



DEPARTMENT OF FORESTRY AND FIRE PROTECTION
Office of the State Fire Marshal
Underground Facilities Safe Excavation Board
2251 Harvard Street, Fourth Floor
Sacramento, California 95815
Website: digsafe.fire.ca.gov



NOTICE OF PROPOSED RULEMAKING

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

NOTICE IS HEREBY GIVEN that the California Underground Facilities Safe Excavation Board (Board) of the Department of Forestry and Fire Protection proposes to take the regulatory action described below and in the Informative Digest after considering public comments, objections, or recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. Written comments will be accepted for 45 days beginning **November 8, 2019** and ending **December 23, 2019**. The written comment period **closes at 12:00 a.m. (PT) on December 24, 2019**. All written comments received by that time and date will be considered and responded to as part of the compilation of the rulemaking file and are subject to disclosure under the Public Records Act. Written comments should be directed to:

- **Email:** digsafereqs@fire.ca.gov (include in the subject line of the email “Comments: Dig Safe Regulations ACE & Tools”).
- **Mail to:**
Cal Fire / Office of the State Fire Marshal
P.O. Box 944246
Sacramento, California 94244-2460
Attn: Diane Arend, Code Development & Analysis
- **Hand delivered between 8:00 a.m. and 5:00 p.m.(PT) to:**
Cal Fire / Office of the State Fire Marshal
2251 Harvard Street, Fourth Floor
Sacramento, California 95815
Attn: Diane Arend, Code Development & Analysis

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a public hearing to accept comments if a written request is received from any interested person, or his or her authorized representative, no later than 15

days before the close of the written comment period pursuant to Government Code section 11346.8. Submit requests to the contact person. Notice of the time, date, and place of the hearing will be provided to every person who has filed a request for notice with the Board.

AUTHORITY AND REFERENCE

The Board has authority to enforce the requirements of Article 2 (commencing with Section 4216) of Division 5 of Title 1 of the Government Code pursuant to Government Code sections 4216.6 and 4216.12.

Section 4216.4(a)(2)(C) of the Government Code authorizes the Board to adopt regulations governing the use of power equipment to expose subsurface installations.

Section 4216.10(e) of the Government Code authorizes the Board to adopt regulations specifying a process for renewing area of continual excavation tickets for areas in which no subsurface installations are present.

Section 4216.11 of the Government Code authorizes the Board to adopt regulations specifying the nature of a plan for managing an area of continual excavation.

Section 4216.18 of the Government Code authorizes the Board to develop standards for safely excavating near subsurface installations, including the manner in which excavators and operators demonstrate compliance with certain requirements.

Section 4216.22 of the Government Code authorizes the Board to adopt regulations as are necessary and proper to exercise the duties conferred upon it by the Dig Safe Act of 2016. (Stats. 2016, ch. 809.)

These regulations implement, interpret, and make specific Government Code sections 4216.2, 4216.3, 4216.4, 4216.10, 4216.11, 4216.12, and 4216.18.

INFORMATIVE DIGEST & POLICY STATEMENT OVERVIEW

The regulations proposed in this rulemaking action relate to management of excavation in areas of continual excavation, the way excavators expose subsurface installations, and require both operators of subsurface installations and excavators to maintain current contact information with regional notification centers.

Specifically, this action establishes requirements for obtaining certain excavation tickets, establishes requirements for work performed under an area of continual excavation ticket, and establishes guidelines and requirements for excavators working near, or attempting to locate, underground facilities, and establishes conditions permitting the use of power tools to conduct excavation in certain instances.

This rulemaking action proposes the addition of Chapters 4 and 5 to Division 4 of Title 19 of the California Code of Regulations, and the amendment of section 4003 in Chapter 1, Article 1 of Title 19.

SUMMARY OF EXISTING LAWS

Current law requires the use of hand tools when excavating within the tolerance zone of a subsurface installation until the installation is located. Government Code section 4216.4(a)(2)(C) requires the Board to implement regulations that permit the use of power tools or boring equipment as an exception to the current rule. The Board must implement those regulations by July 1, 2020.

Government Code section 4216.10(e) requires the Board to develop a process through which the renewal requirement for a ticket for an area of continual excavation can be modified or eliminated when no subsurface installation is present in the area being excavated.

When a high priority subsurface installation is located within an area of continual excavation, current law requires the operator of the facility to meet with the excavator at the site to determine how to protect the facility from the excavation work. (Gov. Code § 4216.10(c)(1).) Government Code section 4216.11 requires the Board to specify “minimum elements” for that meeting through regulation before January 1, 2020.

Government Code section 4216.22 authorizes the Board to prescribe rules and regulations as are necessary or proper to carry out the purposes and intent of the Dig Safe Act of 2016 (Stats. 661, Ch. 809) and to exercise the powers and duties conferred upon the Board by the Act.

SUMMARY OF EXISTING REGULATIONS:

The Board is proposing to add sections 4003(a)(1), 4305, 4310, 4345, 4401, and 4501 under California Code of Regulations Title 19, Division 4, Chapters 2 and 5, prescribing the rules and regulations pursuant to Government Code section 4216.22. The regulations proposed in this rulemaking action would facilitate communications between excavators and facility operators, facilitate the renewal of tickets for areas of continual excavation, and establish requirements for use of power equipment in a facility tolerance zone before the facility is located.

