

Document: Proposed Rule, **Register Page Number:** 29 IR 59
Source: October 1, 2005, Indiana Register, Volume 29, Number 1

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**TITLE 105 INDIANA DEPARTMENT OF
TRANSPORTATION**

Proposed Rule
LSA Document #05-161

DIGEST

Adds 105 IAC 13 to establish a formal procedure for relocations of utility facilities by providing for an exchange of information between the users of state highway right-of-way, transportation contractors and the Department. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Business

Indiana Code 4-22-2.1-5 requires an agency to submit to the Legislative Services Agency and the Indiana Economic Development Corporation a statement of the economic impact of any proposed rule with an economic impact on small businesses. The IEDC is required to review the rule and submit written comments to the agency no later than seven days before the public hearing. The proposed rule, as mandated by SEA 513-2005, is primarily the product of a Task Force which included the groups to be affected by the rule, specifically representatives of utilities, highway contractors, design consultants and the department. The analysis of the rule by the Task Force and the department found no adverse economic impact on small business. Therefore the department did not submit a statement of economic impact to the Legislative Services Agency and the Indiana Economic Development Corporation.

105 IAC 13

SECTION 1. 105 IAC 13 IS ADDED TO READ AS FOLLOWS:

ARTICLE 13. UTILITY RELOCATIONS ON CONSTRUCTION CONTRACTS

Rule 1. General Provisions

105 IAC 13-1-1 Purpose of rule

Authority: IC 8-23-2-5; IC 8-23-2-6

Affected: IC 8-1-26

Sec. 1. (a) The department is authorized to manage the public rights-of-way of state highways. The purpose of this rule is to establish a formal procedure for highway improvement projects that involve the relocation of utility facilities by providing for the exchange of information and the implementation of their respective responsibilities among the department, utilities, and the contractor.

(b) This rule is not intended to modify liability under IC 8-1-26. (*Indiana Department of Transportation; 105 IAC 13-1-1*)

105 IAC 13-1-2 Applicability

Authority: IC 8-23-2-5; IC 8-23-2-6

Affected: IC 8-23-2

Sec. 2. (a) This rule applies to improvement projects, as defined in section 3(8) of this rule, that have utility facilities within the limits of the improvement project when the design process:

(1) is begun after the effective date of this rule; or

(2) has commenced before the effective date of the rule if the:

(A) affected utility has been afforded the notice and response times set out in this rule; and

(B) notices provided were in substantial compliance with notification requirements of this rule.

(b) The department may require a utility to comply with a shortened process or expedited schedule where an emergency exists that could affect public safety or the structural or functional integrity of the highway facility.

(c) Whenever the rule requires information, documents, or other notices to be delivered or provided to the department, it shall mean to the department's highway-utility manager unless the department has directed the utility in writing to a specific representative or office. (*Indiana Department of Transportation; 105 IAC 13-1-2*)

105 IAC 13-1-3 Definitions

Authority: IC 8-23-2-5; IC 8-23-2-6

Affected: IC 8-1-9-2

Sec. 3. The following definitions apply throughout this article:

