

ITEM 12
ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING
GENERAL CLEANUP PROVISIONS

PROPOSED AMENDMENTS TO
CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5
REPEAL AND REPLACE ARTICLES 1, 2, 3, 4.5, 5, 6, 6.5, 7, 8, 8.5, AND 10

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) improve the overall navigation and readability of the Commission's regulations by reorganizing and renumbering articles and sections.

Staff conducted an informal workshop on September 26, 2013, at which it solicited input from state and local agencies and members of the public on Commission staff's draft proposed regulations. Suggestions from that workshop are included in the proposed regulations to the extent that they are consistent with the constitutional and statutory duties of the Commission, the Commission's Mission Statement, and the stated purpose of this rulemaking.

Proposed Order Number 13-01(Exhibit A)

The proposed rulemaking includes a complete reorganization and renumbering of the Commission's existing regulations, except for article 9, the Commission's Conflict Code, which will be amended in a separate proposal under the California Fair Political Practices Commission's process. The substantive proposed changes that clarify and streamline Commission policies and procedures are described immediately below. The main elements of the renumbering and reorganization are described under the *technical and non-substantive proposed changes* heading below. A more detailed account of the renumbering and reorganization can be found in Exhibits C (the proposed article reorganization map) and D (a proposed disposition table showing where the content of the current regulatory provisions is reorganized in the proposed regulations).

Substantive Proposed Changes

Following is a summary of the substantive proposed changes and corresponding new language intended to clarify and streamline Commission regulations. Unless otherwise noted, all section references are to the sections as numbered in the proposed regulations (Exhibit B), not the current Commission regulations.

New and Clarified Definitions

New and amended definitions in §1181.2(e), (f), (h), (i), (k), (l), (m), (s), and (t).

The proposed regulations contain new and clarified definitions, aligned with statute as described below:

- §1181.2(e) is clarified definition of "Completed" to explicitly include the types of matters that must be filed and deemed complete.
- §1181.2(f) is a clarified definition of "Filing date".
- §1181.2(h) replaces the defined term "Informational proceeding" with "Informational hearing" for consistency with Article 8.
- §1181.2(i) amendments to this section clarify that an "Interested party" is an entity with a beneficial interest in a matter pending before the Commission.
- §1181.2(k) is a newly added definition "New filing" for service and filing purposes described in §1181.3.
- §1181.2(l) is a clarification of "Parties" for each type of matter before the Commission.
- §1181.2(m) is the addition of "Real Party in Interest."
- §1181.2(s) is the addition of "Test claim" as defined in Gov. Code 17521 but not currently defined in the Commission's regulations.
- §1181.2(t) is an amended definition of "Written material" to support the distinction from "New filing" in the processes described in §1181.3.

The proposed regulations remove the definition for "Claim" (found in current regulations §1181.1(c)) as it is more appropriately covered in relevant sections pertaining to each different type of matter. Additionally, the proposed regulations remove the definition of "good cause" (found in current regulations §1181.1(h)) and instead include the good cause factors in article 7 for consideration under §1187.9 *Extensions of Time to File Comments or Rebuttals and Postponements and Continuances of Hearings*. As a result of input received at an informal workshop on September 26, 2013, staff has included "complexity of issues" as a potential factor establishing good cause for the postponement of a hearing on a matter in §1187.9(b).

Filing Date of Written Material

New language in §1181.3.

The proposed regulations include the addition of new language to clarify that, beginning on the effective date of this regulation package, the filing date of written material is when it is received at the Commission office, regardless of the method of filing (electronic or hard copy, hand delivered or mailed). Due to the availability of E-filing, the former mail-box rule is obsolete.

Consent Calendar

New language in §1181.9(c).

The proposed regulations include new language describing the purpose of the consent calendar the process for adding or removing items from the consent calendar before or during a meeting of the Commission.

Late Comments Submitted Prior to or During a Commission Meeting

New language in §1181.10.

