

DRAFT/FINAL FISCAL IMPACT STATEMENT

Agency: State Fire Marshal	
Title: 155	Prepared by: Regina Shields
Chapter: 1,2	Date prepared:02/10/19
Subject: Pipeline Safety and State One Call	Telephone:471-9477

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	()	()	()
Decreased Costs	()	()	()
Increased Revenue	()	()	()
Decreased Revenue	()	()	()
Indeterminable	()	()	()

Provide an Estimated Cost & Description of Impact:

There is no anticipated fiscal impact if the regulations are adopted.

If the CFR inclusion regulations are not adopted the Pipeline Safety Program will be penalized in the yearly audit for not incorporating all CFR requirements. If enough points are lost during the audit there could be a reduction in grant funding provided to the Program.

The new requirements in chapter 2 include a provision that all facilities will have to participate in electronic positive response. There are free systems available through the call center or the requirement can still be met utilizing phone calls to the call center. The new requirements regarding required facility information can be accomplished without the facilities having to buy new equipment.

State Agency:

Political

Subdivision: N/A

Regulated

Public: N/A

If indeterminable, explain why:

NEBRASKA ADMINISTRATIVE CODE

Title 155 – STATE FIRE MARSHAL

CHAPTER 1 – REGULATIONS PURSUANT TO THE NEBRASKA NATURAL GAS PIPELINE SAFETY ACT OF 1969

001. Federal regulations adopted by reference are Title 49 of the Code of Federal Regulations, Parts 191, 192, 193, 196 and 199, revised as of ~~June 14, 2013.~~ April 1, 2019.

~~001.01~~ Natural Gas Pipeline Safety Act of 1968, Amendment Numbers 191-18, 191-19, 191-21, 191-22, 192-103A, 192-RIN-2137-AE09, 192-104, 192-105, 192-106, 192-107, 192-108, 192-109, 192-110, 192-111, 192-112, 192-112C, 192-113, 192-113C, 192-114, 192-115, 192-116, 192-117, 193-20, 193-21, 193-22, 193-23, and 199-24.

~~001.02.~~ **001.01.** Copies of the federal regulations are on file at the office of the Nebraska State Fire Marshal, 246 South 14th Street, Lincoln, NE or at the office of the Secretary of State, Division of Rules and Regulations in the Nebraska State Capitol.

002. ~~Within two (2) hours or as soon as practical, following the discovery~~ At the earliest practicable moment following discovery, but no later than one hour after confirmed discovery of any reportable incident as defined in section 002.01-002.02E, an operator shall notify the State Fire Marshal Pipeline Safety Division, Lincoln, Nebraska at (402) 471-2027 during normal business hours. ~~After hours, operators shall call the area Pipeline Safety Deputy.~~

002.01. Reportable incidents, either before or past the meter are: An event that involves a release of gas from a pipeline or a release from an LNG facility that results in one or more of the following consequences:

~~002.01A.~~ An event that involves a release of gas from a pipeline or of liquefied gas from an LNG facility and results in

~~002.01Ai.~~ A death or personal injury necessitating in-patient hospitalization. or

~~002.01BAii.~~ Estimated property damage, including cost of gas lost, of the operator or others, or both of \$50,000.00 or more; or of \$50,000.00 or more, including loss to the operator and others, or both; but excluding cost of gas lost.
or

~~002.01C.~~ Unintentional estimated gas loss of three million cubic feet or more.

~~002.01D.~~ An event that results in an emergency shutdown of an LNG facility. Activation of an emergency shutdown system for reasons other than an actual emergency does not constitute an incident.

~~002.02EAiii.~~ Any failure which results in the explosion or ignition of natural gas before or after the meter.

