

May 30, 1975

Mr. Donald H. Ernest
Director, Pipeline Safety
State of Indiana
Public Service Commission
901 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Ernest:

This refers to your telephone call of May 15, 1975, advising us that in accord with 29 CFR 1910.12, Section 1926.651(a) applies to all construction work and not just construction under Federal or Federally assisted contracts as stated in our letter to you dated May 13, 1975.

We appreciate your calling this matter to our attention. The incorporation by reference in 29 CFR 1910 of the standards for Federal or Federally assisted contracts in Part 1926 was overlooked in our review of the question raised in your letter of April 25, 1975.

You had asked whether the requirement of 29 CFR 1926.651(a) that contractors notify utility companies before excavating is a "program for preventing interference with underground pipelines ...established by law" under 49 CFR 192.707(b)(1)(ii). Our letter of May 13 explained the purpose of Section 192.707(b)(1)(ii) and stated our opinion that Section 1926.651(a) does not qualify as a program for purposes of Section 192.707(b)(1)(ii).

The new information which you have provided does not change our opinion. The first reason set forth in the May 13 letter as to why Section 1926.651(a) does not qualify as a program is that its scope is limited to persons engaged in Federal or Federally assisted contracts. Although as you correctly stated Part 1910 broadens the scope to cover all construction work, the scope is still limited in that it does not apply to all persons likely to damage an underground pipeline, e.g., farmers. More important, however, as stated in the May 13 letter, is that Section 1926.651(a) does not ensure that contractors will be furnished the requisite information or assistance to minimize the likelihood of interference with pipelines.

Sincerely,

Cesar DeLeon
Deputy Director
Office of Pipeline Safety