January 2020 One-Call Law Stakeholder Discussions
Agenda

• Review of revised language.
• Questions regarding proposed language.
• Next-Steps for stakeholder quarterly meetings.
• Other Comments
Process Overview

Proposal of 8 Statutory Revisions:

1. Vacuum Extraction
2. Performance Metrics Reporting
3. Notification Wait Time
4. Electronic Positive Response
5. Utility Operator Response (Second Notice)
6. Digital White Marking
7. Damage Reporting
8. Civil Penalties
9. Damage to Facility – New item for discussion
Process Overview

• Draft language provided to Governor’s Office late August.
• Survey to stakeholders Sept. 4-11.
• Review of survey data and comments.
• Sept. 19, 2019 Stakeholder Meetings
• MNOPS notified that proposal moving forward Oct. 9.
• Finalized revisions provided and comment survey provided Oct. 16.
• Nov. 18-22, 2019 Stakeholder Meetings
• Nov. 27 –Dec. 27, 2019 Utility & Contract Locator Survey
• Dec. 18, 2019 MS216D Revisions
Utility & Contract Locator Survey

- Survey in follow-up to November 2019 Stakeholder Meetings
- Survey sent to approximately 8000 recipients.
- 62 Survey replies received.
1 – Current Performance Metrics

Table 3 lists some Performance Metrics that are already being recorded. Most respondents indicated they record some internal performance metrics regarding locate tickets and damages. 19% reported that they do not record any such performance metrics, 29% reported one metric, and 52% reported more than one metric.

<table>
<thead>
<tr>
<th>Performance Metrics Currently Recorded</th>
<th># of responses</th>
<th>Percentage of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of locate tickets and type (normal, meet, refresh, emergency, etc.)</td>
<td>33</td>
<td>53%</td>
</tr>
<tr>
<td>Timeliness of locates provided (marked by ticket start time, late, delayed, etc.)</td>
<td>25</td>
<td>40%</td>
</tr>
<tr>
<td>Damages to utilities (1st-party, 2nd-party, 3rd-party, etc.)</td>
<td>35</td>
<td>56%</td>
</tr>
<tr>
<td>Other information or comments regarding performance metrics</td>
<td>2</td>
<td>3%</td>
</tr>
<tr>
<td>None</td>
<td>12</td>
<td>19%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>107</strong></td>
<td>**</td>
</tr>
</tbody>
</table>

*Table 3. Performance Metrics Currently Recorded*

**Totals do not equal 100% as respondents could select more than one metric.
Table 4 lists the number and percentage of respondents collecting additional damage data. More than half (58%) reported that they do currently collect damage data, with most collecting several attributes.

<table>
<thead>
<tr>
<th>Damage Data Currently Collected</th>
<th># Responses</th>
<th>Percentage of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility type</td>
<td>25</td>
<td>40%</td>
</tr>
<tr>
<td>Size</td>
<td>18</td>
<td>29%</td>
</tr>
<tr>
<td>Location</td>
<td>31</td>
<td>50%</td>
</tr>
<tr>
<td>Excavator information (name, address, etc.)</td>
<td>29</td>
<td>47%</td>
</tr>
<tr>
<td>Root cause of damage</td>
<td>32</td>
<td>52%</td>
</tr>
<tr>
<td>What type of equipment caused the damage (hand-dig, excavator, horizontal-directional-drill, etc.)</td>
<td>26</td>
<td>42%</td>
</tr>
<tr>
<td>Public safety impacts (outages, injuries, fire, explosion, etc.)</td>
<td>22</td>
<td>35%</td>
</tr>
<tr>
<td>Do you submit CGA DIRT Report Data?</td>
<td>4</td>
<td>6%</td>
</tr>
<tr>
<td>Blank</td>
<td>27</td>
<td>44%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>214</strong></td>
<td><strong>---</strong></td>
</tr>
</tbody>
</table>

Table 4: Damage Data Currently Collected

**Totals do not equal 100% as respondents could select more than one metric.**
3 – Experience with other states that have notification time greater than 48 hours?

Table 5 lists the number of utilities with experience in other states that have notification times greater than 48 hours. Only 11 percent of respondents indicated that they have a presence in states with notification times greater than 48 hours. Comments related to this question are listed in Appendix A – Table 10.