003 002.01F Within 48 hours after the confirmed discovery of an incident, to the extent practicable, an operator must revise or confirm its initial telephonic notice required in paragraph (002.01) of this section with(1) an estimate of the amount of product released (3) an estimate of the number of fatalities and injuries(2) and all other significant facts that are known by the operator that are relevant to the cause of the incident or extent of the damages. If there are no changes or revisions to the initial report, the operator must confirm the estimates in its initial report.

004.002.024 At the earliest practicable moment following discovery, but no later than one hour after confirmed discovery of any reportable events that occur on regulated pipeline as defined in section 004.01-004.03C, an operator shall notify the State Fire Marshal Pipeline Safety Division. These event include:

004.01 002.024A An event that results in a natural gas release due to over-pressure, excavation damage, outside force damage, or natural force damage. Natural force damage includes but is not limited to: earth movement; earthquakes; lightning; flooding; high winds; tornado; or similar natural causes.

004.02 002.024B An event that has or will interrupt natural gas service to 20 or more customers. This does not include scheduled or planned maintenance.

004.03 002.024C An event related to a natural gas release that results in the evacuation of:

004.03A-002.024C1 Four or more one or two family dwellings; or

004.03B-002.024C2 One or more multifamily dwellings; or

004.03C-002.024C3 Any evacuation of a business, public building or public gathering.

004.04 002.035 An event that is significant in the judgment of the operator that could affect the daily operations of the pipeline, safety of the public or operator personnel, even though it does not meet the criteria of 004.01-004.03C 002.01 or 002.02.

0053. Each written report required by Title 49 of the Code of Federal Regulations, Part 191 adopted herein shall be submitted in duplicate to the Nebraska State Fire Marshal Pipeline Safety Division.

0053.01. One copy of the annual report submitted pursuant to 0035 above will be transmitted to U.S. Department of Transportation the Pipeline and Hazardous Materials Safety Administration and to the Nebraska State Fire Marshal no later than March 15, for data from the preceding calendar year.

006. One hundred eighty (180) days after the effective date of this rule each operator shall provide the following documents to the Nebraska State Fire Marshal Pipeline Safety Division in an acceptable digital format, unless the operator can show cause to provide these documents in another format as follows:

006.01 The following procedures, plans and programs shall be submitted annually: Operations and Maintenance Procedures, Emergency Plans, Damage Prevention, and

006.02 Operation maps for distribution and transmission systems shall be submitted every five (5) years or as requested.

007. If a gas operator cannot provide digital copies of the documents required in Paragraph 006 of this chapter, the gas operator shall make a written request to the Nebraska State Fire Marshal Pipeline Safety Section for approval of alternate submission methods.

008. Within seven (7) calendar days after a gas operator changes ownership of a natural gas system or a gas operator makes changes in operational or maintenance provider ship, the gas operator shall give notice to the Nebraska State Fire Marshal Pipeline Safety Section.

LEGAL CITATION: Title 155, Chapter 1 – Nebraska State Fire Marshal

STATUTORY CITATION: Neb. Rev. Stat. 81-542 to 81-550 (2009)

CHAPTER 2 – REQUIREMENTS FOR STATEWIDE ONE-CALL NOTIFICATION CENTER

001. These regulations shall apply to the operating procedures of the state-wide one-call center and the qualifications, appointment, retention, and composition of the board of directors.

002. DEFINITIONS.

002.01. Board of directors shall mean the governing board of the association charged with the responsibility for overseeing the operation of the statewide one-call notification center.

002.02. Business day shall mean any day other than a Saturday, Sunday, or state or nationally observed legal holiday.

002.03. Center shall mean the statewide one-call notification center.

002.04. Damage shall mean any impact with, partial or complete severance, destruction, impairment, or penetration of, or removal or weakening of support from an underground facility, including its protective coating, housing, or other protective device.

002.05. Emergency condition shall mean any condition which constitutes a clear and present danger to life, health, or property or which demands immediate action to prevent or repair a major service outage.

