
TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Notice of First Public Comment Period
LSA Document #24-391

PENALTY DETERMINATION UNDER STANDARD PENALTY SCHEDULE

PURPOSE OF NOTICE

The Indiana Utility Regulatory Commission (IURC) is soliciting public comment on amending rules at [170 IAC 5-5-3](#) concerning the factors used by the underground plant protection advisory committee (advisory committee) to determine penalties under its standard penalty schedule. IURC seeks comment on the affected citations listed and any other provisions of Title 170 that may be affected by this rulemaking.

ADDITIONAL DOCUMENTS

Regulatory Analysis: [20241023-IR-170240391RAA](#)
Notice of Public Hearing: [20241023-IR-170240391PHA](#)

CITATIONS AFFECTED: [170 IAC 5-5-3](#)

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

OVERVIEW

Basic Purpose and Background

This rulemaking is required under [IC 4-22-2-19.6](#), effective January 1, 2023, requiring that for each fee, fine, or civil penalty imposed by an agency that is not set as a specific amount in a state law, a rule must describe the circumstances for which the agency will assess a fee, fine, or civil penalty, and set forth the amount of the fee, fine, or civil penalty. This rulemaking is intended to comply with that requirement.

The scope in the proposed rule is to describe the factors the advisory committee uses under [170 IAC 5-5-3](#) in determining applicable penalties, as required under [IC 4-22-2-19.6](#). The common factors in making penalty recommendations to the IURC include the: (1) number of damages (penalty history); (2) type or manner of damage (activity when damage occurred); and (3) severity of the damage. For damages that occur on or after January 1, 2024, the current standard penalty schedule can be found on the IURC web page at https://www.in.gov/iurc/pipeline-safety-division/damage-to-underground-facilities/#Underground_Plant_Protection_Advisory_Co

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

James Surd
Assistant General Counsel
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500 East
Indianapolis, IN 46204
(317) 232-6735 (Office)
jsurd@urc.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Matthew Jaworowski
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 650-0126
majaworowski@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

REQUEST FOR PUBLIC COMMENT

IURC is soliciting public comment on the proposed rule. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #24-391 Penalty Determination Under Standard Penalty Schedule
James Surd
Assistant General Counsel
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500 East
Indianapolis, IN 46204

(2) By email to urccomments@urc.in.gov. PLEASE NOTE: Email comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.

(3) Attend scheduled public hearing.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than November 27, 2024.

The rule, Regulatory Analysis, appendices referenced in the Regulatory Analysis, and materials incorporated by reference (if applicable) are on file at the Indiana Utility Regulatory Commission, 101 West Washington Street, Suite 1500 East, Indianapolis, Indiana and are available for public inspection. Copies of the rule, Regulatory Analysis, and appendices referenced in the Regulatory Analysis are available at the Indiana Utility Regulatory Commission office and at

<https://www.in.gov/iurc/rulemakings/rulemakings-pending-and-effective/rm-24-05-regarding-170-iac-5-5/>.

If IURC does not receive substantive comments during the public comment period or public hearing, the rule may be adopted with text that is the same as or does not substantially differ from the text of the proposed rule published in this notice.

PROPOSED RULE

SECTION 1. [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 8-1-26-15](#); [IC 8-1-26-16](#); [IC 8-1-26-18](#); [IC 8-1-26-19](#); [IC 8-1-26-20](#); [IC 8-1-26-23](#)

Sec. 3. (a) The pipeline safety division shall investigate alleged violations of [IC 8-1-26](#).

(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 to the advisory committee.

(c) The 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~~ **before** the advisory committee making a recommendation on the summary damage report.

(d) A person or **an** 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 appear at the public meeting in person to provide the written evidence.

(e) **For damages that occur on or after January 1, 2024, the advisory committee's penalty schedule approved in December 2023, effective January 1, 2024, is hereby incorporated by reference. Copies may be obtained at <https://www.in.gov/iurc/files/2024-UPPAC-Penalty-Schedule-.pdf>.** The advisory committee shall use a ~~publicly available~~ **the incorporated** penalty schedule when determining recommended penalties.

(f) ~~Upon~~ **After** 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 filed and served following the procedures in

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

(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](#); filed Sep 20, 2023, 4:06 p.m.: 20231018-IR170220359FRA, eff Jan 5, 2024)

*Posted: 10/23/2024 by Legislative Services Agency
An [html](#) version of this document.*