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TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

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**Proposed Rule**  
LSA Document #22-359

DIGEST

Amends [170 IAC 5-5-1](#), [170 IAC 5-5-2](#), [170 IAC 5-5-3](#), [170 IAC 5-5-4](#) to make various updates to definitions; to modify the procedural timeline for resolution of excavation damage cases; to require account information on the IURC website; and to require a publicly available penalty schedule from the UPPAC. Adds [170 IAC 5-5-1.1](#), [170 IAC 5-5-1.2](#), [170 IAC 5-5-1.3](#), [170 IAC 5-5-2.1](#), [170 IAC 5-5-2.2](#), and [170 IAC 5-5-2.3](#) to define two full working days in which an operator shall provide location information; to specify the expiration date and time of 811 tickets; to require markings indicating the size and type of underground pipelines and infrastructure; to define methods for notifying excavators under [IC 8-1-26-18\(k\)](#); to define the tolerance zone for underground facilities; and to require positive response to excavators. Effective January 5, 2024.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[170 IAC 5-5-1](#); [170 IAC 5-5-1.1](#); [170 IAC 5-5-1.2](#); [170 IAC 5-5-1.3](#); [170 IAC 5-5-2](#); [170 IAC 5-5-2.1](#); [170 IAC 5-5-2.2](#); [170 IAC 5-5-2.3](#); [170 IAC 5-5-3](#); [170 IAC 5-5-4](#)

SECTION 1. [170 IAC 5-5-1](#) IS AMENDED TO READ AS FOLLOWS:

**[170 IAC 5-5-1](#) Definitions**

**Authority:** [IC 8-1-26-16](#); [IC 8-1-26-26](#)

**Affected:** [IC 8-1-26](#)

Sec. 1. (a) The definitions in [IC 8-1-26](#), ~~where applicable,~~ and this section apply throughout this rule.

(b) "811 ticket" means a notice of excavation or demolition as described by [IC 8-1-26-16](#).

(c) "Account" has the meaning as set forth in [IC 8-1-26-1.3](#).

(d) "Advisory committee" has the meaning as set forth in [IC 8-1-26-1.5](#).

(e) "Association" has the meaning as set forth in [IC 8-1-26-3](#).

~~(b)~~ (f) "Commission" means the Indiana utility regulatory commission.

(g) "Damage" has the meaning as set forth in [IC 8-1-26-4](#).

(h) "Demolish" has the meaning as set forth in [IC 8-1-26-5](#).

(i) "Excavate" has the meaning as set forth in [IC 8-1-26-6](#).

(j) "Operator" has the meaning as set forth in [IC 8-1-26-10](#).

(k) "Other materials", as referenced by [IC 8-1-26-6](#), includes, but is not limited to, the following:

- (1) Shrubs, trees, timber, and similar brush.
- (2) Posts and fencing.
- (3) Poles.
- (4) Stakes.

(l) "Pipeline facilities" has the meaning as set forth in [IC 8-1-26-11.2](#).

~~(e) (m) "Pipeline safety division" means the pipeline safety division of the commission. or the pipeline safety division's publicly noticed consultant.~~

~~(d) "Advisory committee" means the underground plant protection advisory committee.~~

(n) "Training", for purposes of [IC 8-1-26-23\(h\)\(2\)](#), means training provided by the commission, the pipeline safety division, or a person or entity approved by the commission.

(o) "Working day" has the meaning as set forth in [IC 8-1-26-12](#).

(Indiana Utility Regulatory Commission; [170 IAC 5-5-1](#); filed May 25, 2011, 12:57 p.m.: [20110622-IR-170100184FRA](#); readopted filed Apr 11, 2017, 9:52 a.m.: [20170510-IR-170170124RFA](#))

SECTION 2. [170 IAC 5-5-1.1](#) IS ADDED TO READ AS FOLLOWS:

**[170 IAC 5-5-1.1](#) Deadline to supply marking information**

Authority: [IC 8-1-26-26](#)

Affected: [IC 8-1-26-16](#); [IC 8-1-26-18](#); [IC 8-1-26-21](#)

Sec. 1.1. After an 811 ticket is submitted, an operator shall supply the information required under [IC 8-1-26-18](#) not later than 7:00 a.m. at the prevailing time observed in Indianapolis, Indiana on the working day after the elapse of two (2) full working day periods from 7:00 a.m. to 6:00 p.m.

(Indiana Utility Regulatory Commission; [170 IAC 5-5-1.1](#))

SECTION 3. [170 IAC 5-5-1.2](#) IS ADDED TO READ AS FOLLOWS:

**[170 IAC 5-5-1.2](#) Location and description of underground facilities**

Authority: [IC 8-1-26-26](#)

Affected: [IC 8-1-26-16](#); [IC 8-1-26-18](#); [IC 8-1-26-21](#)

Sec. 1.2. An operator required to supply the location and description of the underground facilities under [IC 8-1-26-18](#) shall, as part of the description, include the following:

- (1) A description on the ground near the underground facility or in another manner that ensures the party performing the excavation or demolition receives the description.
- (2) For pipeline facilities that are service lines, an indication the underground pipeline facility is a service line.
- (3) For pipeline facilities two (2) inches in diameter and larger, the:
  - (A) diameter; and
  - (B) material type;of the pipeline facility being located.

