STATE OF CALIFORNIA
OFFICE OF ENERGY INFRASTRUCTURE SAFETY
TITLE 19. PUBLIC SAFETY
DIVISION 4. CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD

ADD SECTION 4005- MEMBERSHIP TERMINATION
AMEND SECTION 4010- FEES

INITIAL STATEMENT OF REASONS

Background

California has an excavation regional notification system codified in Government (Gov.) Code section 4216 – *et seq*. (the Dig Safe Law). The Dig Safe Law established a regional notification system that requires regional notification centers (RNCs) to provide underground facility operators with advance warning of nearby excavations for the purpose of protecting those installations from damage and for the safety of the excavators and the public. An operator is an entity that owns, operates, or maintains any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewerlines, nonpressurized storm drains, or other nonpressurized drain lines. All operators, except the California Department of Transportation, must be a member of an RNC (members). There are two RNCs in California; one in the north and one in the south.

An operator must give an RNC the general location of its underground facilities (its area of notification). When an RNC receives a notice that an excavation will take place within that area of notification, it sends a locate request transmission to alert the operator who can then perform its facility location duties as required by law.

The Dig Safe Law also established the California Underground Facilities Safe Excavation Board (the Board). The Board must coordinate education and outreach activities, develop standards, investigate possible violations, and enforce the Dig Safe Law. The Board's budget is supported by a fee charged to operators. Each RNC administers the Board's fee for its members. As required by Gov. Code section 4216.16, the Board's fee is apportioned in a manner consistent with how the RNCs bill their members for their own fees: based on the number of locate request transmissions a member receives. Annually, a smaller operator may receive less than 100 locate request transmissions while a larger operator may receive thousands. For the Board's fee, only members with 500 or more locate request transmissions per year are part of the fee-paying pool of members.

Problem Statement

The Board must prepare its annual budget and calculate operator fees in a manner that allows it to coordinate with the RNCs invoicing practices and provide operators with some advance notice of the fee amounts for the coming year. The Board prepares and publishes its fee calculations for the next fiscal year (July – June) by the prior March 1st.

Currently, when a member terminates their membership with an RNC after the Board has published its fee apportionment but before the start of the fiscal year when the invoice is due, the Board does not collect that fee. Given that the Board's fee is only paid by operators with more than 500 locate request transmissions, not recovering a portion of the Board's fees can have a significant impact. While the Board could recalculate the apportionment amongst the remaining operators, the fee change would not have much prior notice and the new operator of the facilities in question would not have to pay fee for that fiscal year. This is an inequitable burden for the other operators.

Reason/benefits for the changes

This new regulation will provide a process for the Board to recover its fees when a member terminates its RNC membership, but the underground facilities associated with that member remain in the ground. As noted above, if the facilities remain underground, they must have an operator, the operator must be a member of an RNC, and the operator may be required to pay a portion of the Board's fee. Under these new regulations, the new operator would now be responsible for the fees that were apportioned to the former operator. This shift of fees to the current owner would prevent the Board from losing portions of its planned budget while maintaining the fee structure and predictability for the other fee-paying members. Given that the Board's fee is billed for the upcoming year, the new owner will be paying commensurate with their new or additional underground facility responsibilities.

Specific purpose and necessity of each section

<u>Section 4005</u>

Section 4005, subdivision (a) is added. It requires the RNC to notify the Board within 14 business days when a member terminates its membership with the RNC. The RNC must provide the Board with the contact information for the terminating member and when it is known by the

RNC: the contact information for the new member or operator of the affected facilities, and the reason the terminating member gave for deciding it no longer needed to be a member of that RNC. This information allows the Board to charge the correct operator for the Board's fees, aids the Board when identifying and contacting operators during an investigation, and aids the Board in enforcing the requirement for operators to be a member of an RNC.

Section 4005, subdivision (b) is added. It describes the process for determining how a member's fee invoice will be managed when that member terminates their RNC membership after the Board publishes its prorated fee schedule, but before the fee is due at the start of the fiscal year that the fee covers. If a member indicates that it is terminating its RNC membership because it sold or transferred the subsurface installations, those assets remain part of the RNC system, and the new operator must be an RNC member and pay the apportioned Board fee for those assets. The apportioned fee will be added to the existing fee, if any, that the operator would have been responsible for without considering these new assets. This process aids the Board in recovering its complete fee schedule and avoids a structural budget deficit.

