

ITEM 14

ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING GENERAL CLEANUP PROVISIONS

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

- Article 1. General
 - Article 3. Test Claims
 - Article 5. Incorrect Reduction Claims
 - Article 6. Review of Office of State Controller's Claiming Instructions
 - Article 7. Hearings and Decisions
 - Article 8. Rulemaking and Informational Hearings
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EXECUTIVE SUMMARY

Section 1189.2 of the Commission's regulations authorizes the Commission to adopt an 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 the proposed regulations is to (1) encourage the use of electronic filing, (2) move all subvention claim matters to Article 7 quasi-judicial hearings, and (3) clarify procedures that will increase the ease and efficiency of those procedures, and encourage the reduction of the fiscal and environmental costs of the mandates process for all parties and interested parties.

Proposed Order Number 10-01(Exhibit A)

The proposed rulemaking includes the following proposed amendments:

Section 1181.1. Definitions

The proposed changes add the words "of a test claim" to subdivision (b) for the purposes of clarification and add additional items to the non-exhaustive list in subdivision (r).

Section 1181.2. Filing and Service of Written Materials

The proposed changes consolidate sections 1181.2 and 1181.3 into a single section 1181.2, and expand clarification of the process for electronic filing of documents as follows:

- Clarify and expand the procedures for filing documents by electronic mail.
- Clarify the procedures for filing documents by overnight delivery, first class mail, personal service, or facsimile.
- Require Commission staff to include the e-mail addresses of all interested parties and persons who have requested to be included on the mailing lists for each matter.

- Require Commission staff to post all incoming mandate-related documents on the website, including test claims, parameters and guidelines, notices to consolidate, staff analyses, withdrawn claims, notices of rulemaking.
- Require Commission staff to notify parties when documents are received and when staff posts those documents to the Commission’s website.
- Conform Commission procedures for posting requests to withdraw or dismiss claims on the Commission’s website.

The proposed changes amend the following sections to conform the procedures for filing documents throughout the regulations:

Section 1181, 1181.1, 1181.3, 1183, 1183.01, 1183.02, 1183.03, 1183.06, 1183.07, 1183.08, 1183.081, 1183.09, 1183.11, 1183.12, 1183.131, 1183.14, 1183.2, 1183.21, 1183.22, 1183.30, 1183.31, 1183.32, 1185, 1185.3, 1185.4, 1185.5, 1185.6, 1186, 1187, and 1188.31.

Section 1181.4. Designees and Officers

The proposed changes identify the members with a more general definition (a Commission member, as defined by Government Code section 17525, with statutory authority) which defines them in statute, rather than specifically listing them by title.

Section 1183. Test Claim Filing

The proposed changes amend section 1183, subdivision (d) to specify that when an omnibus bill is pled, only the relevant pages of the statute, including the Legislative Counsel’s Digest and the relevant statutory changes need to be included.

Section 1183.07. Review of Completed Test Claim and Preparation of Staff Analysis

The proposed changes clarify that a final staff analysis must provide a full analysis with findings supported by substantial evidence and may not simply “describe” the test claim. Implicit in Government Code section 17559 and Code of Civil Procedure section 1094.5 is a requirement that the Commission “must make findings that bridge the analytic gap between the raw evidence and the ultimate decision or order.” (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974)11 Cal. 3d 506, 515) The proposed changes conform the regulation to current law and practice.

Section 1183.131. Reasonable Reimbursement Methodology, Included in Parameters and Guidelines

The proposed changes authorize, instead of require, Commission staff to conduct an informal conference.

Section 1183.14. Adoption of Parameters and Guidelines

Section 1183.2. Amendments to Parameters and Guidelines

Section 1186. Review of Office of State Controller’s Claiming Instructions

Section 1187. Scheduling and Noticing the Hearing

Section 1189.4. Use of Testimony

Section 1189.5. Questioning

The proposed changes require the Commission to conduct Article 7 quasi-judicial hearings rather than Article 8 informational hearings on parameters and guidelines, amendments to parameters

and guidelines and review of State Controller’s claiming instructions. The proposed changes are consistent with the requirement that the Commission make finding for the purposes of the court’s review pursuant to Government Code 17559 and Code of Civil Procedure 1094.5. The proposed changes make technical and clarifying changes and define “matter” for purposes of Article 7.

