

ITEM 7
ADOPTION OF PROPOSED REGULATION AMENDMENTS
AFTER CLOSE OF 45-DAY COMMENT PERIOD
GENERAL CLEANUP PROVISIONS

PROPOSED AMENDMENTS TO
CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5
ARTICLES 1, 3, 5, AND 7
SECTIONS 1181.2; 1181.3; 1181.4; 1183.1; 1183.7; 1183.17; 1185.2; 1185.3; 1185.4; and
1187.9

TABLE OF CONTENTS

Exhibit A	
Order to Initiate Rulemaking	1-2
Exhibit B	
Proposed Text	1-15
Exhibit C	
Notice of Proposed Rulemaking	1-8
Exhibit D	
Initial Statement of Reasons	1-12
Exhibit E	
Final Statement of Reasons.....	1-1
Exhibit F	
Order to Adopt Proposed Regulatory Action.....	1-1

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,
Articles 1, 3, 5, and 7

No. 21-02
ORDER TO INITIATE RULEMAKING
PROCEEDINGS
General Cleanup Provisions

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

PROPOSED REGULATORY ACTION. The Commission proposes revised language, punctuation, and citations in Articles 1, 3, 5, and 7 of the California Code of Regulations, Title 2, Division 2, Chapter 2.5 with a proposed effective date of October 1, 2021.

The purpose of this rulemaking is to generally clean-up, clarify, and streamline Commission regulations and update language for consistency. The proposed regulations: (1) add a definition of “normal business hours” to clarify the Commission’s normal business hours from 8 a.m. until 5 p.m. of each day from Monday to Friday, excluding state holidays, and that 5 p.m. is the filing cutoff for new filings and written materials to be deemed filed that day; (2) clarify the requirements for test claim filing; (3) clarify that test claims and incorrect reduction claims may be either rejected or dismissed for lack of jurisdiction and clarify the process for rejecting or dismissing a test claim for lack of jurisdiction; (4) clarify that service charge and assessment authority are to be included as offsetting revenues and reimbursements in parameters and guidelines consistent with the purpose of article XIII B, section 6 of the California Constitution; (5) clarify the evidentiary standard for requests for extension of time and postponement of hearing; (6) make minor, non-substantive consistency edits, corrections; and (7) update reference citations.

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

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 comment period closes at **5:00 p.m. on March 22, 2021**. The Commission will only consider written comments received at the Commission’s offices by that time. Commenters are strongly encouraged to submit their written comments electronically if possible (to prevent the spread of COVID-19) via the Commission website “Drop Box” at: <http://www.csm.ca.gov/dropbox.php>.

Written comments may also be submitted to:

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

PUBLIC HEARING. The Commission will hold a hearing on March 26, 2021, if it receives a written request for a public hearing from any interested person or their authorized representative, no later than March 8, 2021.

Date: 1/22/2021 By: 
Heather Halsey, Executive Director

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

5 Article 1. General

6 § 1181.2. Definitions.

7 Unless otherwise indicated, the following definitions and those found in Government Code
8 sections 17510 through 17524 apply to this chapter:

9 (a) "Affected state agency" means a state department or agency that is responsible, in whole or in
10 part, for implementation, enforcement, or administration of any statutes or executive orders that
11 are the subject of a matter.

12 (b) "Amendment" of a test claim means the addition of new allegations based on new statutes or
13 executive orders to an existing test claim. The addition or substitution of parties and supporting
14 declarations based on the original statutes or executive orders alleged in an existing test claim is
15 not an "amendment."

16 (c) "Claimant" means the local agency or school district filing a test claim or incorrect reduction
17 claim.

18 (d) "Commission staff" means the executive director, legal counsel, or other Commission
19 employee authorized by the Commission or the executive director to represent the Commission
20 on a specific claim or request, or to receive filings at the Commission office.

21 (e) "Completed" means that all general and specific requirements for a new filing have been
22 satisfied by the claimant or requester.

23 (f) "Filing date" means the date received at the Commission's office during normal business
24 hours by any of the methods described in section 1181.3 of these regulations. "Normal business
25 hours" means from 8 a.m. until 5 p.m. of each day from Monday to Friday, inclusive, other than
26 state holidays, as provided by Government Code section 11020(a).

27 (g) "Incorrect reduction claim" means a claim alleging that the Office of State Controller
28 incorrectly reduced the reimbursement claim of a local agency or school district.

29 (h) "Informational hearing" means any hearing designed to gather and assess information to
30 assist the Commission in formulating policies, informing the public of Commission actions, or
31 obtaining public comment and opinion.

