

**IDAPA 07
TITLE 10
CHAPTER 01**

**07.10.01 - RULES GOVERNING THE DAMAGE PREVENTION BOARD,
DIVISION OF BUILDING SAFETY**

000. LEGAL AUTHORITY.

The Idaho Damage Prevention Board of the Division of Building Safety is authorized under Section 55-2203, Idaho Code, to promulgate rules consistent with the act for the administration of Title 55, Chapter 22, Idaho Code, to effectuate the purposes thereof. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 07.10.01, "Rules Governing the Damage Prevention Board, Division of Building Safety." ()

02. Scope. These rules shall be applicable to underground facilities, and facility owners as established in Title 55, Chapter 22, Idaho Code. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Idaho Division of Building Safety offices. ()

003. ADMINISTRATIVE APPEALS.

IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Section 100, et seq., shall apply to contested cases, in addition to the provisions of Title 55, Chapter 22, Idaho Code. ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. ()

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Damage Prevention Board is at the Division of Building Safety office located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The Damage Prevention Board may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and at 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Department website is <http://dbs.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. ()

007. FUNDING OF BOARD ACTIVITIES.

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

01. Fee Assessed. The fee shall 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. ()

02. Payment Submission. The one-number notification service shall 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 utility owner is received after the seventy (70) day period, the one-number service shall include late payments in its next payment to the board. ()

03. Notices Issued. The one-number notification service shall 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 shall be updated on a monthly basis to reflect the status of all past-due payments due from underground utility owners that have not been received. ()

04. Civil Penalties. Underground facility owners failing to submit payment to the one-number notification service in a timely manner shall be subject to the imposition of civil penalties and other remedies referenced in Title 55, Chapter 22, Idaho Code. ()

008. AUDIT OF ONE-NUMBER SERVICE RECORDS.

The board shall have the right to review and audit the payment records of any one-number notification service relating to the collection of the ten cent (\$.10) 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 shall provide no less than a five (5) business day advance notice of the intended action. The board may delegate any responsibilities contained herein in this chapter to the Division of Building Safety. ()

009. 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 shall 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 months from an earlier violation, and where facility damage has occurred. (- -18)

01. Violations of Title 55, chapter 22, Idaho Code. The following acts shall 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) shall be subject to a civil penalty. (- -18)

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 shall be subject to a civil penalty. (- -18)

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 shall be subject to a civil penalty. (- -18)

d. Failure to Locate or Mark. An underground facility owner who fails to locate or mark its underground facilities in accordance with section 55-2205 (2), Idaho Code or within the prescribed time provided therein shall be subject to a civil penalty. (- -18)

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 shall be subject to a civil penalty. (- -18)

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 shall be subject to a civil penalty. (- -18)

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 shall be subject to a civil penalty. (- -18)

h. Precautions to Avoid Damage. An excavator who does not engage in any of the activities required by section 55-2207 (2) or use reasonable care to avoid damage to underground facilities shall be subject to a civil penalty. (- -18)

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 shall be subject to a civil penalty. (- -18)

j. Reporting of 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 shall be subject to a civil penalty. (- -18)

k. Failure to Participate. Any person who fails to participate or cooperate with a one-number notification service as required by section 55-2206 shall be subject to a civil penalty.

02. Second Offense. For the purpose of this section a second offense shall be deemed to be any violation of title 55, chapter 22 for which a civil penalty may be imposed in accordance with this section which occurs within five (5) years (but not within 18 months) of a previous violation of any provision.

03. Multiple Violations. Civil penalties may be imposed separately against a person for any distinct violation as provided for in this section regardless of whether the different violation may have resulted from the same conduct or occurred during the same incident. Each day that a violation of Chapter 22, Title 55 occurs for which a civil penalty may be imposed as provided herein shall constitute a separate offense.

04. Judicial Review. Any party aggrieved by the final action of the Idaho Damage Prevention Board shall be entitled to a judicial review thereof in accordance with the provisions of title 67, chapter 52, Idaho Code.

0109. -- 999. (RESERVED)