

IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

24.39.90 – RULES GOVERNING THE DAMAGE PREVENTION BOARD

DOCKET NO. 24-3990-2401 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This rulemaking action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 67-9404, 67-9405, 67-9406, 67-9409, and 67-9413, Idaho Code, as well as Title 55, Chapter 22, Idaho Code, and 55-2203, Idaho Code.

PUBLIC HEARING SCHEDULE: The public hearing concerning this rulemaking will be held as follows:

24.39.90 – Rules of the Damage Prevention Board
Monday, August 12, 2024 – 9:00 a.m. (MT) Division of Occupational and Professional Licenses Soldier Room, Chinden Campus Building 4 11341 W. Chinden Blvd. Boise, ID 83714
Virtual Meeting Link
Telephone and web conferencing information will be posted on https://dopl.idaho.gov/calendar/ and https://townhall.idaho.gov/.

The hearing site will be accessible to persons with disabilities, if needed. Requests for accommodation must be made not later than five (5) days prior to the meeting to the agency address below.

DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Under [Executive Order 2020-01, Zero-Based Regulation](#), the Idaho Damage Prevention Board is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter and to use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

N/A. The proposed amendments to the rules do not impose any new or increased fees.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

This rulemaking is not anticipated to have any negative fiscal impact on the state General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted under Docket No. 24-3990-2401. Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 5, 2024, Idaho Administrative Bulletin [Vol. 24-6, p.82-83](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

N/A. No materials have been incorporated by reference into the proposed rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this proposed rule, contact Krissy Veseth, Bureau Chief, at (208) 577-2491. Materials pertaining to the proposed rulemaking, including any available preliminary rule drafts, can be found on the following DOPL website: <https://dopl.idaho.gov/rulemaking/>.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 28, 2024.

DATED this 5th day of July, 2024.

Krissy Veseth
Bureau Chief
11341 W. Chinden Blvd., Bldg. #4
Boise, ID 83714
Phone: (208) 577-2491
Email: krissy.veseth@dopl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-3990-2401
(ZBR Chapter Rewrite)

24.39.90 – RULES GOVERNING THE DAMAGE PREVENTION BOARD

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to Sections 55-2203, 67-2604, 67-2614, 67-9409, and 67-9406, Idaho Code. (3-28-23)()

001. SCOPE.

These rules are applicable to underground facilities, and facility owners as established in Title 55, Chapter 22, Idaho Code. (3-28-23)

002. -- 099. (RESERVED)

100. EDUCATIONAL AND TRAINING MATERIALS.

01. Approval of Training and Educational Programs. The Board approves acceptable training courses or programs and educational materials on relevant underground facility damage prevention topics pertaining to safe excavation, locating and marking of facilities, determining facility damage, emergency procedures, excavator downtime, pre-marking of intended excavation areas, and appropriate procedures when encountering unmarked facilities. ()

02. Scope of Training and Educational Programs. Such training programs and educational materials must relate to various aspects of underground facility damage prevention, and contain practices, information, and standards generally accepted and recognized among stakeholders in Idaho. ()

03. Accessibility of Training and Educational Programs. The Division maintains and periodically updates a database of approved educational materials and training programs. ()

04. Purposes of Training and Educational Programs. Such programs may be used for general educational use by stakeholders or for remedial training that may be ordered by the board or the administrator pursuant to Section 55-2211, Idaho Code. ()

101. -- 299. (RESERVED)

300. DISCIPLINE.

01. Complaint Forms. Persons may submit written complaints to the administrator regarding an alleged violation of Title 55, Chapter 22, Idaho Code, on such forms as required by the Division. Notice of the complaint may be served concurrently on the alleged violator by the person submitting the complaint. Verifiable proof of such notification of a complaint provided to the alleged violator must also be provided to the administrator, as outlined in the board-approved complaint form. ()

02. Complaint Procedures and Timelines. The following timelines and procedure govern the process of filing and administering complaints related to violations of Title 55, Chapter 22, Idaho Code, and the rules of the Board. ()

a. Initial Filing. Complaints must be filed with the administrator not later than thirty (30) days from the date of the alleged violation giving rise to the complaint or from the date the violation should have reasonably been discovered by the complainant, whichever is later. ()

b. Response. The administrator must notify the alleged violator of the complaint and request a response and any additional information from the alleged violator as may be necessary. The alleged violator may provide a response to the administrator within thirty (30) days from the date they are notified of the complaint by the administrator. ()

c. Recommendation. Within thirty (30) days of receipt of the response, or if no response is received, within fifteen (15) days from the deadline for filing a response, the administrator must notify the complainant and the alleged violator of his recommended course of action. The administrator may extend the period of time in which to determine a recommended course of action, and so notify the parties, if he determines it is necessary to further review or investigate the complaint. ()

d. Contest. The alleged violator has the right to contest the imposition of a civil penalty before the damage prevention board. Notice of such contest must be provided by the alleged violator not more than thirty (30) days after receipt of the administrator's recommended course of action. Recommendations of the administrator regarding complaints may be reviewed by the board at its next regularly scheduled meeting. ()

