

**COLORADO DEPARTMENT OF
LABOR AND EMPLOYMENT
DIVISION OF OIL AND PUBLIC SAFETY
UNDERGROUND DAMAGE PREVENTION
SAFETY COMMISSION REGULATIONS**

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Effective: June 14, 2019



UNDERGROUND DAMAGE PREVENTION SAFETY COMMISSION REGULATIONS

**COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT
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ARTICLE 1 GENERAL PROVISIONS

Section 1-1 Statement of Basis and Purpose

These regulations are promulgated to establish rules for the Underground Damage Prevention Safety Commission (Safety Commission) responsibilities within the Excavation Requirements Act §§ 9-1.5-101, et. seq., C.R.S. (the Act). The purpose of the Safety Commission is to prevent injury to persons and damage to property.

Section 1-2 Statutory Authority

These regulations have been created pursuant to Section 104.2 (2)(d) and 104.2(6)(a) of the Act.

Section 1-3 Effective Date

These regulations shall be effective on June 14, 2019. The previous version of these regulations were filed as an emergency rule that was effective February 14, 2019.

Section 1-4 Definitions

Terms in these regulations shall have the same definitions as those found in the Act or as defined below.

DAMAGE. Includes the penetration or destruction of any protective coating, housing, or other protective device of an underground facility, the denting or partial or complete severance of an underground facility, or the rendering of any underground facility inaccessible.

EMERGENCY SITUATIONS. Includes ruptures and leakage of pipelines, explosions, fires, and similar instances where immediate action is necessary to prevent loss of life or significant damage to property, including, without limitation, underground facilities, and advance notice of proposed excavation is impracticable under the circumstances.

EXCAVATION. Any operation in which earth is moved or removed by means of any tools, equipment, or explosives and includes augering, backfilling, boring, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, hydro excavating, postholing, and tunneling. "Excavation" does not include:

- (1) Routine maintenance on existing planted landscapes; or
- (2) An excavation by a rancher or a Farmer, as defined in Section 42-20-108.5, C.R.S., occurring on a ranch or farm when the excavation involves:
 - (a) Any form of existing agricultural activity that is routine for that ranch or farm;
 - (b) Land clearing if the activity does not involve deep ripping or deep root removal of trees or shrubs; or
 - (c) Routine maintenance of:
 - (i) An existing irrigation facility if the facility has been subjected to maintenance in the previous 24 months; or
 - (ii) Existing fence lines.

FARMER. A person or such person's agent or contractor engaged in the production or raising of crops, poultry, or livestock.

FRIVOLOUS COMPLAINT. A complaint filed with the Safety Commission that is entirely without merit and is made with the intention of causing inconvenience, harassment or expense.

GRAVITY-FED SYSTEM. Any underground facility that is not pressurized and that utilizes gravity as the only means to transport its contents. These systems include sanitary sewer lines, storm sewer lines, and open-air irrigation ditches.

LICENSED PROFESSIONAL ENGINEER. A professional engineer as defined in Section 12-25-102, C.R.S.

NOTIFICATION ASSOCIATION. The statewide notification association of owners and operators of underground facilities created in Section 9-1.5-105, C.R.S., also known as Colorado 811 and the Utility Notification Center of Colorado.

OPERATOR or OWNER. Any person, including public utilities, municipal corporations, political subdivisions, or other persons having the right to bury underground facilities in or near a public road, street, alley, right-of-way, or utility easement. Operator or owner in these regulations does not include any railroad.

PERSON. Any individual acting on his or her own behalf, sole proprietor, partnership, association, corporation, or joint venture; the state, any political subdivision of the state, or any instrumentality or agency of either; or the legal representative of any of them.

ROUTINE MAINTENANCE. A regular activity that happens at least once per year on an existing planted landscape if earth is not disturbed at a depth of more than twelve inches by nonmechanical means or four inches by mechanical means and if the activities are not intended to permanently lessen the ground cover or lower the existing ground contours. Mechanical equipment used for routine maintenance tasks includes aerators, hand-held rototillers, soil injection needles, lawn edgers, overseeders, and hand tools.

SAFETY COMMISSION. Also known as the "Underground Damage Prevention Safety Commission." The enforcement authority as established by statute.

SUBSURFACE UTILITY ENGINEERING NOTIFICATION. A notice to the notification association that a project is being designed by a licensed professional engineer and that the project will include the investigation and depiction of existing underground facilities that meet or exceed the ASCE 38 standard.

SUBSURFACE UTILITY ENGINEERING-REQUIRED PROJECT. A project that meets all of the following conditions:

- (1) The project involves a construction contract with a public entity, as that term is defined in Section 24-91-102, C.R.S.;
- (2) The project involves primarily horizontal construction and does not involve primarily the construction of buildings;
- (3) The project:
 - (a) Has an anticipated excavation footprint that exceeds two feet in depth, not including rotomilling, and is a contiguous one thousand square feet, not including fencing and signing projects; or
 - (b) Involves utility boring.
- (4) The project requires the design services of a licensed professional engineer.

