

UNDERGROUND SERVICE ALERT

— NORTHERN CALIFORNIA & NEVADA —



EXCAVATION LAW

4216 (g) "Excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives in any of the following ways: grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, or any other way.

REGIONAL NOTIFICATION CENTERS



UNDERGROUND SERVICE ALERT

NORTHERN CALIFORNIA & NEVADA

811 or 800-642-2444

undergroundservicealert.org



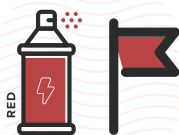
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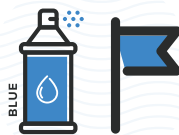
APWA UNIFORM COLOR CODE



Proposed Excavation



Electric



Water



Communication / CATV



Reclaimed Water,
Irrigation, Slurry



Temporary
Survey Marking



Gas, Oil, Steam



Sewer / Storm Drain

California

Government Code 4216

TITLE 1. GENERAL [100 - 7914]

DIVISION 5. PUBLIC WORK AND PUBLIC PURCHASES [4000 - 4563]

CHAPTER 3.1. Protection of Underground Infrastructure [4215 - 4216.24]

ARTICLE 2. Regional Notification Center System [4216 - 4216.24]

Revised January, 2023

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As used in this article, the following definitions apply:

(a) “**Active subsurface installation**” means a subsurface installation currently in use or currently carrying service.

(b) “**Board**” means the California Underground Facilities Safe Excavation Board, also known as the “Dig Safe Board.”

(c) “**Area of continual excavation**” means a location where excavation is part of the normal business activities of agricultural operations and flood control facilities.

(d) “**Delineate**” means to mark in white the location or path of the proposed excavation using the guidelines in Appendix B of the “Guidelines for Excavation Delineation” published in the most recent version of the Best Practices guide of the Common Ground Alliance. If there is a conflict between the marking practices in those guidelines and other provisions of this article, this article shall control. “Delineation” also includes physical identification of the area to be excavated using alternative marking methods, including, but not limited to, flags, stakes, whisksers, or a combination of these methods, if an excavator makes a determination that standard delineation may be misleading to those persons using affected streets and highways, or be misinterpreted as a traffic or pedestrian control, and the excavator has contacted the regional notification center to advise the operators that the excavator will physically identify the area to be excavated using alternative marking methods.

(e) “**Electronic positive response**” means an electronic response from an operator to the regional notification center providing the status of an operator’s statutorily required response to a ticket.

(f) (1) “**Emergency**” means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

(2) “**Unexpected occurrence**” includes, but is not limited to, a fire, flood, earthquake or other soil or geologic movement, riot, accident, damage to a subsurface installation requiring immediate repair, or sabotage.

(g) “**Excavation**” means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives in any of the following ways: grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, or any other way.

(h) Except as provided in Section 4216.8, “**excavator**” means any person, firm, contractor or subcontractor, owner, operator, utility, association, corporation, partnership, business trust, public agency, or other entity that, with their own employees or equipment, performs any excavation.

(i) “**Hand tool**” means a piece of equipment used for excavating that uses human power and is not powered by any motor, engine, hydraulic, or pneumatic device.

(j) “**High priority subsurface installation**” means high-pressure natural gas pipelines with normal operating pressures greater than 415kPA gauge (60psig), petroleum pipelines, pressurized sewage pipelines, high-voltage electric supply lines, conductors, or cables that have a potential to ground of greater than or equal to 60kv, or hazardous materials pipelines that are potentially hazardous to workers or the public if damaged.

(k) “**Inactive subsurface installation**” means either of the following:

(1) The portion of an underground subsurface installation that is not active but is still connected to the subsurface installation, or to any other subsurface installation, that is active or still carries service.

(2) A new underground subsurface installation that has not been connected to any portion of an existing subsurface installation.

(l) “**Legal excavation start date and time**” means two working days, not including the date of notification, unless the excavator specifies a later date and time, which shall not be more than 14 calendar days from the date of notification. For excavation in an area of continual excavation, “legal excavation start date and time” means two working days, not including the date of notification, unless the excavator specifies a later date and time, which shall not be more than six months from the date of notification.

(m) “**Local agency**” means a city, county, city and county, school district, or special district.

(n) (1) “**Locate and field mark**” means to indicate the existence of any owned or maintained subsurface installations by using the guidelines in Appendix B of the “Guidelines for Operator Facility Field Delineation” published in the most recent version of the Best Practices guide of the Common Ground Alliance and in conformance with the uniform color code of the American Public Works Association. If there is a conflict between the marking practices in the guidelines and this article, this article shall control.

(2) “**Locate and field mark**” does not require an indication of the depth.

(o) “**Operator**” means any person, corporation, partnership, business trust, public agency, or other entity that owns, operates, or maintains a subsurface installation. For purposes of Section 4216.1, an “operator” does not include an owner of real property where subsurface installations are exclusively located if they are used exclusively to furnish services on that property and the subsurface facilities are under the operation and control of that owner.

(p) “**Qualified person**” means a person who completes a training program in accordance with the requirements of Section 1509 of Title 8 of the California Code of Regulations Injury and Illness Prevention Program, that meets the minimum locators training guidelines and practices published in the most recent version of the Best Practices guide of the Common Ground Alliance.

(q) “**Regional notification center**” means a nonprofit association or other organization of operators of subsurface installations that provides advance

warning of excavations or other work close to existing subsurface installations, for the purpose of protecting those installations from damage, removal, relocation, or repair.

(r) **“State agency”** means every state agency, department, division, bureau, board, or commission.

(s) **“Subsurface installation”** means any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewerlines, nonpressurized storm drains, or other nonpressurized drain lines.

(t) **“Ticket”** means an excavation location request issued a number by the regional notification center.

(u) **“Tolerance zone”** means 24 inches on each side of the field marking placed by the operator in one of the following ways:

(1) Twenty-four inches from each side of a single marking, assumed to be the centerline of the subsurface installation.

(2) Twenty-four inches plus one-half the specified size on each side of a single marking with the size of installation specified.

(3) Twenty-four inches from each outside marking that graphically shows the width of the outside surface of the subsurface installation on a horizontal plane.

(v) **“Working day”** for the purposes of determining excavation start date and time means a weekday Monday through Friday, from 7:00 a.m. to 5:00 p.m., except for federal holidays and state holidays, as defined in Section 19853, or as otherwise posted on the internet website of the regional notification center.

(Amended by Stats. 2020, Ch. 307, Sec. 1. (SB 865) Effective January 1, 2021.)

4216.1 (Membership)

Every operator of a subsurface installation, except the Department of Transportation, shall become a member of, participate in, and share in the costs of, a regional notification center. Operators of subsurface installations who are members of, participate in, and share in, the costs of a regional notification center, including, but not limited to, the Underground Service Alert—Northern California or the Underground Service Alert—Southern California are in compliance with this section and Section 4216.9. A regional notification center shall not charge a fee to a person for notifying the regional notification center to obtain a ticket or to renew a ticket.

(Amended by Stats. 2020, Ch. 307, Sec. 2. (SB 865) Effective January 1, 2021.)

4216.2 (Before Excavating)

(a) Before notifying the appropriate regional notification center, an excavator planning to conduct an excavation shall delineate the area to be excavated. If the area is not delineated, an operator may, at the operator's discretion, choose not to locate and field mark until the area to be excavated has been delineated.

(b) Except in an emergency, an excavator planning to conduct an excavation shall notify the appropriate regional notification center of the excavator's intent to excavate at least two working days, and not more than 14 calendar days, before beginning that excavation. The date of the notification shall not count as part of the two-working-day notice. If an excavator gives less notice than the legal excavation start date and time and the excavation is not an emergency, the regional notification center will take the information and provide a ticket, but an operator has until the legal excavation start date and time to respond. However, an excavator and an operator may mutually agree to a different notice and start date. The contact information for operators notified shall be available to the excavator.

(c) When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation to set up an onsite meeting prior to the legal excavation start date and time or at a mutually agreed upon time to determine actions or activities required to verify the location and prevent damage to the high priority subsurface installation. As part of the meeting, the excavator shall discuss with the operator the method and tools that will be used during the excavation and the information the operator will provide to assist in verifying the location of the subsurface installation. The excavator shall not begin excavating until after the completion of the onsite meeting.

(d) Except in an emergency, every excavator covered by Section 4216.8 planning to conduct an excavation on private property that does not require an excavation permit may contact the appropriate regional notification center if the private property is known, or reasonably should be known, to contain a subsurface installation other than the underground facility owned or operated by the excavator. Before notifying the appropriate regional notification center, an excavator shall delineate the area to be excavated. Any temporary marking placed at the planned excavation location shall be clearly seen, functional, and considerate to surface aesthetics and the local community. An excavator shall check if any local ordinances apply to the placement of temporary markings.

(e) The regional notification center shall provide a ticket to the person who contacts the center pursuant to this section and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation. A ticket shall be valid for 28 days from the date of issuance. If work continues beyond 28 days, the excavator shall renew the ticket either by accessing the center's internet website or by calling "811" by the end of the 28th day.

(f) A record of all notifications by an excavator or operator to the regional notification center shall be maintained for a period of not less than three years. The record shall be available for inspection by the excavator and any member, or their representative, during normal working hours and according to guidelines for inspection as may be established by the regional notification centers. A regional notification center shall provide notification records to the board quarterly and shall provide notifications of damage to the board within five business days of receipt at the regional notification center.

(g) Unless an emergency exists, an excavator shall not begin excavation until the excavator receives a response from all known operators of subsurface installations within the delineated boundaries of the proposed area of excavation pursuant to subdivision (a) of Section 4216.3 and until the completion of any onsite meeting, if required by subdivision (c).

(h) If a site requires special access, an excavator shall request an operator to contact the excavator regarding that special access or give special instructions on the location request.

(i) If a ticket obtained by an excavator expires but work is ongoing, the excavator shall contact the regional notification center and get a new ticket and wait a minimum of two working days, not including the date of the contact, before restarting excavation. All excavation shall cease during the waiting period.

(Amended by Stats. 2020, Ch. 307, Sec. 3. (SB 865) Effective January 1, 2021.)

4216.3 *(Locating Subsurface Installations/Maintaining the Marks)*

(a) (1) (A) Unless the excavator and operator mutually agree to a later start date and time, or otherwise agree to the sequence and timeframe in which the operator will locate and field mark, an operator shall do one of the following before the legal excavation start date and time:

(i) Locate and field mark within the area delineated for excavation and, where multiple subsurface installations of the same type are known to exist together, mark the number of subsurface installations.

(ii) To the extent and degree of accuracy that the information is available, provide information to an excavator where the operator's active or inactive subsurface installations are located.

(iii) Advise the excavator it operates no subsurface installations in the area delineated for excavation.

(B) An operator shall mark newly installed subsurface installations in areas with continuing excavation activity.

(C) An operator shall indicate with an "A" inside a circle the presence of any abandoned subsurface installations, if known, within the delineated area. The markings are to make an excavator aware

that there are abandoned subsurface installations within that delineated work area.

