

Hearing Date: March 25, 2022

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RULEMAKING\TOC.docx

ITEM 6

**ADOPTION OF COMMISSION ORDER TO INITIATE
EMERGENCY RULEMAKING**

DIGITAL SIGNATURES ON E-FILED COMMISSION FORMS

PROPOSED AMENDMENTS TO
CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5

ARTICLE 1

SECTION 1181.3

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

In the Matter of:

Amendments to California Code of
Regulations, Title 2, Division 2, Chapter 2.5,
Article 1, Section 1181.3

No. 22-02

ORDER TO INITIATE EMERGENCY
RULEMAKING PROCEEDINGS

*Digital Signatures on E-Filed Commission
Forms*

Pursuant to California Code of Regulations, title 2, section 1188.2, the Commission on State Mandates (Commission) hereby adopts this order to institute rulemaking proceedings in accordance with Government Code sections 11346.2, 11346.4, 11346.8, and 11346.9.

PROPOSED REGULATORY ACTION. The Commission proposes revised language, punctuation, and citations in section 1181.3 of the California Code of Regulations, Title 2, Division 2, Chapter 2.5, Article 1, with proposed effective dates of April 18, 2022 through October 15, 2022.

The purpose of this emergency rulemaking to section 1181.3 of the Commission’s regulations is to (1) require e-filed Commission forms to be digitally signed; (2) clarify the e-filing process; and (3) update reference citations.

AUTHORITY AND REFERENCE. Government Code section 17527(g) authorizes the Commission to adopt the proposed regulations.

WRITTEN COMMENT PERIOD. The Commission intends to file the emergency rulemaking package with the Office of Administrative Law (OAL) at the end of five working days from the date of the Notice of Proposed Emergency Action and Finding of Emergency. Any interested person, or their authorized representative, may submit written comments relevant to the proposed emergency regulatory action to the Commission and OAL. If you would like to make comments on the finding of emergency or the proposed emergency regulations, the comments must be received by **both** the Commission and OAL within five calendar days of the Commission’s filing of the emergency regulations with OAL. The submitted action will appear on the list of “Emergency Regulations Under Review” on OAL’s website at:

https://oal.ca.gov/emergency_regulations/emergency_regulations_under_review/.

Comments must be submitted in writing to the Commission via the Commission’s website “dropbox” at: <http://www.csm.ca.gov/dropbox.php> or via mail to:

Jill Magee, Program Analyst
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Phone: (916) 323-3562

The backup contact person is:

Heidi Palchik, Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300

Sacramento, CA 95814
Telephone: (916) 323-3562

A copy of the comments must be **simultaneously** submitted in writing to OAL at:

Office of Administrative Law
Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
Phone: (916) 323-6815
Email: staff@oal.ca.gov

Date: _____ By: _____
Heather Halsey, Executive Director

1 CALIFORNIA CODE OF REGULATIONS
 2 TITLE 2. ADMINISTRATION
 3 DIVISION 2. FINANCIAL OPERATIONS
 4 CHAPTER 2.5. COMMISSION ON STATE MANDATES

5 Article 1. General

6 § 1181.3. Certification, Filing, and Service of Written Materials and New Filings.

7 (a) Certification. All new filings and written materials filed with the Commission shall be signed
 8 at the end of the document, under penalty of perjury, with the declaration that the filing is true
 9 and correct to the best of the declarant's personal knowledge, information, or belief. The date of
 10 signing, the declarant's title, address, telephone number, and email address, if applicable, shall
 11 be included.

12 (b) Documents filed with the Commission shall not contain personal identifying information that
 13 violates state or federal privacy laws, including, but not limited to California Civil Code section
 14 1798 et seq.

15 (c) Filing and Service. New filings and written materials may be filed as described in this
 16 subdivision.

17 (1) E-Filing. Except as provided in subdivision (c)(2) of this section, all new filings and written
 18 materials shall be electronically filed (or e-filed) with the Commission.

