

**Regulatory Analysis**  
LSA Document #24-391**I. Description of Rule**

This rulemaking implements [IC 4-22-2-19.6](#) by including in a rule certain penalties that may be assessed by the Indiana Utility Regulatory Commission ("IURC").

The rule restates the factors used by the Underground Plant Protection Advisory Committee (UPPAC or advisory committee) each year in its Standard Penalty Schedule, when recommending penalties for violations of Indiana 811 law. Under [IC 8-1-26](#), the IURC may approve civil monetary penalties and/or damage prevention training as recommended by UPPAC.

**a. History and Background of the Rule-**

Indiana Code chapter 8-1-26, also known as the Indiana 811 Law or the Indiana Dig Law, generally requires excavators to notify the Indiana Underground Plant Protection Service (which is the association also known as Indiana 811) before excavating, and, in turn, the operators of underground facilities must locate and mark their facilities within two working days.

When an underground gas pipeline is damaged, the gas operators are required to notify the IURC. The Pipeline Safety Division (PSD) of the IURC then investigates to ascertain if the damage was the result of a violation of [IC 8-1-26](#). Those cases in which violations are found are forwarded to UPPAC for their review and penalty consideration.

UPPAC is a seven-member governor-appointed committee, comprised of subject matter experts and stakeholders to include representatives of gas utilities, excavators, utility locators, and Indiana 811. UPPAC makes penalty recommendations in over 2000 cases per year. Upon receipt by the Chairman of UPPAC, cases are divided equally between the members and assigned to avoid any conflicts of interest.

Penalty recommendations to the IURC are made during UPPAC's public meetings by utilizing a Standard Penalty Schedule, which is published on the IURC website at:

[https://www.in.gov/iurc/pipeline-safety-division/damage-to-underground-facilities/#Underground\\_Plant\\_Protection\\_Advisor](https://www.in.gov/iurc/pipeline-safety-division/damage-to-underground-facilities/#Underground_Plant_Protection_Advisor)

The Standard Penalty Schedule is reviewed by UPPAC annually, with modifications made in an expectation to facilitate a downward trend in the number of gas pipeline damages.

Penalty recommendations are forwarded to the IURC for review and approval or denial. An excavator found to be in violation is then notified of the penalty amount and corresponding time frame in which to submit the penalty (and/or in cases where training is an option, a deadline to complete same).

In the event an excavator does not agree with the proposed findings of UPPAC, an accompanying letter explains the procedure to request a hearing to dispute the penalty recommendation(s).

Upon receipt of the final order, excavators are given 90 days to submit payment and/or complete training.

**b. Scope of the Rule** – The scope in the proposed rule is to describe the factors UPPAC utilizes by way of [170 IAC 5-5-3](#) in determining the applicable penalty as required by [IC 4-22-2-19.6](#). The common factors in making penalty recommendations to the IURC include: the number of damages (penalty history), the type or manner of damage (activity when damage occurred), and the 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\\_Advisor](https://www.in.gov/iurc/pipeline-safety-division/damage-to-underground-facilities/#Underground_Plant_Protection_Advisor)

**c. Statement of Need** – This rulemaking is mandatory under [IC 4-22-2-19.6](#), 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 and either set the amount of the fee or penalty or provide the factors that will be used in setting the penalty.

Under the "safe harbor" in [IC 4-22-2-19.6\(e\)\(2\)\(B\)](#), the IURC submitted the applicable fines, fees, and penalties to the State Budget Committee. The State Budget Committee included the IURC's fines, fees, and penalties on its agenda for April 19, 2024. The State Budget Committee had no substantive comments or concerns with the IURC fines, fees, and penalties. See the April 19, 2024, agenda, attached to this Regulatory Analysis.

In addition, the IURC sent a draft "strawman" proposed rule to stakeholders on June 19, 2024, and requested informal comments by July 19, 2024. The rulemaking was sent to the Utility Law Section of the Indiana State Bar Association, the Office of Utility Consumer Counselor, and all appointed members of the Underground Plant Protection Advisory Committee. No objections to this proposed rulemaking were received, and the IURC received no comments or suggested changes from any stakeholder.

**d. Statutory Authority for the Proposed Rule-** Authority: [IC 8-1-26-26](#)

**e. Fees, Fines, and Civil Penalties** – This rulemaking neither adds nor modifies any fines, fees, or civil penalties. It is intended only to comply with the already existing penalties under [IC 8-1-26](#).

## II. Fiscal Impact Analysis

### a. Anticipated Effective Date of the Rule

- The Commission anticipates receiving approval from the Office of Management and Budget and State Budget Agency within forty-five (45) days.
- Assume fourteen (14) days for the Commission to approve the proposed rule.
- Assume twenty-one (21) days for the Legislative Services Agency (LSA) to publish the Notice of First Public Comment Period and Notice of Public Hearing in the Indiana Register.
- Assume thirty (30) days for the first public comment period and public hearing.
- Assume fourteen (14) days for staff to review the comments from the first public comment period.
- If needed, assume twenty-one (21) days for the Legislative Services Agency (LSA) to publish the Notice of Second Public Comment Period and Notice of Public Hearing in the Indiana Register.
- If needed, assume thirty (30) days for the second public comment period and second public hearing.
- If needed, assume fourteen (14) days for staff to review the comments from the second public comment period.
- Assume fourteen (14) days for staff to assemble the rule packet.
- Assume fourteen (14) days for the Commission to approve the final rule.
- The Attorney General has forty-five (45) days to review the packet.
- The Governor's office has up to thirty (30) days to review the packet.
- The rule is effective thirty (30) days from the date the Legislative Services Agency accepts the rule for filing.

