

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 910 Department or Agency Underground Damage Prevention Authority
Rule No. 910-X-3

Rule Title: Enforcement of Violations
 New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

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

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.

Annette R. Reburn

Signature of certifying officer _____

Date 07/21/2020

REC'D & FILED

JUL 20 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-3 Enforcement of Violations

INTENDED ACTION: Establish New Rule

SUBSTANCE OF PROPOSED ACTION:

Establish the process for filing, responding, appealing and enforcing against violation complaints of §37-15-1-10.2.

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-3

Rule Title: Enforcement of Violations

 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-3

Rule Title: Enforcement of Violations

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-3
Enforcement of Violations**

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910-X-3.01 Complaint Filing

- (1) Any person who violates Ala. Code § 37-15-1, et seq., may be reported to the authority for the alleged violation.
- (2) The complaint must be made no later than 30 days after the known occurrence of the violation. A complaint may be filed as information only and designated not to be pursued under the enforcement provisions.
- (3) The Executive Committee may review complaints from any person of alleged violation of Ala. Code § 37-15-1, et seq.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.2

History: New Rule: Filed _____; effective _____.

910-X-3-.02 Complaint Process

- (1) The Authority shall utilize the services of the Alabama Public Service Commission to provide administrative support, subject to the concurrence by the Authority Board. The Public Service Commission shall charge the expenses associated with the administrative duties of the Authority back to the Authority, subject to the concurrence of the Authority Board. The administrative support provided by the Alabama Public Service Commission to the Authority is in an administrative capacity only and shall not expand the jurisdiction of the Alabama Public Service Commission in any way.
- (2) The complaint process shall include:
 - (a) A completed complaint form submitted to the Authority administrator in the designated manner outlined by the Authority.
 - (b) The complaint form must include all required information designated on

approved complaint form.

- (c) Upon receipt of a complaint of a violation of this chapter, the administrator, operating on behalf of the Authority, shall provide notice to the reported violator advising that a complaint of violation has been made setting out the time and place of the alleged violation, the identity of who reported the violation, his or her right to file a written response within 14 days, and his or her right to appeal from an adverse decision.
 - (d) The administrator, acting on behalf of the Authority, shall submit the complaint and documentation to the Executive Committee.
 - (e) The Authority Executive Committee will review the complaint and any documentation regarding the complaint and make any needed recommendation for penalty action.
 - (f) The administrator, operating on behalf of the Authority, shall notify the complainant and the reported violator of any penalty assessed.
 - (g) Once the reported violator is notified of the designated penalty as described in Section 37-15-10, et seq, Code of Ala. 1975, the violator may pay the penalty to the Underground Damage Prevention Fund or dispute the penalty and request a hearing before the full Authority Board.
 - (h) The request for a hearing before the Authority Board must be done within 30 days of the issuance of notification of the violation.
 - (i) The full Authority Board shall meet no more than quarterly, based on need. The hearings will be held at the place set forth in the citation notice of hearing. There shall be no presumption of correctness attached to any finding of fact or any assessment of a penalty that is appealed to the Authority Board, and the proceedings and hearing before the Authority Board shall be tried de novo. The complainant must attend the hearing.
- (3) In cases in which a final citation is issued to an alleged violator, the alleged violator may pay the civil penalty and/or perform the ordered training and applicable costs within ninety (90) days of the citation issuance date, and upon payment of the penalty and performance of the ordered training, the matter shall be closed.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.2

History: New Rule: Filed _____; effective _____.

910-X-3-.03 Appeal Process

- (1) The Authority Board in the appeal process has the authority to do the following:
 - (a) Repeal the initial penalty provisions cited for the alleged violation of this chapter.
 - (b) Uphold the initial penalty provisions cited for the alleged violation of this chapter.
 - (c) Issue a new penalty provision related to the alleged violation of this chapter.
 - (d) Issue an order stating the outcome of the hearing including any assigned penalty.

- (2) A person aggrieved by the final order, within 30 days from the date of the final order, may seek judicial review in the circuit court by filing a notice of appeal.
- (3) The Authority may bring an action against any person or entity to collect any fines, penalties or other monies owed to the authority.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.2

History: New Rule: Filed _____; effective _____.

910-X-3-.04 Enforcement Rules

- (1) The Authority will issue an opinion regarding the applicability to specified facts of:
 - (a) a statute administered or enforceable by the Authority; or
 - (b) a rule promulgated by the Authority.
- (2) The Authority may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:
 - (a) the complaint filed is brought forth as a frivolous complaint. The Executive Committee may make the determination that frivolous complaints are subject to the penalty provisions;
 - (b) lack of clarity;
 - (c) the facts presented in the request are not sufficient to answer the question presented;
 - (d) the request fails to contain information by these rules or the complainant failed to follow the procedure set forth in these rules;
 - (e) the question presented by the request concerns the legal validity of a statute or rule;
 - (f) a similar request is pending before this Authority or any agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law;
- (3) A declared opinion of the Authority shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Authority may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed meet the requirements of these rules or that the opinion issued contains a legal or factual error.
- (4) At any point prior to issuance of a citation or show cause letter, the Complainant may notify the administrator or the Executive Committee that the alleged violation form is withdrawn, and the Executive Committee will dismiss the matter against the alleged violator.

- (5) The Authority may bring an action against any person or entity to collect any fines, penalties or other monies owed to the authority.

Author: Underground Damage Prevention Authority

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

History: New Rule: Filed _____; effective _____.

910-X-3-.05 Open Records

All complaints filed pursuant to Ala. Code § 37-15-1 et seq., shall not be subject to the Alabama Open Records Act. However, the Authority shall make available, upon request, a summary of a requested complaint after a final resolution has been entered regarding any such complaint requested along with any documents associated with the final resolution of the complaint. However, this restriction shall not prevent a party from obtaining a copy of the complaint by means of a subpoena or other method allowed by the Alabama Rules of Civil Procedure or the Alabama Rules of Criminal Procedures.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.2 (l)

History: New Rule: Filed _____; effective _____.

910-X-3-.06 Open Meetings

The Alabama Open Meetings Act shall apply to all meetings and judicial hearings required pursuant to this chapter, except for those meetings of the Authority in which the initial determination of violation and recommended fine is discussed and determined.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.3 (l)

History: New Rule: Filed _____; effective _____.