p>How has the State enforcement authority or supporting organization utilized its assessment of effectiveness to make program adjustments? See guidance.</p> <p>Damage data and narratives were used to pass the 2016 legislation.</p> <p>Comments:</p>	<p>Score (points x weight) Points to increase in CY 18</p> <p style="text-align: center;"><u>10</u></p>

3.c.1.	<p>Does the State make information about enforcement actions and outcomes publicly available?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments:</p> <p>The "enforcement authorities" do not have an online presence regarding damage prevention, excavation damages, penalties, etc.</p> <p>All CPUC citations are online on the CPUC website. Notice of public meetings will be webcast. The CPUC website does not include information on NOPV</p>	Score (points x weight) <u>0</u>
3.c.2.	<p>What information does the State make publicly available?</p> <p>CPUC citations.</p> <p>Comments:</p>	Information Only
3.c.3.	<p>How/where does the State make information publicly available?</p> <p>CPUC citations: http://www.cpuc.ca.gov/General.aspx?id=2494 UFSEB's website is not yet up, but enforcement actions intended to be available at digsafe.fire.ca.gov</p> <p>Comments:</p>	Information Only
Guidance	<p>General: PHMSA seeks records that demonstrate that the State is regularly and consistently using its enforcement authority and imposing appropriate sanctions for violations of the State excavation damage prevention law against pipeline operators and excavators. Sanctions may include civil penalties, mandatory training, warning letters, or other similar activities. States should also be able to demonstrate if the enforcement programs include escalating sanctions. If a State cannot demonstrate use of its enforcement authority, enforcement of the State excavation damage prevention law will be deemed inadequate.</p> <p>PHMSA expects States to demonstrate the impact of the State's enforcement program. PHMSA expects States to maintain records that demonstrate a relationship between the State's enforcement activities and the rate of excavation damage incidents. PHMSA acknowledges that many factors can influence excavation damage rates. However, PHMSA believes that an effective enforcement program includes evaluation of the effects of enforcement activities. The result of PHMSA's review of a State's records in this regard will not, by itself, be grounds for deeming enforcement of the State's excavation damage prevention law inadequate.</p> <p>PHMSA expects State enforcement programs to generally make excavation damage prevention law enforcement information and statistics available to the public via a website. PHMSA does not expect States to violate any State laws, jeopardize any ongoing enforcement cases, or post information that would violate the privacy of individuals as defined by State or Federal law. The result of PHMSA's review of the public availability of a State's information and</p>	

statistics will not, by itself, be grounds for deeming enforcement of the State's excavation damage prevention law inadequate.

3.a.1.: This question is pass/fail. If the answer to this question is "No," enforcement of the State excavation damage prevention law is inadequate.

3.b.2.: PHMSA is seeking records of every enforcement action in the previous calendar year.

3.b.3.: Examples of other sanctions include warning letters, mandatory training, documented verbal warnings, etc.

3.b.4.: PHMSA is seeking the number of sanctions applied to each party.

3.b.6.: PHMSA believes this is critical to a strong damage prevention program with adequate enforcement. PHMSA is seeking to understand if the enforcement authority or supporting organization evaluates damage rates and other relevant information, including causes of damages, repeat one-call law offenders, trends, root causes, geographic trends, etc., to identify excavation damage risks so that enforcement activities may be adjusted. The State should explain how the State uses data, including mandatory/voluntary reporting to the State, one-call center, operator provided information, complaints, and/or PHMSA, to evaluate the impacts of their enforcement activities.

Scoring guidance for question 3.b.6.

2 = Satisfactory; The State thoroughly evaluates damage rates and other relevant information in relation to enforcement activities.

1 = Needs Improvement; The State evaluates some information in relation to enforcement activities, but the information cannot be used to conduct a complete/thorough evaluation.

0 = Unsatisfactory; The State does not evaluate damage rates and other relevant information in relation to enforcement activities in any meaningful way.

Question weight: 10

3.b.7.: PHMSA believes this is critical to a strong damage prevention program with adequate enforcement. PHMSA is seeking to understand what the enforcement authority or supporting organization has learned from evaluating damage rates and other relevant information as identified in question 3.b.6, and how the State is using what it has learned to make adjustments to the enforcement program. For example, an enforcement or supporting organization should be learning which parties or activities in the State are causing excavation damage and tailoring the enforcement program to address risk.

