



## **FIRST AMENDED 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**

#### **INTRODUCTION**

This First Amended Initial State of Reasons reflects these changes:

- (1) The Economic Impact Analysis has been revised;
- (2) The Benefits to Health and Welfare, Worker Safety, and the Environment section has been revised;
- (3) The Creation or Elimination of Jobs Within the State of California section has been revised;
- (4) The Creation of new Businesses or the Elimination of Existing Businesses Within the State of California section has been revised;
- (5) The Expansion of Business Currently Doing Business Within the State of California section has been revised;
- (6) The Consideration of Reasonable Alternatives to the Proposed Regulations and the Agency's Reasons for Rejecting Those Alternatives section has been revised;
- (7) The Reasonable Alternatives to the Proposed Amendments That Would Lessen Any adverse Impact on Small Business section has been revised;
- (8) The 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 section has been revised; and
- (9) The list of documents relied upon now reflects two additional documents as well as the changes reflected in the Addendum to the Initial Statement.

#### **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,<sup>[1]</sup> 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

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<sup>[1]</sup> 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.

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.

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](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, <https://www.cslb.ca.gov/onlineservices/dataportal/ContractorList>, 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. U.S. Small Business Administration Office of Advocacy, *2018 Small Business Profile*
17. Staff Analysis of Contractor Small Business Statistics
18. "Staff Report: Discussion on Area of Continual Excavation Ticket Renewal Requirement (Government Code section 4216.10(e))," Agenda Item 10, February 12, 2019, <https://digsafe.fire.ca.gov/media/2100/agenda-item-10-area-of-continual-excavation-renewal-ticket-requirement.pdf>, accessed on April 23, 2020
19. Lundell, R.A., "Pneumatic Clay Diggers Speed Sewer Tunnel Work," *Compressed Air Magazine* (1922), vol 27, no 6, [https://books.google.com/books?id=xrbmAAAAMAAJ&pg=PA167&lpg=PA167&dq=pneumatic+clay+diggers+speed&source=bl&ots=B3w8KCNGKI&sig=ACfU3U2sXdnNYvXKUE221BQCQ4IN36v07Q&hl=en&sa=X&ved=2ahUKEwint9znsP\\_oAhWKq54KHQ7bChcQ6AEwA3oECAYQAQ#v=onepage&q=pneumatic%20clay%20diggers%20speed&f=false](https://books.google.com/books?id=xrbmAAAAMAAJ&pg=PA167&lpg=PA167&dq=pneumatic+clay+diggers+speed&source=bl&ots=B3w8KCNGKI&sig=ACfU3U2sXdnNYvXKUE221BQCQ4IN36v07Q&hl=en&sa=X&ved=2ahUKEwint9znsP_oAhWKq54KHQ7bChcQ6AEwA3oECAYQAQ#v=onepage&q=pneumatic%20clay%20diggers%20speed&f=false), accessed April 23, 2020.

## **DOCUMENTS INCORPORATED BY REFERENCE**

No documents are incorporated by reference.

## **ECONOMIC IMPACT ASSESSMENT / ANALYSIS**

These proposed regulations will have a financial impact of less than \$350,000 annually. Those costs will be imposed on companies that perform excavation work, and indirectly, on utility operators who are members of the regional notification center DigAlert.

The cost impacts result from (1) the requirement that excavators provide contact information to regional notification centers (§ 4401), and (2) the requirement that regional

notification centers provide annual reminders to holders of tickets for areas of continual excavation (§ 4310.)

### *Excavator Contact Information*

Section 4401 of these proposed regulations requires excavators who obtain tickets for excavation to maintain current contact information with regional call centers, which issue the tickets. This requirement clarifies the nature of the required contact information and enables regional call centers to readily communicate with an excavator about ongoing work that may be affecting a subsurface installation.

This regulation will have a cost impact on business because it will require excavators to contact a call center if, while performing work under a dig ticket, changes are made to the persons who the excavator assigns to handle communications with utility operators. That contact may be made by either telephone or online.

