

**§ 55-2202. Definitions**

As used in this chapter:

- (1) “Administrator” means the administrator of the division of building safety.
- (2) “Board” means the damage prevention board.
- (3) “Business day” means any day other than Saturday, Sunday, or a legal, local, state, or federal holiday.
- (4) “Damage” means any impact or exposure that results in the substantial weakening of structural or lateral support of an underground facility, or the penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the partial or complete destruction of the facility, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected underground facility owner determines that repairs are required.
- (5) “Emergency” means any sudden or unforeseen condition that compels immediate action to prevent or resolve:
  - (a) A clear and present danger to life, health or property;
  - (b) An unplanned customer service outage;
  - (c) The blockage of roads or transportation facilities; or
  - (d) An unstable condition that may result in any of the conditions set forth in subsections (5)(a) to (5)(c) of this section.
- (6) “Emergency excavation” means an excavation performed in response to an emergency.
- (7) “End user” means any customer or consumer of any utility service or commodity provided by an underground facility owner.
- (8) “Excavation” means any operation in which earth, rock, or other material in the ground is moved or otherwise displaced by any means including, but not limited to, explosives.
- (9) “Excavator” means any person who engages directly in excavation.
- (10) “Excavator downtime” means lost time for an excavation project due to failure of one (1) or more stakeholders to comply with applicable damage prevention regulations.
- (11) “Hand digging” means any excavation involving nonmechanized tools or equipment that when used properly will not damage underground facilities. Hand digging includes, but is not limited to, hand shovel digging, manual posthole digging, vacuum excavation, and soft digging.
- (12) “Identified but unlocatable underground facility” means an underground facility that has been identified but cannot be located with reasonable accuracy.
- (13) “Identified facility” means any underground facility that is indicated in the project plans as being located within the area of proposed excavation.
- (14) “Locatable underground facility” means an underground facility that can be field-marked with reasonable accuracy.

(15) “Locator” means a person who identifies and marks the location of an underground facility owned or operated by an underground facility owner.

(16) “Marking” means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

(17) “One-number notification service” means a service through which a person can notify owners of underground facilities and request field-marking of their underground facilities.

(18) “Person” means an individual, partnership, association, corporation, a state, a city, a county, or any subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

(19) “Public right-of-way” means the area on, below, or above a public roadway, highway, street, lane, path, sidewalk, alley, or other right-of-way dedicated for compatible uses.

(20) “Reasonable accuracy” or “reasonably accurate” means location within twenty-four (24) inches horizontally of the outside dimensions of each side of an underground facility.

(21) “Rural underground facility owner” means an underground facility owner that is a public utility or a member-owned cooperative that serves fewer than five thousand (5,000) total customers in a county or counties with populations that do not exceed fifty thousand (50,000) people.

(22) “Service lateral” means any underground facility located in a public right-of-way or underground facility easement that is used to convey water (unless being delivered primarily for irrigation), stormwater, or sewage and connects an end user's building or property to an underground facility owner's main utility line.

(23) “Soft digging” means any excavation using tools or equipment that utilize air or water pressure as the direct means to break up soil or earth for removal by vacuum excavation.

(24) “Stakeholder” means any party with an interest in protecting underground facilities including, but not limited to, persons, property owners, underground facility owners, excavators, contractors, cities, counties, highway districts, railroads, public entities that deliver irrigation water and those engaged in agriculture.

(25) “Underground facility” means any item buried or placed below ground for use in connection with the storage or conveyance of water (unless being delivered primarily for irrigation), stormwater, sewage, electronic, telephonic or telegraphic communications, cable television, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors belowground.

(26) “Underground facility easement” means a nonpossessory right to operate, control, bury, install, maintain, or access an underground facility.

(27) “Underground facility owner” means any person who owns or operates an underground facility or who provides any utility service or commodity to an end user via an underground facility.

**§ 55-2205. Permit compliance--Notice of excavation--Response to notice--Compensation for failure to comply--Exemptions**

(1) Before commencing excavation, the excavator shall:

(a) Comply with other applicable law or permit requirements of any public agency issuing permits;

(b) Pre-mark on-site the path of excavation with white paint or, as the circumstances require, other reasonable means that will set out clearly the path of excavation. An excavator need not pre-mark as required in this subsection if:

(i) The underground facility owner or its agent can determine the location of the proposed excavation by street address or lot and block by referring to a locate ticket; or

(ii) The excavator and underground facility owner have had a meeting prior to the beginning of the proposed excavation at the excavation site for the exchange of information required under this subsection.

(c) Provide notice of the scheduled commencement of excavation to all underground facility owners through a one-number notification service. If no one-number notification service is available, notice shall be provided individually to those owners of underground facilities known to have or suspected of having underground facilities within the area of proposed excavation. The notice shall be communicated by the excavator to the one-number notification service or, if no one-number notification service is available, to the owners of underground facilities not less than two (2) business days nor more than ten (10) business days before the scheduled date for commencement of excavation, unless otherwise agreed in writing by the parties.

(2) Upon receipt of the notice provided for in this section, the underground facility owner or the owner's agent shall locate and mark its locatable underground facilities with reasonable accuracy, as defined in section 55-2202, Idaho Code, by surface-marking the location of the facilities. If there are identified but unlocatable underground facilities, the owner of such facilities or the owner's agent shall locate and mark the underground facilities in accordance with the best information available to the owner of the underground facilities. The owner of the underground facility or the owner's agent providing the information shall respond no later than two (2) business days after the receipt of the notice or before the excavation time set forth in the excavator's notice, at the option of the underground facility owner, unless otherwise agreed in writing by the parties. Excavators shall not excavate until all known facilities have been marked. Once marked by the owner of the underground facility, or the owner's agent, the excavator is responsible for maintaining the markings. Unless otherwise agreed in writing by the parties, maintained markings shall be valid for purposes of the notified excavation for a period of no longer than three (3) consecutive weeks following the date of notification as long as it is reasonably apparent that site conditions have not changed so substantially as to invalidate the markings. If excavation has not commenced within three (3) weeks from the original notice to underground facility owners through the one-number notification service, the excavator shall reinitiate notice in accordance with this section.