03. Claims. Claims for the cost of repairs for damaged underground facilities are enforced by the affected underground facility owner in accordance with procedures as may be established by the facility owner, and in accordance with applicable law. Underground facility owners must provide notice to excavator contractors of such procedures, along with sufficient information supporting the basis for the amount of a claim within six (6) months from the date of the event giving rise to the claim or from the date the event should have reasonably been discovered by the underground facility owner, whichever is later. ()

04. Civil Penalties. The Idaho Damage Prevention Board is authorized under Section 55-2203(17), Idaho Code, to establish by administrative rule the fines to be paid for civil penalties issued for violations of Title 55, Chapter 22, Idaho Code. To the extent authorized by Section 55-2211, Idaho Code, the acts described in this section subject the violator to a civil penalty of not more than one thousand dollars (\$1,000) for a second offense and a civil penalty of not more than five thousand dollars (\$5,000) for each offense that occurs thereafter within eighteen (18) months from an earlier violation, and where facility damage has occurred. ()

05. Violations of Title 55, Chapter 22, Idaho Code. The following acts subject a person to civil penalties: ()

a. Pre-marking Excavation Site. Any person who fails to adequately pre-mark onsite the path of proposed excavation as reasonably required under the circumstances in accordance with Section 55-2205(1)(b), Idaho Code, is subject to a civil penalty. ()

b. Notice of Excavation. Any person who fails to provide notice of the scheduled commencement of excavation to any underground facility owner through a one-number notification service, or directly to a facility owner, as applicable within the prescribed time as required by Section 55-2205(1)(c), Idaho Code, is subject to a civil penalty. ()

c. One-Number Notification to Facility Owner. A one-number notification service that fails to provide notice of a scheduled excavation upon notification from an excavator is subject to a civil penalty. ()

d. Failure to Locate or Mark. An underground facility owner, owner's agent, or locator who fails to locate or mark underground facilities when responsible to do so in accordance with Section 55-2205(2), Idaho Code, or within the prescribed time provided therein, is subject to a civil penalty. ()

e. Failure to Wait for Locate or Maintain Markings. An excavator who commences excavation prior to waiting the time prescribed by Section 55-2205(2), Idaho Code, for all known facilities to be located and marked, or an excavator who fails to maintain the markings of underground facilities previously so marked subsequent to the commencement of excavation in accordance with Section 55-2205(2), Idaho Code, is subject to a civil penalty. ()

f. Failure to Cease Excavation or Report Unidentified Facilities. An excavator who does not cease excavation in the immediate vicinity upon the discovery of underground facilities therein, whether such facilities be active or abandoned, which were not previously identified or located with reasonable accuracy, or does not notify the owner or operator of the facilities, or a one-number notification service in accordance with Section 55-2205(4), Idaho Code, is subject to a civil penalty. ()

g. Failure to Identify Facilities in Contract Documents. Project owners who fail to indicate in bid or contract documents the existence of underground facilities known by the owner to be located within the proposed area of excavation in accordance with Section 55-2207, Idaho Code, is subject to a civil penalty. ()

h. Precautions to Avoid Damage. An excavator who does not engage in any of the activities required by Section 55-2207(2), Idaho Code, or use reasonable care to avoid damage to underground facilities is subject to a civil penalty. ()

i. Reporting of Damage to Facility. An excavator who fails to report to a facility owner and a one-number notification service any contact or damage to an underground facility caused by such excavator in the course of excavation, or fails to alert an appropriate authority upon an actual breach of a facility which causes the release of gas or hazardous liquids as required by Section 55-2208(1), Idaho Code, is subject to a civil penalty. ()

j. Reporting to the Board. An excavator or underground facility owner who observes, suffers or causes damage to an underground facility or excavator downtime related to the failure of one (1) or more stakeholders to comply with the damage prevention regulations and fails to report such information to the board as required by Section 55-2208(5), Idaho Code, is subject to a civil penalty. ()

k. Failure to Participate. Any person, as defined in Section 55-2206 who fails to participate or cooperate with a one-number notification service as prescribed by Section 55-2206, Idaho Code, is subject to a civil penalty. ()

l. False Notification of Emergency. Any person who provides notice of an emergency excavation when there is not an emergency as defined in Idaho Code Section 55-2202(5). ()