The Board estimates that the time needed for an excavator to update his or her contact information to be two minutes. If this change is made by a construction foreman, who makes on average \$25.88 per hour, the cost of each update would be approximately \$0.86. Of the approximately 2 million notifications sent to the one-call centers annually, we make the assumption that 1 in every 5 tickets will need to be updated (an assumption believed to be on the high end of reasonable). The annual statewide cost for an excavator to update contact information would therefore be

$$(2,000,000 \times 0.2) \times \$0.86 = \mathbf{\$344,000}$$

Assuming that all of this cost is borne by the state's approximately 233,000 contractors (the largest excavator group by number, aside from homeowners not subject to regulation), the cost per contractor is

$$\$344,000 / 233,000 = \mathbf{\$1.48}$$

For purposes of this analysis, the Board assumes that all contractors are small businesses. The Board made that assumption to ensure that the impact on small businesses is estimated appropriately. Some contractors are small businesses, but the Board does not have information indicating how many qualify under the statutory definition.

### *Renewal of ACE Tickets*

An area of continual excavation (ACE) is a location where ongoing, or repeated, excavation is part of the normal business operation of agricultural or flood control facilities. (Gov. Code § 4216(c).) Existing law provides that for this type of work, excavators may obtain tickets that are valid for one year rather than 28 days (Gov. Code § 4216.10(d)), and that ACE tickets can be renewed. (Gov. Code § 4216.10(d).) Government Code section 4216.10(e) requires both the Board and regional call centers to either eliminate or modify the process for renewal of ACE tickets. (Gov. Code § 4216.10(e).)

Section 4310 of the proposed regulations modifies the process and has two key provisions. One, when a ticket is renewed, statute requires that the excavator and utility operator must meet at the site (Gov. Code §§ 4216.10(c)(1) & 4216.11.) The regulation permits the excavator to continue the excavation work, for up to 30 days, before that meeting occurs. This provision will create an economic benefit for excavators who renew ACE tickets and will not impose cost impacts.

Two, regional call centers will send electronic renewal reminders to ticket holders between 2 months and 10 days before expiration of the ticket. This provision will have a cost impact.

The renewal requirement will create a cost impact on one of two regional call centers. DigAlert, the southern California call center, will use SMS text messaging to send the reminders, and will incur a cost of \$ .0225 per message sent. The northern California call center, USA North 811, will not incur a cost to send the notifications. Neither one-call center has costs of sending other forms of electronic reminder messaging, such as email.

To determine the number of parcels eligible for ACE tickets—hence eligible for renewal of those tickets, staff used data on the location of petroleum pipelines and natural gas transmission pipelines, the locations of farming activities estimated from the National Land Use Dataset (NLCD, 2011), and parcel data for California. Staff presented an analysis during the February 10, 2019 Dig Safe Board meeting. Approximately 550,000 parcels contain farmland out of almost 12,700,000 parcels statewide. Of the 550,000 parcels containing farmland, about 25,000 parcels contain petroleum and/or natural gas transmission pipelines. Other types of high priority subsurface installations, such as high voltage (60 kV or greater) electric and pressurized sewer lines, are not expected to be buried below farmland in significant numbers. The number of parcels dedicated to flood control facilities, as defined by Section 4000 of Title 19 of the California Code of Regulations, is expected to be insignificant next to the number of agricultural parcels.

If we assume full compliance with the regulation, reminder notifications would need to be sent to approximately 550,000. Of this number, 77.5% are in USA North 811 territory and 22.5% are in DigAlert territory. If we further assume that all ACE ticket recipients in DigAlert territory state a preference of being reminded by SMS, where it costs \$0.0225 per message, the cost of sending a reminder would be:

$$\underline{22.5\% \times 550,000 \times \$0.0225 = \$2,784.38}$$

This number, which is an upper limit on the cost of reminders, would be borne by DigAlert.

