

**Ohio Utilities Protection Service**  
Response to Proposed Rule Making

**4901:1-2-01 – Definitions.**

Recommended additions appear in italicized, underlined, bold font...

- (J) “Participants” means the person that requested the inquiry and the person ***allegedly*** responsible for the compliance failure and any persons permitted to intervene after commencement of a proceeding.
- (L) “Respondent” means the person ***allegedly*** responsible for the compliance failure.

**4901:1-2-04 – Selection and duties of the chairperson, secretary, and coordinator.**

It is recommended that this section be edited to include the addition of a Vice Chairperson position to the UTC hierarchy. This addition will insure and strengthen operational continuity. It is further recommended that the Vice Chairperson be responsible for assuming the Chairperson’s responsibilities during all absences of the Chairperson.

**4901:1-2-11 – Inquiry procedures.**

It is recommended that language be developed and added to this section that defines the minimum level and type of information necessary to initiate an inquiry. This can be done in conjunction with the UTC. It could also be achieved by adopting, in whole or in part, the minimum requirements established by the protection service for the processing of an excavation notice “ticket”. It is recognized that this may not necessarily be an item for the rule making process, however, it is encouraged that somewhere a guideline is established.

The following recommended additions appear in italicized, underlined, bold font...

- (A) An aggrieved person may seek an inquiry with the staff. The request for inquiry must be made no later than ninety days after discovering the alleged compliance failure. A request for inquiry shall not, by itself, cause the creation of a formal proceeding at the commission. ***If, as a result of the staff’s investigation under 4901:1-2-11 (D), an inquiry is found not to be initiated in “good faith” or intentionally fraudulent, the aggrieved person***

**responsible for that inquiry may be subject to fines and/or penalties as determined by the commission.**

- (D) The staff shall conduct an inquiry. The staff's investigation shall be limited to whether there was a compliance failure **and to determine the legitimacy of the inquiry.**

#### **4901:1-2-19 – Damage prevention grant program procedures.**

To insure fairness of opportunity, with regards to awards of funding, it is recommended that guidelines and procedures similar to those used by the Pipeline and Hazardous Materials Safety Administration to administer the State Damage Prevention Grants be adopted.

The following recommended changes and additions appear in italicized, underlined, bold font or as a strike through...

- (A) The commission ~~may~~ ***shall*** administer an underground utility damage prevention grant program, subject to availability of funds, ~~to~~ ***that*** provide grants for qualified purposes.
- (1) Qualified purposes include:
- (c) Programs ~~providing incentives for excavators, operators, persons who locate underground utility facilities, or other persons~~ ***that serve*** to reduce the number and severity of compliance failures.
- (2) Grant funds will be awarded ***in accordance with the following guidelines:***

#### **Process for Application:**

- (a) ***The commission publicly announces the opportunity and includes information regarding the application process, timelines and eligibility requirements.***

#### **Criteria Requirements:**

##### **Each application must consist of the following:**

- (a) ***Complete applicant information, i.e. entity's legal name, employer/taxpayer identification number (EIN/TIN), contact name, address, phone number, email address, etc.***
- (b) ***A detailed project statement of objectives and expected results.***
- (c) ***All documentation that supports the budget request...i.e. vendor quotes, materials cost, development and implementation costs, labor etc.***

**Award Selection Process:**

(a) **The director of the service monitoring and enforcement department or his/her designee will assemble a Ohio damage prevention grant awards panel consisting of a representative from the service monitoring and enforcement department and at least two members of the UTC, with preference given to the presiding UTC chairperson, vice chairperson and secretary.**

**Each representative must immediately declare all conflicts of interests that may exist with regards to any application.**

(b) **The grant awards panel will review and evaluate all submitted applications to insure that they are complete and meet the eligibility requirements.**

(c) **The grant awards panel will utilize the following criteria to award funding to successful applications...**

(1) **Costs, effective results and schedule. This criterion is used to determine if the proposed project will...**

- **Use funds efficiently**
- **Establish clear goals, objectives, milestones and project cost estimates that may include "in kind contributions" from the applicant.**
- **Produce tangible results within the proposed project timelines.**

(2) **Organization's demonstrated commitment to damage prevention education and awareness programs.**

(3) **Organization's performance with regards to any previous grant awards.**

(d) **The grants award panel at, its sole discretion, may choose to award full funding, partial funding or no funding to any application under review.**

(e) **Successful applicants will be required to produce progress reports at intervals specified by the grant awards panel. Submission of a final report detailing the work performed, financial statement, and results obtained will be required at the end of the project.**

Applicants are encouraged to consider the following nine elements of an effective damage prevention program while developing their proposed project:

1. Participation by operators, excavators, and other stakeholders in the development and implementation of methods for establishing and maintaining effective communications between stakeholders from receipt of an excavation notification until successful completion of the excavation, as appropriate.
2. A process for fostering and ensuring the support and partnership of stakeholders, including excavators, operators, locators, designers, and local government in all phases of the program.
3. A process for reviewing the adequacy of a pipeline operator's internal performance measures regarding persons performing locating services and quality assurance programs.
4. Participation by operators, excavators, and other stakeholders in the development and implementation of effective employee training programs to ensure that operators, the one-call center, the enforcing agency, and the excavators have partnered to design and implement training for the employees of operators, excavators, and locators.
5. A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities.
6. A process for resolving disputes that defines the State authority's role as a partner and facilitator to resolve issues.
7. Enforcement of State damage prevention laws and regulations for all aspects of the damage prevention process, including public education, and the use of civil penalties for violations assessable by the appropriate State authority.
8. A process for fostering and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications, underground pipeline locating capability, and gathering and analyzing information about the accuracy and effectiveness of locating programs.
9. A process for review and analysis of the effectiveness of each program element, including a means for implementing improvements identified by such program reviews.

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Summary: Comments electronically filed by Mr. Roger L Lipscomb on behalf of Ohio Utilities Protection Service and Mr. Roger L Lipscomb