Section 4010 Fees

Section 4010, subdivision (a)(1) is amended to refer to the new section 4005, subdivision (b) as an exception to how an RNC member's annual Board fee will be calculated. This addition will allow the Board to recover a greater percentage of its apportioned fees and provides notice to affected operators that they may incur fees for their additional facilities under these same conditions.

Economic Impact Assessment

The regulation is not anticipated to have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with other businesses in California.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The Board determined that the adoption of these regulations will not lead to the creation or elimination of jobs in California. The proposed regulations impose few new or revised duties or burdens on operators or RNCs. Rather, the adoption of these regulations will primarily affect the Board's ability to collect its fees from the RNC members and help ensure operators participate in the RNC system as required by law. These changes are not expected to lead to job growth or shrinkage.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

It is not expected that the proposed regulations will create or eliminate businesses in this niche industry. The proposed regulations impose very few new or additional operational requirements on the affected operators and RNCs.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The Board has determined that the regulations will not have any impact on fostering the growth of existing businesses. As discussed above, the primary focus and consequence of the regulations is on keeping the RNC system supplied with updated information and supporting the Board in fulfilling its enforcement obligations under the Dig Safe Act.

(d) Benefits of the Regulation to the Health and Welfare of California Residents:

The proposed regulations will benefit the welfare of California residents by incorporating accountability for changes that involve the transfer of responsibilities for underground facilities. These actions will support the Board in enforcing the Dig Safe Act which would then ultimately protect the health and welfare of California residents.

(e) Benefits of the Regulation to Worker Safety:

The draft regulations would not directly benefit worker safety because they do not regulate worker safety. However, the regulations will support the Board in its efforts to enforce the Dig Safe Act, and this should ultimately lead to an increase in worker safety.

(f) Benefits of the Regulation of the States Environment:

The draft regulations would not directly benefit the state’s environment because it does not regulate the environment.

Alternatives

The Board has determined that adding new provisions to title 19, California Code of Regulations, division 5.0, chapter 3.1, article 2 is the most effective and least burdensome approach to solving the stated problems. This is because the proposed regulations improve existing practices and policies in a manner that most efficiently and effectively enhances safety. The Board considered not adopting the regulations. However, without the regulations, the regional notification system will continue to lack the necessary enforceable requirements related to information accuracy, member asset status, and Dig Safe Law enforcement.

Alternatives which would lessen any adverse impact on small business

The Board finds that no reasonable alternatives were presented to, or considered by, the Board, that would lessen any adverse impact on small businesses. Some operators may be "small businesses," however, to be affected by this regulation, they would have to have at least 500 locate request transmissions per year. The proposed regulations are the most effective and least burdensome way to regulate changes in operator fees based on facilities affected and maintaining the Board's ability to charge for its administrative costs. The RNCs are nonprofit entities, with one being a mutual benefit corporation and the other a public benefit corporation. Gov. Code, § 11342.610, subdivision (b)(6) indicates that nonprofits are exempt from the definition of "small business."

Documents Relied Upon

The Board relied on the following technical, theoretical, or empirical studies, reports, or similar documents in proposing these regulations:

- Staff Report: 811 Notification Center Membership Termination Processes, April 2024
- Staff Report: 811 Notification Center Membership Termination Processes, July 2024
- Staff Report: 811 Notification Center Membership Termination Processes, September 2024
- Staff Report: Proposed Regulations for Current Area of Notification and Membership Termination, December 2024
- Public Comment, West, December 20, 2024
- Public Comment, DigAlert, December 26, 2024
- Public Comment, Nobles, January 07, 202[5]
- Staff Report: Proposed Regulations for Current Area of Notification and Membership Termination, February 2025

- Staff Report: Proposed Regulations for Current Area of Notification and Membership Termination, July 2025
- Notice of Public Comment period, December 2025

Duplication or Conflict with Federal Regulations

The Board has not found any unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as this proposed rulemaking action.