Scoring guidance for question 3.b.7.:

2 = Satisfactory; Using supporting data, the State thoroughly understands the impact of enforcement on the State's excavation damage prevention program. Using supporting data, the State can demonstrate which parties or activities in the State are causing excavation damage, what are some of the root cause issues, and the actions taken in the State to reduce damages. The State actively uses the results of its enforcement program to continuously improve the program to address risk.

1 = Needs Improvement; The State has some supporting data that demonstrates the impact of enforcement on the State's excavation damage prevention program, but the State's understanding of the impact of enforcement is limited. The State may have anecdotal evidence of the impact of enforcement, but

cannot support claims with data. Accordingly, the State's ability to assess risks and make meaningful adjustments to its enforcement program are limited.

0 = Unsatisfactory; The State cannot make any meaningful claims about the impact of enforcement on the State's excavation damage prevention program due to a lack of supporting data or other information. Accordingly, the State is essentially unable to assess risks based on data and make meaningful adjustments to its enforcement program.

Question weight: 10

3.c.1.: General information about enforcement actions should be made available to the public proactively.

Scoring guidance for question 3.c.1.:

2 = Satisfactory; General information about enforcement actions are made available to the public. Public information about enforcement actions is made available on an ongoing basis and is current.

1 = Needs Improvement; The State makes some information available to the public, e.g. enforcement hearing schedules or general information regarding the State's excavation damage prevention enforcement program, but lacks visibility into the State's enforcement actions and results of the program.

0 = Unsatisfactory; The State makes very limited or no information publicly available regarding the State's excavation damage prevention program and State enforcement actions/results.

Question weight: 5

3.c.2.: Information about the enforcement program, including number of actions, types of violations and sanctions should be publicly available on a web site. At a minimum, PHMSA expects enforcement authorities to publicly share the number and types of enforcement actions taken in a given year (e.g., civil penalties, warning letters, mandatory training sessions, and similar information).

3.c.3.: PHMSA expects this answer to include a website address.

Criterion 4 - Does the enforcement authority have a reliable mechanism (e.g., mandatory reporting, complaint-driven reporting) for learning about excavation damage to underground facilities?

Points:

<p>4.a.</p>	<p>Does the enforcement authority or supporting organization have a reliable mechanism (e.g., mandatory reporting, complaint-driven reporting) for learning about violations of the excavation damage prevention law? What is the mechanism?</p> <p>Reporting mechanism to USFEB for incidents that are not DOT-reportable and do not meet CPUC's "significant media attention" criterion not yet determined.</p> <p>The Board will need to develop rules to specify what the mechanism will be.</p> <p>Comments:</p>	<p>Score (points x weight)</p> <p><u>0</u></p>
<p>4.b.</p>	<p>Cite the portion of the excavation damage prevention law/requirements that addresses how to report suspected violations.</p> <p>Government Code Section 4216.19 states that the board investigates complaints and dig-in events, but does not specify the reporting mechanism.</p> <p>Comments:</p>	<p>Information Only</p>
<p>4.c.</p>	<p>Question removed.</p>	<p>Information Only</p>
<p>4.d.</p>	<p>How does the enforcement authority or supporting organization inform stakeholders about the process for reporting violations of the excavation damage prevention law?</p> <p>To be determined. At minimum, information about violation reporting will come through California's Administrative Procedures Act regulatory process in which stakeholders are involved.</p> <p>Comments:</p> <p>Until 2019, the only enforcement authority in the state against excavators is to pursue some type of action through the CSLB or AG.</p> <p>Board is hoping to get information from local fire departments (as being part of the CASFM)</p>	<p>Score (points x weight)</p> <p><u>0</u></p>
<p>Guidance</p>	<p>General: PHMSA will review how State enforcement programs learn about excavation damage to underground pipelines. In particular, PHMSA will be looking for reporting mechanisms that encourage parity in the application of enforcement resources. For example, when excavation damage occurs, does the reporting mechanism allow for identification of potential violations of law by both excavators and pipeline operators? If the State enforcement program learns of violations via road patrols that specifically target excavators without valid excavation tickets, how does the enforcement authority or supporting organization also learn about violations of other provisions of State excavation damage prevention requirements, such as operators' failure to locate and mark pipelines? Also, PHMSA will review the enforcement authority's methods for making stakeholders – especially excavators and pipeline operators – aware of the process and requirements for reporting excavation damage to pipelines to the enforcement authority. The result of PHMSA's review of a State's activities</p>	

under criterion 4 will not, by itself, be grounds for deeming enforcement of the State's excavation damage prevention law inadequate.