(2) Only a qualified person shall perform subsurface installation locating activities.

(3) A qualified person performing subsurface installation locating activities on behalf of an operator shall use a minimum of a single-frequency utility locating device and shall have access to alternative sources for verification, if necessary.

(4) An operator shall amend, update, maintain, and preserve all plans and records for its subsurface installations as that information becomes known. If there is a change in ownership of a subsurface installation, the records shall be turned over to the new operator. Commencing January 1, 2017, records on abandoned subsurface installations, to the extent that those records exist, shall be retained.

(5) Commencing January 1, 2023, all new subsurface installations shall be mapped using a geographic information system and maintained as permanent records of the operator. This paragraph shall not apply to oil and gas flowlines three inches or less in diameter that are located within the administrative boundaries of an oil field as designated by the Geologic Energy Management Division. For purposes of this paragraph, the following terms have the following meanings:

(A) "Flowline" means any pipeline that connects an oil, gas, or natural gas liquids well with a gathering line or header.

(B) "Gathering line" means a pipeline that transports liquid hydrocarbons between any of the following: multiple wells, a testing facility, a treating and production facility, a storage facility, or a custody transfer facility.

(C) "Header" means a chamber from which liquid or gas is distributed to or from smaller pipelines.

(6) Nothing in this section shall be interpreted to preempt the Professional Land Surveyors' Act, as described in Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code.

(b) If the field marks are no longer reasonably visible, an excavator shall renotify the regional notification center with a request for remarks that can be for all or a portion of the excavation. Excavation shall cease in the area to be remarked. If the delineation markings are no longer reasonably visible, the excavator shall redelineate the area to be remarked. If remarks are requested, the operator shall have two working days, not including the date of request, to remark the subsurface installation. If the area to be remarked is not the full extent of the original excavation, the excavator shall delineate the portion to be remarked and provide a description of the area requested to be remarked on the ticket. The excavator shall provide a description for the area to be remarked that falls within the area of the original location request.

(c) (1) (A) 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. Upon a showing of good cause by an operator, the board may extend the time by which the operator is required to comply with this requirement. The board shall not grant an extension beyond December 31, 2021. The board shall determine which facts or circumstances constitute good cause.

(B) The regional notification center shall make the responses required by subparagraph (A) available to the excavator.

(2) The regional notification centers shall annually report to the board regarding their continual technological development in their roles of facilitating communication between excavators and operators in a manner that enhances safety, accountability, and efficiency.

(d) (1) On or before January 1, 2021, the board shall adopt regulations to implement subparagraph (A) of paragraph (1) of subdivision (c). 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. After the initial adoption, amendment, or repeal of an emergency regulation pursuant to this section, the board shall not request approval from the Office of Administrative Law to readopt the regulation as an emergency regulation pursuant to Section 11346.1.

(2) It is the intent of the Legislature, in authorizing the deviations in this section from the requirements and procedures of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, to authorize the board to expedite the exercise of its power to implement regulations as its unique operational circumstances require.

(e) The excavator shall notify the appropriate regional notification center of the failure of an operator to identify subsurface installations pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a), or subdivision (b). The notification shall include the ticket issued by the regional notification center. The regional notification center shall maintain a record of all notifications received pursuant to this subdivision for a period of not less than three years. The record shall be available for inspection pursuant to subdivision (f) of Section 4216.2.

(f) If an operator or local agency knows that it has a subsurface installation embedded or partially embedded in the pavement that is not visible from the surface, the operator or local agency shall contact the excavator before pavement removal to communicate and determine a plan of action to protect that subsurface installation and excavator.

(Amended by Stats. 2020, Ch. 307, Sec. 4. (SB 865) Effective January 1, 2021.)

4216.4 *(Hand Exposing/Damages)*

(a) (1) Except as provided in paragraph (2), if an excavation is within the tolerance zone of a subsurface installation, the excavator shall determine the exact location of the subsurface installations in conflict with the excavation using hand tools before using any power-driven excavation or boring equipment within the tolerance zone of the subsurface installations. In all cases the excavator shall use reasonable care to prevent damaging subsurface installations.

(2) (A) An excavator may use a vacuum excavation device to expose subsurface installations within the tolerance zone if the operator has marked the subsurface installation, the excavator has contacted any operator whose subsurface installations may be in conflict with the excavation, and the operator has agreed to the use of a vacuum excavation device. An excavator shall inform the regional notification center of their intent to use a vacuum excavation device when obtaining a ticket.

(B) An excavator may use power-operated or boring equipment for the removal of any existing pavement only if there is no known subsurface installation contained in the pavement.

(C) Beginning July 1, 2020, an excavator may use power-operated or boring equipment, as determined by the board, prior to determining the exact location of subsurface installations. The board shall adopt regulations to implement this paragraph on or before July 1, 2020.

(3) An excavator shall presume all subsurface installations to be active, and shall use the same care around subsurface installations that may be inactive as the excavator would use around active subsurface installations.

(b) If the exact location of the subsurface installation cannot be determined by hand excavating in accordance with subdivision (a), the excavator shall request the operator to provide additional information to the excavator, to the extent that information is available to the operator, to enable the excavator to determine the exact location of the installation. If the excavator has questions about the markings that an operator has placed, the excavator may contact the notification center to send a request to have the operator contact the excavator directly. The regional notification center shall provide the excavator with the contact telephone number of the subsurface installation operator.

(c) (1) An excavator discovering or causing damage to a subsurface installation, including all breaks, leaks, nicks, dents, gouges, grooves, or other damage to subsurface installation lines, conduits, coatings, or cathodic protection, shall immediately notify the subsurface installation operator. The excavator may contact the regional notification center to obtain the contact information of the subsurface installation operator. If the operator is unknown and the damage or discovery of damage occurs outside the working hours of the regional notification center, the excavator may follow the

instructions provided by the regional notification center through its internet website or the telephone line recorded message.

(2) An excavator shall call 911 emergency services upon discovering or causing damage to either of the following:

(A) A gas or hazardous liquid pipeline subsurface installation in which the damage results in the escape of any flammable, toxic, or corrosive gas or liquid.

(B) A high priority subsurface installation of any kind.

(3) An excavator discovering or causing damage shall notify the regional notification center within 48 hours of discovering or causing the damage.

(4) Nothing in this section preempts or impedes the board's authority to impose more restrictive notification windows.

(d) Each excavator, operator, or locator shall communicate with each other and respect the appropriate safety requirements and ongoing activities of the other parties, if known, at an excavation site.

(Amended by Stats. 2020, Ch. 307, Sec. 5. (SB 865) Effective January 1, 2021.)

4216.5 (State/Local Agencies)

The requirements of this article apply to state agencies and to local agencies which own or operate subsurface installations, except as otherwise provided in Section 4216.1. A local agency which is required to provide the services described in Section 4216.3 may charge a fee in an amount sufficient to cover the cost of providing that service.

(Added by Stats. 1989, Ch. 928, Sec. 4.)

4216.6 (Civil Penalties)

(a) (1) Any operator or excavator who negligently violates this article is subject to a civil penalty in an amount not to exceed ten thousand dollars (\$10,000).

(2) Any operator or excavator who knowingly and willfully violates any of the provisions of this article is subject to a civil penalty in an amount not to exceed fifty thousand dollars (\$50,000).

(3) Any operator or excavator who knowingly and willfully violates any of the provisions of this article in a way that results in damage to a gas or hazardous liquid pipeline subsurface installation and that results in the escape of any flammable, toxic, or corrosive gas or liquid is subject to a civil penalty in an amount not to exceed one hundred thousand dollars (\$100,000).

(4) Except as otherwise specifically provided in this article, this section is not intended to affect any civil remedies otherwise provided by law for personal injury or for property damage, including any damage to

subsurface installations, nor is this section intended to create any new civil remedies for those injuries or that damage.

(5) This article shall not be construed to limit any other provision of law granting governmental immunity to state or local agencies or to impose any liability or duty of care not otherwise imposed by law upon any state or local agency.

(b) An action may be brought by the Attorney General, the district attorney, or the local or state agency that issued the permit to excavate, for the enforcement of the civil penalty pursuant to this section in a civil action brought in the name of the people of the State of California. If penalties are collected as a result of a civil suit brought by a state or local agency for collection of those civil penalties, the penalties imposed shall be paid to the general fund of the agency. If more than one agency is involved in enforcement, the penalties imposed shall be apportioned among them by the court in a manner that will fairly offset the relative costs incurred by the state or local agencies, or both, in collecting these fees.

(c) This article may also be enforced by the following agencies, either following a recommendation of the Dig Safe Board that the agency shall act to accept, amend, or reject, or through the agency's own investigations, as follows:

(1) The Registrar of Contractors of the Contractors' State License Board shall enforce this article on contractors, as defined in Article 2 (commencing with Section 7025) of Chapter 9 of Division 3 of the Business and Professions Code, and telephone corporations, as defined in Section 234 of the Public Utilities Code, when acting as a contractor, as defined in Article 2 (commencing with Section 7025) of Chapter 9 of Division 3 of the Business and Professions Code. Nothing in this section affects the Public Utilities Commission's existing authority over a public utility.

(2) The Public Utilities Commission shall enforce this article on gas corporations, as defined in Section 222 of the Public Utilities Code, and electrical corporations, as defined in Section 218 of the Public Utilities Code, and water corporations, as defined in Section 241 of the Public Utilities Code.

(3) The Office of the State Fire Marshal shall enforce this article on operators of hazardous liquid pipeline facilities, as defined in Section 60101 of Chapter 601 of Subtitle VIII of Title 49 of the United States Code.

(d) A local governing board may enforce this article on local agencies under the governing board's jurisdiction.

(e) Commencing July 1, 2020, the Dig Safe Board shall enforce this article on persons other than those listed in subdivisions (c) and (d). The board shall not initiate an enforcement action pursuant to this subdivision for a violation that occurred prior to July 1, 2020. As the enforcing body for persons other than those listed in subdivisions (c) and (d), the board may collect any monetary penalties imposed upon those persons.

(f) Moneys collected as a result of penalties imposed pursuant to subdivisions (c) and (e) shall be deposited into the Safe Energy Infrastructure and Excavation Fund.

(g) Statewide information provided by operators and excavators regarding incident events shall be compiled and made available in an annual report by regional notification centers and posted on the internet websites of the regional notification centers and shall be made available to the board upon request.

(h) For purposes of subdivision (g), the following terms have the following meanings:

(1) "Incident event" means the occurrence of excavator downtime, damages, near misses, and violations.

(2) "Statewide information" means information submitted by operators and excavators using the California Regional Common Ground Alliance's Virtual Private Damage Information Reporting Tool. Supplied data shall comply with the Damage Information Reporting Tool's minimum essential information as listed in the most recent version of the Best Practices guide of the Common Ground Alliance.

4216.7 *(Failure to Comply/Consequences)*

(a) If a subsurface installation is damaged by an excavator as a result of failing to comply with Section 4216.2, 4216.4, or 4216.10 or subdivision (b) of Section 4216.3, or as a result of failing to comply with the operator's requests to protect the subsurface installation as specified by the operator before the start of excavation, the excavator shall be liable to the operator of the subsurface installation for resulting damages, costs, and expenses to the extent the damages, costs, and expenses were proximately caused by the excavator's failure to comply.