002.06. Excavation shall mean any activity in which earth, rock, or other material in or on the ground is moved or otherwise displaced by means of tools, equipment, or explosives and shall include grading, trenching, digging, ditching, drilling, auguring, tunneling, scraping, and cable or pipe plowing or driving but shall not include (1) normal maintenance of roads if the maintenance does not change the original road grade and does not involve the road ditch, (2) tilling of soil and gardening for seeding and other agricultural purposes, (3) digging of graves or in landfills in planned locations, (4) maintenance or rebuilding of railroad track or facilities located on a railroad right-of-way by the railroad company or its contractors when such maintenance or rebuilding does not change the track grade, or (5) hand digging around the base of a pole for pole inspection as part of routine maintenance or replacement of a pole when the replacement pole is similarly sized and installed in the existing hole.

002.07. Excavator shall mean a person who engages in excavation in this state.

002.08. Gas or hazardous liquid underground pipeline facility shall mean any underground facility used or intended for use in the transportation of gas or the treatment of gas or used or intended for use in the transportation of hazardous liquids including petroleum or petroleum products.

002.09. Hand Digging shall mean any excavation involving non-mechanized tools or equipment. It shall include but not be limited to, digging with shovels, picks, and manual post-hole diggers, vacuum excavation or soft digging.

002.10. Mandatory Electronic Positive Response shall mean an electronic response transmitted to the center indicating the facility's response status to a ticket.

002.11. Marking Standards shall mean the methods by which a facility owner/operator indicates its line or facility.

002.0912. Nonpermanent surface shall mean any ground consisting of uncovered dirt or rock or ground that is covered by grass or other plant life, crushed rock, gravel, or other similar natural substance.

002.4013. Normal working hours shall mean the hours of 7 a.m. to 5 p.m. on a business day in each time zone in the state.

002.14 Offsets shall mean the amount of distance identified by which the facility/utility is out of line.

002.4415. Operator shall mean a person who manages or controls the functions of an underground facility but shall not include a person who is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on the real property.

002.4216. Permanent surface shall mean any ground that is covered by a hard, artificial, weatherproof material such as concrete, asphalt, or other similar substance.

002.4317. Person shall mean an individual, partnership, limited liability company, association, municipality, state, county, political subdivision, utility, joint venture, or corporation and shall include the employer of an individual.

002.4418. ~~Statewide one-call notification center shall mean the association certified by the State Fire Marshal, operating on a nonprofit basis, supported by its members, and having as its principal purpose the statewide receipt and dissemination to participating operators of information on a fair and uniform basis concerning intended excavation in an area where the operators have underground facilities.~~

002.19. Ticket shall mean the compilation of data received by the center in the notice of excavation and the facility locations provided to the center which is assigned a unique identifying number.

002.20. Ticket life shall mean the set time number of days during which excavation activities may be conducted on a specific type of ticket.

002.21. Trenchless excavation shall mean a type of subsurface construction work that requires few trenches or no continuous trenches.

002.4522. Underground facility shall mean any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic communications, telephonic communications, telegraphic communications, cable television, electric energy, oil, gas, hazardous liquids, or other substances, including pipes, trunk lines, fiber optic cables, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such personal property.

002.4623. Vendor shall mean the company or person selected by the board of directors to operate the one-call center.

003. Every operator having underground facilities in the state on February 15, 1994 shall furnish the vendor with information concerning the location of their facilities, by April 3, 1995.

004. ~~Beginning October 2, 1995, t~~The center shall be established and equipped to process excavation notifications required by the One-Call Notification System Act.

