



INITIAL STATEMENT OF REASONS

TITLE 19. PUBLIC SAFETY
 DIVISION 4. CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD
 Sections 4003(a)(1), 4305, 4310, 4345, 4401, 4501

**CONTACT INFORMATION, CONTINUAL EXCAVATION TICKET,
 USE OF POWER TOOLS NEAR SUBSURFACE INSTALLATIONS**

BACKGROUND

The Dig Safe Act of 2016 (Stats. 2016, Ch. 809) made several changes to laws governing excavation and created the California Underground Facilities Safe Excavation Board. The Board investigates violation of certain laws protecting underground infrastructure and develops standards relating to safety practices.

SPECIFIC PROBLEM, PURPOSE AND RATIONALE OF EACH SECTION

SECTION 4003(a)(1). OPERATOR CONTACT INFORMATION

PROBLEM STATEMENT

In certain circumstances, excavators need to contact operators of subsurface installations that are, or may be, in conflict with intended excavation. Operator contact information is usually available to excavators only through one of the two regional notification centers, DigAlert or USA North. If an operator has not provided current contact information to the appropriate call center, then the excavation work can be delayed while attempts are made to identify and reach the operator.

SPECIFIC PURPOSE OF THE REGULATION

The purpose of the proposed regulation is to make operator contact information available to excavators who need to determine the exact location of a subsurface installation.

NECESSITY & BENEFITS

Excavators may need to contact a person who can assist the excavator in determining the exact location of a subsurface installation for a number of reasons, including to provide instructions for accessing to a site to mark the location of underground facilities (Gov. Code § 4216.2(h)), discuss excavation activities that may affect a subsurface facility (Gov. Code § 4216.4(d)), discuss the use of power tools rather than hand tools to expose a facility (Gov. Code § 4216.4(a)), if the excavator cannot locate the facility (Gov. Code § 4216.4(b)), if an excavator damages a facility (Gov. Code § 4216.4(c)), and regarding work to be performed in an area of continual excavation. (Gov. Code § 4216.10.)

If an operator does not provide current contact information to the regional notification center, then the center cannot provide it to the excavator. The center or the excavator then must spend time attempting to locate the correct information.

The Legislature adopted Government Code section 4216.4(a)(2)(C) and required the Board to adopt regulations governing the use of power equipment to expose subsurface installations. The communication facilitated by this regulation is necessary for determining how and when such equipment can be used.

SECTION 4305 PERSONS ELIGIBLE TO WORK UNDER A CONTINUAL EXCAVATION TICKET

PROBLEM STATEMENT

In areas where excavation work is ongoing or recurring as part of agricultural or flood control operations, an excavator can obtain a continual excavation ticket. (Gov. Code § 4216.10.) Given the nature of that work, it's common for multiple persons to perform the excavation work over time. In some instances, those persons are not all informed of the nature of the approved work and the location of any subsurface facilities. That lack of information jeopardizes the safety of both workers and facilities.

SPECIFIC PURPOSE OF THE REGULATION

The purpose of this regulation is to ensure that all persons performing work under a ticket for an area of continual excavation are informed of the area in which the work is to be performed, the location of any subsurface facilities, and the type of work to be performed.

NECESSITY & BENEFITS

The Legislature adopted Government Code section 4216.11 and required the Board to adopt regulations specifying the nature of a plan for managing an area of continual excavation. It's necessary that all persons performing the planned work be made aware of the plan details.

SECTION 4310. CONTINUAL EXCAVATION TICKET RENEWAL REMINDER

PROBLEM STATEMENT

Tickets for work in areas of continual excavation permit recurring excavation work to be performed for one year from the date of issuance. (Gov. Code § 4216.10(d).) Once the ticket expires, work must stop until the excavator obtains a new ticket. The Board anticipates that, given the one-year duration of the ticket, some excavators will forget to timely renew their tickets.

SPECIFIC PURPOSE OF THE REGULATION

When an excavator has provided contact information to the regional notification center and has consented to an electronic contact from the center, this regulation will require regional notification centers to provide an electronic reminder notice in before the ticket expires. The center is also responsible for assisting excavators with the renewal of the ticket.