32 (i) "Interested party" means a local agency, school district, or state agency, with a beneficial
33 interest in the matter.

34 (j) "Interested person" means any individual, local agency, school district, state agency,
35 corporation, partnership, association, or other type of entity, who has an interest in a matter
36 before the Commission, but is not a party or interested party with respect to that matter.

37 (k) "New filing" means a test claim, incorrect reduction claim, request to amend parameters and
38 guidelines, joint request for reasonable reimbursement methodology and statewide estimate of
39 costs, request for review of claiming instructions, request for removal or inclusion of a program

- 1 in the State Mandates Apportionment System, request for review of the apportionment or base
2 year entitlement of a program in the State Mandates Apportionment System, request for mandate
3 redetermination, or a legislatively determined mandate.
- 4 (l) "Party" includes a party's representative of record who is expressly authorized in writing to
5 act on the party's behalf. Party means the following for each matter as specified below:
- 6 (1) "Party to a Test Claim" means the test claimant, the Department of Finance, and other
7 affected state agencies.
- 8 (2) "Party to an Incorrect Reduction Claim" means the claimant and the Office of State
9 Controller.
- 10 (3) "Party to a Request to Amend Parameters and Guidelines" means the requester, the
11 Department of Finance, the Office of State Controller, affected state and local agencies, and
12 affected school districts.
- 13 (4) "Party to a Joint Request for Reasonable Reimbursement Methodology" and "Party to a
14 Jointly Proposed Request for Early Termination of Reasonable Reimbursement Methodology"
15 means the test claimant and the Department of Finance.
- 16 (5) "Party to a Request for Review of Claiming Instructions" means the requester and the Office
17 of State Controller.
- 18 (6) "Party to a Request for Removal or Inclusion in State Mandates Apportionment System" and
19 "Party to a Request for Review of the Apportionment or Base Year Entitlement of a Program in
20 the State Mandates Apportionment System" means the requester, the Department of Finance, and
21 the Office of State Controller.
- 22 (7) "Party to a Request for Mandate Redetermination" means the requester, the Department of
23 Finance, the Office of State Controller, affected state and local agencies, and affected school
24 districts.
- 25 (m) "Real Party in Interest" means any person or entity whose interest will be directly affected
26 by the resolution of the matter.
- 27 (n) "Rulemaking proceeding" means any hearing designed to adopt, amend, or repeal any rule,
28 regulation, or standard of general application that implements, interprets, or makes specific any
29 provision of Title 2, Division 4, Part 7, beginning with Government Code section 17500 or any
30 other statute enforced or administered by the Commission.
- 31 (o) "Statewide cost estimate" means the approximate sum of money that local agencies or school
32 districts may have incurred to implement a state-mandated program or any increased level of
33 service of an existing mandated program. A statewide cost estimate prepared by a test claimant
34 pursuant to Government Code section 17553(b)(1)(E) shall be an estimate of the first full fiscal
35 year of actual or estimated costs based on the statutes and executive orders alleged in a test
36 claim. In adopting a statewide cost estimate pursuant to Government Code section 17553(a),
37 which shall be an estimate for the initial period of reimbursement to be reported to the
38 Legislature, the Commission may consider the statewide cost estimate prepared by the test
39 claimant, the initial reimbursement claim data, and other relevant information regarding potential
40 mandated local costs, as applicable.
- 41 (p) "Statewide estimate of costs" is based on a joint reasonable reimbursement methodology

1 proposed by a test claimant and the Department of Finance pursuant to Government Code section
2 17557.1, that is adopted by the Commission and reported to the Legislature pursuant to
3 Government Code section 17557.2.

4 (q) "Subsequent change in law" pursuant to Government Code 17570 means a change in law that
5 requires a finding that an incurred cost is a cost mandated by the state, as defined by Government
6 Code section 17514, or is not a cost mandated by the state pursuant to Government Code section
7 17556, or a change in mandates law. Amendments to article XIII B, section 6 of the California
8 Constitution that were approved by the voters on November 2, 2004 and changes in the statutes
9 or executive orders that impose new state-mandated activities and require a finding pursuant to
10 Government Code section 17551(a) are not a "subsequent change in law."

11 (r) "Teleconference" means a conference of individuals in different locations, connected by
12 electronic means, through audio, video, or both.

13 (s) "Test claim" means the first claim filed with the Commission alleging that a particular statute
14 or executive order imposes costs mandated by the state pursuant to Government Code section
15 17521 and also includes a claim filed on a legislatively determined mandate pursuant to
16 Government Code section 17574(c). The test claim procedure functions similarly to a class
17 action and has been established to expeditiously resolve disputes affecting multiple agencies.