UNDERGROUND FACILITY. Any item of personal property which is buried or placed below ground for use in connection with the storage or conveyance of water or sewage, electronic, telephonic, or telegraphic communications or cable television, electric energy, or oil, gas, or other substances. An item of personal property, as used in this definition, includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments thereto.

VIOLATION. A determination by the Safety Commission that a violation of the Act has occurred.

VIOLATION, MAJOR. A major violation includes, but is not limited to, a violation that the Review Committee finds to be in blatant disregard of the best practices and the potential for injury to the public or property is highly probable.

VIOLATION, MINOR. A minor violation includes, but is not limited to, a frivolous complaint or a violation that the Review Committee finds to be valid and the potential for injury to the public or property is not a factor.

VIOLATION, MODERATE. A moderate violation includes, but is not limited to, a violation that the Review Committee finds to be not within best practices and the potential for injury to the public or property is foreseeable.

Section 1-5 Scope

These regulations apply to requirements defined in Sections 104.2, 104.4, 104.7 and 104.8 of the Act, although they may refer to other Sections of the Act.

Section 1-6 Codes and Standards

The following codes, documents or standards are incorporated by reference and may be purchased from the mailing addresses or websites listed with the title of each Institute or Association:

(1) **American Society of Civil Engineers (ASCE)**, 1801 Alexander Bell Drive, Reston, VA 20191; <https://ascelibrary.org/>

(a) Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data (ASCE 38-02)

Interested parties may inspect the referenced incorporated materials by contacting the Division of Oil and Public Safety at 633 17th Street, Suite 500, Denver, Colorado, 80202.

This rule does not include later amendments to or editions of the incorporated material.

Section 1-7 Safety Commission

The Safety Commission will conduct itself according to its adopted Bylaws and Code of Conduct, and these regulations.

ARTICLE 2 ENFORCEMENT OF VIOLATIONS

Section 2-1 Enforcement Process

The Safety Commission provides these regulations to denote its process for reviewing complaints and conducting hearings. When a person is found to be in violation of the Act and/or these regulations, the Safety Commission will pursue penalties or remedial actions against the person.

Section 2-2 Complaints

- (1) The Safety Commission may review complaints from any person of alleged violations of the Act.
 - (a) A person who brings a frivolous complaint, as determined by the Safety Commission, commits a minor violation and is subject to a fine.
 - (b) The person filing the complaint may voluntarily withdraw the complaint prior to a hearing.
- (2) The review of a complaint shall be completed by a review committee (Review Committee). The Review Committee shall:
 - (a) Be comprised of three to five members of the Safety Commission.
 - (b) Have an equal number of members representing excavators and owners/operators.
 - (c) Include at least one member who does not represent either excavators or owners/operators.
- (3) The complaint process shall include:
 - (a) A complaint form, and if applicable a damage form, being completed and submitted to the Safety Commission.
 - (b) Within 90 days of the complaint form being received a hearing will be scheduled.
 - (i) Both the person filing the complaint and the alleged violator will be sent hearing notification letters to advise them of the logistics for the hearing.
 - (ii) Both parties shall receive a copy of the complaint form, and, if applicable, a damage form.
 - (iii) The scheduled hearing date may be modified by mutual agreement of all parties and rescheduled when the Review Committee is available.
 - (c) If applicable, the Safety Commission will file a Data Request Form with Colorado 811 to gain ticket information.

Section 2-3 Hearing

- (1) Hearings shall be conducted in the following manner, unless otherwise directed by the Review Committee:
 - (a) Presentation of positions - every party to the proceeding shall have the right to present its case by oral and documentary evidence and shall provide eight copies of supporting documentation at the time of the hearing.

(b) The Review Committee shall utilize the complaint and damage forms (as applicable), presentations, the response to the Colorado 811 Data Request Form, and committee members' experience in the field in its discussion and finding of facts.

(c) Any member of the Review Committee may ask questions of any person involved in the hearing.

(2) Hearings shall be conducted in the following order, unless otherwise directed by the Review Committee:

(a) Complaint Report number is called.

(i) Introduction of Review Committee members and explanation of the proceedings.

(ii) Determination of whether any Review Committee members have a conflict of interest; this can be determined prior to the formation of a Review Committee, and will be reviewed at the start of the hearing.

(b) Presentation of position and submittal of documentation or other materials by the person filing the complaint.

(c) Presentation of position and submittal of documentation or other material by the person alleged to be in violation, in the complaint.

(d) Rebuttal by the person filing the complaint.

(e) Questions from the Review Committee to both parties.

(f) Discussion by the Review Committee on the findings of fact and recommendations for remedial action (if applicable).

(3) Maximum time allowed for hearings shall be the following, unless otherwise directed by the Review Committee:

(a) Each party shall have 20 minutes to present its case.

