

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 910 Department or Agency Underground Damage Prevention Authority
Rule No. 910-X-2
Rule Title: Organization
 New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? N/A

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Arnette R. Reburn

Signature of certifying officer _____

Date 07/21/2020

(DATE FILED)
(STAMP)

APA-2

Underground Damage Prevention Authority

NOTICE OF INTENDED ACTION

AGENCY NAME: Underground Damage Prevention Authority

RULE NO. & TITLE: Chapter 910-X-2 General Organization

INTENDED ACTION: Establish New Rule

SUBSTANCE OF PROPOSED ACTION:

To outline the organizational structure of the Underground Damage Prevention Authority.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested parties may submit data, view, or arguments concerning the proposed new rule to the Underground Damage Prevention Authority in writing through the close of business on September 4, 2020 to the acting secretary of the Underground Damage Prevention Authority at the following: Annette R. Reburn, Executive Director, Alabama 811 3104 Bates Lane Fultondale, AL 35069 Phone: 205-731-3209 Fax: 205-731-3249 Email: areburn@al811.com

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: September 4, 2020

CONTACT PERSON AT AGENCY:

Annette R. Reburn, Executive Director, Alabama 811
3104 Bates Lane Fultondale, AL 35069 Phone: 205-731-3209 Fax:
205-731-3249 Email: areburn@al811.com



Annette R Reburn, Secretary

**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No. 910 Department or Agency: Underground Damage
Prevention Authority

Rule No: 910-X-2

Rule Title: Organization

 X New Amend Repeal Adopt by Reference

 X This rule has no economic impact.

 This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:

2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:

3. EFFECT OF THIS RULE ON COMPETITION:

4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

****Additional pages may be used if needed.**
APA-7

**TRANSMITTAL SHEET FOR
BUSINESS ECONOMIC IMPACT STATEMENT
(Section 41-22-5.1)**

Control No. 910 Department/Agency Underground Damage Prevention Authority

Rule No. 910-X-2

Rule Title: Organization

New Amend Repeal Adopt by Reference

Attached is a Business Economic Impact Statement filed pursuant to Section 41-22-5.1, Code of Alabama 1975.

Annette R. Leburn

Signature of Filing Officer _____

Date 7/21/2020

(DATE FILED)
(STAMP)

**Underground Damage Prevention Authority
Administrative Rules**

**Chapter 910-X-2
Organization**

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910-X-2-.01 Duties of the Authority

- (1) The duties of the Authority are described in Ala. Code § 37-15-10.1, et seq., and include, but are not limited to the following:
- (a) Enforce the provisions of Ala. Code § 37-15- 1-10.2, et seq.
 - (b) Conduct meetings as described in Ala. Code § 37-15-10.1 - 10.2, et seq., and the rules adopted by the Authority.
 - (c) Elect an Executive Committee from among the Authority members as described in Ala. Code § 37-15-10.1, et seq.
 - (d) Promulgate rules and regulations to carry out its responsibilities described in Ala. Code § 37-15-1, et seq.
 - (e) Enter into contracts as the Authority deems necessary to carry out its responsibilities.
 - (f) Enter into an interagency agreement with the Attorney General’s office to serve as legal counsel.
 - (g) Oversee the development of, or contract for, the development and administration of the designated training program.
 - (h) Manage the Underground Damage Prevention Fund created in Ala. Code § 37-15-10, et seq.
 - (i) Assess and collect funds as described in Ala. Code § 37-15-10(e), et seq., as deemed necessary to carry out its responsibilities.
 - (j) Evaluate and revise the enforcement program process and penalty structure by promulgating rules if the current structure does not meet the purpose and intent of this chapter or federal law.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1 (h) (1-5)

History: New Rule: Filed _____; effective _____.