(b) If an operator has failed to become a member of, participate in, or share in the costs of, a regional notification center, that operator shall forfeit the operator's claim for damages to the operator's subsurface installation arising from an excavation against an excavator who has complied with this article to the extent damages were proximately caused by the operator's failure to comply with this article.

(c) If an operator of a subsurface installation without a reasonable basis, as determined by a court of competent jurisdiction, has failed to comply with the provisions of Section 4216.3, including, but not limited to, the requirement to field mark the appropriate location of subsurface installations within two working days of notification, as defined by subdivision (v) of Section 4216 and subdivision (b) of Section 4216.2, has failed to comply with subdivision (c) of Section 4216.2, or has failed to comply with subdivision (b) of Section 4216.4, the operator shall be liable for damages to the excavator who has complied with Section 4216.2, subdivisions (b) and (e) of Section 4216.3, and Section 4216.4, including liquidated damages, liability, losses, costs, and expenses, actually incurred by the excavator, resulting from the operator's failure to comply with these specified requirements to the extent

the damages, costs, and expenses were proximately caused by the operator's failure to comply.

(d) (1) An excavator who damages a subsurface installation due to an inaccurate field mark by an operator, or by a third party under contract to perform field marking for the operator, shall not be liable for damages, replacement costs, or other expenses arising from damages to the subsurface installation if the excavator complied with Section 4216.10 or Sections 4216.2 and 4216.4.

(2) This section is not intended to create any presumption or to affect the burden of proof in any action for personal injuries or property damage, other than damage to the subsurface installation, nor is this section intended to affect, create, or eliminate any remedy for personal injury or property damage, other than damage to the subsurface installation.

(e) For the purposes of this section, "inaccurate field mark" means a mark, or set of markings, made pursuant to Section 4216.3 or 4216.10, that did not correctly indicate the approximate location of a subsurface installation affected by an excavation and includes the actual physical location of a subsurface installation affected by an excavation that should have been marked pursuant to Section 4216.3 but was not.

(f) Nothing in this section shall be construed to do any of the following:

(1) Affect claims including, but not limited to, third-party claims brought against the excavator or operator by other parties for damages arising from the excavation.

(2) Exempt the excavator or operator from the excavator's or the operator's duty to mitigate any damages as required by common or other applicable law.

(3) Exempt the excavator or operator from liability to each other or third parties based on equitable indemnity or comparative or contributory negligence.

(g) A court or arbitrator shall award reasonable attorney's costs and fees, including expert witness fees, to an excavator if either of the following apply:

(1) The court or arbitrator determines that an excavator is not liable for damages to a subsurface installation for a reason described in subdivision (d).

(2) The excavator makes an offer to settle the matter that is not accepted and the plaintiff fails to obtain a more favorable judgment or award.

4216.8 *(Property Owners/Rental Equipment)*

This article does not apply to any of the following persons:

(a) An owner of real property who contracts for an excavation project on the property, not requiring a permit issued by a state or local agency, with a contractor or subcontractor licensed pursuant to Article 5 (commencing

with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code.

(b) An owner of residential real property, not engaged as a contractor or subcontractor licensed pursuant to Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code, who as part of improving his or her principal residence or appurtenances thereto is performing or having performed excavation work not requiring a permit issued by a state or local agency.

(c) Any person or private entity that leases or rents power operated or power-driven excavating or boring equipment, regardless of whether an equipment operator is provided for that piece of equipment or not, to a contractor or subcontractor licensed pursuant to Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code, if the signed rental agreement between the person or private entity and the contractor or subcontractor contains the following provision:

“It is the sole responsibility of the lessee or renter to follow the requirements of the regional notification center law pursuant to Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code. By signing this contract, the lessee or renter accepts all liabilities and responsibilities contained in the regional notification center law.”

(Amended by Stats. 2004, Ch. 77, Sec. 3. Effective January 1, 2005.)

4216.9 (Permits)

(a) A permit to excavate issued by any local agency, as defined in Section 4216, or any state agency, shall not be valid unless the applicant has been provided an initial ticket by a regional notification center pursuant to Section 4216.2. For purposes of this section, “state agency” means every state agency, department, division, bureau, board, or commission, including the Department of Transportation.

(b) This article does not exempt any person or corporation from Sections 7951, 7952, and 7953 of the Public Utilities Code.

(Amended by Stats. 2016, Ch. 809, Sec. 9. (SB 661) Effective January 1, 2017.)

4216.10 (Continual Excavation Ticket)

(a) In lieu of the notification and locate and field mark requirements of Sections 4216.2 and 4216.3, an excavator may contact a regional notification center to request a continual excavation ticket for an area of continual excavation. The regional notification center shall provide a ticket to the person who contacts the center pursuant to this section and shall notify any member, if known, who has a subsurface installation in the area of continual excavation. The ticket provided to the excavator shall include the contact information for notified operators.

(b) An operator shall provide a response to the excavator pursuant to subdivision (a) of Section 4216.3.

(c) (1) When the area of continual excavation includes, or is within 10 feet of, a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation to set up an onsite meeting prior to the legal excavation start date and time or at a mutually agreed upon time to determine actions or activities required to verify the location and to prevent damage to the high priority subsurface installation during the continual excavation time period. The onsite meeting shall be used to develop a mutually agreed upon plan for excavation activities that may be conducted within 25 feet of each side of the subsurface installation. Additional onsite meetings should also be held following unexpected occurrences or prior to excavation activities that may create conflicts with subsurface installations. As part of the meeting, the excavator shall discuss with the operator the method and tools that will be used during the excavation and the information the operator will provide to assist in verifying the location of the subsurface installation. The excavator shall not begin excavating until after the completion of the onsite meeting and information has been provided describing the activities that can be safely conducted to prevent damage to the high priority subsurface installation.

(2) When the area of continual excavation includes a subsurface installation but does not include, or is not within 10 feet of, a high priority subsurface installation, the excavator or the operator may request an onsite meeting at a mutually agreed upon time to determine actions or activities required to verify the location and to prevent damage to the subsurface installation during the continual excavation time period. The onsite meeting may be used to develop a plan for excavation activities that may be conducted within five feet of each side of the subsurface installation. The operator and excavator may mutually agree to conduct additional onsite meetings following unexpected occurrences or prior to excavation activities that may create conflicts with subsurface installations. As part of the meeting, the excavator may discuss with the operator the method and tools that will be used during the excavation and the information the operator will provide to assist in verifying the location of the subsurface installation. If an onsite meeting is requested prior to the legal excavation start date and time, the excavator shall not begin excavating until after the completion of the onsite meeting and information has been provided describing the activities that can be safely conducted to prevent damage to the subsurface installation.

(3) The excavator and operator shall maintain records regarding the plan of excavation, any locate and field mark and standby activities, and any other information deemed necessary by the excavator and operator. Excavation activities outside the scope of the plan shall be undertaken subsequent to notification pursuant to Section 4216.2.

(d) A ticket for an area of continual excavation shall be valid for one year from the date of issuance. The excavator may renew the ticket within two working days either by accessing the regional notification center's Internet Web site or by calling "811."

(e) The board shall, in consultation with the regional notification centers, develop through regulation a process by which the renewal requirement for a continual excavation ticket may be modified or eliminated for areas of continual excavation in which no subsurface installations are present.

(f) This section shall become operative on July 1, 2020.

(Amended by Stats. 2017, Ch. 26, Sec. 50. (SB 92) Effective June 27, 2017. Section initially operative July 1, 2020, by its own provisions.)

4216.11

On or before January 1, 2020, the board shall adopt regulations to establish minimum elements for the onsite meeting and minimum elements for the mutually agreed-upon plan described in paragraph (1) of subdivision (c) of Section 4216.10 for managing an area of continual excavation.

(Added by Stats. 2017, Ch. 26, Sec. 51. (SB 92) Effective June 27, 2017.)

4216.12 *(Dig Safe Board)*

(a) The Dig Safe Board is hereby created under, and shall be assisted by the staff of, the Office of the State Fire Marshal until January 1, 2022. On and after January 1, 2022, the board shall be within the Office of Energy Infrastructure Safety within the Natural Resources Agency pursuant to Part 7.3 (commencing with Section 15470) of Division 3 of Title 2.

(b) The board shall perform the following tasks:

(1) Coordinate education and outreach activities that encourage safe excavation practices, as described in Section 4216.17.

(2) Develop standards, as described in Section 4216.18.

(3) Investigate possible violations of this article, as described in Section 4216.19.

(4) Enforce this article to the extent authorized by subdivision (e) of Section 4216.6.

(c) Notwithstanding any other law, on and after January 1, 2020, the board shall be subject to review by the appropriate policy committees of the Legislature at least once every three years.

(Amended by Stats. 2020, Ch. 307, Sec. 7. (SB 865) Effective January 1, 2021.)

4216.13

(a) The board shall be composed of nine members, of which seven shall be appointed by the Governor, one shall be appointed by the Speaker of the Assembly, and one shall be appointed by the Senate Committee on Rules.

(b) The seven members appointed by the Governor shall be appointed, as follows:

(1) Three members shall have knowledge and expertise in the operation of subsurface installations. Of those three members, one shall have knowledge and expertise in the operation of the subsurface installations of a municipal utility. At least one of the three members shall have knowledge and experience in the operation of high priority subsurface installations.

(2) Three members shall have knowledge and experience in contract excavation for employers who are not operators of subsurface installations. Of the three members, one member shall be a general engineering contractor, one member shall be a general building contractor, and one member shall be a specialty contractor. For the purposes of this section, the terms “general engineering contractor,” “general building contractor,” and “specialty contractor” shall have the meanings given in Article 4 (commencing with Section 7055) of Chapter 9 of Division 3 of the Business and Professions Code.

(3) One member shall have knowledge and expertise in performing or managing agricultural operations in the vicinity of subsurface installations.

(c) The member appointed by the Speaker of the Assembly shall have knowledge and expertise in representing in safety matters the workers employed by contract excavators.

(d) The member appointed by the Senate Committee on Rules shall have knowledge and expertise in subsurface installation location and marking and shall not be under the direct employment of an operator.

(e) The board may invite two directors of operations or other appropriate representatives of regional notification centers to be nonvoting ex officio members of the board.

(Amended by Stats. 2017, Ch. 26, Sec. 53. (SB 92) Effective June 27, 2017.)

4216.14

(a) The term of a member of the board is four years. Of the first members of the board, four members, determined by lot, shall serve for two years so that the terms of the members shall be staggered.

(b) A member shall not be appointed for more than two consecutive full terms.

(c) To the extent possible, the appointing power shall fill any vacancy in the membership of the board within 60 days after the vacancy occurs.

(d) Upon the recommendation of the board, the Governor may remove a member appointed by the Governor for incompetence or misconduct.

(e) The board shall select a chairperson from among its members at the first meeting of each calendar year or when a vacancy in the chair exists.