NECESSITY & BENEFITS

The Legislature has adopted Government Code section 4216.10 and required the Board to adopt regulations providing for the renewal of continual excavation tickets for areas on which no subsurface installations are present, or to eliminate the requirement for a renewal ticket altogether. The statute also specifies the manner in which the ticket may be renewed. This regulation implements and makes clear that provision.

The Legislature adopted Government Code section 4216.11 and required the Board to adopt regulations specifying the nature of a plan for managing an area of

continual excavation. Facility operators are given notice of the ticket renewal, and so also of the need for a meeting with the excavator to confirm, or modify, the plan for excavation at the site.

Based on available data,^[1] the Board determined that the renewal process needed to be modified rather than eliminated because the process could be eliminated for less than one-tenth of 1% of the farmland in California.

To make that determination, staff first analyzed statewide parcel data, spatial data on farmland derived from the National Land Cover Data Set, and locations of high priority facilities covering transmission lines for oil, gas, and hazardous waste. This analysis indicated that very few of the farmland parcels, perhaps as few as 5%, had high priority facilities present. Which meant that 95% of the farmland parcels could potentially be eligible for an exception to the renewed ticket requirement.

Staff then also analyzed anonymized, combined service area polygons which regional call centers developed from shape files provided by utility operators. The relations between that shape file data and parcel data indicated that only 0.082 percent of farmland parcels were located outside of a service area polygon.

Given the disparities between the analyses, and the Board's current inability to obtain more precise shape file data, at this time, the Board is not able to identify an effective process for identifying farmland parcels for which excavators would not need to renew tickets.

SECTION 4345. ONSITE MEETING & PLAN FOR CONTINUAL EXCAVATION NEAR HIGH PRIORITY SUBSURFACE INSTALLATION

PROBLEM STATEMENT

Tickets for work in areas of continual excavation permit recurring excavation work to be performed for one year from the date of issuance. (Gov. Code § 4216.10(d).) If the area contains a high priority subsurface installation, an excavator must meet with the operator before starting work. (Gov. Code § 4216.10.) If those provisions applied to a renewed ticket in the same way they applied to a new ticket, then an excavator obtaining the renewed ticket would have to stop work until the meeting occurred.

SPECIFIC PURPOSE OF THE REGULATION

This regulation permits the holder of a renewed continual excavation ticket to continue working for 30 days to permit the excavator and operator to meet and agree to a plan for the continued excavation.

NECESSITY & BENEFITS

This regulation permits certain excavators to continue performing planned, recurring work, for a reasonable time, until the operator can meet with the excavator to develop or confirm the plan for protecting the high priority installation present in the area of excavation.

^[1] See, discussion in the April 16, 2019 staff report at <https://digsafe.fire.ca.gov/media/2046/item-6-area-of-continual-excavation-renewal-ticket-requirement.pdf>, also included in the list of documents relied upon, below.

The Legislature has adopted Government Code section 4216.10 and required an excavator planning to perform continual excavation work near a high priority subsurface installation to meet with the operator before beginning work. (Gov. Code § 4216.10(c).) This regulation clarifies and applies that provision as applied to a renewed ticket for an area of continual excavation.

The Legislature adopted Government Code section 4216.11 and required the Board to adopt regulations specifying the nature of a plan for managing an area of continual excavation. This regulation clarifies and applies that provision as applied to a renewed ticket.

SECTION 4401 EXCAVATOR CONTACT INFORMATION

PROBLEM STATEMENT

In certain circumstances, operators of subsurface installations need to contact excavators who are doing work near a subsurface installation. Excavator contact information is usually available to operators only through excavation tickets provided by one of the two regional notification centers, DigAlert or USA North. If an excavator's contact information, as provided to the appropriate call center, is incorrect, the excavation work can be delayed while attempts are made to identify and reach the excavator.

SPECIFIC PURPOSE OF THE REGULATION

The purpose of the proposed regulation is to make excavator contact information available to operators.

NECESSITY & BENEFITS

Operators may need to contact an excavator for a number of reasons, including to report difficulty accessing to the construction site to mark the location of underground facilities (Gov. Code § 4216.2(h)), discuss excavation activities that may affect a subsurface facility (Gov. Code § 4216.4(d)), coordinate an onsite meeting (Gov. Code § 4216.2(c)), discuss the use of power tools rather than hand tools to expose a facility (Gov. Code § 4216.4(a)), perform repairs if an excavator damages a facility (Gov. Code § 4216.4(c)), and regarding work to be performed in an area of continual excavation. (Gov. Code § 4216.10.)

