

**COMMISSION ON STATE MANDATES**

980 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
E-mail: csminfo@csm.ca.gov



September 20, 2006

Ms. Jeannie Oropeza  
Department of Finance  
Education Systems Unit  
915 L Street, 7th Floor  
Sacramento, CA 95814

*And Affected State Agencies and Interested Parties (See Enclosed Mailing List)*

**Re: Final Staff Analysis and Proposed Parameters and Guidelines Amendment**  
*Removal of Chemicals, 03-PGA-04*  
Education Code Section 49411  
Statutes 1984, Chapter 1107; as Amended by Statutes 1994, Chapter 840  
Department of Finance, Requestor

Dear Ms. Oropeza:

The final staff analysis and proposed parameters and guidelines amendment are enclosed for your review.

**Commission Hearing**

The hearing on this matter is set for Wednesday, **October 4, 2006**, at 1:30 p.m. in Room 126 of the State Capitol, Sacramento, California. This item will be scheduled for the consent calendar unless any party objects. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions, please contact Tina Poole at (916) 323-8220.

Sincerely,

PAULA HIGASHI  
Executive Director

Enclosures

**ITEM 11A**  
**FINAL STAFF ANALYSIS**  
**PROPOSED PARAMETERS AND GUIDELINES AMENDMENT**

Education Code Section 49411

Statutes 1984, Chapter 1107

As Amended by Statutes 1994, Chapter 840

*Removal of Chemicals (03-PGA-04)*

Department of Finance, Requestor

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**EXECUTIVE SUMMARY**

**Background**

On August 24, 1988, the Commission on State Mandates (Commission) adopted the Statement of Decision approving this test claim pursuant to article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the increased costs of performing the following activities:<sup>1</sup>

1. Implementing and maintaining a program for the regular removal and disposal of all chemicals whose shelf life has elapsed in accordance with the guidelines issued by the State Department of Education.
2. Certifying to the Superintendent of Public Instruction whether the district is in compliance with the guidelines.

On April 13, 2004, Department of Finance (DOF) requested an amendment to the original parameters and guidelines to conform them to current law.<sup>2</sup> On September 8, 2006, Commission staff issued the Draft Staff Analysis and Proposed Parameters and Guidelines Amendments for comment. No comments were filed. Therefore, no changes were made to the Draft Staff Analysis and the Proposed Parameters and Guidelines Amendments, as originally issued.

**Discussion**

Staff reviewed DOF's proposal and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language. Substantive changes made to Section IV. Reimbursable Activities are discussed below.

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<sup>1</sup> Exhibit A.

<sup>2</sup> Exhibit B.

### Department of Finance Request

On April 13, 2004, DOF requested an amendment for the purpose of conforming the parameters and guidelines to current law. DOF stated that Statutes 1984, chapter 1107 originally imposed a state-mandated local program by requiring each school district to certify to the Superintendent of Public Instruction whether it is in compliance with the State Department of Education's (CDE) guidelines for the regular removal and disposal of all science laboratory chemicals whose estimated shelf life has expired. Statutes 1994, chapter 840 amended Education Code section 49411 and removed the districts' compliance certification requirement, thus making compliance with the CDE's guidelines permissive. As a result, no claimable mandate costs remain.

Accordingly, DOF requests that the parameters and guidelines be amended to provide that no costs may be claimed after January 1, 1995, the effective date of Statutes 1994, chapter 840.

### Interested Party Comments

In its comments dated June 1, 2004, SixTen & Associates argues that the DOF request is too broad and that the only substantive change is that school districts are no longer required to certify to the Superintendent, on or before January 1, 1986, whether the district is in compliance with the guidelines. The regular removal and disposal of the chemicals continues, though without the certification.

### Staff Findings

Staff finds that the 1994 amendment to Education Code section 49411, subdivision (b), deleted the provision that required school districts to report compliance with the CDE guidelines to the superintendent by January 1, 1986, and thus, this one-time reimbursable activity should be deleted from the parameters and guidelines.