<table>
<thead>
<tr>
<th>Answer</th>
<th>Count</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>55</td>
<td>89%</td>
</tr>
<tr>
<td>Yes</td>
<td>7</td>
<td>11%</td>
</tr>
<tr>
<td>Total</td>
<td>62</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 5. Number and percent of responses with states having notification time greater than 48 hours.

4 – Experience with other states that have ticket life greater than 14 days?

Table 6 list the number of utilities with experience in other states that have ticket life greater than 14 days. Only 11 percent of respondents indicated that they have a presence in states with a ticket life greater than 14 days. Comments related to this question are listed in Appendix A – Table 15.

<table>
<thead>
<tr>
<th>Answer</th>
<th>Count</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>55</td>
<td>89%</td>
</tr>
<tr>
<td>Yes</td>
<td>7</td>
<td>11%</td>
</tr>
<tr>
<td>Total</td>
<td>62</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 6. Number and percent of responses with states having ticket life greater than 14 days.
5 – Currently utilize electronic positive response?

Table 7 lists the number of utilities or contact locators that currently utilize positive response to electronically submit the status of the notification to the one-call center. A majority, or 87 percent, of respondents indicated that they currently submit electronic positive response to Gopher State One-Call. Comments submitted on why electronic positive response is not utilized are listed in Appendix A – Table 18.

<table>
<thead>
<tr>
<th>Answer</th>
<th>Count</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>8</td>
<td>13%</td>
</tr>
<tr>
<td>Yes</td>
<td>54</td>
<td>87%</td>
</tr>
<tr>
<td>Total</td>
<td>62</td>
<td>100%</td>
</tr>
</tbody>
</table>

*Table 7. Number and percentage of responses that utilize electronic positive response.*

6 – Experience with other states that have "second notice"?

Table 8 lists the number of utilities or contact locators with experience with in other states that have a "second notice" provision. Only 5 percent of respondents indicated that they have a presence in states with a "second notice". Comments related to this question are listed in Appendix A – Table 18.

<table>
<thead>
<tr>
<th>Answer</th>
<th>Count</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>59</td>
<td>95%</td>
</tr>
<tr>
<td>Yes</td>
<td>3</td>
<td>5%</td>
</tr>
<tr>
<td>Total</td>
<td>62</td>
<td>100%</td>
</tr>
</tbody>
</table>

*Table 8. Number and percentage of responses with states having "second notice".*
7 – Sample damage data or supporting information

None of the 62 surveys submitted provided any data or supporting information in their submittal.

<table>
<thead>
<tr>
<th>Type of Utility</th>
<th># Reported</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electric</td>
<td>36</td>
</tr>
<tr>
<td>Sewer</td>
<td>20</td>
</tr>
<tr>
<td>Telecom</td>
<td>16</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>12</td>
</tr>
<tr>
<td>Water</td>
<td>8</td>
</tr>
<tr>
<td>Cable TV</td>
<td>6</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
</tr>
<tr>
<td>Steam</td>
<td>1</td>
</tr>
<tr>
<td>Liquid Pipeline</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>103</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Size of Utility</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Small</td>
</tr>
<tr>
<td>Contract Locator</td>
<td>1</td>
</tr>
<tr>
<td>Utility (Utility)</td>
<td>34</td>
</tr>
<tr>
<td>Total</td>
<td>35</td>
</tr>
</tbody>
</table>
MNOPS is proposing changes to Subd. 5 of MS216D.01 to incorporate the use of vacuum excavation.

Subd. 5. Excavation. "Excavation" means an activity that moves, removes, or otherwise disturbs the soil by use of a motor, engine, hydraulic or pneumatically powered tool, or machine-powered equipment of any kind, or by explosives. Excavation does not include:

(7) vacuum excavation equipment, when:

1. Used by facility operators in a careful and prudent manner for the purposes of locating and marking its own facilities in response to a notice after all facility operators have responded to that notice or have otherwise coordinated with those facility operators; or

2. Used by excavators in a careful and prudent manner to determine the precise location of a marked underground facility in accordance with MS216D Subd. 4(a) and any provisions communicated to the excavator by the facility operator.
1 - MS216D.01 Definitions - Vacuum Excavation

**Rationale**

1. Vac-ex currently meets the definition of excavation.
2. Update statute allowing vac-ex for locating utilities.
3. Clarify that a one-call ticket is required with vac-ex.
4. Require vac-ex to be performed in a careful and prudent manner.
Proposed Change: Changed Since Last Meeting

MNOPS proposes adding a Subd. 5 to MS216D.03 with the following language:

Subd. 5. Excavation Notice System Metrics. The notification center shall collect all utility-damage reporting required by MS216D.06. In addition, the notification center shall provide each operator with performance metrics in response to excavation notices required by MS216D.04 - Performance Reporting.