The regulation is expected to create an economic benefit to excavators who renew ACE tickets because the excavator does not need to stop working until the utility operator meets with the excavator at the site. The excavator can perform the work before the meeting for up to 30 days. If this provision were not adopted, the excavator would have to stop work when the ticket expired, and could not begin again until after the meeting. This provision would affect approximately 25,000 parcels eligible for an ACE ticket and in which an onsite meeting would be required, 83.0% are in USA North 811 territory and 17.0% are in DigAlert territory. Because ACE tickets will be not issued until July, 2020, the Board does not have information that would permit the Board to quantify the value of that benefit.

## **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.



Proposed regulation section 4401 will require excavators to provide, and update, contact information with regional call centers. Section 4003 will impose the same obligation on utility operators who must respond when excavators obtain a ticket from a call center. These regulations are likely to create a benefit for businesses in that they will permit operators to communicate with excavators when circumstances require, such as to schedule an onsite meeting (Gov't Code § 4216.2(c)), to mutually agree on a different start date (Gov't Code § 4216.3(a)), to discuss difficulties with access (Gov't Code § 4216.2(h)), or to alert the excavator of a facility embedded in pavement (Gov't Code § 4216.3(f)). Absent contact information, time would be wasted in efforts to reach a given excavator. The Board does not have information that would permit the value of this benefit to be quantified but believes any delay would greatly exceed the two minutes needed for an excavator to update contact information and affect many more people, making the benefit greatly outweigh the cost.

Proposed regulation section 4310 will permit excavators holding ACE tickets to continue working after the ticket is renewed and before the operator meets with the excavator at the site. Statute requires that when a ticket is renewed, the excavator and utility operator must meet at the site (Gov. Code §§ 4216.10(c)(1) & 4216.11.) The regulation permits the excavator to continue the excavation work, for up to 30 days, before that meeting occurs. This provision will create an economic benefit for excavators who renew ACE tickets because they do not have to stop work until the meeting occurs.

Proposed regulation section 4501 will permit excavators to use power tools to expose subsurface installations in certain conditions. When excavation work is to be performed near an underground utility facility, the excavator is required to locate the facility by exposing it with hand tools before using any power-driven tools.

The Board expects the regulation to create a safety benefit and an economic benefit. The expected safety benefit is based on two assumptions. One, the excavator will use the type of tool best suited to the circumstances. That tool, in a given situation, will be the tool which gives excavators the best control of the tool and the material being excavated, and so makes that tool the least likely to damage the installation. Two, the use of power equipment will allow excavators to avoid the use of certain hand tools, most often picks and driving rods, that can readily damage installations.

These assumptions are supported by survey responses provided by excavators while the Board was developing this regulation. In total, 99 excavators and operators responded to the survey. Survey responses indicated that an exception to the hand-tool rule was justified by:

- worker safety – 56 responses
- the ability to dig in difficult conditions – 71 responses
- certain power tools are “business critical” for use near installations before the installations have been located (vacuum trucks – 88 responses, roto hammers – 45 responses, mounted hydraulic hammers – 16)
- the desire to use clay-spade-tipped roto hammers – 60 responses
- use of only hand tools has “increased worker injury” – 50 responses

And survey responses indicated that, in the past, survey responders have used these power tools to locate subsurface installations:

- vacuum trucks – 92
- clay-spade-tipped roto hammers – 92
- hydraulic hammers – 10

The expected economic benefit is based on the assumption that an operator will select the most expedient and cost-effective tool to perform the work.

### **THE CREATION OR ELIMINATION OF JOBS WITHIN THE STATE OF CALIFORNIA**

The Board estimates that no jobs within California will be eliminated by this proposal because the financial impact of the costs imposed is not sufficient to cause affected businesses to become less competitive or to shrink the workforce. And no jobs will be created in California because the benefits of the regulations, improved safety and cost savings, are not sufficient to drive additional hiring.