Current regulations (§1182.2 and §1187.6) require that any comments submitted less than 15 days prior to a Commission meeting shall be included in the Commissioners' hearing binders, if possible or shall be provided to the members when the item is called. The proposed regulations include language to discourage last-minute submission of comments, which imposes a significant burden on Commission staff and prevents the Commission and Commission staff from being able to provide full consideration to the points raised. Proposed language indicates that Commission staff will transmit late comments submitted between 15 and five days prior to a meeting to the Commissioners, if possible. However, comments submitted less than five days prior to a meeting or at the meeting, will not be included in the Commissioners' binders and the commenter shall provide 12 paper copies of the comments at the meeting.

Late Submission of Comments or Evidence

New language in §1183.6(d), 1183.13(c), 1183.17(k), 1184.1(j), 1185.7(e), 1190.5(a)(3)(A), 1190.5(b)(3)(A).

The proposed regulations include the addition of new language to clarify that: 1) it is the Commission's policy to discourage the late submission of comments, exhibits, or other evidence after a deadline; and 2) the Commission need not rely on late comments or evidence submitted in response to a draft staff analysis. The intent of this revision is to prevent unnecessary delays in hearing matters and to facilitate the timely resolution of matters before the Commission while respecting the time and effort of all parties involved. Though this is already the rule, the current regulations could state it more clearly so that all participants, including those new to the mandates process, are on notice of the importance of filing timely comments. The new language is proposed for inclusion in the sections of Commission regulations pertaining to comment periods on new filings and draft proposed decisions.

Reasonably Necessary Activities and Required Evidence

New language in §1183.7(d) and 1183.9(b)(2).

The current regulations state that "'The most reasonable methods of complying with the mandate" are those methods *not specified in statute or executive order that are necessary to carry out the mandated program.*" [Emphasis added.] To clarify the meaning of reasonably necessary activities and that regulations and statutes not pled in the test claim may be relied on for the purpose of defining such activities, and to assist claimants in determining what is required to support a claim alleging that such activities are reimbursable, descriptive language is proposed as follows:

"Reasonably necessary activities" are those activities necessary to comply with the statutes, regulation and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of these regulations.

Expiration of a Jointly Proposed Reasonable Reimbursement Methodology (Joint RRM)
New language in §1183.16(i)

Government Code 17577.2(f) requires the Commission to notify claimants and Department of Finance one year before a joint RRM is set to expire. Current regulations are silent as to what happens if the joint RRM expires without comments or request for action from the parties. The proposed regulations specify in that case, that the Commission shall proceed with the adoption of parameters and guidelines pursuant to the established expedited parameters and guidelines process.

Technical and Non-Substantive Proposed Changes

After many piece-meal amendments, the Commission's regulations have become difficult to navigate, include clerical errors, are unnecessarily repetitive, and have inconsistent numbering, structure and internal references. In an effort to "clean-up" the Commission's regulations, staff will reorganize sections primarily for improved navigation and for elimination of duplicative language. These changes fall generally into the categories listed below.

Reorganize and Renumber Articles and Sections to Simplify Navigation¹

The proposed regulations will repeal and replace all articles of the Commission's current regulations except for article 9, the Commission's Conflict Code, which is not a part of this proposed regulatory package. Articles have been renumbered and combined to eliminate the current ".5" numbering of articles and for consolidation of like information in relevant sections. Sections within the articles have been renumbered sequentially, using a consistent decimal style. Article 7 is proposed to be renamed to more clearly identify the quasi-judicial nature of these Commission hearings. See the chart attached in Exhibit C and the table attached in Exhibit D for a detailed representation of the renumbering and reorganization and where the content of current sections (whether amended or not) can be found in the proposed new regulations.

Eliminate Duplication and Consolidate Like Information/Processes

Language describing the process for filing and serving written materials and new filings is proposed for consolidation within article 1, §1181.3 and is referenced throughout the proposed regulations rather than being restated for every matter heard by the Commission, as current regulations do.

Regulations governing an "Informal Conference" are proposed to be moved from articles 3 and 10 to article 7 and consolidated there with current regulations on a "Pre-Hearing Conference".

Language regarding the submission of evidence to the Commission is proposed for consolidation in article 7 (§1187.5) and is consistently referenced throughout the regulations.

