Final Rule – Pipeline Damage Prevention Programs
Advisory Committee Action: Information
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PHMSA published a final rule pertaining to state damage prevention law enforcement programs on July 15, 2015. This rule amends the federal Pipeline Safety Regulations to: 1) Establish criteria and procedures for determining the adequacy of state pipeline excavation damage prevention law enforcement programs; 2) establish an administrative process for making adequacy determinations; 3) establish the Federal requirements PHMSA will enforce in states with inadequate excavation damage prevention law enforcement programs; and, 4) establish the adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised. Pursuant to the PIPES Act of 2006, establishment of review criteria for state excavation damage prevention law enforcement programs is a prerequisite should PHMSA find it necessary to conduct an enforcement proceeding against an excavator in the absence of an adequate enforcement program in the state where the violation occurs.

PHMSA's goal is to minimize the need to take direct federal enforcement action against excavators that damage pipelines. The development of these criteria and the subsequent determination of the adequacy of state excavation damage prevention law enforcement programs is intended to encourage states to develop effective excavation damage prevention law enforcement programs to protect the public from the risk of pipeline ruptures caused by excavation damage, and allow for Federal administrative enforcement action in states with inadequate enforcement programs.

Background: Section 2 of the PIPES Act provided that the Secretary of Transportation may take civil enforcement action against excavators who: (1) Fail to use the one call notification system before excavating; (2) Disregard location markings established by a pipeline operators while excavating; and (3) Fail to promptly report excavation damage to a pipeline to the owner/operator of the facility, and fail to call 911 if the damage results in the escape of any flammable, toxic, or corrosive gas or liquid that may endanger life or cause serious bodily harm or damage to property. The PIPES Act also reinforced PHMSA’s existing authority to enforce the locating and marking requirements that apply to pipeline operators.

The PIPES Act limited the Secretary's ability to take civil enforcement action against these third-party excavators. The Secretary may not conduct an enforcement proceeding for a violation within the boundaries of a state that has the authority to impose penalties described in 49 U.S.C. 60134(b)(7) against persons who violate that state's damage prevention laws, unless the Secretary has determined that the state's enforcement is inadequate to protect safety and until the Secretary issues, through a rulemaking proceeding, the procedures for determining inadequate state enforcement of penalties.

The final rule can be accessed at http://www.phmsa.dot.gov/pipeline/regs/rulemaking.