06. Second Offense. For the purpose of this section, a second offense is deemed to be any violation of Title 55, Chapter 22, Idaho Code, for which a civil penalty may be imposed in accordance with this section which occurs within eighteen (18) months of a previous violation of any provision. ()

07. **Multiple Violations.** Each day that a violation of Title 55, Chapter 22, Idaho Code, occurs for which a civil penalty may be imposed as provided herein constitutes a separate offense. ()

301. -- 349. (RESERVED)

002350. ADMINISTRATIVE APPEALS.

01. Appeal Bond. Upon notice of the imposition of training or a civil penalty, the notified party may contest the imposition of such before the Damage Prevention Board in accordance with Section 018 of these rules. An appeal bond in the amount of two hundred dollars (\$200) must accompany the request for hearing to contest the matter. In the case of training, the Division of Building Safety will refund the bond if the contesting party appears at the hearing. In the case of a civil penalty, the Division will refund any portion of the bond not used to satisfy the penalty imposed by the Board or the entire bond if the contesting party prevails at the hearing. (3-28-23)

002351. -- 006399.(RESERVED)

007400. FUNDING OF BOARD ACTIVITIES FEES.

Each owner of an underground facility must pay a fee of ten cents (\$.10) each time such owner receives notice from a one-number notification service as prescribed by Section 55-2205, Idaho Code. The fee assessed upon the underground facility owner is collected by the one-number notification service, and is payable to the board in accordance with the following schedule: (3-28-23)()

01. Fee Assessed. The fee will be assessed on an underground facility owner for each notification issued by the one-number notification service to the underground facility owner, with the one-number notification service required to submit a summary of the number of notices issued in a given month to the board no later than fifteen (15) days following the end of the month in which the notices were issued. (3-28-23)

02. Payment Submission. The one-number notification service must submit payment to the board for all payments received from underground facility owners no later than seventy (70) days following the end of the month in which the notices were issued to the facility owners. In those cases where the payment from the underground facility owner is received after the seventy-day (70) period, the one-number service must include late payments in its next payment to the board. (3-28-23)

03. Notices Issued. The one-number notification service must also submit a detailed list of notices issued, including the facility owner's contact information, for which payment has not been received within the seventy (70) day period following the end of the month in which the notices were issued. Such list must be updated on a monthly basis to reflect the status of all past-due payments due from underground facility owners that have not been received. (3-28-23)

008. AUDIT OF ONE NUMBER SERVICE RECORDS.

04. Audit of One Number Service Records. The Board has the right to review and audit the payment records of any one-number notification service relating to the collection of the fee imposed on underground facility owners. In the event the board wishes to conduct a review and/or audit of a one-number notification service, the board will provide no less than a five (5) business day advance notice of the intended action. The board may delegate any responsibilities contained herein this chapter to the Division of ~~Building Safety~~ Occupational and Professional Licenses. (3-28-23)()

009. -- 014. (RESERVED)

015. EDUCATIONAL AND TRAINING MATERIALS.

~~**01. Approval of Training and Educational Programs.** The Board approves acceptable training courses or programs and educational materials on relevant underground facility damage prevention topics pertaining to safe excavation, locating and marking of facilities, determining facility damage, emergency procedures, excavator downtime, pre marking of intended excavation areas, and appropriate procedures when encountering unmarked facilities. (3-28-23)~~

~~02. **Scope of Training and Educational Programs.** Such training programs and educational materials must relate to various aspects of underground facility damage prevention, and contain practices, information, and standards generally accepted and recognized among stakeholders in Idaho. (3-28-23)~~

~~03. **Accessibility of Training and Educational Programs.** The Division maintains and periodically updates a database of approved educational materials and training programs. (3-28-23)~~

~~04. **Purposes of Training and Educational Programs.** Such programs may be used for general educational use by stakeholders or for remedial training that may be ordered by the board or the administrator pursuant to Section 55-2211, Idaho Code. (3-28-23)~~

~~016. **ADEQUACY OF FACILITY OWNERS LOCATING UNDERGROUND FACILITIES.** The board reviews all stakeholder complaints of violations related to underground facility line locating, as well as generally accepted practices and procedures related to locating. Stakeholders must take remedial actions to improve line locating performance and monitor and report performance improvements to the board. (3-28-23)~~