Rules governing extensions of time and postponements and continuances of hearings are clarified and consolidated in article 7, §1187.9. This includes the clarification and relocation of language concerning extensions and postponements found in §1183.01(c) of the current regulations.

Rules governing withdrawal and dismissal of all article 7 matters are consolidated in article 7, §1187.12 through 1187.14.

¹ Exhibit C - Article reorganization map.

In the proposed article 8, several sections pertaining to informational hearings and rulemaking are proposed for consolidation into fewer sections, resulting in a clearer presentation of the procedural information.

Clerical Changes of Capitalization, Punctuation and Style

Minor and non-substantive changes in capitalization, punctuation and style are proposed to improve the readability, clarity and consistency of the regulations. For example, the consistent use of the word "matter" rather than "claim" for procedures that also apply to other matters subject to an article 7 hearing. The proposed regulations also include general stylistic changes to improve readability and to ensure that "plain English" is used throughout.

Text of Proposed Regulations (Exhibit B)

Commission staff's draft of the proposed regulatory text is attached as Exhibit B. Due to the extensive movement and renumbering of articles and sections, this proposal will replace current regulations in their entirety (except article 9) rather than a submission of language in line-by-line strikeout and underline. A line-by-line strikeout and underline would be practically impossible to comprehend.

If an order to initiate rulemaking is approved by the Commission, the submission of this proposed rulemaking to the Office of Administrative Law (OAL) will show the current regulations (except for article 9) in strikeout and the new articles will be in underline, as shown in Exhibit B. Before filing with the OAL, staff may make technical corrections, as may be required.

Outreach

Staff has made an effort to include parties, interested parties, and interested persons in the formulation of these proposed regulations. On September 26, 2013, staff conducted an informal public workshop on the proposed regulations to explain the proposed changes and gather initial input and feedback. The draft proposed regulations were posted on the Commission's website along with a notice outlining the proposed changes. On September 10, 2013, e-mail notification of the availability of the material online and the upcoming workshop was sent to all known interested persons on the Commission's agenda list serve, rulemaking list serve, and current e-mail contact lists.

The informal workshop was well attended and included the participation of representatives of the claimant community, Department of Finance, State Controller's Office, the Senate Office of Research, and the California State Association of Counties (CSAC). Hard copies of the proposed regulations were available and staff gave a presentation on the substantive proposed changes and conducted a walkthrough of the overall proposed reorganization. As a result of discussion at the workshop, staff further modified its draft proposed regulations to expand the definition of "good cause" and to further organize the order of articles to more closely follow the overall chronology or "lifecycle" of the mandate claim process, resulting in the proposed order of articles 3, 4, 5 and 6.

An announcement was made at the workshop and notification was sent to all known interested persons, requesting that any additional comments on the proposed regulations be submitted by October 18, 2013. This notice along with the handout presented at the workshop was posted on the Commission's website. Commission staff did not receive any comments on the proposed regulations following the informal public workshop.

Timetable

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

December 10, 2013	Notice of Rulemaking, Initial Statement of Reasons, and Proposed Text will be filed with the Office of Administrative Law for publication.
December 20, 2013	Notice of Proposed Regulatory Action will be issued and published.
January 21, 2014	Last day to request public hearing.*
February 3, 2014	End of public comment period.
February 21, 2014	Issue and post proposed modifications to original rulemaking package, if any.
March 14, 2014	Issue and post final proposed rulemaking package.
March 28, 2014	Adopt proposed rulemaking package.
April 4, 2014	File Adopted Regulations with the Office of Administrative Law.
July 1, 2014	Effective date of adopted regulations.

***Alternate Timetable**

If a public hearing is requested it will be held at the next regular Commission meeting, March 28, 2014.

March 28, 2014	Public hearing will be held, if requested.
April 11, 2014	Issue and post proposed modifications to original rulemaking package, if any.
May 16, 2014	Issue and post final proposed rulemaking package.
May 30, 2014	Adopt proposed rulemaking package.
June 6, 2014	File Adopted Regulations with the Office of Administrative Law.
October 1, 2014	Effective date of adopted regulations.

Staff Recommendation

Staff recommends the Commission adopt Proposed Order 13-01.