4.a. PHMSA expects that violations of the State excavation damage prevention requirements may be reported by any stakeholder involved in excavation damage to a pipeline.

Scoring guidance for question 4.a.:

*2 = Satisfactory; The State has a reliable mechanism for learning about law violations. The mechanism is clearly defined in the written State excavation damage prevention requirements, and may include mandatory reporting or complaint-based reporting of excavation damages. All damage prevention stakeholders are empowered to report law violations to the enforcement authority. **The State's process for violation reporting is readily available on a public web site.***

1 = Needs Improvement; The State has some means of learning about law violations to underground facilities, but it is not reliable in all cases (e.g., the State actively learns about law violations through patrols, media, limited stakeholder reporting, etc., but some damage prevention stakeholders do not have a means of notifying the State when a damage occurs).

0 = Unsatisfactory; The State does not have a reliable means of learning about law violations. Stakeholders have no means of reporting law violations to the State and the State has no means of addressing stakeholder reports of law violations.

Question weight: 10

4.d.: PHMSA expects that the enforcement authority, supporting organization, and/or other damage prevention stakeholders are proactively educating all stakeholders about the reporting process, and provide a point-of-contact for questions on how to report law violations.

Scoring guidance for question 4.d.:

2 = Satisfactory; The enforcement authority, supporting organization, and/or other damage prevention stakeholders can demonstrate they proactively educate all damage prevention stakeholders about the process for reporting law violations. The educational program is documented and available to all stakeholders.

1 = Needs Improvement; The enforcement authority, supporting organization, and/or other damage prevention stakeholders demonstrate some effort to educate stakeholders about the process for reporting law violations, but the educational program is not proactive or documented, is used on a limited basis, and/or the outreach may not focus on all stakeholders responsible for ensuring damage prevention.

0 = Unsatisfactory; The enforcement authority, supporting organization, and/or other damage prevention stakeholders do not have a process for educating stakeholders about the process for reporting law violations.

Question weight: 3

Criterion 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?

Points:

<p>5.a.</p>	<p>What organization conducts the damage investigation?</p> <p>CPUC, OSFM investigate DOT-reportable incidents. UFSEB investigates non-DOT reportable incidents.</p> <p>CPUC will investigate some non-DOT reportable. GEO 112 reportables, including non-DOT incidents. DOT reportable (112F regulation).</p> <p>Comments:</p>	<p>Information Only</p>
<p>5.a.1</p>	<p>Does the damage investigation organization have a formal relationship, e.g. a memorandum of understanding, with the enforcement authority, if the two are different?</p> <p>Currently in process for determining process for transmitting investigations and enforcement records from UFSEB to CPUC, OSFM, CSLB and vis-a-versa. Process expected to be formalized through MOUs.</p> <p>Comments:</p> <p>Legal teams will need to review to determine if an MOU is necessary in the future.</p>	<p>Information Only</p>
<p>5.b.</p>	<p>Does the investigation organization have documented damage investigation processes and procedures to ensure consistency in how investigations are conducted?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments:</p> <p>UFSEB damage investigation processes expected to be documented between Q2 2018 and Q4 2018. CPUC and OSFM investigation processes documented per PHMSA requirements.</p>	<p>Score (points x weight)</p> <p><u>0</u></p>
<p>5.c.</p>	<p>Does the investigating organization investigate all pipeline excavation damages that it learns about (in the field or in the office) or use written procedures to determine when an investigation is warranted.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments:</p> <p>UFSEB expected to use written procedures to determine when and what type of investigation warranted. CPUC procedures for investigating excavation damages established per PHMSA regulations.</p>	<p>Score (points x weight)</p> <p><u>0</u></p>
<p>5.d.</p>	<p>What information does the investigation organization collect when investigating excavation damages, and from whom?</p> <p>UFSEB procedures expected to include collection of information from excavator, facility owner, and others such as fire and law enforcement.</p> <p>Comments:</p>	<p>Information Only</p>
<p>5.e.</p>	<p>Question removed.</p>	
<p>5.f.</p>	<p>How does the enforcement authority determine when to undertake enforcement action?</p> <p>CPUC, OSFM, and CSLB expected to take action on USFEB recommendations</p>	<p>Score (points x weight)</p> <p><u>0</u></p>