(f) Subject to subdivision (g), the manner in which the chairperson is selected and the chairperson's term of office shall be determined by the board.

(g) A member of the board shall not serve more than two consecutive years as the chairperson of the board.

(Added by Stats. 2016, Ch. 809, Sec. 13. (SB 661) Effective January 1, 2017.)

4216.15

The board shall meet at least once every three months. The board shall hold meetings in Sacramento and Los Angeles, and in other locations in the state it deems necessary.

(Added by Stats. 2016, Ch. 809, Sec. 14. (SB 661) Effective January 1, 2017.)

4216.16

The board may obtain funding for its operational expenses from:

(a) A federal grant.

(b) A fee charged to members of the regional notification centers not to exceed the reasonable regulatory cost incident to enforcement of this article. The board shall apportion the fee in a manner consistent with formulas used by the regional notification centers. Revenues derived from the imposition of this fee shall be deposited in the Safe Energy Infrastructure and Excavation Fund.

(c) Any other source.

(d) The board shall not charge a fee to a person for notifying the regional notification center to obtain a ticket or to renew a ticket.

(Added by Stats. 2016, Ch. 809, Sec. 15. (SB 661) Effective January 1, 2017.)

4216.17

(a) The board shall annually convene a meeting for the following purposes:

(1) To understand the existing needs for education and outreach, including to those groups with the highest awareness and education needs, including, but not limited to, homeowners.

(2) To facilitate discussion on how to coordinate existing education and outreach efforts with state and local government agencies, California operators, regional notification centers, and trade associations that fund outreach and education programs that encourage safe excavation practices.

(3) To determine the areas in which additional education and outreach efforts may be targeted through use, upon appropriation by the Legislature, of the moneys in the Safe Energy Infrastructure and Excavation Fund pursuant to subdivision (c).

(b) In addition to state and local government agencies, California operators, regional notification centers, and trade associations that fund outreach and education programs that encourage safe excavation practices, the meeting pursuant to subdivision (a) shall include representatives of groups that may be the target of those outreach and education efforts.

(c) For violations that are neither egregious nor persistent, the board shall offer violators the option of completing an educational course in lieu of paying a fine. To develop the programming for the educational option, the board may contract with a third party or create the curriculum itself.

(d) Upon appropriation by the Legislature, moneys in the Safe Energy Infrastructure and Excavation Fund shall be available to the board to fund the educational course developed pursuant to subdivision (c).

(Amended by Stats. 2020, Ch. 307, Sec. 8. (SB 865) Effective January 1, 2021.)

4216.18

The board shall develop a standard or set of standards relevant to safety practices in excavating around subsurface installations and procedures and guidance in encouraging those practices. When possible, standards should be informed by publicly available data, including, but not limited to, that collected by state and federal agencies and by the regional notification centers pursuant to subdivision (g) of Section 4216.6, and the board should refrain from using data about facility events not provided either to a state or federal agency or as statewide information, as defined in paragraph (2) of subdivision (h) of Section 4216.6. The standard or set of standards are not intended to replace other relevant standards, including the Best Practices of the Common Ground Alliance, but are to inform areas currently without established standards. The standard or set of standards shall address all of the following:

(a) Evidence necessary for excavators and operators to demonstrate compliance with Sections 4216.2, 4216.3, 4216.4, and 4216.10.

(b) What constitutes reasonable care, as required by paragraph (1) of subdivision (a) of Section 4216.4, in using hand tools around subsurface installations within the tolerance zone, considering the need to balance worker safety in trenches with the protection of subsurface installations. As part of determining reasonable care, the board shall consider the appropriate additional excavating depth an excavator should make if either of the following occur:

(1) The subsurface installation is delineated within the tolerance zone but it is not in conflict with the excavation.

(2) The location of a subsurface installation is determined, but additional subsurface installations may exist immediately below the located subsurface installation.

(c) What constitutes reasonable care, as required by paragraph (1) of subdivi-

vision (a) of Section 4216.4, in grading activities on road shoulders and dirt roads which may include standards for potholing.

(Amended by Stats. 2017, Ch. 26, Sec. 54. (SB 92) Effective June 27, 2017.)

4216.19

(a) The board shall investigate possible violations of this article.

(b) The board may investigate reports of incident events, as defined in paragraph (1) of subdivision (h) of Section 4216.6 and complaints from affected parties and members of the public.

(c) In determining whether to pursue an investigation, the board shall consider whether the parties have settled the matter and whether further enforcement is necessary as a deterrent to maintain the integrity of subsurface installations and to protect the safety of excavators and the public.

(d) If the board, upon the completion of an investigation, finds a probable violation of the article, the board shall transmit the investigation results and any recommended penalty to the state or local agency pursuant to subdivision (c) or (d) of Section 4216.6.

(e) Sanctions shall be graduated and may include notification and information letters, direction to attend relevant education, and financial penalties. When considering the issuance of citations and assessment of penalties, the board shall consider all of the following:

(1) The type of violation and its gravity.

(2) The degree of culpability.

(3) The operator's or excavator's history of violations.

(4) The operator's or excavator's history of work conducted without violations.

(5) The efforts taken by the violator to prevent violation and, once the violation occurred, the efforts taken to mitigate the safety consequences of the violation.

(Amended by Stats. 2018, Ch. 51, Sec. 8. (SB 854) Effective June 27, 2018.)

4216.21

(a) For an investigation that the board undertakes as a result of a complaint of a violation of Section 4216.2, 4216.3, 4216.4, or 4216.10, the complainant shall not file an action in court for damages based on those violations until the investigation is complete, or for 6 months after the investigation begins, whichever comes first, during which time, applicable statutes of limitation shall be tolled.

(b) If a complainant files an action in court against a person for damages based upon violations of Section 4216.2, 4216.3, 4216.4, or 4216.10, after the completion of a board investigation in which the person was found

not to have violated the article, the complainant shall also notify the board when the action is filed.

(c) This section only applies to a claim for damages to a subsurface installation.

(d) This section shall become operative on July 1, 2020.

(Repealed (in Sec. 56) and added by Stats. 2017, Ch. 26, Sec. 57. (SB 92) Effective June 27, 2017. Section operative July 1, 2020, by its own provisions.)

4216.22

Consistent with all laws of this state, the board may prescribe rules and regulations as may be necessary or proper to carry out the purposes and intent of this act and to exercise the powers and duties conferred upon it by this act.

(Added by Stats. 2016, Ch. 809, Sec. 20. (SB 661) Effective January 1, 2017.)

4216.23

(a) Notwithstanding Section 10231.5, the board shall report to the Governor and the Legislature on or before February 1, 2018, and each year thereafter, on the activities of the board and any recommendations of the board.

(b) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795.

(Added by Stats. 2016, Ch. 809, Sec. 21. (SB 661) Effective January 1, 2017.)

4216.24

The Safe Energy Infrastructure and Excavation Fund is hereby established in the State Treasury. Moneys deposited into the fund shall be used, upon appropriation by the Legislature, to cover the operational expenses of the board and for the purposes specified in subdivision (c) of Section 4216.17, except that revenues derived from penalties imposed pursuant to Section 4216.6 shall not be used for operational expenses.

(Amended by Stats. 2017, Ch. 561, Sec. 67. (AB 1516) Effective January 1, 2018.)

California

Code of Regulations Title 19

TITLE 19. Public Safety [§ 1.00 - § 4501]

DIVISION 4. California Underground Facilities Safe Excavation Board [§ 4000 - § 4501]

Chapter 1. General [§ 4000 - § 4020]

Chapter 2. Investigation [§ 4100 - § 4151]

Chapter 3. Enforcement [§ 4200 - § 4258]

Chapter 4. Area of Continual Excavation [§ 4300 - § 4361]

Chapter 5. Pre-Excavation Responsibilities [§ 4401 - § 4501]

Revised January, 2023

Code and Regulations accurate as of date of printing. Be sure to stay up to date at <https://leginfo.legislature.ca.gov> and <https://govt.westlaw.com/calregs>.

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§ 4000. Definitions.

(a) The definitions in this section are supplementary to those under Government Code section 4216.

(b) The following definitions shall apply wherever the terms are used throughout this division:

“Act” means the Dig Safe Act of 2016 (SB 661, Chapter 809, Statutes of 2016) and article 2 of chapter 3.1 of division 5 of title 1 of the Government Code (commencing with section 4216).

“Agreement” as the term is used in the Area of Continual Excavation Agreement (Agricultural Operations) means the Area of Continual Excavation Agreement (Agricultural Operations) between an excavator and operator.

“Agreement” as the term is used in the Area of Continual Excavation Agreement (Flood Control Facilities) means the Area of Continual Excavation Agreement (Flood Control Facilities) between an excavator and operator.

“Area of Continual Excavation Agreement (Agricultural Operations)” means the Area of Continual Excavation Agreement - Agricultural Operations (Form No. ACE Agreement 01 (07-01-2020)), which is available on the Board's website: digsafe.fire.ca.gov.

“Area of Continual Excavation Agreement (Flood Control Facilities)” means the Area of Continual Excavation Agreement - Flood Control Facilities (Form No. ACE Agreement 02 (07-01-2020)), which is available on the Board's website: digsafe.fire.ca.gov.

“Business day” means a weekday Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding State of California observed holidays under Government Code section 19853.

“Damage” means any damage to a subsurface installation caused by excavation or excavation related work, including breaks, leaks, nicks, dents, strikes, gouges, grooves, cracks, or punctures to a subsurface installation.

“Farm Owner/Lessee” as the term is used in the Area of Continual Excavation Agreement (Agricultural Operations), means “excavator” as defined in Government Code section 4216, subdivision (h).

“Flood control facility” means an engineered basin operated by a state or local agency, used for the temporary slowing and storing of storm water runoff and for which regular removal of debris is required.

“Investigator” means an investigator under the California Underground Facilities Safe Excavation Board.

“One-call center” as the term is used in the Area of Continual Excavation Agreement (Agricultural Operations) and the Area of Continual Excavation Agreement (Flood Control Facilities) means “regional notification center” as defined in Government Code section 4216, subdivision (q).

“Record” means records related, pertaining, or relevant to any damage or probable violation of the Act or this division. Such “records” include any document, email, photograph, electronic recording, map, drawing including computer-aided designs, film, microfiche, tape, disc, flash drive, book, log, journal, global positioning system (“GPS”) coordinates, design plan, ticket, previous incident documentation, soil sample, writing as defined in Evidence Code section 250, or any other tangible or intangible material of any kind.

“Respondent” means the excavator or operator who has been issued a notice of probable violation.

“Staff” means the staff of the California Underground Facilities Safe Excavation Board.

“Utility” as the term is used in the Area of Continual Excavation Agreement (Agricultural Operations), means “high priority subsurface installation” as defined in Government Code section 4216, subdivision (j).

“Utility Owner” as the term is used in the Area of Continual Excavation Agreement (Agricultural Operations), means “operator” as defined in Government Code section 4216, subdivision (o).

Note: Authority cited: Section 4216.22, Government Code. Reference: Section 4216, Government Code.

