

FINAL STATEMENT OF REASONS
CALIFORNIA CODE OF REGULATIONS

Title 19. PUBLIC SAFETY

Division 4. CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD

UPDATE OF INITIAL STATEMENT OF REASONS

The California Underground Facilities Safe Excavation Board (“Board”) has provided an update to the Initial Statement of Reasons. The Board made available a 45-day public comment period for the proposed regulation from June 22, 2018 through August 6, 2018. Following the close of the 45-day public comment period, no changes were made to the text of the proposed regulation.

The Board relied on technical, theoretical, and/or empirical sources (studies, reports, and documents), which were provided in the Initial Statement of Reasons, to discern its operational expenses, which includes loan repayment (principal and interest), reasonable revenue, personnel including salary and benefits, printing, communications, office supplies and equipment, postage, travel, training, facilities (buildings and utilities), and information technology. The sources include Budget Change Proposal 3540-306-BCP-2018-A1, Budget Act AB 97 (Budget Act, Chapter 14, Statutes of 2017), and *Operating Reserve Policy Toolkit for Nonprofit Organizations*, First Edition, September 15, 2010. All sources can be accessed from the Board’s website: digsafe.fire.ca.gov.

As of the date of the publication of the Notice of Proposed Rulemaking, June 22, 2018, Budget Change Proposal 3540-306-BCP-2018-A1, which extended the loan repayment date to July 1, 2021, had been submitted to the Department of Finance on March 29, 2018 and approved by the Legislature on June 27, 2018.

The following non-substantive changes were made to the text of the regulations:

- Added “as defined in Government Code section 4216, subdivision (q)” in subdivision (a)(1) of section 4010.
- Renumbered subdivisions in section 4010.
- Deleted original subdivision (d).

SUMMARY OF EFFECT OF PROPOSED REGULATIONS

These regulations will require operators, which are members of regional notification centers and respond to any local request transmission from a regional notification center regarding excavation near the operator’s subsurface installation, to pay a fee to support the operational expenses of the Board. These regulations will also impact

regional notification centers by requiring the regional notification centers to obtain the fee from their members and remit the fee to the Board.

UPDATE OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Costs to local governments are not mandated by the state as defined under Government Code section 17514. Any cost incurred by a local government would be based on the number of locate request transmissions the local government may receive from a regional notification center for excavation activity as an operator and member of a regional notification center. As costs are based on a percentage of the statewide total of the operator's annual locate request transmissions, expected costs to local governments are proportional to the locate request transmissions local governments receive. Based on locate request transmissions local governments received from regional notification centers in year 2017, the estimated cost to local government operators may be less than \$1,834,000 (before 2022) and less than \$991,000 (2022 and after).

Any cost incurred by a state agency would be based on the number of locate request transmissions the state agency may receive from a regional notification center for excavation activity as an operator and member of a regional notification center. As costs are based on a percentage of the statewide total of the operator's annual locate request transmissions, expected costs to state agencies are proportional to the locate request transmissions state agencies receive. Nevertheless, based on locate request transmissions state agencies, including the Regents of the University of California, received from regional notification centers in year 2017, the estimated cost to state agencies may be less than \$21,000 (before 2022) and less than \$12,000 (2022 and after). These state agencies will likely absorb the fee within their existing resources.

The Board received three (3) public comments on the proposed regulation as originally noticed.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF JUNE 22, 2018 THROUGH AUGUST 6, 2018

COMMENT 1.1: Atascadero Mutual Water Company ("AMWC") stated (see Comments, p.1),

The development of the preliminary regulations and the fee schedule should be more closely coordinated to ensure fees are apportioned in a manner that reflects the costs incurred by all users. As the Underground Facilities Safe Excavation Board (Board) proposes to implement, interpret, clarify and make changes to specific sections of Government Codes 44216.1 [sic] and 4216.16, we ask that all changes to fees be closely coordinated between users and that costs be tied to fee for service. The Regional Notification Center is an integral part of AMWC's operations; requiring full time staff. Thus, any increase in fees will impact operations/customer service. We urge the Board to consider said operational/fiscal

impacts and establish a non-arbitrary fee schedule that ensures equity among users.