- (1) "Authorized representative" means the person named by the utility as their official contact person.
- (2) "Business day" means any calendar day of the year exclusive of Saturday, Sunday, and state declared holidays.
- (3) "Compensable work" means utility facility alteration or relocation work for which the department will reimburse the utility facility owner under Indiana law.
- (4) "Contractor" means the person or entity that enters into an improvement project contract with the department, including subcontractors and suppliers.
- (5) "Day" means any calendar day of the year. If more than one (1) day, the term includes any consecutive day or days of any year or years.
- (6) "Department" means the Indiana department of transportation (INDOT) or any consultant or local agency acting on behalf of the department.
- (7) "Highway" means any roadway:
 - (A) under the jurisdiction of the department; or
 - (B) where a department-administered project is planned.
- (8) "Improvement" or "improvement project" means the construction, reconstruction, rehabilitation, and process incidental to building, fabricating, or bettering any:
 - (A) state, United States, or interstate route;
 - (B) projects within the state parks or other roadways the department is required by statute to build and maintain;
 - (C) local project administered by the department and federally funded; and
 - (D) project on the state highway system administered by a local authority.The term shall not include routine maintenance.
- (9) "Initial notice" means a written notice denoted as an "Initial Notice" that is:
 - (A) prepared by the department for an improvement project; and
 - (B) mailed to the utility under section 4(c) of this rule.
- (10) "Letting date" means the date the department receives and opens bids for an improvement.
- (11) "Mail" means a written transmittal sent to the addressee by U.S. mail or other approved means.
- (12) "Major project" means an improvement that:
 - (A) due to scope or complexity typically involves a long term design process of more than twelve (12) months; or
 - (B) is otherwise designated by the department as a major project.
- (13) "Minor project" means an improvement that:
 - (A) due to scope or complexity typically involves a short term design process of less than twelve (12) months; or
 - (B) is otherwise designated by the department as a minor project.
- (14) "Noncompensable work" means utility facility alteration or relocation work that the utility owner must carry out without cost to the department.
- (15) "Project plan" means the plans for the improvement project suitable for the design of utility facility alterations or relocations that the department sends to the utility.
- (16) "Ready for contract" means the date when the highway project design process will be complete with plans and specifications ready to advertise for bids for construction. This date is subject to change depending on the actual design progress.
- (17) "Utility" means the owner of a utility as defined in IC 8-1-9-2(a). The term includes cable television systems.
- (18) "Work plan" means a plan of the utility to carry out utility facility alteration or relocation work to accommodate an improvement project of the department.

(*Indiana Department of Transportation; 105 IAC 13-1-3*)

105 IAC 13-1-4 Identification and notification

Authority: IC 8-23-2-5; IC 8-23-2-6

Affected: IC 8-1-26

Sec. 4. (a) Each utility shall submit the:

- (1) name;
- (2) street address;
- (3) mailing address;
- (4) phone number;
- (5) fax number; and
- (6) e-mail address;

of its authorized representative to the department in January of each year. If the authorized representative changes, the department shall be notified within thirty (30) days.

(b) The department shall make a reasonable effort to do the following:

(1) Determine what utility facilities are located within the right-of-way of a proposed improvement project, which shall include, but not be limited to, the following:

- (A) Researching permit files.**
- (B) Reviewing map files maintained by the department.**
- (C) Field investigation.**
- (D) Contact with one-call locating services.**
- (E) Through contacts with local governmental units.**

(2) Identify each utility determined in subdivision (1) by name.

(c) The department shall mail to the identified utility the initial notice of the proposed improvement project.

(d) The notification shall include the following:

- (1) The name or route number, or both, of the highway.**
- (2) The geographical limits of the improvement.**
- (3) A general description of the work to be done.**
- (4) An estimated date that an approved work plan will be needed.**
- (5) The anticipated ready for contract date.**

The designer and other contact information shall be provided, if available. The anticipated schedule shall be updated with each submission from the department.

(e) Within thirty (30) days of the receipt of the initial notice, the utility shall do the following:

(1) Respond by mail to the department to:

- (A) describe the type and location of any and all utility facilities it has in the vicinity of the proposed improvement; or**
- (B) advise that it has no facilities in the vicinity of the proposed improvement.**

(2) Provide the department with detailed location information for all its buried utilities in the vicinity of the proposed improvement including horizontal location within an accuracy of plus or minus two (2) feet and approximate depths. Unless the department and the utility mutually agree on some other format or timetable for exchange of this information, the utility will do the following:

- (A) Mark the locations in the field in a manner as prescribed in IC 8-1-26.**
- (B) Notify the department at least two (2) business days before commencing the placement of the markings.**
- (C) Complete the placement of the markings within thirty (30) days of receipt of the initial notice.**

The department will be responsible for measuring and recording the locations of the field markings.

(f) The department will list and identify the locations of all known utility facilities, on one (1) or more plan sheets. (Indiana Department of Transportation; 105 IAC 13-1-4)

105 IAC 13-1-5 Verification of existing facilities

Authority: IC 8-23-2-5; IC 8-23-2-6

Affected: IC 8-23-2

Sec. 5. (a) The department shall mail each utility a copy of the plan identified in section 4(f) of this rule that shows all existing utility facilities known to the department that are:

- (1) within the right-of-way; or
 - (2) in the vicinity of;
- the improvement project.