18 (t) "Written material" means any paper or electronic document relevant to a matter that is filed
19 with the Commission except that "written material" does not include a "new filing" as defined in
20 subdivision (k) of this section.

21 Note: Authority cited: Sections 17527(g), 17553(a) and 17570(d), Government Code. Reference:
22 Sections 11020(a), 11123, 17516-17521, 17527(c), 17529, 17530, 17531, 17551, 17553, 17555,
23 17557, 17557.1, 17557.2, 17558, 17558.5, 17558.7, 17558.8, 17559, 17561, 17561.5, 17570,
24 17572, 17573, 17600 and 17612, Government Code; *Redevelopment Agency v. Commission on*
25 *State Mandates* (1996) 43 Cal.App.4th 1188; and *City of San Jose v. State of California* (1996)
26 45 Cal.App.4th 1802.

27 **§ 1181.3. Certification, Filing, and Service of Written Materials and New Filings.**

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

33 (b) Documents filed with the Commission shall not contain personal identifying information that
34 violates state or federal privacy laws, including, but not limited to California Civil Code section
35 1798 et seq.

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

38 (1) E-Filing. Except as provided in subdivision (c)(2) of this section, all new filings and written
39 materials shall be electronically filed (or e-filed) with the Commission by filing the signed
40 original document in an unlocked PDF file via the Commission's e-filing system, available on
41 the Commission's website. Documents e-filed with the Commission shall be in a legible and
42 searchable format using a "true PDF" (i.e., documents digitally created in PDF, converted to

1 PDF or printed to PDF) or optical character recognition (OCR) function, as necessary, that
2 allows Commission staff to electronically date stamp the document and append additional pages
3 for posting on the Commission's web-site with a proof of service for e-service by the
4 Commission, in lieu of the filer serving the document to the entire mailing list for the matter. E-
5 filed documents shall be saved, converted, or printed to PDF and filed in their original,
6 searchable form, but the signature page shall be replaced with a scanned copy, rather than
7 digitally signed. E-filed documents shall not exceed 500 megabytes. Documents larger than 500
8 megabytes shall be filed in multiple volumes and labeled as such (i.e., "Volume I, Volume II"
9 etc.) and shall, in that case, include a table of contents. Filing of color documents is strongly
10 discouraged. However, if a color image(s) is necessary for readability or comprehension, the
11 color image(s) shall be filed in a separate and final volume of exhibits. E-filed documents shall
12 include electronic bookmarks to each heading, subheading, and component (including but not
13 limited to the table of contents, declarations, exhibits, proof of service) of the document.
14 Documents not available or obtainable in electronic form may be scanned and OCR'd and filed
15 in a separate volume, however it is prohibited to file scanned documents that are available or
16 obtainable electronically. E-filed documents that must be scanned, shall be scanned in black and
17 white (not gray scale or color). The filer is responsible for maintaining the signed original for the
18 duration of the process for the matter, including any period of appeal (this may be an electronic
19 document, depending on how the filer creates and maintains its records). If a new filing or
20 written material is e-filed, no additional copies shall be filed with the Commission. The
21 following shall apply to new filings and written materials e-filed with the Commission:

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

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

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

42 (D) Upon confirmation of actual receipt of the e-filed document, Commission staff shall notify
43 all persons on the mailing list for the matter that written material may be viewed on the
44 Commission's website. For "new filings" as defined by section 1181.2(k) of these regulations,
45 Commission staff shall notify all persons on the mailing list prepared pursuant to section 1181.4

1 of these regulations, of the availability of those filings on the Commission's website when
2 Commission staff issues its notice of complete filing to the filer.

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

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

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

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

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

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

27 Note: Authority cited: Sections 17527(g), 17553(a), 17570(d) and 11104.5, Government Code.
28 Reference: Section 1798 et seq., Civil Code; and Sections 11020(a), 17530, 17551, 17557(d),
29 17558.7, 17570, 17573(b), 17574(c) and 17573(g), Government Code.

30 **§ 1181.4. Mailing Lists and Numbering of Matters.**

31 (a) For all matters deemed complete, Commission staff shall prepare a mailing list of the names,
32 addresses, phone numbers and e-mail addresses of the parties, interested parties, and interested
33 persons who have requested inclusion on the mailing list. The mailing list will be uploaded to the
34 Commission's website and an e-mail notification of its availability will be sent to everyone on
35 the list who has provided an e-mail address. A hard copy will be provided by Commission staff
36 to persons on the mailing list who have not provided an e-mail address and to any person who
37 requests a hard copy.