Section 1183.08. Withdrawal of Test Claims

Section 1183.2. Amendments to Parameters and Guidelines

Section 1185.4. Executive Director’s Authority to Consolidate Incorrect Reduction Claims

Section 1185.6. Withdrawal of Incorrect Reduction Claims

Section 1186. Review of Office of State Controller’s Claiming Instructions

The proposed changes amend the preceding sections to authorize the Executive Director to dismiss claims withdrawn by a claimant after notice and posting, if no other claimant or state agency takes over the claim or request. The proposed changes also reduce hearing costs, and streamline the process for actions that are administrative in nature.

Section 1183.2. Amendments to Parameters and Guidelines

The proposed changes clarify that a request to amend parameters and guidelines may be submitted to make the following changes to the parameters and guidelines:

- Delete reimbursable activities
- Update offsetting revenues and savings
- Include a reasonable reimbursement methodology
- Clarify reimbursable activities
- Add new reimbursable activities that are reasonably necessary for the performance of the original program.
- Define what is not reimbursable consistent with the statement of decision
- Amend boilerplate language
- Consolidate parameters and guidelines for two or more programs

The proposed changes also clarify that the addition or substitution of requestors and the submittal of supporting declarations based on the original facts alleged are not amendments to the request to amend parameters and guidelines.

Section 1183.30. Reasonable Reimbursement Methodology and Statewide Estimate of Costs Developed by the Test Claimant and Department of Finance

The proposed changes clarify the claimant must submit proposed parameters and guidelines unless a draft reimbursement methodology or a request for an extension has been submitted by the filing date.

Section 1185. Incorrect Reduction Claim Filing

The proposed changes clarify when a claimant notifies the Commission that it intends to pursue an incorrect reduction claim on behalf of a class of claimants.

Section 1185.2. Consolidation of Claims Initiated by an Individual Claimant and Intent to Join a Consolidated Claim

The proposed changes move the process for joining a consolidated claim to a new section 1185.21.

Section 1185.21. Joining a Consolidated Incorrect Reduction Claim

This is a technical revision because it moves the process from one section to another.

Section 1185.6. Withdrawal of Incorrect Reduction Claims

The proposed changes establish procedures for the original claimant in a consolidated incorrect reduction claim to withdraw the claim.

Section 1187.2. Assignment to Hearing Panels/Hearing Officers

The proposed changes clarify that the Commission is required to hold at least one informational hearing under Article 8, section 1189, before assignment of a matter to a hearing panel; and move provisions that require that the hearing panels be rotated among the members of the Commission to assure that the panels are not comprised of a fixed composition of members to section 1189.

Section 1188.3. Withdrawal of Claims and Requests

The proposed changes add, for purposes of clarification, a reference to the procedures required by Section 1183.2, subdivision (i), requiring notice and an opportunity for another claimant or state agency to take over the claim or request, with regard to a request to withdraw a proposed amendment to parameters and guidelines.

Section 1189. Assignment of Matter to a Hearing Panel or Hearing Officer

The proposed changes make the procedures more clear.

Non-Substantive Technical Amendments

Non-substantive technical amendments were made to sections 1187.3, 1187.9, 1188, 1188.1, 1188.2, 1188.3, 1188.31 and 1189.1.

Text of Proposed Amendments (Exhibit B)

Staff’s draft of the proposed text is attached as Exhibit B. Before filing with the Office of Administrative Law, staff may make technical corrections, as may be required.

Timetable

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

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| June 1, 2010 | Notice of Rulemaking, Initial Statement of Reasons, and Proposed Text will be filed with the Office of Administrative Law for publication. |
| June 11, 2010 | Notice of Proposed Regulatory Action will be issued and published. |
| July 15, 2010 | Last day to request public hearing. |
| July 29 or 30, 2010 | Public hearing will be held, if requested. |
| July 30, 2010 | End of public comment period. |
| August 18, 2010 | Issue and post proposed modifications to original rulemaking package, if any. |
| September 10, 2010 | Issue and post final proposed rulemaking package. |

September 23 or 24, 2010 Adopt proposed rulemaking package.
October 2, 2010 File Adopted Regulations with the Office of Administrative Law.
January 1, 2011 Effective date of adopted regulations.

Staff Recommendation

Staff recommends the Commission adopt Proposed Order 10-01.