

Subchapter 10 sets forth provisions concerning registration by coordination, registration by qualification, and registration by notification. It also includes Appendices A, B and C, which contain, respectively, the New Jersey Addendum, the New Jersey Registration Statement for Registration by Notification, and the Statement of Eligibility for Registration by Notification.

Subchapter 11 contains forms for, amongst other things, registrations, renewals, withdrawals, surety bonds, and consent to service of process.

Subchapter 12 sets forth the exemptions for securities transactions and securities offerings and addresses employee benefit plans, accredited investors, and manual exemptions.

Subchapter 12A sets forth the intrastate offering or “crowdfunding” exemption, including conditions for eligibility; filing for the exemption; requirements for internet site operator registration, renewal of registration, and conditions that exempt internet site operators from registering as a broker-dealer; requirements and duties of issuer and internet site operators; recordkeeping obligations by the issuer and internet site operator and inspection of such records; escrow accounts; provisions regarding advertising by issuers and persons acting on behalf of issuers and internet site operators; and measures to reduce the risk of fraud.

Subchapter 13 governs the rules of practice generally applicable to administrative proceedings before the Bureau under the Uniform Securities Law (1997) before a matter is determined to be a contested case and transmitted by the Bureau to the Office of Administrative Law.

Subchapter 14 contains the rules of practice relating to private investigations conducted by the Bureau.

The Bureau of Securities has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated, as required by Executive Order No. 66 (1978). Therefore, pursuant to N.J.S.A. 49:3-47 et seq., specifically 49:3-67.a, and in accordance with N.J.S.A. 52:14B-5.1.c(1), these rules are readopted without amendment and shall continue in effect for a seven-year period.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Underground Facilities: One-Call Damage Prevention System

Readoption with Amendments: N.J.A.C. 14:2

Proposed: December 6, 2021, at 53 N.J.R. 1986(a).

Adopted: June 8, 2022, by the New Jersey Board of Public Utilities,

Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Upendra Chivukula, and Robert M. Gordon, Commissioners.

Filed: June 9, 2022, as R.2022 d.084, with **non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:2-73 et seq.

BPU Docket Number: EX20090613.

Effective Dates: June 9, 2022, Readoption;
July 18, 2022, Amendments.

Expiration Date: June 9, 2029.

Summary of Public Comments and Agency Responses:

Written comments were received by: Public Service Electric and Gas Company (PSE&G), New Jersey Natural Gas Company (NJNG), South Jersey Gas Company (SJG), Elizabethtown Gas Company (ETG) (collectively “GDCs”), Jersey Central Power and Light (JCP&L), New Jersey Realtors ® (NJR), New Jersey Society of Professional Land Surveyors (NJSPLS), Utility and Transportation Contractors Association (UTCA) and Verizon New Jersey Inc. (Verizon).

General Comments

1. COMMENT: When a repair is made on a gas main, there are typically two “T” branches installed on either side of the repair area to bypass the line for the repair. After the completion of the repair, the bypass is removed, but the two stubs are capped and remain live to the cap. These stubs are usually 2” diameter, and 2’ to 4’ long depending on the size of the main to be repaired. These stubs are never marked out and are sometimes hit while excavating parallel to the main. If the utility company can better document the repair location and mark out these stubs, an unsafe and costly situation could be avoided. (UTCA)

RESPONSE: The operator is required to mark out stubs according to N.J.A.C. 14:2-5.2(o) and Figure 6 of the Appendix. Additionally, pursuant to N.J.S.A. 48:2-82(d), the excavator must be diligent to hand-dig and locate the main when operating mechanized equipment within 24 inches of the marks. Damages of this nature will be reduced when both operators and excavators adhere to the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq. (UFPA), and the Underground Facilities: One-Call Damage Prevention System, N.J.A.C. 14:2 (One-Call Rules), as written.

2. COMMENT: On occasions when facilities are mismarked, the utility company will send out a locating crew to attempt to re-locate its facilities. The Underground Facility Operator will be liable for all down-time after a mismark and unfortunately, currently, this is not a consistent procedure and UTCA suggests that the utility facility owner should be required to relocate and mark out its facilities in an expedited timeframe. (UTCA)

RESPONSE: When a contractor calls in an “Update” ticket to report damage to a facility or a mismark, these tickets are given a higher priority, and operators are required to mark out these requests within two hours. While the procedure regarding “Update” tickets is not described in the One-Call Rules, it is done administratively by the One-Call Damage Prevention System operator.

3. COMMENT: Mismarked facilities can have serious repercussions to the safety of excavator’s employees, property owners, and the public. The consensus among the construction industry is that the markout companies do not have the proper amount of accountability regarding the responsibility of accuracy on the mark outs. We believe much can be done in this area (that is, training, up-to-date technology and equipment, as well as some legal liability). (UTCA)

RESPONSE: Pursuant to N.J.S.A. 48:2-82(e), excavators are obligated to report damages to the underground facility operator, including damages arising from mismarked facilities, and, pursuant to N.J.A.C. 14:2-3.6(a) and (b), may do so directly to the One-Call Damage Prevention System Operator. Additionally, utilities are required to report all damages to the Board of Public Utilities (Board), pursuant to N.J.S.A. 48:2-80 and N.J.A.C. 14:2-4.4. The data collected from these reports allow the Board to analyze trends in damages. The requirement of excavators to provide additional reporting provides a benefit to the stakeholder community, including the public. Furthermore, regarding the commenter’s reference to legal liability, the Board directs the commenter to N.J.S.A. 48:2-86, N.J.S.A. 48:2-88, and N.J.A.C. 14:2-6.2, which govern the Board’s assessment of penalties for the violation of the UFPA and One-Call Rules, including the markout requirements for operators pursuant to N.J.S.A. 48:2-80(a).

4. COMMENT: Inadvertent encasement of utility facilities—there are occasions when contractors find a facility that is encased in the roadway, walkway, driveway, or similar structure. Encasements can be found in the asphalt or concrete roadway. To get through the asphalt or concrete, the contractor must sawcut or jack hammer through the material before they can hand-dig or excavate. The contractor must fill out a dangerous condition reporting form and document the utility line once discovered, and if damaged, a violation will not be given to an excavator that can prove they correctly followed all One-Call procedures. (UTCA)

RESPONSE: The Board appreciates the commenter’s concern for the above-mentioned situation. Damages which result from the inadvertent encasement of facilities are often the result of a prior excavation and not the result of actions of the underground facility operator or the excavator that is currently working on the site. Variables discovered through a preliminary investigation are taken into consideration when Board staff issues a Notice of Probable Violation (NOPV). The excavator may

respond by providing an answering certification which, contained therein, reveals all mitigating circumstances that may justify a reduction of civil penalties. It is important that excavators carefully document and record their worksite before excavation has commenced to thoroughly defend their actions and comply with State law.

N.J.A.C. 14:2-1.1—Scope and Applicability

5. COMMENT: UTCA supports all changes to N.J.A.C. 14:2-1.1 through 2.2, including all changes, additional definitions, and clarifications to both subchapters. (UTCA)

RESPONSE: The Board appreciates the commenter's support for the rules.

6. COMMENT: Neighboring states, such as New York and Pennsylvania include the 811 markout to allow for design purposes. We feel that New Jersey should join these states in allowing this practice for design professionals as well. Our request is for consideration by the Board to amend N.J.A.C. 14:2-1.1 as follows (as underlined):

N.J.A.C. 14:2-1.1-Scope and Applicability

(a) This chapter implements the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq.

(b) This chapter governs the following, as these terms are defined at N.J.A.C. 14:2-1.2:

1. The Board-designated One-Call System Operator;
2. Underground facility operators;
3. Excavators;
4. Responsible Contractors; and

5. For Duties of Design Professionals (Land Surveyor, Engineer, Architect) (NJSPLS)

RESPONSE: The Board agrees that designers and excavators should work with utilities early in the design process to locate existing utility facilities and plan future ones to maximize efficient and safe construction of buildings and underground facilities. However, these goals are better met through face-to-face meetings between planners and representatives of underground facility operators, rather than through the One-Call program. These planning goals are not within the Board's mandate under the One-Call program.

N.J.A.C. 14:2-1.2—Definitions

7. COMMENT: JCP&L encourages the Board to modify the rule proposal to exempt utility groundline pole inspections less than 18 inches in depth from the definition of an "excavation." In the case of such utility groundline pole inspections, JCP&L respectfully submits that there is similarly minimal risk to public safety or underground facilities. Utility groundline pole inspections are performed by utilities on a regular basis to determine whether any potential underground damage and/or decay to the pole warrants its replacement. These inspections are typically performed by utility personnel or qualified contractors who are aware of safety guidelines pertaining to performing such inspections. The excavations performed for the inspections are done without the use of any mechanized equipment and utility equipment, such as ground wires, and riser cables/conduits are readily apparent when the inspections are performed. To the best of JCP&L's knowledge, the company is unaware of any incidents (outages, public safety issues, or infrastructure damage) resulting from these types of inspections. The process for these inspections and the lack of incidents demonstrates that there is a minimal risk of injury or damage to utility facilities as a result of these inspections. Moreover, this exception will make the administration of utility groundline pole inspection activities more streamlined, creating administrative efficiencies, and ultimately reducing costs to ratepayers. (JCP&L)

RESPONSE: The definition of excavation is taken directly from the UFPA, as well as the description of routine maintenance and the associated exemptions to the definition of excavation. The statutory definition of "excavation" at N.J.S.A. 48:2-75 limits these exceptions, which do not specify utility groundline pole inspections. The Board, therefore, has not included an exemption for such inspections.