HISTORY

1. New section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

§ 4002. Incorporated References.

(a) The following forms, in the format developed by the California Underground Facilities Safe Excavation Board, are incorporated by reference and available on the Board's website: <https://digsafe.fire.ca.gov>:

(1) Area of Continual Excavation Agreement - Agricultural Operations (Form No. ACE Agreement 01 (07-01-2020)); and

(2) Area of Continual Excavation Agreement - Flood Control Facilities (Form No. ACE Agreement 02 (07-01-2020)).

Note: Authority cited: Section 4216.22, Government Code. Reference: Section 4216, Government Code.

HISTORY

1. New section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

§ 4003. Valid and Current Contact Information for Members of Regional Notification Centers.

(a) Members of regional notification centers shall maintain valid and current contact information, including name, address, phone number, and email address, with the appropriate regional notification center, and shall promptly inform the appropriate regional notification center of any changes to the contact information.

(1) Each member shall provide at least one valid and current contact that includes the name, telephone number, and email address of an individual or business unit that can reach a person authorized to respond to inquiries regarding the determination of the exact location of subsurface installations operated by the member.

(b) Regional notification centers shall provide updated contact information for their members to the Board upon request by the Board.

Note: Authority cited: Sections 4216.4 and 4216.22, Government Code. Reference: Sections 4216.1, 4216.4 and 4216.12, Government Code.

HISTORY

1. New section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

2. New subsection (a)(1) and amendment of Note filed 9-18-2020; operative 9-18-2020 pursuant to Government Code section 11343.4(b)(3) (Register 2020, No. 38).

§ 4010. Fees.

(a)(1) *Each member of a regional notification center as defined in Government Code, section 4216, subdivision (q) who receives 500 or more locate request transmissions in the calculation year shall pay a fee to support the operational expenses of the California Underground Facilities Safe Excavation Board as provided in the following formula:*

Fee = (member locate request transmissions / statewide locate request transmissions) X Board operational expenses

(2) *In the formula above:*

(A) *“member locate request transmissions” represents the number of locate request transmissions the member of the regional notification center received in the calculation year;*

(B) *“statewide locate request transmissions” is the total number of locate request transmissions issued by the regional notification centers in the calculation year, not including those locate request transmissions issued to members who received less than 500 locate request transmissions in the calculation year; and*

(C) *“Board operational expenses” is the sum of the estimated operational expenses, including any loan repayment, of the California Underground Facilities Safe Excavation Board in the billing year, subject to the State Budget Act and not to exceed the amount listed in subdivision (e).*

(b) *The Board shall post the following to its website by March 1 of each year,*

(1) The Board operational expenses for the upcoming billing year, not to exceed the amount listed in subdivision (e).

(2) The statewide locate request transmissions from the recently ended calculation year, the member locate request transmissions for each member of a regional notification center from the calculation year, and the amount of regulatory fees to be paid by each member of a regional notification center in the upcoming billing year.

(c)(1) *A member shall remit payment to the regional notification center who issued the invoice to the member.*

(2) A member who fails to pay the fee within 90 days of the date the invoice was issued pursuant to Section 4011 is subject to a late fee of 5% the amount of the fee, in addition to the fee due on the invoice.

(d) *For purposes of this section, the following terms have the following meanings:*

(1) "Billing year" means the July 1 to June 30 period in which the Legislature authorizes expenditures in the State Budget Act.

(2) "Calculation year" means the January 1 to December 31 calendar year before the beginning of the billing year.

(3) "Locate request transmission" means the notification provided by a regional notification center to an operator to locate and field mark in response to a new ticket, as identified in Government Code section 4216.2, subdivision (e) or to a new ticket created to replace an expired ticket, as identified in Government Code section 4216.2, subdivision (i).

(e) *The value of the estimated operational expenses in subdivision (a)(2)(C), subject to the State Budget Act, shall not exceed the following amounts for the following time periods:*

(1) \$7 million for each calendar year 2019, 2020, and 2021.

(2) \$2.5 million for the period of January 1, 2022 to June 30, 2022.

(3) \$7.0 million for the billing year that begins on July 1, 2022 and for each billing year thereafter.

(f) *For the period of January 1, 2022 to June 30, 2022, the fee shall be calculated pursuant to subdivision (a) with the following modifications:*

(1) The calculation year shall be January 1, 2021 to June 30, 2021.

(2) The billing year shall be January 1, 2022 to June 30, 2022.

(3) The Board operational expenses shall be as identified in subdivision (e) paragraph (2).

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216, 4216.1, 4216.2, 4216.3 and 4216.16, Government Code.

HISTORY

1. New division 4 (chapter 1, section 4010), chapter 1 (article 1, section 4010), article 1 (section 4010) and section filed 11-30-2018; operative 1-1-2019 (Register 2018, No. 48).

2. Amendment filed 10-11-2021; operative 1-1-2022 (Register 2021, No. 42).

§ 4011. Fee Collection.

(a) A regional notification center shall collect the fee described in Section 4010 from its members on the Board's behalf. A regional notification center shall send an invoice to a member on the same billing cycle it uses to send the invoice to the member for dues to pay the operating costs of the regional notification center pursuant to Government Code 4216.1.

(1) A regional notification center shall use one of the following two methods when invoicing to their members for the fee:

(A) A line item on the invoice that the regional notification center sends to a member to collect member dues.

(B) An invoice dedicated to the fee.

(i) A regional notification center shall send an invoice to a member for the fee at substantially the same time as the regional notification center sends an invoice to the member for dues to pay the operating costs of the regional notification center.

(2) A regional notification center shall make reasonable efforts to inform members of past due balances and account credits.

(3) An invoice sent pursuant to this subdivision shall include the "member locate request transmissions," "statewide total locate request transmissions," and "Board operational expenses," as defined in Section 4010 subdivision (a).

(4) A regional notification center may use the Board seal on an invoice requesting a member pay the Board's fee, a statement informing a member of balance due for the Board's fee, or communication informing a member of the consequences of late payment or nonpayment of the Board's fee, if the document contains the following language:

"Use of the seal of the California Underground Facilities Safe Excavation Board is authorized pursuant to Section 4011 of Title 19 of the California Code of Regulations."

(5) If using the member contact information available to it, a regional notification center is unable to provide an invoice for the fee to a member, the regional notification center shall inform the Board.

(b)(1) A regional notification center shall reissue an invoice to a member who has not paid an invoice within 90 days of receipt. The regional notification center shall include the 5% late fee described in Section 4010 subdivision (c)(2).

(2) Prior to reissuing the invoice pursuant to paragraph (1), the regional notification center shall send a reminder to the member of the unpaid invoice no later than 30 days before reissuing the invoice that includes the 5% late fee. The reminder will notify the member of the date at which the 5% late fee applies.

(c) A regional notification center shall remit to the California Underground Facilities Safe Excavation Board the fee revenues that it collected prior to January 1, April 1, July 1, and October 1 each year. The regional notification center shall remit the fee revenues within 15 days of the dates above.

(d) A regional notification center shall provide the following information to the Board electronically:

(1) On or before the 15th day of each month, information about invoices for the fee issued and payments received in the previous month, including the following:

(A) For each member, the invoice number, invoice due date, amount of the regulatory fee, and the applicable email or physical address the invoice was sent to.

(B) For each member, the invoice number, payment received date, amount of payment received, identifying information about the payment such as check, ACH, or other payment identification number.

(C) A copy of any invoice to collect the fee sent.

(2) On or before the 15th day of the month following each calendar quarter described in subdivision (c), regional notification center membership information about the following:

(A) The number of locate request transmissions, as defined in Section 4010 subdivision (d)(3), each member received in the recently-ended quarter.

(B) The membership of the regional notification center, including the member identification code, any member identification sub-code.

(C) Contact information for each member, including the names, phone numbers, and email addresses for the general contact and billing contact.

(3) Information provided pursuant to paragraphs (1) and (2), except for subparagraph (C) in paragraph (1), shall be provided in tabular form, each of entry of which shall include the member name, member identification code, and any member identification sub-code.

(e) Notwithstanding the requirement in subdivision (a) for a regional notification center to send an invoice to a member on the same billing cycle it uses to send the member an invoice to collect dues to pay the operating costs, if a regional notification center does not send an invoice to a member for dues during the period of January 1, 2022 to June 30, 2022, the

regional notification center shall send an invoice to the member prior to March 1, 2022 to collect the fee for the six-month billing period described in Section 4010, subdivision (f).

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216, 4216.1, 4216.2, 4216.3 and 4216.16, Government Code.

HISTORY

1. New section filed 10-11-2021; operative 1-1-2022 (Register 2021, No. 42).

§ 4020. Extension of Time in Which to Provide Electronic Positive Response Through Regional Notification Centers. [Repealed]

Note: Authority cited: Sections 4215.3(d)(1) and 4216.22, Government Code. Reference: Section 4216.3(c)(1)(A), Government Code.

HISTORY

1. New section filed 6-29-2020 as an emergency; operative 7-1-2020. Expiration date of emergency extended 60 days (Executive Order N-40-20) plus an additional 60 days (Executive Order N-66-20) (Register 2020, No. 27). A Certificate of Compliance must be transmitted to OAL by 4-27-2021 or emergency language will be repealed by operation of law on the following day.

2. Repealed by operation of Government Code section 11346.1(g) (Register 2021, No. 18).

19 CCR Chap. 2: Investigation; Article 1: Damage Notification

§ 4100. Damage Notification by Excavators.

(a) Immediately after calling 911 emergency services or other emergency responders as necessary, and in no event longer than 2 hours after the excavator's knowledge of the damage, the excavator shall notify the appropriate regional notification center of any of the following types of damages:

(1) Damage to natural gas or hazardous liquid pipeline subsurface installation whether or not the damage results in the escape of any flammable, toxic, or corrosive gas or liquid.

(2) Damage to high priority subsurface installation of any kind.

(3) Damage causing injury that requires treatment at a facility that provides medical services, such as a clinic as defined under Health and Safety Code section 1200 or a health facility defined under Health and Safety Code section 1250.

(4) Damage causing fatality.

(b) The excavator shall notify the appropriate regional notification center of the damage through the regional notification center's website or mobile application, as available, or by phone. The notification shall include the following, as may be known to the excavator at the time of notification:

(1) Excavator's contact information.

(2) Location of the damage.

(3) Type of subsurface installation.

(4) Approximate date and time the damage occurred.

(5) Any injury or fatality.

(6) Whether damage caused fire or evacuation.

(7) Type of excavation equipment or tool used by the excavator when the damage occurred or when the excavator discovered the damage.

(c) Regional notification centers shall transmit the notification by email, phone, or other method as may be provided on the Board's website (digsafe.fire.ca.gov), to the Board immediately, but not longer than 1 hour, after the regional notification center's receipt of the notification.

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.4, 4216.6, 4216.12 and 4216.19, Government Code.

HISTORY

1. New chapter 2 (articles 1-2, sections 4100-4151), article 1 (section 4100) and section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

19 CCR Chap. 2: Investigation; Article 2: Investigators

§ 4150. Investigators.

