

## ITEM 10

### ADOPTION OF PROPOSED REGULATORY ACTION INCORRECT REDUCTION CLAIMS PROCESS

PROPOSED AMENDMENTS TO  
CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 5.  
INCORRECT REDUCTION CLAIMS, COMMENCING WITH SECTION 1185

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## ITEM 10

### ADOPTION OF PROPOSED REGULATORY ACTION INCORRECT REDUCTION CLAIMS PROCESS

#### PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 5. INCORRECT REDUCTION CLAIMS, COMMENCING WITH SECTION 1185

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#### EXECUTIVE SUMMARY

The purpose of this rulemaking is to implement Assembly Bill 2652 (Stats. 2006, ch. 168), which reforms the Commission's incorrect reduction claims process. It adds Government Code sections 17558.7 and 17558.8, which establish processes for either claimant-initiated or Commission-directed consolidation of incorrect reduction claims, if specific criteria are met.

The notice of proposed rulemaking and the proposed text was mailed on November 17, 2006, which is more than 45 days prior to the close of the public comment period on January 5, 2007.<sup>1</sup> Sixten and Associates submitted written comments and requested a public hearing on the proposed rulemaking action.<sup>2</sup> The hearing was held on January 24, 2007, at 980 Ninth Street, Sacramento, California. Representatives of the California State Association of Counties SB 90 Service provided oral testimony.<sup>3</sup> The main issues were: 1) the proposed shortening of the statute of limitations for filing an incorrect reduction claim from three years to one year following the date of the Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction, if the notice is dated on or after July 1, 2007; and 2) the proposed timelines for the opt out process.

Based on the comments received, the Commission, on February 2, 2007, issued modifications to the text of the proposed regulations along with a notice of the public comment period from February 2, 2007, through February 20, 2007.<sup>4</sup> Agreeing that Assembly Bill 2652 did not address a statute of limitations, staff removed the proposal to shorten the statute of limitations from three years to one year from this rulemaking proposal. Also, staff modified section 1185.4 to provide a 30-day notice period for claimants to file a written request that an individual incorrect reduction claim be severed from the Executive Director's proposed consolidation of incorrect reduction claims.

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<sup>1</sup> Exhibit A.

<sup>2</sup> Exhibit B.

<sup>3</sup> Exhibit C.

<sup>4</sup> Exhibit D.

On February 16, 2007, Sixten and Associates submitted written comments<sup>5</sup> suggesting that one of the types of State Controller actions that begin the three-year statute of limitations for filing an incorrect reduction claim in section 1185, subdivision (b), be modified to read “state audit report” rather than “final state audit report.” It was argued that the Controller’s Office may also issue revised, corrected, or amended audit reports after a “final” report is issued, and thus, removing the modifier “final” would eliminate confusion. Staff noted that the Commission’s intent is to receive the Controller’s final decision and that revised, corrected, or amended audit reports can also fall under “other written notices of adjustment.” Therefore, staff did not make any modifications to the rulemaking proposal to address this comment.

Staff’s full response to the oral and written comments is in the Final Statement of Reasons.<sup>6</sup>

Staff finds that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

### **Staff Recommendation**

Therefore, staff recommends that the Commission:

- Find that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.
- Adopt the proposed amendments to California Code of Regulations, title 2, division 2, chapter 2.5, article 5. Incorrect Reduction Claims, commencing with section 1185.
- Authorize staff to make any non-substantive, technical corrections requested by the Office of Administrative Law or Barclays Official California Code of Regulations prior to publication.

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<sup>5</sup> Exhibit E.

<sup>6</sup> Exhibit F.

PROPOSED AMENDMENTS TO:  
CALIFORNIA CODE OF REGULATIONS  
TITLE 2. ADMINISTRATION  
DIVISION 2. FINANCIAL OPERATIONS  
CHAPTER 2.5. COMMISSION ON STATE MANDATES

**Article 5. Incorrect Reduction Claims**

**§ 1185. Incorrect Reduction Claim Filing**

(a) To obtain a determination that the Office of State Controller incorrectly reduced a reimbursement claim, a claimant shall file an "incorrect reduction claim" with the commission.

(b) All incorrect reduction claims shall be filed with the commission no later than:

~~(1) Three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction, if the notice is dated before July 1, 2007.~~

~~(2) One (1) year following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction, if the notice is dated on or after July 1, 2007.~~

(c) An incorrect reduction claim shall pertain to alleged incorrect reductions in a reimbursement claim(s) filed by one claimant. The incorrect reduction claim may be for more than one fiscal year.

(d) All incorrect reduction claims, or amendments thereto, shall be filed on a form provided by the commission.

(e) All incorrect reduction claims, or amendments thereto, shall contain at least the following elements and documents:

(1) A copy of the Office of State Controller's claiming instructions that were in effect during the fiscal year(s) of the reimbursement claim(s).

(2) A written detailed narrative that describes the alleged incorrect reduction(s). The narrative shall include a comprehensive description of the reduced or disallowed area(s) of cost(s).

(3) If the narrative describing the alleged incorrect reduction(s) involves more than discussion of statutes or regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by testimonial or documentary evidence and shall be submitted with the claim. All documentary evidence must be authenticated by declarations

under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

(4) A copy of ~~the any~~ final state audit report, ~~or~~ letter, ~~or the~~ remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance.

~~(5) A copy of a letter sent by the claimant or the claimant's representative to the Office of State Controller explaining why the reduced area(s) of cost in dispute should be restored.~~

(65) A copy of the subject reimbursement claims the claimant submitted to the Office of State Controller.

(76) An incorrect reduction claim, or amendment thereto, shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the ~~test~~ incorrect reduction claim is true and complete to the best of the declarant's personal knowledge or information or belief. The date signed, the declarant's title, address, telephone number, and, if available, electronic mail address and facsimile number, shall be included.

(87) The claimant shall file one original incorrect reduction claim, or amendment thereto, and accompanying documents with the commission. The original shall be unbound and single-sided, without tabs, and include a table of contents.

(98) The claimant shall also file two (2) copies of the incorrect reduction claim, or amendment thereto, and accompanying documents with the commission. The copies may be two-sided and shall not include tabs.

(f) Within ten (10) days of receipt of an incorrect reduction claim, commission staff shall notify the claimant if the incorrect reduction claim is complete or incomplete. Incorrect reduction claims will be considered incomplete if any of the elements required in subsections (~~dc~~) through (~~fe~~) of this section are illegible or not included. Incomplete incorrect reduction claims shall be returned to the claimant. If a complete incorrect reduction claim is not received by the commission within thirty (30) days from the date the incomplete claim was returned to the claimant, the commission shall deem the filing to be withdrawn.

Note: Authority cited: Section 17527(g) ~~and (h)~~, Government Code. Reference: Sections 17551(~~bd~~) and 17553(d), Government Code.

#### **§ 1185.011. Review of Incorrect Reduction Claims.**

(a) Within ten (10) days of receipt of a complete incorrect reduction claim, commission staff shall provide a copy of the claim to the Office of State Controller.

(b) Commission staff shall notify the Office of State Controller that written oppositions or recommendations and supporting documentation in connection with an incorrect reduction claim

shall be filed no more than ninety (90) days from the date the copy of the claim is provided to the Office of State Controller. The Office of State Controller shall simultaneously serve a copy of any opposition or recommendation regarding the claim on the claimant and their designated representative or, if a mailing list is provided by the commission, a copy of any opposition or recommendation on the claim, must be filed on all parties and interested parties on the mailing list. Proof of service must be filed with the oppositions or recommendations and supporting documentation pursuant to section 1181.2. If the oppositions or recommendations regarding an incorrect reduction claim involve more than the discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by documentary evidence and shall be submitted with the response. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

(c) The claimant and interested parties may submit written rebuttals to the Office of State Controller's comments. Written rebuttals shall be filed with the commission within thirty (30) days of service of the Office of State Controller's comments. The claimant shall simultaneously serve a copy of the written rebuttal on the Office of State Controller or, if a mailing list is provided by the commission, a copy of the rebuttal, must be served on all parties and interested parties on the mailing list. Proof of service shall be filed with the written rebuttal and supporting documentation pursuant to section 1181.2. If the written rebuttal involves more than discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by documentary evidence and shall be submitted with the rebuttal. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

Note: Authority cited: Section 17527(g), Government Code. Reference: Sections 17551(bd) and 17553(d), Government Code.

**§ 1185.2. Consolidation of Claims Initiated by an Individual Claimant; Intent to Join a Consolidated Claim.**

(a) On behalf of a class of claimants, an individual claimant may initiate the consolidation of claims alleging an incorrect reduction as described in Government Code section 17558.7, if all of the following apply:

(1) The method, act, or practice that the claimant alleges led to the reduction has led to similar reductions of other parties' claims, and all of the claims involve common questions of law or fact.

(2) The common questions of law or fact among the claims predominate over any matter affecting only an individual claim.

(3) The consolidation of similar claims by individual claimants would result in consistent decisionmaking by the commission.

(4) The claimant filing the consolidated claim would fairly and adequately protect the interests of the other claimants.

(b) A claimant that seeks to file a consolidated incorrect reduction claim shall notify the commission of its intent at the time of filing on a form provided by the commission.

(c) Within ten (10) days of receipt of a consolidated incorrect reduction claim, commission staff shall notify the claimant if the consolidated incorrect reduction claim is complete or incomplete pursuant to section 1185, and request the Office of the State Controller to provide the commission, within thirty (30) days, a list of claimants for whom the Controller has reduced similar claims under the same mandate, and the date each claimant was notified of an adjustment.

(d) Upon receipt of the list from the Office of the State Controller, the commission shall notify the list of other claimants experiencing similar reductions by the Controller under the same mandate and other interested parties of the original claimant's intent to consolidate an incorrect reduction claim.

(e) Within thirty (30) days of receipt of the commission's notice regarding the original claimant's intent to consolidate an incorrect reduction claim, any other eligible claimant may, on a form provided by the commission, file a notice of intent to join the consolidated incorrect reduction claim.

(f) All notices of intent to join a consolidated incorrect reduction claim shall comply with section 1185(b) and contain at least the following elements and documents:

(1) A copy of the final state audit report, letter, remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance.

(2) A copy of the subject reimbursement claims submitted to the Office of State Controller.