If an excavator does not provide current contact information to the regional notification center, then the center cannot provide it to the operator, requiring either the center or the operator to spend time attempting to locate the correct information.

The Legislature adopted Government Code section 4216.4(a)(2)(C) and required the Board to adopt regulations governing the use of power equipment to expose subsurface installations. The communication necessary for determining how and when such equipment can be used is facilitated by this regulation.

SECTION 4501. USE OF POWER TOOLS TO LOCATE SUBSURFACE INSTALLATION

PROBLEM STATEMENT

An excavator cannot use power tools within the tolerance zone of a subsurface installation before first using hand tools to determine the exact location of the installation. (Gov. Code § 4216.4(a)(1).) In some instances, most often in hard or

rocky soil, hand tools cannot effectively remove enough material to expose an installation.

SPECIFIC PURPOSE OF THE REGULATION

This regulation permits the use of power tools to locate a subsurface utility if the excavator satisfies certain conditions.

NECESSITY & BENEFITS

The Legislature adopted Government Code section 4216.4 and directed to Board to adopt regulations that permit use of power tools in the tolerance zone before the subsurface installation is located. (Gov. Code § 4216.4(a)(2)(C).) Those regulations will provide an exception to section 4216.4(a), which requires the use of hand tools to locate the installation before power tools can be used.

The Legislature adopted Government Code section 4216.18 and required the Board to develop standards for safely using power tools to excavate near subsurface installations. (Gov. Code § 4216.18(b).)

All initial statements of reasons requirements for the proposed regulations have been satisfied.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board relied on the following sources:

1. Letter from Alan K. Mayberry to Attorney General Kamala Harris, December 22, 2015
2. Online surveys created by the Board, which 1) operators and 2) all other stakeholders were invited to take (03/14/2019 to 04/30/2019) and the results of those two surveys.
3. AB 1914 Bill Analysis, Assembly Floor, August 30, 2018
4. "Staff report: AB 1914 – Initial Discussion on Scope of Implementation," Agenda Item 7, November 8, 2018, <https://digsafe.fire.ca.gov/media/2045/item-7-initial-discussion-on-ab-1914-regulations.pdf>, accessed on August 29, 2019.
5. "Staff report: Discussion on Implementation of AB 1914," Agenda Item 4, April 15, 2019, <https://digsafe.fire.ca.gov/media/2050/item-4-implementation-of-ab-1914.pdf>, accessed on August 29, 2019.
6. "Staff report: Discussion on Area of Continual Excavation Ticket Renewal Requirement (Government Code section 4216.10(e)), " Agenda Item 6, April 16, 2019, <https://digsafe.fire.ca.gov/media/2046/item-6-area-of-continual-excavation-renewal-ticket-requirement.pdf>, accessed on August 29, 2019.
7. "Staff report: Draft Regulations on Area of Continual Excavation Ticket Renewal Requirement and AB 1914 Implementation," Agenda Item 5 & 6, May 13 – 14, 2019, <https://digsafe.fire.ca.gov/media/2103/item-5-6-staff-report-on-draft-regulations-on-ace-renewal-and-ab-1914.pdf>, accessed on August 29, 2019.
8. Local Maintaining Agencies List, Department of Water Resources https://water.ca.gov/LegacyFiles/floodmgmt/hafoo/fpiib/fpinss/annual_reports/lma-short-names.pdf, accessed on August 29, 2019.
9. Construction Industry Salary Information from indeed.com
10. Contractors State Licensing Board Master License Data, accessed on July 29, 2019
11. Dig Safe Board Policy L-02
12. USA North 811 2018 Annual Newsletter
13. Email from James Wingate of USA North 811 to Staff, August 5, 2019
14. Email from Ann Diamond of DigAlert to Staff, on July 26, 2019 and August 4, 2019

15. Hearing before the California State Senate Committee on Business, Professions and Economic Development, July 2, 2018, 17:30 to 20:30 and 24:00 to 26:00
16. Common Ground Alliance, *DIRT Report for 2017 - Appendix D: Excavation Information* (Vol. 14)
17. California Department of Food and Agriculture, *California Agricultural Statistics Review 2017-2018*, pg. 2 “Farm Facts”
18. U.S. Small Business Administration Office of Advocacy, *2018 Small Business Profile*
19. Staff Analysis of Contractor Small Business Statistics
20. Engineering News-Record, *ENR California 2018 Top Contractors*, <https://www.enr.com/California/Toplists/2018-Top-Contractors>, accessed on August 9, 2019

DOCUMENTS INCORPORATED BY REFERENCE

No documents are incorporated by reference.