	<p>Comments:</p>	
5.g.	<p>How does the State hold both pipeline operators and excavators accountable for violations of the excavation damage prevention requirements?</p> <p>UFSEB will supply investigations and recommendations for enforcement to CPUC, OSFM, CSLB based on who the violator is. Under 4216.6 (e), UFSEB will enforce GC4216 directly over PHMSA jurisdictional operators.</p> <p>Comments:</p>	<p>Score (points x weight)</p> <p>0</p>
Guidance	<p>General: PHMSA expects State enforcement programs to be balanced with regard to how they apply enforcement authority. PHMSA expects enforcement programs to be focused on the compliance responsibilities of both excavators and pipeline operators. PHMSA seeks a pattern of pipeline excavation damage enforcement that demonstrates that penalties are consistently applied to all violators of the State excavation damage prevention requirements and are not consistently applied to only one stakeholder group. PHMSA is interested in States' excavation damage investigation practices, and especially if these practices include the opportunity for input from all parties and if there is due process in place for those accused of violating the law. The result of PHMSA's review of a State's program under criterion 5 will not, by itself, be grounds for deeming enforcement of the State's excavation damage prevention law inadequate.</p> <p>5.b.: PHMSA expects the State to able to produce copies of its documented damage investigation procedures/forms/etc.</p> <p><u>Scoring guidance for question 5.b.:</u></p> <p><i>2 = Satisfactory; The State has thoroughly-documented damage investigation written procedures/forms/etc.</i></p> <p><i>1 = Needs Improvement; The State has some damage investigation written procedures/forms/etc., but the documentation does not completely describe the investigation process.</i></p> <p><i>0 = Unsatisfactory; The State has limited or no documented damage investigation procedures/forms/etc.</i></p> <p><i>Question weight: 10</i></p> <p>5.c.: Investigations may or may not include site visits or field investigations; investigations may include in-office reviews of evidence submitted by parties involved in a damage. If the enforcement authority does not investigate every case of pipeline excavation damage, PHMSA expects States to have a policy for determining when investigation is warranted.</p> <p><u>Scoring guidance for question 5.c.:</u></p> <p><i>2 = Satisfactory; The State investigates all pipeline excavation damages that it learns about, or the State's written policies/procedures include criteria for when an investigation is not needed.</i></p> <p><i>1 = Needs Improvement; The State investigates some pipeline excavation damages that it learns about, but not all, and the State's investigation procedures do not provide sufficient guidance for determining if an investigation is needed.</i></p> <p><i>0 = Unsatisfactory; The State does not investigate pipeline excavation damages on a consistent basis. Investigations are not regular or common, and many pipeline excavation damages are not investigated. Enforcement procedures do not address when an investigation is needed.</i></p> <p><i>Question weight: 10</i></p> <p>5.f.:</p> <p><u>Scoring guidance for question 5.f.:</u></p>	

2 = Satisfactory; The enforcement authority either takes enforcement action in every case of pipeline excavation damage, or has a documented consistent approach to determining when enforcement action is taken.

1 = Needs Improvement; The enforcement authority does not take enforcement action in every case of pipeline excavation damage or does not have a thoroughly documented approach for consistently determining when enforcement action is taken. Enforcement action does occur, but is not always consistent.

0 = Unsatisfactory; The enforcement authority does not have any process for ensuring enforcement is consistently applied.

Question weight: 5

5.g.: PHMSA is seeking an explanation of the State's policy regarding equitable and consistent application of enforcement to both operators and excavators.

Scoring guidance for question 5.g.:

2 = Satisfactory; The State's approach to applying enforcement to both operators and excavators is fair, as demonstrated by enforcement records, written enforcement policies/procedures, and excavation damage data.

1 = Needs Improvement; The State applies enforcement to both operators and excavators, but records indicate that enforcement authority is clearly used more often against one stakeholder group. For example, excavators may be targeted for enforcement more often than operators, but enforcement is applied to operators in some cases.

