

ITEM 17 U
FINAL STAFF ANALYSIS
PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Vehicle Code § 10500
Chapter 337, Statutes of 1990
Stolen Vehicle Notification
05-PGA-68 (CSM-4403)
State Controller's Office, Requestor

EXECUTIVE SUMMARY

This is a request filed by the State Controller's Office (SCO) to amend the parameters and guidelines for the *Stolen Vehicle Notification* program (CSM-4403) to add language regarding source documentation, and record retention requirements during the period a claim is subject to an audit. If the Commission on State Mandates (Commission) approves the SCO's request, the amendments would be effective for costs incurred beginning on July 1, 2005.

In 2003, upon recommendation from the Bureau of State Audits, direction from the Legislature, and an SCO request, the Commission adopted amendments to parameters and guidelines that clarified what source documentation claimants are required to retain to support the claims they file to obtain reimbursement for mandated programs, and records retention language that identifies the records that must be retained to support an audit initiated by the SCO. The adopted language, commonly referred to as "boilerplate language," has been included in all parameters and guidelines adopted since 2003. In addition, section 1183 of the Commission's regulations require parameters and guidelines to include instruction on claim preparation, notice of the SCO's authority to audit claims, and the amount of time documentation must be retained during the audit period.

The SCO is now requesting that parameters and guidelines adopted prior to 2003 be amended to also include the source documentation and records retention language.

This analysis pertains only to the request to amend the *Stolen Vehicle Notification* program. The staff analyses for the other 48 programs will be presented separately.

There is one issue for the Commission's consideration:

- **Should the parameters and guidelines be amended to add the current "boilerplate language"?**

Staff finds that it is appropriate to approve the SCO's request to insert the source documentation and records retention language because it would conform the parameters and guidelines for the *Stolen Vehicle Notification* program with the parameters and guidelines adopted for other programs, and is consistent with section 1183.1 of the Commission's regulation. Therefore, staff included the language requested by the SCO.

Staff Recommendation

Staff recommends that the Commission:

- Adopt the SCO's proposed amendments to the parameters and guidelines for the *Stolen Vehicle Notification* program, beginning on page 9.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

STAFF ANALYSIS

Requestor

State Controller's Office

Chronology

11/19/1992	Commission on State Mandates (Commission) adopts Statement of Decision
05/26/1994	Commission adopts parameters and guidelines
01/19/1995	Commission adopts statewide cost estimate
01/23/2003	The Commission, upon the recommendation of the Bureau of State Audits, direction from the Legislature, and upon request from the State Controller's Office (SCO), adopts amendments to the <i>School Bus Safety II</i> parameters and guidelines to include "boilerplate language" that details the documentation necessary to support reimbursement claims. After this date, all adopted parameters and guidelines contain this language
04/07/2006	SCO requests the parameters and guidelines for 49 mandated programs adopted prior to 2003 also be amended to include boilerplate language, including the <i>Stolen Vehicle Notification</i> program analyzed here
04/27/2006	Commission deems SCO's request for amendment of parameters and guidelines complete and issues for comment
07/23/2009	Commission reissues SCO's request for amendment of parameters and guidelines for comment
08/18/2009	Department of Finance files comments
10/13/2009	Commission issues draft staff analysis

Background

This is a request filed by the State Controller's Office (SCO) to amend the parameters and guidelines for the *Stolen Vehicle Notification* program (CSM-4403) to add language regarding source documentation, and record retention requirements during the period a claim is subject to an audit. If the Commission on State Mandates (Commission) approves the SCO's request, the amendments would be effective for costs incurred beginning on July 1, 2005.

Test Claim Decision and Parameters and Guidelines

Prior to enactment of the test claim statutes, when a law enforcement agency recovered a stolen vehicle or license plates, it was required to report to the Department of Justice and to the law enforcement agency that originated the stolen vehicle report of the location and condition of the recovered vehicle or license plates.

The test claim statutes also required that within 48 hours of being notified of the recovery of a stolen vehicle, the original reporting law enforcement agency must now notify the party who reported the vehicle stolen of the location and condition of the recovered vehicle.

The County of San Bernardino filed a test claim on November 15, 1991, on the 1990 statutory changes for reporting recovered stolen vehicles. The Commission approved this test claim on November 19, 1992, concluding that Vehicle Code § 10500, as amended by

Statutes 1990, chapter 337 constituted a reimbursable state-mandated program upon local agencies pursuant to section 6, article XIII B of the California Constitution.¹

On May 26, 1994, the Commission adopted the parameters and guidelines for this program.²

Boilerplate Language

On March 28, 2002, the Bureau of State Audits (BSA) issued an audit report on the *School Bus Safety II* program, stating that the parameters and guidelines do not impose sufficient requirements regarding the documentation required to support reimbursement claims, and thus, insufficient documentation was being submitted to support claims.³ The report recommended, among other things, that the Commission work with the SCO, other affected state agencies, and interested parties to make sure the language in the parameters and guidelines and the claiming instructions for the *School Bus Safety II* program reflects the Commission's intentions as well as the SCO's expectations regarding supporting documentation. On June 10, 2002, the SCO proposed that parameters and guidelines be amended to clarify what documentation is necessary to support reimbursement claims and what records must be retained to support audits initiated by the SCO.