~~017. **IMPROVEMENT OF TECHNOLOGY AND COMMUNICATIONS BY STAKEHOLDERS.**~~

~~01. **Adoption of Technology and Communications Materials.** On an annual basis the board reviews and adopts any available technology and communications materials which promote effective underground facility locating. The board will make available any such appropriate technology and communications materials as it may determine to all stakeholders on the Division website. (3-28-23)~~

~~02. **Availability of Technology and Communications Materials.** The board may request that stakeholders provide it with information or data related to procedures, methods, or technologies utilized by such stakeholders to enhance communications among other stakeholders, or that enhances underground facility locating capabilities, or enhances the stakeholder's ability to gather and analyze data related to underground facility damage. The board will review such technologies, methods, or materials adopted by stakeholders to ensure that such use is adequate, as well as to provide stakeholders with best practices. The Division of Building Safety must maintain an approved database of such referenced stakeholder data for public viewing and analysis on its website. (3-28-23)~~

~~018. **DAMAGE PREVENTION COMPLAINTS.**~~

~~01. **Complaint Forms.** Persons may submit written complaints to the administrator regarding an alleged violation of Title 55, Chapter 22, Idaho Code, on such forms as required by the Division. Notice of the complaint may be served concurrently on the alleged violator by the person submitting the complaint. Verifiable proof of such notification of a complaint provided to the alleged violator must also be provided to the administrator. (3-28-23)~~

~~02. **Contents.** Complaints must include the name and address of the complainant and the alleged violator, the date and location of the alleged violation, as well as a complete description of the nature of the violation alleged, including whether it resulted in damage to an underground facility or an excavator downtime event. Complainants may also provide additional documentation in support of a complaint. Complaints must be accompanied by a sworn declaration from the complainant declaring that the information contained therein is true and accurate. The administrator may request additional information or documents in support of the complaint. (3-28-23)~~

~~03. **Complaint Procedures and Timelines.** The following timelines and procedure govern the process of filing and administering complaints related to violations of Title 55, Chapter 22, Idaho Code, and the rules of the Board. (3-28-23)~~

~~a. **Initial Filing.** Complaints must be filed with the administrator not later than thirty (30) days from the date of the alleged violation giving rise to the complaint or from the date the violation should have reasonably been discovered by the complainant, whichever is later. (3-28-23)~~

~~b. **Response.** The administrator must notify the alleged violator of the complaint and request a response and any additional information from the alleged violator as may be necessary. The alleged violator may~~

~~provide a response to the administrator within thirty (30) days from the date they are notified of the complaint by the administrator. (3-28-23)~~

~~**e.** Recommendation. Within thirty (30) days of receipt of the response, or if no response is received, within fifteen (15) days from the deadline for filing a response, the administrator must notify the complainant and the alleged violator of his recommended course of action. The administrator may extend the period of time in which to determine a recommended course of action, and so notify the parties, if he determines it is necessary to further review or investigate the complaint. (3-28-23)~~

~~**d.** Contest. The alleged violator has the right to contest the imposition of a civil penalty before the damage prevention board. Notice of such contest must be provided by the alleged violator not more than thirty (30) days after receipt of the administrator's recommended course of action. Recommendations of the administrator regarding complaints may be reviewed by the board at its next regularly scheduled meeting. (3-28-23)~~

019. CLAIMS AND REPORTS OF DAMAGE OR EXCAVATOR DOWNTIME.

~~**01. Claims.** Claims for the cost of repairs for damaged underground facilities are enforced by the affected underground facility owner in accordance with procedures as may be established by the facility owner, and in accordance with applicable law. Underground facility owners must provide notice to excavator contractors of such procedures, along with sufficient information supporting the basis for the amount of a claim within six (6) months from the date of the event giving rise to the claim or from the date the event should have reasonably been discovered by the underground facility owner, whichever is later. (3-28-23)~~

~~**02. Reports.** Underground facility owners and excavators who observe, suffer or cause damage to an underground facility or observe, suffer or cause excavator downtime related to a failure of one (1) or more stakeholders to comply with applicable damage prevention statutes or regulations must report such information to the board on forms or by such method adopted for such by the board. Forms are available at the Division offices and electronically on the Division's website. (3-28-23)~~

020. CIVIL PENALTIES.

~~The Idaho Damage Prevention Board is authorized under Section 55-2203(17), Idaho Code, to establish by administrative rule the fines to be paid for civil penalties issued for violations of Title 55, Chapter 22, Idaho Code. To the extent authorized by Section 55-2211, Idaho Code, the acts described in this section subject the violator to a civil penalty of not more than one thousand dollars (\$1,000) for a second offense and a civil penalty of not more than five thousand dollars (\$5,000) for each offense that occurs thereafter within eighteen (18) months from an earlier violation, and where facility damage has occurred. (3-28-23)~~