(a) Excavators shall have the right to receive compensation from the owner of the underground facility for costs incurred if the owner of the underground facility does not locate its facilities in accordance with this chapter.

(b) An owner of an underground facility shall have the right to receive compensation for costs incurred in responding to an excavation notice given less than two (2) business days prior to the excavation except for notices given for emergency excavations under subsection (4) of this section and unidentified facilities discovered under subsection (5) of this section.

(3) An end user shall not be required to locate or mark any service lateral. An underground facility owner who provides any utility service or commodity via a service lateral shall locate and mark the service lateral in accordance with the provisions of subsection (2) of this section. Nothing in this subsection shall be construed to impose an indemnification obligation prohibited by law on any public agency as defined in section 67-2327, Idaho Code, or to alter the liability of any public agency as provided by law, including article VIII of the constitution of the state of Idaho.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, in response to an emergency:

(a) An excavator shall provide notice of an emergency excavation through a one-number notification service to all underground facility owners known or suspected to have underground facilities within the emergency excavation area not less than two (2) hours before commencing the emergency excavation unless subsection (4)(b) of this section applies. The notice of an emergency excavation must include:

(i) A description of the emergency;

(ii) The precise location of the proposed emergency excavation area;

(iii) Accurate contact information for the excavator, including but not limited to a continuously staffed telephone number where the excavator can be contacted throughout the emergency;

(iv) The emergency excavation start date and time if the start date and time will be more than two (2) hours after the excavator provides the notice.

(b) If an emergency is such that providing notice as required under subsection (4)(a) of this section would result in an undue risk to life, health, or property, then the excavator may perform the emergency excavation without providing such notice. The excavator shall provide notice of the emergency excavation as soon as practicable and take all reasonable precautions to avoid or minimize damage to underground facilities. Emergency excavation prior to providing notice of the excavation under this subsection does not relieve the excavator from any responsibility for damage to an underground facility.

(c) Upon receiving notice of an emergency excavation, an underground facility owner or its designated agent shall:

(i) Within one (1) hour of receiving the notice, attempt to contact the excavator at the telephone number provided under subsection (4)(a)(iii) of this section to provide any information concerning underground facilities within the emergency excavation area and the anticipated response time of the underground facility owner or its designated agent; and

(ii) Unless otherwise agreed in writing by the parties, locate and mark underground facilities within the emergency excavation area before the emergency excavation start date and time provided under subsection (4)(a)(iv) of this section or within two (2) hours of receiving the notice.

(d) If an underground facility owner or its designated agent is unable to locate and mark underground facilities as required under subsection (4)(c)(ii) of this section, the underground facility owner shall immediately attempt to notify the excavator at the telephone number provided under subsection (4)(a)(iii) of this section.(5) If the excavator, while performing the excavation, discovers underground facilities

(whether active or abandoned) which are not identified or were not located in accordance with subsection (2) of this section, the excavator shall cease excavating in the vicinity of the facility and immediately notify the owner or operator of such facilities, or the one-number notification service. The excavator shall have the right to receive compensation from the underground facility owner for standby cost (based on standby rates made publicly available) incurred as a result of waiting for the underground facility owner or the owner's agent to arrive at the work site to identify the unidentified facilities and provided that if the underground facility owner or the owner's agent supplies the locate information required under subsection (2) of this section within eight (8) hours of the time that the excavator notifies the underground facility owner of facilities not previously located, the excavator's compensation for delay of the excavation project shall be limited to actual costs or two thousand dollars (\$2,000), whichever is less.

**§ 55-2206. One-number notification service--Establishment--Participation required--Funding**

Two (2) or more persons who own or operate underground facilities in a county may voluntarily establish or contract with a third person to provide a one-number notification service to maintain information concerning underground facilities within a county. Upon the establishment of the first such one-number notification service, all underground facility owners with underground facilities within said county shall participate and cooperate with the service, and no duplicative service shall be established pursuant to this chapter. The activities of the one-number notification service shall be funded by all of the underground facility owners required by the provisions of this section to participate in and cooperate with the service. Each underground facility owner required to participate in a one-number notification service is subject to the jurisdiction of the damage prevention board established in section 55-2203, Idaho Code, and shall maintain accurate contact information, updated at least annually, with the one-number notification service for individuals responsible for the operation of the underground facilities of the underground facility owner, including contact information for individuals responsible for responding to an emergency.

**§ 55-2207. Excavation contracts--Limitations--Precautions to avoid damage--Liability for damage**

- (1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation.
- (2) An excavator shall use reasonable care to avoid damaging underground facilities. An excavator shall:
  - (a) Determine by hand digging, in the area twenty-four (24) inches or less from the facilities, the precise actual location of underground facilities which have been marked;
  - (b) Plan the excavation to avoid damage to or minimize interference with underground facilities in and near the excavation area; and
  - (c) Provide such support for underground facilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such facilities.
- (3) If an underground facility is damaged and such damage is the consequence of the failure to fulfill an obligation under this chapter, the party failing to perform that obligation shall be liable for the damage to the underground facility. Nothing in this chapter prevents the parties to an excavation contract from contracting with respect to the allocation of risk for changed or differing site conditions.
- (4) In any action brought under this section, the prevailing party is entitled to reasonable attorney's fees.