8. COMMENT: The commenter requests minor amendments to the proposed definitions of "excavate", "excavating", "excavation", and "demolition" at N.J.A.C. 14:2-1.2. The definition of the aforementioned terms does not include "routine residential property or right-of-way

maintenance or landscaping activities performed with non-mechanized equipment." The commenter requests a minor amendment to this section concerning the use of residential real estate for-sale signs that are not placed using mechanized equipment. Additionally, the commenter seeks clarification that the placement of residential real estate for-sale signs placed by hand or that do not utilize mechanized equipment do not necessitate the use of the One-Call Prevention System. (NJR)

RESPONSE: To be excluded from the definition of "excavation," excavation activity must be routine and cyclical (as described at N.J.S.A. 48:2-75 and N.J.A.C. 14:2-1.2). Such digging must occur repeatedly on the same residential property. The placement of real estate lawn signs is neither cyclical nor repetitive and therefore poses a much greater risk of hitting an underground facility and causing damage or danger. Accordingly, the Board declines to adopt the commenter's suggested change.

9. COMMENT: With respect to N.J.A.C. 14:2-1.2(5), NJNG appreciates the Board's inclusion of proposed language to reflect the Federal amount of \$122,000, as defined at 49 CFR 191.3, Definitions, Incidents 1 (ii). (NJNG)

RESPONSE: The Board appreciates the commenter's support for the rules.

N.J.A.C. 14:2-2—One-Call System Operator

10. COMMENT: UTCA supports all changes to N.J.A.C. 14:2-1.1 through 2.2, including all changes, additional definitions, and clarifications to both subchapters. (UTCA)

RESPONSE: The Board appreciates the commenter's support for the rules.

N.J.A.C. 14:2-3.1—Excavators—Notice of Intent to Excavate—Timing

11. COMMENT: Regarding N.J.A.C. 14:2-3.1 and 3.2, UTCA gives full support of the changes proposed to the Excavator and Responsible Contractors, Subchapter 3. (UTCA)

RESPONSE: The Board appreciates the commenter's support for the rules.

N.J.A.C. 14:2-3.2—Excavators—Notice of Intent to Excavate—Contents, Perimeter Marking

12. COMMENT: With respect to N.J.A.C. 14:2-3.2(b)1, NJNG appreciates the Board's inclusion of the proposed language. (NJNG)

RESPONSE: The Board appreciates the commenter's support for the rules.

13. COMMENT: NJNG appreciates the Board's modification to the proposed language for N.J.A.C. 14:2-3.2(b)6iv. (NJNG)

RESPONSE: The Board appreciates the commenter's support for the rules.

14. COMMENT: The One-Call Rules require that an excavator submit an excavation site for mark out that is the "minimum size necessary to safely accommodate the planned excavation or demolition." See N.J.A.C. 14:2-3.2(d). Despite this requirement, however, it is common for excavators to submit requests for the entirety of properties or multiple properties at a time, even if there is no plan to excavate in the area. While JCP&L understands that the Board has attempted to limit the scope of requests in an informal manner by preventing excavators from creating tickets through the One-Call system that are greater than 1,500 feet, excavators can easily subvert this restriction by simply creating more than one ticket for the property. JCP&L encourages the Board to review this process with stakeholders and potentially create a complex ticket process to handle larger projects. JCP&L recommends that requirements for such a process ultimately be codified and that a maximum excavation site size be expressly provided for in the regulations. As expressed in the One-Call Rules, such a requirement will further the Board's policy of "avoid[ing] unnecessary mark-outs." See *id.* (JCP&L)

RESPONSE: The Board previously addressed the issue by limiting the scope of the ticket through the One-Call Damage Prevention System. This change was made effective on June 16, 2017. The Board will continue to work with stakeholders to integrate technologies that further refine the ticket scope without sacrificing the safety elements of the program.

N.J.A.C. 14:2-3.3—Excavators—Onsite Requirements

15. COMMENT: With respect to N.J.A.C. 14:2-3.3(a)5 and 6, NJNG appreciates the Board's inclusion of the proposed language. (NJNG)

RESPONSE: The Board appreciates the commenter's support for the rules.

N.J.A.C. 14:2-3.5—Excavators—Excavation or Demolition in Response to an Emergency

16. COMMENT: UTCA is asking for additional changes to N.J.A.C. 14:2-3.5. During an "emergency" we are asking the Board to allow that when valid markouts are made, that they continue and to remain acceptable for three days for the contractor to continue working on the site only if the scope of the work does not change. There are many times in an emergency when the "emergency" is mitigated, the valid markout process was completed by all utilities in the area, and there is still work needed to be completed. In these specific instances, UTCA suggests that the Board allow for work to continue under these original valid markouts. This change will expedite the needed construction while mitigating delays and serious costs for both the traveling public and/or ratepayer without sacrificing safety. (UTCA)

RESPONSE: An emergency can be temporarily mitigated with a repair made using an emergency markout. Additional work in the same area requires a routine markout, and the excavator must wait three business days. While calling for a routine markout provides potentially redundant information, the emergency work may have damaged the original markout. Steps to preserve a markout may not be followed as carefully in an emergency. Also, the circumstances surrounding the emergency may have prevented the locator from accessing the entire area described in the locate request. For these reasons, it is safer to call in the routine ticket and ensure that all utilities have been adequately marked out. While the Board understands the desire to mitigate delays and serious costs, the Board is obligated to maintain the safety standards of the program. As such, the Board declines to make the requested revision.

17. With respect to N.J.A.C. 14:2-3.5(g), NJNG appreciates the Board's inclusion of the proposed language. (NJNG)

RESPONSE: The Board thanks the commenter for their support of the rules.

N.J.A.C. 14:2-3.6—Excavators—Incident Damage and Reporting

18. COMMENT: With respect to N.J.A.C. 14:2-3.6(b), the GDCs believe that this proposed language does not belong in this section. This section is related to incident and damage reporting, but the proposed language focuses on One-Call notification procedures for emergency markouts. The GDCs recommend that the Board consider moving this language to a more appropriate section, such as N.J.A.C. 14:2-4.2(e). (GDCs)

RESPONSE: The Board thanks the commenter for this suggestion. The requirement to provide "contact information of a person knowledgeable of the excavation to be performed" will be moved upon adoption to N.J.A.C. 14:2-3.5(b). The requirement is placed upon the excavators when they are making an emergency markout request, and as such, the language is more appropriately placed at N.J.A.C. 14:2-3.5, which concerns an excavator's response to an emergency. The Board declines to move the proposed language to N.J.A.C. 14:2-4.2(e) as subsection (e) pertains to the requirements for operators responding to an emergency markout request. As N.J.A.C. 14:2-3.5(b) is the correct section of the proposed language, the Board is reinserting existing N.J.A.C. 14:2-3.6(b), upon adoption, which was inadvertently deleted.

N.J.A.C. 14:2-4.1—Operators—Applicability

19. COMMENT: NJNG appreciates the Board's inclusion of the proposed language at N.J.A.C. 14:2-4.1(b). (NJNG)

RESPONSE: The Board appreciates the commenter's support for the rules.

20. COMMENT: UTCA strongly supports the changes to N.J.A.C. 14:2-4.1(b) language which requires water operators to assist contractors with the location of their lines. Currently, contractors can give countless examples of damages, and the rule change would seriously help mitigate these incidents. (UTCA)

RESPONSE: The Board appreciates the commenter's support for the rules.

N.J.A.C. 14:2-4.2—Operators—Basic requirements

21. COMMENT: The proposed N.J.A.C. 14:2-4.2(b) is a very helpful addition that would motivate underground facility operators to participate with the One-Call Damage Prevention System. (UTCA)

RESPONSE: The Board appreciates the commenter's support for the rules.

22. COMMENT: UTCA proposes amendments to N.J.A.C. 14:2-4.2(d) about electronic positive response. Contact information for the markout firms should be added to the ticket. Excavators encounter many projects that are not marked out or the markout is wrong. Giving the excavator the number will expedite any downtime and help fix the very unsafe situation that was created. (UTCA)

RESPONSE: The Board disagrees. Markout companies are third parties that work for the utilities. The excavator must contact the operator of the underground facility to report and solve any problems relating to the markout. Utilities need to know if the performance of their contractors is not fulfilling their obligations under the UFGPA. This direct reporting provides accountability and allows the utilities to recognize where problems may exist that may be improved by better recordkeeping and training. Furthermore, excavators can report damages, mismarks, and non-responses directly to the One-Call center, and the Board can use this information for effective enforcement programs that address patterns of non-compliance with the law.

