

**Title 55**  
**PUBLIC SAFETY**  
**PART I. STATE POLICE**  
**Chapter 21. Underground Utilities**

**§2101. Purpose**

A. It is the purpose of these rules to promote the protection of property, workmen, and citizens in the immediate vicinity of an underground facility or utility from damage, death, or injury and to promote the health and well-being of the community by preventing the interruption of essential services which may result from the destruction of, or damage to, underground facilities or utilities. The purpose of this rule is to further provide for the enforcement of the Louisiana Underground Utilities and Facilities Damage Prevention Law. An advisory committee composed of representatives from the relevant industries, state government, and the regional notification centers shall be formed to assist in implementation of these rules.

B. The advisory committee referenced in Subsection A above is hereby established and shall be composed of the following members:

1. a representative of each certified Louisiana regional notification center;
2. a representative of the Department of Public Safety;
3. a representative of the Department of Environmental Quality;
4. a representative of the Right-to-Know Unit, Office of State Police;
5. a representative of the Department of Natural Resources, Pipeline Division;
6. a representative of the Office of the State Fire Marshal;
7. a representative of the Public Service Commission;
8. a representative of the Louisiana Chemical Association;
9. a representative of the Louisiana Gas Association;
10. a representative of the Louisiana Municipal Association;
11. a representative of the Louisiana Forestry Association;
12. a representative of the Louisiana Home Builders Association;
13. a representative of the Louisiana Rural Water Association;
14. a representative of the Louisiana Cable and Telecommunications Association;
15. a representative of the Louisiana Electric Cooperatives Association;
16. A representative of the Mid Continent Oil and Gas Association;
17. a representative of the Louisiana Farm Bureau Federation;
18. a representative of the Louisiana Associated General Contractors;
19. a representative of the Louisiana Common Ground Alliance;
20. a representative of offshore facility owners and operators.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:92 (January 2000), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, LR 41:1772 (September 2015).

**§2103. Definitions**

A. For the purposes of these rules, the following terms shall have the meanings ascribed to them in this Section.

*Damage*—any defacing, scraping, gorging, breaking, cutting, or displacement of, impact upon or removal of an underground facility or utility or its means of primary support.

*Demolisher*—any person engaged in the act of demolishing as defined in R. S. 40:1749.12(2).

*Demolition*—the total or partial wrecking, razing, rendering, moving, or removing of any building or structure, movable or immovable.

*Department*—the Department of Public Safety and Corrections, Public Safety Services.

*Emergency*—any crisis situation which poses an imminent threat or danger to life, health, or property and requires immediate action.

*Excavation or Excavate*—any operation for the purpose of movement or removal of earth, rock, or other materials in or on the ground by the use of powered or mechanical or manual means, including pile driving, digging, blasting, auguring, boring, back filling, dredging, compressing, plowing-in, trenching, ditching, tunneling, land-leveling, grading, and mechanical probing.

*Excavator*—any person who engages in excavation operations.

*Inclement Weather*—weather that prohibits or impedes a worker's use of his locating equipment or causes undue risk to himself or his equipment such as lightning, heavy rain, tornadoes, hurricanes, floods, sleet, snow, or flooding conditions.

*Locator*—any person employed to determine the specific location of the operator's underground facility or utility within the area specified through a notice served by a regional notification center.

*Mark by Time*—the date and time provided by the regional notification center by which the utility operator is required to mark the location or provide information to enable an excavator, using reasonable and prudent means, to determine the specific location of the facility as provided for in R.S. 40:1749.14(D).

*Operator*—any person, individual, governmental agency or political subdivision or their agents, joint venture, firm, partnership, association, or corporation who owns or operates, a public or private underground facility or utility which furnishes a service or material or stores, transports, or transmits electric energy, steam, oil, natural gas, gas, mixture of gases, petroleum, petroleum products, hazardous or flammable fluids, toxic or corrosive fluids/gases, including telephone or telegraph system, fiber optic electronic communication systems, or water or water systems, or drainage, sewer systems, or traffic control systems or other items of like nature.