(i) The Review Committee may allow additional time for presentations.

(ii) If the Review Committee grants additional time to one person, the same amount of additional time will be offered to the other person.

(b) The person filing the complaint shall have five minutes for rebuttal.

(c) The Review Committee shall take as much time as is necessary to ask questions and discuss the complaint.

(4) Burden of Proof

(a) The person filing the complaint has the burden to prove by a preponderance of the evidence that the alleged violator committed a violation.

(5) Application of Technical Knowledge

(a) The Review Committee may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.

- (b) The Review Committee may take notice of general, technical, or scientific facts within its knowledge, but only if the facts so noticed are specified in the record or are brought to the attention of the persons involved in the complaint before the final decision and both the person filing the complaint and the person alleged to be in violation are afforded an opportunity to controvert the facts so noticed.

(6) Representation by Counsel

- (a) Any person permitted or compelled to testify or to submit data or evidence shall be entitled to the benefit of legal counsel of his or her own choosing and at his or her own expense, but a person may appear for his or her self.
- (b) An attorney who is a witness may not act as counsel for the person involved in the hearing.

Section 2-4 Final Decision

(1) Review Committee's Finding of Facts:

- (a) After due consideration of written and oral statements, and accompanying documentation, the Review Committee shall determine whether a violation of the law has occurred and, if appropriate, recommend remedial action, or make such determination of the matter as it shall deem appropriate consistent with the Act.
- (b) Within seven business days after the completion of the hearing, the Review Committee shall provide to the Safety Commission a report of its findings and recommendations.

(2) Safety Commission's Final Determination:

- (a) The Safety Commission shall review the Review Committee's findings and recommendations at its next scheduled meeting.
 - (i) The Safety Commission is bound by the Review Committee's findings of fact and decision.
 - (ii) The Safety Commission may adjust the Review Committee's recommendation of remedial action or penalty if an adjustment is supported by at least 12 members of the Safety Commission.
- (b) Within 10 business days after the Safety Commission's meeting to review the Review Committee's findings and recommendations, the Safety Commission shall provide both parties involved in the complaint a summary of the Review Committee's findings and the Safety Commission's final determination with respect to any required remedial action or penalty.
- (c) The decision of the Safety Commission is a final agency action subject to review by the District Court pursuant to Section 24-4-106, C.R.S.

Section 2-5 Remedial Actions

- (1) A recommendation of remedial action that includes a fine requires a unanimous vote of the Review Committee.
- (2) The Review Committee shall not recommend remedial action or a fine against a homeowner, rancher or Farmer (as defined), unless the Review Committee finds by clear and convincing evidence that a violation of the law has occurred.

- (3) The Safety Commission may consider training, support services or other remediation measures that will improve the behavior of the person found in violation.
- (4) Guidance for the recommendation of remedial action shall be consistent with the following principles:
 - (a) Whether the alleged violation is classified as a Minor, Moderate or Major violation (as defined).
 - (b) For a person who has not had a violation in the previous 12 months, the Safety Commission may consider alternatives to fines.
 - (c) The number of violations, relative to the number of notifications received, are a part of the consideration.
 - (d) The maximum fines are set forth in Table 2-5.

Table 2-5: Potential Enforcement Penalties				
Type of Violation	Number of Violations within the previous 12 months			
	1	2	3	4
Minor	\$250	\$500	\$1,000	\$5,000
Moderate	\$1,000	\$2,500	\$5,000	\$25,000
Major	\$5,000	\$25,000	\$50,000	\$75,000

Section 2-6 Home Rule Entity

- (1) This enforcement process shall not apply to a home rule county, city and county, municipality, or power authority established pursuant to Section 29-1-204 (1), C.R.S.; except that if the Safety Commission identifies an alleged violation by the home rule entity, the Safety Commission shall:
 - (a) Inform the home rule entity of the alleged violation.
 - (b) If requested by the home rule entity, suggest corrective action.
- (2) Every home rule entity described in subsection (1) shall:
 - (a) Adopt by resolution, ordinance, or other official action either:
 - (i) Its own damage prevention safety program similar to that established pursuant to the Act; or
 - (ii) A waiver that delegates its damage prevention safety program to the Safety Commission.
 - (b) Notify the Safety Commission of the decision in subsection (a).

ARTICLE 3 BEST PRACTICES

(1) The Safety Commission shall advise the Notification Association and other state agencies, the general assembly, and the local government on:

- (a) Best practices and training to prevent damage to underground utilities.
- (b) Policies to enhance public safety, including the establishment and periodic updating of industry best standards, including marking and documentation best practices and technology advancements.
- (c) Policies and best practices to improve efficiency and cost savings to the Colorado 811 program, including the review, establishment, and periodic updating of industry standards, to ensure the highest level of productivity and service for the benefit of both excavators and owners and operators.