23. COMMENT: With respect to N.J.A.C. 14:2-4.2(g), NJNG appreciates the Board's inclusion of the proposed language. (NJNG)

RESPONSE: The Board appreciates the commenter's support for the rules.

N.J.A.C. 14:2-4.3—Operators—Markout Records

24. COMMENT: The commenters noted that the use and maintenance of pictures to record markouts is a valuable tool that is used for incident investigations. Over time, advances in technology have allowed for the efficient and effective capture and storage of these pictures. The commenters expressed their appreciation for the Board's updated language, which reflects technological advances in picture taking. While the updated language reflects these advances, the commenters expressed concern that the requirement to include location on the picture would create unintended consequences. Namely, high-quality cameras may not have GPS capability or the ability to turn on GPS coordinates. Furthermore, the commenters questioned the need to require location data to be included on pictures if the location can be found on the One-Call transmission ticket and through landmarks on the photographs themselves. For these reasons, the commenters proposed the following language for N.J.A.C. 14:2-4.3(c)4: "Be transmitted in a format that includes the date and time, and should include the location of the photograph." (GDCs, NJNG)

RESPONSE: The Board declines to adopt the commenters' proposed change to the language. While not all cameras are GPS-enabled, the photographer can compensate by taking photographs from several angles and distances and include landmarks. If a photograph is to be used as evidence, it must be able to accurately provide the date, time, and location in question. These photographs can be used in conjunction with images that have been taken with a device that can record the location of the photograph, but may have limited image quality, such as an image taken with a cellular phone. Photographs may be used as evidence of markouts, excavations, and damages to demonstrate compliance with State law.

N.J.A.C. 14:2-4.4—Operators—Accidents and Emergencies

25. COMMENT: UTCA supports N.J.A.C. 14:2-4.3 and 4.4 and the additional requirements for the facility operator's markouts. This will prevent damages, and photographs of the markout will assist with the investigation if damage occurs. During emergencies, excavators will now have a much better idea when a facility operator representative will be arriving on the scene of an emergency. We ask that the contact information be accurate and not a corporate number that does not assist the contractor with the emergency. (UTCA)

RESPONSE: The Board appreciates the commenter's support for the rules.

26. COMMENT: Subsection (a) includes a cross-reference to subsection (h) that is no longer appropriate. Based on the additions in the rule proposal, JCP&L believes that the appropriate cross-reference should be subsection (j). (JCP&L)

RESPONSE: The Board thanks the commenter for this suggestion. The suggested change will be made upon adoption.

27. COMMENT: JCP&L recommends that the reference to “both of the following” in subsection (b) be clarified to ensure that there is not any confusion as a result of there now being three requirements set forth in that subsection. (JCP&L)

RESPONSE: The Board agrees with the commenter and has made the change.

28. COMMENT: In order to promote consistency with language used in Federal regulations, the GDCs request that the term “learning” in N.J.A.C. 14:2-4.4(b) be replaced with the term “confirmed discovery,” as found at 49 CFR 191.5(a). The GDCs’ recommended language is as follows: “When an [underground facility] operator receives a report of an emergency, the [underground facility] operator shall do both of the following immediately, and in all cases within [two] one hour[s] after [learning] confirmed discovery of the emergency:” (GDCs)

29. COMMENT: With respect to N.J.A.C. 14:2-4.4(b), NJNG strongly recommends that the language be updated so that it is better aligned with the language used at 49 CFR 191.5—Immediate notice of certain incidents. The use of the word “learning” is not consistent with the Federal Code’s language of “confirmed discovery”. (NJNG)

RESPONSE TO COMMENTS 28 AND 29: N.J.A.C. 14:2-4.4(b) pertains to underground facility operators that are receiving an emergency markout request from the One-Call Damage Prevention System operator, while 49 CFR 191.5(a) relates to the reporting of incidents to the National Response Center that are “discovered” by the operator of the underground facility. Pursuant to N.J.A.C. 14:2-4.4(b), underground facility operators are required to dispatch personnel to assist in locating and protecting underground facilities within one hour (formerly two) and take any action necessary to minimize damage. The use of the word “confirmed” could cause confusion, as these steps are required based upon the preliminary report of the emergency from the One-Call center. Taking steps to “confirm” the report of the emergency has the potential to cause delay in responding to the emergency markout request. Therefore, the Board declines to make the recommended change.

N.J.A.C. 14:2-4.4(d) pertains to the notification of the Board’s Division of Reliability and Security of a One-Call incident. In this section, the underground facility operator is required to report the One-Call incident after they have been “notified” of the incident and no later than one hour after the notification. The notification is a preliminary report and sufficient to trigger a notification to Board staff. It is confusing to apply the word “confirmed” to a preliminary report. Many criteria of a One-Call incident are identified quickly, such as the number of people evacuated or the closure of a major roadway. The notification to Board staff of this type of incident only requires a phone call and a brief description of the incident. Pursuant to N.J.A.C. 14:2-4.4(g), as adopted, details regarding the incident are provided in the form of a written report within 15 calendar days of the incident.

30. COMMENT: During an emergency, operators are faced with numerous challenges that can have consequences on response times. For example, in the event of severe flooding, as the GDCs just experienced this past September with Hurricane Ida, operators were dispatched immediately upon receiving notice of emergency incidents. However, the ability for operators to arrive at the site of the emergency was made impossible due to the impassable roads and traffic that the flooding caused. Situations like this one make it impossible to adhere to the one-hour requirement at N.J.A.C. 14:2-4.4(b)2. The GDCs agree that the proposed one-hour requirement will make adhering to this language impossible in certain unforeseen situations. Furthermore, the requirement of taking “any other action necessary” is vague and does not provide a gauge as to what is considered a necessary action. The GDCs request that the Board revisit this section and the unintended consequences that the one-hour time requirement may have on effective adherence to this proposal. (GDCs)

31. COMMENT: Responding to the immediate needs of an emergency when in the field must be the top priority for all emergency personnel and

requiring actions that do not improve that emergency response can have a negative impact. It is strongly recommended that the proposed language at N.J.A.C. 14:2-4.4(b) not be adopted and the current timeframe of two hours remain in place. During an emergency, operators are faced with numerous challenges that can have consequences on response times. For example, in the event of severe flooding, as we just experienced this past September with Hurricane Ida, operators were dispatched immediately upon receiving notice of emergency incidents. However, the ability for operators to arrive at the site of the emergency was made unattainable due to the impassable roads and traffic that the severe flooding caused. Situations such as this one make it impossible to adhere to the one-hour requirement. (NJNG)

RESPONSE TO COMMENTS 30 AND 31: N.J.A.C. 14:2-4.4(b)1 requires the operator within one hour to “[d]ispatch appropriate personnel to the site to assist in locating and protecting underground facilities.” While a locator must be dispatched to the location within one hour, they are not required to be on the site within one hour. Utilities are still encouraged to take actions that reduce the response times of personnel who are responding to emergencies. In the extenuating circumstances that the commenters have described above, the new requirement at N.J.A.C. 14:2-3.6(b) (removed as an administrative correction recommended by a commenter to N.J.A.C. 14:2-3.5(b)) would require excavators to provide additional contact information to facilitate communication during emergencies. The operator can contact the “person knowledgeable of the excavation to be performed.” This was changed from the “onsite emergency contact” mentioned in the proposal. Regarding the interpretation of N.J.A.C. 14:2-4.4(b)2, “any other action necessary” has been left open for the operators to determine what is reasonably appropriate to mitigate the dangers and risks of the emergency. When the operator dispatches personnel to the site and assesses the hazards of the situation, communication with the “person knowledgeable of the excavation to be performed” allows for pertinent information to be communicated between the parties. Communication with the excavator will allow the operator to advise the excavator of issues it is having reaching the site in response to the markout request. Board staff is committed to improving emergency responses without sacrificing the safety goals of the UFPA and the One-Call Rules.

