

From: [Comments, Urc](#)
To: [Comeau, Jeremy](#)
Subject: FW: Indiana Constructor Strawman Draft Proposal Comments
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Attachments: [2022-04-28 811 law Strawman Draft Proposed rule 170 IAC 5-5 Indiana Constructors Comments.docx](#)

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From: Jim Wood <jwood@indianaconstructors.org>
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Subject: Indiana Constructor Strawman Draft Proposal Comments

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Attached is the strawman draft proposed rule which Indiana Constructors member comments for your review. Below are comments to the additional issues not included in the strawman draft rule.

a. Should the rule address spacing of paint lines and flags?

Yes, a standardization should be established for consistency. Excavators could train new employees on what to look for.

b. Should the rule address the frequency of ongoing maintenance of the markings by the operator?

c. Do stakeholders see a need to require marking standardization, perhaps by incorporating CGA best practices?

Yes, where will contractors be able to find the descriptions (location on the job site)? Will a standardized code(s) be used?

d. Should there be an maximum limit for reschedules, so that, for instance, an 811 ticket cannot be rescheduled for a date after the 811 ticket would be expired?

e. Is there a benefit to defining a separate locate process for "project" locate tickets? Is there a standardized definition of "project" tickets?

Yes, large projects need to be handled in a different way than a standard locate ticket. All

parties involved would benefit.

- f. Should the clearance zone requirement spell out the calculation of the size of the tolerance zone, i.e. half the diameter of the facility plus 24 inches on all sides?
- g. Should there be a penalty or other enforcement mechanism if an operator fails to provide positive response?

Yes, excavators need a reliable system when determining ticket completion. As well, there must be an enforcement mechanism for false information given on positive responses.

Respectfully,

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IURC RM 22-03, STRAWMAN DRAFT PROPOSED RULE – Version 4/28/22
TITLE 170 INDIANA UTILITY REGULATORY COMMISSION
170 IAC 5-5

Strawman Draft Proposed Rule

LSA Document #22-____
IURC RM #22-03

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, add definitions for re-mark, job extension, and second notice tickets, 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 compliance 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 30 days after filing with the Publisher.

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) **“Job Extension ticket” means an 811 ticket that is requested to extend the expiration date of a current, unexpired dig ticket, and does not include a re-mark ticket or a second notice ticket.**

Job extension ticket should allow excavators to continue to dig in areas where marks are still visible from the prior ticket. Example: pipe work where marks are needed in areas already excavated but still visible in areas to be excavated in the future. Job extension ticket should not delay the excavator.

Sec.1.3. (2)(d) How will the excavator know when the job extension ticket has been completed?

(o) **“Re-mark ticket” means an 811 ticket that is requested because the markings from the most recent dig ticket have become illegible.**

(p) **“Second notice ticket” means an 811 ticket that is requested because the markings from the most recent dig ticket:**

“Second notice ticket” should include additional third, fourth, fifth notices. Second notice tickets do not always get a response.

(1) **were not provided, or**

(2) **there is evidence of an unmarked pipeline facility in the area of the excavation or demolition.**

What constitutes evidence, specific descriptions are necessary. Perceived differences are subjective.

(q) **“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.**

(q) **“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 by IC 8-1-26-18 not later than 7:00 a.m., eastern time, on the next 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)

Sec. 1.1. All operators shall be assessed a penalty for noncompliance to the two full working day period. The penalty schedule shall be assessed per day in excess of the two full working day period.

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 to location and description of the underground facilities under IC 8-1-26-18 shall, as part of the description, include the following:

(1) A written 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 service lines,

(A) an indication the underground facility is a service line; and

(B) the material type of the service line.

(3) For pipeline facilities two (2) inches in diameter and larger,

(A) the diameter, and

(B) material type

of the facility being located.

(4) For electric underground facilities, the voltage level of the facility being located.

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

Sec.1.2. (1) Description: Where will contractors be able to find a resource for the descriptions (location on the job site)? Will a standardized code(s) be used? CGA standards?

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. (a) An 811 ticket expires at midnight, local time at the site of the excavation or demolition, twenty (20) calendar days after the date the notice is submitted to the association under IC 8-1-26-16.

(b) A person responsible for the excavation or demolition may commence work or continue work after obtaining a job extension ticket only if the following circumstances apply:

(1) The markings from the current, unexpired 811 ticket have not become illegible;

(2) There is no evidence of an unmarked pipeline facility in the area of the excavation or demolition.

(c) A job extension ticket expires at midnight, local time at the site of the excavation or demolition, twenty (20) calendar days after the date on which the job extension ticket is submitted.

(d) A person responsible for the excavation or demolition may not commence or continue work after calling in a re-mark ticket until the operators supply the information required by IC 8-1-26-18.

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

Sec.1.3. (a) The ticket expiration of twenty (20) calendar days shall start following completion of locates. Due to extended locate completion times (beyond 2 working days) the 20-day window is reduced. This causes additional phone calls to 811 for “extension” or “remark” tickets further burdening the system and locators.

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** by providing the pipeline safety division with written or electronic notice of the ~~violation~~ **damage** **within 30 days of becoming aware of the damage.**

~~(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 respond to a request for information about a damage within 30 days of a request by the pipeline safety division.

(c) 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 provided in one of the following ways:

(1) An oral communication in real time, either in person or electronically, with the person responsible for the excavation or demolition. The operator shall also make a written record, contemporaneously at the time of the oral communication, containing at a minimum:

(A) the date and time of the communication;

(B) the name of all parties that participated in the communication; and

(C) the new date by which the operator of the pipeline facility will provide the location information as required by IC 8-1-26-18.

A voicemail message is not sufficient notice under this subsection.

(2) A signed, written agreement between the operator and the person responsible for the excavation or demolition agreeing to a rescheduled deadline by which an operator will provide the location information as required under 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 Clearance Zone

Authority: IC 8-1-26-26

Affected: IC 8-1-26-21

Sec. 2.2. A person for responsible for an excavation or demolition shall maintain a clearance from mechanized equipment of not less than two (2) feet from the outer limits of physical plant, including all sides of the physical plant above, below, and in a full radius surrounding the physical plant. (*Indiana Utility Regulatory Commission; 170 IAC 5-5-2.2*)

Sec.2.2. Should reference IC 8-1-26-20 Duties of excavator; facilities in or under pavement; use of mechanized equipment.

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.

Sec.2.3. Response shall be through the associations web ticketing process (Exactix) and linked to the ticket number. Individual email responses from each utility is unacceptable. Email responses from each utility for each ticket would yield an extensive volume of emails for the excavators to manage.

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

(*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 of the underground plant protection laws 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 the damage. 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.~~

(d) 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) 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.~~

(f) **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.

~~(gh) 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.**

(hi) 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.

(ij) 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)