910-X-2-.02 Authority Organization

(1) The Authority shall be composed of a board of underground facility protection stakeholders. The board shall be composed on one subject matter expert representative from each of the following stakeholders. The Authority consists of seventeen members, appointed as follows:

(a) By the Governor:

1. One representative of Alabama County Engineers
2. One representative of the cable television industry
3. One representative of the electric utility industry
4. One representative of the municipal utility operator industry
5. One representative of the natural gas distribution industry
6. One representative of the one call notification center
7. One representative of the professional excavator industry
8. One representative of the professional road builders industry
9. One representative of the land survey industry
10. One representative of the telecommunications industry
11. One representative of the transmission pipeline industry
12. One representative of the utility facility locating industry
13. One representative of the water utility industry
14. One representative of the wastewater industry

(b) By specified entities:

1. One representative of the Alabama Attorney General's Office
2. One representative of the Alabama Public Service Commission— gas pipeline safety
3. One representative of the Alabama Department of Transportation

(2) No member of the board, individually or jointly, shall be civilly liable for acts within the scope of his or her duties as a board member which are made in good faith and are absent unreasonable, wanton, willful, intentional conduct or a violation of federal law.

(3) The members of the Authority board shall serve without compensation.

(4) Nothing in this chapter shall grant the Authority jurisdiction over damage to utilities located above the ground.

(5) Board members shall not participate in any enforcement action decisions pertaining to the entity they represent.

(6) The Authority shall be governed by the Alabama Administrative Procedures Act.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1 (h), (i), (j), (k), (m)

History: New Rule: Filed _____; effective _____.

910-X-2-.03 Authority Member Terms

- (1) The initial authority board shall be appointed with staggering terms as determined by the Governor.
- (2) After the initial appointment, each stakeholder representative shall serve a three-year term.
- (3) No person shall be appointed for more than two full consecutive terms with the exception of the following:
 - (a) Alabama Attorney General's Office
 - (b) Alabama PSC – gas pipeline safety
 - (c) Alabama Department of Transportation
 - (d) One Call Notification Center.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1 (d)

History: New Rule: Filed _____; effective _____.

910-X-2-.04 Officers

- (1) The Authority shall elect a chairman and other officers as the Authority deems necessary.
- (2) The officers of the Authority shall be as follows:
 - (a) Chairman - The Chairman shall preside at all meetings of the Authority and discharge the duties of the presiding officer, shall be the principal executive officer of the Authority, may sign contracts and other instruments authorized by the Authority, except in cases where the Authority shall expressly delegate that authority to another member, and shall perform whatever other duties the Authority may from time to time prescribe. The Chairman may also function as the Chair of the Executive Committee.
 - (b) Vice-Chairman - The Vice-Chairman shall, in the absence of the Chairman, perform the duties and exercise the powers of the Chairman. The Vice-Chairman shall also perform whatever duties and have whatever powers the Authority may from time to time assign. The Vice-Chairman may also function as the Vice-Chairman of the Executive Committee.
 - (c) Secretary - The Secretary shall attend all meetings of the Authority and shall keep or cause to be kept, true and complete minutes of the proceedings of those meetings. The Secretary shall give or cause to be given, notice of all meetings of the Authority, shall be the Public Records Compliance Officer and whatever additional duties the Authority may from time to time prescribe.
 - (d) Treasurer - The Treasurer shall keep full and accurate accounts of receipts and disbursements and shall deposit all Authority monies and other valuable effects in the name and to the credit of the Authority in a depository or depositories designated by the Authority. The Treasurer shall disburse the

funds of the Authority and shall render to the Chairman or the Authority, whenever they may require it, an account of the transactions as Treasurer and the financial condition of the Authority.

- (3) **Combination of Offices.** Nothing herein shall prohibit the combination of the duties of Secretary and Treasurer and those offices being held by one member of the Authority.
- (4) **Other Officers.** Such other officers as are created from time to time by the Authority shall have such duties as may be assigned to them by the Authority in the minutes of meetings duly adopted, or by Resolution of the Authority.
- (5) **Terms.** The term of each office shall be two years. Officers shall not hold a particular office for more than two consecutive two-year terms without a majority vote of the Authority members.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1 (g)

History: New Rule: Filed _____; effective _____.