32. COMMENT: With respect to N.J.A.C. 14:2-4.4(b)3, it is recommended this proposed language not be adopted. Currently, “dispatched” is not a positive response status. NJNG requests clarification on this proposed amendment. Appropriate personnel are already immediately dispatched once an emergency is reported. Thus, the need to update an electronic positive response with the status “dispatched” is a duplicated action. Furthermore, confirmation of a positive response is immediately known if the contractor that reports the emergency is on site when the appropriate personnel arrive. Finally, there are scenarios in which an emergency situation on-site will not allow appropriate personnel responsible for marking a facility to do so within the one-hour window, making it impossible to update the positive response with the status “marked” or “cleared”. (NJNG)

33. COMMENT: During an emergency, providing all personnel with as much valuable information as needed is essential to ensure that the appropriate steps are taken to effectively respond. Requiring actions that do not improve that response and that cannot be applied consistently can have a negative impact. When an emergency is called in, operators immediately dispatch appropriate personnel, and they work to respond to these emergencies as safe and effective as the situation allows. The need to update a positive response as “dispatched,” “marked,” or “cleared,” within one hour of a confirmed emergency is at times unnecessary or even impossible. First, notifying an excavator on-site of the emergency that an operator has been dispatched is unnecessary if it is already required that the operator respond within an hour, and if the excavator is already on-site. Second, there are emergency situations for which, out of the need for ensuring the safety of all involved, a markout is not possible to be completed within the one-hour time allotment. That makes adhering to the proposed language impossible. For these reasons, the GDCs strongly recommend that the proposed language at N.J.A.C. 14:2-4.4(b)3 not be adopted. (GDCs)

RESPONSE TO COMMENTS 32 AND 33: The current two-hour requirement for a utility to dispatch personnel to the site of an emergency

to perform a markout has turned into a practice of excavators waiting two hours after making an emergency markout request and then digging, regardless of whether or not the markout has been performed. The purpose of an emergency markout request is to expedite work being done to mitigate a potentially hazardous condition. Excavators may begin work immediately after making an emergency markout request, provided that they excavate with care and, pursuant to N.J.A.C. 14:2-3.5(d), take “all reasonable precautions to protect any underground facilities that may be located at the site of the excavation or demolition.” The current practice of waiting two hours only increases the response time of the crew addressing the emergency and does not ensure that the markout will occur. Positive response for emergencies did not exist prior to the re-adoption of these rules. The positive response of “dispatched” would allow excavators to make a more informed decision as to whether or not there would be a benefit to waiting for the markout to be completed.

34. COMMENT: With respect to N.J.A.C. 14:2-4.4(e), NJNG appreciates the Board’s inclusion of the proposed language. (NJNG)

RESPONSE: The Board appreciates the commenter’s support for the rules.

35. COMMENT: The proposed addition to subsection (e) would allow an underground facility operator to use a LiDAR system, which uses a laser to detect objects, Ground Penetrating Radar or other surveying technologies to document the scene of a One-Call incident, as requested by the Board, and whenever damage to an underground facility results in bodily injury or property damage of \$122,000 or more. Verizon agrees that there are certain circumstances in which it could be appropriate for an operator to use a LiDAR system to record the scene of a One-Call incident. However, setting a dollar figure as the threshold for determining how best to document the scene of an incident is impractical and may even delay the pace of incident reports. It takes time to determine the monetary value of property damage involved in an incident, and that process often involves insurance providers, repair workers, or other third parties who must make an accurate assessment of the situation. Basing this requirement on a specific dollar amount could mean that LiDAR or other technology recordings are not created until significantly after the One-Call incident when the monetary amount of property damage is determined. Additionally, operators may inadvertently fail to utilize these technologies to create records at the time of an incident because they underestimate the monetary amount of damage. Furthermore, facility operators should not be required to invest in a specific technology, and the requirement to use such technologies at the request of Board staff should not be part of the rules. Verizon proposes the below revision to avoid the uncertainty that could result when operators cannot determine the monetary value of property damage at the time of an incident:

(e) Operators may use Terrestrial LiDAR, Ground Penetrating Radar or other surveying technologies to records the scene of a One-Call incident when damage to an underground facility results in substantial property damage ~~amounting to \$122,000 or more or causes bodily injury, or as requested by Board staff.~~ (Verizon)

RESPONSE: The Board declines to make the commenter’s proposed change. The language encourages operators to make careful and thorough investigations of high consequence incidents. The use of new technology has the potential to improve the quality of data collected during an investigation, resulting in more detailed and thorough investigations. The operator will benefit from more detailed and thorough investigations. The language encourages the operator to look to new technologies to improve the quality of data collected during investigations. For clarification, the words “may use” have been changed to “should consider the use of.” This language does not require the operator to use these surveying technologies or invest in a particular technology, but expresses the Board’s intention to encourage operators to use new technologies to improve the quality of their investigations. This is consistent with the proposal, which states that “the Board suggests operators use” these technologies. 53 N.J.R. 1986(a) at 1987. The Board maintains that the thorough documentation of an incident would also assist operators in demonstrating whether their markout was in compliance with State law. The Board recommends these technologies in the case of high consequence incidents because they provide precise measurements, creating a three-dimensional record of the scene of the incident. However, nothing in these provisions restricts or bars the use of these technologies in other situations. Operators are free to

use these technologies in incidents that incur less damage than the recommended threshold.

36. COMMENT: The additional investigation requirements for damages that amount to over \$122,000 seem very reasonable and justified as well as the suggestion of using Terrestrial LiDAR, Ground Penetrating Radar and other new technologies. (UTCA)

RESPONSE: The Board appreciates the commenter’s support for the rules.

N.J.A.C. 14:2-5.1—Markouts—General Markout Provisions

37. COMMENT: Commenters noted that when operators install new facilities, the practice of back flagging and marking out the facilities is an effective damage prevention measure. However, the commenters expressed concern over the requirement to notify excavators of newly installed facilities as written in the proposed language for N.J.A.C. 14:2-5.1(d). The notification requirement would ultimately be a manual process, requiring a 60-day ticket search of all ticket requests in the scope of these newly installed facilities. The commenters raised questions about what is expected of operators when they cannot get in contact with excavators with valid ticket requests. While the commenters acknowledged that they can paint and back flag the newly installed facilities if needed, they raised concerns over contacting each individual excavator, especially if contractors are being used to complete the new facility installation. As a result, the commenters believe that the logistics of complying with the language as proposed will be nearly impossible to abide by. (GDCs, NJNG)

38. COMMENT: The GDCs also contend that when back flagging is used, damages related to newly installed facilities do not occur. Requiring notification to excavators appears to be unnecessary, and for all these reasons, the GDCs strongly urge the Board to reconsider their concerns and remove the proposed language around notifying excavators of newly installed facilities. (GDCs)

39. COMMENT: NJNG states that its field personnel do not have the ability to look up markout tickets, as the company utilizes a second party locating contractor. Additionally, NJNG is requesting clarification as to what it means to “notify” for newly installed facilities. (NJNG)

40. COMMENT: NJNG is also requesting clarification on how it would be required to document newly installed work that has been back flagged. Lastly, what is to be considered “newly installed facilities”? There is no timeline or guidance regarding when newly installed facilities are no longer considered as such. For all these reasons, NJNG does not support the proposed language and requests that it not be adopted. (NJNG)

RESPONSE TO COMMENTS 37, 38, 39, AND 40: The Board recognizes the difficulties posed by the amendment and interpretations as it is written. As such, clarifying changes to the language have been made. A facility is considered newly installed upon completion of the installation; however, a facility is no longer considered newly installed once it has been added to and mapped in the One-Call Damage Prevention System. In addition, the “valid notice of intent to excavate in accordance with N.J.A.C. 14:2-3.1 in the scope of the work area” is further clarified as a ticket that has not yet reached its “start by” date. For instance, the term includes situations where a ticket has already been marked, but the excavator has not yet begun work. As such, the operator would not be required to notify the excavator of the newly installed facilities that are months old. The Board disagrees that the operators would need to search manually for tickets that exist in the same area as the recent installation since the operators’ recordkeeping should reflect the existence of such tickets.

Furthermore, the Board deleted “through email” upon adoption since the language is redundant. Namely, since updating positive response will generate an email through the One-Call Damage Prevention System, the “through email” language is unnecessary. The Board notes that updating positive response does not create an unfair and unreasonable burden on the operator. Since the rules, as revised on adoption, will refer only to notifications of tickets that have not yet reached their start date, the new requirement will require utilities to look back approximately two weeks. After this search, the operators would simply need to update the positive response of those tickets. In many cases, there will be no tickets to update. Updating the positive response will make it consistent with the information on the ground. The updated positive response allows the

excavator to prepare for changes on the worksite and direct their crews accordingly. In addition, the positive response will also serve to document the backflagging of the facilities.

41. COMMENT: UTCA supports the proposed language at N.J.A.C. 14:2-5.1 for the notifications of newly installed facilities if there is a valid notice of intent to excavate in the scope of the work area where the facilities have been installed. (UTCA)

RESPONSE: The Board appreciates the commenter's support for the rules.

