

ITEM 14
ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING
GENERAL CLEANUP PROVISIONS

PROPOSED AMENDMENTS TO
CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5
ARTICLES 1, 2, 3, 4, 5, 6, 7, 8, AND 10
SECTIONS 1181.1 THROUGH 1188.2 AND 1190 THROUGH 1190.5

EXECUTIVE SUMMARY

Section 1189.2(a) of the Commission's regulations authorizes the Commission to adopt an order to initiate rulemaking. Following adoption of the order, staff will publish a notice of hearing and mail the notice and rulemaking package to all interested persons for public comment.

The purpose of this rulemaking is to: (1) clarify and streamline Commission regulations; (2) eliminate duplicative language; and (3) update authority and reference citations.

Proposed Order Number 15-01(Exhibit A)

The substantive proposed changes that clarify and streamline Commission policies and procedures are described immediately below. The other proposed changes eliminating duplicative language and increasing clarity are described under the *technical and non-substantive proposed changes* heading below.

Substantive Proposed Changes

Following is a summary of the substantive proposed changes and corresponding new language intended to clarify and streamline Commission regulations.

Personal Identifying Information in Commission Filings

Section 1181.3. Filing and Service of Written Materials and New Filings.

The purpose of this proposed change is to prevent the inclusion of personal identifying information, which violates state or federal privacy laws, in written materials filed with the Commission. In its regular course of business, the Commission does not handle personal confidential information other than the data of its own employees necessary for personnel administration. Filings with the Commission are public documents which are routinely posted to the Commission's website, consistent with the Commission's regulations and policies and procedures and which are subject to a public hearing under the Bagley-Keene Open Meetings Act and the Commission's enabling statutes.

New language is proposed in section 1181.3(a) stating that " Filings shall not contain personal identifying information that violates state or federal privacy laws, including, but not limited to the provisions of California Civil Code section 1798 et seq."

This proposed change will safeguard against the accidental distribution of material containing personal identifying information by putting the filer on notice that this information should not be included in any filing. Furthermore, it allows Commission staff to deem a new filing incomplete if this type of information is included, thus providing the filer the benefit of redacting the information while tolling the original filing date.

Authority to File Test Claims and Incorrect Reduction Claims

Section 1183.1. Test Claim Filing.

Section 1185.1. Incorrect Reduction Claim Filing.

The purpose of these proposed changes is to clarify which persons have the authority to file a test claim or incorrect reduction claim with the Commission on behalf of a school district or local agency. The Commission should take jurisdiction only if it is clear that the claim has been filed with the appropriate authority delegated by the governing body of the local agency or school district. This regulation will prevent the filing of claims by persons who, while associated with the local agency or school district, may not have the legal authority to bind that local government.

New language is proposed in sections 1183.1(a) and 1185.1(a) specifying that a test claim or incorrect reduction claim may be filed as follows:

- (1) A county auditor, auditor-controller, or director of finance who has assumed the duties of controller, may file on behalf of a county.
- (2) A city manager, director of finance, or other officer with a delegation by ordinance or resolution from the city council, may file on behalf of a city.
- (3) A district superintendent may file on behalf of a school district.
- (4) A chancellor, vice chancellor, director of finance, or other officer with authority delegated by the governing body by ordinance or resolution, may file on behalf of a community college district.
- (5) A general manager or other officer with authority delegated by the governing body by ordinance or resolution may file on behalf of a special district.

Substitution of Parties for Test Claims

Section 1187.14. Substitution of Parties and Dismissal of a Matter.

The purpose of this proposed change is to specify that test claims filed by an agency that is not eligible to seek reimbursement because it is not subject to the taxing and spending limitations of article XIII A and B of the California Constitution, may be taken over by eligible claimants in the same manner as those test claims that are withdrawn or deemed abandoned. The test claim process is similar to a class action and the first claim filed with the Commission is the test claim. If a test claim is filed but it is later determined that the test claimant is not an eligible claimant, this proposed language will allow an eligible claimant to take over the claim, thus preserving the right of similarly situated eligible claimants to a mandate determination by the Commission.