0 = Unsatisfactory; The State applies enforcement to only one stakeholder group in most cases. For example, the enforcement program specifically and consistently targets excavators, but rarely targets operators for failing to fulfill their role in the damage prevention process.

Question weight: 10

Criterion 6 -At a minimum, do the State’s excavation damage prevention requirements include the following:

- 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.
- Excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.
- An excavator who causes damage to a pipeline facility:
 - Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and
 - If the damage results in the escape of any natural and other gas or hazardous liquid from a PHMSA-regulated pipeline, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.

Points: 80

6.a.	<p>Does the State require excavators (who are not exempt from State requirements) to use an available one-call notification system to establish the location of underground facilities in the excavation area before engaging in excavation activity?</p> <p>Yes. Additionally, excavators not permitted to begin work until all facility owners have provided positive response to the location request.</p> <p>Comments: Reference: Government Code Section 4216.2(b),(g)</p>	<p>Score (points x weight) <u>20</u></p>
6.b.	<p>Does the State require that excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator?</p> <p>Yes. Statute 1) defines tolerance zone to be within 24 in of either side of a utility mark 2) specifies the use of hand tools in determining the location of pipe, and 3) requires an onsite meeting for high priority pipelines. HAZARDOUS .</p> <p>***Link is found in G1.</p> <p>Comments: References: 1) GOV 4216(u), 2) GOV 4216.3(a), 3) GOV 4216.2(c). High Priority Pipelines include gas facilities above 60 psig and all hazardous liquids lines).</p>	<p>Score (points x weight) <u>20</u></p>
6.c.	<p>Does the State require an excavator who damages a pipeline facility to report the damage to the operator of the facility at the earliest practical moment following discovery of the damage?</p> <p>Yes. Reference: GOV 4216.4(c)</p> <p>Comments:</p>	<p>Score (points x weight) Note guidance on scoring change <u>20</u></p>
6.d.	<p>Does the State require an excavator who causes damage to a PHMSA-regulated pipeline that results in a release of natural or other gas or hazardous liquid to</p>	<p>Score (points x</p>

<p>promptly report the release to emergency responders by calling the 911 emergency telephone number or another emergency telephone number?</p> <p>Yes. This change was made by the 2016 law.</p> <p>Comments: 4216.4(c)</p>	<p>weight) <u>20</u></p>
<p>Guidance</p>	<p>General: PHMSA will review State requirements to ensure they address the basic Federal requirements in the PIPES Act for excavators such as using an available one-call system. The result of PHMSA’s review of a State’s requirements will not, by itself, render the State’s enforcement program inadequate.</p> <p>6.a.:</p> <p><u>Scoring guidance for question 6.a.:</u> <i>2 = Satisfactory; The State requires excavators (who are not exempt from State requirements) to use an available one-call notification system to establish the location of underground facilities in the excavation area before engaging in excavation activity.</i> <i>1 = Needs Improvement; The State requires excavators (who are not exempt from State requirements) to use an available one-call notification system or to contact the operators of underground facilities directly to establish the location of underground facilities in the excavation area before engaging in excavation activity.</i> <i>0 = Unsatisfactory; The State does not require excavators to use an available one-call notification system to establish the location of underground facilities in the excavation area before engaging in excavation activity.</i> <i>Question weight: 10</i></p> <p>6.b.:</p> <p><u>Scoring guidance for question 6.b.:</u> <i>2 = Satisfactory; The State explicitly requires that excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.</i> <i>1 = Needs Improvement; The State requires or recommends that excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator, but the State’s excavation damage prevention requirements are not explicit on this point. For example, the State damage prevention law/regulations may not have a defined tolerance zone in which hand tools or soft digging must be used, or the law/regulations may not require excavators to request re-locates when necessary.</i> <i>0 = Unsatisfactory; The State does not require that excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.</i> <i>Question weight: 10</i></p> <p>6.c.: 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 <u>does not exempt anyone</u> 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,</p>

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.

Scoring guidance for question 6.c.:

2 = Satisfactory; The State explicitly requires an excavator who damages a pipeline facility to report the damage to the operator of the facility at the earliest practical moment following discovery of the damage.