19 (A) All new filings and written materials shall be filed by filing the signed original document in
 20 an unlocked PDF file via the Commission's e-filing system, available on the Commission's
 21 website. Documents e-filed with the Commission shall be in a legible and searchable format
 22 using a "true PDF" (i.e., documents digitally created in PDF, converted to PDF or printed to
 23 PDF) or optical character recognition (OCR) function, as necessary, ~~that allows Commission~~
 24 ~~staff to electronically date stamp the document and append additional pages for posting on the~~
 25 ~~Commission's web site with a proof of service for e-service by the Commission, in lieu of the~~
 26 ~~filer serving the document to the entire mailing list for the matter.~~

27 (B) Any new filing required to be filed on a form prescribed by the Commission shall be
 28 digitally signed, using the digital signature technology and authentication process contained
 29 within the Commission forms. The completed form shall be e-filed separately from any
 30 accompanying documents. Accompanying documents shall be e-filed together in a single file in
 31 accordance with subdivision (c)(1)(C) of this section, and shall not exceed 500 megabytes.
 32 Accompanying documents exceeding 500 megabytes shall also comply with subdivision
 33 (c)(1)(D) of this section.

34 (C) All e-filed documents, other than forms prescribed by the Commission, shall:

35 (i) be in unlocked PDF file format, to allow Commission staff to electronically date stamp the
 36 document and append additional pages for posting on the Commission's website with a proof of
 37 service for e-service by the Commission, in lieu of the filer serving the document to the entire
 38 mailing list for the matter; and saved, converted, or printed to PDF and filed in their original,
 39 searchable form,

40 (ii) include a scanned copy of but the signed signature page shall be replaced with a scanned

1 copy, rather than a digitally signed document. The scanned copy shall be in black and white (not
2 gray scale or color).

3 (D) E-filed documents ~~shall not exceed 500 megabytes. Documents larger than 500 megabytes~~
4 shall be e-filed in multiple volumes and labeled as such (i.e., "Volume I, Volume II" etc.) and
5 shall, in that case, include a table of contents. Filing of color documents is strongly discouraged.
6 However, if a color image(s) is necessary for readability or comprehension, the color image(s)
7 shall be e-filed in a separate and final volume of exhibits. E-filed documents shall include
8 electronic bookmarks to each heading, subheading, and component (including but not limited to
9 the table of contents, declarations, exhibits, proof of service) of the document. Documents not
10 available or obtainable in electronic form may be scanned and OCR'd and e-filed in a separate
11 volume, however it is prohibited to e-file scanned documents that are available or obtainable
12 electronically. E-filed documents that must be scanned, shall be scanned in black and white (not
13 gray scale or color).

14 (E) The filer is responsible for maintaining the signed original new filing or written material for
15 the duration of the process for the matter, including any period of appeal (this may be an
16 electronic document, depending on how the filer creates and maintains its records). ~~If a new~~
17 ~~filing or written material is e-filed, no additional copies shall be filed with the Commission. The~~
18 ~~following shall apply to new filings and written materials e-filed with the Commission:~~

19 ~~(AF)~~ An automated notice that the document was successfully sent is immediately available to
20 the filer using the Commission's e-filing system and should be saved or printed for the filer's
21 records. Commission staff shall also reply by e-mail confirming actual receipt of the legible,
22 searchable document by the Commission within two business days of receipt. In the absence of a
23 confirmation e-mail from Commission staff, it is the responsibility of the filer to obtain
24 confirmation that the Commission actually received the filing.

25 ~~(BG)~~ By using e-filing, the filer agrees, in the event of failure of e-filing, to re-file the document
26 no later than the business day after the business day on which notice of the failure of e-filing is
27 received by the filer. The filer may re-file by any means authorized by these rules, in order to
28 maintain the original filing date. "Failure of e-filing" occurs when the filer receives notification,
29 in any manner, of non-receipt of an e-filed document or of any other inability of Commission
30 staff to access the document.

31 ~~(EH)~~ Documents e-filed with the Commission are served by Commission staff to persons who
32 have provided an e-mail address for the mailing list for the matter in accordance with section
33 1181.4 of these regulations. E-filed documents do not need to be served by the filer and proof of
34 service does not need to be provided by the filer for persons who have provided an e-mail
35 address for the mailing list in accordance with section 1181.4. Nothing in this regulation excuses
36 a filer from serving hard copies of written material on persons who appear on the mailing list and
37 have not provided an e-mail address for the mailing list, or from providing a proof of service
38 with the e-filing to the Commission for the service of the document on those persons.

39 ~~(DI)~~ Upon confirmation of actual receipt of the e-filed document, Commission staff shall notify
40 all persons on the mailing list for the matter that written material may be viewed on the
41 Commission's website. For "new filings" as defined by section 1181.2(k) of these regulations,
42 Commission staff shall notify all persons on the mailing list prepared pursuant to section 1181.4
43 of these regulations, of the availability of those filings on the Commission's website when
44 Commission staff issues its notice of complete filing to the filer.