(b) Each utility shall do the following:

- (1) Review the accuracy of the plan as to the existing utility facilities.
- (2) Detail any inaccuracies by written reply to the department within thirty (30) days of receipt.
- (3) Reply whether or not the information is accurate.

Failure to reply, however, within the allotted time shall be deemed verification that the plans are accurate. (*Indiana Department of Transportation; 105 IAC 13-1-5*)

105 IAC 13-1-6 Project and work plans

Authority: IC 8-23-2-5; IC 8-23-2-6

Affected: IC 4-21.5-3

Sec. 6. (a) In conjunction with the mailing in section 5(a) of this rule or as a separate mailing later, the department shall prepare preliminary plans that shall be mailed to the involved utilities. Each utility shall do the following:

- (1) Review the submitted preliminary plans.
- (2) Indicate any conflicts between its facility or facilities and the proposed improvement project in writing to the department within:
 - (A) sixty (60) days of receipt for major projects; or
 - (B) thirty (30) days of receipt for minor projects.
- (3) Reply whether or not there are conflicts.

Failure to timely reply, however, shall be deemed an indication of no conflicts. In the event of conflicts, the utility may recommend design changes for the improvement project to minimize utility costs or delays. The department will review the recommended changes and implement the changes where appropriate.

(b) Upon completion of the preliminary plan development, the department will proceed with the development of final plans for the improvement project. The department shall mail to the utility a copy of the preliminary final plans for the improvement project, generally before those plans are complete, but which shall have sufficient detail to allow the preparation of the utility relocation work plan. The utility shall use the plans to develop and provide to the department its work plan. A work plan shall be submitted:

- (1) whether or not any actual relocation is required; and
- (2) within:
 - (A) sixty (60) days of receipt for a minor project; and
 - (B) one hundred twenty (120) days for a major project.

Upon a utility's request or on its own initiative, if the department determines there is a potential for conflict between work plans, the department will schedule a meeting, which the utilities are required to attend, to coordinate the work. An additional thirty (30) days will be allowed to furnish the work plan if coordination is required with another utility or utilities. Additional time may be allowed by the department for unusually complex or extensive relocations, but not more than one hundred eighty (180) days.

(c) The work plan shall include the following:

- (1) A narrative description of what work will be required.
- (2) Whether the work is dependent on work:
 - (A) by another utility; or
 - (B) to be done by the department or contractor;with a description of the work.
- (3) Whether the utility is willing to consider allowing the contractor to do the needed work as part of the highway contract.
- (4) The earliest date when the utility could begin to implement the work plan and the number of calendar days that will be required to complete the work.
- (5) The expected lead time in calendar days:
 - (A) to obtain any required permits; and

- (B) required for obtaining materials and scheduling work crews.
- (6) A drawing showing the proposed location of the relocated facilities.

(d) For compensable work, in addition to the items specified in subsection (c), the work plan shall include an estimate of cost for utility facilities relocation including appropriate credits for betterments and documentation of easements and compensable land rights. A highway/utility agreement or subordination agreement, if required, or both, shall be executed at this time.

- (e) The department shall review the work plan to ensure the following:
 - (1) Compatibility with department permit requirements.
 - (2) The highway improvement plans and construction schedule.
 - (3) Reasonableness of the following:
 - (A) The relocation scheme.
 - (B) The cost for compensable work.

If the work plan submitted by the utility is not compatible or reasonable, the department shall notify the utility by mail as soon as practicable. The utility shall submit a revised work plan within thirty (30) days of receipt of the notice by the department. The department shall review the revised work plan, and, if the work plan is still not compatible or reasonable, the department will prepare an alternative work plan for submission to the utility. Within thirty (30) days of receipt by the utility of the alternative plan, the utility may accept the alternative plan or request, in writing, specific changes. The department shall review any changes requested to the alternative plan. The department shall adopt a final alternative plan that considers the interests of the utility, contractor, and public, to assure safety and reliability and avoid the imposition of unnecessary and unreasonable costs. The final work plan adopted by the department will be considered a final agency action, subject to appeal under IC 4-21.5-3.

