

# NOTICE OF PROPOSED RULEMAKING

45-Day Public Comment Period  
May 21, 2021 through July 5, 2021

**California Code of Regulations**  
**Title 19. Public Safety**  
**Division 4. California Underground Facilities Safe Excavation Board**  
**Chapter 1. General**  
**Sections 4010, 4011**

The California Underground Facilities Safe Excavation Board (“Board”) proposes to adopt the proposed regulations described below after considering all comments, objections, and 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 May 21, 2021 through July 5, 2021**. All written comments received through the end of July 5, 2021 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:** [digsaferegs@fire.ca.gov](mailto:digsaferegs@fire.ca.gov) (include in the subject line of the email “Comments: Dig Safe Regulations - Ticket and Billing Fees”).
- **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, 4th 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 45-day written comment period, pursuant to Government Code section 11346.8. Submit requests to the contact person indicated below.

## AUTHORITY AND REFERENCE

Government Code section 4216.22 authorizes the Board to adopt these proposed

regulations. The proposed regulations implement, interpret, and make specific section 4216.16 of the Government Code.

### **INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

This rulemaking action implements, interprets, clarifies, and makes specific the fees each member or a regional notification center shall pay to the Board.

#### Summary of Existing Laws:

Government Code section 4216.1 requires every operator of a subsurface installation, except for the Department of Transportation, to become a member of, or participate in, and share in the costs of, a regional notification center. Government Code section 4216.16 authorizes the Board to obtain funding for its operational expenses from a fee charged to the members of the regional notification centers not to exceed the reasonable regulator cost incident to the enforcement of Government Code section 4216, et seq., and apportion the fee in a manner consistent with formulas used by the regional notification centers. Government Code section 4216.22 provides that the Board may prescribe the rules and regulations as may be necessary or proper to carry out the purposes and intent of Article 2 of Chapter 3.1, Division 5, of Title 1 of the Government Code (sections 4216 to 4216.24), and to exercise the powers and duties conferred upon the Board by the Act.

#### Summary of Regulations:

The Board is proposing to modify section 4010, and add section 4011, under the California Code of Regulations, Title 19, Division 4, Chapter 1, prescribing the rules and regulations pursuant to Government Code section 4216.16. The regulations proposed in this rulemaking action would establish and specify the amount of the fees, including late fees, the members of the regional notification centers must pay to the Board, as well as payment deadlines and instructions.

#### Summary of Effect:

The proposed regulations will have a negligible effect on operators who are required to be members of regional notification centers and respond to any local request transmission from a regional notification center regarding excavation near the operator's subsurface installation; and pay a fee to support the operational expenses of the California Underground Facilities Safe Excavation Board. The largest effect these regulations have are to adjust an update business practices for the regional notification centers through the coordination of the Board.

#### Comparable Federal Regulations or Statute:

There are no comparable federal regulations or statutes.

#### Objective and Anticipated Benefits of the Proposed Regulations:

The broad objective of the proposed regulation is to ensure that the Board has sufficient funding for its operational expenses to carry out the purposes and intent of the Dig Safe Laws.

The specific benefits anticipated from the proposed regulation include (1) coordination of education and outreach activities that encourage safe excavation practices, (2)

development of standards for safe excavation, (3) investigations of violations of Dig Safe Laws, and (4) enforcement of Dig Safe Laws which benefits the public health and welfare of California residents, worker safety, and the environment.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The Board has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area of law, the Board has concluded that the proposed regulations are the only regulations that concern investigation and enforcement processes under the Dig Safe Law, and onsite meeting and agreement requirements for areas of continual excavation near high priority subsurface installations.

Documents Incorporated by Reference:

No documents are incorporated into these regulations by reference.

**OTHER MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY**

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 ACTION**

The Board has made the following initial determinations:

1. Mandate on local agencies and school districts: **None.**
2. Cost or savings to any state agency: Negligible. Although the proposed action will directly affect a state agency that is an excavator or operator, the Board concludes that any cost will not be significant. Costs depend on a state agency's violation of the Dig Safe Law. A state agency, which is an excavator or operator, that negligently violates the Dig Safe Law is subject to a monetary fine of up to \$10,000; or knowingly and willfully violates the Dig Safe Law is subject to a monetary fine of up to \$50,000. (Gov. Code, § 4216.6.)
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. Cost 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 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.

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: Cost impacts on a representative private person or business: Pursuant to Government Code section 4216.16, subdivision (b), the Board “shall apportion the fee in a manner consistent with formulas used by the regional notification centers.” The fee in the proposed regulation is only about one-third of the fee charged by the regional notification centers to its members for each transmission initiated at the request of the member.

## **BUSINESS REPORT**

The proposed regulations require the call centers to report to the Board electronically certain member contact information and certain billing and revenue information. The Board finds that these requirements are necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

## **RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT**

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 proposal 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 of the Proposed Action:* The Board believes the proposed amendments will benefit California residents by funding the operational expenses of the Board to carry out the purposes and intent of the Act and to exercise the powers and duties conferred upon the Board by the Act, including 1) coordination of education and outreach activities that encourage safe excavation practices, 2) development of standards for safe excavation, 3) investigations of possible violations of Government Code section 4216 et seq., and 4) enforcement of Government Code section 4216 et seq. which benefits the public health and welfare of California residents, worker safety, and the environment.

## **SMALL BUSINESS DETERMINATION**

The Board has determined that the proposed regulations may affect small businesses. These regulations establish procedures that must be followed by interested parties which may include small businesses that own, operate, or maintain a subsurface installation.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action described in this Notice, 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(S)**

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  
[diane.arend@fire.ca.gov](mailto:diane.arend@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](mailto:digsaferegs@fire.ca.gov)  
(916) 767-3370  
or  
Jeff Brooks, Legal  
[Jeffrey.brooks@fire.ca.gov](mailto: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, the Initial Statement of Reasons, and the STD. 399. Please direct requests for copies to the contact person listed above. Due to COVID-19 restrictions please contact Diane Arend at [diane.arend@fire.ca.gov](mailto:diane.arend@fire.ca.gov) or (916) 568-2917 to make an appointment to review the rulemaking file in person.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After 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(s) listed above. 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(s) listed above or by accessing the website listed below.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of the Proposed Action, the Initial Statement of Reasons, and the text of the regulations and any other materials or documents concerning this rulemaking can be accessed via the [Office of the State Fire Marshal's website at: http://osfm.fire.ca.gov/divisions/code-development-and-analysis/title-19-development/](http://osfm.fire.ca.gov/divisions/code-development-and-analysis/title-19-development/)