Section 1187.14 is proposed to be renamed "Substitution of Parties and Dismissal of a Matter." New language is proposed in 1187.14(b)(1) as follows:

For test claims that are withdrawn or deemed abandoned, or filed by an agency that is not eligible to seek reimbursement because it is not subject to the taxing and spending limitations of article XIII A and B of the California Constitution, Commission staff shall serve written notice to initiate dismissal of the test claim to everyone on the mailing list for the matter. The notice shall announce that another local agency or school district may take over the claim by substitution of parties within 60 days of the issuance of the notice. The notice shall also announce the opportunity to provide written comments on the proposed dismissal of the test claim. A copy of the notice shall also be posted on the Commission's website.

Technical and Non-Substantive Proposed Changes

In an effort to “clean-up” the Commission's regulations, the proposed rulemaking eliminates duplicative language, makes terminology consistent, updates authority and reference citations, and fixes clerical or internal reference errors in prior rulemaking.

Eliminate Duplicative Language and Increase Clarity

Language in the sections listed below is either proposed for elimination because it is duplicative of language elsewhere in the governing regulations or has been otherwise modified to improve readability.

1181.6(d) – The Commission's regulations already make clear in section 1181.1 that actions of the executive director may be appealed.

1181.13 – Rather than restating elements of the Bagley-Keene Open Meeting Act, the proposed language cites to the law and indicates Commission compliance.

1183.9(a) and 1183.9(b) – Rather than including an exhaustive list of the elements of an expedited parameters and guidelines that may be addressed in the successful test claimant's comments, these two subdivisions are consolidated and simplified with language stating that the claimant's comments "may include proposed modifications" to the staff's draft expedited parameters and guidelines. This language is simpler to interpret and allows the claimant to comment on any aspect of the draft proposed parameters and guidelines.

1183.9(c) – Formerly subdivision (d), this language is replaced to specify the 15-day rebuttal period rather than requiring the reader to reference another section of the regulations to determine the timeframe.

1183.13(a) – Clarifies what Commission staff considers when preparing a draft proposed decision and parameters and guidelines, whether that draft was submitted by the claimant or was prepared via the expedited process.

1185.7(b) – Clarifies what Commission staff considers when preparing a proposed decision on an incorrect reduction claim.

1187.9(b)(1)(F) – Eliminates unnecessary reference to "proposed decision" or "comments filed on the matter" when a request for postponement of a matter relies on the "complexity of issues" as a circumstance for good cause.

1187.15 – Clarifies who may request that the Commission reconsider and change an adopted decision. Removes duplicative language from subdivision (1)(A) to improve readability and more clearly explain the decision making process of the Commission.

Consistent Terminology

Language has been changed for consistent use of terminology throughout the regulations. For example, replacing instances of "staff analysis" with "draft proposed decision" to eliminate any ambiguity in the Commission's terminology and processes. A similar, non-substantive, change is proposed in section 1187.15 to refer to "an Adopted Decision" rather than a "Prior Final Decision."

Clerical Changes of Internal References, Punctuation and Style

Minor and non-substantive changes in internal references, punctuation and style are proposed to improve the readability and clarity of the regulations. The proposed regulations also include general stylistic changes to improve readability and to ensure that "plain English" is used throughout the Commission's regulations.

Updated Authority and Reference Citations

Citations to statute and court cases have been reviewed and updated as necessary throughout the Commission regulations to: 1) remove outdated or incorrect citations; and 2) add new citations to current law.

Text of Proposed Regulations (Exhibit B)

Commission staff's draft of the proposed regulatory text is attached as Exhibit B. The proposed text is in ~~strikeout~~ and underline to show proposed changes to current regulatory language. The attached text of proposed regulations includes a table of contents for ease of navigation. Proposed text submitted to OAL will not include a table of contents.

Before filing with the OAL, staff may make technical corrections, as may be required.

Timetable

If the order is adopted, staff will proceed pursuant to the following timetable:

January 27, 2015	Notice of Rulemaking, Initial Statement of Reasons, and Proposed Text will be filed with the Office of Administrative Law for publication.
February 6, 2015	Notice of Proposed Regulatory Action will be issued and published.
March 9, 2015	Last day to request public hearing.
March 23, 2015	End of public comment period.
March 27, 2015	Adopt proposed rulemaking package.
April 10, 2015	File Adopted Regulations with the Office of Administrative Law.
July 1, 2015	Effective date of adopted regulations.

Staff Recommendation

Staff recommends the Commission adopt Proposed Order 15-01.