(f) The department shall notify the utility by mail as soon as practicable whether its work plan or alternative plan is approved. (*Indiana Department of Transportation; 105 IAC 13-1-6*)

105 IAC 13-1-7 Construction

Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-2

Sec. 7. (a) The department shall notify the utility, by mail, not less than thirty (30) days before the utility is required to begin the implementation of the approved work plan. The utility shall acknowledge the notification by mail within fifteen (15) days.

(b) The department will include or reference a copy of each work plan in the highway contract.

- (c) If the utility's approved work plan is dependent on work by the contractor, the contractor shall do the following:
 - (1) Provide the department and the utility a good faith notice not less than fifteen (15) days before the contractor's work is expected to be complete and ready for the utility to implement its work plan.
 - (2) Follow up with a confirmation notice to the department and the utility not less than three (3) business days before the contractor's work will be completed so that the utility may implement the work plan.

(d) The utility shall notify the department and contractor, if identified, as follows:

- (1) At least five (5) days before beginning fieldwork within the right-of-way.
- (2) When the work is complete.

The notifications may be verbal, but must be confirmed by written notice within five (5) days of starting and completing the work, respectively. (*Indiana Department of Transportation; 105 IAC 13-1-7*)

105 IAC 13-1-8 Work plan revisions

Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-2

Sec. 8. (a) If, before the letting date of the highway improvement project, the department's project plan is changed so that additional utility relocation or adjustment work is found necessary:

- (1) the department shall furnish a revised project plan under section 6 of this rule; and
- (2) the utility shall provide the department with a revised work plan under section 6 of this rule, except that the time allowed for the utility to submit the revised work plan after receipt of the revised project plan shall not exceed sixty (60) days.

Revisions to the highway project plan shall be identified to the utility.

(b) If, after the letting date of the highway improvement project, additional utility relocation or adjustment work is found necessary, the department shall provide notice to the utility to prepare an expedited work plan as soon as practicable for submission to the department.

(c) A utility may submit a revised work plan that must be considered by the department if more than one (1) year has passed since the department approved the utility's work plan but not after the highway project ready for contract date. The department may require the utility to proceed with the previously approved work plan. *(Indiana Department of Transportation; 105 IAC 13-1-8)*

105 IAC 13-1-9 Responsibilities

Authority: IC 8-23-2-5; IC 8-23-2-6

Affected: IC 8-1-26

Sec. 9. (a) The utility, contractor, and department shall perform the duties imposed by the approved work plan, contract, and this rule within the time frames specified.

(b) Factors that shall excuse a utility from meeting the deadlines in their approved work plan include the following:

(1) The alteration or relocation was impacted by any of the following:

(A) Significantly differing site conditions.

(B) Unexpected impacts of other utilities.

(C) Other unforeseen circumstances that could not have been reasonably anticipated through due diligence.

(D) A force majeure event.

(2) Occurrence of severe weather or other factors beyond the control of the utility directly affecting the work plan completion.

(3) The final project plans differ substantially from the plans provided the utility under section 6(b) of this rule.

(4) If the utility's facility is discovered during the process required by IC 8-1-26, has not been previously identified as being within the project limits, and the utility can show the following:

(A) The facility was installed after the date the department identified the affected utilities under section 4(b) of this rule.

(B) A proper permit was obtained for the installation of the facility from the department.

(c) If a utility's work plan requires adjustment due to the occurrence of one (1) or more factors enumerated in subsection (b), the department and the utility shall proceed as directed in section 8(b) of this rule. *(Indiana Department of Transportation; 105 IAC 13-1-9)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 27, 2005 at 10:00 a.m., at the Indiana Government Center-North, 100 North Senate Avenue, Room N755, Bay Window Conference Room, Indianapolis, Indiana the Indiana Department of Transportation will hold a public hearing on proposed new rules related to utility facility relocations on certain construction projects.

The Department of Transportation is required to adopt these rules by IC 8-23-2-5. Since the proposed rule merely formalizes activities that are already being performed by affected parties, no adverse economic impact is anticipated. It is believed that no small business will be subject to this rule; however, if affected, since these duties are already being performed and this rule merely formalizes the process, no additional costs are anticipated.

Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room N730 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

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Indiana Department of Transportation