(3) A notice of intent to join a consolidated incorrect reduction claim shall include a certification by the joint-claimant authorizing the original claimant to act as its representative in the consolidated incorrect reduction claim, and a declaration under penalty of perjury that the filing is true and complete to the best of the declarant's personal knowledge or information or belief. The date signed, the declarant's title, address, telephone number, and, if available, electronic mail address and facsimile number, shall be included.

(4) The joint-claimant shall file one original notice of intent to join and accompanying documents with the commission. The original shall be unbound and single-sided, without tabs.

(5) The joint-claimant shall also file two (2) copies of the notice of intent to join and accompanying documents with the commission. The copies may be two-sided and shall not include tabs.

(g) Within ten (10) days of receipt of a notice of intent to join a consolidated incorrect reduction claim, commission staff shall notify the joint-claimant if the notice of intent to join is complete or incomplete. Notices of intent to join a consolidated incorrect reduction claim will be considered incomplete if any of the elements required in subsection (f) of this section are illegible or not included. Incomplete notices of intent shall be returned to the joint-claimant. If a complete notice of intent to join a consolidated incorrect reduction claim is not received by the commission within thirty (30) days from the date the incomplete notice of intent was returned to the joint-claimant, the commission shall deem the filing to be withdrawn.

Note: Authority cited: Sections 17527(g) and 17558.7(g), Government Code. Reference: Section 17558.7, Government Code.

### **§ 1185.3 Opting Out of a Consolidated Incorrect Reduction Claim.**

Pursuant to Government Code section 17558.7(f), each claimant that files an intent to join a consolidated incorrect reduction claim may opt out and not be bound by any determination made on the consolidated claim.

(a) To opt out of a consolidated incorrect reduction claim, claimants shall file a written notice with the commission within fifteen (15) days of service of the Office of State Controller's comments. A copy of the notice must be served on all parties and interested parties on the mailing list. Proof of service shall be filed with the notice pursuant to section 1181.2.

(1) No later than one (1) year after opting out, or within the statute of limitations under section 1185(b), whichever is later, a claimant that opts out of a consolidated claim shall file an individual incorrect reduction claim pursuant to commission requirements in order to preserve its right to challenge a reduction made by the Controller on that same mandate.

(2) If a claimant opts out of a consolidated incorrect reduction claim and an individual incorrect reduction claim for that entity is already on file with the commission, the individual filing is automatically reinstated.

Note: Authority cited: Sections 17527(g) and 17558.7(g), Government Code. Reference: Section 17558.7, Government Code.

### **§ 1185.4. Executive Director's Authority to Consolidate Incorrect Reduction Claims.**

(a) The executive director may consolidate part or all of any incorrect reduction claim with another incorrect reduction claim, if necessary to ensure the complete, fair, or timely consideration of any incorrect reduction claim.

~~(1b)~~ At least ~~ten (10)~~ thirty (30) days before the action is taken, the executive director shall simultaneously serve on the parties and interested parties on the mailing list described in section 1181.2 of these regulations a notice of any proposed action to consolidate.



~~(e) Any party may opt out of a consolidated incorrect reduction claim as described in section 1185.1(e).~~

(2) During the thirty (30) day notice period, a claimant may serve and file a written request that an individual incorrect reduction claim be severed from the proposed consolidation. Timely requests to sever shall be approved by the executive director.

(3) Late requests for severing an individual incorrect reduction claim shall be denied. Any party may appeal to the commission for review of the actions and decisions of the executive director under this section pursuant to section 1181 of these regulations.

Note: Authority cited: Sections 17527(g) and 17558.8(b), Government Code. Reference: Sections 17530, 17554, and 17558.8, Government Code.

### **§ 1185.025. Review of Completed Incorrect Reduction Claims and Preparation of Staff Analysis.**

~~(a) The executive director may combine analyses of incorrect reduction claims from different claimants if the claims contain similar issues.~~

~~(b)~~ Before hearing an individual or consolidated incorrect reduction claim, commission staff shall prepare a written analysis of the incorrect reduction claim that shall include, but not be limited to, a review of any statements filed by the Office of State Controller and the claimant's rebuttal. The analysis shall also include a staff recommendation on whether the claimant's reimbursement claim was incorrectly reduced.

~~(b)~~ At least eight (8) weeks before the hearing or at such other time as required by the executive director or stipulated to by the claimant and the Office of State Controller, commission staff shall distribute a draft staff analysis to the Office of State Controller and the claimant and their designated representative, or, if a mailing list is provided by the commission, a copy shall be distributed to all parties and interested parties on the mailing list.

~~(c)~~ The Office of State Controller and the claimant may file written comments on the draft staff analysis with the commission. Written comments shall be filed with the commission at least five (5) weeks before the hearing or as otherwise stipulated to by the parties or determined and publicized by the executive director. If a mailing list is provided by the commission, a copy of the comments must be served on all parties and interested parties on the mailing list. Written comments shall be reviewed by staff and may be incorporated into the final staff analysis presented to the commission.

Note: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(~~b~~), Government Code.

| § 1185.~~036~~. **Withdrawal of Incorrect Reduction Claims.**

An incorrect reduction claim may be withdrawn by written application any time before a decision is adopted or by oral application at the time of hearing. If such application is made the commission may issue a decision dismissing the claim.

| Note: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(~~bd~~), Government Code.

| § 1185.~~17~~. **Reinstatement of Costs.**

If the commission determines that a reimbursement claim was incorrectly reduced, the commission shall send the statement of decision to the Office of State Controller and request that the Office of State Controller reinstate the costs that were incorrectly reduced.

| Note: Authority cited: Section 17527(g) ~~and (h)~~, Government Code. Reference: Section 17551(~~bd~~), Government Code.

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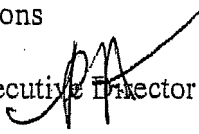
**COMMISSION ON STATE MANDATES**

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



November 17, 2006

TO: All Interested Persons

FROM: Paula Higashi, Executive Director 

SUBJECT: Rulemaking Proceeding

Government Code section 17527, subdivision (g), authorizes the Commission to adopt the proposed regulations. The purpose of this rulemaking is to implement AB 2652 (Stats. 2006, ch. 168), which reforms the Commission's incorrect reduction claims process.

The Commission proposes to amend and renumber sections 1185, 1185.01, 1185.02, 1185.03, and 1185.1; and to add sections 1185.2, 1185.3, and 1185.4 of the California Code of Regulations, title 2, division 2, chapter 2.5.

We invite your participation in the Commission's Rulemaking Proceeding. Enclosed is the Commission's rulemaking packet that includes the following documents:

- Commission Order to Initiate Rulemaking Proceedings
- Notice of Proposed Rulemaking
- Initial Statement of Reasons
- Text of Proposed Regulatory Action

Written comments on the proposed amendments will be accepted until **5:00 p.m. on January 5, 2007**. The Commission will hold a public hearing if it receives a written request for a public hearing no later than 15 days before the close of the written comment period. For details on public participation, please see the enclosed Notice of Proposed Rulemaking.

If you have any questions about the proposed rulemaking, please call Cathy Cruz Jefferson at (916) 323-8218.

Enclosures



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 5

No. 06-2

ORDER TO INITIATE  
RULEMAKING PROCEEDINGS

*Incorrect Reduction Claims Process*

Pursuant to California Code of Regulations, title 2, section 1189.2, the Commission on State Mandates ("Commission") hereby adopts this order to institute rulemaking proceedings in accordance with the procedures of Government Code sections 11346.2, 11346.4, 11346.8, and 11346.9.

PROPOSED REGULATORY ACTION. The Commission proposes to amend and renumber sections 1185, 1185.01, 1185.02, 1185.03, and 1185.1; and to add sections 1185.2, 1185.3, and 1185.4 of the California Code of Regulations, title 2, chapter 2.5, division 2.

AUTHORITY AND REFERENCE. Government Code section 17527, subdivision (g), authorizes the Commission to adopt the proposed regulations. The purpose of this rulemaking is to implement AB 2652 (Stats. 2006, ch. 168), which reforms the Commission's incorrect reduction claims process.

WRITTEN COMMENT PERIOD. Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The Commission will only consider written comments received at the Commission's office by 5:00 p.m. on January 5, 2007. Submit comments to:

Cathy Cruz Jefferson, Senior Program Analyst  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814.  
Phone: (916) 323-3562 FAX: (916) 445-0278  
Email: cathy.cruz@esm.ca.gov

PUBLIC HEARING. The Commission will hold a hearing on January 24, 2007, if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than December 21, 2006.

Date: 10/30/06

By: 

Paula Higashi, Executive Director



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

**NOTICE OF PROPOSED RULEMAKING**

The Commission on State Mandates (Commission) proposes to adopt the regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

The Commission has not scheduled a public hearing on this proposed action. However, the Commission will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at **5:00 p.m. on January 5, 2007**. The Commission will consider only comments received at the Commission offices by that time. Submit comments to:

Cathy Cruz Jefferson, Senior Program Analyst  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**AUTHORITY AND REFERENCE**

Government Code section 17527, subdivision (g), authorizes the Commission to adopt the proposed regulations. The purpose of this rulemaking is to implement AB 2652 (Stats. 2006, ch. 168), which reforms the Commission's incorrect reduction claims process.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Commission is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state-mandated local programs (Gov. Code, § 17500 et seq.) and to hear matters involving applications for a finding of significant financial distress (Welf. & Inst. Code, § 17000.6). The proposed rulemaking implements AB 2652 (Stats. 2006, ch. 168), which reforms the Commission's incorrect reduction claims process. It adds Government Code sections 17558.7 and 17558.8, which establish processes for either claimant-initiated or Commission-directed consolidation of incorrect reduction claims, if all of the following apply:

- The method, act, or practice that the claimant alleges led to the reduction has led to similar reductions of other parties' claims, and all of the claims involve common questions of law or fact.
- The common questions of law or fact among the claims predominate over any matter affecting only an individual claim.



- The consolidation of similar claims by individual claimants would result in consistent decisionmaking by the commission.
- The claimant filing the consolidated claim would fairly and adequately protect the interests of the other claimants.

Under Article 5, the Commission proposes to amend and renumber sections 1185, 1185.01, 1185.02, 1185.03, and 1185.1; and to add sections 1185.2, 1185.3, and 1185.4 of the California Code of Regulations, title 2, chapter 2.5, division 2.

