United States Department of Transportation (USDOT)
Pipeline and Hazardous Materials Safety Administration (PHMSA)
Pipeline Safety: Pipeline Damage Prevention Programs

49 CFR 196 -- Protection of Underground Pipelines from Excavation Activity
49 CFR 198 – Regulations for Grants to Aid State Pipeline Safety Programs
Effective January 1, 2016

Background

49 USC § 60114 provides the United States Department of Transportation with back stop authority to conduct administrative civil enforcement proceedings against excavators who damage hazardous liquid and natural gas pipelines in a state that has failed to adequately enforce its excavation damage prevention or one-call laws.

PHMSA published a Final Rule on July 23, 2015 that establishes

1. Criteria and procedures for determining the adequacy of state pipeline excavation damage prevention law enforcement programs
2. An administrative process for making adequacy determinations
3. Federal requirements PHMSA will enforce in states with inadequate excavation damage prevention law enforcement programs
4. The adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised

Criteria to be used to Evaluate State Damage Prevention Programs

1. Does the state have enforcement authority including civil penalties?
2. Is there a designated enforcement body?
3. Is the state using its authority and making enforcement records available to the public?
4. Does the state have a reliable means of learning about damages?
5. Does the state have damage investigation practices that are adequate to determine the at-fault party when damage occurs?
6. At a minimum, does state law require:
    a. Excavators must call 811 before digging
    b. Excavators must "respect the marks"
    c. If damage to a pipeline occurs…
        i. Excavator must report damage to operator at earliest practical moment
        ii. If release occurs, excavator must call 911
7. Are exemptions from the DP law limited? Written justification of exemptions is required.

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September 8, 2016 Exhibit 11

Administrative Process for States to Contest Notices of Inadequacy

1. PHMSA issues a notice of inadequacy to the state in accordance with 49 CFR 190.5
2. State will have 30 days to submit written response
   Mail responses to:
   Alan Mayberry
   Acting Associate Administrator for Pipeline Safety
   Pipeline and Hazardous Materials Safety Administration
   U.S. Department of Transportation
   1200 New Jersey Avenue, SE, Suite E22-207
   Washington, DC 20590
3. PHMSA issues final decision
4. State may petition PHMSA to reconsider at any time following a finding of inadequacy; PHMSA will respond not later than the date of the next annual review
5. States that fail to establish an adequate enforcement program within five years of effective date of final rule may be subject to 4% reduction in base grant funding

Federal Standard for Excavators

1. Call 811 before excavating
2. Wait for pipeline operators to establish and mark the location of underground pipelines before excavating
3. Excavate with proper regard for the marks, take all practicable steps to prevent excavation damage
4. Make additional use of one-call as necessary
5. Any contact with pipelines must be reported to operator at earliest practical moment
6. If there is a release, excavator must call 911

There are no exemptions in the new regulation for calling 811 prior to excavation. PHMSA understands many states have one-call law exemptions and will be considerate of those exemptions when undertaking Federal enforcement action.

For More Information

http://phmsa.dot.gov/pipeline/safety-awareness-and-outreach/excavator-enforcement/

Contact Our Damage Prevention Team

Our team of damage prevention professionals, Sam Hall, Annmarie Robertson, and Steve Fischer are available to answer questions pertaining to this final rule, state one call laws, and damage prevention. They may be reached at excavation.enforcement@dot.gov.