



NOTICE OF PROPOSED EMERGENCY ACTION

FINDING OF EMERGENCY

CALIFORNIA CODE OF REGULATIONS
TITLE 19. PUBLIC SAFETY
DIVISION 4. CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD
Section 4020

EXTENSION OF TIME IN WHICH TO PROVIDE ELECTRONIC POSITIVE RESPONSE THROUGH REGIONAL NOTIFICATION CENTERS

The California Underground Facilities Safe Excavation Board [Board] proposes an emergency adoption of Section 4020 of Chapter 1, Article 1, Division 4, Title 19, California Code of Regulations, related to the extension of time in which to provide electronic positive response through regional notification centers.

STATEMENT UNDER TITLE 1, CALIFORNIA CODE OF REGULATIONS, §48

Government Code section 11346.1(a)(2), requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has requested a notice of regulatory action with the Dig Safe Board. After submission of the proposed emergency regulations to the Office of Administrative Law by the agency, the Office of Administrative Law will post the regulation text and finding of emergency notice on the OAL web site and shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Title 1, California Code of Regulations, section 55(b) sets forth the requirements for submitting comments to the Office of Administrative Law on the proposed emergency action. Comments must be in writing, must identify the topic of this rulemaking, and must be submitted directly to the Office of Administrative Law as follows:

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814-4339
Fax: (916) 323-6826
e-mail: staff@oal.ca.gov

The Board intends to file the Notice and proposed emergency text with the Office of Administrative Law on June 18, 2020 and you will then have five working days within

which to submit written comments on the proposal, including the finding of emergency, directly with the Office of Administrative Law.

In addition, a copy of the comments must be transmitted to the Department's contact person for this rulemaking. To ensure prompt receipt and consideration of your comments, the Department requests that you transmit a copy directed to:

- **Email:** diane.arend@fire.ca.gov
(Include in the subject line of the email "Comments: Dig Safe EPR").
- **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.(PDT) to:**
CAL FIRE / Office of the State Fire Marshal
2251 Harvard Street, Fourth Floor
Sacramento, California 95815
Attn: Diane Arend, Code Development & Analysis

EFFECTIVE DATE

This proposed regulation will take effect on **July 1, 2020**, and will remain in effect through **December 27, 2020**.

FINDING OF EMERGENCY

The adoption of these regulations is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

The need for these regulations to be adopted immediately has been declared by the Legislature in Government Code section 4216.3(d)(1), which directs the California Underground Facilities Safe Excavation Board [Board] to adopt these regulations:

"The initial adoption, amendment, or repeal of a regulation authorized by this section is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6, and the board is hereby exempted for that purpose from the requirements of subdivision (b) of Section 11346.1."

And Government Code section 4216.3(d)(2) confirms the Legislature's intent to "authorize the board to expedite the exercise of its power to implement regulations as its unique operational circumstances require."

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

LIST OF REGULATIONS TO BE ADOPTED:

California Code of Regulations, Title 19, Section 4020. Extension of Time in Which to Provide Electronic Positive Response Through Regional Notification Centers.

The Boards proposed adoption of regulations related to extension of utility operator's time for compliance with the requirements set forth in Government Code section 4216.3(c)(1)(A), will provide further support for operators who request that the Board extend the time to provide electronic positive response through regional notification centers.

The Board is authorized to adopt regulations as emergency regulations (Government Code 4216.3(d)(1)).

BACKGROUND

Currently, utility operators have the option to provide electronic positive responses to locate-and-mark requests from regional call centers. Providing that response will remain an option through 2020. As of January 1, 2021, Government Code section 4216.3(c)(1)(A) will make electronic responses mandatory. Assembly Bill 1166 (2019-2020) made that change, amending Government Code section 4216.3 to provide that: "On and after January 1, 2021, every operator shall supply an electronic positive response through the regional notification center before the legal excavation start date and time." (Gov. Code § 4216.3(c)(1)(a).)

AB 1166 also anticipated that some utility operators would be unable to comply by the January, 2021 deadline, so it directed the Board to determine good cause for extensions of the deadline and to grant extensions to operators that establish good cause. (Gov. Code § 4216.3(d)(1).) The Board may not grant an extension beyond December 31, 2021. (Gov. Code § 4216.3(c)(1)(A).) These proposed regulations specify the types of facts that constitute "good cause" and create a process by which utility operators can apply for extension of the deadline.