1 (~~E~~J) The Commission may serve any document by e-mail service, or by making it available at a
2 particular URL, unless doing so would be contrary to state or federal law.

3 (~~F~~K) The executive director may issue any order consistent with these rules to govern e-mail
4 service for a particular matter.

5 (2) Hard Copy Filing and Service in Cases of Undue Hardship or Significant Prejudice. If e-
6 filing legible and searchable PDF documents, as described in subdivision (c)(1) of this section,
7 would cause the filer undue hardship or significant prejudice, filing may occur by first class mail,
8 overnight delivery or personal service only upon approval of a written request to the executive
9 director.

10 (A) Filing. If the executive director authorizes filing by first class mail, overnight delivery, or
11 personal service, the filer shall file the unbound original document with the Commission.

12 (B) Service. If written materials are filed in hard copy, the filing shall simultaneously be served
13 on everyone on the mailing list using the same method used for the filing. Unless otherwise
14 provided in this section, a proof of service shall be included with any written material filed with
15 the Commission. Proof of personal service requires a declaration of the messenger of the time
16 and place that the written material was served. Service is not required for new filings because
17 mailing lists for matters are only prepared, pursuant to section 1181.4 of these regulations, after a
18 new filing is deemed complete. Completed new filings will be served on the mailing list by
19 Commission staff with the Notice of Complete Filing.

20 (3) Time of Filing. New filings or written materials filed with the Commission no later than 5
21 p.m. on a business day (i.e., Monday through Friday, except state holidays) are deemed filed on
22 that business day. New filings or written materials filed with the Commission after 5 p.m. on a
23 business day, or on a Saturday, Sunday, or state holiday, are deemed filed on the following
24 business day.

25 Note: Authority cited: Sections 16.5, 17527(g), 17553(a), 17570(d) and 11104.5, Government
26 Code. Reference: Sections 1633.1 et seq., 1798 et seq., Civil Code; and Sections 11020(a),
27 17530, 17551, 17557(d), 17558.7, 17570, 17573(b), 17574(c) and 17573(g), Government Code.

TITLE 2. ADMINISTRATION
 DIVISION 2. FINANCIAL OPERATIONS
 CHAPTER 2.5. COMMISSION ON STATE MANDATES

**NOTICE OF PROPOSED EMERGENCY RULEMAKING
 AND FINDING OF EMERGENCY**

DIGITAL SIGNATURES ON E-FILED COMMISSION FORMS

NOTICE OF PROPOSED EMERGENCY ACTION

The Commission on State Mandates (Commission) proposes the emergency adoption of the regulations described below. Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In accordance with Government Code Section 11346.1(a)(2), this notice appends: (1) the specific language of the proposed regulations to amend Section 1181.3 of California Code of Regulations, Title 2 by adding the requirement that e-filed Commission forms shall be digitally signed; and (2) the finding of emergency, which includes specific facts demonstrating the need for immediate action and demonstrating by substantial evidence the need for the proposed regulations, the list of documents relied upon, the authority and reference citations, the informative digest and policy statement overview, and the required determinations.

WRITTEN COMMENT PERIOD

The Commission intends to file the emergency rulemaking package with the Office of Administrative Law (OAL) at the end of five working days from the date of this notice. Any interested person, or their authorized representative, may submit written comments relevant to the proposed emergency regulatory action to the Commission and OAL. If you would like to make comments on the finding of emergency or the proposed emergency regulations, the comments must be received by **both** the Commission and OAL within five calendar days of the Commission's filing of the emergency regulations with OAL. The submitted action will appear on the list of "Emergency Regulations Under Review" on OAL's website at: https://oal.ca.gov/emergency_regulations/emergency_regulations_under_review/.

Comments must be submitted in writing to the Commission via the Commission's website "dropbox" at: <http://www.csm.ca.gov/dropbox.php> or via mail to:

Jill Magee, Program Analyst
 Commission on State Mandates
 980 Ninth Street, Suite 300
 Sacramento, CA 95814
 Phone: (916) 323-3562

The backup contact person is:

Heidi Palchik, Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Telephone: (916) 323-3562

A copy of the comments must be **simultaneously** submitted in writing to OAL at:

Office of Administrative Law
Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
Phone: (916) 323-6815
Email: staff@oal.ca.gov

**AVAILABILITY OF FINDING OF EMERGENCY,
TEXT OF PROPOSED EMERGENCY REGULATIONS, AND RULEMAKING FILE**

The Commission will have the entire emergency rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address.