Based on BSA's audit findings and recommendations, the Legislature enacted Statutes 2002, chapter 1167 (AB 2781) to direct the Commission to amend the parameters and guidelines in *School Bus Safety II*, to detail the documentation necessary to support reimbursement claims.

On January 23, 2003, upon recommendation from BSA, direction from the Legislature, and the SCO's request, the Commission adopted the following language regarding source documentation and records retention to the *School Bus Safety II* parameters and guidelines.⁴

IV. Reimbursable Activities

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, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." 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.

¹ Exhibit A.

² Exhibit B.

³ Exhibit C.

⁴ The Commission also adopted other boilerplate language that is not relevant to this request.

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.

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 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. 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.*

The Commission has included this language, commonly referred to as “boilerplate language,” in all parameters and guidelines adopted on or after January 23, 2003.

SCO Request to Amend Parameters and Guidelines

On April 7, 2006, the SCO requested that the parameters and guidelines for 49 mandated programs that were adopted prior to 2003 be amended to also include the boilerplate language regarding source documentation and records retention that was adopted by the Commission in 2003.⁵

The parameters and guidelines for the *Stolen Vehicle Notification* program is one of the 49 programs the SCO is requesting be amended.

Comments on the Proposal

On April 27, 2006, the Commission issued the SCO’s request to amend the parameters and guidelines for comment. No comments were filed. On July 23, 2009, the Commission reissued the proposal for comment. On August 18, 2009, Department of Finance submitted comments.⁶

In its comments, Finance stated it was neutral on the proposal, because the request to include boilerplate language in the parameters and guidelines for the 49 programs would allow the Controller to complete audit related tasks more efficiently, and provide the claimant with more information and record retention requirements, as well as the statute of limitations for audits.

Commission staff issued the draft staff analysis on October 13, 2009.⁷ No comments were filed.

* This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

⁵ Exhibit D.

⁶ Exhibit E.

⁷ Exhibit F.

Related Litigation (Clovis Unified School Dist., et al. v. State Controller)

This case involves a challenge by school districts and community college districts on reductions made by the State Controller's Office to reimbursement claims for several mandated programs.⁸ The school districts argue that reductions made on the ground that school districts do not have contemporaneous source documents are invalid.

Trial Court Ruling. On January 2, 2009, the Sacramento County Superior Court (Case No. 06CS00748) issued a clarification of ruling and on February 19, 2009, issued a Judgment and Writ, finding that reductions made by the Controller on the ground that claimants did not have contemporaneous source documents supporting their reimbursement claims were invalid as an underground regulation *if* the contemporaneous source document requirement was not in the Commission's parameters and guidelines. The court held that the Controller has no authority to reduce a claim on the ground that a claimant did not maintain contemporaneous source documents to support their claim, absent statutory or regulatory authority to require contemporaneous source documents, or language in the parameters and guidelines requiring it. Pursuant to Government Code section 17558, the Controller's claiming instructions shall be derived from the test claim decision and the adopted parameters and guidelines. Thus, the court granted declaratory relief and a writ of mandate requiring the Controller to set aside the reduction and pay the school district plaintiffs the amounts reduced on two mandated programs that did not have parameters and guidelines language requiring claimants to maintain contemporaneous source documents.

Court of Appeal Filings (Third District Court of Appeal, Case No. C061696). Notices of appeal and cross-appeal have been filed by the SCO, the community college districts, and the school districts, and opening briefs have been filed. The appeal on the issue of the validity of the contemporaneous source documentation requirement remains pending.

Discussion

The proposed amendments to the parameters and guidelines raise the following issue for determination by the Commission:

Issue: Should the parameters and guidelines be amended to add the Commission's current "boilerplate language"?

In 2003, following recommendation from the BSA and direction from the Legislature, the SCO requested, and the Commission adopted amendments to parameters and guidelines that clarify what source documentation claimants are required to retain to support the claims they file to obtain reimbursement for mandated programs, and records retention language that identifies the records that must be retained to support an audit initiated by the SCO.

The adopted language, as detailed on pages 4 and 5 of this analysis, has been included in all parameters and guidelines adopted since 2003.

In addition, section 1183.1, subdivision (a) (5) and (6) require that the parameters and guidelines contain, among other things, the following:

- Claim preparation. Instruction on claim preparation, including instruction for direct and indirect cost reporting, or application of a reasonable reimbursement methodology.

⁸ The Commission is not a party to this action.

- Record retention. Notice of the Office of the State Controller's authority to audit claims and the amount of time supporting documents must be retained during period subject to audit.

The SCO is now requesting that parameters and guidelines adopted prior to 2003 be amended to also include the source documentation and records retention language. This analysis pertains to the parameters and guidelines for the *Stolen Vehicle Notification* program.⁹

Inserting the source documentation and records retention boilerplate language would conform the parameters and guidelines for the *Stolen Vehicle Notification* program with the parameters and guidelines adopted for other programs, and is consistent with section 1183.1 of the Commission's regulations.