*Person*—an individual, firm, partnership, association, corporation, joint venture, municipality, governmental agency, political subdivision, or agent of the state or any legal representative, thereof.

*Regional Notification Center*—may be any one of the following:

a. an entity designated as nonprofit by the Internal Revenue Service under Section 501(c)(4) of the Internal Revenue Code and which is organized to protect its members from damage and is certified by the Department of Public Safety and Corrections in accordance with the Chapter; or

b. an organization of operators, consisting of two or more separate operators who jointly have underground facilities or utilities in three or more parishes in Louisiana, which is organized to protect its own installation from damage, and has been certified by the Department of Public Safety and Corrections in accordance with this Chapter; or

c. an operator who has underground facilities or utilities in a majority of parishes in Louisiana and is organized to protect its own installation from damage, and has been certified by the Department of Public Safety and Corrections in accordance with this Chapter.

*Service Line or Lines*—underground facilities or utilities which provide power, gas, natural gas, communication or water capabilities to a building or structure of buildings or group of structures.

*Underground Facility or Utility*—any pipe, conduit, duct, wire, cable, valve, line, fiber optic equipment, or other structure which is buried or placed below ground or submerged for the use in connection with storage, conveyance, transmission or protection of electronics communication system, telephone or telegraph system, or fiber optic, electric energy, oil, natural gas, gases, steam, mixture of gases, petroleum, petroleum products, hazardous or

flammable fluids/gases, toxic or corrosive fluids/gases, hazardous fluids/gases or other substances of like nature or water or water systems, sewer systems, or traffic, drainage control systems, or other items of like nature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:92 (January 2000), amended LR 40:1111 (June 2014).

#### **§2105. Regional Notification Certification Process**

A. The regional notification program must have or be able to demonstrate the following:

1. toll free nationwide telephone number;
2. specifically defined geo-political service area with a goal of no overlap;
3. mechanism for law enforcement to verify locate request information;
4. establish a formal member contractual agreement and submit for approval;
5. locate request tracking process that includes a specific numbering system for each locate request;
6. provide timely transmission of notifications to facility owner/operator;
7. provide locate request information upon inquiry by law enforcement;
8. establish a process to handle emergency locate requests;
9. validation process for owner/operator member's map data base;
10. agree to participate in the Underground Utilities/Facilities Damage Prevention Advisory Committee
11. develop standard operating procedures and training manuals for routine and emergency operations;
12. voice recording of all incoming locate request calls and voice out calls;
13. ability to produce records of all outgoing notification calls;
14. record retention procedures in compliance with R.S. 40:1749.13;
15. establish a pro-active public awareness and damage prevention education.

B. Upon establishing its ability to meet the above requirements, the regional notification center shall be certified by the department.

C. The department may charge a fee for the certification process of \$2,500.

D. An entity operating in this state as an authorized regional notification center prior to and upon the effective date of this Subsection shall have six months from the date of final adoption of these rules and regulations to seek and obtain compliance certification from the Department of Public Safety and Corrections. Failure to obtain such certification shall result in the cessation of activities by the regional notification center.

E. Any entity not operating in this state as an authorized regional notification center prior to and upon the effective date of this Subsection shall obtain compliance certification from the Department of Public Safety and Corrections prior to performing the operations of a regional notification center in or for this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:93 (January 2000).

#### **§2106. Investigation Procedure**

A. In accordance with R.S. 40:1749.23(D)(5), established investigative procedures shall adhere to the minimal standards established by the Police Officer Standards and Training (POST) and be demonstrated by an officer's completion of a certified law enforcement training course. The procedures may include, but are not limited to; observation, interrogation, documentation, collection, intervention, interdiction, mitigation, remediation, litigation, analyzation and recommendation.

B. Investigative procedures permit department investigators to collect and record information, as outlined in LAC 55:I.2106.C, on a standard investigation form; empowering the department to investigate a complaint, issue a citation and adjudicate the complaint.