N.J.A.C. 14:2-5.2—Markouts—Specifications for Marks Used in Markouts

42. COMMENT: The commenters noted that as operators, they are committed to ensuring that their facilities are marked out as accurately as possible in order to ensure that excavators are provided the ability to dig safely and effectively. However, the commenters expressed their concern that providing excavators with unnecessary information could have unintended consequences. The proposed language at N.J.A.C. 14:2-5.2(k) would require that the type of infrastructure material used for underground facilities be provided to excavators on markouts. The commenters believe that providing this information to excavators could lead to unsafe digging practices. For example, an excavator that knows the infrastructure they are digging over is steel may choose to use mechanized equipment to dig within the hand dig zone because steel may not damage as easily as plastic, if struck. Furthermore, the commenters noted that the common practice of inserting pipelines through abandoned facilities makes it problematic to identify the material type (such as insertion of plastic through steel). For these reasons, the commenters requested that the proposed language be removed. (GDCs, NJNG)

43. COMMENT: Verizon objects to the proposed addition of subsection (k), which would require markouts to include a letter designation code that indicates the physical composition of the underground facilities. Markings for underground facilities should be straightforward and easy to understand so that it is easy to avoid damaging these facilities. These "composition codes" would clutter markings and impose additional burdens on the operator without providing any corresponding benefit. Given the fact that the type of buried material is not readily known to the operator performing the markout, this requirement could prove very difficult and costly to comply with. A backward-looking analysis of the material composition of historical buried facilities goes far beyond the information that is needed to avoid damaging those facilities during adjacent construction or repairs. If this requirement is enacted, it could significantly increase the cost of deployment of broadband and other infrastructure. Staff has not articulated any rationale for the proposed changes at subsection (k), and Verizon similarly cannot identify any benefit commensurate with the burdens these changes would impose on operators. (Verizon)

RESPONSE TO COMMENTS 42 AND 43: Abandoned lines pose a significant threat to the excavator's safety. Unmarked lines on a work site cause confusion that leads to dangerous and costly conditions. When excavators are hand-digging to locate a line that is adjacent to or underneath an abandoned line, it is possible that the unmarked line is the one that may be uncovered first, causing them to dig in proximity to the undiscovered, marked line with mechanized equipment. Additional information provided to excavators regarding the type of infrastructure material will enable them to determine, in some cases, that they have uncovered an unmarked line and that they need to continue to hand-dig and locate the line that is indicated by the markout. Regarding the commenters' concern that the proposed change is going to increase the use of unsafe digging practices, excavators are required to first locate the marked underground facilities by hand-digging and exercise reasonable care during excavation to avoid damage to underground facilities. The use of unsafe digging practices is a violation of N.J.A.C. 14:2-3.3, and the Board addresses this issue by issuing violations in accordance with N.J.A.C. 14:2-6. To clarify what will be marked in the case of a line of one material sleeved through another, it would be the outer material's designation code. For example, plastic sleeved through steel would be designated as "STL." The word "outer" will be added to the amendment for clarification. Telecommunications companies already practice this to some degree when marking lines as "TV" and "FOC." In addition, it is

known when lines are contained within a concrete duct bank or conduit, as markouts must indicate such structures in accordance with N.J.A.C. 14:2-5.1(b). Thus, the Board has determined that this amendment is necessary and appropriate to ensure safety.

44. COMMENT: UTCA strongly supports the need for operators to use the proposed Table B when marking out their lines because having this information will reduce the extreme danger of abandoned lines. (UTCA)

RESPONSE: The Board appreciates the commenter's support for the rules.

45. COMMENT: Abandoned lines are often encountered when contractors are excavating. Workers will hand-dig, find the "abandoned" line and will innocently believe it is the live utility's line and then begin to excavate with mechanized equipment, then hit the current live utility line. If more specific information concerning the facility is provided with the markouts, the utility (that is, plastic or steel), the excavator can avoid/reduce the incidences of hitting dangerous lines. If the type of pipe was noted with the markout, when the workers are looking for a plastic line and find the steel line, they would keep hand-digging until they find the plastic pipe. Having the operators required to use Table B will save lives which is why it is a Nation Common Ground Alliance Best Practice. (UTCA)

RESPONSE: The Board thanks the commenter for their support for the rules.

46. COMMENT: UTCA is requesting that the Board require that the depth of the utility line be indicated on the markout when it can be determined. We understand that it is challenging for markout firms to determine the depth of an underground facility. Changes in the contour of land and post construction activities can change the original installation burial coverage. However, since the law and regulations were developed, locating technology has advanced greatly. Ground Penetrating Radar (GPR) will give the markout provider the ability to determine the depth of the facility. UTCA is asking that the depth of the line be indicated on the markout ticket and markout itself, especially when there is the possibility that the utility line is imbedded in the asphalt of a road. In these cases, the only way for an excavator to physically locate the utility line is for the asphalt to be sawcut, exposing excavators to extreme danger if the line is imbedded in the asphalt. Having the depth requirement will prevent serious accidents. (UTCA)

RESPONSE: The Board disagrees with the recommendation. The depth of the line cannot yet accurately be determined with current technology, and the use of Ground Penetrating Radar (GPR) at all sites to provide this information will be costly and delay the completion of markouts. Error in GPR measurements has also been shown to increase with increasing depth. Excavators should always operate equipment with extreme caution and assume that the utility is located at a depth shallower than expected. Providing this information to excavators also has the potential to cause them to excavate over utilities with mechanized equipment before hand-digging in order to save time.

47. COMMENT: With respect to N.J.A.C. 14:2-5.2(m)7, NJNG appreciates the Board's inclusion of the proposed language. (NJNG)

RESPONSE: The Board appreciates the commenter's support of the rules.

48. COMMENT: Verizon similarly opposes the proposed changes to N.J.A.C. 14:2-5.2(k), which would require flags to be marked with multiple phone numbers as well as with the web address of the One-Call Damage Prevention System. The proposed additions will impose unnecessary burdens on operators, given that they are already required by N.J.A.C. 14:2-5.2(m)8 to label flags with their telephone number or the telephone number of the One-Call center. The purpose of including the operator's telephone number on the flag is that the party performing construction can immediately contact the underground facility operator, especially in cases of emergency. Listing multiple different numbers will create a safety risk: if a line is damaged, it is important that the excavator contact the utility first in order to mitigate property damage or risk to life. Listing one phone number is safer, clearer, and consistent with both N.J.A.C. 14:2-5.2(m)8 and 3.6, which requires excavators to immediately call 911 and the operator when a line or pipe carrying natural gas, liquid petroleum, or any other hazardous liquid is damaged. Adding requirements to label flags with multiple different phone numbers and web addresses is likely to prove confusing in the field and may create

unnecessary safety risks without providing corresponding benefit. Verizon suggests the following:

(m)7. Marked with the [underground facility] **operator's** initials or logo in black letters or symbols at least one inch high[; and], ~~the operator's phone number, the telephone number of the New Jersey One-Call Damage Prevention System operator (811 or 1-800-272-1000), and the current web address (URL) of the One-Call Damage Prevention System operator, that may be encoded in a QR code; and~~

8. Marked with the [underground facility] **operator's** telephone number or the telephone number of the New Jersey One-Call Damage Prevention Center (811 or 1-800-272-1000), in letters at least one inch high. (Verizon)

RESPONSE: The Board notes that the proposed language should appear in N.J.A.C. 14:2-5.2(m)8 and not (m)7. This change will be made upon adoption. In addition, the Board disagrees with the commenter's proposed language. Most flags in the field contain only the telephone number to the One-Call center. N.J.A.C. 14:2-3.6(a) requires the excavator to immediately report any damage to a natural gas line to the operator; however, if the operator cannot be reached, the One-Call rules require the excavator to contact the One-Call center. If the excavator causes or discovers any damage to any other type of underground facility, N.J.A.C. 14:2-3.6(b) requires the excavator to report the damage to the operator and then to the One-Call center. As such, the Board believes that the proposed requirement to include both the operator's and the One-Call center's phone numbers on markout flags would lead to more effective incident and damage reporting. The QR code that will be visible on the flag will link to a website that provides general information about the markout, contact information, and a link to a "search and status" database that provides ticket information to the public in a redacted format. Excavators working on the site that do not have a copy of their ticket on-hand can pull up a redacted version of the ticket that will let them know what operators were notified of their excavation and the status of their responses. The website that is referenced on the flag will provide resources to a potential caller more quickly and in better detail than a call to the One-Call center. As a result, the website link and QR code allow additional One-Call information to be available to the excavator, homeowner, or anyone who needs the information from the flag.

N.J.A.C. 14:2-6.5—Violations, Penalties, Enforcement—Response by Alleged Violator to Notice of Probable Violation

49. COMMENT: UTCA supports the Board's proposed changes to N.J.A.C. 14:2-6.5, which provides the requirements for a response by an alleged violator to a notice of probable violation to add proof with photographs and a narrative to prove the innocence of the alleged violation. (UTCA)

RESPONSE: The Board appreciates the commenter's support for the rules.

N.J.A.C. 14:2-6.7—Violations, Penalties, Enforcement—Notice of Administrative Order and Civil Administrative Penalty Assessment (AONOCAPA)

50. COMMENT: UTCA strongly suggests that at N.J.A.C. 14:2-6.7, the Notice of Administrative Order and Civil Administrative Penalty Assessment (AONOCAPA) must be made in a timely manner. An AONOCAPA currently has no time limit and can legally be given out years after an incident when workers may have left a company and records may be hard to recover. The alleged violator is only given 21 calendar days to submit an answering certification after receiving a Notice of Probable Violation (NOPV) from the Board. UTCA suggests that a 90-day window be given to the Board to produce an AONOCAPA which is over four times the 21-day window given to the alleged violator. (UTCA)

RESPONSE: The Board disagrees with the commenter's suggestion. Pursuant to N.J.S.A. 48:2-86, the Board may order the abatement of any alleged violation to the UFPA and One-Call Rules "[w]henver it appears to the [B]oard that a person has violated" such provisions. The language of the statute does not impose a time limit on the Board's issuance of an AONOCAPA. The Board may open an investigation into reported damages, if deemed necessary, and N.J.A.C. 14:2-6.7 allows for sufficient time for Board staff to thoroughly investigate the incidents, engage in

informal conferences with excavators and operators, and review all information obtained during the investigation before issuing an AONOCAPA. Additionally, N.J.A.C. 14:2-6.7 enables the Board to open an investigation into reported damages that occurred in the vicinity of an incident that had not previously been investigated. The Board reserves this administrative flexibility at N.J.A.C. 14:2-6.7 to review records to interpret trends and to guide enforcement strategies. Furthermore, excavators should thoroughly document all incidents at the time of the damage so that they are prepared to discuss the incident with Board staff and defend their position and actions taken, if necessary. For these reasons, the Board declines to limit its enforcement authority over alleged violations of the UFPA and the One-Call Rules by imposing a 90-day window to issue an AONOCAPA.

