INITIAL STATEMENT OF REASONS (ISOR)

California Code of Regulations
TITLE 19. PUBLIC SAFETY
Division 4. California Underground Facilities Safe Excavation Board
Chapter 1. General
Article 1. General
Section 4010, 4011

EXISTING LAW

Funding for the Dig Safe Board's operational costs is obtained almost exclusively from fees paid by utility operators. The Board charges the fee pursuant to the authority granted by Government Code section 4216.16(b), and imposes the fee on utility operators that receive more than 200 locate-and-mark requests in each year.

SPECIFIC PURPOSE AND RATIONALE

Problem begin addressed: These proposed regulations are intended to improve the processes related to both billing and collecting the fees and reduce uncertainty to one-call center members about the amount they are responsible for while ensuring the Board receives funding sufficient to cover the reasonable regulatory cost of its operations, as required by Gov't Code §4216.16.

Anticipated benefits from this regulatory action:

The provisions of the proposed regulation have several benefits, primarily focused on clarity of one-call center and feepayer requirements and streamlining collection and information sharing processes based on two years of experience with the current regulation. Benefits are as follows:

1. **Clarifies responsibilities by placing feepayer and one-call center requirements in different code sections**. This will make Section 4010 more accessible to one-call center members, who do not need to know about one-call center responsibilities in administering the fee.

2. **Clarifies the fee calculation and billing time periods**. Several definitions were moved out of Section 4010 (a) to separate the definition of the fee equation from the definition of its constituents. New definitions include that of "calculation year" and "billing year".

3. **Clarifies Board operational expense dollar amounts in different time periods**. Board operational expense values were removed from subdivision (a) to a new subdivision (e) for both clarity and to allow the display of fee amounts for the time periods so that a reader could better see that the revenue requirement has changed.

4. **Clarifies to a member that their fee is remitted to the one-call center**. While this is implicit in the existing regulation, it has been made explicit here.

5. **Clearly defines the six-month transition period**. The transition from billing on a

calendar to billing on a fiscal year requires a six-month transition period (January 1, 2022 to June 30, 2022). This period has its own "calculation year" (January 1, 2021 to June 30, 2021) and affordance to the one-call center for how to bill during that period if the call center wouldn't normally send an invoice (4011(e)).

6. **Reducing hassle for one-call center members who ask the Board about their fee**. The proposed regulation formalizes and specifies the frequency and exact information the one-call centers need to submit to the Board regarding invoices, payments, tickets, and general as well as billing contact information. Empowered with this information, Board staff will be readily equipped with the tools it needs to assess late fees appropriately, conduct proactive outreach to members, and respond to members' inquiries. This will vastly improve the customer experience and reduce the burden on the one-call centers to answer fee questions. In the current process, when a member calls Board staff with a question, Board staff needs to reach out to the one-call centers for invoice information such as invoices issued and fees collected between the twice-yearly collection periods, as staff does not have a copy of each invoice issued by the one-call centers for the regulatory fee.

7. **Improves information provided to one-call center members about past-due invoices**. Currently, balance information is not available on invoices sent to one-call center members, and many have expressed how they were unaware they had outstanding invoices.[1] The proposed regulation requires one-call centers to make reasonable efforts to inform their members about past-due invoices, but does not prescribe a method by which the one-call centers must do so.

8. **Provides the one-call centers the option of using either a line item or a separate invoice to bill their members for the fee**. This provides flexibility to the one-call centers. Should a one-call center elect to provide separate invoices for their dues and for the regulatory fee, those invoices would need to be sent at substantially the same time to reduce confusion for members at getting the second invoice.

9. **Provides one-call center members a late notice before receiving a late fee invoice**. The proposed regulation would require the one-call centers to invoice for a late fee for an invoice unpaid after 90 days and requires a notification of the impending late fee no later than 30 days from that time.

10. **Allows the one-call centers to use the Board's seal**. To add legitimacy to invoices provided by the one-call centers to their members, the regulation allows them to use the Board's seal with language "Use of the Dig Safe Board seal is authorized pursuant to Section 4011 of Title 19 of the California Code of Regulations."

11. **Aligns locate request transmission definition with that used by the one-call centers**. This change realigns the basis of billable tickets from new, renewal, and remark tickets to only new tickets, as used by both one-call centers since early 2020 when USA North changed to billing only for new tickets. When the fee regulation was first created in 2018, the Board used the billing model of USA North 811 who at the

[1] Staff Report: "Update on Fee Implementation and Collection," June 8-9, 2020, p. 7.

time billed for the same ticket types contained in the current regulation.

12. **Realignment of billing periods with the fiscal year**. Beginning in June 2022, the draft regulation moves the fee billing periods from a calendar year (Jan-Dec) cycle to a fiscal year (Jul-Jun) cycle to better align with state accounting periods as well as to allow sufficient time for ticket tabulation and notification of one-call center members prior to new billing amounts being applied. The current process of calendar year (Jan-Dec) tickets forming the basis for the fee in the next calendar year leaves insufficient time to tabulate ticket counts and has delayed issuance of January invoices. The previous calendar year (Jan-Dec) would continue to be used as the basis for the ticket counts and thus the billing proportions. There would be an abbreviated billing period from January to June of 2022 to accommodate the transition to fiscal year (Jul-Jun) billing periods. Staff plans to use the time between when the ticket totals are tabulated after the end of the previous calendar year (December 31) and when the new fee period begins (July 1) to conduct additional outreach to members regarding the new fee amounts. The amounts would also be posted on the Board's website.

13. **Allows the Board to collect revenue sufficient to cover its legislatively-capped operating expenses**. The increase in the Board's expenses is the result of legislatively approved budget increases for increased personnel costs through statewide bargaining agreements and additional temporary and permanent positions the Board new statutes as well as increases to pro rata charges which the Board pays for statewide central service departments such as Cal HR, the Department of Technology, and the State Controller's Office.

These benefits are not quantifiable.

Factual Basis/Rationale: Without a clearly defined formula specifying the way in which the fee amount is calculated, the Board's ability to collect its regulatory fee from members cannot adequately be represented to the feepayer in knowing what their organization will need to budget for in future years and for the Board in predicting its future operational expenditures.

Not every utility operator pays the same fee amount. Section 4010, of Title 19, of the California Code of Regulations, adopted in a 2018 rulemaking (Z-2018-0612-05) specifies the way in which the fee amount is calculated. This rulemaking package will not change that calculation.

The formula that determines the amount of the fee imposed on a given utility operator has three variables: (1) The number of locate-and-mark requests received by the operator, (2) the total number of locate-and-mark requests generated statewide, and (3) the amount of the Board's operational expenses.

The amount of the Board's operational expenses is specified in the budget passed by the Legislature each year. The number of locate-and-mark requests generated, both in total and to each given operator, is determined after the close of the one-year accounting period.

These numbers are provided to the Board by the state's two regional notification centers, which are commonly referred to as "one-call centers." From this information, the Board calculates each one-call center member's fee.

Summary of Estimated Cost Impacts

The total costs of the regulation on the following industries is estimated at the following:
Operators: **$1,200,000/yr (max of $3,200,000/yr)**
Regional Notification Centers = **$50,000/yr**

Background – One-Call Centers and "Tickets"

Utility operators are required to be members of the state's one-call centers. There are two one-call centers in California, each responsible for a specified geographic area. Underground Service Alert of Southern California (DigAlert[2]) services the counties of Imperial, Inyo, Los Angeles, Orange, San Bernardino, San Diego, Santa Barbara, Riverside, and Ventura, while Underground Service Alert of Northern California and Nevada (USA North 811[3]) services the rest of California's counties and the state of Nevada.