(Indiana Utility Regulatory Commission; [170 IAC 5-5-1.2](#))

SECTION 4. [170 IAC 5-5-1.3](#) IS ADDED TO READ AS FOLLOWS:

**[170 IAC 5-5-1.3](#) Expiration of 811 tickets**

Authority: [IC 8-1-26-26](#)

Affected: [IC 8-1-26-16](#); [IC 8-1-26-18](#); [IC 8-1-26-21](#)

Sec. 1.3. An 811 ticket expires at 11:59 p.m. at the prevailing time observed in Indianapolis, Indiana twenty (20) calendar days after the date the notice is submitted to the association under [IC 8-1-26-16](#).

(Indiana Utility Regulatory Commission; [170 IAC 5-5-1.3](#))

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SECTION 5. [170 IAC 5-5-2](#) IS AMENDED TO READ AS FOLLOWS:

**[170 IAC 5-5-2](#) Notification of violations of [IC 8-1-26](#)**

Authority: [IC 8-1-26-26](#)

Affected: [IC 8-1-26-21](#)

Sec. 2. (a) ~~Any person or entity may~~ **An operator of a pipeline facility shall report a violation of [IC 8-1-26](#) damage to a pipeline facility by providing the pipeline safety division with written or electronic notice of the violation damage within thirty (30) days of becoming aware of the damage, unless an extension is approved in writing by the director of the division.**

~~(b) All violations shall be reported to the commission within thirty (30) days of a person becoming aware of the circumstances constituting the violation.~~ **An operator of a pipeline facility shall provide information about a damage within thirty (30) days after notice that a case number has been assigned by the pipeline safety division, unless an extension is approved in writing by the director of the division.**

**(c) A person may report a violation to the pipeline safety division by providing written or electronic notice of the circumstances giving rise to a violation.**

~~(e)~~ **(d)** The pipeline safety division shall maintain, or cause to be maintained, a database of all reports provided to the pipeline safety division.

*(Indiana Utility Regulatory Commission; [170 IAC 5-5-2](#); filed May 25, 2011, 12:57 p.m.: [20110622-IR-170100184FRA](#); readopted filed Apr 11, 2017, 9:52 a.m.: [20170510-IR-170170124RFA](#))*

SECTION 6. [170 IAC 5-5-2.1](#) IS ADDED TO READ AS FOLLOWS:

**[170 IAC 5-5-2.1](#) Notice of inability to provide location information**

Authority: [IC 8-1-26-26](#)

Affected: [IC 8-1-26-18](#); [IC 8-1-26-21](#)

Sec. 2.1. (a) The notice under [IC 8-1-26-18](#)(k) shall be an oral, a written, or an electronic contact with the person responsible for the excavation or demolition. The operator shall make a written record, contemporaneously at the time of the contact, containing at a minimum:

- (1) the date, time, and manner of the communication;
- (2) the name of all individuals that participated in the communication; and
- (3) the new date by which the operator will provide the location information as required by [IC 8-1-26-18](#).

(b) An operator of a pipeline facility that does not provide notice as specified in this section:

- (1) fails to notify the person responsible for the excavation under [IC 8-1-26-18](#)(k); and
- (2) if [IC 8-1-26-18](#)(h) otherwise applies, the operator is subject to the penalty specified in [IC 8-1-26-18](#)(h).

*(Indiana Utility Regulatory Commission; [170 IAC 5-5-2.1](#))*

SECTION 7. [170 IAC 5-5-2.2](#) IS ADDED TO READ AS FOLLOWS:

**[170 IAC 5-5-2.2](#) Tolerance zone**

Authority: [IC 8-1-26-26](#)

Affected: [IC 8-1-26-20](#); [IC 8-1-26-21](#)

Sec. 2.2. As used in [IC 8-1-26-20](#), "either side of the outer limits of the physical plant" means all outer limits of the underground facility, including above, below, and in a full radius surrounding the underground facility.

*(Indiana Utility Regulatory Commission; [170 IAC 5-5-2.2](#))*

SECTION 8. [170 IAC 5-5-2.3](#) IS ADDED TO READ AS FOLLOWS:

**[170 IAC 5-5-2.3](#) Positive response to excavators of supplied location information**

Authority: [IC 8-1-26-26](#)

Affected: [IC 8-1-26-18](#); [IC 8-1-26-21](#)

Sec. 2.3. (a) An operator of a pipeline facility shall provide an affirmative electronic response to the association in the manner directed by the association when the operator has provided the marking information in response to an 811 ticket.