Federal Standards Statement

N.J.S.A. 52:14B-22 through 24 requires State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The rules readopted with amendments do not exceed any Federal standards. Under the Federal Pipeline Safety Act (Act), 49 U.S.C. 60101 and 60105, certain Federal funding for the State is conditioned on the implementation of a State One-Call program. The Federal Pipeline Safety Act does not require that a state implement a One-Call program. However, if the state implements such a program and other pipeline safety programs, the Act provides funding to the State for these programs.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 14:2.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 1. SCOPE

14:2-1.1 Scope and applicability

(a) (No change.)

(b) This chapter governs the following, as these terms are defined at N.J.A.C. 14:2-1.2:

1. (No change.)

2. Operators;

3.-4. (No change.)

(c) (No change.)

(d) This chapter applies to a homeowner as follows:

1. A homeowner that owns only residential underground facilities, including, but not limited to, an underground sprinkler system or an underground structure for lighting, is excluded from the definition of "operator," and such a homeowner is not subject to the requirements for operators at N.J.A.C. 14:2-4; and

2. (No change.)

(e) (No change.)

14:2-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1.

...
 "Excavate," "excavating," "excavation," or "demolition" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosive, and includes, but is not limited to, drilling, grading, boring, milling to a depth greater than six inches, trenching, tunneling, scraping, tree and root removal, cable or pipe plowing, fence post or pile driving, and wrecking, razing, rending, or removing any structure or mass material, but does not include routine residential property or right-of-way maintenance or landscaping activities performed with non-mechanized equipment, excavation within the flexible or rigid pavement box within the right-of-way, or the tilling of soil for agricultural purposes to a depth of 18 inches or less.

...

“One-Call incident” means any of the following, if it involves an underground facility and results from excavation or demolition:

- 1.-4. (No change.)
- 5. Damage to the property estimated at more than \$122,000;
- 6.-10. (No change.)

“Operator” means a person owning or operating, or controlling the operation of, an underground facility, but shall not include a homeowner who owns only residential underground facilities, such as an underground lawn sprinkler system or an underground structure for a residential low-voltage lighting system.

“Terrestrial LiDAR (Light Detection and Ranging)” means an optical sensing technology that acquires XYZ coordinates of numerous points on land by emitting laser pulses toward these points and measuring the distance from the device to the target.

SUBCHAPTER 2. ONE-CALL SYSTEM OPERATOR

14:2-2.1 Duties of One-Call Damage Prevention System operator

(a) The System operator shall operate a one-call center that is open 24 hours per day, seven days per week, and serves the entire State. The telephone number for the One-Call center shall be 811 in New Jersey, or 1-800-272-1000 for out-of-State callers.

(b) The System operator shall staff the one-call center with representatives that will do all of the following:

- 1.-4. (No change.)
- 5. Promptly transmit to the appropriate operator(s) the information received from an excavator or responsible contractor regarding intended excavation or demolition;
- 6. (No change.)
- 7. Provide to the excavator or responsible contractor the names of the operators who will be notified by the One-Call center of the intended excavation.

(c) The System operator shall provide a form to excavators for the purpose of reporting a condition or configuration which has the potential to pose a danger to health and safety, in accordance with N.J.A.C. 14:2-3.4(d). Once this form is completed, the System operator shall send the completed form to the appropriate operator, in conformance with the System operator’s tariff.

14:2-2.2 Designation and term of One-Call Damage Prevention System operator

- (a) (No change.)
- (b) The term of the System operator shall be five years, but the Board may rescind, extend, or modify this designation if it determines, that a modification is required for the operation of the System in conformance with N.J.S.A. 48:2-73 et seq., this chapter, and its Board-approved tariff.
- (c) In the final year of a System operator’s term, the Board shall advertise the System operator position in the New Jersey Register and in newspapers of general circulation and comply with all applicable rules of the New Jersey Department of the Treasury.

(d) The Board shall accept applications and shall designate a person as the System operator for a term, consistent with the New Jersey Department of the Treasury guidelines. In choosing a System operator, the Board shall select the applicant that will best operate the System to achieve the purposes of the Underground Facility Protection Act, in accordance with N.J.S.A. 52:34-12 and N.J.A.C. 17:12.

- (e) (No change.)

SUBCHAPTER 3. EXCAVATORS AND RESPONSIBLE CONTRACTORS

14:2-3.1 Notice of intent to excavate—timing

(a) A person shall not perform excavation or demolition, as defined at N.J.A.C. 14:2-1.2, unless the person performing the excavation or demolition, or a responsible contractor, has provided notice of the excavation or demolition to the One-Call center by dialing 811 in New Jersey, out-of-State, 1-800-272-1000, or by electronic notice as directed by the One-Call System operator in accordance with its Board-approved

tariff. Requests provided electronically or through any procedure other than that directed for use by the One-Call System operator shall not constitute notice in compliance with this section.

- (b) (No change.)
- (c) Notice provided in accordance with (a) above, for an excavation or demolition that is commenced within 10 business days after the notice, shall remain valid for 45 business days from the notification, provided that the excavator maintains the markout that is made by an operator. Any excavation or demolition continuing after the 45 business days shall require a new notification that meets the requirements at (a) above.

- (d)-(e) (No change.)
- (f) An excavation that is undertaken in order to repair or replace the vent or filler pipe of an underground heating oil tank or a heating system shall not be subject to the three-business-day advance notice requirement at (a) above, provided it meets all of the requirements at (f)1, 2, and 3 below. Instead, such an excavation may be started immediately after notice to the One-Call center.

- 1.-3. (No change.)
- (g) (No change.)

14:2-3.2 Notice of intent to excavate—contents, perimeter marking

- (a) (No change.)
- (b) An excavator or responsible contractor shall provide all of the following in its notice to the One-Call center:
 - 1. The name and telephone number of the person notifying the One-Call center, including the contact information of a person knowledgeable about the excavation to be performed;
 - 2. The following information regarding the excavator, any rented equipment operators that will be used, and the responsible contractor, if any:
 - i. Name and address;
 - ii.-iii. (No change)

- 3.-5. (No change.)
- 6. A description of the site, sufficient to enable the operator to accurately determine the location and boundaries of the site. The excavator shall utilize as many of the following methods as are necessary to ensure that the operator can accurately identify the site:
 - i. (No change.)
 - ii. The block and lot of the site;
 - iii. A description of any white perimeter markings the excavator has made in accordance with (c) below; and/or
 - iv. On large parcels of land where white paint is used, GPS coordinates may be used, in decimal degrees, to further aid in identifying the area of excavation.

(c) Where appropriate, to clearly identify the site of a planned excavation or demolition, an excavator or responsible contractor may choose to mark the perimeter of the site in white, prior to notifying the One-Call center. White perimeter marking is encouraged in order to minimize unnecessary marking and locating by the operators, for example to indicate small sites, nonlinear excavations, and spot excavations such as soil borings, mailboxes, sign posts, or tree plantings.

- (d) (No change.)
- (e) If an excavator chooses to mark the site perimeters pursuant to (c) above, the excavator shall:
 - 1. (No change.)
 - 2. Mark the site boundaries in a manner that is reasonably calculated to enable an operator to determine the site boundaries with sufficient accuracy so that the operator can comply with the markout provisions at N.J.A.C. 14:2-5;

- 3.-4. (No change.)

14:2-3.3 Excavators—onsite requirements

- (a) An excavator or responsible contractor shall:
 - 1.-2. (No change.)
 - 3. Use reasonable care during excavation or demolition to avoid damage to, or interference with, underground facilities, including protecting each underground facility from freezing, traffic, and/or other loads or hazard in accordance with (b) below;
 - 4. After commencement of excavation or demolition, protect and preserve the marking, staking, or other designation of an underground

facility until the marking, staking, or other designation is no longer necessary for safe excavation or demolition;

5. Provide identification in the form of company credentials or a State-issued ID to Board staff upon request; and

6. Provide a paper or electronic copy of the One-Call notification to Board staff upon request.

(b) At all times throughout the course of an excavation or demolition, an excavator shall also provide adequate physical support of all underground facilities on the site, as follows:

1. An excavator shall comply with all reasonable support specifications that the operator provides pursuant to N.J.A.C. 14:2-4.2(e);

2. If the operator does not provide support specifications pursuant to (b)1 above, the excavator shall provide support in accordance with generally accepted engineering practice. The support shall be at least equivalent to the support to the underground facility prior to the excavation;

3. (No change.)