The centers are non-profit corporations and communicate with both excavators and utility operators to help excavators avoid damaging underground utility installations. When an excavator calls "811" to notify a call center of plans to dig, the center sends "locate-and-mark requests" to every utility operator who may have installations in the planned work area. These requests are more commonly referred to as "tickets."

Gov't Code Section 4216.1 requires all operators of subsurface installations in the state to "become a member of, participate in, and share in the costs of" USA North 811 and DigAlert. DigAlert invoices its membership due to members monthly, while USA North 811 invoices on one of three different schedules—annually (Jan-Dec), annually (July-June), or monthly. Both one-call centers invoice members based on the number of tickets the one-call center send to the member, or their "locate request transmissions."[4] DigAlert charges $1.65 for each new member locate request transmission,[5] while USA North 811 charges each member a flat fee and a volumetric amount based percentage of locate request transmission the member received in proportion to all locate request transmissions sent by USA North 811.[6] In its 2018 regulation, the Board modeled its fee allocation on USA North 811's methodology.

For 2019 and 2020, the one-call centers provided ticket information to the Board, which identified the utility operators who were required by section 4010 to pay the Board's fee and allowed the Board to determine the amount of each operator's fee. The one-call centers then billed the utility operators and provided the funds they received to the Board.

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[2] https://www.digalert.org/
[3] https://usanorth811.org/
[4] A locate request transmission is differentiated from a ticket in that tickets are created by the one-call centers based on an excavator's notification and locate request transmissions are the ticket transmissions provided to operators who have subsurface installations in the area. An average of approximately eight locate request transmissions are sent to operators for every ticket created in California.
[5] DigAlert bylaws, Exhibit 1. https://www.digalert.org/pdfs/2018-07_bylaws.pdf
[6] USA North 811 bylaws, p. 9. https://usanorth811.org/images/pdfs/Articles_Bylaws_20150729.pdf

Uncertainties

Ticket numbers, Board operating expenses, and the Board's ability to collect its regulatory fee from members represent significant uncertainties for a feepayer in knowing what their organization will need to budget for in future years and for the Board in predicting its future operational expenditures. These regulations continue the guiding principle of the 2018 regulations to reduce or mitigate the effect of these uncertainties.

Uncertainty in a member's proportion of fees

Ticket numbers—both statewide and for specific areas—are not easily predictable year-to-year, nor are they subject to the control of the feepayer (*i.e.* ticket numbers are determined largely by how many tickets unaffiliated third-party excavators perform excavation work in a member's service territory). The Board, in 2018, chose to address this uncertainty by tying a member's fees not to the number of ticket transmissions a number receives, but to their percentage of the total of statewide tickets—the rationale being that, while ticket numbers varied widely with the ebb and flow of the economy, a member's percentage should be more constant.[7] This choice also allowed the Board to propose a lower ongoing fee amount, as it should need less of a reserve to account for economic uncertainties.[8]

Comparison between 2018 and 2019 locate request transmissions allow the Board to examine the effect of this choice on ticket transmissions and fee amounts. Between 2019 to 2020, the number of billable statewide locate request transmissions increased from 12,234,982 to 14,753,928, an increase of 20.6%. This increase in transmissions was not, however, uniform across the state. Rather, DigAlert transmissions increased by 7%, while USA North 811 transmissions skyrocketed by 32%.[9] Much of reason for the spike in USA North 811 transmissions appears to be due to utility pole testing work performed by Osmose Utility Services for Pacific Gas and Electric Company, who is responsible for 20.5% of all tickets[10] submitted to USA North 811.[11]

This unequal increase in ticket numbers has led to an increase in the proportion that USA North 811 members share of the fee. In 2019, USA North 811 members were billed approximately 55% of the fee, with DigAlert members paying 45%. In 2020, however, USA North 811 members paid 60% of the total fee. From their perspectives, USA North 811 members were billed 10% more in 2020 than in 2019, whereas DigAlert members were billed 12% less.

Even within USA North 811 there was a significant variation in fee amounts. Of the 770 members who received an invoice for the regulatory fee in both 2019 and 2020, 303 (39%) received an increase. Sixty-six (8.6%) received an increase of more than 100%. Six (0.8%) received an increase of more than 1000% (primarily due to a dramatic increase in construction work in the area ravaged by the 2018 Camp Fire).

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7 Initial Statement of Reasons for Z-2018-0612-05, Dig Safe Board, p. 4.
8 Initial Statement of Reasons for Z-2018-0612-05, Dig Safe Board, p. 12.
9 Fee change tables, 2019 to 2020.
10 Including ticket types that are not billable, such as damage tickets.
11 USA North 811 meeting packet, October 28, 2020.

While apportioning fees by a member's percentage of statewide locate request transmissions (as opposed to a set fee per locate request transmission) acts to reduce the variability in a member's fee year-over-year, dramatic regional differences in year-over-year construction activity can overwhelm this dampening effect. For this reason, new provisions were added to the proposed regulation to ensure members had sufficient notice of what their fee will be prior to receiving a bill.

Uncertainty in Board Operational Expenditures

Changes since 2018 in costs outside the Board's control—such as Pro Rata, bargaining agreement contracts, and legislative requirements—have hindered the Board's ability to predict is operations in future years, and more significant, dramatic changes brought on by the passage of SB 865 (Hill, Chapter 307, Statutes of 2020) have the potential to change Board costs dramatically.

As can be seen in the State's 2020 Enacted Budget,[12] Pro Rata contributions from the Safe Energy Infrastructure and Excavation Fund have increased from $0 in the 2018-19 fiscal year to $360,000 in the 2020-21 fiscal year. The passage of AB 1914 (Flora, Chapter 708, Statutes of 2018) and AB 1166 (Levine, Chapter 453, Statutes of 2019) created mandates that required temporary and ongoing augmentation of the Board's budget.[13,14] Additionally, the SB 865 requires the Board to receive notifications from the one-call centers, which the Board indicated to legislative appropriations committees may require the purchase of a ticket management system.

SB 865 also moves the Board from the Department of Forestry and Fire Protection (CAL FIRE) to the new Office of Energy Infrastructure Safety starting on January 1, 2022. Being in a new department could affect Board share of Pro Rata and departmental indirect costs in a way that are not currently predictable.

Uncertainty in Fee Collection

As presented in the fee implementation staff report for the Board's June 8, 2020 Board meeting, staff had only been able to collect approximately 80% of the 2019 regulatory fee by May 1, 2020.[15] This had increased to 90.6% by June 1, 2020, [16] following the issuance of late fee notices and telephonic and email responses to approximately 150 member contacts. Provisions in this proposed regulation address 1) the uncertainty of how many people will not pay the fee, 1) increasing clarity so that members understand their responsibility to pay, and 3) reducing the amount of time that Board and one-call center staff must take to address fee questions.