C. The department's standard investigation form, titled hazardous materials incident report, may include, but is not limited to, the following:

1. excavator:
  - a. name;
  - b. address;
  - c. representative and title;
  - d. primary and secondary contact phone numbers;
  - e. regional notification center dig ticket number;
  - f. status of dig ticket;
  - g. status of markings;
2. operator:
  - a. name;
  - b. address;
  - c. representative and title;
  - d. primary and secondary contact phone numbers;
  - e. regional notification center dig ticket number;
  - f. status of dig ticket;
  - g. status of markings;
3. effects on general public:
  - a. chemical name;
  - b. hazard class;
  - c. amount released—potential;
  - d. injuries;
  - e. fatalities;
  - f. fire;
  - g. road closures;
  - h. evacuations;
  - i. shelter in place;
  - j. remediation, mutual aid, and additional agencies on-scene;
4. details:
  - a. the department's investigator may provide additional information and data relevant to the investigation.

AUTHORITY NOTE: Promulgated in accordance with R. S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 40:1111 (June 2014).

### **§2107. Citation**

A. The citation issued to a party alleged to be in violation of R.S. 40:1479 et seq., or these rules shall be uniform as developed by the department and may include the following:

1. the violation number;
2. the date of the incident;
3. the location of the incident;
4. the specific statute or regulation which is alleged to have been violated;
5. the penalty assessed to the responsible party based on the results of the department's investigation;
6. a brief description of the violation; and
7. an explanation of the responsible party's right to an administrative hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:93 (January 2000), amended LR 40:1111 (June 2014).

### **§2109. Collection of Data by the Department**

A. The department may collect such data that will allow law enforcement agencies to determine the number of existing violations and the results of the adjudication process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:93 (January 2000), amended LR 40:1112 (June 2014).

### **§2111. Establishment of Local Governmental Enforcement**

A. Pursuant to R. S. 40:1749.11 et seq., and these rules, local government shall have the authority to enforce any and all provisions therein, except the certification process for the regional notification center and the establishment of the uniform citation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:93 (January 2000).

### **§2113. Civil Penalties**

A. A person who is required by this Part to become a member of, participate in, or share the cost of, a regional notification center and who fails to do so shall be subject to a civil penalty of not more than \$250 for the first violation and not more than \$1,000 for each subsequent violation. A subsequent violation shall be deemed to have occurred if the person fails to become a member of, participate in, or share the cost of, a regional notification center as required within ninety days after issuance of a citation for the previous violation.

B. A person who participates in a regional notification center and who fails to mark or provide information regarding the location of underground utilities and facilities shall be subject to a civil penalty of not more than \$1,000. A subsequent violation shall be deemed to have occurred if a person fails to provide information or markings within two years of the issuance of a prior citation for the same or similar conduct.

C. A person who is required by law to participate in a regional notification center and who fails to provide information or markings to indicate hazardous material as defined in Title 30 of the Louisiana Revised Statutes of 1950 shall be subject to the following:

1. for the first violation, a civil penalty of not more than \$250;
2. for a second violation, a civil penalty of not more than \$500;
3. for a third violation, a civil penalty of not more than \$1,000;
4. for a fourth and each subsequent violation, a civil penalty of not less than \$2,000 nor more than \$25,000.

D. An excavator or demolisher who is unable to provide to law enforcement the locate request number assigned by the regional notification center for the specific excavation shall be considered to be in violation of R.S. 40:1749.13, shall stop all excavations immediately and shall be subject to the following:

1. for the first violation, a civil penalty of not more than \$250;
2. for a second violation of a similar nature within a two-year period from the previous violation, a civil penalty of not more than \$500;
3. for a third violation of a similar nature within a two-year period from a previous violation, a civil penalty of not more than \$1,000;
4. for a fourth and each subsequent violation of a similar nature within a two-year period from the previous violation, a civil penalty of not less than \$2,000 nor more than \$25,000;
5. for any violation involving hazardous materials as defined in Title 30 of the Louisiana Revised Statutes of 1950, a civil penalty of not less than \$2,000 nor more than \$25,000;
6. an excavator or demolisher who is issued a citation for a violation shall immediately stop all excavation or demolition activity until the requirements of this Part are met. Failure to do so shall subject the excavator or demolisher to an additional citation and civil penalty of not more than \$25,000 for each such subsequent citation issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:93 (January 2000).