(b) The association shall make available the operator's response under subsection (a) to the person responsible for the excavation or demolition.

(c) An operator of a pipeline facility that does not provide the affirmative response required under subsection (a) violates [IC 8-1-26-18\(h\)\(1\)](#). If [IC 8-1-26-18\(h\)](#) otherwise applies, the operator is subject to the penalty specified in [IC 8-1-26-18\(h\)](#).

(Indiana Utility Regulatory Commission; [170 IAC 5-5-2.3](#))

SECTION 9. [170 IAC 5-5-3](#) IS AMENDED TO READ AS FOLLOWS:

**[170 IAC 5-5-3](#) Process for determining violations and penalties**

Authority: [IC 8-1-26-26](#)

Affected: [IC 8-1-26](#)

Sec. 3. (a) The pipeline safety division shall investigate alleged violations of [IC 8-1-26](#) by requesting a written response from all known persons or entities reportedly involved in an incident, whose addresses are reported or available on the internet, within sixty (60) days. The pipeline safety division shall investigate all incidents pursuant to applicable federal requirements and may investigate incidents further at its discretion.

(b) The pipeline safety division shall **determine whether a violation of [IC 8-1-26](#) occurred and by which person or entity. After making a determination of a violation, the pipeline safety division shall** forward its findings of violations of requirements provided in [IC 8-1-26](#) to the advisory committee.

(c) ~~The advisory committee will provide the person or entity accused of violating [IC 8-1-26](#) with a copy of the pipeline safety division's summary damage report.~~

(d) ~~(c)~~ The ~~advisory committee~~ **pipeline safety division** will provide the person or entity accused of violating [IC 8-1-26](#) with notice and an opportunity to appear before the advisory committee **to provide written evidence** prior to the advisory committee making a recommendation on the summary damage report.

(e) ~~(d)~~ A person or entity accused of violating [IC 8-1-26](#) may send correspondence **and written evidence** regarding the pipeline safety division's finding of a violation to the advisory committee ~~or in lieu of appearing appear~~ at the public meeting in person. ~~All correspondence must be addressed to the Underground Plant Protection Advisory Committee, Indiana Utility Regulatory Commission, 101 West Washington Street, Suite 1500 E, Indianapolis, Indiana 46204.~~ **to provide the written evidence.**

(f) ~~(e)~~ The advisory committee shall use a publicly available penalty schedule when determining recommended penalties.

(g) Upon receiving a recommendation from the advisory committee, the commission shall provide the person or entity accused of violating [IC 8-1-26](#) with notice of the advisory committee's recommendation and provide the person or entity thirty (30) days to request a public hearing on the advisory committee's recommendation.

(g) A request for a public hearing before the commission must be in writing and shall be considered filed upon receipt by the commission **filed and served following the procedures in [170 IAC 1-1.1](#)**.

(h) If a person or entity accused of violating [IC 8-1-26](#) does not request a public hearing, the commission **will** ~~may~~ act upon the advisory committee's recommendation.

(i) All hearings before the commission regarding violations of [IC 8-1-26](#) are subject to the commission's rules of practice and procedure.

~~(j) A person or entity found in violation of [IC 8-1-26](#) may be required to pay a civil penalty. All civil penalties must be paid to the commission within ninety (90) days of being assessed.~~

*(Indiana Utility Regulatory Commission; [170 IAC 5-5-3](#); filed May 25, 2011, 12:57 p.m.: [20110622-IR-170100184FRA](#); readopted filed Apr 11, 2017, 9:52 a.m.: [20170510-IR-170170124RFA](#))*

SECTION 10. [170 IAC 5-5-4](#) IS AMENDED TO READ AS FOLLOWS:

**[170 IAC 5-5-4](#) Underground plant protection account**

**Authority:** [IC 8-1-26-26](#)

**Affected:** [IC 8-1-26-18](#); [IC 8-1-26-24](#); [IC 8-1-26-25](#)

Sec. 4. (a) The commission shall administer the account.

(b) The account consists of civil penalties issued pursuant to [IC 8-1-26](#).

**(c) The commission shall maintain a publicly available website with information about the account.**

**(d) A person may submit a request for a grant to the commission that:**

**(1) complies with the purposes of the account under [IC 8-1-26-24](#); and**

**(2) follows the guidelines set forth on the commission's website.**

*(Indiana Utility Regulatory Commission; [170 IAC 5-5-4](#); filed May 25, 2011, 12:57 p.m.: [20110622-IR-170100184FRA](#); readopted filed Apr 11, 2017, 9:52 a.m.: [20170510-IR-170170124RFA](#))*

SECTION 11. SECTIONS 1 through 10 of this document take effect January 5, 2024.

**[Notice of Public Hearing](#)**

*Posted: 05/24/2023 by Legislative Services Agency*

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