



PHMSA State One-Call Law Exemption Forum

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Setting the State

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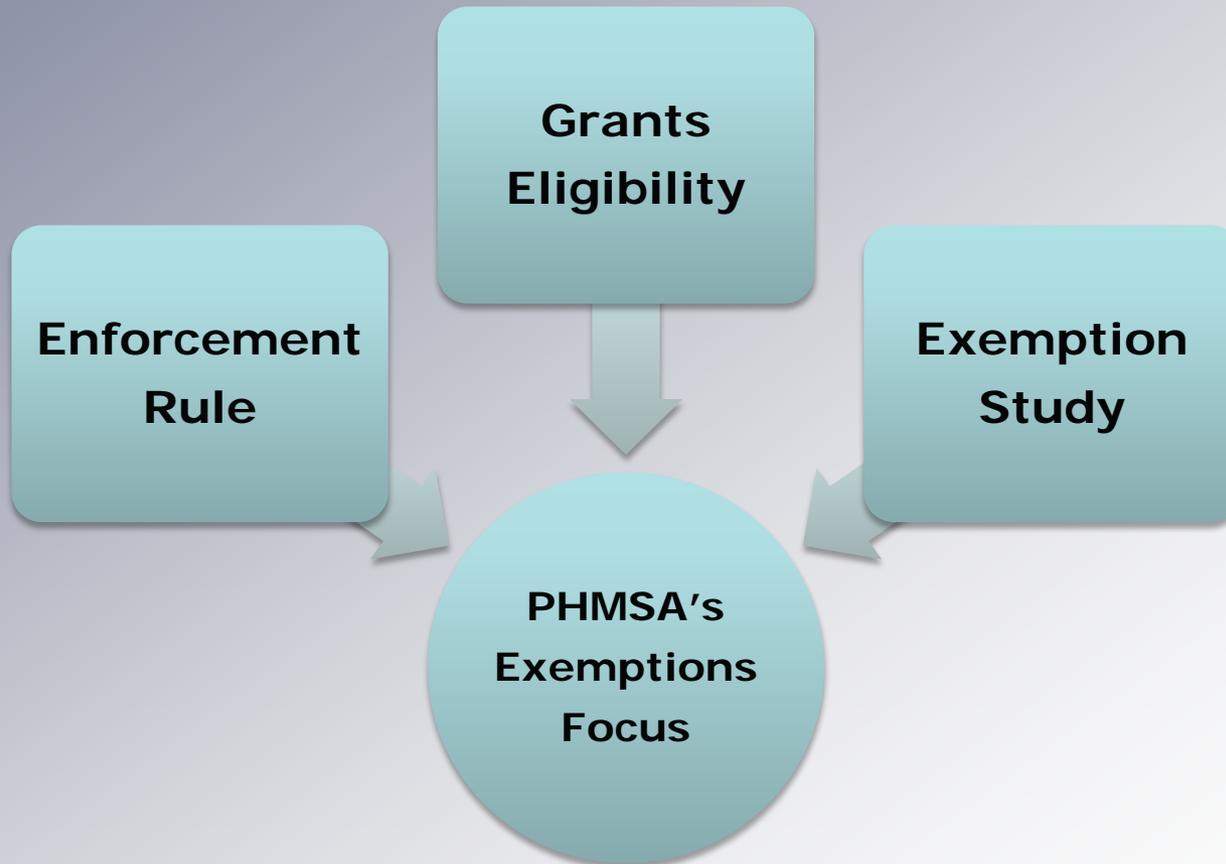


Background

- State damage prevention laws typically exempt some parties from requirements of the law
 - Notification exemptions
 - Specific excavation practices and/or classes of excavators
 - Membership exemptions
- Pre-read materials on the meeting website summarize current state one-call law exemptions
- PHMSA is addressing exemptions in a variety of ways



PHMSA and Exemptions





Enforcement Rule

- PIPES Act of 2006 – PHMSA has limited enforcement authority over excavators in states with inadequate damage prevention law enforcement programs
- April 2, 2012: NPRM (Docket ID PHMSA-2009-0192)
- The NPRM proposed:
 - **Criteria used to evaluate states' damage prevention law enforcement programs**
 - Administrative process for states to contest notice of inadequacy
 - Federal standards PHMSA will enforce in states with inadequate enforcement programs
 - Adjudication process for violators



Proposed Criteria

- PHMSA proposed seven criteria for evaluating the adequacy of state damage prevention law enforcement programs
 - Criteria are focused on existence and use of enforcement authority, investigation practices, and the contents of state damage prevention laws
- The 7th criterion says:
“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.”



Grants Eligibility

**One-call exemptions for state and
local government agencies**

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**No State Damage Prevention (SDP)
or One Call Grants from PHMSA**

(per PHMSA 2011 Reauthorization Bill)



Grants Eligibility

- PHMSA has preliminarily notified states of their eligibility status
- PHMSA is in the process of formally notifying states that are considered “probably ineligible” (there are ten)
- PHMSA sending letters to state governors, requesting a response within six weeks
- Affected state agencies and one call centers will receive electronic copies of letters to the governors



Exemption Study

In accordance with the 2011 Reauthorization Act, PHMSA must study the impact of excavation damage on pipeline safety. The study shall include:

- A. an analysis of the frequency and severity of different types of excavation damage incidents;
- B. an analysis of exemptions to the one-call notification system requirements in each State;
- C. a comparison of exemptions to the one-call notification system requirements in each State to the types of excavation damage incidents in that State; and
- D. an analysis of the potential safety benefits and adverse consequences of eliminating all exemptions for mechanized excavation from State one-call notification systems.



Challenges - Study

- No database exists that can give us the information we need to conduct a thorough study
- PHMSA will examine our own incident reports, but the data is thin because only a small fraction of damages result in federally reportable incidents
- This forum gives us a chance to better understand the impact of exemptions on stakeholder groups, which is critical information for drafting the report to Congress



Panel Discussion Guidelines

- Panelists will describe the impact of exemptions on their respective stakeholder groups, using data to support their positions whenever possible.
- PHMSA is interested in learning what can – or cannot – be learned with existing information, and what can/should be done to fill data gaps to effectively address exemptions, with improved pipeline safety as the overall goal.
- Though the forum's focus is on notification exemptions, panelists who wish to address membership exemptions may do so but are encouraged to demonstrate the impact of exemptions, or lack of exemptions, on pipeline safety.



Some Questions for Discussion

- What exemptions are/are not acceptable to your stakeholder group and how do you support these positions in the context of the requirements of Congress?
- What would be the impact of removing all notification exemptions from state one call programs? What is your basis for this position?
- If you could keep or eliminate only one exemption, which would it be, and why?
- How can the damage prevention community collect more meaningful data that demonstrates the impacts of exemptions?