004.01. The center shall establish a toll-free telephone number for purpose of receiving excavation notifications.

~~**004.01A.** Operators utilizing excavation notification telephone numbers other than the center's toll-free number may have the notification calls forwarded to the center, provided such operators discontinue any further public notice or advertising of the old notification telephone numbers. Current public notices and advertising of old notification numbers shall be replaced or removed as soon as is practicable.~~

004.02. Upon receipt of an excavation notification, the center shall require the following information from the person making the notification:

004.02A. The name and telephone number of the person making the notification;

004.02B. The name, address, and telephone number of the excavator;

004.02C. The location of the area of the proposed excavation, including the range, township, section, and quarter section, unless the area is within the corporate limits of a city or village, in which case the location may be by street address;

004.02D. The date and time excavation is scheduled to commence;

004.02E. The depth of excavation;

004.02F. The type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring; and

004.02G. Whether the use of explosives is anticipated.

005. The center shall inform the excavator of all operators to whom the excavation notification will be transmitted and shall promptly transmit such notice to every operator having an underground facility in the area of intended excavation.

005.01. The center shall assign an identification number to each excavation notice it receives, and shall maintain a record of each notice of intent to excavate and all location requests for a minimum of five years. Such records will be made available and printed upon request from an operator or excavator.

005.02. The excavation notice shall be transmitted to operators and excavators as a ticket. The standard start time for excavation activities shall be 12:00 a.m. (Midnight) two business days after the date on which the ticket was transmitted to the operator.

005.02A. If an excavator provides a start time on the submitted information to the center that is beyond the two business day requirement this shall be deemed to automatically constitute a mutually agreed upon start time for that ticket.

005.03. The ticket life on a standard excavation ticket shall be 17 calendar days after the excavation ticket start date and shall only describe an area in which the proposed excavation can reasonably be completed within the 17 days.

005.03A. If the excavation is not completed by calendar day 14 a refresh ticket should be placed with the center.

005.03B. The ticket life shall not supersede the requirement that markings shall be done in a manner that will last for a minimum of five business days on any nonpermanent surface and a minimum of ten business days on any permanent surface. If the markings become unclear or unusable a Refresh request should be submitted to the center.

005.04. Hand digging shall be required within eighteen inches plus half the width of the marked underground facility, A person shall expose the underground facility to its outermost surfaces by hand or other nondestructive techniques.

005.05. Operators shall mark their facilities in accordance with adopted marking standards as listed.

005.05A. Operators shall mark lines using the American Public Works Association (APWA) color codes.

005.05B. Markings shall include the use of paint, flags, stakes, whiskers, signs, or posts any combination of these.

005.05C. Painted spots or dots can be used to identify utilities; the direction of the facility must be identifiable.

005.05D. Offsets can be used when there is a strong likelihood that marks may be destroyed. Offsets are placed parallel to the running line of the facility. The offset shall indicate the distance and direction from the offset to the facility.

005.05E. When known, the markings shall include: the size of the facility, if over 2 inches in width; the material make-up of the facility, and the facility name.

006. The center shall provide notification service during normal working hours at a minimum, and shall provide procedures for emergency notification for calls received at other than normal working hours.

006.01. Every operator shall be required to participate in the Mandatory Electronic Positive Response process.

006.01A. Every operator shall electronically notify the center of their response status on the required ticket types. This notification shall be received by the

center prior to the excavation ticket start date or the work to begin start time and date as listed on the ticket.

007. The center shall identify, on a current basis, persons who normally engage in excavation activities and shall publicize on a regular basis:

007.01. The existence and purpose of the center; and

007.02. How to learn the location of underground facilities before excavation activities begin.

008. Board of Directors

~~A board of directors shall be appointed by the State Fire Marshal and shall govern the center and establish operating procedures and the technology needed for the center pursuant to the regulations contained in this chapter and shall establish a competitive bidding procedure to select a vendor to provide the notification service.~~

008.01. Appointment

008.01A. A board of directors, appointed by the State Fire Marshal, shall oversee operation of the center.

008.01B. The State Fire Marshal shall develop and publish an application form for appointment to the One Call Board of Directors. This form shall be published on the State Fire Marshal website.

008.02. Qualifications

008.02A. To be appointed as a board member an applicant must have at least three (3) years' experience in one of the following: a) using the One Call System in the area of excavating or facility operations or b) work in the area of damage prevention to underground utilities.