POLICY STATEMENT OVERVIEW

This regulation will create a benefit for private sector businesses because the utility operators that cannot meet the January 1, 2021 deadline will be able to obtain the time needed to develop their processes and systems needed to provide electronic positive responses. In the absence of a time extension, those utility operators would be out of compliance because they are unable to comply, not because they chose not to comply.

COSTS – PRIVATE SECTOR AND LOCAL GOVERNMENT

This regulation will have a cost impact on utility operators that are private businesses when those operators choose to apply for extension of the deadline for electronic positive response. The costs will be comprised of staff time to assess the utility operator's ability to provide the required response and to complete the application for an extension. The information supporting the application will be submitted on a fillable .pdf form that the utility operator will access on the Board's internet site.

The Board made the following assumptions to provide instructive numbers for considering the economic impact.

Number of operators who will apply for an extension: The state has approximately 2,100 utility operators. Of these operators, approximately 1,123 are local government entities and 18 are state government agencies. The balance are primarily private enterprises (or divisions thereof), with a few federal agencies. For the purpose of calculation, the Board anticipates no more than 25% of the state's operators will apply for an extension, or 525. Assuming the government/private status of an operator has no influence as to whether they would request an extension, the numbers of entities requesting an extension are as follows:

- Local governments: 280
- State agencies: 5
- Private businesses: 240

Small businesses: The majority of businesses affected by AB 1166's electronic positive response requirement—hence affected by this regulation providing the opportunity to seek an extension—are cities and public sector water providers. Privately-owned electric utilities and petroleum pipeline operators are small in number and generally very large. We make the conservative assumption that the majority of the California Public Utilities Commission-regulated water (approximately 100¹) and small telecommunications utilities (16²) are small businesses. For the purpose of this discussion, the Board makes the assumption that all 116 small businesses apply for the extension.

Time required to complete the application: Given the brevity of the application, the Board does not anticipate developing the application will take a great deal of time to complete. The Board anticipates each application to take one person three hours. The Board assumes that everyone who requests an extension would not be able to otherwise comply, assumes that 25% of operators will apply for the extension. The benefit to operators is to not have to be out of compliance and therefore avoid paying penalties for lack of compliance.

The state has approximately 2,100 operator operators. Of those, approximately 1,123 are local government entities and 18 are state government agencies. The balance are primarily private enterprises (or divisions thereof), with a few federal agencies. For the purpose of calculation, the Board anticipates no more than 25% of the state's one-call center members will apply for an extension, or 525. Assuming the government/private status of a member has no influence as to whether they would request an extension, the numbers of entities requesting an extension are as follows:

- Local governments: 280
- State agencies: 5
- Private businesses: 240

The only cost associated with this regulation is the time required to complete the application, assumed at 3 hours. If we assume the application is completed by an Engineering Manager making \$117,378 annually (Glassdoor), the total cost per

¹ <https://www.cpuc.ca.gov/water/>

² <https://www.cpuc.ca.gov/General.aspx?id=991>

application is \$169.29 (\$56.43 x 3 hrs). As we assume 240 private businesses and individuals will apply for the extension, the total cost of the regulation on private businesses and individuals would be \$40,629.60.

Only a very small fraction of California's estimated 3.8 million businesses (99.8% of them small businesses) fall under this regulation. The cost of application for a small business, typical business, and individuals would be the same, at \$169.29.

Some local governments are utility operators and this regulation will have a cost impact when those operators choose to apply for extension of the deadline for electronic positive response. Assuming that the time-related cost of applying is the same for local government operators because the application is completed by an Engineering Manager making \$117,378 annually (Glassdoor), the total cost per application is \$169.29 (\$56.43 x 3 hrs). As 280 local government agencies are expected to apply (Section A above), the total fiscal effect on local government is expected to be $280 \times \$169.29 = \$47,401.20$

COSTS – STATE GOVERNMENT

Evaluating the extension applications will increase the Board's operating expenses because it will require the Board to add two positions, both of which have been requested in the Governor's 2020-21 Budget (3540-051-BCP-2020-GB). One position will be an Associate Governmental Program Analyst (AGPA), and the other will be a temporary position, anticipated to be filled by an Information Officer I (Specialist) (IO). Those two positions will be used to perform administrative and outreach work necessary for the Board to fulfill the statutory requirements during fiscal years 2020-21 and 2021-22. The Information Officer I Specialist will be needed only through June 30, 2022.