910-X-2-.05 Authority Operations

- (1) **Rule Making Authority.** The Authority shall make such rules and regulation as may be necessary to carry out the provisions of the statute.
- (2) **Meetings and Notice.** The Authority shall meet at the location and on the date and time set by the Chairman upon at least five business days' notice provided by United States mail, electronic mail or personal delivery to every Authority member. Scheduled meeting dates, times, and locations shall be published in the Authority's minutes.
- (3) The Authority shall meet no more than quarterly based on need relative to the hearing of enforcement proceeding appeals.
- (4) **Meetings.** Members of the Authority board and executive committee may participate in a meeting of the board or committee by means of telephone conference, video conference, or similar communications equipment by means of which all persons participating in the meeting may hear each other at the same time. Participation by such means shall constitute presence in person at a meeting for all purposes.
- (5) **Quorum.** A quorum will be represented from a simple majority of the current Authority Membership.
- (6) **Voting.** All members of the Authority including the Chairman shall be entitled to vote and to make or second motions. A majority vote of those present is required

to pass a motion. Members expecting to be absent for a vote may provide written comments as to their position; however, they may not grant a vote by proxy.

(7) Action without a Meeting. Any action required or permitted may be taken without a meeting if the action is noticed to all Authority Members and approved by a majority of the Members of the Authority. The action must be evidenced by one or more written consents describing the action taken, and delivered to the Secretary for inclusion in the minutes or filed with the appropriate records.

(8) Robert's Rules of Order. The Chairman shall conduct each Authority meeting in accordance with Robert's Rules of Order. Committee meetings of the Authority shall be conducted in a like manner.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1 (g) (h), (l) and § 37-15-10.2 (i)

History: New Rule: Filed _____; effective _____.

910-X-2-.06 Committees of the Authority

(1) The Chairman, with concurrence of the Authority, may from time to time establish and abolish such committees from among the members of the Authority as may be deemed necessary, expedient or to contribute to the performance of the duties of the Authority. The Chairman shall appoint a Chair for each such committee.

(2) The Chairman, with concurrence of the Authority, deems it advantageous or beneficial to the Authority, the Chairman may appoint members to a committee who are not members of the Authority.

(3) A quorum shall be a majority of the committee. The rules relating to the Authority shall apply to all committees.

(4) The Authority Board shall elect an executive committee made up of five representatives from the Authority Board as provide in Ala. Code § 37-15-10.1, et seq., excluding those entities representing a state agency, who will be responsible for levying civil penalties and taking actions as described in Ala. Code § 10, 10.1 and 10.2, et seq.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1

History: New Rule: Filed _____; effective _____.

910-X-2-.07 Executive Committee

(1) The Executive Committee is charged with reviewing the alleged violations complaints and any documentation regarding the complaint and making any

needed recommendation for penalty action.

- (2) The duties of the Executive Committee include, but are not limited to the following:
 - (a) Conduct meetings and reviews of alleged violation complaints as described in Ala. Code § 37-15-10.2, et seq., and the rules promulgated by the Authority.
 - (b) Determine whether violations have occurred.
 - (c) Dismiss those complaints in which it determines a violation has not occurred.
 - (d) Upon finding that a violation has occurred, determine and levy penalties, order training, and otherwise take action as described in Ala. Code § 37-15-10.2, et seq., and the rules promulgated by the Authority.
- (3) An Executive Committee member shall not participate in any discussion or vote on any of the following matters:
 - (a) One in which the Executive Committee member or the member's employer is the complainant or respondent.
 - (b) One in which the member reasonably believes that he/she is unable to act impartially and independently as a result of the circumstances related to an alleged violation.
- (4) An Executive Committee member disqualified from voting on a matter shall notify all members of the Executive Committee of said disqualification, immediately upon discovery that a basis for disqualification exists. Another Authority member may be appointed to the Executive Committee on a temporary basis to replace the recused Executive Committee Member during the designated complaint hearing.
- (5) The term of those serving on the Executive Committee shall be two years. No Executive Committee member shall serve more than two consecutive two-year terms without a majority vote of the Authority members.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1

History: New Rule: Filed _____; effective _____.