

ITEM 17

ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING APPEAL OF EXECUTIVE DIRECTOR DECISIONS

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 1. GENERAL

EXECUTIVE SUMMARY

Section 1189.2 of the Commission's regulations requires the adoption of a Commission order to initiate rulemaking. Following adoption of the order, staff will publish a notice of hearing and mail the notice and rulemaking package to all interested persons for public comment.

The purpose of this rulemaking is to implement Government Code section 17530 and establish procedures for appeal of Executive Director decisions.

Proposed Order Number 05-2 (Exhibit A)

The proposed rulemaking amends Section 1181 under Article 1. General to establish procedures for appeal of Executive Director decisions. The amendments specifically address the timeline for filing appeals, the content of a filing, comments from other parties, and hearing procedures.

Text of Proposed Amendments (Exhibit B)

Staff's draft of the proposed text is attached as Exhibit B.

Timetable

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

May 31, 2005	Notice of Rulemaking, Initial Statement of Reasons, and Proposed Text will be filed with the Office of Administrative Law for publication.
June 10, 2005	Notice of Proposed Regulatory Action will be issued and published.
July 25, 2005	End of public comment period.
July 28, 2005	Public hearing will be held if requested.
September 29, 2005	Regulations will be proposed for adoption by the Commission.
October 13, 2005	Adopted Regulations will be filed with the Office of Administrative Law.

Staff Recommendation

Staff recommends the Commission adopt Proposed Order 05-2.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

In the Matter of:

Amendments to California Code of
Regulations, Title 2, Division 2, Chapter 2.5,
Article 1, Section 1181.

No. 05-2

ORDER TO INITIATE
RULEMAKING PROCEEDINGS

*Appeal of Executive Director
Decisions*

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 section 1181 of the California Code of Regulations, title 2, division 2, chapter 2.5.

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 Government Code section 17530 and establish procedures for appeal of Executive Director decisions.

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 July 25, 2005. Submit comments to:

Cathy Cruz, 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@csm.ca.gov

PUBLIC HEARING. The Commission will hold a hearing on July 28, 2005, if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than July 8, 2005.

Date: _____ By: _____
Paula Higashi, Executive Director

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

Article 1. General

§ 1181. Delegation of Certain Functions; Executive Director Appeals.

(a) Whenever it is stated in these rules that the "commission" may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, the Commission on State Mandates specifically has reserved the same for its own exclusive action.

(b) Whenever it is stated the "executive director" may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, or it is not expressly stated that the commission itself shall so act, the executive director of the commission has the authority to act thereon.

(c) Any party in interest may appeal to the commission for review of the actions and decisions of the executive director.

(1) The appellant shall submit the appeal in writing within ten (10) days of first being served written notice of the executive director's action or decision.

(2) The appellant shall submit an original and one (1) copy of the appeal to the executive director and serve a copy on the parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(3) The appeal shall explain the basis for the appeal, state the action being requested of the commission, and include all facts and materials the applicant believes are relevant to the appeal.

(4) The executive director shall schedule the appeal for hearing and vote by the commission as soon as practicable following receipt of the appeal.

(5) Other parties may submit comments to the commission on the appeal.

(6) The commission shall determine whether to uphold the executive director's decision by a majority vote of the members present. The decision shall be final and not subject to reconsideration.

(7) The executive director shall notify the appellant in writing within ten (10) days of the commission's decision.

(d) Nothing herein prohibits the executive director from delegating to his/her subordinates as provided in Government Code section 18572.

NOTE: Authority cited: Sections 17530 and 17531, Government Code. Reference: Section 17530, Government Code.