

**STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW  
300 CAPITOL MALL, SUITE 1250  
SACRAMENTO, CA 95814**

**TITLE 1, CALIFORNIA CODE OF REGULATIONS  
UNDERGROUND REGULATIONS: AMENDMENT OF SECTIONS 250, 260, 270, AND 280**

**NOTICE OF PROPOSED RULEMAKING**

The Office of Administrative Law ("OAL") proposes to adopt the amended regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

OAL will hold a virtual public hearing on May 12, 2021, at 9:00 a.m.

Attendees may participate via Microsoft Teams online meeting platform or telephone conferencing. To participate via Microsoft Teams online meeting platform please email [amy.gowan@oal.ca.gov](mailto:amy.gowan@oal.ca.gov) by 4:30 p.m. on May 11, 2021, to request a link to the meeting. A link to the meeting will also be posted under the Announcements heading on the front page of the OAL website, no later than 8:00 a.m. the morning of the hearing. To participate by telephone, call 1-916-282-3524 and enter Conference ID: 439 922 79#.

As a reasonable ADA accommodation, limited in person seating may be available at the hearing in the OAL Training Room, 300 Capitol Mall, Suite 1210, Sacramento, CA 95814. Attendees must comply with all COVID-19 safety protocols. Please contact Amy Gowan at [amy.gowan@oal.ca.gov](mailto:amy.gowan@oal.ca.gov) or (916) 323-6225 by 4:30 p.m. on May 11, 2021, if an accommodation is necessary.

Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The hearing will continue on the date noted above until all testimony is submitted, or until 12:00 p.m., whichever is later. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. OAL requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony via email.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Office of Administrative Law  
Attn: Amy Gowan  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at (916) 323-6826 or by e-mail to [amy.gowan@oal.ca.gov](mailto:amy.gowan@oal.ca.gov). The written comment period closes on May 12, 2021. To ensure OAL will consider your comment it must be received by May 12, 2021. When commenting, please indicate the proposed rulemaking action to which your comment refers.

## **AUTHORITY AND REFERENCE**

Government Code section 11342.4 authorizes OAL to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific sections 11000 and 11340.5 of the Government Code.

## **INFORMATIVE DIGEST**

### Summary of Existing Laws and Effect of the Proposed Action

Government Code section 11340.5 requires executive branch state agencies adopt regulations pursuant to California's Administrative Procedure Act ("APA"), unless there is an express statutory exemption. Pursuant to section 11340.5, OAL may issue a determination as to whether an agency's guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that has not been adopted pursuant to the APA is a regulation as defined in law (i.e., an "underground regulation") that must be adopted pursuant to the APA. Existing regulations establish standards and procedures for submitting petitions for review of purported underground regulations to OAL and issuance of these determinations by OAL. Existing regulations also establish the process by which OAL's issuance of a determination must be suspended by an agency certifying that it will not issue, use, enforce, or attempt to enforce a purported underground regulation.

The amendments proposed in this rulemaking action would add specificity and greater detail regarding the information required to be submitted to OAL in a petition for underground regulation review, including amending the definition of "interested person," defining the "challenged agency," and clear procedural requirements based on the delivery method of the petition (e.g., mail, personal delivery, e-mail). The amendments would identify certain circumstances for declining or issuing a summary disposition more appropriately as facts for OAL to consider when deciding whether to accept a petition. The amendments would clarify existing procedures for agencies to follow in certifying that they will not issue, use, enforce, or attempt to enforce alleged underground regulations, and clarify persons authorized to make

these certifications. The amendments also add a procedure for OAL to reconsider a petition that has been suspended pursuant to section 280(a) if OAL learns that the challenged agency continues to issue, use, enforce, or attempt to enforce the challenged rule. The amendments would also include stylistic, grammatical, and minor, non-substantive changes to existing regulation text.

### Anticipated Benefits of the Proposed Regulations

The broad objective of the regulations is to ensure that the processes for submittal and review of petitions for underground regulations are clear and precise. The specific benefits anticipated from the regulations are increased openness and transparency in government. A person's ability to petition for underground regulation review is an important check on government overreach, and it is crucially important that the petition procedures are not confusing or ambiguous.

### Evaluation of Inconsistency/Incompatibility with Existing State Regulations

OAL has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area of law, OAL has concluded that these are the only regulations that concern the issuance of determinations pursuant to the California Administrative Procedure Act.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

OAL has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: Negligible.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

Cost impacts on a representative private person or business: OAL is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### Results of the Economic Impact Analysis/Assessment

OAL concludes that it is unlikely that (1) the proposal will eliminate any jobs, (2) the proposal will create any jobs, (3) the proposal will create any new businesses, or (4) the proposal will eliminate any existing businesses or result in the expansion of businesses currently doing business within the state. OAL believes the proposed amendments will benefit California residents by adding specificity to the underground regulation petition process and increased openness and transparency of government. OAL believes there may be minimal benefit to the environment by expressly permitting submission of petitions by email which may save paper. OAL does not anticipate any benefits to worker safety.

### Small Business Determination

OAL has determined that the proposed regulations do affect small businesses. These regulations establish procedures that must be followed by interested parties submitting petitions to OAL which may include small businesses.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), OAL must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, as effective and less burdensome to affected private persons than the proposed action, or more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

OAL invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

## **CONTACT PERSONS**

Inquiries concerning the proposed rulemaking action may be directed to:

Amy Gowan  
Office of Administrative Law  
300 Capitol Mall, Suite 1250, Sacramento, CA 95814  
Phone: (916) 323-6225  
Email: amy.gowan@oal.ca.gov

The backup contact person for these inquiries is:

Thanh Huynh  
Office of Administrative Law  
300 Capitol Mall, Suite 1250, Sacramento, CA 95814  
Phone: (916) 323-6225  
Email: thanh.huynh@oal.ca.gov

### **AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

OAL will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons, and the STD. 399. Please direct requests for copies to the contact person(s) listed above. Due to COVID-19 restrictions please contact Amy Gowan at [amy.gowan@oal.ca.gov](mailto:amy.gowan@oal.ca.gov) or (916) 323-6225 to make an appointment to review the rulemaking file in person.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, OAL may adopt the proposed regulations substantially as described in this notice. If OAL makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before adopting the regulations as revised. Please send requests for copies of any modified regulations to the contact person(s) listed above. If substantive modifications are made, OAL will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, OAL will make copies of the Final Statement of Reasons available. Please send requests for copies to the contact person(s) listed above.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications highlighted, as well as the Final Statement of Reasons, when completed, and modified text, if any, can be accessed via OAL's website at [www.oal.ca.gov](http://www.oal.ca.gov).