Pipeline and Hazardous Materials Safety Administration (PHMSA) Excavation Enforcement Rule

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Overview of the Rule

- The Pipeline Inspection, Protection, Enforcement and Safety (PIPES)
 Act of 2006 gave PHMSA new enforcement authority over
 excavators who damage pipelines in States with inadequate
 excavation damage prevention law enforcement programs.
- PHMSA developed the excavator enforcement rule as a prerequisite to using this new enforcement authority. The rule amends the pipeline safety regulations to establish the following:
 - 1. The seven criteria and the process PHMSA will use to determine the adequacy of State pipeline excavation damage prevention law enforcement programs;
 - 2. An administrative process for making State adequacy determinations;
 - 3. The federal requirements PHMSA will enforce in States with inadequate enforcement programs;
 - 4. The adjudication process for administrative enforcement proceedings against excavators where federal authority is exercised.





The Rule Creates...

- Part 198, Subpart D
 - Criteria for adequate State DP enforcement programs and process for assessment
 - Administrative procedures for States to contest a notice of inadequacy
- New Part 196
 - Standards for excavators digging near pipelines
 - Adjudication process for excavators cited by PHMSA –
 Same as for operators cited by PHMSA for violations of pipeline safety regulations





Criteria for Evaluating State DP Enforcement Programs

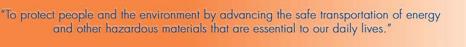
- 1. Does the State have enforcement authority (with civil penalties)?
- 2. Is there a designated enforcement body?
- 3. Is the State using its authority and making enforcement records available to the public?
- 4. Does the State have a reliable means of learning about damages?
- 5. Does the State have damage investigation practices that are adequate to determine the atfault party when a damage occurs?



Criteria for Evaluating State DP Enforcement Programs

- 6. At a minimum, does the State require:
 - a. Excavators must call 811 before digging
 - b. Excavators must "respect the marks"
 - c. If damage to a pipeline occurs...
 - 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.





Federal Standard for Excavators

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

NOTE: There are no exemptions in the final rule. PHMSA will be considerate of exemptions in State laws when undertaking federal enforcement action.





PHMSA Implementation – State Evaluations

- Effective Date of Rule is 1/1/2016
- New England State Evaluations Completed
 - Rhode Island 8/15/2016
 - Massachusetts 8/16/2016
 - Maine 9/19/2016
 - New Hampshire 9/20/2016
 - Vermont 9/21/2016
- PHMSA Eastern Region Letters Issued to Date
 - Virginia Adequate
 - Connecticut Adequate
 - West Virginia Inadequate





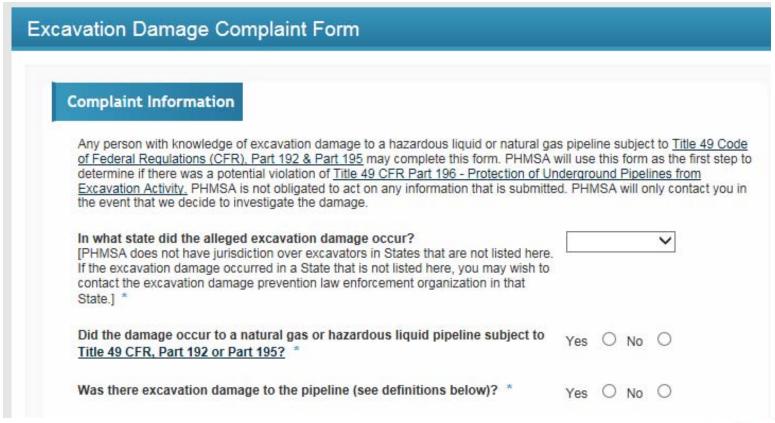
Policy: Enforcement

- PHMSA's enforcement focus will be on serious violations
- PHMSA's standards for excavators are the "floor" or "baseline"; when conducting enforcement, PHMSA will be cognizant of State requirements
- PHMSA and States have existing authority to enforce against non-compliant pipeline operators



PHMSA Implementation – Excavation Enforcement

Notify PHMSA of Excavation Damage







For More Information

For more information, visit our website at: http://phmsa.dot.gov/pipeline/safety-awareness-and-outreach/excavator-enforcement



Questions can be sent to:

excavation.enforcement@dot.gov