The Commission's original decision, adopted in 1988, includes a separate finding that the costs of complying with the CDE guidelines developed pursuant to Education Code section 49411, subdivision (a), imposed a reimbursable state mandate upon local school districts that are required to comply with the guidelines. There is no evidence in the record that the CDE guidelines have been repealed. Therefore, staff finds that the DOF's request to eliminate reimbursement for the costs of implementing the CDE guidelines should be denied.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed parameters and guidelines amendment, as modified by staff, beginning on page 3.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Amendment Proposed: October 4, 2006  
Adopted: ~~10/26/89~~ October 26, 1989

## **PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF**

Education Code Section 49411  
Chapter 1107, Statutes of 1984, Chapter 1107  
As Amended by Statutes 1994, Chapter 840

Department of Education Guidelines

Removal of Chemicals (03-PGA-04) (CSM-4211 and CSM-4298)

January 1, 1995 and Subsequent Years

### **I. SUMMARY OF THE MANDATE**

On July 28, 1988, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that Chapter 1107, Statutes of 1984, chapter 1107 and the Department of Education Guidelines developed pursuant thereto, imposed a new program or higher level of service for school districts and county offices of education within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission determined the following activities to be reimbursable:

- Implementing and maintaining a program for the regular removal and disposal of all chemicals whose shelf life has elapsed in accordance with the guidelines issued by the State Department of Education, and
- Certifying to the Superintendent of Public Instruction whether the district is in compliance with the guidelines.

Statutes 1994, chapter 840 amended Education Code section 49411, subdivision (b), and deleted the language that required each school district, on or before January 1, 1986, to certify compliance with the guidelines to the superintendent.

On October 4 2006, the Commission amended the parameters and guidelines to conform to Statutes 1994, chapter 840.

### **H. COMMISSION ON STATE MANDATES DECISION**

~~On July 28, 1988, the Commission on State Mandates determined that a new program and a higher level of service of an existing program is now required of school districts by Chapter 1107, Statutes of 1984, and the Department of Education Guidelines. It was established that the guidelines which were issued by the State Department of Education are an "executive order" as defined by Government Code section 17516 and imposed a reimbursable state mandate upon local school districts who are required to comply with the guidelines for the regular removal and disposal of all chemicals whose shelf life has elapsed.~~

~~Chapter 1107, Statutes of 1984, further imposed a reimbursable state mandate upon local school districts by requiring each school district to certify to the Superintendent of Public Instruction whether the district is in compliance with the guidelines.~~

## **II. ELIGIBLE CLAIMANTS**

~~Any school districts, and or county offices of education, as defined in Government Code section 17519, that incurred mandated incurs increased costs as a result of this mandate implementing Chapter 1107, Statutes of 1984, and the Department of Education Guidelines is eligible to claim reimbursement.~~

## **IV.III. PERIOD OF REIMBURSEMENT**

~~Chapter 1107, Statutes of 1984, became effective January 1, 1985, and was signed into law on September 12, 1984. Section 17557 of the Government Code states that a test claim must be submitted on or before November 30 following a given fiscal year to establish eligibility for reimbursement for that year. The test claim for this mandate was filed on November 26, 1985; therefore, costs incurred on or after September 13, 1984, are eligible for reimbursement.~~

~~Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section 17561(d)(3) of the Government Code (GC), all claims for the reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.~~

~~If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by GC Section 17564.~~

This parameters and guidelines amendment is effective January 1, 1995.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
2. A school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
3. In the event revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c), between October 15 and January 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If

the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

#### **V.IV. REIMBURSABLE COSTS ACTIVITIES**

##### A.Scope of Mandate

~~School districts and county departments of education shall be reimbursed for the costs of (1)implementing and maintaining a program for the regular removal and disposal of all chemicals whose shelf life has elapsed in accordance with the guidelines issued by the State Department of Education and (2) certifying to the Superintendent of Public Instruction whether the district is in compliance with the guidelines.~~