008.02B. An applicant must be currently employed in the category for which he/she applies.

008.043. Composition

008.03A. The board shall be composed of 22 18 voting members representing the following:

008.03A1. Three members representing municipally-owned utilities;

008.03A2. Two members representing public power districts with more than forty million dollars in gross revenue.

008.03A3. Two members representing public power districts with less than forty million dollars in gross revenue.

008.03A4. Three members representing telecommunications companies;

008.03A5. Two members representing natural gas distribution companies;

008.03A6. Two members representing transmission pipeline companies;

008.03A7. Four members representing excavators, with one member specializing in trenchless excavation activities and one member representing county governments.

~~008.01A.~~ Two members representing local exchange telecommunications companies;

~~008.01B.~~ Two members representing long-distance telecommunications companies;

~~008.01C.~~ Three members representing municipally-owned utilities;

~~008.01D.~~ Two members representing public power districts with more than forty million dollars in gross revenue;

~~008.01E.~~ Two members representing public power districts or electric cooperatives with less than forty million dollars in gross revenue;

~~008.01F.~~ Two members representing cable television companies;

~~008.01G.~~ Two members representing natural gas distribution companies;

~~008.01H.~~ Two members representing transmission pipeline companies;

~~008.01I.~~ One member representing rural water districts;

~~008.01J.~~ One member representing governmental utility providers;

~~008.01K.~~ One non-voting member representing private excavation contractors; and

~~008.01L.~~ One non-voting member representing the Nebraska Department of Roads;

~~008.01M.~~ One non-voting member representing county governments.

008.03B. The State Fire Marshal or his/her designee shall be a non-voting, technical advisor to the Board.

008.04. Retention

008.04A. Board member terms shall be four years, and shall be staggered so that one-half of the board positions become vacant every two years. One-half of the initial board appointments shall be for two years. Any vacancy on the board,

including those created by expiration of any term, shall be filled by the State Fire Marshal.

008.04B. Board members must be active and attend board meetings and educational/outreach activities. Each member shall be required to attend at least two educational/outreach activities during his/her appointed term. Each member shall be allowed no more than three (3) excused absences and no more than two (2) unexcused absences from Board meetings per term. An absence shall be considered unexcused if no contact is made with the Board President prior to the meeting. This contact should explain the reason(s) for missing the board meeting.

008.04C. Any more than (two) 2 unexcused absences per term shall result in removal from the board. If any board member receives more than two (2) unexcused absences the Board President shall notify the State Fire Marshal. The notification shall include the name of the board member and the dates of the unexcused absences.

008.04D. The State Fire Marshal shall remove any board member who has more absences than those allowed in 008.04B.

008.04E. The State Fire Marshal shall remove any board member when just cause for such removal is demonstrated in writing to the board member.

008.04F. Any person removed from the board shall have the right to appeal such removal at an administrative hearing. Any person receiving a notice of removal may send a written request for a hearing to State Fire Marshal Agency main office. Any administrative hearing must be conducted in accordance with the Administrative Procedure Act, Neb. Rev. Stat. § 84-901, et seq.

~~**008.02.** In making appointments, consideration shall be given to nominations received from industry trade organizations representing the industries or interests listed in 008.01. Board member terms shall be four years, and shall be staggered so that one-half of the board positions become vacant every two years. One-half of the initial board appointments shall be for two years. Any vacancy on the board, including those created by expiration of any term, shall be filled by the State Fire Marshal.~~

~~**008.03.** The board of directors may incur reasonable administrative costs to be covered by a surcharge to be collected by the vendor.~~

~~**008.04.** The board shall meet no later than one month after the appointment of the initial members.~~

LEGAL CITATION: Title 155, Chapter 2 – Nebraska State Fire Marshal

STATUTORY CITATION: Neb. Rev. Stat. 76-23242301 to 76-23292331 (20137)