4. The operator may, by mutual agreement with the excavator, choose to provide the physical support.

(c) If a representative of an operator determines that an excavator is not adequately protecting or supporting the facility, resulting in an unsafe condition or situation relating to the excavation or demolition, the representative may require the excavator to suspend the excavation or demolition until the problem is corrected. The representative may impose this requirement verbally only if the representative believes that an emergency exists, and shall provide a written confirmation of the verbal directive to suspend work as soon as feasible thereafter. In all other situations, the representative shall provide the directive to suspend the excavation or demolition in writing.

14:2-3.5 Excavation or demolition in response to an emergency

(a) (No change.)

(b) An excavator that is subject to this section shall notify the One-Call center of an emergency excavation or demolition as soon as reasonably possible without causing a delay in addressing the emergency, and shall include in the notice a description of the nature of the emergency ***and provide contact information of a person knowledgeable of the excavation to be performed***.

(c)-(f) (No change.)

(g) Emergency notifications shall only be valid for the period that the conditions defined at N.J.A.C. 14:2-1.2 exist. If a temporary repair is made and requires additional excavation, a routine markout request is required.

14:2-3.6 Excavators—incident and damage reporting

(a) If an excavator causes or discovers any damage, as defined at N.J.A.C. 14:2-1.2, to a line or pipe carrying natural gas, liquid petroleum, or any other hazardous liquid, the excavator shall immediately call 911, and shall immediately thereafter report the damage to the appropriate representative of the operator. If the excavator cannot reach the operator, the excavator shall report the damage to the One-Call center at 811 in New Jersey, or out-of-State, 1-800-272-1000.

[(b) An excavator that is subject to this section shall notify the One-Call center of an emergency excavation or demolition as soon as reasonably possible without causing a delay in addressing the emergency and shall include in the notice a description of the nature of the emergency and provide contact information of a person knowledgeable of the excavation to be performed.]

(b) If an excavator causes or discovers any damage to an underground facility that carries anything other than natural gas, liquid petroleum, or another hazardous liquid, the excavator shall immediately report the damage to the appropriate representative of the underground facility operator. Immediately thereafter, the excavator shall report the damage to the One-Call center at 1-800-272-1000 out-of-State, or 811 in New Jersey.

(c) (No change.)

(d) If, during excavation or demolition, an excavator causes or discovers any of the following, the excavator may complete and submit to the One-Call center a dangerous condition reporting form:

1. (No change.)

2. Any condition or configuration relating to an underground facility, which, in the excavator's judgment, has the potential to pose a danger to health and safety, and which is not covered pursuant to (a) or (b) above.

(e) (No change.)

SUBCHAPTER 4. OPERATORS

14:2-4.1 Applicability

(a) This subchapter applies to operators, as defined at N.J.A.C. 14:2-1.2, except as specified in this section.

(b) An operator of an underground non-metallic water pipe or non-metallic water distribution facility that was installed prior to November 18, 1994, is exempt from the requirement at N.J.A.C. 14:2-4.2 to mark out the facility, but shall, within three business days of the notice to the One-Call center, cooperate with excavators in reasonable efforts, including a site meeting, to determine the location of the facility. Reasonable efforts, include, to any and all extent possible, ascertaining and/or obtaining information regarding the location of the meter and curb shutoff, closest building penetration to the water meter, the location of service connection to the main, the diameter of the facility, the composition of the facility, company service records, and records that the operator may have.

(c) An operator that is a State department or agency is exempt from the requirement at N.J.A.C. 14:2-4.2 to mark out its facilities in accordance with N.J.A.C. 14:2-4.2 if all of the following criteria are met:

1.-6. (No change.)

(d) (No change.)

(e) An operator that is exempt from markout requirements in accordance with (b) or (c) above shall comply with all other requirements in this chapter.

14:2-4.2 Operators—basic requirements

(a) An operator shall ensure that it is fully equipped and available to receive from the One-Call center the information required pursuant to N.J.A.C. 14:2-3.2 regarding a planned excavation or demolition.

(b) If an operator fails to participate in and comply with the requirements of the One-Call Damage Prevention System in violation of N.J.S.A. 48:2-80 and an underground facility of such operator is damaged by an excavator or responsible contractor by reason of the excavator's or responsible contractor's failure to notify the operator because the operator was not a member of the One-Call Damage Prevention System, such operator shall have no right of recovery from the excavator or responsible contractor of any costs associated with the damage to its lines.

(c) Excluding operators that are exempt, in accordance with N.J.A.C. 14:2-4.1(b), any operator that fails to mark, locate, or otherwise provide the position and number of its underground facilities, which may be affected by a planned excavation or demolition, shall be liable for any costs, labor, parts, equipment, and personnel downtime, incurred by an excavator damaging a facility owned, operated, or controlled by the operator.

(d) Within three business days after receiving information from the System operator regarding a planned excavation or demolition, an operator shall provide an electronic positive response to the System operator and do either of the following:

1. If the operator owns, operates, or controls the operation of any underground facilities on the site, the operator shall mark out the site as required pursuant to N.J.A.C. 14:2-5, except if a facility is exempt from markout requirements pursuant to N.J.A.C. 14:2-4.1(b) or (c); or

2. If the operator does not own, operate, or control the operation of any underground facilities on the site, the operator shall notify the excavator of that fact.

(e) An operator shall provide to the excavator specifications for supporting any underground facility on the site, which requires physical support during excavation or demolition, including the type, strength, and arrangement of the support. In accordance with N.J.A.C. 14:2-3.3, if the parties mutually agree, the operator shall provide such support.

(f) If an operator receives a request from the One-Call center for an emergency markout, the operator shall:

1. (No change.)

2. If the operator does not own, operate, or control any underground facilities on the site, the operator shall immediately notify the excavator of that fact. If the operator cannot confirm that the excavator is aware that

the operator does not own, operate, or control any underground facilities on the site, the operator shall immediately dispatch appropriate personnel to the site.

(g) The requirements at (f) above shall apply to all operators that receive a request from the One-Call center for an emergency markout, regardless of whether the operators' underground facilities are involved in the emergency or not.

14:2-4.3 Operators—markout records

(a)-(b) (No change.)

(c) In addition to the markout record required pursuant to (a) above, an operator shall make and maintain a visual record of the markout using photography and other visual documentation. The record shall:

1.-3. (No change.)

4. Be transmitted in a format that includes the date, time, and location of the photograph.

(d) (No change.)

14:2-4.4 Operators—accidents and emergencies

(a) Operators shall ensure that employees who are qualified to accept and respond to reports of accidents, damage, and emergencies involving underground facilities, are available at all times of the day and night throughout the year. Each operator shall provide the Board with the names and titles of these qualified response personnel, as part of every report required pursuant to *(h)* *(j)* below.

(b) When an operator receives a report of an emergency, the operator shall do *[both]* ***all*** of the following immediately, and in all cases within one hour after learning of the emergency:

1. Dispatch appropriate personnel to the site to assist in locating and protecting underground facilities;

2. Take any other action necessary to assist in minimizing danger and/or damage; and

3. Update the electronic positive response with the appropriate status ("marked," "cleared," or "dispatched").

(c) Each operator shall report any One-Call incident, as defined at N.J.A.C. 14:2-1.2, to the Board in accordance with the reporting procedures for reportable accidents found in the Board's rules for all utilities at N.J.A.C. 14:3-6.4. Should there be any inconsistency between the reporting procedures at N.J.A.C. 14:3-6.4 and those of this subchapter, the more stringent requirement shall govern.

(d) Whenever an operator is notified of a One-Call incident, the operator shall immediately, and in no event later than one hour after notice of the incident, contact the Board's Division of Reliability and Security through email and shall provide the location and a brief description of the incident.

(e) Operators *[may use]* ***should consider the use of*** Terrestrial LiDAR, Ground Penetrating Radar, or other surveying technologies to record the scene of a One-Call incident when damage to an underground facility results in property damage amounting to \$122,000 or more, or causes bodily injury, or as requested by Board staff.

(f) (No change in text.)

(g) As soon as possible after a One-Call incident, and in no case later than 15 calendar days afterwards, the operator shall follow up the initial notice required pursuant to this section with a detailed written report. The written report shall include all significant facts of which the operator is aware regarding the location and cause of the incident, all pictures of the incident, a timeline of events, and the extent of any damage and/or injuries.

(h) Any person who obstructs an inspection or investigation by taking actions that were known or reasonably should have been known to prevent, hinder, or impede an investigation without good cause will be subject to administrative and/or criminal penalties, as allowed by statute.

(i) Each operator of an underground facility that handles natural gas or hazardous liquids shall submit a "hits report" listing any damage, emergency, or One-Call incident involving the operator's natural gas or hazardous liquids facilities. The report shall be submitted to the Board by the close of business on Tuesday of the week following any two-week period in which any such damage, emergency, or One-Call incident has occurred.