(a) The notification center shall provide a quarterly report to each utility operator comprising the following information:

(1) Number of notifications by type;
(2) Percentage of normal tickets with electronic status indicating marked by the start time on the notification;
(3) Number of damages by causes; and
(4) Any other information determined by the notification center board of directors and commissioner.

(b) The notification center shall make all reporting performance metrics and the information contained in each notice required by MS216D.02 available upon request by the reports available to the commissioner upon request. The notification center shall publish an annual report summarizing operator performance reporting.
Rationale

1. Track utility damage prevention performance.

2. Measure timeliness and accuracy.

3. Utilize data as needed for enforcement in follow-up to a complaint.

4. Utilize data as needed to assess the adequacy of the One-Call-Law.

5. Information made available to MNOPS.

6. More specificity added in follow-up to stakeholder feedback.
Proposed Change: Removed following September 19th Meeting

MNOPS is proposing changes to Subd. 1 of MS216D.04 to require notification be made by an excavator 72 hours prior to excavation instead of the current 48 hours.
Proposed Change: Changed Since Last Meeting

MNOPS is proposing changes to Subd. 3 and adding section (h) of MS216D.04 to require electronic positive response. The revised language reads as follows:

(h) Prior to the excavation start time on the notice, an operator shall provide an electronic status to the notification center. The operator shall electronically submit all updates promptly to the notification center. Operators with less than 500 notifications received in the previous calendar year are exempt from this requirement.
Rationale

1. Minnesota has required positive response by:
   - **Marking utilities,**
   - **Clearing onsite,** or
   - **Responding electronically**

2. This proposal requires what many utility operators are already providing -- an **electronic** status to the notification center.

3. Provide more accurate performance metrics when tracking the timeliness of locates.

4. **Added exemption for electronic positive response for small utilities in follow up to stakeholder feedback.**
Proposed Change: Removed following Nov. 18-22 Meetings

MNOPS proposes changes to Subd. 3 and adding section (h) of MS216D.04 to require electronic positive response. MNOPS proposes changes MS216D.04 to incorporate a second notification process in the event of missing or incorrect markings.
Proposed Change: No Changes Since Last Meeting

MNOPS has proposed changes to section (2) of MS216D.05 requiring excavators to place white markings prior to submitting notification and also allowing digital white marking if the notification center has such technology. The revised language reads as follows:

(2) communicate the location of the proposed excavation in sufficient detail by performing at least one of the following:
   (a) white marking the area with white paint or flags, or both, before providing notice; or
   (b) digitally marking the area on the notice.
6 - MS216D.05 Precautions to Avoid Damage – Allow for Digital Premarking

**Rationale**

1. Current compliance rates with this requirement are low.
2. Continues the requirement for white marking, but provides the ability for digital pre-marking when mapping and submittal options allow.
3. Ensure white markings are provided before the notice is made.
4. Ensure that the utility company has the white marking information when responding to the notice.
5. No additional trip to proposed excavation area.
6. Clear instructions for utility locators.
Proposed Change: Additional Specificity Added Since Last Meeting

MNOPS proposes changes to Subdivision 1 section **MS216D.06** by adding sub-section (d) to require excavators and operators to report damages to the notification center within 30 days. In follow up to the November 2019 stakeholder meetings, the proposed language has been revised as follows:

(d) An excavator and operator shall each report damage to an underground facility to the notification center within 30 calendar days. The 30 calendar day period begins when the damage is discovered. Private facilities are excluded from this requirement.
(e) The damage report may be oral or written, and must contain the following information:

1. Operator or excavator reporting;
2. Date and location;
3. Type of facility;
4. Type of excavator, excavation equipment, and type of work performed, if known;
5. If notification was made and notification number;
6. Cause of damage; and
7. Any other information determined by the notification center board of directors and commissioner.
Rationale

1. Track the performance of both utility operators and excavators.
2. Determine the effectiveness of the state’s one-call laws.
3. Damages reported to the notification center.
4. Current mandatory reporting for pipeline operators to MNOPS.
5. More specificity added in follow-up to stakeholder feedback.
Proposed Change: No changes since last meeting.