[12] http://www.ebudget.ca.gov/2020-21/pdf/Enacted/GovernorsBudget/3000/3540.pdf, RES 18.
[13] https://esd.dof.ca.gov/Documents/bcp/1920/FY1920_ORG3540_BCP2636.pdf
[14] https://esd.dof.ca.gov/Documents/bcp/2021/FY2021_ORG3540_BCP3349.pdf
[15] https://digsafe.fire.ca.gov/media/2386/item-4-fee-implementation-accessible.pdf
[16] https://digsafe.fire.ca.gov/media/2389/item-4-fee-implementation-attachment-h-accessible.pdf

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS

The Board relied on the following sources:

- DigAlert bylaws, revised July 2018, Exhibit 1. https://www.digalert.org/pdfs/2018-07_bylaws.pdf
- Initial Statement of Reasons for Z-2018-0612-05, Dig Safe Board, May 2018.
- Enacted State Budget, Details, Department of Forestry and Fire Protection. http://www.ebudget.ca.gov/2020-21/pdf/Enacted/GovernorsBudget/3000/3540.pdf
- Fee calculation spreadsheet, using members, locate request transmissions, and fees assessed for the 2020 billing year, as provided by USA North 811 and DigAlert.
- Fee change tables, 2019 to 2020.
- Occupational Employment and Wages, May 2019: 43-3031 Bookkeeping, Accounting, and Auditing Clerks. https://www.bls.gov/oes/current/oes433031.htm
- Occupational Employment and Wages, May 2019: 15-1245 Database Administrators and Architects. https://www.bls.gov/oes/current/oes151245.htm
- Staff Report: “Update on Fee Implementation and Collection,” June 8-9, 2020. https://digsafe.fire.ca.gov/media/2386/item-4-fee-implementation-accessible.pdf
- Staff Report: “Discussion of Dig Safe Board Regulatory Fee Implementation,” July 13-14, 2020. https://digsafe.fire.ca.gov/media/2431/item-6-discussion-of-fee-implementation.pdf
- Staff Report: “Dig Safe Board Regulatory Fee – Draft Regulation Language,” August 10, 2020. https://digsafe.fire.ca.gov/media/2471/august-10-2020-item-5-dig-safe-board-regulatory-fee.pdf
- Staff Report: “Dig Safe Board Fee Regulation,” September 14, 2020. https://digsafe.fire.ca.gov/media/2497/sept-14-2020-item-16-fee-regulation.pdf
- USA North 811 bylaws, amended July 29, 2015, p. 9. https://usanorth811.org/images/pdfs/Articles_Bylaws_20150729.pdf
- USA North 811 meeting packet, October 28, 2020, pp. 10-11.

REPORTING REQUIREMENTS

These proposed regulations will require one-call centers to report to the Board and provide certain billing information to the Board, and utility operator corporate and call center identification information, including member codes.

Of the requirements, the regulation places on the one-call centers, the following may be considered reporting requirements:

(1) Notify the Board if the call center cannot provide an invoice to a utility provider;
(2) On a monthly basis, provide certain billing and revenue information to the Board; and
(3) On a quarterly basis, provide certain membership information to the Board.

The one-call centers did not differentiate reporting-related and non-reporting related costs, nor did Board staff identify requirements as reporting or non-reporting during these meetings, so this analysis assumes that the entire costs may reasonably be construed as reporting-related, creating a reporting requirement cost of $25,000 + $25,000 = **$50,000**.

NECESSITY FOR THIS RULEMAKING ACTION

The proposed regulations are needed to ensure that the Dig Safe Board has funding sufficient to conduct its operations, which include, (1) coordination of industry outreach and education activities, (2) development of standards for safe excavation, and (3) investigation of Dig Safe law violations.

These proposed regulations are intended to improve the processes related to both billing and collecting the fees and reduce uncertainty to one-call center members about the amount they are responsible for while ensuring the Board receives funding sufficient to cover the reasonable regulatory cost of its operations, as required by Gov't Code §4216.16.

During discussions between Board and one-call center staff, as well as discussions during the Board's June, July, and August public meetings, the Board learned that not every operator had received a fee invoice from the call center. And that call centers were not able to confirm which operators had, and which had not, received invoices. Additionally, some utilities needed to, but could not, update their contact information with a call center.

Additionally, the Board also learned that some operators thought that the call center fee invoice was fraudulent because of the way it looked, and some operators thought the invoice was a mistaken duplicate invoice. And in some instances, southern California call center deemed some operators to be late because fees paid for one invoice were applied to an earlier invoice.

This proposed rulemaking action will address these problems though amendments to section 4010 and the addition of section 4011 to Title 19.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

This proposed rulemaking action will have cost impacts on two types of businesses: utility operators and regional notification centers. Those impacts are similar in kind to the cost impacts of the current section 4010 of Title 19. Additionally, there are difficult to quantify cost savings from process improvements associated with better information flow between Board and one-call center staff.

Impacts on Call Centers

As to the call centers, the proposed regulations do not change what the current section 4010 requires the call centers to do. The proposed regulations require the call centers to provide additional information to the Board, which both the call centers and the Board can use to inform utility providers who must pay the Board's fee. The new requirements imposed on the call centers are:

(1) The call centers must bill for the Board's fee during the same time period that the bills

for call center fees are sent;

(2) Inform utility operators of credits and past due balances;

(3) On invoices for the Board's fee, indicate the utility operators ticket totals, statewide ticket totals, and the Board's operational expense information;

(4) Notify the Board if the call center cannot provide an invoice to a utility provider;

(5) Remind utility providers of Board fees that were not timely paid, and assess fees for late payment of Board fees;

(6) Remit fees to the Board four times per year instead of two;

(7) On a monthly basis, provide certain billing and revenue information to the Board;

(8) On a quarterly basis, provide certain membership information to the Board; and

The proposed regulations give the call centers the option to:

(1) Include the Board's fee as a line item on the call center's invoice; and

(2) Use the Board's seal on invoices for the Board's fee.

During Board meetings, one-call center representatives indicated that these requirements could cost as much as $25,000 per year for each center for part-time staff to implement these requirements. The cost of these requirements borne by the one-call centers would therefore be of $25,000 + $25,000 = **$50,000**.

These costs may be on the high end. Each of these centers already operate well-developed information collection, processing, and dissemination systems due to the nature of their work in receiving and distributing excavation notifications and thus one-time and on-going costs are expected to be minimal. Information reporting standards were developed around existing information that the Regional Notification Centers are already in possession of including invoice, payment, and member information. Initial set-up of data queries and reports is assumed to take approximately 40 hours of work by a bookkeeper at an estimated hourly rate of approximately $21/hour[17] and approximately 40 hours of work by a database administrator/architect at approximately $46/hour[18] for estimated total one-time costs of approximately $2,680 for each Regional Notification Center or a total of $5,360.

Estimated yearly costs to produce the data and other reports to comply with the proposed regulation are also estimated to be minimal. Monthly reporting is assumed to take approximately 16 hours of work by a bookkeeper at approximately $21/hour and quarterly reporting is assumed to take approximately 8 hours at the same rate. Total estimated on-

[17] https://www.bls.gov/oes/current/oes433031.htm
[18] https://www.bls.gov/oes/current/oes151245.htm

going costs are $4,704 for each Regional Notification Center or a total of $9,408.