(j) All operators shall submit the following report(s) to the Board, as applicable:

1. An operator with facilities that have sustained any damage, as defined at N.J.A.C. 14:2-1.2, during a quarter shall submit a "hits report," including all damage occurring to its facilities during that quarter. No quarterly report is required from an operator that has had no damage to its facilities during that quarter;

2. Any operator that has had no damage to its facilities during a year shall submit an annual "no hits" report. The "no hits" report shall be submitted on January 30th of each year; and

3. Reports required pursuant to this subsection shall contain the contact information for the qualified response personnel described pursuant to (a) above.

(k) Each operator shall maintain a paper or electronic record of all damage, as defined at N.J.A.C. 14:2-1.2, to its underground facilities, including any damage reported by an excavator in accordance with N.J.A.C. 14:2-3.4, for seven years after the damage occurred.

(l) Reports and records may be submitted to the Board on paper or electronically, except where another method is required pursuant to this chapter or a Board rule or order.

SUBCHAPTER 5. MARKOUTS

14:2-5.1 General markout provisions

(a) When an operator is required pursuant to N.J.A.C. 14:2-4.2(b) to mark out a site, the operator shall perform the markout in accordance with this subchapter.

(b) (No change.)

(c) If an excavator has marked the perimeter of a proposed excavation or demolition site with white in accordance with N.J.A.C. 14:2-3.2(c), (d), and (e), an operator shall mark out all of the operator's facilities that lie within the white perimeter marking, and in addition all facilities outside the white perimeter that are within 10 feet of the white marking.

(d) All facilities newly installed by the operator shall be back flagged and marked according to N.J.A.C. 14:2-5.2, upon completion of the installation. If there is a valid notice of intent to excavate in accordance with N.J.A.C. 14:2-3.1 in the scope of the work area where the facilities have been installed, ***that has not yet reached its "start by" date,*** the excavator must be notified about the newly installed facilities. This shall be done *[through email and]* by updating the positive response.

14:2-5.2 Specifications for marks used in markouts

(a) An operator shall perform all markouts using paint. In addition, if the markout must be made on a non-firm surface including, but not limited to, grass, dirt, gravel, or sand, or if weather or site conditions may make paint difficult to use or see, the operator shall utilize paint, and, in addition, shall utilize stakes and/or flags. If used, the location of any stakes or flags shall conform to the diagrams at chapter Appendix A, incorporated herein by reference.

(b) The operator shall ensure that all paint used for markouts has sufficient lasting properties so as to withstand vehicular traffic during the course of the excavation or demolition, but shall be sufficiently removable or degradable with time so as not to be permanent.

(c) If necessary to avoid placing paint on decorative gravel, stone, or pavers, an operator may elect to substitute eight-inch whiskers, as defined at N.J.A.C. 14:2-1.2, for one or more paint marks. The whiskers shall be the appropriate color, shall be laid flat on the ground in the position that would be covered by a paint mark, and fastened to the ground with a nail or other appropriate fastener. The required letter designation code and other numbers and letters may be placed on a flag. An operator shall not use whiskers as a substitute for a stake or flag.

(d) (No change.)

(e) An operator shall perform all markouts in a manner that will clearly indicate the location and direction of each underground facility.

(f) An operator shall place all marks used to indicate a particular facility at intervals of 25 feet or less. However, the operator shall place marks closer together than 25 feet, if necessary, to clearly indicate the location and direction of the underground facility. For example, site conditions or directional changes of the underground facility may necessitate a shorter distance between marks in order to clearly indicate the location and direction of an underground facility.

(g) (No change.)

(h) An operator shall arrange all marks, except for the arrowhead marks in an offset markout, in a line following or paralleling the course of the underground facility. The arrowhead marks used in an offset markout shall be perpendicular to the course of the underground facility.

(i)-(j) (No change.)

(k) Markouts shall include the type of ***outer*** infrastructure material, where known or reasonably estimated, using the following letter designation codes at Table B below. Composition codes are to appear once per linear markout or every time there is a change in diameter or composition. These letter designation codes will be used in addition to the letter codes at Table A above.

Table B

Infrastructure Material

ABS	Acrylonitrile - Butadiene - Styrene
ACP	Asbestos Cement Pipe
CL	Cast Iron
CMC	Cement Mortar Coated
CML	Cement Mortar Lined
CMP	Corrugated Metal Pipe
CPP	Corrugated Plastic Pipe
CU	Copper
CWD	Creosote Wood Duct
HDPE	High Density Polyethylene
MTD	Multiple Tile Duct
PLA	Plastic (conduit or pipe)
RCB	Reinforced Concrete Box
RCP	Reinforced Concrete Pipe
RF	Reinforced Fiberglass
SCCP	Steel Cylinder Concrete Pipe
STL	Steel
VCP	Vertrified Clay Pipe

(l) The operator shall ensure that all colors used in markouts meet the standards in Standard Z535.1-2017 of the American National Standards Institute, Inc., which is incorporated herein by reference, as amended and supplemented, and is available at <https://www.nema.org/Standards/Pages/American-National-Standard-for-Safety-Colors.aspx>.

(m) The operator shall ensure that all flags used in markouts shall be: 1.-6. (No change.)

7. Marked with the operator’s initials or logo in black letters or symbols at least one inch high*, the operator’s phone number, the telephone number of the New Jersey One-Call Damage Prevention System operator (811 in New Jersey, or out-of-State, 1-800-272-1000), and the current web address (URL) of the One-Call Damage Prevention System operator, that may be encoded in a QR code]*; and

8. Marked with the operator’s telephone number*,* *[or]* the telephone number of the New Jersey One-Call Damage Prevention *[Center]* ***System operator*** (811 in New Jersey, or out-of-State, 1-800-272-1000), in letters at least one inch high*, **and the current web address (URL) of the One-Call Damage Prevention System operator, that may be encoded in a QR code***.

(n) The operator shall ensure that all stakes used in markouts shall be: 1.-5. (No change.)

Recodify existing (n)-(o) as (o)-(p) (No change in text.)

14:2-5.4 Centerline markouts

(a) An operator shall utilize a centerline markout to indicate an underground facility that is 12 inches or less in nominal outside dimension, unless exceptional site conditions would either make it impossible to clearly mark the centerline of the underground facility in accordance with this section, or would make it impossible for the excavator to see the markings in a centerline markout. In a case with such exceptional site conditions, an operator may utilize a centerline offset markout, described at N.J.A.C. 14:2-5.6.

(b)-(c) (No change.)

14:2-5.5 Outside dimension markouts

(a) An operator shall utilize an outside dimension markout to indicate an underground facility that is more than 12 inches in nominal outside dimension, unless exceptional site conditions would either make it impossible to clearly mark the outside walls of the underground facility in accordance with this section; or would make it impossible for the excavator to see the markings in an outside dimension markout. In a case with such exceptional site conditions, an operator may utilize an outside dimension offset markout, described at N.J.A.C. 14:2-5.6.

(b)-(c) (No change.)

14:2-5.6 Offset markouts

(a) An operator shall utilize an offset markout only if exceptional site conditions make it impossible to clearly mark the underground facility with a centerline markout pursuant to N.J.A.C. 14:2-5.4 or an outside dimension markout pursuant to N.J.A.C. 14:2-5.5.

(b)-(g) (No change.)

(h) The distance between an underground facility and an offset markout shall be as small as possible while enabling an excavator to clearly see the location of the underground facility. If site conditions permit this distance to be 18 inches or less, the operator shall not utilize a centerline offset markout, but instead shall utilize a centerline markout or outside dimension markout.

SUBCHAPTER 6. VIOLATIONS, PENALTIES, ENFORCEMENT

14:2-6.2 Penalty amounts

(a) Except as provided pursuant to (b) below, an operator, an excavator, or the One-Call System operator, that violates any provision of this chapter, the Underground Facility Protection Act, or an order adopted pursuant thereto, shall be liable to a penalty of not less than \$1,000 and not more than \$2,500 per day for each day the violation continues, except that the maximum civil penalty shall not exceed \$25,000 for any related series of violations.

(b)-(e) (No change.)

14:2-6.5 Response by alleged violator to Notice of Probable Violation

(a) (No change.)

(b) If the alleged violator wishes to contest the NOPV, the alleged violator shall indicate this on the Answering Certification and provide proofs by both picture and narrative of the alleged violator’s innocence as to the violation charged. Board staff may hold an informal conference with the alleged violator to analyze the record of the matter.

(c)-(e) (No change.)

14:2-6.9 Actions in Superior Court

(a)-(b) (No change.)

(c) An affected operator may institute an action in the Superior Court for an injunction against a violator whose repeated failure to comply with the Underground Facilities Protection Act constitutes a threat to public safety.

(d) (No change.)

(a)

BOARD OF PUBLIC UTILITIES

Telecommunications

Readoption with Amendments: N.J.A.C. 14:10

Adopted Repeals: N.J.A.C. 14:10-6.5 and 10

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