The AGPA position will be needed to:

- Accept, review, track, and present to the Board several hundred requests for exemptions from the electronic positive response requirements;
- Process and mail Board decisions on the applications; and
- Track applicant compliance plans and deadlines, review dig ticket data, and assist with compliance activities.

The IO position will be needed through June 30, 2022 to design and implement an outreach plan, which will include writing meeting materials and presentations, coordinate technology presentations to utility providers, and working with trade associations to provide compliance information to members.

To fund the two positions, the Board will incur costs totaling \$335,000 during 2021-22 and \$175,000 during 2022-23.

BENEFITS – PRIVATE SECTOR AND LOCAL GOVERNMENT

The size and nature of any penalty imposed by the Board would be based on the facts of the case and guided by the principles in Gov't Code § 4216.19 and the

forthcoming Section 4201 of Title 19 of the California Code of Regulations. Therefore, the amount of any penalties that would be imposed in the absence of this regulation are unknown. For the purpose of providing instructive numbers for considering the economic impact of the regulation, however, the Board makes the assumption that all operators subject to financial penalty are fined \$1,000 for non-compliance. As local government agencies are subject to enforcement by their local governing boards, local government agencies would not suffer this impact. The remaining 245 private companies and state agencies would therefore be subject to the \$1,000 penalty. The economic benefit of avoiding these penalties would be \$245,000.

Further, in implementing this regulation, the Board will conduct outreach to operators, who will be educated regarding the electronic positive response requirement and therefore will be more likely to make the changes needed to comply.

EVALUATION OF CONSISTENCY

There currently exist no regulations that relate to the Board's process for granting extensions of the electronic positive response deadline. Therefore, the proposed action is not incompatible or inconsistent with existing regulations.

COMPARABLE FEDERAL REGULATIONS AND STATUTES

There are currently no federal laws or regulations setting forth requirements relating to electronic positive responses by utility operators doing business in California.

LOCAL MANDATE DETERMINATION

The application process is voluntary. The proposed regulations do not impose any mandate on local agencies or school districts. To the extent that a local agency utility operator chooses to apply for a time extension, that local agency is subject to requirements that also apply to the private sector. Therefore, the proposed regulation imposes no reimbursable costs.

COST SAVINGS

These proposed regulations will not result in any cost savings to any state agency, and will not result in any cost or savings related to federal funding. Nor will these proposed regulations create any reimbursable costs to any local agency or school district, or impose either nondiscretionary costs or savings on any local agency.

FEDERAL FUNDING

This proposed regulation will have no effect on any federal funding.

AUTHORITY AND REFERENCE

Government Code section 4216.3(d)(1) requires the Board to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific Government Code section 4216.3(c)(1)(a).

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

The Board relied on the following sources:

1. Budget Change Proposal 3540-051-BCP-2020-GB, https://esd.dof.ca.gov/Documents/bcp/2021/FY2021_ORG3540_BCP3349.pdf, accessed May 26, 2020.
2. CalHR, "Civil Service Pay Scale – Alpha by Class Title," https://www.calhr.ca.gov/Pay%20Scales%20Library/PS_Sec_15.pdf, accessed May 26, 2020.
3. California Public Utilities Commission, "Water Division," <https://www.cpuc.ca.gov/water/>, accessed on May 26, 2020.
4. California Public Utilities Commission, "California High Cost Fund-A Program and Reports," <https://www.cpuc.ca.gov/General.aspx?id=991>, accessed on May 26, 2020.
5. Glassdoor, "Engineering Manager Salaries in California." glassdoor.com. Accessed May 26, 2020.
6. U.S. Small Business Administration, Office of Advocacy, "Small Business Profile: California," <https://cdn.advocacy.sba.gov/wp-content/uploads/2017/01/25101636/California-2017.pdf>, accessed on May 26, 2020.

FORM PUBLISHED AS PART OF THE REGULATION

The regulation requires that utility operators submit applications for a time extension to the Board on a particular form entitled, "EPR Extension Application," dated July, 2020, which is published in the regulations. The form is available in a fillable, pdf format on the [Board's internet site](https://digsafe.fire.ca.gov/epr) at <<https://digsafe.fire.ca.gov/epr>>.

A copy of the form is included with the text of the regulation that the Board has published with this notice.