Impacts on Utility Operators

This proposed rulemaking does not change the type of cost impacts that the current section 4010 imposes. The proposed regulation increases fees from $3.8 million starting in 2022 to up to $7.0 million starting in 2022, depending on the Board's operational expenses, as set by the Legislature in the annual Budget process. The Board's expected operational expenses will be $5.0 million. The cost of this regulation on operators is therefore expected to be $5,000,000 - $3,800,000 = **$1,200,000** and capped at $7,000,000 - $3,800,000 = $3,200,000.

The extensive discussion that follows pertains to how that increase in cost is distributed among businesses and local, state, and federal and tribal governments.

Currently, utility operators that receive more than 200 tickets per year are responsible for paying Board fees. The fee each utility operator must pay is determined by the following calculation:[19]

$$Fee = \frac{member\ locate\ request\ transmissions}{statewide\ locate\ request\ transmissions} \times Board\ operational\ expenses$$

The time period in which the locate request transmissions is determined by analyzing one-call center records during a prior (calendar) year period, and the Board operational expenses is the same period during which the fee is collected. At specified intervals, one-call centers will provide the locate request information to the Board. And each year, the Legislature will determine the limit of the Board's operating expenses through the Budget Act.

Ticket transmissions fall disproportionally on the largest utility operators. Sixteen members of the 2,231 one-call center members received more than 50% of the locate request transmissions in 2020. Of those large members, only one was a local government agency (Los Angeles Department of Water and Power) and none were state agencies.

The proposed regulation will allow the Board a revenue requirement of up to $7.0 million—the amount the Board currently collects—and will reduce the number of members subject to the fee by approximately 31.9%. As such, the impact on one-call center members will be 1) proportional to the difference in the Board's operational expenses and 2) affected by the change in the distribution of fees paid by difference member types in response to the change in the number members paying the fee. The first effect is significantly larger than the second.

Current law requires that members who have more than 200 new, renewal, and remark tickets must pay, while the proposed regulation requires members that have 500 or more new tickets will pay. In 2019, 1,482 of the 2,231 one-call center members received more

[19] Note that statewide locate request transmissions are qualified as only including those received by members who received more than a threshold number; the threshold number is subject to discussion in this Initial Statement of Reasons.

than 200 of the state's 14,801,976 new, renewal, and remark tickets and had to pay the fee, or 66.4%. The Board has data provided by DigAlert breaking out different ticket types, and its data demonstrates that new tickets made up 59.5% of billable tickets in 2019. Assuming that the ratio of new, renewal, and remark tickets is consistent across all operators,[20] the number of members subject with 500 or more tickets (thus subject to the fee) would drop to 1,009, and their numbers would be distributed as shown in **Table 2**.

Feepayer type	Number feepayers (current)	Number feepayers (proposed)
Businesses	553	324
Local Government Agencies	902	672
State Government Agencies	17	9
Federal and Tribal Governments	10	4
Total	**1,482**	**1,009**

Table 1: Number of feepayers subject to current and proposed regulations by member types.

In 2020, the Board charged fees to collect approximately \$7.0 million.[21] The existing regulation would have those fees drop to \$3.8 million starting in 2022. The proposed regulation would allow the Board to collect \$7.0 million should its operational expenses rise to that amount, though the Board expects its operational expenses to be approximately \$5.0 million for the next several years. Board fees assessed to businesses, local government agencies, state government agencies, and federal and tribal governments would be expected to be the amounts shown in **Table 3** for \$7.0 million, \$3.8 million, and \$5.0 million in operational expenses:

Feepayer type	Number	\$7.0 million	\$3.8 million	\$5.0 million
Businesses	324	\$4,929,439	\$2,675,981	\$3,521,028
Local Government Agencies	672	\$2,048,405	\$1,111,991	\$1,463,147
State Government Agencies	9	\$19,308	\$10,482	\$13,792
Federal and Tribal Governments	4	\$2,848	\$1,546	\$2,034
Total	**1009**	**\$7,000,000**	**\$3,800,000**	**\$5,000,000**

Table 2: Total cost of fee to members at Board operational expenses of \$7.0 million, \$3.8 million, and \$5.0 million.

The reduction of tickets eliminated more local government, state government, and federal and tribal government agencies from paying the fee, but the allocation of costs between

[20] At least all operators who receive 500+ new, renewal, and remark tickets.
[21] Actually \$6,999,905.03. The difference from \$7.0 million due to rounding to \$0.01.

groups changed little, as shown by **Table 4**.

Feepayer type	Number	Fee shift
Businesses	-41.4%	0.5%
Local Government Agencies	-25.5%	-1.0%
State Government Agencies	-47.1%	-7.1%
Federal and Tribal Governments	-60.0%	-29.8%

Table 3: Change in number and in fee proportion to be paid by member type in proposed regulation.

To estimate what a "typical" business and small business might pay, we examine the median feepayer and the median small business feepayer. Of the 553 businesses who were assessed the fee in 2020, none in the top 30 are small businesses. As many of the other 523 businesses are difficult to identify as small businesses without significant research, they are assumed to be small businesses.[22]

In **Table 5**, the effect of the regulation on the median fee along the axes of both the reduction of members paying the fee and the change in the Board operational expenses that may be collected.

Median	\$7.0 million	\$3.8 million	\$5.0 million	\$7.0 - \$3.8 million	\$5.0 - \$3.8 million
Businesses (current)	\$541.34	\$293.87	\$386.67	**\$247.47**	**\$92.80**
Small Businesses (current)	\$493.90	\$268.12	\$352.79	**\$225.78**	**\$84.67**
Businesses (proposed)	\$549.35	\$298.22	\$392.39	**\$251.13**	**\$94.17**
Small Businesses (proposed)	\$500.81	\$271.87	\$357.72	**\$228.94**	**\$85.85**
Difference (Businesses)	**\$8.01**	**\$4.35**	**\$5.72**	**\$255.48**	**\$98.52**
Difference (Small Businesses)	**\$6.91**	**\$3.75**	**\$4.94**	**\$232.69**	**\$89.60**

Table 4: Change in median cost to member feepayers due to decrease in feepayers (red text) and due to changing of Board operational fees (green text). The blue text shows the combination of these two effects.

The blue text in the bottom-right corner of **Table 5** shows the effect of Board operational expenses of \$7.0 million and \$5 million, and how the cost of the new regulation at the higher expenses compares to the cost of the current regulation at \$3.8 million operational expenses. First, the median feepayer under the current regulation still pays fees in the proposed regulation, as only approximately 31.9% of current feepayers will no longer pay in the new regulation. Second, the median member pays less than \$10 more in the new regulation for the same Board operational expenses,[23] demonstrating that the combined

[22] The remaining 523 businesses include branches of AT&T, Southern California Edison, and Spectrum communications, so we expect to have dramatically overcounted the number of small businesses.

[23] In this calculation, we looked at the effect on the business who currently pays the median fee, not the new median business.

cost shifts of billing only new tickets and increasing the fee threshold to 500 locate request transmissions is a small in dollars. As the Board expects to have operational expenses of approximately $5.0 million in the next several years, a typical (median) business is expected to pay **$98.52** more annually under the new regulation, and the median small business would pay up to **$89.60** more. In the case where the Board's operational expenses are as high as allowed under the proposed regulation ($7.0 million), typical (median) business is would to pay $243.12 more, and the median small business would pay up to $222.03 more.

Four individual property owners are members, and of those, only one received more than 200 locate request transmissions in a 2019 (240) and was billed $113.87. This person is not expected to receive more than 500 locate request transmissions when only new tickets are used to calculate the number, so the cost of the regulation to him would be **–$113.87**.

