
California Underground Facilities Safe Excavation Board
(“Dig Safe Board”)

April 13, 2020

Agenda Item No. 3 (Action Item) – Staff Report

Resolution No. 20-04-01 Adoption of Emergency Regulations to Implement a Process for Receiving and Evaluating Applications for a Good-Cause Extension of the Deadline for Electronic Positive Responses to Locate-and-Mark Requests

PRESENTER

Jeff Brooks, Attorney

SUMMARY

Staff will present a proposed regulation required by subdivisions (c)(1)(A) and (d)(1) of Government Code section 4216.3.

BACKGROUND

During the July, 2019 meeting, the Board concluded that Assembly Bill 1166 should be amended to give the Board discretion to address barriers which operators might face in their efforts to comply with the electronic positive response requirement. To achieve that end, the Board approved Resolution 19-07-03, authorizing Board Members Muñoz and Charland and the Executive Officer to convey the Board’s position on Assembly Bill 1166 to the Legislature.

On August 30, 2019, the author amended AB 1166 in the manner requested by the Board. The amendment provided, at Government Code section 4216.3(c)(1)(A):

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.

During the December, 2019 meeting, the Board discussed the types of circumstances that might constitute “good cause.”

AB 1166 was enacted on January 1, 2020, and imposed the January 1, 2021 electronic positive response deadline.

In early January, to better understand the needs of utility operators, the Board asked operators to participate in an online survey. In February, staff presented the results of that survey to the Board. The Board's discussion of the results indicated that most operators believed that a lack of either time or funding would impede their ability to comply with the response requirement. And that the lack of those resources, in turn, would ultimately prevent operators from either implementing needed software systems or training personnel.

DISCUSSION

Good cause. The proposed regulation provides that "good cause" is the inability to communicate electronic positive responses to regional notification centers when that inability is caused by a need to procure software or to hire or train employees.

Duration of extension. Given the 180-day duration of the emergency regulations and the December 1, 2021 statutory deadline, when an operator needs additional time after an initial extension expires, that operator will not have time to apply for an additional extension. For that reason, staff recommend that the Board grant extensions that are one-year in duration.

Time in which to apply. Staff are presently not able to confirm the time that will be required to complete the process of adopting this regulation. Measures taken to mitigate the impact of the COVID-19 virus are impacting business processes. While staff expect to be able to complete the process before July, the process will likely take longer than initially planned. For that reason, the end of the application period should be later in this calendar year rather than earlier.

Application through internet site. Staff recommend requiring that operators submit applications through a form available on the Board's internet site. That will ensure that staff timely receive the applications, particularly as virus mitigation measures may also impact mail delivery to the Board's office.

Attachment: Proposed Text

Text of Proposed Regulation

Section 4020. Application for Continuance of Deadline for Electronic Positive Response Requirement

An operator may request that the Board extend the time by which the operator must comply with the requirements set forth in Government Code section 4216.3(c)(1)(A). For good cause, the Board may extend the operator's time for compliance to a date no later than December 31, 2021.

- (a) The request must be made no later than October 1, 2020, and must be submitted through the from "[TITLE]" at the address "_____".
- (b) To establish good cause, an operator must establish that the operator will be unable to provide electronic positive responses to the appropriate regional notification center before January 1, 2021 for reasons that arise from a need to hire personnel, train personnel, or procure software.
- (c) The request must state all the facts and circumstances which support the request. The request should not contain information that the operator considers to be confidential.
- (d) The Board must decide the request and issue its decision no later than 90 days after receiving the request.