As of the date this Notice is published, the rulemaking file consists of the text of the proposed emergency regulations, the notice of proposed emergency action and finding of emergency, and the Commission order to initiate emergency rulemaking proceedings.

Copies of these documents may be obtained through the Commission's website at <http://www.csm.ca.gov/rulemaking.php> or by contacting Ms. Jill Magee (see contact information above). All persons on the Commission's interested persons mailing list will be provided a copy of the rulemaking file by making it available on the Commission's website and providing notice of how to locate it.

FINDING OF EMERGENCY

Government Code section 11346.1 requires a finding of emergency to include a written statement containing the information required by section 11346.5(a)(2) through (a)(6) and a description of the specific facts demonstrating the existence of an emergency and demonstrating by substantial evidence the need for immediate action. "Emergency" in this context is defined as "a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare." (Gov. Code § 11342.545.) If a state agency makes a finding that the adoption of a regulation is necessary to address an emergency, the regulation may be adopted as an emergency regulation. (Gov. Code § 11346.1(b)(1).)

Government Code section 11346.1(b)(2) provides that a finding of emergency shall not be based solely upon expediency, convenience, best interest, general public need, or speculation. If the situation identified in the finding of emergency existed and was known in sufficient time for the agency to address it through nonemergency regulations, the finding of emergency shall include facts explaining the failure to address the situation through nonemergency regulations.

The Commission on State Mandates (Commission) finds that, for the reasons set forth below, an emergency exists, and that adoption of the proposed amendments to section 1181.3 of its regulations is necessary to avoid serious harm to the public peace, health, safety, or general welfare.

I. Emergency Facts

The COVID pandemic remains a serious threat to the health and safety of the public. As of March 2, 2022, there are 3,987 COVID-19 hospitalizations and 740 ICU patients statewide.¹ Despite recent decreases in the number of positive cases, COVID-19 continues to claim the lives of 174 Californians each day.²

Article XIII B, section 6 of the California Constitution requires that “[w]henever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse the local government for the costs of the program or increased level of service....” In 1984, the Legislature enacted Government Code section 17500 et seq., to implement article XIII B, section 6 and establish procedures for claiming reimbursement for state-mandated programs, and to create the Commission on State Mandates as a quasi-judicial body with sole and exclusive jurisdiction to resolve disputes over the existence of state-mandated local programs subject to review by the courts. (Stats. 1984, ch. 1459; Gov. Code, §§ 17552, 17559; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 332.)

Section 1181.3 of the Commission’s regulations provides the procedure for certifying, filing, and serving new filings and written materials for all matters identified in Government Code section 17500 et seq., both electronically (e-filing) and in hard copy. With limited exceptions, section 1181.3(c) requires all new filings and written materials to be electronically filed via the Commission’s e-filing system. Under section 1181.2 of the Commission’s regulations, “new filing” includes but is not limited to a test claim; incorrect reduction claim and notice of intent to join a consolidated incorrect reduction claim; and request for mandate redetermination, all of which must be filed by state and local governments on Commission forms and signed by authorized representatives.³ Section 1181.3(c)(1) requires all e-filed documents, including Commission forms, to be filed in unlocked, searchable PDF file format, with a scanned copy of the original handwritten signature page: “E-filed documents shall be saved, converted, or printed to PDF and filed in their original, searchable form, but the signature page shall be replaced with a scanned copy.” Thus, under the current regulations, the filer has to scan the form to submit the *original* signature, which regularly requires filing parties to perform tasks in the office, or for hard copies of the form or signature page to be handled by more than one staff person, both of which potentially increase COVID-19 exposure and transmission.

Commission forms have not previously been formatted to accept digital signatures and the Commission’s regulations are at odds with ensuring that state and local governments are not prevented from exercising their constitutional and statutory right to file claims with the Commission within the prescribed time limits, and without increased COVID-19 risks, during the COVID-19 pandemic. A failure to immediately remedy this inconsistency will create

¹ State Officials Announce Latest COVID-19 Facts, California Department of Public Health, Office of Communications: <https://www.cdph.ca.gov/Programs/OPA/Pages/NR22-045.aspx> (accessed March 2, 2022).