Response: The California Underground Facilities Safe Excavation Board (“Board”) is required by statute under Government Code section 4216.16 to “apportion the fee in a manner consistent with formulas used by the regional notification centers.” Thus, the fee in the proposed regulation is consistent with the formulas used by the regional notification centers: the fees are proportionate to the number of locate request transmissions the regional notification centers provide their members. Further, as provided under Government Code section 4216.16, the fee charged to members of the regional notification centers do not “exceed the reasonable regulatory cost incident to enforcement” of article 2 of chapter 3.1 of division 5 of title 1 of the Government Code. The fee formula takes into consideration the member’s locate request transmissions in proportion to statewide locate request transmissions, multiplied by Board operational expenses. Therefore, the proposed regulation is non-arbitrary and equitably establishes a fee among members of regional notification centers.

COMMENT 1.2: AMWC stated (see Comments, p.1),

More clarity needed regarding the need for potential increase in amount of fees, including late fees. The fee in the proposed regulation is about one-third of the fee charged by the regional notification centers to its members for each transmission initiated at the request of the member to support operational expenses. Managing annual and long-term budgets is critical to our water system’s operations. AMWC anticipates annual costs as the operating budget is adopted; which is not only important to maintaining our water system but to ensuring responsiveness to customers. The process and need for the proposed increase in fees is unclear.

Response: The Board is authorized by statute under Government Code section 4216.16 to “obtain funding for its operational expenses from ... [a] fee charged to members of the regional notification centers not to exceed the reasonable regulatory cost incident to enforcement of this article.” The process and need for the fee, including late fees, is explained in the Initial Statement of Reasons.

COMMENT 2: The Underground Service Alert of Southern California (“DigAlert”) (see Comments, p.2)

Asked the Board to reach out to all members of DigAlert as well as industry groups like League of Cities, California State Association of Counties, California Water Association, Association of California Water Agencies and others to raise awareness of the new fees.

Response: The Board has complied with Government Code section 11346.4, subdivision (a)(1) through (4), regarding the mailing of the notice of proposed regulatory action. The notice was e-mailed or mailed to DigAlert members at least 45 days prior to close of the public comment period. The Board also held a public meeting on the proposed regulation on April 19, 2018 and a webinar on May 22, 2018. The Board expects to conduct additional outreach to remind regional notification center members of the fee upon approval of the regulation by the Office of Administrative Law.

COMMENT 3: Bayshore Sanitary District stated (see email Comments, p.3),

We would like to register the same complaint with you as we have continually advised USA. There are errors in the mapping used and therefore approximately 20% of the alerts we receive are NOT in our service area. Since you will be using that same erroneous information to bill the District, we will be penalized twice for calls that are not within our boundaries.

Response: The comment is a complaint regarding the mapping used by the regional notification center, rather than the proposed regulation itself. The Board will adopt the regulation for the reasons explained in the Initial Statement of Reasons. Nevertheless, the Board will consult with regional notification centers to help ensure accurate figures will be used in the formula in the proposed regulation to calculate the fee.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES OR REPORTS

The Board did not rely on any report or document in the development of this rulemaking beyond that previously identified in the Initial Statement of Reasons.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

No alternatives were proposed to the Board that would lessen any adverse economic impact on small business.

ALTERNATIVES DETERMINATION

The Board has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. No commenter had provided any alternatives or supporting information.

LOCAL MANDATE DETERMINATION

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

COORDINATION WITH FEDERAL LAW

The Board has determined that this proposed regulatory action neither conflicts with, nor duplicates, any applicable federal regulation contained in the Code of Federal Regulations. There have been no changes in applicable laws related to the proposed action or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.