

ITEM 6
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 1181.2 THROUGH 1181.3; 1182.2; 1182.7; 1182.9; 1182.10; 1182.15;
1183.1 THROUGH 1183.4; 1183.6; 1183.8 THROUGH 1183.13; 1183.15 THROUGH 1183.17;
1184.1; 1185.1 THROUGH 1185.3; 1185.7; 1185.8; 1186.2; 1186.4; 1187.5; 1187.8; 1187.9;
1187.12; 1187.14; 1187.15; 1190.1 THROUGH 1190.3; 1190.5

EXECUTIVE SUMMARY

Section 1189.2(a) of the Commission on State Mandates' (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 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) update language for consistency; (3) clarify the definition of interested person; (4) clarify the certification and signature requirements for documents filed with the Commission; (5) clarify the requirements to e-file documents in a searchable PDF format and include an original signature; (6) clarify the period of limitation for filing a test claim consistent with the statutory scheme; (7) clarify the requirement for a single claimant representative for joint test claim filing; (8) clarify the requirements for filing a proposed amendment to parameters and guidelines consistent with changes to the Government Code; (9) clarify evidence submission requirements; (10) clarify that the same certification and filing requirements apply to all new filings and written materials; (11) update authority and reference citations; and (12) update punctuation for consistency throughout the regulations.

I. Proposed Order Number 17-01 (Exhibit A)

The proposed changes are described immediately below.

A. Substantive Proposed Changes

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

1. Clarification of the Definition of Interested Person

Section 1181.2. Definitions.

This proposed amendment clarifies the definition of an “interested person” who may participate in Commission proceedings to mean any individual, local agency, school district, state agency, corporation, partnership, association, or other type of entity, who has an interest in a matter before the Commission, but is not a party or interested party with respect to that matter.

2. Clarification of Certification Requirement for Filing and Service of Written Materials and New Filings and Submission Requirement that PDFs Include an Original Signature and Remain Searchable

Section 1181.3(a). Certification.

The proposed amendment makes clear what is already stated throughout the Commission’s regulations: that all new filings or other written materials must be signed, under penalty of perjury, and with a declaration that the filing is true and correct to the best of the declarant’s personal knowledge, information, or belief. The proposed amendment also requires the filing to include the date, the declarant’s title, address, telephone number, and email address.

Section 1181.3(b). E-Filing.

In addition, the proposed amendment clarifies how to submit electronic documents with a signature while maintaining the searchability of the document. Electronic signatures interfere with date stamping and do not allow for addition of proofs of service or mailing lists, which Commission staff appends before electronically serving the document. The proposed amendment requires an electronic filer to submit a searchable original PDF document (not a scanned document), along with a scanned signature page (rather than an electronically signed signature page).

Finally, the title of the section is updated to reflect the changes described above.

3. Filing Period Requirements for Test Claims

Section 1183.1. Test Claim Filing.

The regulation provides the requirements for test claim filing, including the period of limitation within which a successful test claim must be filed in accordance with Government Code section 17551(c). Government Code section 17551(c) states that “Local agency or school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” The existing regulation, however, confuses the period of limitation for filing test claims with the period of reimbursement identified in parameters and guidelines for approved test claims by stating that “For purposes of claiming based on the date of first incurring costs, ‘within 12 months’ means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.”

The proposed amendment applies a clear, predictable, and precise one year period of limitation to the filing of all test claims, whether based on the effective date of the test claim statute or executive order or the date that costs were first incurred under the test claim statute or executive order. This amendment deletes the sentence that states “For purposes of claiming based on the date of first incurring costs, ‘within 12 months’ means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant,” and makes the time for filing test claims under section 1183.1 consistent with Government Code section 17551(c), by adding the words “(365 days)” after the words “must be filed not later than 12 months”

following the effective date of a statute or executive order, and adding the words “(365 days)” after the words “or within 12 months” of first incurring increased costs as a result of a statute or executive order, whichever is later.

4. Joint Test Claim Single Representative Requirement

Section 1183.1. Test Claim Filing.

Test claims may be prepared as a joint effort between two or more claimants, under specified circumstances. The proposed amendment clarifies the requirement that joint claimants must designate one person to act as the sole representative for all claimants on the test claim.

5. Requirement for Use of Audited Claim Data in Development of Reasonable Reimbursement Methodology

Section 1183.17. Amendments to Parameters and Guidelines.

The proposed amendment harmonizes the regulation with changes made to Government Code section 17518.5, which defines “reasonable reimbursement methodology.” As amended by Statutes 2016, chapter 31, section 17518.5 provides that where a reasonable reimbursement methodology is, in whole or in part, based on costs included in claims submitted to the Controller, only those cost claims that have been audited may be relied upon. The proposed amendment recognizes that these provisions would only arise in the case of an *amendment* to parameters and guidelines, because initial parameters and guidelines proposals including a reasonable reimbursement methodology could not be based on cost claims submitted to the Controller; cost claims cannot be submitted until after the adoption of initial parameters and guidelines by the Commission and the issuance of claiming instructions by the Controller. The regulations therefore include the new requirements of section 17518.5 only in section 1183.17 of the regulations dealing with amendments to parameters and guidelines, and not in section 1183.12, addressing the adoption of new parameters and guidelines following a test claim decision. Additionally, the provision requiring a statement that the proposal is based on cost claims submitted to the Controller for reimbursement is necessary to effectuate the requirement in section 17518.5(e)(2-3) that the Commission notify the Controller within 30 days of an amendment request that relies on cost claims, so that the Controller, in turn, may select and audit a representative sample of the claimed costs within 360 days.