² State Officials Announce Latest COVID-19 Facts, California Department of Public Health, Office of Communications: <https://www.cdph.ca.gov/Programs/OPA/Pages/NR22-045.aspx> (accessed March 2, 2022).

³ See Government Code sections 17553(b), 17558.7(c) and (e), and 17570(d)(1), respectively.

continued difficulty and risk for government agencies seeking to file claims with the Commission while working remotely.

Furthermore, beginning January 1, 2022, most state agency forms must be capable of accepting e-signatures that are secure and verifiable.⁴ Digital signatures are a type of permissible e-signature for use on state agency forms. While the Commission’s statutorily-prescribed forms are exempt from the state form e-signature requirement,⁵ in light of the ongoing COVID-19 pandemic and the need to slow the spread of COVID-19 by encouraging telework by public agency personnel and paperless transactions to the extent possible, digital signatures provide a secure mechanism for signing e-filed Commission forms and reflect the current work environment, as well as promoting the statewide policy of state agencies of providing digital signature blocks on agency forms.

Both the Uniform Electronic Transactions Act (UETA) (Civ. Code, § 1633.1 et seq.) and Government Code section 16.5 authorize the use of digital signatures in written communication with public entities, including state agencies. The UETA provides that any law that requires a signature is satisfied by an electronic signature.⁶ Under the UETA, government agencies are permitted to accept electronic signatures, which are defined as follows:

“Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. For purposes of this title, a “digital signature” as defined in subdivision (d) of Section 16.5 of the Government Code is a type of electronic signature.⁷

A “digital signature” under Government Code section 16.5(d) is defined as a type of electronic signature under the UETA and “an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.” Section 16.5

⁴ State Administrative Manual Management Memo Number 20-07, California Department of General Services: <https://www.dgs.ca.gov/Resources/ManagementMemos> (accessed January 27, 2022), which states in relevant part the following:

This policy requires all forms that are designed to be completed by internal or external customers (public or private sector entities) conducting business with the State of California, whether standard (STD) or agency forms, are available in an electronic format. Agencies shall use electronic signatures (hereafter “e-Signatures” or “e-Sign”) in place of a wet signature unless prohibited by law.

⁵ See Government Code section 14774, which provides that the State Forms Management Program, under which the Department of General Services is authorized to develop statewide standardization of state agency forms, does not apply to any state agency form with provisions specifically authorized and established by statute. As discussed above, Government Code sections 17553(b), 17558.7(c) and (e), and 17570(d)(1), respectively, require test claims, incorrect reduction claims and notices of intent to join consolidated incorrect reduction claims, and requests for adoption of a new test claim decision to be filed on forms prescribed by the Commission.

⁶ Civil Code section 1633.7(d).

⁷ Civil Code section 1633.2(h).

authorizes the use of a “digital signature” in any written communication with a public entity in which a signature is required or used, provided that the digital signature is unique to the person using it; capable of verification; under the sole control of the person using it; linked to data in such a manner that if the data is changed, the digital signature is invalidated; and conforms to regulations adopted by the Secretary of State.⁸

Digital signatures are therefore distinct from the broader category of electronic signatures in that a digital signature requires that specific technology be used to verify the signature. The Secretary of State regulations implementing Government Code section 16.5 provide that a digital signature used or accepted by a public entity must be created by an acceptable technology.⁹ The regulations further specify that an “acceptable technology” is one that is capable of creating signatures in conformity with the requirements of Government Code section 16.5, the technical attributes of which are described in great detail in section 22003.¹⁰

The Commission has reformatted its forms to include a digital signature block, meaning that government agencies seeking to e-file a test claim, incorrect reduction claim, notice of intent to join a consolidated incorrect reduction claim, or request for mandate redetermination will do so using a digital signature, which better ensures the verifiability of the signatory than an electronic signature or a scanned copy of the handwritten signature page. The proposed amendments to subdivision (c)(1) specify that any new filing required to be filed on a form prescribed by the Commission shall be digitally signed using the digital signature technology and authentication process contained within the form.

Government Code section 11346.1(b)(2) provides that if the situation identified in the finding of emergency existed and was known in sufficient time for the agency to address it through nonemergency regulations, the finding of emergency shall explain the failure to address the situation through nonemergency regulations.

