

---

**California Underground Facilities Safe Excavation Board  
("Dig Safe Board")**

**December 9, 2019**

Agenda Item No. 5 (Information Item) – Staff Report

*Draft Emergency Regulations Allowing Electronic Positive Response  
Extension Applications (AB 1166)*

---

**PRESENTERS**

Tony Marino, Executive Officer  
Jeff Brooks, Attorney

**SUMMARY**

Assembly Bill 1166 will amend Government Code section 4216.3 to require operators to provide electronic positive responses beginning January 1, 2021. The new law will also permit operators to apply to this Board for extensions of the compliance deadline, and will require the Board to adopt, through regulations, a process for deciding the requests. Staff recommends that the Board discuss the attached proposal and recommend changes to the regulation text.

**BACKGROUND**

In October, Governor Newsom approved Assembly Bill 1166, which will require utility operators to respond to locate requests with electronic positive responses through one call centers. Currently, operators have the option of providing an electronic positive response. Many do not. The AB 1166 amendments to Government Code section 4216.3 will go into effect in January 1, 2020, and will require operator compliance by January 1 of the following year, 2021.

Assembly Member Marc Levine introduced AB 1166 on February 21, 2019 to address records falsification allegations made by the Public Utilities Commission (PUC) in its adjudicatory proceeding (No. I.18-12-007.) The PUC investigated representations by Pacific Gas & Electric (PG&E) employees that the utility had properly located and marked buried utility facilities within the required two-day timeframe, when in fact, it had not. Assembly Member Levine expressed concern that PG&E's failure timely mark facilities created a safety risk to contractors who were led to believe that their site was ready for excavation. In requiring operators to provide electronic positive responses, AB 1166 imposes a deterrent to records falsification because excavators will be able to later prove when the response was provided.

During the July meeting, the Board took a "support if amended" position on AB 1166 because of concern that some operators would not be able to meet the January 1, 2021 deadline. (Resolution No. 19-07-03.) The Board asked for authority to grant limited extensions of time to operators with good cause for an inability to meet the deadline.

On August 30, an amendment to the bill gave that discretion to the Board. Specifically, Government Code section 4216.3(c)(1)(A) was amended to provide:

“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.”

Recognizing that the Board may not be able to adopt regulations to accept and process extension applications with enough time before the January 1, 2021 deadline, the Legislature authorized the Board to develop emergency regulations to do so.

## **DISCUSSION**

### **Emergency Regulations**

Emergency regulations are temporary regulations meant for situations that call for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. An agency can adopt emergency regulations in a shorter time than is normally required, in part because the agency is exempted from complying with most of the Administrative Procedures Act rulemaking requirements, such as the notice to the Notice Register, 45-day public comment period, and to summarize and respond to public comments.

Emergency regulations remain in effect for 180 days. If the regulation now being considered by the Board was to become effective in early July, the Board could begin deciding requests in August or September, and the 180-day period would correspond with the remainder of the calendar year.

### **Time Extensions**

An operator of a subsurface installation is defined broadly to include any person who owns infrastructure not fully-contained within the bounds of that person’s property (Gov. Code § 4216(o)), and every operator of subsurface installations must be a member of the one-call centers (Gov. Code § 4216.1.) More than 2,000 of subsurface installation operators do business in California. The biggest, such as communications providers and gas and electric utilities, respond to anywhere from several hundred thousand to upward of a million 811 tickets annually. The smallest, which constitute approximately 35% of all operators, receive fewer than 200 tickets annually.

All of the operators, large or small, who don’t currently use electronic positive response would need to configure their software to allow for and properly manage this new functionality. And each type of operator may face unique challenges.

To make electronic positive response feasible for smaller members, DigAlert and USA North 811 offer a web-based service—WebTMS—to provide the response. However, because of software configuration, staffing, and resource challenges, the WebTMS system alone may not resolve an operator’s issues.

Larger operators use dedicated ticket management software provided by third-party vendors. However, some large operators may still print and distribute tickets manually to their locators,

and so would need to choose between using the web-based service from DigAlert and USA North 811 or procuring their own ticket management software.

**“Good Cause”**

AB 1166 charges this Board with determining what facts or circumstances that constitute “good cause” for extending the deadline. Staff suggest that facts relating to “good cause” might involve reasons that:

- the WebTMS system won’t work for an operator;
- time is required to process budget changes or procurements;
- time is required to hire or train employees; or
- information technology impediments that cannot be timely overcome.

**RECOMMENDATION**

Staff recommends the Board discuss the attached proposal and recommend changes in advance of a vote in January or February to finalize and send the regulation to the Office of Administrative Law to open the 5-day public comment period before adopting the language as an emergency regulation.

*Attachment:* Draft Regulation Text

## DRAFT REGULATION TEXT

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 a not later than December 21, 2021.

The facts and circumstances that constitute good cause include, but are not limited to, the following:

- 
- 
- 

The request must be made by electronic mail to the address “\_\_\_\_\_@fire.ca.gov.”, and must be made no later than November 1, 2020.

The request must state all the facts and circumstances which support the request, and must describe the way in which the operator will comply with Government Code section 4216.3(c)(1)(A). The request should not contain information that the operator considers to be confidential.

In deciding the request, the Board must consider all the facts and circumstances that are relevant to the determination.

The Board must decide the request and issue its decision no later than 90 days after receiving the request or December 31, 2020, whichever date is sooner.