

MINNESOTA OFFICE OF PIPELINE SAFETY MS216D (ONE-CALL LAW) REVISIONS: DEC. 18, 2019

Red text in *italics* indicates proposed change to the current statute, deletions to the current statute are indicated by ~~strikeout~~. Changes or additions to the proposed change since November 2019 stakeholder meetings are indicated by red italics text that is underlined, deletions are indicated by ~~strikeout~~.

1. MNOPS is proposing changes to Subd. 5 of [MS216D.01](#) to incorporate the use of vacuum excavation. This language has not been revised since the November 2019 stakeholder meetings. The proposed language reads as follows:

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.*

2. MNOPS proposes adding a Subd. 5 to [MS216D.03](#) with the following language noted below. In follow up to the November 2019 stakeholder meetings, the proposed language has been revised as follows:

~~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.

3. MNOPS proposes changes to Subd. 3 and adding section (h) of [MS216D.04](#) to require electronic positive response. In follow up to the November 2019 stakeholder meetings, the proposed language has been revised as follows:

216D.04 EXCAVATION; LAND SURVEY.

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Subdivision 1. Notice required; contents.

(a) Except in an emergency, an excavator shall and a land surveyor may contact the notification center and provide notice at least 48 hours, excluding Saturdays, Sundays, and holidays and not more than 14 calendar days before beginning any excavation or boundary survey. An excavation or boundary survey begins, for purposes of this requirement, the first time excavation or a boundary survey occurs in an area that was not previously identified by the excavator or land surveyor in the notice.

(b) The notice may be oral or written, and must contain the following information:

- (1) the name of the individual providing the notice;
- (2) the precise location of the proposed area of excavation or survey;
- (3) the name, address, and telephone number of the individual or individual's company;
- (4) the field telephone number, if one is available;
- (5) the type and extent of the activity;
- (6) whether or not the discharge of explosives is anticipated;
- (7) the date and time when the excavation or survey is to commence; and
- (8) the estimated duration of the activity.

~~(c) A second notice may be oral or written, and must contain the following information:~~

~~(1) the original notification number;~~

~~(2) the reason for notification;~~

~~(3) facility operators to be notified; and~~

~~(4) any additional information required by the notification center.~~

Subd. 1a. Plans for excavation.

(a) Any person, prior to soliciting bids or entering into a contract for excavation, shall provide a proposed notice to the notification center to obtain from the affected operators of underground facilities the type, size, and general location of underground facilities. Affected operators shall provide the information within 15 working days. An operator who provides information to a person who is not a unit of government may indicate any portions of the information which are proprietary and may require the person to provide appropriate confidentiality protection. The information obtained from affected operators must be submitted on the final drawing used for the bid or contract and must depict the utility quality level of that information. This information must be updated not more than 90 days before completion of the final drawing used for the bid or contract.

(b) This subdivision does not apply to bids and contracts for:

- (1) routine maintenance of underground facilities or installation, maintenance, or repair of service lines;
- (2) excavation for operators of underground facilities performed on a unit of work or similar basis; or
- (3) excavation for home construction and projects by home owners.

(c) A person required by this section to show existing underground facilities on its drawings shall conduct one or more preliminary design meetings during the design phase to communicate the project design and coordinate utility relocation. Affected facility operators shall attend these meetings or make other arrangements to provide information.

(d) A person required by this section to show existing underground facilities on its drawings shall conduct one or more preconstruction meetings to communicate the project design and coordinate utility relocation. Affected facility operators and contractors shall attend these meetings or make other arrangements to provide information.

(e) This subdivision does not affect the obligation to provide a notice of excavation as required under subdivision 1.

Subd. 2. Duties of notification center; regarding notice.

The notification center shall assign an inquiry identification number to each notice and retain a record of all notices received for at least six years. The center shall immediately transmit the information contained in a notice to every operator that has an underground facility in the area of the proposed excavation or boundary survey. ~~The notification center shall immediately transmit the information contained in a second notice to each operator identified in the request.~~

Subd. 3. Locating underground facility; operator.

(a) Prior to the excavation start time on the notice, an operator shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator and provide readily available information regarding the operator's abandoned and out-of-service underground facilities as shown on maps, drawings, diagrams, or other records used in the operator's normal course of business, without cost to the excavator. The excavator shall determine the precise location of the underground facility, without damage, before excavating within two feet of the marked location of the underground facility.

(b) Within 96 hours or the time specified in the notice, whichever is later, after receiving a notice for boundary survey from the notification center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the land surveyor and operator, an operator shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator, without cost to the land surveyor.

(c) For the purpose of this section, the approximate horizontal location of the underground facilities is a strip of land two feet on either side of the underground facilities.

(d) Markers used to designate the approximate location of underground facilities must follow the current color code standard used by the American Public Works Association.

(e) If the operator cannot complete marking of the excavation or boundary survey area before the excavation or boundary survey start time stated in the notice, the operator shall promptly contact the excavator or land surveyor.

(f) After Dec. 31, 1998, operators shall maintain maps, drawings, diagrams, or other records of any underground facility abandoned or out-of-service after Dec. 31, 1998.

(g) An operator or other person providing information pursuant to this subdivision is not responsible to any person, for any costs, claims, or damages for information provided in good faith regarding abandoned, out-of-service, or private or customer-owned underground facilities.

(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.

~~*(i) An operator shall contact the excavator within three hours after receiving a second notice.*~~

Subd. 4. Locating underground facility; excavator or land surveyor.

(a) The excavator or land surveyor shall determine the precise location of the underground facility, without damage, before excavating within two feet on either side of the marked location of the underground facility.

(b) If the excavator or land surveyor cancels the excavation or boundary survey, the excavator or land surveyor shall cancel the notice through the notification center.

(c) The notice is valid for 14 calendar days from the start time stated on the notice. If the activity will continue after the expiration time, then the person responsible for the activity shall serve an additional notice at least 48 hours, excluding Saturdays, Sundays, and holidays, before the expiration time of the original notice, unless the excavator makes arrangements with the operators affected to periodically verify or refresh the marks, in which case the notice is valid for six months from the start time stated on the notice.

(d) The excavator is responsible for reasonably protecting and preserving the marks until no longer required for proper and safe excavation near the underground facility. If the excavator has reason to believe the marks are obliterated, obscured, missing, or incorrect, the excavator shall notify the facility operator or notification center in order to have an operator verify or refresh the marks.

~~*(e) The excavator may make a second notice to the notification center in order to have an operator verify or refresh the marks when either of the following apply:*~~

~~*(1) prior to beginning excavation, the excavator has reason to believe the marks are missing, or*~~

~~*(2) during excavation, the excavator has reason to believe the marks are incorrect.*~~

4. 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. This language has not been revised since the November 2019 stakeholder meetings. The proposed language reads as follows:

~~(2) use white markings for proposed excavations except where it can be shown that it is not practical~~

(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.

5. 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.

6. MNOPS proposes changes to Subdivision 1 of [MS216D.08](#) to change the limits of penalties for excavators and non-pipeline utility operators. This language has not been revised since the November 2019 stakeholder meetings. The proposed 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.