The Commission is a small state agency with 13 employees, with turn-over in five of these positions during the course of the pandemic, and with one position dedicated to contract-tracing efforts for over a year of the pandemic. Staff have worked tirelessly throughout the COVID-19 pandemic to ensure that the Commission’s processes, including six Commission hearings per year, have been fully accessible to state and local governments and all members of the public who are working remotely, in addition to performing its regular work. Moreover, before the Commission could propose changes to its regulations to reflect the e-signature requirement, staff had to determine whether a type of secure and verifiable e-signature, such as a digital signature, was preferable or required under existing law, and if so, whether the Commission’s procedures and technologies complied with Government Code section 16.5 and the digital signature requirements set forth in the Secretary of State’s regulations. As stated above, Government Code section 16.5 authorizes the use of a “digital signature” in any written communication with a public entity in which a signature is required or used, provided that the digital signature is unique to the person using it; capable of verification; under the sole control of the person using it; linked

⁸ Government Code section 16.5(a). See California Code of Regulations, title 2, sections 22000 - 22005.

⁹ California Code of Regulations, title 2, sections 22001, 22002, 22005.

¹⁰ California Code of Regulations, title 2, section 22003.

to data in such a manner that if the data is changed, the digital signature is invalidated; and conforms to regulations adopted by the Secretary of State.¹¹ This process required a review of the Commission's current electronic form processes and technologies, procuring new digital signature technology, as well as input from and coordination amongst more than half of the Commission's small work force. Therefore, until now, the Commission has been unable to remedy the e-filed form signature issue through nonemergency regulations.

On March 25, 2022, the Commission adopted an order to initiate a regular rulemaking, requiring e-filed Commission forms to be digitally signed, consistent with Government Code section 16.5 and the regulations adopted by the Secretary of State. If the proposed language is adopted by the Commission, the soonest the non-emergency regulations will go into effect will be October 1, 2022, more than six months from now.

However, as discussed above, the COVID pandemic is not over. Thus, the Commission is required to continue to protect the health and safety of state and local government filers and ensure that the mandates process is fully accessible in accordance with the California Constitution and Government Code section 17500 et seq. A failure to immediately require e-filed Commission forms to be digitally signed, with the protections outlined in Government Code section 16.5 and the Secretary of State's regulations, will lead to unnecessary risks and difficulties for local governments and state agencies in complying with existing Commission regulations governing the timely filing of test claims, incorrect reduction claims, notices of intent to join a consolidated incorrect reduction claim, and requests for mandate redeterminations.

Thus, the Commission finds that any new filing required to be filed on a form prescribed by the Commission shall be digitally signed using the digital signature technology and authentication process contained within the form constitutes an emergency, as defined in Government Code section 11342.545, and proposes to immediately adopt emergency regulations to avoid serious harm to the public health, safety, and general welfare.

II. Necessity

Modifying existing regulations to require digital signatures on Commission forms is necessary to ensure that the Commission does not unduly expose Californians to COVID-19, and the requirement for digital signatures, as opposed to the more general category of electronic signatures, is to enhance security and verifiability in accordance with Government Code section 16.5 and the Secretary of State's regulations for documents that are required to be signed under penalty of perjury. The proposed regulations would also be consistent with the State Administrative Manual Management Memo Number 20-07 for state agency forms not specifically authorized and established by statute and the general policy direction of the State.¹²

The proposed amendments result in a need to clarify the electronic filing requirements applicable to all other, non-form documents filed with the Commission. These amendments are needed to distinguish the e-filing procedures that apply to Commission forms versus all other documents.

¹¹ Government Code section 16.5(a). See California Code of Regulations, title 2, sections 22000 - 22005.

¹² State Administrative Manual Management Memo Number 20-07, California Department of General Services: <https://www.dgs.ca.gov/Resources/ManagementMemos> (accessed January 27, 2022).

Adding citations for the Uniform Electronic Transactions Act (Civ. Code, § 1633.1 et seq.) and Government Code section 16.5 are necessary to provide a more complete and accurate listing of references.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON TO DEVELOP REGULATIONS

In developing the proposed changes, the Commission relied on the following documents:

1. State Administrative Manual Management Memo Number 20-07, California Department of General Services: <https://www.dgs.ca.gov/Resources/ManagementMemos> (accessed January 27, 2022); and
2. State Administrative Manual, Section 1734, California Department of General Services: <https://www.dgs.ca.gov/Resources/SAM/TOC/1700/1734> (accessed February 8, 2022).