~~**01. Violations of Title 55, Chapter 22, Idaho Code.** The following acts subject a person to civil penalties: (3-28-23)~~

~~**a.** Pre marking Excavation Site. Any person who fails to adequately pre mark onsite the path of proposed excavation as reasonably required under the circumstances in accordance with Section 55-2205(1)(b), Idaho Code, is subject to a civil penalty. (3-28-23)~~

~~**b.** Notice of Excavation. Any person who fails to provide notice of the scheduled commencement of excavation to any underground facility owner through a one number notification service, or directly to a facility owner, as applicable within the prescribed time as required by Section 55-2205(1)(c), Idaho Code, is subject to a civil penalty. (3-28-23)~~

~~**e.** One Number Notification to Facility Owner. A one number notification service that fails to provide notice of a scheduled excavation upon notification from an excavator is subject to a civil penalty. (3-28-23)~~

~~**d.** Failure to Locate or Mark. An underground facility owner, owner's agent, or locator who fails to locate or mark underground facilities when responsible to do so in accordance with Section 55-2205(2), Idaho Code, or within the prescribed time provided therein, is subject to a civil penalty. (3-28-23)~~

~~**e.** Failure to Wait for Locate or Maintain Markings. An excavator who commences excavation prior~~

~~to waiting the time prescribed by Section 55-2205(2), Idaho Code, for all known facilities to be located and marked, or an excavator who fails to maintain the markings of underground facilities previously so marked subsequent to the commencement of excavation in accordance with Section 55-2205(2), Idaho Code, is subject to a civil penalty.~~

~~(3-28-23)~~

~~**f.** Failure to Cease Excavation or Report Unidentified Facilities. An excavator who does not cease excavation in the immediate vicinity upon the discovery of underground facilities therein, whether such facilities be active or abandoned, which were not previously identified or located with reasonable accuracy, or does not notify the owner or operator of the facilities, or a one-number notification service in accordance with Section 55-2205(4), Idaho Code, is subject to a civil penalty.~~

~~(3-28-23)~~

~~**g.** Failure to Identify Facilities in Contract Documents. Project owners who fail to indicate in bid or contract documents the existence of underground facilities known by the owner to be located within the proposed area of excavation in accordance with Section 55-2207, Idaho Code, is subject to a civil penalty.~~

~~(3-28-23)~~

~~**h.** Precautions to Avoid Damage. An excavator who does not engage in any of the activities required by Section 55-2207(2), Idaho Code, or use reasonable care to avoid damage to underground facilities is subject to a civil penalty.~~

~~(3-28-23)~~

~~**i.** Reporting of Damage to Facility. An excavator who fails to report to a facility owner and a one-number notification service any contact or damage to an underground facility caused by such excavator in the course of excavation, or fails to alert an appropriate authority upon an actual breach of a facility which causes the release of gas or hazardous liquids as required by Section 55-2208(1), Idaho Code, is subject to a civil penalty.~~

~~(3-28-23)~~

~~**j.** Reporting to the Board. An excavator or underground facility owner who observes, suffers or causes damage to an underground facility or excavator downtime related to the failure of one (1) or more stakeholders to comply with the damage prevention regulations and fails to report such information to the board as required by Section 55-2208(5), Idaho Code, is subject to a civil penalty.~~

~~(3-28-23)~~

~~**k.** Failure to Participate. Any person who fails to participate or cooperate with a one-number notification service as prescribed by Section 55-2206, Idaho Code, is subject to a civil penalty.~~

~~(3-28-23)~~

~~**l.** False Notification of Emergency. Any person who provides notice of an emergency excavation when there is not an emergency as defined in Idaho Code Section 55-2202(5).~~

~~(3-28-23)~~

~~**02. Second Offense.** For the purpose of this section, a second offense is deemed to be any violation of Title 55, Chapter 22, Idaho Code, for which a civil penalty may be imposed in accordance with this section which occurs within eighteen (18) months of a previous violation of any provision.~~

~~(3-28-23)~~

~~**03. Multiple Violations.** Each day that a violation of Title 55, Chapter 22, Idaho Code, occurs for which a civil penalty may be imposed as provided herein constitutes a separate offense.~~

~~(3-28-23)~~

~~021401. -- 999. (RESERVED)~~