1 = Needs Improvement; The State requires an excavator who damages a pipeline facility to report the damage to the operator of the facility at the earliest practical moment following discovery of the damage.

0 = Unsatisfactory; The State does not require an excavator who damages a pipeline facility to report the damage to the operator of the facility at the earliest practical moment following discovery of the damage.

Question weight: 10

6.d.:

Scoring guidance for question 6.d.:

2 = Satisfactory; The State 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.

1 = Needs Improvement; The State requires or recommends that 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 notify emergency responders, but does not explicitly require calling the 911 emergency telephone number or another emergency telephone number.

0 = Unsatisfactory; The State does not require or recommend that 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 notify emergency responders, but does not explicitly require calling the 911 emergency telephone number or another emergency telephone number.

Question weight: 10

Criterion 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 excavation damage prevention requirements. PHMSA will make the written justifications available to the public.

Points:

7.a.	<p>What notification exemptions for excavators exist in the excavation damage prevention law?</p> <p>1) Homeowners 2) A landowner who contracts with a contractor for an excavation project not requiring a permit issued by a state or local agency.</p> <p>CalTrans does not have to be a member, not exempt for calling before digging. 4216.8(c)</p> <p>Comments:</p> <p>Reference: GOV 4216.8</p>	Information Only
7.b.	<p>Does the enforcement authority or supporting organization maintain information that demonstrates the impact of exemptions?</p> <p>UFSEB intends to use damage information, including, but not limited to CGA DIRT data, and other supporting information to determine the impact of these exemptions. Moreover, CPUC will receive such information annually.</p> <p>Comments:</p>	Score (points x weight) <u>0</u>
7.c.	<p>What information does the enforcement authority or supporting organization maintain?</p> <p>UFSEB investigation and information collection procedures to be developed mid-2018.</p> <p>Comments:</p>	Information Only
7.d.	<p>How does the enforcement authority or supporting organization use information about the impact of exemptions?</p> <p>UFSEB has been given the responsibility to provide recommendations to the state Legislature, which would include findings of significant impact of exemptions</p> <p>Comments:</p>	Score (points x weight) <u>0</u>
Guidance	<p>General: PHMSA expects States to document the exemptions provided in State excavation damage prevention laws for any/all excavators. "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. Documentation should include the exemptions for excavators in State law and any data or other evidence that demonstrates the impact of the exemptions on the rate of excavation damage to pipelines and other underground</p>	

infrastructure. PHMSA believes that exemptions for entire classes of excavators (e.g., farmers) represent a greater threat to pipeline safety than exemptions for specific excavation activities (e.g., shallow tilling). The result of PHMSA's review of a State's program under criterion 7 will not, by itself, be grounds for deeming enforcement of the State's excavation damage prevention law inadequate.

7.b.:

Scoring guidance for question 7.b.:

2 = Satisfactory; The enforcement authority or supporting organization maintains robust complete information that clearly demonstrates the impact of exemptions. The information shows the number of damages caused by parties or activities that are exempt from State excavation damage prevention requirements.

1 = Needs Improvement; The enforcement authority or supporting organization maintains some information that demonstrates the impact of exemptions, but the information is not complete and can only be used in a limited capacity to demonstrate the number of damages caused by parties or activities that are exempt from State excavation damage prevention requirements.

0 = Unsatisfactory; The enforcement authority or supporting organization maintains limited or no information that demonstrates the impact of exemptions.

Question weight: 3

7.d.:

Scoring guidance for question 7.d.:

2 = Satisfactory; The State uses information about the impact of exemptions to improve the excavation damage prevention program on a consistent basis.

1 = Needs Improvement; The State collects some information about the impact of exemptions, but does not actively use the information to improve the excavation damage prevention program.

0 = Unsatisfactory; The State does not collect or use information about the impact of exemptions to improve the excavation damage prevention program.

Question weight: 3

General Evaluation Comments:

**STATE EXCAVATION DAMAGE PREVENTION LAW ENFORCEMENT PROGRAM EVALUATION
SIGN-IN SHEET**

STATE:

DATE:

Name	Organization	Title	Email
Ken Bruno	CPUC		
Sunil Shori	CPUC		
Ben Ho	CSFM		
Bob Gorham	CSFM		
Tony Marino (two others)	CA Underground Facilities Saf...		
Tom Finch	PHMSA		