The Commission also relied upon the statutes and cases cited in the authority and reference sections for the regulations.

AUTHORITY AND REFERENCE CITATIONS

Government Code section 17527(g) authorizes the Commission to adopt the proposed regulations. Reference citations: Sections 1633.1 et seq., 1798 et seq., Civil Code; and Sections 11020(a), 17530, 17551, 17557(d), 17558.7, 17570, 17573(b), 17574(c) and 17573(g), Government Code.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The Commission on State Mandates (Commission) is a seven-member quasi-judicial body created by the Legislature to resolve disputes regarding the existence of state-mandated local programs (Gov. Code, § 17500 et seq.) and to hear matters involving county applications for a finding of significant financial distress (Welf. & Inst. Code, § 17000.6).

Policy Statement Overview

The purpose of this rulemaking is to modify the signature requirement for e-filed Commission forms to require the use of a digital signature and to clarify the requirements applicable to all other documents e-filed with the Commission. Existing law requires a scanned copy of the original signature page for all documents filed with the Commission.

While the Commission's statutorily-prescribed forms are exempt from the state form e-signature requirement,¹³ in light of the ongoing COVID-19 pandemic and the need to slow the spread of COVID-19 by encouraging telework by public agency personnel and paperless transactions to the extent possible, digital signatures provide a secure mechanism for signing e-filed

¹³ See Government Code section 14774, which provides that the State Forms Management Program, under which the Department of General Services is authorized to develop statewide standardization of state agency forms, does not apply to any state agency form with provisions specifically authorized and established by statute. As discussed above, Government Code sections 17553(b), 17558.7(c) and (e), and 17570(d)(1), respectively, require test claims, incorrect reduction claims and notices of intent to join consolidated incorrect reduction claims, and requests for adoption of a new test claim decision to be filed on forms prescribed by the Commission.

Commission forms, reflect the current work environment, and promote the statewide policy of using digital signature blocks on agency forms, particularly for statements made under penalty of perjury.

The proposed regulations amend section 1181.3(c)(1) to require: (1) use of a digital signature on e-filed Commission forms; (2) separately e-filing the digitally-signed Commission form from any accompanying documents; and (3) e-filing the documents accompanying the digitally-signed Commission form together in a single file, unless the file size exceeds 500 megabytes, in which case the accompanying documents shall be filed in multiple volumes, in accordance with the requirements specified in newly-labeled subdivision (c)(1)(D).

The proposed changes also clarify that all e-filed documents other than Commission forms shall continue to be filed in unlocked PDF file format, with a black-and-white scanned copy of the signed signature page, rather than a digitally signed document.

The proposed amendments add reference citations for the Uniform Electronic Transactions Act (UETA) (Civ. Code § 1633.1 et seq.) and Government Code section 16.5, which provide the governing statutory authority permitting the use of digital signatures in written communication with state agencies and define “digital signature” as the term applies to section 1181.3.

Existing Law

Section 1181.3 provides the procedure for certifying, filing, and serving new filings and written materials for all Commission matters, both electronically (e-filing) and in hard copy. With limited exceptions, section 1181.3(c) requires all new filings and written materials to be electronically filed via the Commission’s e-filing system. Under section 1181.2 of the Commission’s regulations, “new filing” includes but is not limited to a test claim; incorrect reduction claim and notice of intent to join a consolidated incorrect reduction claim; and request for mandate redetermination, all of which must be filed on Commission forms.¹⁴ Subdivision (c)(1) requires all e-filed documents, including Commission forms, to be filed in unlocked, searchable PDF file format, with a scanned copy of the original handwritten signature page.

Under existing law, the filer has to scan the form to submit the original signature, which regularly requires filing parties to perform tasks in the office, or for hard copies of the form or signature page to be handled by more than one staff person, both of which potentially increase COVID-19 exposure and transmission.

Furthermore, beginning January 1, 2022, most state agency forms must be capable of accepting e-signatures that are secure and verifiable.¹⁵ Digital signatures are a type of permissible e-

¹⁴ See Government Code sections 17553(b), 17558.7(c) and (e), and 17570(d)(1), respectively.