MNOPS proposes changes to Subdivision 1 of MS216D.08 to change the limits of penalties for excavators and non-pipeline utility operators. The revised language reads as follows:

Subdivision 1. Penalties. A person who is engaged in excavation for remuneration or an operator other than an operator subject to section 299F.59, subdivision 1, who initially violates any sections 216D.01 to 216D.07 is subject to a civil penalty to be imposed by the commissioner not to exceed $1,000 for each violation per day of violation $5,000 for each violation per the notice required by MS216D.04. Subsequent violations of sections MS216D.01 to MS216D.07 are subject to a civil penalty to be imposed by the commissioner not to exceed $10,000 for each violation per the notice required by MS216D.04. The maximum civil penalty amount imposed shall not exceed $20,000 per the notice required by MS216D.04. An operator subject to section 299F.59, subdivision 1, who violates sections 216D.01 to 216D.07 is subject to a civil penalty to be imposed under section 299F.60. The district court may hear, try, and determine actions commenced under this section. Trials under this section must be to the court sitting without a jury. If the fine exceeds the maximum limit for conciliation court, the person appealing the fine may request the commissioner to conduct an administrative hearing under chapter.
Rationale

1. Increased civil penalties for both the utilities and excavators.
2. Increased penalties for subsequent violations.
3. Maximum civil penalty amount per ticket.
4. Removal of the per-day structure.
5. Higher penalties for violations resulting in severe consequences (fatality, injury, mass outages, evacuations, etc.) or continued violations.
**Background: Follow-up to PHMSA Fall 2019 Damage Prevention Audit**

PHMSA urges all States to review the definitions for excavators and excavation in their excavation damage prevention law to **ensure the law does not exempt anyone from the reporting** requirements of 49 USC § 60114 and 49 CFR Part 198.55. “Damage” is defined as any excavation activity that results in the need to repair or replace a pipeline due to a weakening, or the partial or complete destruction, of the pipeline, including, but not limited to, the pipe, appurtenances to the pipe, protective coatings, support, cathodic protection or the housing for the line device or facility. “Excavation” refers to excavation activities as defined in 49 CFR 192.614, and **covers all excavation activity involving both mechanized and non-mechanized equipment**, including hand tools. “Excavator” means any person or legal entity, public or private, proposing to or engaging in excavation.
Proposed Change: New

Subdivision 1. Notice; repair.

(a) If any damage occurs to an underground facility or its protective covering, the person excavator shall notify the operator promptly. When the operator receives a damage notice, the operator shall promptly dispatch personnel to the damage area to investigate. If the damage results in the escape of any flammable, toxic, or corrosive gas or liquid or endangers life, health, or property, the person excavator responsible shall immediately notify the operator and the 911 public safety answering point, as defined in section 403.02, subdivision 19, and take immediate action to protect the public and property. The person excavator shall also attempt to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and completed their assessment. The 911 public safety answering point shall maintain a response plan for notifications generated by this section.
Questions About Revisions?

2 Minutes per speaker please
Next Steps

• Continued discussion regarding proposed revisions

• Industry focus group meetings:

  ✓ January

  ❑ May (Tentative week of May 11th)

  ❑ August-Large Group Meeting (Tentative week of August 10th)

  ❑ November (Tentative week of November 16th)
Industry Focus Groups

- Focus groups:
  - Excavators
  - Utilities
  - GSOC
  - Locators
  - Consulting Engineers / Municipalities
- MNOPS point person in each group.
- 5-10 core members per group.
- Focus on stakeholder issues.
- Identify areas for education and statutory changes as needed.
- Meet a minimum of once per quarter.
- Provide focus group findings/recommendations at large annual meeting.
Comment Session

2 Minutes per speaker please
Thank You!