(a) Investigators are authorized to investigate any damage, probable violation of the Act or this division, reports of incident events as defined in Government Code section 4216.6, subdivision (h)(1), and complaints of damage or probable violation of the Act or this division.

(b) Investigators are delegated the powers conferred on the Board under article 2 of chapter 2, part 1, division 3, title 2 of the Government Code (commencing with section 11180). Investigators are authorized to pursue any other investigatory or discovery power authorized under the laws of the State of California, such as inspection warrants under Code of Civil Procedure section 1822.51.

(c) Investigators may interview witnesses and obtain statements, declarations, verifications, certificates, oaths, or affidavits under penalty of perjury pursuant to Code of Civil Procedure section 2015.5.

(d) Investigators may issue notices of probable violation and information letters. An information letter may include safe excavation education and training opportunities, and information on the Act or this division.

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, 4216.19 and 11180-11191, Government Code.

HISTORY

1. New article 2 (sections 4150-4151) and section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

§ 4151. Evidence Collected by Investigators.

(a) Investigators may inspect, examine, gather, and maintain records.

(b) Upon an investigator's request, excavators and operators shall provide access to sites and facilities, and any records. Excavators and operators shall remove objects, such as barricades and plates, at or near the site of the damage to facilitate the investigation.

(c) Any excavator or operator who obstructs an investigation by taking actions that were known or reasonably should have been known to prevent, hinder, or impede an investigation is subject to sanctions under the Act and this division.

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12 and 4216.19, Government Code.

HISTORY

1. New section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

19 CCR Chap. 3: Enforcement; Article 1: Sanctions

§ 4200. Categories of Sanctions.

(a) Violation of the Act or this division is subject to any of or a combination of any of the following sanctions:

(1) Order for corrective action, such as completion of relevant education or training courses; facility or equipment repair, testing, or replacement; and changes to operational or management procedures or processes, including updates to Geographic Information Systems ("GIS") data.

(2) Monetary penalty up to the maximum amounts under Government Code section 4216.6, subdivision (a).

(b) This section does not limit or bar any other or additional sanctions that may be issued under the authority of the Registrar of Contractors of the Contractors State License Board, the Public Utilities Commission, or the Office of the State Fire Marshal.

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12 and 4216.19, Government Code.

HISTORY

1. New chapter 3 (articles 1-2, sections 4200-4258), article 1 (section 4200) and section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

§ 4201. Considerations to Assess Sanctions.

(a) All of the following shall be considered to determine whether to assess a sanction for a violation of the Act or this division, and if so, the appropriate sanction for the violation:

(1) Type of violation and its gravity, such as risk of or actual injury, death, or environment or property damage.

(2) Degree of culpability, which may be measured in part by whether there were intervening acts or omissions by other persons.

(3) Respondent's history of violations.

(4) Respondent's history of work conducted without violations.

(5) Efforts taken by the respondent to prevent the violation and, once the violation occurred, the efforts taken to mitigate the safety consequences of the violation.

(b) In determining whether to assess a sanction for a violation of the Act or this division, and if so, the appropriate sanction for the violation, the Board must consider evidence that is relevant to any of the following matters:

(1) Respondent notified the appropriate regional notification center, the Board, or other state agency with jurisdiction over the respondent under Government Code section 4216.6, if possible, of the violation immediately after detecting it and before the respective state agency learned of it by other means. This consideration does not apply when the respondent is required to report violations related to damages that must be reported under section 4100, or violations under any other law to the appropriate regional notification center, the Board, or other state agency with jurisdiction over the respondent under Government Code section 4216.6.

(2) Cooperation with state agencies during the investigation.

(3) Appropriateness of the sanction to the size of the business of the respondent, including any effect on the respondent's ability to continue doing business.

(4) Economic benefit gained from the violation without any reduction because of subsequent costs.

(5) Respondent had received one or more information letters from a Board investigator.

(6) Other factors in consideration of the facts, evidence, and violation.

(c) In determining whether to issue an order for corrective action instead of monetary penalty, the Board must consider evidence that is relevant to any of the following matters:

(1) Respondent is willing and able to comply with an order for corrective action.

(2) Respondent notified the appropriate regional notification center, the Board, or other state agency with jurisdiction over the respondent under Government Code section 4216.6, if possible, of the violation immediately after detecting it and before the state agency or the Board learned of it by other means. This consideration does not apply when the respondent is required to report violations related to damages that must be reported under section 4100, or violations under any other law to the appropriate regional notification center, the Board, or other state

agency with jurisdiction over the respondent under Government Code section 4216.6.

(3) Cooperation with state agencies during the investigation.

(4) Violation did not cause death or substantial injury, environment or property damage, or pose significant risk of death or substantial injury, or environment or property damage.

(5) Respondent did not act willfully or knowingly, which includes recklessly.

(6) Respondent does not have a history of the same or similar violations, and has not failed to comply with an order for corrective action.

(7) If the respondent has a history of engaging in excavation or excavation related work, the respondent has a history of conducting this work without a history of the same or similar violations.

(8) Respondent took immediate action upon discovery to mitigate the safety consequences of the violation.

(9) Other factors in consideration of the facts, evidence, and violation.

(d) When the Board issues an order for corrective action, Respondent must provide the Board with access to respondent's records, sites, and facilities to verify compliance with the order for corrective action. The Board has discretion to impose a monetary penalty upon a respondent that fails to timely comply with an order for corrective action if the Board determines that the failure to comply was willful.

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12 and 4216.19, Government Code.

HISTORY

1. New section filed 8-27-2020; operative 10-1-2020 (Register 2020, No. 35).

19 CCR Chap. 3: Enforcement; Article 2: Enforcement of Violations

§ 4250. Effective Date for Enforcement by the Board.

Beginning July 1, 2020, the Board shall enforce the Act and this division on persons under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e).

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12 and 4216.19, Government Code.

HISTORY

1. New article 2 (sections 4250-4258) and section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

§ 4251. **Notice of Probable Violation.**

(a) Based on the results of an investigation, the Board may issue a notice of probable violation of the Act or this division. A notice of probable violation shall include the following:

- (1) Statute, regulation, or order that the respondent is alleged to have violated and a statement of the evidence upon which the allegation is based.
- (2) Maximum amount of the penalty the respondent is subject to under the Act and this division.
- (3) Amount of the penalty, if any.
- (4) Corrective action, if any.
- (5) Response options available to the respondent under section 4252.

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12 and 4216.19, Government Code.

HISTORY

1. New section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

§ 4252. **Response Options to a Notice of Probable Violation.**

(a) If a penalty or corrective action is stated in a notice of probable violation, the respondent must respond by choosing one of the following options in writing, which must be received by the Board within 30 business days of the date of the notice of probable violation:

- (1) Respondent may choose not to contest the allegation, penalty (if any), and corrective action (if any).
 - (A) If the respondent is under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e), the respondent shall pay any penalty and complete any corrective action, in accordance with section 4256, as may be provided in the notice of probable violation and ordered by the Board.
 - (B) If, the respondent is under the jurisdiction of a state or local agency referenced in subdivisions (c) or (d) of Government Code section 4216.6, the Board will transmit the investigation results and any recommended penalty to the appropriate agency.
- (2)(A) Respondent may submit a written explanation and other records the respondent believes may warrant modification or elimination of the penalty or corrective action for the Board's consideration at a public meeting held in accordance with the Bagley-Keene Open Meeting Act (Government Code section 11120 et seq.).
 - (i) Respondent must provide a minimum of one original and 12 copies of the original written response to staff, or submit the written response electronically as provided on the Board's website: digsafe.fire.ca.gov. The written response must not exceed 10 pages

(excluding exhibits), must be on 8 1/2" x 11" white paper, double-spaced text lines, and minimum 11-point font text. The 10-page limit may be extended at respondent's request by the Chair or Vice-Chair of the Board, depending on the complexity of the facts and evidence. Respondent must submit such a request to staff within 5 business days of the date of the notice of probable violation, which shall include the basis for the request. Staff shall notify respondent of the Chair's or Vice-Chair's decision within 10 business days of receipt of respondent's request.

(ii) The public meeting shall be held no later than 60 business days from the date of the Board's receipt of respondent's response. If a quorum of the Board cannot be gathered at the public meeting, the Board may consider the matter at the next public meeting where a quorum is present. At that public meeting or thereafter, within 45 business days or at the next public meeting where a quorum of the Board is present, the Board shall adopt a written decision or recommendation, as applicable. The Board's decision is effective upon the adoption of the written decision or a later date as may be provided in the written decision.

(iii) If the respondent is under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e), the respondent shall pay any penalty and complete any order for corrective action, in accordance with section 4256, that may be ordered by the Board.

(iv) If the respondent is under the jurisdiction of a state or local agency referenced in subdivisions (c) or (d) of Government Code section 4216.6, the Board will transmit the investigation results and any recommended penalty to the appropriate agency.

(3) Respondent may request an informal hearing before the Board at a public meeting held in accordance with the Bagley-Keene Open Meeting Act (Government Code section 11120 et seq.), as provided in section 4253.

(A) If the respondent is under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e), the respondent shall pay any penalty and complete any order for corrective action, in accordance with section 4256, that may be ordered by the Board.

(B) If the respondent is under the jurisdiction of a state or local agency referenced in subdivisions (c) or (d) of Government Code section 4216.6, the Board will transmit the investigation results and any recommended penalty to the appropriate agency.

(4) If the respondent is under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e), the respondent may request a hearing before an Administrative Law Judge of the Office of Administrative Hearings, as provided in section 4254.

(5) If, pursuant to Government Code section 4216.6, subdivision (c), the respondent is under the jurisdiction of the Registrar of Contractors of the Contractors State License Board, the Public Utilities Commission, or the Office of the State Fire Marshal, the respondent may contest the allegation, penalty (if any), or corrective action (if any) and request the Board to make a recommendation to the state entity with jurisdiction over the respondent.

(b) The Board shall notify respondent of the date, time, and location of any public meeting or hearing under subdivision (a)(2) or (a)(3) at least 20 business days before the public meeting or hearing. The Board shall also notify respondent of any Board decision or recommendation within 2 business days of the Board's decision or recommendation.

(c) Failure of a respondent to respond as required by subdivision (a) constitutes a waiver of any right to appeal the Board's decision to either (1) transmit the investigation results and any recommended penalty to another state or local agency pursuant to Government Code section 4216.19, or (2) impose a civil penalty or order corrective action pursuant to Government Code section 4216.6.

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12 and 4216.19, Government Code.

HISTORY

1. New section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

§ 4253. Informal Hearing Before the Board.

(a) An informal hearing before the Board shall be held at a public meeting within 60 business days of the Board's receipt of respondent's request.

(1) If a quorum of the Board cannot be gathered at the public meeting, the Board may consider the matter at the next public meeting where a quorum is present.

(2) If the notice of probable violation does not order any corrective action, the respondent may request staff to reschedule the hearing date. Respondent must submit such a request in writing to staff no later than 15 business days before the scheduled hearing date. Staff will reschedule the hearing only one time, and must reschedule the hearing for a date that is no more than 45 business days after the original hearing date and on which a quorum of the Board is available to conduct the hearing.

