

ORIGINAL

INDIANA UTILITY REGULATORY COMMISSION

Commissioner	Yes	No	Not Participating
Huston	√		
Bennett	√		
Freeman	√		
Veleta	√		
Ziegner	√		

Final Rulemaking

LSA #22-359(F)
IURC RM #22-03

This Final Rulemaking 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. It also 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 round facilities, and to require positive response to excavators. Effective January 5, 2024.

Upon prior publication of notice, a public hearing was held on June 20, 2023, at 1:30 p.m., local time in Judicial Courtroom 224 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana, as required by the provisions of I.C. 4-22-2-1, et seq. The Indiana Utility Regulatory Commission adopted the foregoing proposed rule on March 15, 2023 at 10:00 a.m. local time in Judicial Courtroom 222, PNC Center, Indianapolis, Indiana at which time a majority of members of said Commission were present.

The Secretary is hereby directed to submit the aforesaid final rule to the Attorney General and Governor of Indiana, for their approval of same, and thereafter to submit the aforesaid rule to the publisher, Indiana Register.

IT IS SO ORDERED.

HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR:

APPROVED: JUL 26 2023

I hereby certify that the above is a true and correct copy of the Rule as approved.

Dana Kosco
Secretary of the Commission

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Final 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 round facilities, and to require positive response to excavators. Effective January 5, 2024.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

SECTION 1. 170 IAC 5-5-1 IS AMENDED TO READ AS FOLLOWS:

170 IAC 5-5-1 Definitions

Authority: IC 8-1-26-26, IC 8-1-26-16

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 same meaning as set forth in IC 8-1-26-1.3.**

(d) **“Advisory committee” means the underground plant protection advisory committee has the same meaning as set forth in IC 8-1-26-1.5.**

(e) **“Association” has the same meaning as set forth in IC 8-1-26-3.**

~~(b)~~(f) **“Commission” means the Indiana utility regulatory commission.**

(g) **“Damage” has the same meaning as set forth in IC 8-1-26-4.**

(h) **“Demolish” has the same meaning as set forth in IC 8-1-26-5.**

(i) **“Excavate” has the same meaning as set forth in IC 8-1-26-6.**

(j) **“Pipeline facilities” has the same meaning as set forth in IC 8-1-26-11.2.**

(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) **“Operator” has the same meaning as set forth in IC 8-1-26-10.**

~~(e)(m)~~ “Pipeline safety division” means the pipeline safety division of the commission. ~~or the pipeline safety division’s publicly noticed consultant.~~

(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 same 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 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 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 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,

(A) the 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 AS FOLLOWS:

170 IAC 5-5-1.3 Expiration of 811 Tickets

Authority: IC 8-1-26-26

Affected: IC 8-1-26-21, IC 8-1-26-16, IC 8-1-26-18

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)

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—
damage to a pipeline facility** by providing the pipeline safety division with written or electronic notice of the ~~violation~~ **damage within 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.~~

(b) An operator of a pipeline facility shall provide information about a damage within 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.

(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 AS FOLLOWS:

170 IAC 5-5-2.1 Notice of inability to provide locate information

Authority: IC 8-1-26-26

Affected: IC 8-1-26-21

Sec. 2.1. (a) **The notice under IC 8-1-26-18(k) shall be an oral, written, or 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 AS FOLLOWS:

170 IAC 5-5-2.2 Tolerance Zone

Authority: IC 8-1-26-26

Affected: IC 8-1-26-21

Sec. 2.2. As used in IC 8-26-20, “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 AS FOLLOWS:

170 IAC 5-5-2.3 Positive response to excavators of supplied location information

Authority: IC 8-1-26-26

Affected: IC 8-1-26-21

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. 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 whom. 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.~~

(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.

(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 **to provide the written evidence**. 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.

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

(f) 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.

(gg) 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.**

(hh) 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.

(ii) 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 8-1-26-25

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.

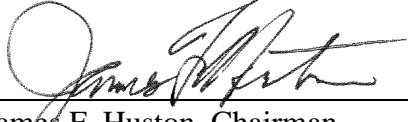
Rule Signature Page

Rule #: LSA #22-359(F)
Agency: Indiana Utility Regulatory Commission
Subject: Amends 170 IAC 5-5 regarding Indiana 811 law.

ADOPTED:

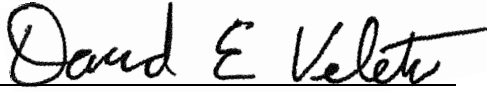
By the Indiana Utility Regulatory Commission

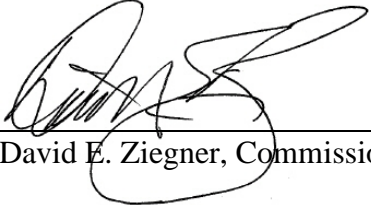
Date: **JUL 26 2023**


James F. Huston, Chairman


Wesley R. Bennett, Commissioner


Sarah E. Freeman, Commissioner


David E. Veleta, Commissioner


David E. Ziegner, Commissioner

APPROVED AS TO FORM AND LEGALITY:

By: _____

Date: _____

Todd Rokita
Attorney General, State of Indiana

APPROVED:

By: _____

Date: _____

Eric J. Holcomb
Governor, State of Indiana

ACCEPTED FOR FILING:

By: _____

Date: _____

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