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

The Board estimates that no businesses in California will be eliminated as a result of these proposed regulations because financial impact of the costs imposed is not sufficient to cause affected businesses to become less competitive with out-of-state businesses. And the Board estimates that no businesses in California will be created as a result of these proposed regulations because benefits, improved safety and cost savings, are not significant enough to drive the creation of new businesses with California.

### **THE EXPANSION OF BUSINESS CURRENTLY DOING BUSINESS WITHIN THE STATE OF CALIFORNIA**

The Board estimates that these regulations will not lead to the expansion of businesses in California because financial impact of the costs imposed is not sufficient to cause affected businesses to become more competitive relative to out-of-state businesses.

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

The Board considered the following alternatives to the proposed regulations.

#### Alternative 1: Operator approval of power tool use

The Board considered only allowing the use of power tools in the tolerance zone following operator approval. Many operators expressed a desire to have such control over the process. Ultimately this alternative was rejected, as the Board did place appropriate restrictions on power tool use—restricting the tool, the conditions, and the manner of use—to maintain safety that did not require operator supervision. Only in cases where the tool, conditions, and manner of use were not sufficient to complete the job would a discussion need to take place.

Requiring operator approval for use of the tool identified in the regulations, under the conditions and manner of use described in the regulations, would have increased costs of both operators and excavators. Operators would have needed to take time to analyze the request by examining facility records, their costs increasing proportional to the number of requests submitted. Excavators would have had increased costs in waiting for operators to determine whether or not to approve power tool use (to the extent that the analysis took longer than two working days from the notification), and would have had to incur the cost

of using hand tools in the cases where an operator rejected an excavator's request. The total cost of this alternative is difficult to quantify, as it creates incentives that affect behavior. An operator overwhelmed with requests may choose to reject many of them without careful analysis, as there would unlikely be any penalty for rejection, thereby shifting his costs to the excavator. Such a scenario may lead to excavators foregoing making a request an instead operating out of compliance. As requiring operator approval creates additional costs and perverse incentives, the Board rejected this alternative.

#### Alternative 2: ACE ticket renewal process

The Board considered developing a process by which the renewal requirement for an area of continual excavation ticket could be eliminated through requiring operators to employ electronic positive response. The Legislature had directed the Board to develop a process by which the ACE ticket "may be modified or eliminated for areas of continual excavation in which no subsurface installations are present." The idea is that an excavator should only need to contact the one-call center once if that notification resulted in no facilities found in the area of continual excavation.

Operators may, however, respond to an excavation notice in a number of ways, including by marking the ground with paint or flags. As an average of eight operators respond to an excavation, there is no master record of how each operator responded. This problem would be solved by all operators implementing electronic positive response—a system in which operators must report on how they respond to an excavation notice electronically to the one-call center. Few California operators use electronic positive response, and the Board rejected this alternative on the basis of cost and the time it would take to implement. Requiring operators to implement electronic positive response:

1. Could pose significant unknown costs—of software acquisition and integration as well as retraining of staff, and
2. Would likely take more time for operators to implement than is allotted, as this regulation needs to be in place in advance of the first ACE tickets expiring in July 1, 2021.

Following the Board's vote to send this regulations package to public notice, the Legislature passed AB 1166 (Levine, Chapter 453, Statutes of 2019), requiring operators to adopt electronic positive response by January 1, 2021. The bill also requires the Board to approve operator applications for extensions until December 31, 2021, which is after the July 1, 2021 date in which ticket renewal regulations must be in effect. While the Board rejected this alternative based on both cost and timing, the passage of AB 1166 and the passage of time may make this alternative more reasonable in a future rulemaking.

#### **REASONABLE ALTERNATIVES TO THE PROPOSED AMENDMENTS THAT WOULD LESSEN ANY ADVERSE IMPACT ON 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 that would be less burdensome and as effective as 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.