The effect of the proposed regulation on businesses and local, state, and federal and tribal governments is seen in **Table 6**.

Feepayer type	#	$7.0 million	$3.8 million	$5.0 million	$7.0 - $3.8 million	$5.0 - $3.8 million
Businesses (current)	553	$4,906,361	$2,663,453	$3,504,544	**$2,242,908**	**$841,090**
Businesses (proposed)	324	$4,929,439	$2,675,981	$3,521,028	**$2,253,458**	**$845,047**
Local Government Agencies (current)	902	$2,068,700	$1,123,008	$1,477,643	**$945,691**	**$354,634**
Local Government Agencies (proposed)	672	$2,048,405	$1,111,991	$1,463,147	**$936,414**	**$351,155**
State Government Agencies (current)	17	$20,786	$11,284	$14,847	**$9,502**	**$3,563**
State Government Agencies (proposed)	9	$19,308	$10,482	$13,792	**$8,827**	**$3,310**
Federal and Tribal Governments (current)	10	$4,058	$2,203	$2,899	**$1,855**	**$696**
Federal and Tribal Governments (proposed)	4	$2,848	$1,546	$2,034	**$1,302**	**$488**
Difference (Businesses)	**-229**	**$23,078**	**$12,528**	**$16,484**	**$2,265,985**	**$857,574**
Difference (Local Gov't)	**-230**	**-$20,294**	**-$11,017**	**-$14,496**	**$925,397**	**$340,138**
Difference (State Gov't)	**-8**	**-$1,478**	**-$802**	**-$1,056**	**$8,024**	**$2,508**

Difference (Fed/Tribal Gov't)	**-6**	**-$1,210**	**-$657**	**-$864**	**$645**	**-$169**

Table 5: Change in cost to business, local, state, and federal/tribal feepayers due to decrease in feepayers (red text) and due to changing of Board operational fees (green text). The blue text shows the combination of these two effects.

The blue text in the bottom-right corner of **Table 6** shows the effect of Board operational expenses of $7.0 million and $5 million, and how the cost of the new regulation at the higher expenses compares to the cost of the current regulation at $3.8 million operational expenses. The expected increase in fees in 2022 and beyond ($5.0 million in operational expenses) from the current regulation to the new regulation for business, local, state, and federal/tribal members is **$857,574**, **$340,138**, **$2,508**, and **-$169**, respectively. The maximum increase in fees in 2022 and beyond ($7.0 million in operational expenses) from the current regulation to the new regulation for business, local, state, and federal/tribal members is $2,265,985, $925,397, $8,024, and $645, respectively. Note that these costs begin January 1, 2022. Entities, such as state government entities, who operate on July-June fiscal years would be responsible for six months of these costs in fiscal year 2021-22.

Impact from Improvements in Information Sharing

The regulation's data sharing requirements allow for process improvements that create difficult-to-quantify savings. Specifically, due to the lack of formalized data and information sharing that exists currently, many individual requests must be made to the one-call centers for information needed for Board staff to effectively respond to invoice questions. The Board receives on average approximately 20-50 invoice questions per month, with some months being higher and others being lower. Assuming that eighty percent of these questions can now be answered directly by Board staff without needing to interface with one-call center staff, and that each request would take approximately 20 minutes of time for a bookkeeper to address, and the bookkeeper is paid an estimated hourly rate of approximately $21/hour,[24] cost savings to the one-call centers may be approximately **$4,200** annually.

Additionally, improvements to transparency and customer service expected to result from Board staff having all of the available information to inform one-call center members of invoice and fee details are likely to cause cost savings for some members as streamlined invoice processes decrease confusion and thus time spent to contact either the state or the center with questions. Due to the diverse nature of the members which span from the largest multinational telecommunications and utility providers to the smallest water districts and towns, it is difficult to estimate or quantify what the savings to members as a result of improved processes may be.

Effects on Small Business

Of the 523 feepayers who may be small businesses and currently pay the fee, 229 will no longer pay a fee. For the remaining 296 who may be small businesses, the regulation would increase fees on the median member an expected **$89.60** and maximum $232.69 annually, as described above.

The Creation or Elimination of Jobs

The Board has determined that these proposed regulations will not have a financial impact

[24] https://www.bls.gov/oes/current/oes433031.htm

sufficient to either create or eliminate jobs within the State of California.

The Creation or Elimination of Businesses
The Board has determined that these proposed regulations will not have an impact on the creation of new businesses or elimination of existing businesses within the State of California.

Expansion of Businesses
The Board has determined that these proposed regulations will not have a significant impact on or limit or discourage the expansion of business currently doing business within the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment
This regulatory proposal provides a direct benefit to the protection of public health and safety of Californians by reducing the time that both the Board and one-call centers will need to invest to answer questions from their member about the fee, clarify fee basis information for utility providers, and provide the funding necessary for the Board's operations.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS
The Board can find no facts, documents, testimony, or evidence that this action will have a significant adverse economic impact on any business. The proposed regulation clarifies and adds language that better defines the fee requirements for members of one-call centers. There is no significant cost impact anticipated because of these regulations.

DOES THE PROPOSED REGULATORY ACTION MANDATE THE USE OF SPECIFIC TECHNOLOGIES OR EQUIPMENT, OR PRESCRIBE SPECIFIC ACTIONS OR PROCEDURES?
The proposed regulation requires the regional notification centers to provide financial data to the Board in either a spreadsheet or a tab-separated value file that can be loaded into a spreadsheet—with financial numbers. This format is compatible with several different spreadsheet programs from different vendors as well as free and open source software (FOSS) solutions. The centers already do this informally, and creating a standardized format will reduce time and effort of Board and call center staff in discussions regarding the information.

The regulation allows one-call centers to invoice feepayers using either a line item on their existing membership dues invoice or a separate invoice. The regulation also requires the one-call center to take "reasonable efforts" to inform their members of past-due fee balances, but it does not prescribe the method.

CONSIDERATION OF REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The following three alternatives were considered:

Alternative 1: Set a fixed number for Board operational expenses

Rather than set a cap, the regulation could have set a fixed dollar amount or a schedule for the Board's operational expenses. On the surface this appears to have the benefit of certainty for the feepayer, even if it has clear downsides for the Board. First, the major downside of the Board—the lack of certainty of the Board's operating expenses—requires the Board to make a choice on the spectrum between these two ends:

1) Regularly update the fee regulation.
2) Set a high fee to extend the time between updates and build up significant reserves to buffer operations in the 1-2 years between the beginning fee regulation development and fee increase implementation.

As discussed above, the Board has spent more of its existence developing its fee regulation than it has been free of fee regulation development. As also discussed above, the ongoing uncertainty associated with legislative requirements and operational costs at the new Office of Energy Infrastructure Safety make it difficult to predict the operational expenses. The risk premium associated with this alternative would be significant, and the Board would have to set a correspondingly high operational expense level to address this risk, at approximately $6.0 million. This would not be fair to feepayers, who would be paying higher fees than they need to—perhaps as much as $1.5 million annually. To avoid requiring members to overpay to address a risk premium was the reason the Board chose in 2018 to bill member as a percentage of their share of the locate request transmissions rather than a flat fee per locate request transmission,[25] and the Board rejects this alternative on the same basis.