¹⁵ State Administrative Manual Management Memo Number 20-07, California Department of General Services: <https://www.dgs.ca.gov/Resources/ManagementMemos> (accessed January 27, 2022), which states in relevant part the following:

This policy requires all forms that are designed to be completed by internal or external customers (public or private sector entities) conducting business with the State of California, whether standard (STD) or agency forms, are available in an electronic format. Agencies shall use electronic signatures (hereafter “e-Signatures” or “e-Sign”) in place of a wet signature unless prohibited by law.

signature for use on state agency forms. While the Commission’s statutorily-prescribed forms are exempt from the state form e-signature requirement,¹⁶ in light of the ongoing COVID-19 pandemic and the need to slow the spread of COVID-19 by encouraging telework by public agency personnel and paperless transactions to the extent possible, digital signatures provide a secure mechanism for signing e-filed Commission forms, reflect the current work environment, and promote the statewide policy of using digital signature blocks on agency forms, particularly for statements made under penalty of perjury.

Both the Uniform Electronic Transactions Act (UETA) (Civ. Code, § 1633.1 et seq.) and Government Code section 16.5 authorize the use of digital signatures in written communication with public entities, including state agencies. Under the UETA, any law that requires a signature is satisfied by an electronic signature, including a “digital signature” within the meaning of Government Code section 16.5(d).¹⁷ Government Code section 16.5(d) defines a “digital signature” as “an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.” Under section 16.5, a “digital signature” may be used in any written communication with a public entity in which a signature is required or used, provided that the digital signature meets specified criteria and conforms to regulations adopted by the Secretary of State.¹⁸

Digital signatures are distinct from the broader category of electronic signatures in that a digital signature requires that specific technology be used to verify the signature. The Secretary of State regulations implementing Government Code section 16.5 provide that a digital signature used or accepted by a public entity must be created by an acceptable technology.¹⁹

The Commission has reformatted its forms to include a digital signature block, meaning that state agencies and local governments seeking to e-file a test claim, incorrect reduction claim, notice of intent to join a consolidated incorrect reduction claim, or request for mandate redetermination will do so using a digital signature, which better ensures verifiability for documents that are required to be signed under penalty of perjury, such as these Commission forms. The proposed amendments to subdivision (c)(1) specify that any new filing required to be filed on a form prescribed by the Commission shall be digitally signed using the digital signature technology and authentication process contained within the form.

¹⁶ See Government Code section 14774, which provides that the State Forms Management Program, under which the Department of General Services is authorized to develop statewide standardization of state agency forms, does not apply to any state agency form with provisions specifically authorized and established by statute. As discussed above, Government Code sections 17553(b), 17558.7(c) and (e), and 17570(d)(1), respectively, require test claims, incorrect reduction claims and notices of intent to join consolidated incorrect reduction claims, and requests for adoption of a new test claim decision to be filed on forms prescribed by the Commission.

¹⁷ Civil Code section 1633.7(d).

¹⁸ Government Code section 16.5(a). See California Code of Regulations, title 2, sections 22000 - 22005.

¹⁹ California Code of Regulations, title 2, sections 22001, 22002, 22005.

Anticipated Benefits of the Proposed Regulations

The proposed amendments will streamline and make more efficient the mandate determination process and will enable state and local government agencies to sign e-filed Commission forms in a safer and more secure manner. By enabling state and local agencies to digitally sign Commission forms, the proposed amendments will lessen COVID-19 exposure and transmission by providing a paperless and contactless process for signing and e-filing Commission forms.

Therefore, the Commission proposes revised language and citations in Article 1 of the California Code of Regulations, Division 2, Title 2, Chapter 2.5 (Section 1181.3).

Consistency and Compatibility with Existing State Regulations

The only existing regulations concerning the Commission’s process are those set forth in California Code of Regulations, Title 2, Sections 1181.1 et seq. The only existing regulations concerning the use of digital signatures on state agency forms are those set forth by the Secretary of State in California Code of Regulations, Title 2, Chapter 10, Division 7 (Sections 22000 – 22005). After careful evaluation, the Commission has determined that the proposed regulations are consistent and compatible with existing regulations.

DISCLOSURES REGARDING THE PROPOSED EMERGENCY ACTION

The Commission has made the following initial determinations:

Substantial differences from existing comparable federal regulations:	None
Mandate on local agencies and school districts:	None
Cost or savings to any state agency:	None
Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:	None
Other non-discretionary cost or savings imposed on local agencies:	None
Cost or savings in federal funding to the state:	None