(3) At least 15 business days before the hearing, respondent may submit a written response and other records to the notice of probable violation that may support modification or elimination of the penalty or corrective action for the Board's consideration. Respondent must provide a minimum of one original and 12 copies of the original written response to staff, or submit the written response electronically as provided on the Board's website: digsafe.fire.ca.gov.

The written response must not exceed 10 pages (excluding exhibits), must be on 8 1/2" x 11" white paper, double-spaced text lines, and minimum 11-point font.

(b) Rules relating to admission of evidence do not apply to the informal hearing. Nevertheless, at the Board's discretion, the Board may exclude evidence that is unduly repetitious, irrelevant, or unreliable.

(c) The informal hearing shall proceed as follows.

(1) Staff may present the basis for the notice of probable violation. The Board may place time limitations, not less than 15 minutes, depending on the complexity of the facts and evidence to make such a presentation to the Board.

(2) After staff's presentation, the respondent may present respondent's reasons for contesting the allegation or reasons that may support a modification or elimination of the penalty or corrective action. The Board may place time limitations, not less than the time afforded to staff to present the basis for the notice of probable violation, depending on the complexity of the facts and evidence to make such a presentation to the Board.

(3) Staff may present a rebuttal to respondent's presentation. The Board may place time limitations, not less than 5 minutes, depending on the complexity of the facts and evidence to make such a rebuttal.

(4) Respondent may present a rebuttal to staff's rebuttal. The Board may place time limitations, not less than the time afforded to staff to present a rebuttal to respondent's presentation, depending on the complexity of the facts and evidence to make such a rebuttal.

(5) The Board may pose questions to staff, respondent, or other witnesses or experts.

(d) At sole cost to the respondent, the respondent may arrange for a stenographer or court reporter to transcribe the informal hearing if transcription by a stenographer or court reporter is feasible at the hearing, and the respondent notifies staff at least 15 business days in advance of the hearing. Respondent shall submit a complete copy of the transcript to the Board.

(e) The Board shall issue a decision or recommendation at the informal hearing or thereafter within 45 business days of the informal hearing, or at the next public meeting where a quorum of the Board is present. The Board shall adopt a written decision or recommendation at the informal hearing or subsequent public meeting. The Board's decision is effective upon the adoption of the written decision.

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12 and 4216.19, Government Code.

HISTORY

1. New section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

§ 4254. Hearing Before an Administrative Law Judge.

(a) If a respondent, under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e), requests a hearing before an administrative law judge under section 4252, subdivision (a)(4), the hearing shall be conducted pursuant to chapters 4.5 and 5 of part 1 of division 3 of title 2 of the Government Code (commencing with sections 11400 and 11500) and California Code of Regulations, title 1, section 1000 et seq., and shall be subject to the following:

(1) At the Board's discretion, the hearing may be recorded electronically instead of by a stenographer or court reporter.

(b) The Board shall act on the administrative law judge's proposed decision in accordance with Government Code section 11517, subdivision (c).

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, 4216.16 and 4216.19, Government Code.

HISTORY

1. New section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

§ 4255. Request for Reconsideration.

(a) Respondent may request the Board to reconsider the Board's decision or recommendation issued pursuant to section 4252, subdivision (a)(2), or 4253. The request for reconsideration must be in writing and received by the Board within 30 days of the Board's decision or recommendation.

(1) The Board will not consider information or other records previously submitted to or received by the Board prior to the Board's decision or recommendation issued pursuant to section 4252, subdivision (a)(2), or 4253. The basis of the request for reconsideration must be that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the time of the respondent's response or informal hearing on the matter.

(2) The Board may grant or deny, in whole or in part, a request for reconsideration without further proceedings. The Board shall issue a decision at a public meeting within 60 business days of the Board's receipt of respondent's request for reconsideration, or at the next public meeting where a quorum of the Board is present. At that public meeting or thereafter, within 45 business days or at the next public meeting where a quorum of the Board is present, the Board shall adopt a written decision on respondent's request for reconsideration. The Board's decision on the request for reconsideration is effective upon the adoption of the written decision.

(3) The Board shall notify respondent in writing of the date, time, and location of any public meeting held under this subdivision at least 20 business days before the public meeting. The Board shall also notify

respondent in writing of the Board's decision on the request for reconsideration within 2 business days of the Board's decision.

(4) The filing of a request for reconsideration stays the payment of any assessed penalty, but does not stay any order for corrective action unless specified otherwise by the Board in the Board's written decision under section 4252, subdivision (a)(2), or 4253.

(b) Respondent may request the Board to reconsider the Board's decision issued pursuant to section 4254. The request for reconsideration must be in writing and received by the Board within 5 days of the date of the Board's decision, and shall be administered in accordance with Government Code section 11521 and California Code of Regulations, title 1, section 1050.

(1) The Board shall notify respondent in writing of the date, time, and location of any public meeting held under this subdivision at least 10 days before the public meeting. The Board shall also notify respondent in writing of the Board's decision on the request for reconsideration within 2 business days of the Board's decision.

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12 and 4216.19, Government Code.

HISTORY

1. New section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

§ 4256. Payment of Penalty and Compliance with Order for Corrective Action.

(a) If the respondent is under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e), the respondent must pay any Board ordered penalty within 30 days of the Board's decision unless specified otherwise in the decision. Payment shall be made by certified check or money order payable to "Safe Energy Infrastructure and Excavation Fund - Enforcement Account" and sent to: California Underground Facilities Safe Excavation Board, 2251 Harvard Street, Suite 400, Sacramento, California 95815.

(b) If the respondent is under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e), the respondent must comply with any order for corrective action within the timeframe specified in the Board's decision.

(c) If, pursuant to Government Code section 4216.6, subdivision (c), the respondent is under the jurisdiction of the Registrar of Contractors of the Contractors State License Board, the Public Utilities Commission, or the Office of the State Fire Marshal, the respondent shall pay any penalty or comply with any corrective action as may be ordered by the respective state agency with jurisdiction over the respondent. Payment shall be made by certified check or money order payable to "Safe Energy Infrastructure and Excavation Fund - Enforcement Account" and sent to: California Underground Facilities Safe Excavation Board, 2251 Harvard Street, Suite 400, Sacramento, California 95815.

(d) If the respondent fails to pay the full amount of the penalty in accordance with this section, the matter may be referred to the Attorney General to enforce the penalty, including any interest and costs, in a civil action in the appropriate court.

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, 4216.19 and 4216.24, Government Code.

HISTORY

1. New section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

§ 4257. Valid and Current Contact Information.

Respondent shall maintain valid and current phone number, email, mailing and business address with the Board and promptly notify the Board of any changes to the phone number, email, and mailing and business address.

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12 and 4216.19, Government Code.

HISTORY

1. New section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

§ 4258. Ex Parte Communication.

Ex parte communication with any Board member or staff regarding the substance of the matter is prohibited from the date of the notice of probable violation until the Board issues a written decision or recommendation, and from the date a request for reconsideration (if any) is filed until the Board issues a written decision on the request for reconsideration. However, ex parte communication with staff regarding procedural issues, such as scheduling a hearing, is permitted.

Note: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12 and 4216.19, Government Code.

HISTORY

1. New section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

19 CCR Chap. 4: Area of Continual Excavation; Article 1: General

§ 4300. Effective Date.

This chapter is effective beginning July 1, 2020.

Note: Authority cited: Sections 4216.10, 4216.11 and 4216.22, Government Code. Reference: Sections 4216.10 and 4216.12, Government Code.

HISTORY

1. New chapter 4 (articles 1-3, sections 4300-4361), article 1 (section 4300) and section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

§ 4305. **Persons Eligible to Work Under a Continual Excavation Ticket.**

An excavator who contacts a regional notification center to request a continual excavation ticket shall communicate information about the extent of the area of excavation, the location of subsurface infrastructure within the area of continual excavation, and the type of work described within the continual excavation ticket to all workers, including any subcontractors, authorized by the excavator to perform work within the area of continual excavation.

Note: Authority cited: Sections 4216.10, 4216.11 and 4216.22, Government Code. Reference: Sections 4216.10 and 4216.12, Government Code.

HISTORY

1. New section filed 9-18-2020; operative 9-18-2020 pursuant to Government Code section 11343.4(b)(3) (Register 2020, No. 38).

§ 4310. **Continual Excavation Ticket Renewal Reminder Notifications.**

(a) In response to a request from an excavator for a continual excavation ticket, a regional notification center shall provide the excavator with a continual excavation ticket and information or tools to assist the excavator with renewing the ticket.

(b)(1) If the excavator requesting a continual excavation ticket has provided electronic contact information to the regional notification center and the excavator has granted the regional notification center permission to use the electronic contact information to provide a reminder notification in advance of ticket expiration, the regional notification center shall use the excavator's electronic contact information to provide one or more notifications to the excavator as a reminder to alert the excavator of the need to renew the ticket.

(2) At least one reminder notification shall be sent no earlier than two months before ticket expiration and no later than ten days prior to ticket expiration. The reminder notification shall include the continual excavation ticket number and expiration date of the ticket. The reminder notification may include a hyperlink or other means by which the excavator may access a portal for electronic ticket renewal.

(c) For the purposes of this section "electronic contact information" means an email address, a short message service (SMS) number, or another means of electronic communication offered by a regional notification center.

Note: Authority cited: Sections 4216.10, 4216.11 and 4216.22, Government Code. Reference: Sections 4216.10 and 4216.12, Government Code.

HISTORY

1. New section filed 9-18-2020; operative 9-18-2020 pursuant to Government Code section 11343.4(b)(3) (Register 2020, No. 38).

§ 4345. Onsite Meeting and Plan Following Renewal of a Continual Excavation Ticket Near High Priority Subsurface Installations.

An excavator may continue excavation pursuant to an Area of Continual Excavation Agreement (Agricultural Operations) or an Area of Continual Excavation Agreement (Flood Control Facilities) for thirty days following the renewal of a continual excavation ticket to allow the excavator and the operator of the high priority subsurface installation to set up an onsite meeting at a mutually agreed upon time to renew or to develop and agree to a new area of continual excavation plan pursuant to Section 4351 or Section 4361.

Note: Authority cited: Sections 4216.11 and 4216.22, Government Code. Reference: Sections 4216.10, 4216.11 and 4216.12, Government Code.

HISTORY

1. New section filed 9-18-2020; operative 9-18-2020 pursuant to Government Code section 11343.4(b)(3) (Register 2020, No. 38).

19 CCR Chap. 4: Area of Continual Excavation; Article 2: Onsite Meeting and Plan to Manage Area of Continual Excavation - Agricultural Operation

§ 4350. Locate and Field Mark for Agricultural Operations Near High Priority Subsurface Installations.

(a) Prior to the onsite meeting under section 4351, the operator shall provide a response to the excavator pursuant to Government Code section 4216.3, subdivision (a).

