

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 910 Department or Agency Underground Damage Prevention Authority
Rule No. 910-X-4
Rule Title: Designated Penalties
X 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? 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? Yes

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. Leburn

Signature of certifying officer _____

Date 07/21/2020

REC'D & FILED
JUL 20 2020
LEGISLATIVE SVC AGENCY

(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-4 Designated Penalties

INTENDED ACTION: Establish New Rule

SUBSTANCE OF PROPOSED ACTION:

To outline the penalty provisions established under §37-15-10 and the guidelines to be followed by the Authority in assessing these penalties.

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-4

Rule Title: Designated Penalties

New Amend Repeal Adopt by Reference

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE: To comply with Alabama Code §37-15-10 in the penalty provisions to be assessed for those determined to have violated the requirements of Alabama Code §37-15. The intent is with increased enforcement violations of this Act will decrease and result in reduction of threat to the general public, excavating community and underground facilities.
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE: Complies with the requirements of Alabama Code §37-15-10
3. EFFECT OF THIS RULE ON COMPETITION: N/A
4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED: The only impact would be on those found guilty of violating Alabama Code §37-15 and assessed a penalty as defined by Alabama Code §37-15-10.

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

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE: Potential Federal Grant funds, departmental resources and levied penalties assessed.

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: N/A

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

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH: Reduce potential damage to underground facilities which would could impact the environment for released product or public health due to loss of utility services.

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

****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-4

Rule Title: Designated Penalties

X 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-4
Designated Penalties**

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910-X-4-.01 Penalty Provisions

- (1) Any person who violates the provisions of Ala. Code § 37-15, et seq., or the rules adopted under the Authority, shall be subject to a civil penalty as follows:
 - (a) For a first violation, the violator shall complete a course of training concerning compliance or pay a civil penalty in an amount not to exceed five hundred dollars (\$500) per incident, or both.
 - (b) For a second or subsequent violation within a twelve (12) month period, the violator shall complete a course of training concerning compliance or pay a civil penalty in an amount not to exceed one thousand dollars (\$1000) per incident, or both.
 - (c) For a third or subsequent violation within a twelve (12) month period, the violator shall complete a course of training concerning compliance and pay a civil penalty in an amount not to exceed three thousand dollars (\$3,000) per incident.
 - (d) Notwithstanding this subsection, if any violation was the result of gross negligence or willful noncompliance, the violator shall be required to complete a course of training concerning compliance and pay a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) per incident.
- (2) Any person who is required to complete a course of training shall be responsible for paying for the cost of the training. For those instances in which training is ordered, if the person is a firm, partnership, association, corporation, limited liability company, joint venture, department or subdivision of the state or other governmental entity or any other body or organization, it may be required that at least one manager or supervisor thereof attend any training.
- (3) These penalties provided under this section may be subject to periodic review by the Authority Board and revised by rule as needed to ensure enforcement penalties are deemed effective and are in compliance with federal law.
- (4) All penalties recovered in such actions shall be paid into the Underground Damage Prevention Fund.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10

History: New Rule: Filed _____; effective _____.

910-X-4-.02 Liabilities of Penalty Provisions

- (1) Enforcement actions do not affect any civil remedies for personal injury or property damage or criminal sanctions except as otherwise specifically provided for in Ala. Code § 37-15-1, et seq.
- (2) Evidence of findings of fact, civil penalties or any of the actions or proceedings shall not be admissible in any other civil causes of actions related to the excavation or damage for which the penalty or fine was issued, however, these materials are discoverable in civil actions arising from the facts herein. The Authority decision shall not limit any person's right to pursue any additional civil remedy otherwise allowed by law.
- (3) No civil penalty may be imposed against an excavator or operator who violates any provisions of Ala. Code § 37-15-1, et seq., if the violation occurred while the excavator or operator was responding to an emergency. Notwithstanding the foregoing, the civil penalty shall be imposed if the violation was willful or malicious.
- (4) Ala. Code § 37-15-1, et seq., shall not be construed to limit any provision of law granting governmental immunity to state or local entities or to impose any liability or duty of care not otherwise imposed by law upon any state or local entity.
- (5) Any person who willfully or maliciously removes or otherwise destroys a marking used by an operator to mark the location of any underground facility, except in the ordinary course of excavation, is guilty of a Class C misdemeanor.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10

History: New Rule: Filed _____; effective _____.

910-X-4-.03 Guidelines for Application of Penalties

- (1) The Executive Committee shall determine and assess penalties according to Ala. Code § 37-15-10, et seq. In determining the penalty for a violation, the Executive Committee shall consider the following:
 - (a) The degree of non-compliance;
 - (b) The amount of injury or damage caused;
 - (c) The degree of threat to public safety;
 - (d) The degree of public inconvenience caused as a result of the violation;
 - (e) The number of past violations;
 - (f) Mitigation of the penalty may be shown by "good faith" efforts of the violator to have complied with the provisions of Ala. Code § 37-15, et seq.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10 (d)

History: New Rule: Filed _____; effective _____.