Second, as discussed above, the benefit to feepayers of certainty in Board operational expenses does not translate to certainty in their fee. The Board chose to address this through its adoption of proposed Section 4010 subdivision (b), which requires the Board to post fee information on its website on March 1, which will give members four months of advance notice of the amount they need to pay for their fee.

Alternative 2: Leave the minimum locate request transmission threshold at 201

Were the Board to maintain the threshold for a member to pay the fee at 201 locate request transmissions, the Board would have more feepayers to manage, which would be a detriment to the Board and those members who receive between 201 and 499 locate request transmissions annually. As up to 553 – 324 = 229 of those members could be small businesses, those members would be the least sophisticated and well-prepared to process the invoice. Table 1 shows the different options available in choosing the locate request transmission threshold, and the rationale for why 500 was chosen is described above. The cost of this alternative is the same as the proposed regulation, as the alternative only affects allocation of the fee in the manner discussed above.

Alternative 3: Board staff bills one-call center members and collects fee directly

Board staff recommended taking over the billing and collection functions of the fee in advance

[25] Initial Statement of Reasons for Z-2018-0612-05, Dig Safe Board, May 2018, p. 12.

of the June 8, 2020 meeting.[26] Staff's rationale was that too many entities were involved in the fee collection process, leading to structural communication issues between Board and one-call center staff and confusion for one-call center members. The Board rejected this option because 1) the staff time and resources required would draw resources away from other Board activities and 2) one-call center members receiving invoices from two different entities (Dig Safe Board for fees, one-call center for membership dues) would add confusion. The cost of this alternative is the nearly the same as the proposed regulation, though it would reduce the cost of one-call center compliance and increase the workload on staff, to the detriment of other mission activities.

REASONABLE ALTERNATIVES – SMALL BUSINESS

The proposed regulations have no substantial effect to small business. The Board has identified no alternative that would lessen adverse impact, if any, on small business and still allow the Board to effectively enforce the regulations.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

DUPLICATION OF CONFLICT WITH FEDERAL REGULATIONS

The Board has reviewed and concluded that this proposed regulatory action neither conflicts with nor duplicates any federal regulation contained in the Code of Federal Regulations. The proposed regulatory action does not contain any regulations that are identical to any corresponding federal action.

PURPOSE AND NECESSITY

Specific Sections which have been modified:

Section 4010. Fees. Currently specifies requirements for both billing and payment. To improve clarity, the proposed regulations would make section 4010 applicable to the calculation of the amount of, and payment of, the fees imposed on each operator. And would add section 4011 to address the collection of fees by the call centers.

Section 4010, subdivision (a). The proposed regulation changes the existing subdivision (a) in three ways.

It changes the number of tickets a utility operator must receive to be required to pay the regulatory fee from 201 to 500 locate request transmissions. This change, in conjunction with the change to only charge for new tickets (Section 4010, subdivision (d)), reduces the number of members subject to the fee from approximately 1,482 to approximately 1,009. This makes collection easier for the Board and one-call centers, as fewer members are subject to the fee, and it shifts the costs from those members who receive 201-499 to the members who receive 500 or more tickets. This shift, for reasons described below, is slight.

Ticket transmissions fall disproportionally on the largest utility operators. Sixteen members of the 2,231 one-call center members received more than 50% of the locate request

[26] Staff Report: "Update on Fee Implementation and Collection," June 8-9, 2020, p. 10.

transmissions in 2020. Of those large members, only one was a local government agency (Los Angeles Department of Water and Power) and none were state agencies. Under the current regulation, a threshold of 201 tickets exempted 33.6% of one-call center members from being assessed a fee. The locate request transmissions to these members constituted only 0.32% of all tickets—a reduction from 0.43% in 2017.[27] These billable tickets are based on locate request transmissions of new, renewal, and remark tickets. Data from DigAlert indicates that 59.5% of billable tickets are for new tickets. In choosing to move to a threshold of 500 or more new tickets, the number of members affected, cost shift to paying members, and minimum bill were considered. **Table 1** shows these effects for different ticket thresholds.

Ticket Threshold	% tickets billable	# members pay	% members pay	Approx. Min Fee ($7.0M)	Approx. Min Fee ($5.0M)
0	100.0%	2,208	99.0%	<$1	<$1
200	99.4%	1,330	59.6%	$160	$114
500	98.2%	1,009	45.2%	$400	$286
1,500	93.4%	550	24.7%	$1,200	$857
5,000	83.0%	212	9.5%	$4,000	$2,857
10,000	75.5%	114	5.1%	$8,000	$5,714

Table 6: Percentages of new tickets and members subject to fee and minimum fee for several new ticket thresholds. Note that $5.0 million is the expected Board operating expenses for the next several years; $7.0 million is the maximum allowed by the proposed regulation.

Several principles, many conflicting, were considered in choosing a ticket threshold:

1) **Ease of administration**. Fewer members, leads to fewer resources expended by the Board to collect fees. Members with larger ticket numbers are more sophisticated than those with fewer, so in addition to reducing the number of members the Board must collect from, a higher threshold also removes many members who are difficult to collect from.
2) **Minimization of cost shift**. Fairness dictates that members should pay for the portion of the system designated for them. While what constitutes “fair” can be complicated (especially when considering fixed vs. marginal costs), one could easily argue that a system that requires a small number of members to shoulder the majority of the costs has a high burden to demonstrate fairness.
3) **Minimization of edge effects**. A high threshold leads to a high minimum bill. Members who receive locate request transmissions near the number might engage in unpredictable behavior to reduce their tickets as not to be required to pay the fee. Some of these behaviors may not be in the interest of safety. On the contrary, the lack of a threshold would lead to the only marginal cost being of incremental locate request transmissions—each less than $1.

Necessity: A 500-ticket threshold was determined to be optimum, as it eliminates more

[27] Initial Statement of Reasons for Z-2018-0612-05, Dig Safe Board, p. 5.

than 50% of members from fee responsibility, while creating a cost shift of only 1.8%, and maintaining a reasonable minimum bill of $286.

Section 4010, subdivision (a)(2) also deletes the reference from “previous calendar year” and instead, uses the term “calculation year” for clarity. Subdivision (d)(2) defines “calculation year” to be the period between January 1 and December 31 in the year before the “billing year.” This section also states that the amounts of the Board’s operational expenses will be specified in subdivision (e) rather than subdivision (a)(2)(B), and that the operational expenses shall not exceed that amount.
Necessity: This changes will explicitly allow the Board to set Board operational expenses—which is proportional to member fees—below the amount listed in the regulation. As discussed above, the Board is not in control of its operational expenses, and it cannot reasonably predict where those expenses will be in more than a year or two. The Board set its fee in 2018, and it has spent considerable staff resources—including meetings in four consecutive months of 2020—to prepare this regulation package. It will commit more resources to shepherd the regulations through the formal process. Once this regulatory package is complete, the Board will have spent more of its time of creating and amending fee regulations as it will have spent not doing so.[28]

To avoid a perpetual cycle of updating the Board’s fee regulation in the face of continuing uncertainties (described above), The Board chose to set a fee based on three conditions: 1) estimated operational expenses, 2) $3.8 million, and 3) the State Budget Act. Experience over the past two years has shown these three conditions to be in conflict with each other as State Budget Act costs conform to legislative prerogative, not to numbers we set in regulation.