(1) If the operator locates and field marks within the area delineated for excavation as provided in Government Code section 4216.3, subdivision (a)(1)(A)(i), the excavator and operator shall agree to the method to be used to locate and mark as provided in Government Code section 4216, subdivision (n).

Note: Authority cited: Sections 4216.11 and 4216.22, Government Code. Reference: Sections 4216, 4216.3, 4216.10 and 4216.12, Government Code.

HISTORY

1. New article 2 (sections 4350-4351) and section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

§ 4351. Onsite Meeting and Plan for Agricultural Operations Near High Priority Subsurface Installations.

(a) An onsite meeting for agricultural operations near a high priority subsurface installation held pursuant to Government Code section 4216.10, subdivision (c)(1), must take place at the parcel of real property where the high priority subsurface installation is present. The onsite meeting must

be held at a mutually agreed upon date and time that does not unreasonably disrupt the excavator's or operator's business operations.

(b) The excavator or the excavator's authorized representative, which may be the real property owner or lessee, and the operator or the operator's representative must attend the onsite meeting. Both the excavator, which may be the real property owner or lessee, and the operator must attend, or send an authorized representative to attend, the onsite meeting.

(1) The onsite meeting must include the excavator or the excavator's authorized representative with the following knowledge and authority:

(A) Knowledge of the agricultural operations that will occur in the area of continual excavation during the period of time the continual excavation ticket is valid under Government Code section 4216.10, subdivision (d). Excavator must be prepared at the onsite meeting with all relevant information concerning the agricultural operations that will occur in the area of continual excavation.

(B) Authority to develop and agree to an area of continual excavation plan by completing the Area of Continual Excavation Agreement (Agricultural Operations), form number ACE Agreement 01 (07-01-2020).

(2) The onsite meeting must include the operator or the operator's authorized representative with the following knowledge and authority:

(A) Knowledge of the location of the high priority subsurface installation, such as a superintendent, supervisor, or engineer. Operator must be prepared at the onsite meeting with all relevant information concerning the location of the high priority subsurface installation in the area of continual excavation.

(B) Authority to develop and agree to an area of continual excavation plan by completing the Area of Continual Excavation Agreement (Agricultural Operations).

(3) The excavator and operator must complete the Area of Continual Excavation Agreement (Agricultural Operations).

(c) Excavator must be aware of the exact location of the high priority subsurface installations in conflict with the excavation pursuant to Government Code section 4216.4.

(1) If the operator's understanding of the exact location of the high priority subsurface installation is contrary to the excavator's understanding, the operator must demonstrate that the high priority subsurface installation is in conflict with the excavation, and excavation activities within a specified distance from each side of the high priority subsurface installation may cause damage to the high priority subsurface installation, by any of the following methods:

(A) Provide documentation indicating the exact location of the high priority subsurface installations.

(B) Expose the high priority subsurface installations within the tolerance zone at a date and time, in a manner, and with the hand tool or vacuum excavation device agreed upon by the excavator and operator.

Note: Authority cited: Sections 4216.11 and 4216.22, Government Code. Reference: Sections 4216.10 and 4216.12, Government Code.

HISTORY

1. New section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

19 CCR Chap. 4: Area of Continual Excavation; Article 3: Onsite Meeting and Plan to Manage Area of Continual Excavation - Flood Control Facilities

§ 4360. Locate and Field Mark for Continual Excavation on Flood Control Facilities Near High Priority Subsurface Installations.

(a) Prior to the onsite meeting under section 4361, the operator shall provide a response to the excavator pursuant to Government Code section 4216.3, subdivision (a).

(1) If the operator locates and field marks within the area delineated for excavation as provided in Government Code section 4216.3, subdivision (a)(1)(A)(i), the excavator and operator shall agree to the method to be used to locate and mark as provided in Government Code section 4216, subdivision (n).

Note: Authority cited: Sections 4216.11 and 4216.22, Government Code. Reference: Sections 4216, 4216.3, 4216.10 and 4216.12, Government Code.

HISTORY

1. New article 3 (sections 4360-4361) and section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

§ 4361. Onsite Meeting and Plan for Continual Excavation on Flood Control Facilities Near High Priority Subsurface Installations.

(a) An onsite meeting for continual excavation on flood control facilities near a high priority subsurface installation held pursuant to Government Code section 4216.10, subdivision (c)(1), must take place at the parcel of real property where the high priority subsurface installation is present. The onsite meeting must be held at a mutually agreed upon date and time that does not unreasonably disrupt the excavator's or operator's business operations.

(b) The excavator or the excavator's authorized representative, which may be the real property owner or lessee, and the operator or the operator's

representative must attend the onsite meeting. Both the excavator, which may be the real property owner or lessee, and the operator must attend, or send an authorized representative to attend, the onsite meeting.

(1) The onsite meeting must include the excavator or the excavator's authorized representative with the following knowledge and authority:

(A) Knowledge of continual excavation that will occur on the flood control facilities during the period of time the continual excavation ticket is valid under Government Code section 4216.10, subdivision (d). Excavator must be prepared at the onsite meeting with all relevant information concerning the continual excavation that will occur on the flood control facilities.

(B) Authority to develop and agree to an area of continual excavation plan by completing the Area of Continual Excavation Agreement (Flood Control Facilities), form number ACE Agreement 02 (07-01-2020), which is hereby incorporated by reference.

(2) The onsite meeting must include the operator or the operator's authorized representative with the following knowledge and authority:

(A) Knowledge of the location of the high priority subsurface installation, such as a superintendent, supervisor, or engineer. Operator must be prepared at the onsite meeting with all relevant information concerning the location of the high priority subsurface installation in the area of continual excavation.

(B) Authority to develop and agree to an area of continual excavation plan by completing the Area of Continual Excavation Agreement (Flood Control Facilities).

(3) The excavator and operator must complete the Area of Continual Excavation Agreement (Flood Control Facilities).

(c) Excavator must be aware of the exact location of the high priority subsurface installations in conflict with the excavation pursuant to Government Code section 4216.4.

(1) If the operator's understanding of the exact location of the high priority subsurface installation is contrary to the excavator's understanding, the operator must demonstrate that the high priority subsurface installation is in conflict with the excavation, and excavation activities within a specified distance from each side of the high priority subsurface installation may cause damage to the high priority subsurface installation, by any of the following methods:

(A) Provide documentation indicating the exact location of the high priority subsurface installations.

(B) Expose the high priority subsurface installations within the tolerance zone at a date and time, in a manner, and with the hand tool or vacuum excavation device agreed upon by the excavator and operator.

Note: Authority cited: Sections 4216.11 and 4216.22, Government Code. Reference: Sections 4216.10 and 4216.12, Government Code.

HISTORY

1. New section filed 5-21-2020; operative 7-1-2020 (Register 2020, No. 21).

19 CCR Chap. 5: Pre-Excavation Responsibilities; Article 1: Responsibilities of Excavators

§ 4401. Valid and Current Contact Information for Excavators Using the Regional Notification Centers.

(a) When notifying a regional notification center of intent to excavate pursuant to Government Code section 4216.2, subdivision (b) or Government Code section 4216.10, subdivision (a), an excavator shall provide the contact information of a person knowledgeable in the proposed excavation activities so that an operator may contact the person regarding excavation activities that may occur around subsurface installations in the area of proposed excavation.

(1) The contact information shall include a name, telephone number, and an email address.

(2) The contact information shall be accurate during the period in which the ticket is valid. If either the person knowledgeable in the proposed excavation activities or the contact information for the person knowledgeable in the proposed excavation activities changes during the period in which the ticket is valid, the excavator shall provide updated contact information to the regional notification center.

Note: Authority cited: Sections 4216.11 and 4216.22, Government Code. Reference: Sections 4216.2, 4216.3, 4216.11 and 4216.12, Government Code.

HISTORY

1. New chapter 5 (article 1, sections 4401-4501), article 1 (sections 4401-4501) and section filed 9-18-2020; operative 9-18-2020 pursuant to Government Code section 11343.4(b)(3) (Register 2020, No. 38).

§ 4501. Use of Equipment Other Than Hand Tools to Determine the Exact Location of a Subsurface Installation.

(a) An excavator may use equipment other than hand tools within the tolerance zone of a subsurface installation for the purpose of determining the exact location of the subsurface installation if all of the following conditions are satisfied:

(1) The operator has responded to the excavator with a locate and field mark as provided in Government Code section 4216.3, subdivision (a)(1)(A)(i).

(2) The equipment conforms to the requirements as specified in subdivision (b) and has not been modified to function outside those requirements.

(3) The field mark does not indicate a subsurface installation type classified under the orange category of the “Guidelines for Operator Facility Field Delineation” in Appendix B of the most recent version of the Best Practices Guide of the Common Ground Alliance and in conformance with the uniform color code of the American Public Works Association.

(4) The field mark as identified using abbreviations in the “Guidelines for Operator Facility Field Delineation” in Appendix B of the most recent version of the Best Practices Guide of the Common Ground Alliance does not indicate street lighting or traffic signal.

(5) The excavator has classified the soil within the tolerance zone as Type A or Type B, as provided in Appendix A of Section 1541.1 of Title 8.

(b) An excavator may use equipment other than hand tools within the tolerance zone of a subsurface installation for the purpose of determining the exact location of a subsurface installation consistent with the requirements of subdivision (a) if the equipment and the equipment's manner of use conform to the following requirements:

(1) Equipment configuration and specifications:

(A) The tool shall be a handheld percussive pneumatic, electric, or hydraulic hammer that drives a bit.

(B) The tool weight without accessory shall not exceed 40 lbs.

(C) The bit used shall be no less than 4 inches wide, have a rounded edge, and present no sharp surfaces.

(2) Manner of equipment use:

(A) The equipment must be used according to the manufacturer's instructions.

(B) The bit edge shall be placed parallel, not perpendicular, to the orientation of the subsurface installation as indicated by the field mark.

(c) An excavator shall request consultation with the operator of the subsurface installation to determine how to safely proceed if the use of hand tools, or equipment other than hand tools as permitted in this section, is not a safe and effective means of determining the exact

location of the subsurface installation. The operator of the subsurface installation shall respond to such a request within two working days not including the date the operator received the request and shall discuss with the excavator how the excavator can safely and effectively proceed. An excavator may use equipment other than as permitted in subdivisions (a) and (b), if the excavator and operator agree in writing upon the equipment to be used and the manner in which it will be used.

(d) This section shall not apply to the use of a vacuum excavation device, which is determined by Government Code 4216.4, subdivision (a)(2)(A).

Note: Authority cited: Sections 4216.4, 4216.12, 4216.18 and 4216.22, Government Code.

Reference: Sections 4216.2, 4216.4, 4216.10, 4216.12 and 4216.18, Government Code.

HISTORY

1. New section filed 9-18-2020; operative 9-18-2020 pursuant to Government Code section 11343.4(b)(3) (Register 2020, No. 38).

IMPORTANT NUMBERS

Keep any important numbers you may need while working in the field. *4216.4 (d) Each excavator, operator, or locator shall communicate with each other and respect the appropriate safety requirements and ongoing activities of the other parties, if known, at an excavation site.*

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