

California Code of Regulations

Title 19. Public Safety

Division 4. California Underground Facilities Safe Excavation Board

§ 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).

§ 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)).

§ 4003. Valid/Current Member Contact Information.

(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.

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

§ 4010. Fees.

(a)(1) Each member of a regional notification center as defined in Government Code, section 4216, subdivision (q) who receives more than 200 locate request transmissions in the previous calendar 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 previous calendar year;

(B) “statewide locate request transmissions” is the total number of locate request transmissions issued by the regional notification centers in the previous calendar year, not including those locate request transmissions issued to members who received less than 200 locate request transmissions in the previous calendar 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 current calendar year, subject to the State Budget Act. The “Board operational expenses” is \$7 million for each calendar year 2019, 2020, and 2021, subject to the State Budget Act. The “Board operational expenses” is \$3.8 million for calendar year 2022 and each calendar year thereafter, subject to the State Budget Act.

(3) The “member locate request transmissions,” “statewide total locate request transmissions,” and the “Board operational expenses” shall be reflected on the invoice to each member of a regional notification center.

(b)(1) Each member of a regional notification center shall remit the fee under subdivision (a) to the regional notification center by the due date in the billing statement issued by the regional notification center.

(2) At least semi-annually on April 1 and October 1, the regional notification centers shall submit to the California Underground Facilities Safe Excavation Board the fees received by the regional notification centers as of the date of submittal to the California Underground Facilities Safe Excavation Board.

(c) If a member fails to pay the fee by the due date in the billing statement as provided in subdivision (b), the Board shall issue an invoice to seek and obtain the fee directly from the member and charge the member a late fee of 5% of the amount of the fee, in addition to the fee due in the billing statement. The regional notification centers shall inform the Board of any failure to pay the fee and shall provide a copy of the member's billing statement.

(d) For purposes of this section, “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 or renewed ticket, as identified in Government Code section 4216.2, subdivision (e), to a new ticket created to replace an expired ticket, as identified in Government Code section 4216.2, subdivision (i), or to a ticket requesting a remark, as identified in Government Code section 4216.3, subdivision (b).

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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).

§ 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.

§ 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.

§ 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.

§ 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).

§ 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.

§ 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.

§ 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

§ 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.

§ 4300. Effective Date.

This chapter is effective beginning July 1, 2020.

§ 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.

§ 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.

§ 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.

§ 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).

§ 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.

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

(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).

§ 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.

§ 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.

§ 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).