To harmonize these three conditions, the proposed regulations modify them to instead create a cap on the amount the Board may collect, allowing the Board to set the Board operational expenses at a lower number. As described in Section 4010, subdivision (a), that cap is proposed at $7.0 million. Were the Board to set a specific number for its operational expenses, it would need to set a number sufficiently large to hedge against these uncertainties. This is discussed in the Alternatives section.

Section 4010, subdivision (b). The proposed regulation specifies that a one-call center member’s fees, and the information that went into developing them, will be identified on the Board’s website annually on March 1. As the proposed regulation also changes the billing period to a July 1-June 30 fiscal year (subdivision (d)), this provides feepayers a three-month notice of the amount their fee will be.

The fee is calculated using one-call center ticket data. This data is usually not available from USA North 811 for the previous calendar year until early February of the new year. As, in the current regulation, the billing period begins on January 1, members cannot be

[28] The Board’s first meeting was in January 2018, and the target for completion of this package is January 2022—a span of four years. The Board first met in April 2018 to discuss and approve a fee regulation which was not approved by OAL until November. The Board began discussing this fee regulation in June 2020. Even in this scenario, where we are ignoring the amount of staff time taken in preparing information in advance of Board meetings, this means that 26 of 48 months of Board existence were spent in one part or another of fee regulation development.

informed of what their fee for a billing period until at least a month into it.
Necessity: The change proposed in this section was made to ensure feepayers had advanced notice of the amount of their fee. In fielding questions from one-call center members, staff noticed that municipal members were especially keen to know their fee amounts in advance to allow them to provide their city councils accurate numbers during their annual budgeting process. As municipal budgets are also on the July 1-June 30 fiscal year, providing this information by March 1 will allow those cities to use accurate fee information in their planning processes.

Board staff also believes that this will cut down on the time required to answer individual telephonic and email questions from persons asking what their bill will be, as staff may point them to the website instead of retrieving a spreadsheet off the shared drive and looking up the member. As many operators have more than one one-call center membership—even for the same one-call center, this process is not always straightforward and creates the potential that staff may not provide a one-call center member with the information they were looking for.

The provisions relating to payment of the fee by utility operators has been moved from subdivision (b) to subdivision (c), and the provision regarding remission of fees paid to the Board has been moved to section 4011.

Section 4010, subdivision (c). This subdivision provides that a one-call center member must remit payment to the one-call center, and that a member who does not pay an invoice for the fee within 90 days of the date of the invoice is subject to a 5% late fee.
The proposed language differs from current subdivision (c) in that it 1) specifies that payment is to be made directly to the one-call center, 2) removes information about the method by which the late fee will be collected (as such information is now found in Section 4011), and 3) specifies that the late fee is applicable after 90 days, rather than the dates that the one-call centers choose to use (at present 45 days for USA North 811 and 30 days for DigAlert).
Necessity: Specifying that the payment is to be remitted directly to the one-call center—and removing the provision that the Board will seek to obtain fees directly from a member who has not made timely payment—is necessary to clarify that payment should not be made directly to the Board. When the Board issued invoices in Spring 2020 to members who had not paid their 2019 fees, many of those members became confused about where to send payment—to the address on the original invoice or the address on the new one. Also, it was a challenge for Board staff and the one-call centers to maintain timely communication on who has paid. Without all the information, neither Board staff nor the one-call centers had confidence that they had correct payment information when speaking to feepayers who had questions.

The existing requirement that members pay invoices by the due date on the invoice was based on the Board’s belief that one-call centers would add the Board fees as a line item on the member’s existing membership dues invoice. Given that the two one-call centers don’t have the same due dates on their invoices, the Board did not want to specify a due date inconsistent with existing one-call center processes. Changing the time at which the late fee is applicable from the date on the member’s invoice to 90 days is necessary in that it allows for a standard procedure—listed in subdivision (b) of the proposed Section 4011—to be used by both one-call centers in issuing a late fee invoice. This change also allows the one-call centers to send out a reminder notice to feepayers who haven't paid, so that they may do so without incurring additional cost. Even if a one-call center choses to add the Board's fee to their existing invoices (discussed in Section 4011, subdivision (a)(1)), 90 days is an even multiple of both 30 days (for DigAlert) and 45 days (for USA North 811), preventing members from having the regulatory fee on a different schedule than member dues.

Section 4010, subdivision (d). Proposed subdivision (d)(1) and (2) defines the terms "calculation year" and "billing year" and changes the types of tickets subject to billing from new, renewal, and remark tickets to only new tickets.
Subdivision (d) relocates the definition of the term "locate request transmission" to subdivision (d)(3) and makes minor amendments by deleting the following text at the end of the sentence: …"or to a ticket requesting a remark, as identified in Government Code section 4216.3, subdivision (b)". This deletion removes text that is potentially unclear to the extent it indicated that a request for a re-mark generates a ticket. Creating terms "calculation year" and "billing year" improves clarity by specifying the applicable time frames. The current regulation uses the terms "current" and "previous" to identify time frames. Those terms are serviceable in the current regulations, as both refer to a calendar year. The proposed regulations, on the other hand, refer to different types of years—previous calendar year and current fiscal year—and, with multiple different dollar amounts for different timeframes of (b)—some of which "year" is only actually 6 months (sub. (e) transition year), defining "billing" and "calculation" year outside of subdivision (a) was necessary to reduce the change of ambiguity and to prevent subdivision (a) from being convoluted with time periods that will pass. This change requires a six-month transition period (January 1, 2022 to June 30, 2022), that is addressed in subdivisions (e) and (f).
Necessity: Changing the tickets subject to the fee is necessary to conform with one-call center billing practices. In 2018, DigAlert charged members based on new tickets only, and USA North 811 charged members based on new, renewal, and remark tickets. In late 2019, USA North 811, facing concern from its members that some excavators working in their service territories had a high proportion of renewal tickets, changed its practice to only bill for new tickets, conforming with DigAlert practice. Since then, Board staff has received questions from USA North 811 members who were trying to understand why the number of tickets they were billed for from the Board was different than the number from USA North 811. As USA North no longer billed for renewal and remark tickets, this information was no longer listed on their USA North 811 invoices, and so members have no documentation that Board staff can point to show that their new, renewal, and remark ticket add to the number they are invoiced for the regulatory fee. To create as consistent and straightforward an experience for the feepayer, the proposed regulation changes the types of tickets billed to only new tickets, in conformance with DigAlert and USA North 811 practices. This has no effect on the amount the Board collects.

Section 4010, subdivision (e). Proposed subdivision (e) sets the cap of the Board operational expenses for different time periods.
Necessity: Setting Board operational expenses as its own subdivision is necessary to reduce the complexity of subdivision (a)(2)(C), which otherwise would have to contain two different Board operational expenses for the periods of 1) January 1, 2022 to June 30, 2022

and 2) the billing year that begins on July 1, 2022, and every billing year thereafter. Specifying the Board operational expenses for calendar years 2019, 2020, and 2021 also assists the lay reader feepayer, who may wish to know the revenue requirement from previous years to understand why their bill has increased or decreased over time.