6. Filing and Service of All Documents, and Signature and Certification of Evidence Requirements; Elimination of Duplicative Language

Sections affected: 1182.2; 1182.7; 1182.9; 1182.10; 1183.1; 1183.2; 1183.3; 1183.4; 1183.6; 1183.8; 1183.9; 1183.10; 1183.11; 1183.12; 1183.13; 1183.15; 1183.16; 1183.17; 1184.1; 1185.1; 1185.2; 1185.3; 1185.7; 1185.8; 1186.2; 1186.4; 1187.8; 1187.9; 1187.12; 1187.14; 1187.15; 1190.1; 1190.2; 1190.3; 1190.5.

The above-described regulations address and provide for the filing of findings of significant financial distress, test claims, proposed parameters and guidelines, jointly proposed parameters and guidelines, requests to amend parameters and guidelines, jointly proposed requests for early termination of a reasonable reimbursement methodology, review of the State Controller’s claiming instructions, incorrect reduction claims, requests for inclusion of a reimbursable program in the state mandates apportionment system (SMAS) (defined as “matters”), requests for extensions of time or postponements of hearings, substitutions of parties, requests for reconsideration, and requests for mandate redeterminations, and all comments, rebuttals, and

supporting documentation associated with such matters (defined as “written materials”). All such filings are subject to the requirements of section 1181.3 (filing and service, including e-filing), and most are also subject to section 1187.5 (evidentiary requirements for article 7 quasi-judicial matters). However, portions of the language from either section 1181.3 or section 1187.5, or both, are repeated throughout the above-described regulations, with varying degrees of consistency and detail. The proposed amendments provide uniformity to those varied references, and ensure that the requirements of section 1181.3 are applied to all documents filed with the Commission, and the provisions of section 1187.5 are followed where applicable.

7. Elimination of Duplicative Language; Consistency; Punctuation and Style

In an effort to “clean-up” the Commission’s regulations, the proposed rulemaking makes terminology consistent, corrects punctuation and spacing, updates authority and reference citations, and fixes clerical or internal reference errors from prior rulemakings.

Technical Change - Section 1187.5. Evidence Submitted to the Commission.

The proposed amendment removes the word “or” between “personal knowledge” and “information” with respect to the provision requiring persons signing written representations of fact to do so based on the declarant’s personal knowledge or information or belief. The proposed amendment is a minor, technical change and is consistent with evidentiary standards and the penalty of perjury standard stated in the Government Code, including section 17553 pertaining to test claim filings and section 17570 pertaining to mandate redetermination requests and the substantial evidence requirement applicable to Commission decisions.

Section 1185.4. Joining a Consolidated Incorrect Reduction Claim.

The proposed amendment removes the word “or” between “personal knowledge” and “information” with respect to the provision requiring a party seeking to join a consolidated incorrect reduction claim to file a notice of intent accompanied by a declaration. The proposed amendment is a minor, technical change and is consistent with evidentiary standards and the penalty of perjury standard stated in the Government Code, and with section 1187.5 of these regulations.

Section 1187.7. Witnesses and Subpoenas.

The proposed amendment removes the word “or” between “personal knowledge” and “information” with respect to the provision permitting an application for a subpoena to compel the attendance of a witness, and an application for a subpoena duces tecum for the production of documentation. The proposed amendment is a minor, technical change and is consistent with evidentiary standards and the penalty of perjury standard stated in the Government Code, and with section 1187.5 of these regulations.

Consistent Terminology

Several sections have been amended to apply consistent terminology or phrasing.

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.

Sections affected: 1182.15; 1183.1; 1185.2; 1187.15.

The words “and hearing procedures” are replaced with “requirements and procedures relating to applications” in section 1182.15(b). The word “of” is changed to “on” in section 1183.1(a)(1). A space is inserted after “(c)” and before “Within” in section 1185.2(c). The period is replaced with a comma after “and” in section 1187.15(c)(4), because the new section 1187.15(c)(5) is now the last of the list of requirements.

Updated Authority and Reference Citations

Citations have been updated to maintain consistency throughout the regulations and to add references, where appropriate.

Sections affected: 1183.17 and 1187.5.

II. Text of Proposed Regulations (Exhibit B)

The draft proposed regulatory text is attached as Exhibit B. The proposed text is in strikeout and underline to show proposed changes to current regulatory language.

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

III. Timetable

If the order is adopted at the May 26, 2017 hearing of the Commission, staff will proceed pursuant to the following timetable:

May 30, 2017	Notice of Rulemaking, Initial Statement of Reasons, and Proposed Text will be filed with the Office of Administrative Law for publication.
June 9, 2017	Notice of Proposed Regulatory Action will be issued and published.
July 10, 2017	Last day to request public hearing.
July 24, 2017	End of public comment period.
July 28, 2017	Adopt proposed rulemaking package.
August 11, 2017	File Adopted Regulations with the Office of Administrative Law.
January 1, 2018	Effective date of adopted regulations.

Staff Recommendation

Staff recommends the Commission adopt Proposed Order 17-01.