Therefore, with added time for uncertainty, based on the facts and timeline above, the Commission anticipates the rule would be fully promulgated within 325 days, which would be effective before July 1st, 2025.

**b. Estimated Fiscal Impact on State and Local Government** - No Fiscal Impact on State or Local Government due to this rule merely being a continuation of an existing regulation.

**c. Sources of Expenditures or Revenues Affected by the Rule** – This rule does not impact expenditures and/or revenues of State agencies or local government.

**d. If the implementation costs of the proposed rule are expected to exceed the threshold set in [IC 4-22-2-22.7\(c\)\(6\)](#)** – This rule will not have implementation costs not already present.

**III. Impacted Parties** No parties will be impacted by this additional rule as it only references and utilizes the existing factors that UPPAC uses in its Standard Penalty Schedule, in order to comply with [IC 4-22-2-19.6](#).

## IV. Changes in Proposed Rule

The below list describes the changes to existing regulations in this rulemaking; however, this rulemaking does not represent any change from existing practice or any change to the penalties. This rulemaking only incorporates the factors used in recommending penalties into a rule to comply with [IC 4-22-2-19.6](#). For damages that occur on or

after January 1, 2024, the current Standard Penalty Schedule can be found on the Commissions web page at: [https://www.in.gov/iurc/pipeline-safety-division/damage-to-underground-facilities/#Underground\\_Plant\\_Protection\\_Advisory\\_Co](https://www.in.gov/iurc/pipeline-safety-division/damage-to-underground-facilities/#Underground_Plant_Protection_Advisory_Co)

[170 IAC 5-5-3\(e\)](#) is amended to add the following:

The recommended penalties may include civil penalties up to \$10,000. When developing its penalty schedule and making its penalty recommendations, the advisory committee:

- (1) shall consider the factors found in [IC 4-22-2-19.6\(d\)](#);
- (2) may consider the following aggravating factors:
  - (A) failure to complete training in a previous case;
  - (B) self-repair of the damaged facility;
  - (C) concealment of the damage;
  - (D) recklessness, which:
    - (i) means actions marked by lack of proper caution, careless of consequences, or irresponsibility;
    - (ii) also includes intentional disregard of the law.
  - (E) failure to report the damage to Indiana 811
  - (F) failure to report release of gas or hazardous liquid to Indiana 811 and local police and fire departments having jurisdiction (911);
  - (G) attempts to temporarily repair the damage or stop the flow of gas or hazardous liquid;
  - (H) physical injury;
  - (I) property damage of over \$10,000;
  - (J) failure to pay previous civil penalties;
  - (K) level of culpability;
  - (L) amount of damage or threat caused by noncompliance; or
  - (M) other factors the advisory committee deems appropriate;
- (3) may consider mitigating factors the advisory committee deems appropriate.

## V. Benefit Analysis

Compared to existing fees and penalties, this rulemaking makes no changes. However, there may be benefits to regulated entities and the public by including references to the relevant Standard Penalty Schedule.

**a. Estimate of Primary and Direct Benefits of the Rule** – There may be efficiencies realized by the general public, regulated entities, businesses, agencies, law firms and anyone else looking for information regarding the relevant fees and penalties. Those entities may save time, and consequently, money, in assessing and determining the fees and penalties that are associated with this rulemaking.

Lawyers and their staff, utilities, companies and any other interested party will have access to this information in the Indiana Administrative code instead of looking for the fees in various other locations, such as General Administrative orders or specific forms. This time saved is a direct benefit.

**b. Estimate of Secondary or Indirect Benefits of the Rule** - An indirect benefit of this rulemaking is the corresponding productivity gains that may result in listing the fees and penalties in the Indiana Administrative Code. Time saved not looking for fees and penalties is time that can be spent elsewhere.

**c. Estimate of Any Cost Savings to Regulated Industries** – Cost savings will result from the aforementioned direct and indirect benefits. It would be expected that entities such as regulated entities and law offices will spend less time looking for this information and thus save time and money.

## VI. Cost Analysis

There are no costs, tangible or intangible, being imposed as a result of the changes made in the proposed rule compared to existing requirements. The penalties are unchanged by this rulemaking.

### a. Estimate of Compliance Costs for Regulated Entities

No additional costs as the possible civil penalties for violations already exist and have been previously utilized by UPPAC through its Standard Penalty Schedule.

### b. Estimate of Administrative Expenses Imposed by the Rules

This rule will not require any additional administrative expense not already present.

### c. The fees, fines, and civil penalties analysis required by [IC 4-22-2-19.6](#)

This rule will not require any additional administrative expense not already present.

## VII. Sources of Information

The Commission staff relied on its own analysis, in conjunction with the UPPAC, in determining the information presented here.

**a. Independent Verifications or Studies - None**

**b. Sources Relied Upon in Determining and Calculating Costs and Benefits** Commission staff relied on its own analysis, in conjunction with the UPPAC, in determining the information presented here.

## VIII. Regulatory Analysis

As previously stated, this rulemaking will not impose additional costs on any regulated entity as the relevant fees and penalties are already in existence. There may be benefits to regulated entities and the public by including an easy reference to the relevant fees and penalties in the Indiana Administrative Code. For these reasons, the Commission staff believes the benefits to this proposed rule outweigh its costs.

## IX. Contact Information of Staff to Answer Substantive Questions

James Surd  
Assistant General Counsel  
Indiana Utility Regulatory Commission  
jsurd@urc.in.gov  
317.232.6735

*Notice of First Public Comment Period with Proposed Rule:* [20241023-IR-170240391FNA](#)  
*Notice of Determination Received:* August 23, 2024

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