The cap for billing year 2022-23 and beyond was chosen as $7 million for two reasons: 1) to ensure the Board would not need to develop new regulations for several years, and 2) feepayers are currently paying to support a revenue requirement of $7 million, as the Board needed to recover funds by July 1, 2021 to repay a $7.408 million startup loan. It is reasonable that the Board review the fee should the revenue requirement grow above the amount it was from 2019-2021. The amount of $2.5 million was chosen for the six-month transition period as it is the upper bound of what is believed to be necessary for the second half of the Board's 2021-22 fiscal year, as the 2020-21 State Budget called for expenditures of $4.798 million to be drawn from fee revenue.[29]

Section 4010, subdivision (f). The proposed regulation clearly defines the six-month transition period.
Necessity: While the calculation year will continue to be a calendar year, the new billing year will be pushed back from January 1 to July 1. As such there needs to be a six-month transition billing period from January 1, 2022 to June 30, 2022. This subdivision defines calculation year and billing year for this period. The calculation year was chosen to be from January 1, 2021 to June 30, 2021 to allow six months to calculate and disseminate the transition period fees to feepayers so that they have sufficient notice.

Section 4011. Fee Collection. The proposed regulation adds a new section that specifies the way call centers will collect the fees specified in proposed section 2010.

Section 4011, subdivision (a). Proposed subdivision (a) expressly provides that the call centers will (1) collect the fees directly from utility operators, (2) will do so on the Board's behalf, and (3) will bill for the Board's fee in the same timeframe that it bills for its own fee.
Necessity: These requirements will reduce confusion that some operators told Board staff arose from receiving two invoices at different times. This provision is moved to this section from current regulation section 4010(a)(3).

Section 4011, Subdivision (a) paragraph (1) allows one-call centers to either add the fee as a line item to their membership dues invoice or send the Board's fee as a separate invoice. During the Board's discussion in advance of these proposed regulations, staff, members, and one-call center staff publicly discussed the way one-call center members were billed, and what methods were reasonable and effective for the parties. The representative from USA North 811 suggested during the August 2020 meeting that the one-call center members be given flexibility, as placing the fee on the same invoice as the member dues may become easier in the future for the one-call centers than it is now.[30] The Board therefore chose to allow in regulations either option. If, however, a one-call center choses to issue separate invoices, the regulations require that those invoices be issued at

[29] http://www.ebudget.ca.gov/2020-21/pdf/Enacted/GovernorsBudget/3000/3540.pdf, RES 18.
[30] Staff Report: "Dig Safe Board Fee Regulation," September 14, 2020, p. 2. https://digsafe.fire.ca.gov/media/2497/sept-14-2020-item-16-fee-regulation.pdf

substantially the same time as the one-call center issues invoices for membership dues.
Necessity: This requirement is in response to Board staff hearing from one-call center members that they did not know or not understand why they were getting invoices at different times. To ensure that members are aware of the full scope of payment they are responsible for and can see all one call-related invoices concurrently prior to payment, proposed regulations require that the one-call centers send fee invoices at the substantially the same time as one-call centers send invoices for their membership dues.

Section 4011, Subdivision (a) paragraph (2) requires call centers to inform members of account balances.
Necessity: This is necessary because utility operators in southern California told Board staff that, at times, there was confusion regarding which month's invoice a payment had been credited to, and that they were provided no information to alert them to missing a payment.[31]

Section 4011, Subdivision (a) paragraph (3) contains language in the current regulation pertaining to what information must be on a member's invoice so that the member may know the basis for their fee.
Necessity: This provision has been moved from Section 4010 to Section 4011 as it pertains to the one-call centers' responsibility in creating invoices.

Section 4011, Subdivision (a) paragraph (4) will allow the call centers to use the Board's seal.
Necessity: This provision is necessary to reduce confusion that some operators told Board staff arose from invoices that did not appear to be legitimate.[32] The proposed regulation requires the invoice to identify this regulation so that a recipient can refer to the regulation and confirm the invoice's legitimacy.

Section 4011, Subdivision (a) paragraph (5) requires one-call centers to notify the Board if it cannot provide an invoice for the fee to one of its members.
Necessity: This provision is necessary as the one-call centers issue most invoices via email, and contact information can change. Many one-call center members appear not to have received their 2019 invoices, as the emails had bounced back, but the Board was not notified and was unaware that no invoice had been received.[33]

Section 4011, subdivision (b). Proposed subdivision (b) requires call centers to provide notice to, then assess late fees on, utility operators that did not timely pay the Board's fee, and specifies the time frame within which the center must assess the fee.
Necessity: This provision is necessary to standardize how late notices and invoices are sent. As discussed in above pertaining to Section 4010 subdivision (c), this change ensures a feepayer will receive notice of an outstanding invoice in advance of receiving a late fee. A period of 90 days before the late fee applies was chosen as it is an even multiple of both 30 days (for DigAlert) and 45 days (for USA North 811), allowing members to have a

[31] Staff Report: "Update on Fee Implementation and Collection," June 8-9, 2020, p.7. https://digsafe.fire.ca.gov/media/2386/item-4-fee-implementation-accessible.pdf
[32] June Staff Report, p. 6.
[33] June Staff Report, p. 7.

deadline that coincides with member dues.

Section 4011, subdivision (c). Proposed subdivision (c) requires the call centers to transfer fees to the Board four time per calendar year, and specifies the deadlines for each transfer.
Necessity: The section differs from the current regulation in two respects: 1) It requires the one-call centers to remit fees quarterly, rather than semi-annually, and 2) it provides fifteen days after the collection period for the one-call centers to remit the fee to the Board. The change to quarterly remittance was made following discussion with the one-call centers, who did not see additional burden to quarterly remittance, which will allow for more regular cash flow—which is especially important with the State's adoption of Fi$Cal. The current regulation requires that, on April 1 and October 1, that the one-call centers remit all fees received up to April 1 or October 1, respectively. This allows the one-call centers no time between collection and remittance, which has led to them being out of compliance with the existing regulation. The change to allow 15 days is necessary to give them a reasonable amount of time to collect, account for, and remit the fee to the Board.

Section 4011, subdivision (d)(1), (2), (3). Proposed subdivision (d) requires the call centers to provide certain utility company, billing, and payment information on a monthly and quarterly basis.
Necessity: This information is necessary for several reasons, including to invoice and assess late fees promptly, to permit Board staff's proactive outreach to members, and respond to one-call center member inquiries. As discussed extensively during the Board's June, July, and August meetings—and outlined specifically in the Board's June 2020 staff report[34]—Board staff's lack of information about the fees has contributed to one-call center member dissatisfaction with the fee process, as the Board has generally not had timely information about invoices, and so needed to send members to the call center for that information or ask the one-call center directly and get back to the member later. The regular transmittal of standardized information by both one-call centers is expected to reduce Board and one-call center staff time required to answer one-call center member questions.

Section 4011, subdivision (e). Proposed subdivision (e) requires regional notification centers to invoice utility operators for the Board's fee on the same billing cycle as the notification center's fees are billed.
Necessity: This is necessary because the northern California center members receive invoices on three different schedules, per member preference: monthly, annually (calendar year), annually (fiscal year). For those members issued invoices annually (fiscal year), there will be no membership dues invoice in the 6-month "billing year." Proposed section 4011(a)(1)(B) requires that regulatory fee invoices must come out at the same time as membership dues invoices. This provision allows USA North 811 to invoice those members in the absence of an invoice for membership dues during the 6-month transition "billing year".

[34] June Staff Report, p.8.