

NOTICE OF PROPOSED RULEMAKING

To

**California Code of Regulations,
TITLE 19. PUBLIC SAFETY
Division 4. California Underground Facilities Safe Excavation Board
Chapter 1. Section 4001**

The California Underground Facilities Safe Excavation Board (“Board”) proposes to adopt the proposed regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

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.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. Comments will be accepted for 45 days beginning June 22, 2018 and ending August 6, 2018. The written comment period **closes at 5:00 p.m. (Pacific Time (“PT”)) on August 6, 2018**. All written comments received by that time will be considered and responded to as part of the compilation of the rulemaking file. Submit comments to contact via:

- Email: diane.arend@fire.ca.gov; (include in the subject line of the email “**Dig Safe Board, T19, Division 4 Comments**”), *or*
- Mail to:

**CAL FIRE / OFFICE OF THE STATE FIRE MARSHAL
P.O. Box 944246
Sacramento, CA 94244-2460
Attn: Diane Arend, Code Development & Analysis**

Hand delivery to:

**CAL FIRE / OFFICE OF THE STATE FIRE MARSHAL
2251 Harvard Street, Suite 400
Sacramento, CA 95815
Attn: Diane Arend, Code Development & Analysis
8:00 a.m to 5:00 p.m**

AUTHORITY AND REFERENCE

Government Code section 4216.22 authorizes the Board to adopt the proposed regulation. The proposed regulation implements, interprets, clarifies, and makes specific sections 4216.1 and 4216.16 of the Government Code.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

This rulemaking action implements, interprets, clarifies, and makes specific the fees each member of 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 the Department of Transportation, to become a member of, 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 regulatory cost incident to 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 the Dig Safe Act of 2016 (SB 661, Chapter 809, Statutes of 2016) (the "Act") and to exercise the powers and duties conferred upon the Board by the Act.

Summary of Regulations:

The Board is proposing to add California Code of Regulations, Title 19, Division 4, Chapter 1, prescribing the rules and regulations pursuant to Government Code, Section 4216.22. The regulation 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:

These regulations will have 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 and 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 Regulation:

The 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 Act and to exercise the powers and duties conferred upon the Board by the Act. 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 possible violations of Government Code section 4216 et seq., and 4) enforcement of Government Code section 4216 et seq.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The Board has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that this proposed regulation is the only regulation that concerns the payment of fees to the Board for its operational expenses to carry out the purposes and intent of the Act and to exercise the powers and duties conferred upon the Board by the Act.

Forms Incorporated by Reference:

There are no documents or forms incorporated by reference for this rulemaking

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 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: Although the proposed action will directly affect a state agency that owns, operates, or maintains a subsurface installation, and is required to be a member of a regional notification center, the Board concludes that any cost will not be significant.
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 own, operate, or maintain a subsurface installation, including small businesses that own, operate, or maintain a subsurface installation, 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: 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.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT:

The Board concludes that it is (1) unlikely that the proposed regulation will eliminate any jobs, (2) unlikely that the proposed regulation will create jobs, (3) unlikely that the proposed regulation 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 proposed regulation 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.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed regulation may affect small businesses that own, operate, or maintain a subsurface installation.

BUSINESS REPORT

The proposed regulation does not mandate any new reporting or recordkeeping requirements beyond the business practice that has already been established by the Board.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (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, would be 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 regulation during the written comment period.

CONTACT PERSON(S)

Inquires 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
(916) 568-2917

Substantive or technical questions:

Deborah Yang, Legal Counsel
California Underground Facilities Safe Excavation Board
2251 Harvard Street, Suite 400
Sacramento, CA 95815
deborah.yang@fire.ca.gov
(916) 568-2969

Please direct requests for copies of the proposed text (the “express terms”) of the regulation, 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 regulation, 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, if requested, and considering all timely and relevant comments received by the Board, the Board may adopt the proposed regulation substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, it 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 (FSOR) 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 (“NOPR”), Initial Statement of Reasons (“ISOR”), the text of the regulation (“ET”) 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/codedevelopment/codedevelopment_title19development