Section 1185 will shorten the statute of limitations for filing an incorrect reduction claim from three years to one year following the date of the Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction, if the notice is dated on or after July 1, 2007. It will also eliminate the requirement, when filing an incorrect reduction claim with the Commission, to submit a copy of a letter sent by the claimant or the claimant's representative to the Controller explaining why the reduced area(s) of cost in dispute should be restored.

Section 1185.2 adds a process for the consolidation of claims initiated by an individual claimant as described in Government Code section 17558.7.

Section 1185.3 adds a process for opting out of a consolidated incorrect reduction claim.

Section 1185.4 adds a process for the executive director to consolidate incorrect reduction claims as described in Government Code section 17558.8.

Sections 1185.01, 1185.02, 1185.03, and 1185.1 were renumbered and will make only minor, non-substantive, and technical amendments.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Commission has made the following initial determinations:

Mandate on local agencies and school district:	None
Cost or savings to any state agency:	Minor
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:	Minor
Cost or savings in federal funding to the state:	None
Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:	None
Significant effect on housing costs:	None
Cost impacts on a representative private person or business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.	

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

*Small Business Determination:* Because the Commission has no jurisdiction over small businesses, the proposed regulatory action will have no impact on small businesses.

### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Cathy Cruz Jefferson, Senior Program Analyst  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Telephone: (916) 323-3562

The backup contact person for these inquiries is:

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

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Cathy Cruz Jefferson at the above address.

### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire 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 in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Commission order to initiate rulemaking proceedings. Copies may be obtained by contacting Ms. Cathy Cruz Jefferson at the address or phone number listed above. All persons on the Commission's interested persons mailing list will automatically be sent a copy of the rulemaking file.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, and holding a public hearing, if necessary, the Commission may adopt the proposed regulations substantially as described in this notice. If the Commission makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Commission adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Ms. Cathy Cruz Jefferson at the address indicated above. The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Cathy Cruz Jefferson at the above address.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at [www.csm.ca.gov](http://www.csm.ca.gov).

## INITIAL STATEMENT OF REASONS

### SPECIFIC PURPOSE OF THE PROPOSED ACTION

The Commission is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state-mandated local programs (Gov. Code, § 17500 et seq.) and to hear matters involving applications for a finding of significant financial distress (Welf. & Inst. Code, § 17000.6). The purpose of this rulemaking is to implement AB 2652 (Stats. 2006, ch. 168), which reforms the Commission's incorrect reduction claims process. It adds Government Code sections 17558.7 and 17558.8, which establish processes for either claimant-initiated or Commission-directed consolidation of incorrect reduction claims, if all of the following apply:

- The method, act, or practice that the claimant alleges led to the reduction has led to similar reductions of other parties' claims, and all of the claims involve common questions of law or fact.
- The common questions of law or fact among the claims predominate over any matter affecting only an individual claim.
- The consolidation of similar claims by individual claimants would result in consistent decisionmaking by the commission.
- The claimant filing the consolidated claim would fairly and adequately protect the interests of the other claimants.

### MINOR, NON-SUBSTANTIVE, CLARIFYING AND TECHNICAL AMENDMENTS

The Commission edited text of the existing regulations for clarity and consistency purposes. Specifically, the Commission proposes minor, non-substantive, or clarifying technical amendments in sections 1185.01, 1185.03, and 1185.1.

### ARTICLE 5. INCORRECT REDUCTION CLAIMS

#### SECTION 1185. INCORRECT REDUCTION CLAIM FILING

##### *Specific Purpose of the Regulation*

This section specifies the elements and documents required for filing an incorrect reduction claim with the Commission.

##### *Necessity*

Currently, the statute of limitations for filing an incorrect reduction claim is three years following the date of the Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction. Government Code section 17558.6 authorizes the Commission to review its incorrect reduction claims process in order to provide for a more expeditious and less costly process. To provide a more expeditious process, the proposed changes amend this section to shorten the statute of limitations from three years to one year following the date of the Controller's final state audit report, letter, remittance advice, or other

written notice of adjustment notifying the claimant of a reduction, if the notice is dated on or after July 1, 2007. In addition, the proposed changes amend this section to eliminate the requirement, when filing an incorrect reduction claim with the Commission, to submit a copy of a letter sent by the claimant or the claimant's representative to the Controller explaining why the reduced area(s) of cost in dispute should be restored. The Commission no longer requires this document when reviewing an incorrect reduction claim filing. The proposed changes are also necessary to correct the reference citations.

**SECTION 1185.2. CONSOLIDATION OF CLAIMS INITIATED BY AN INDIVIDUAL CLAIMANT; INTENT TO JOIN A CONSOLIDATED CLAIM**

*Specific Purpose of the Regulation*

This section establishes the procedures for an individual claimant to initiate the consolidation of claims alleging an incorrect reduction, if certain criteria apply, and establishes the procedures for other claimants to join a consolidated claim. This section also specifies the duties of the Commission staff and the State Controller's Office upon receipt of a notice of intent to consolidate an incorrect reduction claim and notice of intent to join a consolidated claim.

*Necessity*

This section conforms to AB 2652 that authorizes claimant-initiated consolidation of incorrect reduction claims.

**SECTION 1185.3. OPTING OUT OF A CONSOLIDATED INCORRECT REDUCTION CLAIM**

*Specific Purpose of the Regulation*

This section establishes the procedures for opting out of a consolidated incorrect reduction claim and clarifies how a claimant may preserve its right to challenge a reduction made by the Controller on a mandated program.

*Necessity*

This section conforms to AB 2652 that permits claimants who join a consolidated incorrect reduction claim to opt out and not be bound by any determination made on the consolidated claim.

**SECTION 1185.4. EXECUTIVE DIRECTOR'S AUTHORITY TO CONSOLIDATE INCORRECT REDUCTION CLAIMS**

*Specific Purpose of the Regulation*

This section establishes the procedures for the executive director's authority to consolidate incorrect reduction claims.

*Necessity*

This section conforms to AB 2652 that authorizes the executive director to consolidate incorrect reduction claims, if necessary to ensure the complete, fair, or timely consideration of any incorrect reduction claim.

SECTION 1185.02. REVIEW OF COMPLETED INCORRECT REDUCTION CLAIMS AND PREPARATION OF STAFF ANALYSIS

*Specific Purpose of the Regulation*

This section specifies the duties of Commission staff in preparing the staff analysis on a completed incorrect reduction claim, and the process for claimants, state agencies, and interested parties to participate in review of the staff analysis.

*Necessity*

AB 2652 authorizes the executive director to consolidate incorrect reduction claims to ensure the complete, fair, or timely consideration of any incorrect reduction claim. The proposed changes remove subdivision (a), which provides that the executive director may combine analyses of incorrect reduction claims if they contain similar issues, because the executive director's authority was moved to section 1185.4. The proposed changes are also necessary to renumber this section and to correct the reference citations.

**MATERIAL RELIED UPON TO DEVELOP REGULATIONS**

No technical documents, empirical studies, reports or documents have been relied upon to develop these proposed regulations.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTIONS**

The Commission has not identified any reasonable alternatives to the proposed regulatory actions. The Commission has no jurisdiction over small businesses. Therefore, there is no adverse impact on small businesses.

**ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

The Commission has made an initial determination that there is no adverse economic impact on any business because the Commission does not have jurisdiction over businesses.



PROPOSED AMENDMENTS TO:  
CALIFORNIA CODE OF REGULATIONS  
TITLE 2. ADMINISTRATION  
DIVISION 2. FINANCIAL OPERATIONS  
CHAPTER 2.5. COMMISSION ON STATE MANDATES

**Article 5. Incorrect Reduction Claims**

**§ 1185. Incorrect Reduction Claim Filing**

(a) To obtain a determination that the Office of State Controller incorrectly reduced a reimbursement claim, a claimant shall file an "incorrect reduction claim" with the commission.

(b) All incorrect reduction claims shall be filed with the commission no later than:

(1) Three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction, if the notice is dated before July 1, 2007.

(2) One (1) year following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction, if the notice is dated on or after July 1, 2007.

(c) An incorrect reduction claim shall pertain to alleged incorrect reductions in a reimbursement claim(s) filed by one claimant. The incorrect reduction claim may be for more than one fiscal year.

(d) All incorrect reduction claims, or amendments thereto, shall be filed on a form provided by the commission.

(e) All incorrect reduction claims, or amendments thereto, shall contain at least the following elements and documents:

(1) A copy of the Office of State Controller's claiming instructions that were in effect during the fiscal year(s) of the reimbursement claim(s).

(2) A written detailed narrative that describes the alleged incorrect reduction(s). The narrative shall include a comprehensive description of the reduced or disallowed area(s) of cost(s).

(3) If the narrative describing the alleged incorrect reduction(s) involves more than discussion of statutes or regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by testimonial or documentary evidence and shall be submitted with the claim. All documentary evidence must be authenticated by declarations



under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

(4) A copy of ~~the~~ any final state audit report, ~~or~~ letter, ~~or~~ the remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance:

~~(5) A copy of a letter sent by the claimant or the claimant's representative to the Office of State Controller explaining why the reduced area(s) of cost in dispute should be restored.~~

~~(6)~~ A copy of the subject reimbursement claims the claimant submitted to the Office of State Controller.

~~(7)~~ An incorrect reduction claim, or amendment thereto, shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the ~~test~~ incorrect reduction claim is true and complete to the best of the declarant's personal knowledge or information or belief. The date signed, the declarant's title, address, telephone number, and, if available, electronic mail address and facsimile number, shall be included.

~~(8)~~ The claimant shall file one original incorrect reduction claim, or amendment thereto, and accompanying documents with the commission. The original shall be unbound and single-sided, without tabs, and include a table of contents.

~~(9)~~ The claimant shall also file two (2) copies of the incorrect reduction claim, or amendment thereto, and accompanying documents with the commission. The copies may be two-sided and shall not include tabs.

(f) Within ten (10) days of receipt of an incorrect reduction claim, commission staff shall notify the claimant if the incorrect reduction claim is complete or incomplete. Incorrect reduction claims will be considered incomplete if any of the elements required in subsections ~~(e)~~ through ~~(f)~~ of this section are illegible or not included. Incomplete incorrect reduction claims shall be returned to the claimant. If a complete incorrect reduction claim is not received by the commission within thirty (30) days from the date the incomplete claim was returned to the claimant, the commission shall deem the filing to be withdrawn.

Note: Authority cited: Section 17527(g) ~~and (h)~~, Government Code. Reference: Sections 17551(~~b~~d) and 17553(d), Government Code.

#### **§ 1185.011. Review of Incorrect Reduction Claims.**

(a) Within ten (10) days of receipt of a complete incorrect reduction claim, commission staff shall provide a copy of the claim to the Office of State Controller.

(b) Commission staff shall notify the Office of State Controller that written oppositions or recommendations and supporting documentation in connection with an incorrect reduction claim

shall be filed no more than ninety (90) days from the date the copy of the claim is provided to the Office of State Controller. The Office of State Controller shall simultaneously serve a copy of any opposition or recommendation regarding the claim on the claimant and their designated representative or, if a mailing list is provided by the commission, a copy of any opposition or recommendation on the claim, must be filed on all parties and interested parties on the mailing list. Proof of service must be filed with the oppositions or recommendations and supporting documentation pursuant to section 1181.2. If the oppositions or recommendations regarding an incorrect reduction claim involve more than the discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by documentary evidence and shall be submitted with the response. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

(c) The claimant and interested parties may submit written rebuttals to the Office of State Controller's comments. Written rebuttals shall be filed with the commission within thirty (30) days of service of the Office of State Controller's comments. The claimant shall simultaneously serve a copy of the written rebuttal on the Office of State Controller or, if a mailing list is provided by the commission, a copy of the rebuttal, must be served on all parties and interested parties on the mailing list. Proof of service shall be filed with the written rebuttal and supporting documentation pursuant to section 1181.2. If the written rebuttal involves more than discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by documentary evidence and shall be submitted with the rebuttal. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

Note: Authority cited: Section 17527(g), Government Code. Reference: Sections 17551(bd) and 17553(d), Government Code.

**§ 1185.2. Consolidation of Claims Initiated by an Individual Claimant; Intent to Join a Consolidated Claim.**

(a) On behalf of a class of claimants, an individual claimant may initiate the consolidation of claims alleging an incorrect reduction as described in Government Code section 17558.7, if all of the following apply:

(1) The method, act, or practice that the claimant alleges led to the reduction has led to similar reductions of other parties' claims, and all of the claims involve common questions of law or fact.

(2) The common questions of law or fact among the claims predominate over any matter affecting only an individual claim.

(3) The consolidation of similar claims by individual claimants would result in consistent decisionmaking by the commission.

(4) The claimant filing the consolidated claim would fairly and adequately protect the interests of the other claimants.

(b) A claimant that seeks to file a consolidated incorrect reduction claim shall notify the commission of its intent at the time of filing on a form provided by the commission.

(c) Within ten (10) days of receipt of a consolidated incorrect reduction claim, commission staff shall notify the claimant if the consolidated incorrect reduction claim is complete or incomplete pursuant to section 1185, and request the Office of the State Controller to provide the commission, within thirty (30) days, a list of claimants for whom the Controller has reduced similar claims under the same mandate, and the date each claimant was notified of an adjustment.

(d) Upon receipt of the list from the Office of the State Controller, the commission shall notify the list of other claimants experiencing similar reductions by the Controller under the same mandate and other interested parties of the original claimant's intent to consolidate an incorrect reduction claim.

(e) Within thirty (30) days of receipt of the commission's notice regarding the original claimant's intent to consolidate an incorrect reduction claim, any other eligible claimant may, on a form provided by the commission, file a notice of intent to join the consolidated incorrect reduction claim.

(f) All notices of intent to join a consolidated incorrect reduction claim shall comply with section 1185(b) and contain at least the following elements and documents:

(1) A copy of the final state audit report, letter, remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance.

(2) A copy of the subject reimbursement claims submitted to the Office of State Controller.

(3) A notice of intent to join a consolidated incorrect reduction claim shall include a certification by the joint-claimant authorizing the original claimant to act as its representative in the consolidated incorrect reduction claim, and a declaration under penalty of perjury that the filing is true and complete to the best of the declarant's personal knowledge or information or belief. The date signed, the declarant's title, address, telephone number, and, if available, electronic mail address and facsimile number, shall be included.

(4) The joint-claimant shall file one original notice of intent to join and accompanying documents with the commission. The original shall be unbound and single-sided, without tabs.

(5) The joint-claimant shall also file two (2) copies of the notice of intent to join and accompanying documents with the commission. The copies may be two-sided and shall not include tabs.

(g) Within ten (10) days of receipt of a notice of intent to join a consolidated incorrect reduction claim, commission staff shall notify the joint-claimant if the notice of intent to join is complete or incomplete. Notices of intent to join a consolidated incorrect reduction claim will be considered incomplete if any of the elements required in subsection (f) of this section are illegible or not included. Incomplete notices of intent shall be returned to the joint-claimant. If a complete notice of intent to join a consolidated incorrect reduction claim is not received by the commission within thirty (30) days from the date the incomplete notice of intent was returned to the joint-claimant, the commission shall deem the filing to be withdrawn.

Note: Authority cited: Sections 17527(g) and 17558.7(g), Government Code. Reference: Section 17558.7, Government Code.

### **§ 1185.3 Opting Out of a Consolidated Incorrect Reduction Claim.**

Pursuant to Government Code section 17558.7(f), each claimant that files an intent to join a consolidated incorrect reduction claim may opt out and not be bound by any determination made on the consolidated claim.

(a) To opt out of a consolidated incorrect reduction claim, claimants shall file a written notice with the commission within fifteen (15) days of service of the Office of State Controller's comments. A copy of the notice must be served on all parties and interested parties on the mailing list. Proof of service shall be filed with the notice pursuant to section 1181.2.

(1) No later than one (1) year after opting out, or within the statute of limitations under section 1185(b), whichever is later, a claimant that opts out of a consolidated claim shall file an individual incorrect reduction claim pursuant to commission requirements in order to preserve its right to challenge a reduction made by the Controller on that same mandate.

(2) If a claimant opts out of a consolidated incorrect reduction claim and an individual incorrect reduction claim for that entity is already on file with the commission, the individual filing is automatically reinstated.

Note: Authority cited: Sections 17527(g) and 17558.7(g), Government Code. Reference: Section 17558.7, Government Code.

### **§ 1185.4. Executive Director's Authority to Consolidate Incorrect Reduction Claims.**

(a) The executive director may consolidate part or all of any incorrect reduction claim with another incorrect reduction claim, if necessary to ensure the complete, fair, or timely consideration of any incorrect reduction claim.

(b) At least ten (10) days before the action is taken, the executive director shall simultaneously serve on the parties and interested parties on the mailing list described in section 1181.2 of these regulations a notice of any proposed action to consolidate.

(c) Any party may opt out of a consolidated incorrect reduction claim as described in section 1185.1(c).

Note: Authority cited: Sections 17527(g) and 17558.8(b), Government Code. Reference: Sections 17530, 17554, and 17558.8, Government Code.

**§ 1185.025. Review of Completed Incorrect Reduction Claims and Preparation of Staff Analysis.**

~~(a) The executive director may combine analyses of incorrect reduction claims from different claimants if the claims contain similar issues.~~

(~~b~~a) Before hearing an individual or consolidated incorrect reduction claim, commission staff shall prepare a written analysis of the incorrect reduction claim that shall include, but not be limited to, a review of any statements filed by the Office of State Controller and the claimant's rebuttal. The analysis shall also include a staff recommendation on whether the claimant's reimbursement claim was incorrectly reduced.

(~~b~~b) At least eight (8) weeks before the hearing or at such other time as required by the executive director or stipulated to by the claimant and the Office of State Controller, commission staff shall distribute a draft staff analysis to the Office of State Controller and the claimant and their designated representative, or, if a mailing list is provided by the commission, a copy shall be distributed to all parties and interested parties on the mailing list.

(~~c~~c) The Office of State Controller and the claimant may file written comments on the draft staff analysis with the commission. Written comments shall be filed with the commission at least five (5) weeks before the hearing or as otherwise stipulated to by the parties or determined and publicized by the executive director. If a mailing list is provided by the commission, a copy of the comments must be served on all parties and interested parties on the mailing list. Written comments shall be reviewed by staff and may be incorporated into the final staff analysis presented to the commission.

Note: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(~~b~~d), Government Code.

**§ 1185.036. Withdrawal of Incorrect Reduction Claims.**

An incorrect reduction claim may be withdrawn by written application any time before a decision is adopted or by oral application at the time of hearing. If such application is made the commission may issue a decision dismissing the claim.

Note: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(~~b~~d), Government Code.

§ 1185.17. Reinstatement of Costs.

If the commission determines that a reimbursement claim was incorrectly reduced, the commission shall send the statement of decision to the Office of State Controller and request that the Office of State Controller reinstate the costs that were incorrectly reduced.

Note: Authority cited: Section 17527(g) and (h), Government Code. Reference: Section 17551(b)(4), Government Code.



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 Issue: Commission Regulations

**Regulations Mailing List**

**TO ALL PARTIES AND INTERESTED PARTIES:**

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Mr. Christopher McKenzie League of California Cities 1400 K Street, #400 Sacramento, CA 95814	Tel: (916) 658-8200 Fax: (916) 000-0000
Mr. Patrick Day San Jose Unified School District 855 Lenzen Avenue San Jose, CA 95126-2736	Tel: (408) 997-2500 Fax: (408) 997-3171
Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: (916) 939-7901 Fax: (916) 939-7801
Mr. Dave Walrath Murdoch, Walrath & Holmes 1130 K Street, Suite 210 Sacramento, CA 95814	Tel: (916) 441-3300 Fax: (916) 441-3893
Chief Consultant Assembly Local Government Committee (E-24) California State Assembly 1020 N Street, Room 157 Sacramento, CA 95814	Tel: (916) 000-0000 Fax: (916) 000-0000
Mr. W. P. Carlson California Highway Patrol (G-20) Executive Office 2555 First Avenue Sacramento, CA 95818	Tel: (916) 657-8048 Fax: (916) 657-7324
Mr. Henry Tarke Health and Human Services Agency Children's Mental Health P.O. Box 85524 (P531C) San Diego, CA 92186-5524	Tel: (619) 692-5578 Fax: (619) 692-8674
Executive Director California State Firefighters' Association 2701 K Street, Suite 201 Sacramento, CA 95816	Tel: (800) 451-2732 Fax: (916) 446-9889

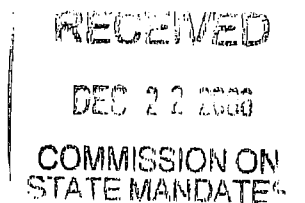
# SixTen and Associates Mandate Reimbursement Services

EXHIBIT B

KEITH B. PETERSEN, MPA, JD, President  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Telephone: (858) 514-8605  
Fax: (858) 514-8645  
E-Mail: Kbpsixten@aol.com

December 20, 2006



Paula Higashi, Executive Director  
Commission on State Mandates  
U.S. Bank Plaza Building  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Attention: Cathy Cruz Jefferson, Senior Program Analyst

Subject: 06-2 Rulemaking Proceedings  
Incorrect Reduction Claims Process

Dear Ms. Higashi:

This letter responds to the content of the proposed rulemaking on the above referenced matter transmitted by the Commission letter dated November 17, 2006.

## **Title 2, Section 1185 (Amended)      Incorrect Reduction Claim Filing**

The stated purpose of this rulemaking is to implement the results of AB 2652 (Statutes of 2006, Chapter 168). This legislation was requested by the Commission and passed in substantially the form proposed by the Commission. The statute of limitations was not a subject of this legislation. On April 4, 2006, I proposed in writing to Commission staff that they include the statute of limitations in its proposed legislation. However, that opportunity was not utilized by Commission staff.

There is no statute (Government Code section) which establishes a statute of limitations for the filing of incorrect reduction claims, as there is for test claims. It is a question of law whether a statute of limitations which controls the constitutional entitlement to mandate reimbursement can be established or modified by rulemaking in the absence of a source statute. AB 2652 does not provide a statutory basis to shorten the statute of limitations from three years to one year. There is no other statute which compels reducing the filing period.

The Commission staff's statement of "necessity" provides no specific factual basis to compel reduction of the filing period. There is no stated factual basis which indicates that



a shorter filing period would "provide a more expeditious" process. Considering that the State Controller has a five-year audit period (three years to commence an audit and two years to complete the audit) and that incorrect reduction claims can wait more than six years for action by the Commission, a one-year statute of limitation expedites nothing for an incorrect reduction claim. Clearly, a one-year filing period would hold claimants to a standard of performance not required, practiced, or apparently contemplated by the state agencies.

The only significant outcome of reducing the statute of limitations period will be to reduce the likelihood of incorrect reduction claims being timely filed. It will not improve the content or adjudication of the claim. A reduced filing period does not improve the ability of claimants to function within the deliberative mandate reimbursement bureaucracy. Perhaps, by reducing the number of incorrect reduction claims filed due to lack of time, the proposed one-year period of limitation could be construed to "expedite" the process since it would reduce the Commission workload.

The reduction of the statute of limitations is not necessary for any stated real or reasonable purpose. It is punitive to those claimants which cannot reasonably take action within one year. Reasonable people will find it disproportionate to expect incorrect reduction claim filers to act in one year when the state agencies which process the annual claims and adjudicate the incorrect reduction claims have never achieved that standard for their own duties.

**Title 2, Section 1185.2 (new) Consolidation of Claims Initiated by an Individual Claimant**

The time periods for action by the parties are too short. As a practical matter, it is unlikely that claimant-initiated consolidations will occur if any part of the process is subject to a one-year statute of limitations.

Voluntary consolidation of claims by claimants presumes that potential consolidators will have the information needed to consolidate the claim in a timely manner. Controller payment adjustments and audits occur over a period of years. Potential consolidators will not be informed of audit or payment actions taken by the state against other claimants in time to organize a consolidated response. Reliance upon the Controller staff to provide, within 30 days, a comprehensive list of other claimants with the same payment or audit actions is misplaced. Currently, Controller staff doesn't reply to the filed incorrect reduction claims, much less within the 90-days allowed for that response.

**Title 2, Section 1185.3 (New) Opting Out of a Consolidated Incorrect Reduction Claim**

The fifteen-day period to opt-out starts with the service of the State Controller's comments.

It is unclear which "comments" this proposed regulation is citing. Is it the list of other claimants with similar issues to be provided by the Controller, or the 90-day comment period provided for by renumbered Section 1185.1 (b)? If it is the latter, it should be noted that the current practice of the Controller is not to respond to the incorrect reduction claim until the draft staff analysis, if then.

The opt-out process also creates a new statute of limitations for filing the claim. The proposed regulation would grant another year to file an individual claim after opting out even if more than a year has passed from the date of the Controller action which was the basis for the incorrect reduction claim.

**Title 2, Section 1185.4 (New) Executive Director's Authority to Consolidate Incorrect Reduction Claims**

The time period for action by the claimants to opt out in response to this unilateral action by the Commission is too short. The Commission will want to consolidate incorrect reduction claims which have been filed over the course of years. There will be claims which have been waiting years for Commission action and a fifteen-day period to file a response to opt out will essentially come as a surprise and allow very little time for the claimant personnel to communicate with their staff about the issues and contact other claimants to evaluate the potential benefit of the consolidation. It will be comparable to the concerns expressed by many test claimants about the accelerated parameters and guidelines process (even though that process occurs immediately after the statement of decision, when one would presume the parties are well informed about the issues just presented at the test claim hearing, which is not the case here).

In addition, the proposed method to opt-out here is unclear because in subdivision (c) the reference is to renumbered Section 1185.1 (c). This does not appear to be correct, since that subdivision pertains to rebuttals to the Controller's comments to the incorrect reduction claim as filed.

Sincerely,



Keith B. Petersen



## Cathy Cruz Jefferson

---

**From:** Kbpsixten@aol.com  
**Sent:** Tuesday, December 19, 2006 12:59 PM  
**To:** Cathy Cruz Jefferson  
**Cc:** Nancy Patton; Paula Higashi  
**Subject:** 06-2 Rulemaking on Incorrects

Hi Cathy

I faxed a letter yesterday requesting that the hearing on the rulemaking be conducted on January 24, as described in the rulemaking package. I also requested that the receipt of the letter be acknowledged since the due date for such a request is December 21, 2006. Please let me know if you got the letter.

Also, I would like to receive the text of any modified regulations. This appears to require a separate request, so this my request for that:

Thanks.

Keith B. Petersen, President  
SixTen and Associates  
5252 Balboa Avenue, Suite 900  
San Diego, 92117  
Voice: 858-514-8605  
Fax: 858-514-8645



PUBLIC HEARING  
COMMISSION ON STATE MANDATES

--oOo--

**CERTIFIED  
COPY**

RULEMAKING PROCEEDING  
INCORRECT REDUCTION CLAIMS PROCESS

TIME: 1:30 p.m.  
DATE: Wednesday, January 24, 2007  
PLACE: Commission on State Mandates  
U.S. Bank Building  
Second Floor Conference Room B  
Sacramento, California

--oOo--

TRANSCRIPT OF PROCEEDINGS

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Transcribed By:  
Daniel P. Feldhaus  
California Certified Shorthand Reporter #6949  
Registered Diplomat Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

Hearing Officer:

CATHY CRUZ JEFFERSON  
Senior Program Analyst  
Commission on State Mandates

ALSO PRESENT

PAMELA STONE  
Legal Counsel  
California State Association of Counties  
SB 90 Service  
4320 Auburn Boulevard, Suite 2000  
Sacramento, CA 95841

ALLAN BURDICK  
Director  
California State Association of Counties  
SB 90 Service  
4320 Auburn Boulevard, Suite 2000  
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PERLYN JUNIO  
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JIM L. SPANO  
Chief, Compliance Audits Bureau  
Controller of California  
300 Capitol Mall, Suite 518  
Post Office Box 942850  
Sacramento, CA 94250-5874

--oOo--

I N D E X

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1                   Wednesday, January 24, 2007, 1:30 p.m.

2                   --oOo--

3                   MS. CRUZ: Good afternoon. I am Cathy Cruz  
4                   Jefferson, Senior Program Analyst with the Commission on  
5                   State Mandates. It is now 1:30 p.m. on Wednesday,  
6                   January 24, 2007, in the second floor conference room of  
7                   the U.S. Bank Building at 980 Ninth Street, Sacramento,  
8                   California, where the Commission on State Mandates is  
9                   located.

10                  This hearing is being convened to receive public  
11                  comments on a proposed rulemaking action by the  
12                  Commission on State Mandates. The Commission proposes to  
13                  amend and renumber sections 1185, 1185.01, 1185.02,  
14                  1185.03, and 1185.1; and to add sections 1185.2, 1185.3,  
15                  and 1185.4 of the California Code of Regulations,  
16                  Title 2, chapter 2.5, division 2.

17                  The purpose of this rulemaking is to shorten the  
18                  statute of limitations for filing incorrect reduction  
19                  claims, and to implement Assembly Bill 2652, Statutes of  
20                  2006, Chapter 168, which reforms the Commission's  
21                  incorrect reduction claims process by adding Government  
22                  Code section 17558.7 and 17558.8.

23                  These sections establish processes for either  
24                  claimant-initiated or Commission-directed consolidation  
25                  of incorrect reduction claims.

1 Under the rulemaking provisions of the  
2 California Administrative Procedure Act, this is the time  
3 and place set for the presentation of statements,  
4 arguments, and contention, orally or in writing, for or  
5 against changes in the Commission's regulations. Notice  
6 of the proposed action has previously been published and  
7 sent by mail to interested persons.

8 This is a quasi-legislative hearing, in which  
9 the Commission carries out a rulemaking function  
10 delegated to it by the Legislature. Witnesses presenting  
11 testimony at this hearing will not be sworn in, nor will  
12 we engage in cross-examination of the witnesses. We will  
13 take under submission all written and oral statements  
14 submitted or made during this hearing. We will respond  
15 to these comments in writing in the final statement of  
16 reasons.

17 A certified shorthand reporter will tape-record  
18 this entire APA rulemaking hearing. The transcript of  
19 the hearing and all exhibits and evidence presented  
20 during the hearing will be made part of the rulemaking  
21 record.

22 Written comments from interested persons will be  
23 accepted during the hearing. No further comments will be  
24 received after the hearing is adjourned.

25 If you've brought written comments with you to

1 submit during this hearing, please give them to me before  
2 we adjourn.

3 We will notify all interested persons of any  
4 changes to the proposed regulations or about any new  
5 material relied upon in proposing these regulations prior  
6 to adoption. Such notice will be sent to everyone who  
7 submits written comments during the written comment  
8 period, anyone who testifies today, and everyone who asks  
9 for such notification.

10 When you entered the room, you were offered the  
11 attendance sheet to sign your name, with a space to  
12 indicate if you want to make oral comments on the  
13 proposed regulations. No one may be excluded from  
14 participation in these proceedings for failure to  
15 identify themselves. However, the names and information  
16 on the attendance sheet will be used to provide notices,  
17 and will become part of the rulemaking record.

18 Please sign the attendance sheet, even if you do  
19 not plan on speaking.

20 We will call upon you to present your oral  
21 comments in the order you signed the sheet. After we  
22 hear from everyone who signed in, we will hear from any  
23 late-comers or anyone else who wishes to be heard.

24 When testifying, please begin by stating your  
25 name and identifying the organization you represent.

1           At this point, the rulemaking record includes  
2 the following:

3           The Commission order to initiate rulemaking  
4 proceedings;

5           The notice of proposed action, published in the  
6 California Regulatory Notice Register on November 17,  
7 2006;

8           The initial statement of reasons, the proposed  
9 text;

10          The economic and fiscal impact statement; and  
11          Written comments received to date.

12          These proposed regulations were duly noticed  
13 more than 45 days prior to today's hearing. Copies of  
14 the notice, the text of the proposed regulatory action,  
15 the initial statement of reasons and the proposed  
16 rulemaking calendar were mailed to all interested persons  
17 who requested rulemaking notices.

18          At this point, we will begin public testimony.

19          MS. STONE: This is Pam Stone on behalf of the  
20 CSAC SB 90 Committee. I would like to request --

21          MR. BURDICK: I go first because I've signed in  
22 already.

23          MS. STONE: -- to go first because I have a  
24 contemporaneous hearing going on upstairs, if that's all  
25 right.

1 MS. CRUZ: That's fine.

2 MR. BURDICK: That's all right.

3 MS. STONE: Is that okay, Allan? Do you want to  
4 go first? Because I've got my prehearing upstairs going  
5 on now.

6 MR. BURDICK: Go ahead, Pam.

7 MS. STONE: First of all, I would like to object  
8 to the amendment of section 1185, subsection (b)(2), with  
9 regard to the alteration of the statute of limitations  
10 from three years to one year.

11 First of all, there is no authority for the  
12 Commission to unilaterally reduce a statutorily-driven  
13 three-year statute of limitations to one year. There has  
14 been no demonstration of factual or legal necessity  
15 therefore.

16 And, at present, that does eliminate one avenue  
17 that is available to claimants. This would require, for  
18 example, that an incorrect reduction claim be filed one  
19 year after receipt of the State Controller's final audit  
20 report.

21 The State Controller does have a methodology by  
22 which final audit reports can be appealed through their  
23 own internal process. This particular one-year statute  
24 of limitations would preclude the total avenue of going  
25 through the internal State Controller's Office process

1 for review of a final audit report after it is exhibited  
2 due to the shortening of the statute of limitations; and,  
3 therefore, could result in increased filings of incorrect  
4 reduction claims on final audit reports, which, were the  
5 three-year statute of limitations to remain in effect,  
6 not so require. So, therefore, we believe that the  
7 shortening of the statute of limitations will actually,  
8 in fact, result in an increase in filing incorrect  
9 reduction claims as sort of a placeholder pending further  
10 negotiations.

11 Secondly, it's not necessary to reduce the  
12 statute of limitations for any expeditiousness, since it  
13 now takes in excess of six years for the Commission on  
14 State Mandates to hear an incorrect reduction claim once  
15 it is filed. So, therefore, the shortening of the  
16 incorrect reduction claim, statute of limitations on the  
17 front end, is not necessarily going to result in any  
18 quicker determination of the actual reduction claim  
19 itself.

20 Next, is that the Commission on State Mandates  
21 wishes to have a very short 15-day period under  
22 section 1185.3 to opt out of an incorrect reduction claim  
23 being limited to 15 days.

24 Unfortunately, this does not take into account  
25 the reality of local government. Oftentimes, a 15-day

1 period cannot be met because an individual charged with  
2 the responsibility for handling this matter may need  
3 supervisorial approval and/or may be out of the office  
4 and someone else may not have the total knowledge to be  
5 able to handle this particular matter. A 15-day opt-out  
6 period will result in substantial harm to local  
7 government.

8 And, again, this is not adequate for local  
9 governmental personnel to communicate with staff, obtain  
10 the approvals necessary to make a rational determination  
11 as to whether to remain in or opt out of an incorrect  
12 reduction claim.

13 Also, it presents the issue, too, of discussion  
14 within local governmental agency as to what agency is  
15 best able to proceed with the incorrect reduction claim  
16 when you have consolidated incorrect reduction claims.

17 Again, also with regard to the consolidation of  
18 incorrect reduction claims issued by claimant under  
19 section 1185.2, we believe it's unlikely that there will  
20 be claimant-initiated consolidations if there is a  
21 one-year statute of limitations.

22 Basically, you have a situation where various  
23 judgments will be made by a Controller over a series of  
24 years. There may be issues in common; but with a  
25 one-year statute of limitations, it may result in the

1 inability to so consolidate if you have one agency who is  
2 audited in the beginning with a one-year statute of  
3 limitations, and another agency with similar issues whose  
4 audit does not take place for a year or two thereafter.

5 So, therefore, we do not believe that this is  
6 going to result in an expeditious or efficacious  
7 methodology for consolidation of claims.

8 Additionally, in the past, the claimants and the  
9 executive director worked together to do a stipulation  
10 for consolidation of incorrect reduction claims, when  
11 there have been common issues of law, in fact, which has,  
12 in fact, worked without the short timelines for opting  
13 in, consolidating, or opting out, which we believe has  
14 worked quite efficaciously.

15 So, therefore, on that basis, we do not believe  
16 that this particular methodology is the best method to be  
17 able to join in.

18 In essence, it is taking a process and creating  
19 a number of very short timelines which are not in statute  
20 and for which the Commission does not have authority,  
21 i.e., the reduction of the three-year statute of  
22 limitations to one, in creating ten-day, 30-day, 15-day,  
23 90-day statutes of limitations within which actions must  
24 be taken on a very complex issue, which will preclude  
25 active negotiations with the State Controller's Office,



1 and within one's own agency to determine the most  
2 efficacious methodology for having a unified hearing on  
3 issues of fact and law.

4 And we would also join in the statements made by  
5 Keith Petersen of SixTen and Associates.

6 And if you will excuse me, I have a prehearing  
7 upstairs.

8 MS. CRUZ: Thank you.

9 MS. STONE: Thank you very much.

10 MS. CRUZ: Mr. Burdick?

11 MR. BURDICK: Yes, my name is Allan Burdick.

12 I'm a staff director of the CSAC SB 90 Service. It's a  
13 membership service of the California State Association of  
14 Counties, an organization representing all 58 counties  
15 and all 296 supervisors in the state of California. I'm  
16 here to make comments only on the statute of limitations,  
17 and to object to the change in the statute of  
18 limitations.

19 I have attended every meeting of the Commission  
20 on State Mandates, but one, since its creation in 1985.

21 And to my knowledge, there has only been one series of  
22 extensive discussions on the statute of limitations.

23 That happened in the earlier days, and a lot of testimony  
24 was brought forth. And the issue primarily was  
25 established based on evidence and information presented

1 by a Mr. Arnold Schuller, who then was the Chief Deputy  
2 Controller for the State of California, who argued and  
3 presented evidence that it should be three years, and  
4 that should be the statute of limitations.

5 There was agreement and adoption at that point,  
6 I think by the Commission, on the action taken at hand.  
7 And ever since that time, I think everybody has agreed  
8 and felt that that was the correct interpretation, and  
9 that the three years is the proper statute of  
10 limitations.

11 We do object to the fact that, at this point in  
12 these regulations, trying to establish something other  
13 than the three-year statute of limitations.

14 And I want to thank you very much for the  
15 opportunity to present our views.

16 I would also like to comment, we support those  
17 views of Ms. Stone and Mr. Petersen as they relate to the  
18 statute of limitations.

19 Thank you very much.

20 MS. CRUZ: Thank you.

21 Is there anyone else present that would like to  
22 testify or make any comments?

23 Okay, it is now 1:45. We will wait until about  
24 two o'clock to adjourn the meeting.

25 Thank you all for your comments.

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(Discussion off record from 1:45 p.m. to  
1:50 p.m.)

MS. CRUZ: Okay, it is now 1:50. We'll wait  
about another ten minutes for additional comments, and  
then we will adjourn the meeting.

(Discussion off record from 1:50 p.m. to  
1:55 p.m.)

MS. CRUZ: It is now 1:55. We'll wait another  
five minutes to see if we have any additional comments or  
witnesses walk in, and then we will adjourn.

(Discussion off record from 1:55 p.m. to  
2:05 p.m.)

MS. CRUZ: It is now 2:05 p.m., and the meeting  
is adjourned.

Thank you.

(Proceedings concluded at 2:05 p.m.)

--oOo--

**TRANSCRIBER'S CERTIFICATE**

This is to certify that: I transcribed to the best of my ability from one audio recording tape-recorded by Daniel P. Feldhaus, CSR, Inc.; and the foregoing pages 1 to 15, inclusive, contain a full statement and record of said audio recording.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand on the 31st of January 2007.



---

Daniel P. Feldhaus  
California CSR #6949  
Registered Diplomate Reporter  
Certified Realtime Reporter



**COMMISSION ON STATE MANDATES**

980 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

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FAX: (916) 445-0278

E-mail: csmInfo@csm.ca.gov



February 2, 2007

TO: All Interested Persons

FROM: Paula Higashi, Executive Director

SUBJECT: NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS  
*Incorrect Reduction Claims Process*

Pursuant to the requirements of Government Code section 11346.8, subdivision (c), and California Code of Regulations, title 1, section 44, the Commission on State Mandates (Commission) is providing notice of changes made to proposed regulation sections 1185 and 1185.4, which were the subject of a regulatory hearing on January 24, 2007. These changes are in response to comments received regarding the proposed regulations.

If you have any comments regarding the proposed changes, the Commission will accept written comments between February 2, 2007, and February 20, 2007. All written comments must be submitted to the Commission no later than 5:00 p.m. on February 20, 2007, and addressed to:

Commission on State Mandates  
Attn: Cathy Cruz Jefferson  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

All written comments received by February 20, 2007, which pertain to the indicated changes will be reviewed and responded to by the Commission staff as part of the compilation of the rulemaking file. Please limit your comments to the modifications to the text.

If you have any questions, please contact Cathy Cruz Jefferson at (916) 323-8218.

Enclosure



PROPOSED AMENDMENTS TO:

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

**Article 5. Incorrect Reduction Claims**

**§ 1185. Incorrect Reduction Claim Filing**

(a) To obtain a determination that the Office of State Controller incorrectly reduced a reimbursement claim, a claimant shall file an "incorrect reduction claim" with the commission.

(b) All incorrect reduction claims shall be filed with the commission no later than:

~~(1) Three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction, if the notice is dated before July 1, 2007.~~

~~(2) One (1) year following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction, if the notice is dated on or after July 1, 2007.~~

(c) An incorrect reduction claim shall pertain to alleged incorrect reductions in a reimbursement claim(s) filed by one claimant. The incorrect reduction claim may be for more than one fiscal year.

(d) All incorrect reduction claims, or amendments thereto, shall be filed on a form provided by the commission.

(e) All incorrect reduction claims, or amendments thereto, shall contain at least the following elements and documents:

(1) A copy of the Office of State Controller's claiming instructions that were in effect during the fiscal year(s) of the reimbursement claim(s).

(2) A written detailed narrative that describes the alleged incorrect reduction(s). The narrative shall include a comprehensive description of the reduced or disallowed area(s) of cost(s).

(3) If the narrative describing the alleged incorrect reduction(s) involves more than discussion of statutes or regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by testimonial or documentary evidence and shall be submitted with the claim. All documentary evidence must be authenticated by declarations



under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

(4) A copy of ~~the~~ any final state audit report, ~~or~~ letter, ~~or~~ the remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance.

(5) ~~A copy of a letter sent by the claimant or the claimant's representative to the Office of State Controller explaining why the reduced area(s) of cost in dispute should be restored.~~

(65) A copy of the subject reimbursement claims the claimant submitted to the Office of State Controller.

(76) An incorrect reduction claim, or amendment thereto, shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the ~~test~~ incorrect reduction claim is true and complete to the best of the declarant's personal knowledge or information or belief. The date signed, the declarant's title, address, telephone number, and, if available, electronic mail address and facsimile number, shall be included.

(87) The claimant shall file one original incorrect reduction claim, or amendment thereto, and accompanying documents with the commission. The original shall be unbound and single-sided, without tabs, and include a table of contents.

(98) The claimant shall also file two (2) copies of the incorrect reduction claim, or amendment thereto, and accompanying documents with the commission. The copies may be two-sided and shall not include tabs.

(f) Within ten (10) days of receipt of an incorrect reduction claim, commission staff shall notify the claimant if the incorrect reduction claim is complete or incomplete. Incorrect reduction claims will be considered incomplete if any of the elements required in subsections (~~dc~~) through (~~fe~~) of this section are illegible or not included. Incomplete incorrect reduction claims shall be returned to the claimant. If a complete incorrect reduction claim is not received by the commission within thirty (30) days from the date the incomplete claim was returned to the claimant, the commission shall deem the filing to be withdrawn.

Note: Authority cited: Section 17527(~~g~~) and (~~h~~), Government Code. Reference: Sections 17551(~~bd~~) and 17553(~~d~~), Government Code.

#### **§ 1185.041. Review of Incorrect Reduction Claims.**

(a) Within ten (10) days of receipt of a complete incorrect reduction claim, commission staff shall provide a copy of the claim to the Office of State Controller.

(b) Commission staff shall notify the Office of State Controller that written oppositions or recommendations and supporting documentation in connection with an incorrect reduction claim

shall be filed no more than ninety (90) days from the date the copy of the claim is provided to the Office of State Controller. The Office of State Controller shall simultaneously serve a copy of any opposition or recommendation regarding the claim on the claimant and their designated representative or, if a mailing list is provided by the commission, a copy of any opposition or recommendation on the claim, must be filed on all parties and interested parties on the mailing list. Proof of service must be filed with the oppositions or recommendations and supporting documentation pursuant to section 1181.2. If the oppositions or recommendations regarding an incorrect reduction claim involve more than the discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by documentary evidence and shall be submitted with the response. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

(c) The claimant and interested parties may submit written rebuttals to the Office of State Controller's comments. Written rebuttals shall be filed with the commission within thirty (30) days of service of the Office of State Controller's comments. The claimant shall simultaneously serve a copy of the written rebuttal on the Office of State Controller or, if a mailing list is provided by the commission, a copy of the rebuttal, must be served on all parties and interested parties on the mailing list. Proof of service shall be filed with the written rebuttal and supporting documentation pursuant to section 1181.2. If the written rebuttal involves more than discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by documentary evidence and shall be submitted with the rebuttal. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

Note: Authority cited: Section 17527(g), Government Code. Reference: Sections 17551(bd) and 17553(d), Government Code.

**§ 1185.2. Consolidation of Claims Initiated by an Individual Claimant; Intent to Join a Consolidated Claim.**

(a) On behalf of a class of claimants, an individual claimant may initiate the consolidation of claims alleging an incorrect reduction as described in Government Code section 17558.7, if all of the following apply:

(1) The method, act, or practice that the claimant alleges led to the reduction has led to similar reductions of other parties' claims, and all of the claims involve common questions of law or fact.

(2) The common questions of law or fact among the claims predominate over any matter affecting only an individual claim.

(3) The consolidation of similar claims by individual claimants would result in consistent decisionmaking by the commission.

(4) The claimant filing the consolidated claim would fairly and adequately protect the interests of the other claimants.

(b) A claimant that seeks to file a consolidated incorrect reduction claim shall notify the commission of its intent at the time of filing on a form provided by the commission.

(c) Within ten (10) days of receipt of a consolidated incorrect reduction claim, commission staff shall notify the claimant if the consolidated incorrect reduction claim is complete or incomplete pursuant to section 1185, and request the Office of the State Controller to provide the commission, within thirty (30) days, a list of claimants for whom the Controller has reduced similar claims under the same mandate, and the date each claimant was notified of an adjustment.

(d) Upon receipt of the list from the Office of the State Controller, the commission shall notify the list of other claimants experiencing similar reductions by the Controller under the same mandate and other interested parties of the original claimant's intent to consolidate an incorrect reduction claim.

(e) Within thirty (30) days of receipt of the commission's notice regarding the original claimant's intent to consolidate an incorrect reduction claim, any other eligible claimant may, on a form provided by the commission, file a notice of intent to join the consolidated incorrect reduction claim.

(f) All notices of intent to join a consolidated incorrect reduction claim shall comply with section 1185(b) and contain at least the following elements and documents:

(1) A copy of the final state audit report, letter, remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance.

(2) A copy of the subject reimbursement claims submitted to the Office of State Controller.

(3) A notice of intent to join a consolidated incorrect reduction claim shall include a certification by the joint-claimant authorizing the original claimant to act as its representative in the consolidated incorrect reduction claim, and a declaration under penalty of perjury that the filing is true and complete to the best of the declarant's personal knowledge or information or belief. The date signed, the declarant's title, address, telephone number, and, if available, electronic mail address and facsimile number, shall be included.

(4) The joint-claimant shall file one original notice of intent to join and accompanying documents with the commission. The original shall be unbound and single-sided, without tabs.

(5) The joint-claimant shall also file two (2) copies of the notice of intent to join and accompanying documents with the commission. The copies may be two-sided and shall not include tabs.

(g) Within ten (10) days of receipt of a notice of intent to join a consolidated incorrect reduction claim, commission staff shall notify the joint-claimant if the notice of intent to join is complete or incomplete. Notices of intent to join a consolidated incorrect reduction claim will be considered incomplete if any of the elements required in subsection (f) of this section are illegible or not included. Incomplete notices of intent shall be returned to the joint-claimant. If a complete notice of intent to join a consolidated incorrect reduction claim is not received by the commission within thirty (30) days from the date the incomplete notice of intent was returned to the joint-claimant, the commission shall deem the filing to be withdrawn.

Note: Authority cited: Sections 17527(g) and 17558.7(g), Government Code. Reference: Section 17558.7, Government Code.

### **§ 1185.3 Opting Out of a Consolidated Incorrect Reduction Claim.**

Pursuant to Government Code section 17558.7(f), each claimant that files an intent to join a consolidated incorrect reduction claim may opt out and not be bound by any determination made on the consolidated claim.

(a) To opt out of a consolidated incorrect reduction claim, claimants shall file a written notice with the commission within fifteen (15) days of service of the Office of State Controller's comments. A copy of the notice must be served on all parties and interested parties on the mailing list. Proof of service shall be filed with the notice pursuant to section 1181.2.

(1) No later than one (1) year after opting out, or within the statute of limitations under section 1185(b), whichever is later, a claimant that opts out of a consolidated claim shall file an individual incorrect reduction claim pursuant to commission requirements in order to preserve its right to challenge a reduction made by the Controller on that same mandate.

(2) If a claimant opts out of a consolidated incorrect reduction claim and an individual incorrect reduction claim for that entity is already on file with the commission, the individual filing is automatically reinstated.

Note: Authority cited: Sections 17527(g) and 17558.7(g), Government Code. Reference: Section 17558.7, Government Code.

### **§ 1185.4. Executive Director's Authority to Consolidate Incorrect Reduction Claims.**

(a) The executive director may consolidate part or all of any incorrect reduction claim with another incorrect reduction claim, if necessary to ensure the complete, fair, or timely consideration of any incorrect reduction claim.

(1b) At least ~~ten (10)~~ thirty (30) days before the action is taken, the executive director shall simultaneously serve on the parties and interested parties on the mailing list described in section 1181.2 of these regulations a notice of any proposed action to consolidate.

~~(c) Any party may opt out of a consolidated incorrect reduction claim as described in section 1185.1(e).~~

(2) During the thirty (30) day notice period, a claimant may serve and file a written request that an individual incorrect reduction claim be severed from the proposed consolidation. Timely requests to sever shall be approved by the executive director.

(3) Late requests for severing an individual incorrect reduction claim shall be denied. Any party may appeal to the commission for review of the actions and decisions of the executive director under this section pursuant to section 1181 of these regulations.

Note: Authority cited: Sections 17527(g) and 17558.8(b), Government Code. Reference: Sections 17530, 17554, and 17558.8, Government Code.

#### **§ 1185.025. Review of Completed Incorrect Reduction Claims and Preparation of Staff Analysis.**

~~(a) The executive director may combine analyses of incorrect reduction claims from different claimants if the claims contain similar issues.~~

~~(ba) Before hearing an individual or consolidated incorrect reduction claim, commission staff shall prepare a written analysis of the incorrect reduction claim that shall include, but not be limited to, a review of any statements filed by the Office of State Controller and the claimant's rebuttal. The analysis shall also include a staff recommendation on whether the claimant's reimbursement claim was incorrectly reduced.~~

~~(eb) At least eight (8) weeks before the hearing or at such other time as required by the executive director or stipulated to by the claimant and the Office of State Controller, commission staff shall distribute a draft staff analysis to the Office of State Controller and the claimant and their designated representative, or, if a mailing list is provided by the commission, a copy shall be distributed to all parties and interested parties on the mailing list.~~

~~(ec) The Office of State Controller and the claimant may file written comments on the draft staff analysis with the commission. Written comments shall be filed with the commission at least five (5) weeks before the hearing or as otherwise stipulated to by the parties or determined and publicized by the executive director. If a mailing list is provided by the commission, a copy of the comments must be served on all parties and interested parties on the mailing list. Written comments shall be reviewed by staff and may be incorporated into the final staff analysis presented to the commission.~~

~~Note: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(bd), Government Code.~~

**§ 1185.036. Withdrawal of Incorrect Reduction Claims.**

An incorrect reduction claim may be withdrawn by written application any time before a decision is adopted or by oral application at the time of hearing. If such application is made the commission may issue a decision dismissing the claim.

Note: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(bd), Government Code.

**§ 1185.17. Reinstatement of Costs.**

If the commission determines that a reimbursement claim was incorrectly reduced, the commission shall send the statement of decision to the Office of State Controller and request that the Office of State Controller reinstate the costs that were incorrectly reduced.

Note: Authority cited: Section 17527(g) and (h), Government Code. Reference: Section 17551(bd), Government Code.



# Commission on State Mandates

Original List Date: 9/14/2000  
Last Updated: 1/31/2007  
List Print Date: 02/01/2007  
Claim Number: Regs  
Issue: Commission Regulations

## Regulations Mailing List

### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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# SixTen and Associates Mandate Reimbursement Services

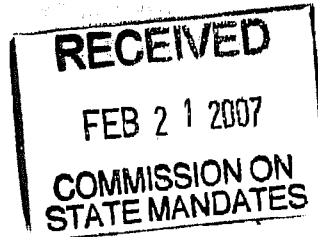
EXHIBIT E

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February 16, 2007



Paula Higashi, Executive Director  
Commission on State Mandates  
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Sacramento, CA 95814

Attention: Cathy Cruz Jefferson, Senior Program Analyst

Subject: 06-2 Rulemaking Proceedings  
Incorrect Reduction Claims Process

Dear Ms. Higashi:

This letter responds to the amended proposed rulemaking language for the above referenced matter transmitted by the Commission letter dated February 2, 2007.

## **Title 2, Section 1185 (Amended) Incorrect Reduction Claim Filing**

Section 1185, subdivision (b) lists the type of State Controller actions which begin the three-year statute of limitations for filing of an incorrect reduction claim. The first enumerated action is a "final state audit report." The modifier "final" may present an interpretation problem. Currently, the Controller's practice is to issue a "draft" audit report for comment, followed thereafter by the "final" audit report. However, in practice, the Controller has also issued corrected "final" audit reports which change the findings reported in the original "final" audit report. It can be anticipated that there will continue to be several types of audit reports: final, revised, corrected, or amended.

I recommend that the modifier "final" be removed from the proposed language so that the proposed language simply reads "state audit report." This would remove any confusion regarding the effect of corrected, revised, or amended audit reports. Each of these is also a "final" audit report which, when issued, will "restart" the statute of limitations. To the contrary, I believe we can assume as a matter of law or practice that "draft" audit reports have no legal effect in terms of the statute of limitations.



The alternative is to provide language which attempts to enumerate all potential types of audit reports, such as "final, revised, corrected, or amended audit report." In terms of statutory construction, enumeration creates the risk of exclusion, so it would be better to be inclusive by eliminating any modifier and simply use the words "state audit report."

Sincerely,



*for* Keith B. Petersen

## FINAL STATEMENT OF REASONS

### SPECIFIC PURPOSE OF THE PROPOSED ACTION

The Commission is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state-mandated local programs (Gov. Code, § 17500 et seq.) and to hear matters involving applications for a finding of significant financial distress (Welf. & Inst. Code, § 17000.6). The purpose of this rulemaking is to implement AB 2652 (Stats. 2006, ch. 168), which reforms the Commission's incorrect reduction claims process. It adds Government Code sections 17558.7 and 17558.8, which establish processes for either claimant-initiated or Commission-directed consolidation of incorrect reduction claims, if the following apply:

- The method, act, or practice that the claimant alleges led to the reduction has led to similar reductions of other parties' claims, and all of the claims involve common questions of law or fact.
- The common questions of law or fact among the claims predominate over any matter affecting only an individual claim.
- The consolidation of similar claims by individual claimants would result in consistent decisionmaking by the commission.
- The claimant filing the consolidated claim would fairly and adequately protect the interests of the other claimants.

### SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF NOVEMBER 17, 2006, THROUGH JANUARY 5, 2007, AND THE PUBLIC HEARING ON JANUARY 24, 2007

COMMENT NO. 1: Sixten and Associates and the California State Association of Counties SB 90 Service opposed the proposed shortening of the statute of limitations for filing incorrect reduction claims from three years to one year in section 1185, subdivision (b). Sixten and Associates contends that Assembly Bill 2652 (Stats. 2006, ch. 168) provides no statutory basis to shorten the statute of limitations. Without a source statute, Sixten and Associates argues that it is a question of law whether a statute of limitations can be established by rulemaking. Sixten and Associates also argues that a shorter filing period would neither result in a more expeditious process nor would it improve the content or adjudication of an incorrect reduction claim. The California State Association of Counties SB 90 Service supports the comments made by Sixten and Associates, adding that such a change could result in increased filings of incorrect reduction claims as a placeholder pending further negotiations with the State Controller's Office.

Response: The Commission agrees that Assembly Bill 2652 did not address a statute of limitations. Thus, the proposal to shorten the statute of limitations from three years to one year was removed from this rulemaking proposal.

COMMENT NO. 2: Sixten and Associates contends that the time periods for action by the parties proposed in section 1185.2 are too short because potential consolidators will not have the necessary information in order to consolidate an incorrect reduction claim in a timely manner. Specifically, Sixten and Associates argues that reliance upon the State Controller staff to provide a comprehensive list of other claimants experiencing similar reductions under the same mandate within 30 days is misplaced. The California State Association of Counties SB 90 Service supports the comments made by Sixten and Associates.

Response: The Commission disagrees with the comment. Commission staff consulted with the State Controller's staff about providing a list of other claimants within 30 days. The State Controller's staff did not object and has not filed any comments regarding this proposal. The other 30-day timeline, which is for other eligible claimants to file a notice of intent to join a consolidated incorrect reduction claim within 30 days of receipt of the Commission's notice is required by Government Code section 17558.7, subdivision (e).

COMMENT NO. 3: Sixten and Associates notes that the 15-day opt out period in section 1185.3 begins with the service of the State Controller's Office comments, but is unclear if this refers to when the Controller provides the list of other claimants or the 90-day comment period for the Controller to respond to the incorrect reduction claim. If it is the latter, Sixten and Associates notes that the Controller's staff does not always submit comments on the incorrect reduction claim, responding instead to the Commission's draft staff analysis.

Response: The Commission clarifies that the 15-day opt out period begins with the service of the Controller's comments on the incorrect reduction claim during the 90-day comment period. Staff notes that the Controller's Office has not objected and has not filed any comments regarding this proposal. Therefore, the Commission did not make any modifications to the rulemaking proposal to address this comment.

COMMENT NO. 4: The California State Association of Counties SB 90 Service added that the 15-day opt out period in section 1185.3 will result in substantial harm to local government because the time is inadequate to make a rational determination whether to remain in or opt out of a consolidated incorrect reduction claim.

Response: The Commission disagrees with the comment and notes that the proposed language in section 1185.3 regarding the 15-day opt out period is merely implementing the requirements of Government Code section 17558.7, subdivision (f).

COMMENT NO. 5: Sixten and Associates contends that the opt out process in section 1185.3 also creates a new statute of limitations for filing the incorrect reduction claim because the proposed regulation would grant another year to file a claim after opting out even if the statute of limitations has passed from the date of the Controller's action, which was the basis for the incorrect reduction claim.

Response: The Commission agrees that a new statute of limitations for filing the incorrect reduction claim is created; however, the new statute of limitations is created by Government Code section 17558.7, subdivision (f). Therefore, the Commission did not make any modifications to the rulemaking proposal to address this comment.

COMMENT NO. 6: Sixten and Associates asserts that the 15-day period for action by the claimants to opt out in response to the Executive Director's authority to consolidate incorrect reduction claims in section 1185.4 is too short.

Response: The Commission agrees with the comment and modified section 1185.4 to provide a 30-day notice period for claimants to file a written request that an individual incorrect reduction claim be severed from the proposed consolidation.

### **COMMENTS RECEIVED DURING THE PERIOD THE MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC**

The modified text was made available to the public from February 2, 2007, through February 20, 2007. The Commission received comments from Sixten and Associates on February 16, 2007.

### **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PERIOD THE MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC**

COMMENT NO. 1: Sixten and Associates suggested that one of the types of State Controller actions that begin the three-year statute of limitations for filing an incorrect reduction claim in section 1185, subdivision (b), be modified to read "state audit report" rather than "final state audit report." Sixten and Associates argues that in practice, the Controller's Office issues a draft report for comment, followed by the final audit report. However, there may also be revised, corrected, or amended audit reports after a "final" report is issued. Removing the modifier "final" would eliminate confusion.

Response: The Commission's intent is to receive the Controller's final decision. As proposed, the types of Controller actions enumerated are also meant to be consistent with the requirement in subdivision (e)(4). The Commission notes that revised, corrected, or amended audit reports can also fall under "other written notices of adjustment." Therefore, the Commission did not make any modifications to the rulemaking proposal to address this comment.

### **ALTERNATIVES DETERMINATION**

The Commission has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

### **LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school districts.