##### Ongoing Reimbursable Activities

~~For each eligible claimant, The following ongoing cost items~~activities~~ are reimbursable:~~

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.~~For each eligible claimant, the following activities are reimbursable:~~

- ~~1.Reimbursement is available for elementary, secondary and unified school districts. Salaries and benefits of personnel at school sites, district offices and county offices of education, both certificated and classified, who perform any duties related to compliance with this mandate. Salaries and benefits of substitute employees who provided coverage for employees performing duties related to said mandates.~~
- ~~2.1.~~Consultant fees for preparation of initial chemical inventories, preparation of chemical profile inventories for chemical disposal purposes, supervision (monitoring) of contractor during on-site related activities.
- ~~3.2.~~All contractor fees/charges for review and computer entry of inventories.

4.3. All costs for the regular removal and disposal of chemicals that have not yet reached a "retrograde" condition (Health and Safety Code Section 25121.5) but still pose a significant threat to the health and safety of teachers, staff, and students as established by the most current Department of Education Guidelines. The costs of regular removal and disposal may include, but are not limited to, the following:

- a. Consultant fees for supervision of lab-packing, loading, etc.
- b. Contractor fees/charges for lab-packing of chemicals, transportation of waste and/or charges associated with final disposition of the waste material to include: treatment; recycling; incineration; landfill disposal.
- c. All costs incurred by the school district for packing of these chemicals in-house using district personnel. These costs may include disposable body suits, protective gloves, D.&T. approved shipping containers (drums, liners, etc.), absorbent materials for spill containment and lab-packing, D.O.T. approved shipping labels for D.O.T. containers, publications used for reference and/or training of district personnel to include "Science Safety Handbook for California High Schools.
- d. Other miscellaneous costs incurred by the district which are imposed by local, state and/or federal governmental agencies. These costs are normally charged as taxes or surcharges, such as excise tax fees, generator fees and/or superfund taxes, by the particular agency. These costs are reimbursable only to the extent that they are incurred for the disposal of chemicals which have not yet reached a "retrograde" condition as specified above.

#### **B. Certification Costs**

~~For each claimant which certified by June 30, 1988, to the Department of Education its compliance with the guidelines, the costs of removal and disposal of "retrograde materials" prior to June 30, 1988, but subsequent to the enactment of Chapter 1107/84, are also reimbursable. The costs of removal and disposal have been previously defined in Item V.B.4.a. d. above.~~

#### **VI. NON-REIMBURSABLE ACTIVITIES**

All costs incurred after June 30, 1988, associated with the removal of chemicals which meet the definition of "retrograde materials" contained in Health & Safety Code section 25121.5 are non-reimbursable.

#### **VII. LIMITATION**

No claim for reimbursement for the costs associated with the actual removal and disposal of chemicals to comply with the certification requirements of Statutes 1984, chapter 1107 Chapter 1107/84 shall be reimbursed by the State Controller until verification has been obtained by the State Controller's Office from the Department of Education that the claimant complied with the certification requirements and deadline of June 30, 1988.

A claim may not include costs for removal and disposal of chemicals which were known to be "retrograde material" (Health & Safety Code, ~~§ section~~ 25121.5) prior to enactment of Statutes 1984, chapter 1107 Chapter 1107/84 and the issuance of the Department of Education Guidelines.

## V. CLAIM PREPARATION AND SUBMISSION

### VIII.

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

#### A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

##### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

##### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

##### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

##### 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

##### 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.



## B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND OTHER REIMBURSEMENTS**

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

## **VIII. STATE CONTROLLER'S REVISED CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the revised parameters and guidelines adopted by the Commission.

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<sup>1</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon the revised parameters and guidelines adopted by the Commission.

**IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

**X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission