

March 18, 2005

Ms. Bonnie Ter Keurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

And State Agencies and Interested Parties (See Attached Mailing List)

RE: **Final Staff Analysis and Proposed Parameters and Guidelines**
False Reports of Police Misconduct, 00-TC-26
County of San Bernardino, Claimant
Penal Section 148.6, subdivisions (a)(2) and (a)(3)
Statutes 1995, Chapter 590
Statutes 2000, Chapter 289

Dear Ms. Ter Keurst:

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

Commission Hearing

The hearing on this matter is set for Thursday, March 30, 2005, at 9:30 a.m. at the **Department of Social Services Auditorium, 744 P Street, First Floor, Sacramento, California**. This item will be scheduled for the consent calendar unless any party objects. Please let us know in advance of the hearing if you or a representative of your agency will testify at the hearing, and if other witnesses will also appear.

Special Accommodations

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

Please contact Tina Poole at (916) 323-8220 with questions.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosures

ITEM 9
FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES,
AS MODIFIED BY STAFF

Penal Code Section 148.6, Subdivisions (a)(2) and (a)(3)

Statutes 1995, Chapter 590

Statutes 2000, Chapter 289

False Reports of Police Misconduct (00-TC-26)

County of San Bernardino, Claimant

EXECUTIVE SUMMARY

The test claim statutes added or amended Penal Code section 148.6. This provision made it a misdemeanor for any individual to knowingly file a false complaint against a peace officer. These statutes require any law enforcement agency accepting an allegation of misconduct against a peace officer to have the complainant read and sign a specified information advisory. These statutes also require the advisory to be available in multiple languages.

Staff Analysis

Staff reviewed the claimant's proposal and the comments received. Substantive changes were made according to the comments received from state agencies and claimants, and to conform to recently adopted parameters and guidelines. Non-substantive, technical changes were made for purposes of clarification and conformity to the statement of decision and statutory language.

Substantive changes were made to the following sections of the claimant's proposed parameters and guidelines.

IV. Reimbursable Activities

The claimant proposed various reimbursable activities including training, establishing and updating an intranet site, interviewing the complainant, and addressing questions or concerns by the complainant. Staff deleted these activities because they were not identified in the Statement of Decision nor found to be reasonably necessary to comply with the mandate. Staff also clarified the reimbursement periods for each of the reimbursable activities.

V. Claim Preparation and Submission

The claimant proposed a uniform time allowance for three of the proposed reimbursable activities. Since staff deleted two of these activities, staff modified the uniform time allowance to coincide with the remaining reimbursable activity.

Staff Recommendation

Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as modified by Commission staff, beginning on page 9.

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

STAFF ANALYSIS

Claimant

County of San Bernardino

Chronology

02/20/04 Commission on State Mandates (Commission) adopted Statement of Decision
06/04/04 Claimant submitted proposed parameters and guidelines
07/12/04 The State Controller's Office (SCO) submitted comments
08/02/04 Claimant submitted rebuttal to SCO comments
02/10/05 Draft staff analysis issued
03/11/05 Claimant submitted comments on the draft staff analysis
03/17/05 Final staff analysis issued

Summary of the Mandate

The test claim statutes added or amended Penal Code section 148.6. This provision made it a misdemeanor for any individual to knowingly file a false complaint against a peace officer. These statutes require any law enforcement agency accepting an allegation of misconduct against a peace officer to have the complainant read and sign a specified information advisory. These statutes also require the advisory to be available in multiple languages.

On February 20, 2004, the Commission adopted its Statement of Decision finding that Penal Code section 148.6, subdivision (a), sections (2) and (3) impose a reimbursable state-mandated program on city and county law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.¹ The Commission approved the following new activities:

- In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2). (Pen. Code, § 148.6, subd. (a)(2).)²
- Make the advisory available in multiple languages, utilizing the translations available from the State. (Pen. Code, § 148.6, subd. (a)(3).)³

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

¹ Exhibit A.

² As added by Statutes 1995, chapter 590; reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

³ As amended by Statutes 2000, chapter 289; reimbursement period begins no earlier than January 1, 2001, the operative date of the statute.

Discussion

Staff reviewed the claimant's proposed parameters and guidelines⁴ and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

Substantive changes were made to the following sections of the claimant's proposed parameters and guidelines:

IV. Reimbursable Activities

Training

The claimant's proposal included the one-time activity of training employees that perform the reimbursable activities. Staff deleted training because it is not identified in the Statement of Decision as a reimbursable activity. Nor is it reasonably necessary to comply with the test claim legislation, because the test claim legislation was enacted in 1995, four years before the beginning of the reimbursement period for this program. Thus, if employees were trained to comply with the mandated program, it would have occurred before July 1, 1999.

In their comments on the draft staff analysis, the claimant stated that employee training is necessary to carry out the intended requirements of the mandate.⁵ The claimant states that employee turnover and shifting of assignments in the department are two examples that would cause the County to hire and/or train employees in carrying out the mandate requirements. Staff finds that if any training is required to comply with this mandate it would be minimal, as the only activity required is to provide a complainant with an advisory form. In *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1195, the court held that providing two hours of domestic violence training to peace officers was not a reimbursable state mandate, concluding, "Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement." Staff finds that training employees on providing a complainant with a form can be done with a "minimal reallocation of resources," as discussed in the *County of Los Angeles* decision. Therefore staff deleted training.

Forms and Folders

The proposed parameters and guidelines included the activities for establishing and updating an intranet site for saving and downloading PC 148.6 advisory forms. In their comments, the SCO stated that additional costs to establish an intranet site to save downloaded files are at the discretion of the entity and should not be subject to reimbursement. The SCO states that instead, the downloaded electronic forms should be saved in an existing electronic medium.⁶ In their rebuttal to the SCO comments, the claimant agrees that the manner in which forms are saved is at the discretion of the entity, but argues that the manner in which they choose is reimbursable.⁷ Staff finds that establishing and maintaining an intranet site goes beyond the scope of the

⁴ Exhibit B.

⁵ Exhibit F.

⁶ Exhibit C.

⁷ Exhibit D.

mandate. There is no need to create an entirely new intranet site to store documents when they can be easily stored in an existing electronic format. Therefore, this activity is not reasonably necessary to comply with the test claim legislation. Staff deleted this activity.

However, the claimant also proposed the one-time activity of creating an advisory form folder to file the PC 148.6 advisory forms that are created and released by the Department of Justice (DOJ). The Commission found in its Statement of Decision use of the DOJ forms is a reasonably necessary method of complying with the mandate. Therefore, staff finds that downloading the advisory form in an electronic format and saving it in a folder, whether electronic or paper, and creating that folder, whether electronic or paper, are efficient procedures for administering a forms process, and are reasonably necessary to carry out the mandate.

Thus, staff revised the language to clarify that creating a folder to store the forms, in both electronic and paper formats, and downloading the electronic form, are reimbursable.

The claimant also proposed the ongoing activity of updating the folder as new forms are released by DOJ. Although these activities were not stated in the Statement of Decision, staff finds that this activity is considered an efficient procedure for administering a forms process, and is reasonably necessary to comply with the mandate. Therefore, staff retained this activity, but clarified that updating the forms folder is reimbursable if additional forms become available through the Department of Justice.

Law Enforcement Notification

The claimant's proposal included an ongoing activity of informing the local law enforcement agency employees about the availability of the new or revised PC 148.6 advisory forms by the DOJ. Although this activity was not stated in the Statement of Decision, staff finds that ensuring that local agency employees are kept informed about current forms is reasonably necessary to comply with the mandate. Therefore, staff retained this activity.

Policies and Procedures

The claimant's proposal included a one-time activity to develop policies and procedures and an ongoing activity to update the policies and procedures as needed. This mandate added specific new activities for law enforcement agencies when accepting allegations of peace officer misconduct. As a result, policies and procedures for accepting allegations of peace officer misconduct should already exist. Therefore, staff deleted the activity of *developing* policies and procedures. However, staff finds that the one-time activity of *updating* existing policies and procedures to include these new activities is reasonably necessary to comply with the mandate, and modified the language accordingly.

Complainant Interviews

In the original proposed parameters and guidelines, the claimant proposed that interviewing the complainant to determine which language to provide the advisory form in should be a reimbursable activity. The claimant also proposed that addressing any questions or concerns from the complainant regarding reading and signing the advisory form be reimbursable. As stated in the Statement of Decision, this mandate only requires law enforcement agencies accepting an allegation of misconduct against a peace officer to have the complainant read and sign the advisory. This mandate does not require any explanatory or other additional activities on the part of law enforcement agencies. Therefore, staff deleted these activities.

In their comments on the draft staff analysis, the claimant states that interviewing the complainant is necessary in order to provide the complainant with the advisory form written in a language understood by the complainant. The claimant further states that “providing explanatory or other additional activities necessary to comply with the mandate in helping these underprivileged complainants to understand and sign the mandated forms.”⁸ As stated in the Statement of Decision, the plain language of Penal Code section 148.6 does not require a law enforcement agency to read the document aloud, explain the document or answer questions. Also, as discussed in the Statement of Decision, the Legislature considered an amendment requiring greater action on the part of peace officers, but chose not to implement it when adopting the final version of the bill. Therefore, these activities were clearly denied in the Statement of Decision. Staff finds that any explanatory or other additional activities are undertaken at the discretion of the law enforcement agency and are not reimbursable. Thus, these activities were deleted.

Period of Reimbursement

As stated under Section III. Period of Reimbursement, there are two distinct reimbursement periods for this program. Penal Code section 148.6, subdivision (a)(2), requires local law enforcement agencies to provide the complainant with the advisory form. This requirement is effective July 1, 1999. Penal Code section 148.6, subdivision (a)(3), effective January 1, 2001, requires local law enforcement agencies to provide the form in multiple languages. Therefore, staff clarified that providing the form under section 148.6, subdivision (a)(2), is reimbursable from July 1, 1999 through December 31, 2000, and providing the form in multiple languages under section 148.6, subdivision (a)(2) and (a)(3) is reimbursable beginning January 1, 2001.

V. Claim Preparation and Submission

The claimant proposed a uniform time allowance of 22 minutes for three of the proposed ongoing activities (identified in the claimant’s proposal as activities IV.B.5, IV.B.6. and IV.B.7.). However, staff deleted two of these proposed activities (IV.B.5. and IV.B.7.). Therefore, staff modified this section to reduce the uniform time allowance to two minutes. This reflects the uniform time allowance for the remaining activity of providing the complainant with the advisory form written in a language understood by the complainant. In their comments on the draft staff analysis, the claimant requested that the deleted activities be reinstated and that the uniform time allowance be restated back to the 22 minutes per case. As addressed in Section IV, the deleted activities were not reinstated. Therefore, staff retained the uniform time allowance of two minutes.

Finally, staff deleted reimbursement for travel and training under this section, since travel and training are not included in the Statement of Decision, nor are they reasonably necessary to carry out the mandate. There is nothing in the program that requires travel to complete the required activities. Training was denied as a reimbursable activity as described on page 4, above.

VI., VIII., and IX. Boilerplate Language

Sections V., VIII., and IX. include boilerplate language for Record Retention, State Controller’s Claiming Instructions, and Remedies before the Commission. Staff made technical changes to these sections to include the changes made in 2004 by Statutes 2004, chapter 890 (AB 2856).

⁸ Exhibit F, page 3.

Staff Recommendation

Staff recommends that the Commission adopt the proposed parameters and guidelines, beginning on page 9.

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

**PROPOSED PARAMETERS AND GUIDELINES,
AS MODIFIED BY STAFF**

Penal Code Section 148.6, Subdivisions (a)(2) and (a)(3)

Statutes of 1995, Chapter 590

~~Statutes of 1996, Chapter 586~~

Statutes of 2000, Chapter 289

False Reports of Police Misconduct (00-TC-26)

County of San Bernardino, Claimant

I. SUMMARY OF THE MANDATE

Statutes of 1995, Chapter 590; ~~Statutes of 1996, Chapter 586;~~ and Statutes of 2000, Chapter 289 added or amended Penal Code section 148.6. This provision made it a misdemeanor for any individual to knowingly file a false complaint against a peace officer relating to the false police misconduct report filings. These statutes:

- ~~— Make it a misdemeanor to file an allegation of misconduct against any peace officer, knowing the report to be false.~~
- Require any law enforcement agency accepting an allegation of misconduct against a peace officer to have the complainant read and sign a specified information advisory.
- ~~— Make it an additional misdemeanor for knowingly filing a false civil claim against a peace officer or placing lien against his or her property, with the intent to harass or dissuade the officer from carrying out his or her official duties.~~
- Require the advisory to be available in multiple languages.

On January 29, 2004, the Commission on State Mandates (Commission) adopted ~~its~~ the Statement of Decision for *False Reports of Police Misconduct (00-TC-26)*. The Commission found that Penal Code section 148.6, subdivision (a), sections (2) and (3), ~~the test claim legislation~~ constitutes a new program or higher level of service and impose a reimbursable state-mandated program upon city and county law enforcement agencies ~~local governments~~ within the meaning of Article XIII B, Section 6, of the California Constitution and Government Code section 17514. Accordingly, the Commission approved this test claim for the following reimbursable activities:

- In accepting an allegation of peace officer misconduct, ~~r~~ requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2). ~~when accepting an allegation of peace officer misconduct.~~
- Making the advisory available in multiple languages, ~~through~~ utilizing the translations available from the State, as prescribed in Penal Code section 148.6, subdivision (a)(3).

The Commission denied any remaining alleged activities or costs, including any from Penal Code section 148.6, subdivision (a)(1), as added by Statutes 1995, chapter 590, and subdivision (b) as added by Statutes 1996, chapter 586, because they do not impose a new program or higher level of service, and do not impose costs mandated by the state within the

meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

II. ELIGIBLE CLAIMANTS

Any city, county, city and county, or special district employing peace officers and incurring increased costs as a direct result of this mandate ~~is~~ are eligible to claim reimbursement of these costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed on Monday, July 2, 2001. Since June 30 fell on a Saturday in 2001, the filing deadline for establishing a July 1, 1999 reimbursement period pursuant to and the test claim was postmarked to the Commission on Monday, July 2, 2001, the Government Code section 17557, subdivision (c), and the operative regulations, was delivery or postmark by Monday, July 2, 2001. establish July 1, 1999 as the initial period for which reimbursement can be filed. Thus, costs incurred for compliance with Statutes 1995, Chapter 590 and Statutes 1996, Chapter 586 are eligible for reimbursement on or after July 1, 1999. Statutes 2000, Chapter 289 was operative January 1, 2001. Therefore, costs incurred for compliance with Statutes 2000, Chapter 289 are reimbursable on or after January 1, 2001.

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

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

IV. REIMBURSABLE ACTIVITIES

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

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

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

For each eligible claimant, the following activities are reimbursable:

Reimbursement Period July 1, 1999 through December 31, 2000¹:

In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2).²

A. One-Time Activities

- ~~1. Train those employees that actually perform the reimbursable activities listed in Section IV, A and B, of these parameters and guidelines. (One-time activity per employee.)~~
- ~~2. Create advisory form folder to file multi-language PC 148.6 advisory forms, which are created and released by the Department of Justice.~~
- ~~3. Establish an intranet site where PC 148.6 advisory forms are saved electronically, and are available for downloading by the interested parties.~~
- 2.1. Develop Update policies and procedures to implement the reimbursable activities listed in Section IV., B, of these parameters and guidelines.

B. On-going Activities

1. Provide the complainant with the PC 148.6 advisory form. See Section V. A. for uniform time allowance for this activity.

Reimbursement Period Begins January 1, 2001³:

Make the advisory available in multiple languages, utilizing the translations available from the state.⁴

C. One-Time Activities

1. Create and electronic and/or paper advisory form folder to file multi-language PC 148.6 advisory forms, which are created and released by the Department of Justice.
2. Update policies and procedures to implement the reimbursable activities listed in Section IV., C, and D, of these parameters and guidelines.

D. Ongoing Activities

- ~~1. Update and implement policies and procedures as needed. (Reimbursement period begins July 1, 1999.)~~
- 2.1. Downloading the PC 148.6 advisory form and saving it to an electronic and/or paper advisory form folder.

¹ Pursuant to Government Code section 17557, subdivision (c).

² Penal Code section 148.6, subdivision (a)(2), as added by Statutes 1995, chapter 590.

³ Pursuant to Government Code section 17557, subdivision (c).

⁴ Penal Code section 148.6, subdivision (a)(3), as added by Statutes 2000, chapter 289.

2. Update the multi-language advisory form folder as needed, if additional the new PC 148.6 advisory forms become available through the Department of Justice.
3. ~~Update the intranet site as the Department of Justice releases the new PC 148.6 advisory forms electronically for downloading purposes.~~
4. 3. Inform the local law enforcement agency employees about the availability of the new, (or any changes made to the existing) PC 148.6 advisory forms by the Department of Justice.
5. ~~Interview the complainant and determine in what language the advisory form should be made available to him/her for reading and signing as prescribed in the Penal Code section 148.6.~~
6. 4. Provide the complainant with the applicable advisory form written in the a language understood by the complainant that he/she can read. If the advisory form is unavailable in the complainant's language, request from the Department of Justice to send a new PC 148.6 advisory form written in a language that can be read by the complainant.⁵ See Section V. A. for uniform time allowance for this activity.
7. ~~Address any questions or concerns that the complainant may have regarding reading and signing the PC 148.6 advisory form.~~

V. CLAIM PREPARATION AND SUBMISSION

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

A. Uniform Allowances (Time)

The uniform time allowances cover the cost of the salaries and benefits of the employees performing the ongoing activities listed in Part B. 1, and Part D. 3, ~~#5, #6, and #7~~ in the Section IV; of these parameters and guidelines. For purposes of the following calculations, productive hours mean: "Time spent performing any kind of mental or physical work. Paid leave is not included."

Citizens Filing Complaints of Police Misconduct Under P.C. Section 148.6

For activities IV. B. 1, and D. 3, ~~5, IV. B. 6, and IV. B. 7,~~ multiply as follows:

(the total number of P.C. Section 148.6 cases) x (0.033 ~~367~~ hours⁶) x (the productive hourly rate [total wages and related benefits divided by productive hours] for employees performing the reimbursable activities).

The Commission has not identified any circumstances that would cause an eligible claimant to incur additional costs to perform any other activities not incorporated in Section IV; of these parameters and guidelines. Eligible claimants incurring any such costs within the scope of the reimbursable activities may submit a request to amend the parameters and guidelines to the Commission for such costs to be approved for reimbursement, subject to the provisions of Government Code section 17557 and California Code of Regulations, title 2, section 1183.2.

⁵ Penal Code section 148.6, subdivision (a)(2) and (a)(3).

⁶ Equivalent to 22 minutes.

B. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. ~~Attach a copy of the contract to the claim.~~ If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim and itemize all costs for those services. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

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

~~5. Travel~~

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

~~6. Training~~

~~Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV. of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of~~

~~the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1, Salaries and Benefits, and B.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.3, Contracted Services.~~

C. Indirect Cost Rates

Indirect costs are defined as costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate, which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage, which the total amount allowable indirect costs bear to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter⁷ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

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

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

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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