SUMMARY OF EFFECT:

The proposed regulations will require excavators and utility operators to provide contact information to regional call centers; require regional notification centers to remind holders of annual tickets for areas of continual excavation to renew tickets before they expire; permit excavators to perform planned, recurring work in areas of continual excavation during a certain time period following renewal of the ticket; require persons working under tickets for areas of continual excavation to have knowledge of the information on the ticket; and permit excavators to use certain power tools in the tolerance zones in specified circumstances.

OBJECTIVE AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The broad objective of the proposed changes proposed in this rulemaking action are intended to reduce the risk of injury to workers performing excavation work and to protect subsurface installations. Additionally, this regulatory proposal provides a direct benefit to the protection of public health and safety of Californians by maintaining current contact information with regional notification centers to facilitate communication between excavators and operators. Requiring excavators to provide detailed information about work to be performed in areas of continual excavation, and requiring operators to meet with excavators to discuss that work, should also

reduce the frequency with which installations are damaged and reduce likelihood of injuries to workers, and environmental and property damage.

CONSISTENCY EVALUATION

The Board has conducted a review for any related state regulation and found that there exists no related regulations addressing the subject matter within the scope of these proposed regulations or relating to Government Code sections 4216.4(a)(2)(C), 4216.10(e), or 4261.11. Therefore, the Board has determined that the proposed regulations are not incompatible or inconsistent with existing regulations.

FORMS OR DOCUMENTS INCORPORATED BY REFERENCE

There are no documents incorporated by reference.

COMPARABLE FEDERAL REGULATIONS OR STATUTES

No comparable federal regulations or statutes exist.

OTHER MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS.

There are no other matters prescribed by statute applicable to the Board, or to any specific regulation. There are no other matters to identify.

DISCLOSURES REGARDING THE PROPOSED RULEMAKING

The Board has made the following initial determinations:

1. Mandate on local agencies and school districts: **None**
2. Cost Savings to Any State Agency: The proposed action will affect the operations of a state agency that either conducts excavation or that owns, operates, or maintains subsurface installation. However, the nature of the effect on operations will not cause the agency to incur any significant expense.
3. Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: **None**
4. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: **None**
5. Costs or Savings in Federal Funding to the State: **None**
6. Significant Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals: Although the proposed action may have an impact on businesses statewide that are excavators or operators, including such small businesses, the Board concludes that the adverse economic impact, including the ability of California businesses to compete with businesses in other states, will not be significant.

DECLARATION OF EVIDENCE

The Board has not relied on any other facts, evidence, documents, testimony or other evidence to make its initial determination of no statewide adverse economic impact.

7. Significant effect on housing costs: **None**
8. Cost Impacts on a Representative Private Person or Business: The Board is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action. The

proposed rulemaking will permit excavators and operators to reduce certain operational costs relating to work in areas of continuing excavation, in more efficiently locating subsurface utilities, and in avoiding damage to subsurface utilities.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations may affect small businesses that conduct excavation work or that own, operate, or maintain subsurface installations. The impact will likely be to make certain communications more efficient because contact information will be readily available, and to make minimize delays to excavation work performed near subsurface installation or under a continuing excavation ticket.

BUSINESS REPORT

The proposed regulations do not create any reporting requirements.

RESULTS OF ECONOMIC IMPACT ANALYSIS

The Board concludes that it is (1) unlikely that the proposed regulations will eliminate any jobs, (2) unlikely that the proposed regulations will create jobs, (3) unlikely that the proposed regulations will create new businesses, (4) unlikely that the proposed regulations will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state.

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.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be:

- More effective in carrying out the purpose for which the action is proposed;
- As effective and less burdensome to affected private persons than the proposed action; or
- Would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries or specific questions concerning the proposed rulemaking action may be directed to the following contact persons:

General inquiries:

Diane Arend, Regulations Coordinator
CAL FIRE / Office of the State Fire Marshal
2251 Harvard Street, Suite 400
Sacramento, CA 95815
digsaferegs@fire.ca.gov
(916) 568-2917

Substantive or technical questions:

Tony Marino, Executive Officer
California Underground Facilities Safe Excavation Board
2251 Harvard Street, Suite 400
Sacramento, CA 95815
digsaferegs@fire.ca.gov
(916) 767-3370
or
Jeff Brooks, Legal
Jeffrey.brooks@fire.ca.gov
(916) 568-2969

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to the contact person(s).

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting the contact person.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding a public hearing and considering all timely and relevant comments received by the Board, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, the Board will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the contact person. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by making a written request to the contact person at the above address or by accessing the website listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of the Proposed Rulemaking, Initial Statement of Reasons, the text of the regulations, and any other materials or documents concerning this rulemaking can be accessed on the Office of the State Fire Marshal Website at:

<http://osfm.fire.ca.gov/divisions/code-development-and-analysis/title-19-development/>