Therefore, staff finds that it is appropriate to approve the SCO's request, and made the following modifications to the parameters and guidelines:

III. Period of Reimbursement

Government Code section 17557, subdivision (d) states that a parameters and guidelines amendment filed on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year. This amendment was filed on April 7, 2006, (after the claiming deadline) establishing reimbursement for fiscal year 2005-2006. Therefore, reimbursement for this amendment shall begin on July 1, 2005.

Staff clarified that the proposed amendments would be effective on July 1, 2005.

IV. Reimbursable Activities

Staff inserted the following boilerplate language regarding source documentation, as requested by the SCO:

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, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge."
Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government

⁹ The SCO only requested that the portions of the boilerplate language regarding source documentation and records retention be added to the parameters and guidelines for the 49 programs. There are other sections of the boilerplate language regarding the remedies available before the Commission, and the legal and factual basis for the parameters and guidelines. Staff did not include these sections because the SCO did not request that they be included.

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

VI. *Records Retention*

At the request of the SCO, staff removed the existing language regarding supporting data, and replaced it with the following boilerplate language regarding records 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 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. 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.*

Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed amendments to parameters and guidelines for the *Stolen Vehicle Notification* program, beginning on page 9.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

* This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Date Adopted: May 26, 1994

Proposed Amendment: January 29, 2010

File Number: 4403

PROPOSED AMENDMENT TO ~~ADOPTED~~ PARAMETERS AND GUIDELINES

Vehicle Code § 10500

Statutes 1990, Chapter 337, ~~Statutes of 1990~~

Stolen Vehicle Notification

05-PGA-68 (CSM-4403)

This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement.

I. Summary of Mandate

Chapter 337, Statutes of 1990, amended Vehicle Code § 10500 to require that the original reporting law enforcement agency notify the reporting party of the location and condition of a recovered stolen vehicle, within 48 hours of receiving notice of the recovery.

II. Commission on State Mandates' Decision

At its hearing of September 24, 1992, the Commission determined that, to the extent the provisions of Vehicle Code § 10500 exceed the notification requirements set forth in prior laws, § 10500 requires local agencies to implement a new program or higher level of service in an existing program, within the meaning of section 6, article XIIB of the California Constitution and Government Code § 17514.

III. Eligible Claimants

Counties and cities.

IV. Period of Reimbursement

This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement.

Chapter 337, Statutes of 1990, became effective January 1, 1991. Government Code § 17557 states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed by the County of San Bernardino on November 15, 1991. Therefore, reimbursement claims may be filed for costs incurred on or after January 1, 1991.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent fiscal year may be included in the same claim, if applicable. Pursuant to Government Code § 17561, subdivision (d), subpart (3), all claims for 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 provided by Government Code § 17564.

V. Reimbursable Costs

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, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." 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.

A. Scope of Mandate

Law enforcement agencies which originate a stolen vehicle report shall be reimbursed for the increased costs of notifying the party that reported the vehicle stolen of its recovery and the location and condition of the vehicle. The costs which are reimbursable are limited by the following requirements:

1. The original reporting law enforcement agency shall not be the same agency that recovers the vehicle, except as noted in Item 2 below.
2. When the reporting party is not the owner of the vehicle, the original reporting agency and the recovering agency may be the same.

B. Reimbursable Activities

For each eligible claimant, the following is reimbursable:

The cost of notifying the reporting party, by telephone or in writing, of the location and the condition of the recovered vehicle.

VI. Claim Preparation

Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a listing of each item for which reimbursement is claimed under this mandate.

- A. Description of Activity
- B. Supporting Documentation

Claimed costs should be supported by the following information:

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function. The average number of hours devoted to each function may be claimed if supported by a documented time study.

As an alternative to the above methods, a unit time not to exceed ten minutes per report may be claimed.

2. Services and Supplies

Only expenditures which can be identified as a direct cost of the mandate can be claimed. List the cost of materials which have been consumed or expended specifically for the purpose of this mandate.

3. Allowable Overhead Costs

Indirect costs may only be claimed by using 10 percent of direct labor as an indirect cost rate or by preparing a departmental indirect cost rate proposal to determine the rate.

VII. ~~Records Retention~~ ~~Supporting Data~~

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 chapter¹ 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 V, must be retained during the period subject to audit. If the Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

~~For auditing purposes, all costs claimed shall be traceable to source documents (i.e., employee time records, invoices, receipts, purchase orders, contracts, worksheets, etc.) that show evidence of and validity of claimed costs. All documentation supporting~~

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

~~such costs shall be made available to the State Controller or his agent, as may be requested, during the record retention period specified in Government Code § 17588.5, subdivision (a).~~

~~Government Code § 17588.5, subdivision (a) requires that all supporting source documents and worksheets must be kept on file not less than four years after the end of the calendar year in which the reimbursement claim is filed or last amended, unless no funds are appropriated for the program for the fiscal year for which the claim is made, in which case, the four year retention period shall commence to run from the date of initial payment of the claim.~~

VIII. Offsetting Savings and Other Reimbursements

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

IX. State Controller's Office Required Certification

An authorized representative of the claimant will be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the statute contained herein.