#### **§2115. Report of Adjudication**

A. Proceedings and adjudication for the levying of civil penalties under this law shall be conducted by the division of administrative law in accordance with regulations adopted pursuant to the Administrative Procedure Act.

B. A local governmental subdivision, except justice of the peace courts, enforcing the provisions of this Part may establish a procedure for adjudication of violations and levying of civil penalties in accordance with the provisions of this Part. Such procedure shall include:

1. the fixing of a schedule of civil penalties and costs for the various offenses within the limits of such penalties as are set by law;
2. providing that any person cited for a violation of the provisions of this Part may plead guilty or no contest before an officer designated by the local governmental subdivision;
3. that the adjudication shall conform to the requirements of the Administrative Procedure Act;
4. the final report of adjudication issued pursuant to R.S. 40:1749.23(D) shall be sent within 30 days to the department by certified mail return receipt requested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:94 (January 2000).

#### **§2117. Collection and Distribution of Fees, Fines, or Civil Penalties: Underground Damages Prevention Fund**

A. All civil penalties shall be paid to the state treasury for credit to the underground damage prevention fund, and shall be disbursed as follows:

1. 34 percent shall be retained by the underground damages prevention fund;
2. upon request for disbursement by the agency, within one year of the civil penalty being deposited into the underground damages prevention fund, funds shall be disbursed as follows:
  - a. 50 percent shall be disbursed to the local law enforcement agency that issued the citation if the citation was adjudicated by the local governmental subdivision; or
  - b. 50 percent shall be disbursed to the state law enforcement agency that issued the citation if the citation was adjudicated by the state; or

c. 25 percent shall be disbursed to the local law enforcement agency that issued the citation and 25 percent retained in the fund if such citation was adjudicated by the state;

3. if the local governing authority:

a. is a member of or participates in a regional notification center; upon request for disbursement by the local governing authority within one year of the civil penalty deposited into the underground damages prevention fund, 16 percent shall be disbursed to the local governing authority of the area in which the violation occurred to be used solely for purposes of compliance with Louisiana Underground Utilities/Facilities Damage Prevention Law;

b. is not a member of nor participates in a regional notification center, but establishes and operates a violations bureau pursuant to R.S. 1749.23(D), then upon request for disbursement by the local governing authority within one year of the civil penalty deposited into the underground damage prevention fund, 16 percent shall be disbursed to the local governing authority for each violation adjudicated by the violations bureau of that local governing authority;

c. otherwise, the amount shall be retained in the underground damages prevention fund and distributed per §2117.A.1 and 2 of this Part.

B. All funds received by the Department of Public Safety and Corrections under the provisions of this Part shall be retained in the Underground Damages Prevention Fund.

C. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, an amount equal to that deposited as required by Subsection B of this Section shall be credited to a special fund hereby created in the state treasury to be known as Underground Damages Prevention Fund. After disbursements as authorized in this Section, the monies in this fund shall be used solely as provided by Subsection D of this Section and only in the amounts appropriated by the legislature. All unexpended and unencumbered monies in this fund at the end of the fiscal year shall remain in such fund. The monies in this fund shall be invested by the state treasurer in the same manner as monies in the state general fund and interest earned on the investment of these monies shall be credited to this fund, following compliance with the requirement of Article VII, Section 9(B) relative to the Bond Security and Redemption Fund.

D. The monies in the Underground Damages Prevention Fund shall be used by the Department of Public Safety and Corrections solely for enforcement of the provisions of the Louisiana Underground Utilities/Facilities Damage Prevention Law, and may include expenditure for information and programs designed to enhance awareness of duties and responsibilities of persons under the provisions of this statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1749.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:94 (January 2000), amended LR 40:1112 (June 2014).