ECONOMIC IMPACT ASSESSMENT / ANALYSIS

The proposed regulations are designed to reduce the frequency with which excavation workers are injured and subsurface installations are damaged by facilitating communications between excavators and operators, clarifying requirements for continuing excavation work, and establishing standards for power tool use near subsurface installations.

The Board anticipates that the proposed regulations will result in general economic benefits in four respects. One, allowing continued excavation work during the first 30 days of a renewed ACE ticket (proposed Tit. 19, § 4345) will result in a general economic benefit because the work will not need to be stopped until the excavator meets with the operator. Two, to the extent that excavators are able to use power tools rather than hand tools to locate installations, (proposed Tit. 19, § 4501), that work will require less time. Three, the regulations requiring that excavators and operators maintain current contact information with regional notification centers should help representatives reach the appropriate more efficiently than if the information were not readily available. Four, to the extent that these regulations prevent interruptions to construction projects, the economic impact should be favorable.

THE CREATION OR ELIMINATION OF JOBS WITHIN THE STATE OF CALIFORNIA

The Board does not anticipate that these proposed regulations will have a financial impact sufficient to either create or eliminate jobs within the State of California.

THE CREATION OF NEW BUSINESSES OR THE ELIMINATION OF EXISTING BUSINESSES WITHIN THE STATE OF CALIFORNIA

The Board does not anticipate that these proposed regulations will have an impact on the creation of new businesses or elimination of existing businesses in the State of California

THE EXPANSION OF BUSINESS CURRENTLY DOING BUSINESS WITHIN THE STATE OF CALIFORNIA.

The Board does not anticipate that these proposed regulations will have an impact on or limit or discourage the expansion of business within the State of California.

BENEFITS TO HEALTH AND WELFARE, WORKER SAFETY, AND THE ENVIRONMENT

The Board anticipates that these regulations will have a positive impact on worker safety and on the health and welfare of California residents. Damaging a subsurface installation, particularly one containing a flammable chemical or conducting electricity, endangers

workers, emergency responders, and residents. These regulations are intended to enable excavators to more readily coordinate work with utility operators and to better protect utility installations when excavating.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Board can find no facts, documents, testimony, or evidence that this action will have a significant adverse economic impact on any business. Although the proposed action will directly affect businesses statewide, including small businesses, the Board concludes that the economic impact, including the ability of California businesses to compete with businesses in other states, will not be significant.

CONSIDERATION OF REASONABLE ALTERNATIVES TO THE PROPOSED REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has thoroughly reviewed the proposed regulatory action, including both the positive and negative impacts it will place upon the industry. No alternatives considered by the Board would be more effective and less burdensome in carrying out the purposes of the proposed regulation. The Board invites and will consider all public comments on alternatives to any of the proposed regulations.

REASONABLE ALTERNATIVES TO THE PROPOSED AMENDMENTS THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The proposed regulations have no substantial effect to small business.

The Board has identified no alternative that would lessen adverse impact, if any, on small business and believes that there are no reasonable alternatives to the proposed regulations that would reduce any adverse impact on small business and still allow the Board to effectively enforce the regulations. However, the Board invites and will consider all public comments on alternatives to any of the proposed regulations.

ACTION THAT WOULD BE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ACHIEVES THE PURPOSES OF THE STATUTE OR OTHER LAW BEING IMPLEMENTED

The Board believes that there are no reasonable alternatives to the proposed regulations. However, the Board invites and will consider all public comments on alternatives to any of the proposed regulations.

DOES THE PROPOSED REGULATORY ACTION MANDATE THE USE OF SPECIFIC TECHNOLOGIES OR EQUIPMENT, OR PRESCRIBE SPECIFIC ACTIONS OR PROCEDURES?

No.

DUPLICATION OR CONFLICT WITH FEDERAL LAW

The Board has not found any unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations. The proposed regulatory action does not contain any regulations that are identical to any corresponding federal action.