38 (b) By providing an e-mail address for the mailing list for a matter, a person consents to e-mail
39 service of documents for that matter.

40 (c) For the following new filings received by the Commission, the executive director shall issue
41 sequential matter numbers, by fiscal year, as follows:

- 1 (1) Test Claim (TC)
- 2 (2) Incorrect Reduction Claim (I)
- 3 (3) Request to Amend Parameters and Guidelines (PGA)
- 4 (4) Joint Request for Reasonable Reimbursement Methodology and Statewide Estimate of Costs
- 5 (RRM)
- 6 (5) Request for Review of Claiming Instructions (RCI)
- 7 (6) Request for Removal, Inclusion, or Review of the Apportionment or Base Year Entitlement
- 8 of a Program in State Mandates Apportionment System (SMAS)
- 9 (7) ~~Joint Request for~~ Legislatively Determined Mandate (LDM)
- 10 (8) Request for Mandate Redetermination (MR)
- 11 Note: Authority cited: Sections 17527(g), 17553(a), 17570(d) and 11104.5, Government Code.
- 12 Reference: Sections 17530, 17551, 17557, 17557.1, 17571, 17557.2, 17570, 17573(b), 17573(g),
- 13 17574(c) and 17615.1, Government Code.

14 **Article 3. Test Claims**

15 **§ 1183.1. Test Claim Filing.**

16 (a) In order to obtain a mandate determination, a local agency or school district shall file a test
 17 claim with the Commission pursuant to Government Code sections 17551 and 17553. ~~A local~~
 18 ~~agency or school district may file a test claim~~ as follows:

19 (1) A county auditor, auditor-controller, or director of finance who has assumed the duties of
 20 controller, may file on behalf of a county.

21 (2) A city manager, director of finance, or other officer with a delegation by ordinance or
 22 resolution from the city council, may file on behalf of a city.

23 (3) A district superintendent may file on behalf of a school district.

24 (4) A chancellor, vice chancellor, director of finance, or other officer with authority delegated by
 25 the governing body by ordinance or resolution, may file on behalf of a community college
 26 district.

27 (5) A general manager or other officer with authority delegated by the governing body by
 28 ordinance or resolution may file on behalf of a special district.

29 (b) Claimants may agree to file a test claim as a joint effort, ~~as provided in section 1183.1(g) of~~
 30 ~~these regulations.~~ if the claimants attest to all of the following in the test claim filing:

31 (1) The claimants allege state-mandated costs result from the same statute or executive order;

32 (2) The claimants agree on all issues of the test claim; and

33 (3) The claimants have designated one person to act as the sole representative for all claimants.

34 Otherwise, the first claim filed on a statute or executive order by a similarly situated claimant is
 35 the test claim and no duplicate test claims will be accepted by the Commission. Other similarly
 36 situated affected agencies may participate in the process by filing comments in writing on any
 37 agenda item as provided in section 1181.10 of these regulations, and may attend any

1 Commission hearing on the test claim and provide written or oral comments to the Commission.
2 Affected agencies that are not similarly situated, meaning that test claim statutes affect them
3 differently, may file a test claim on the same statutes as the first claim, but must demonstrate
4 how and why they are affected differently.

5 (c) Except as provided in Government Code sections 17573 and 17574, any test claim or
6 amendment filed with the Commission must be filed not later than 12 months (365 days)
7 following the effective date of a statute or executive order, or within 12 months (365 days) of
8 first incurring increased costs as a result of a statute or executive order, whichever is later.

9 (d) All test claims, or amendments thereto, shall be filed on a form developed by the executive
10 director and shall contain all of the elements and supplemental documents required by statute,
11 regulation and the form. When an omnibus bill is pled, claimant shall file only the relevant pages
12 of the statute, including the Legislative Counsel's Digest and the specific statutory changes at
13 issue.

14 (e) A test claim, or amendment thereto, and accompanying documents shall be certified, filed,
15 and served in accordance with section 1181.3 of these regulations. All representations of fact
16 shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of
17 these regulations.

18 (f) Within 10 days of receipt of a test claim, or amendment thereto, Commission staff shall notify
19 the claimant if the test claim is complete or incomplete. Test claims will be considered
20 incomplete if any of the ~~elements required in subdivisions (e) and (d) requirements of~~
21 Government Code section 17553 or this section are illegible, or are not included, or are not met.
22 If a complete test claim is not received within 30 calendar days from the date the incomplete test
23 claim was returned, the executive director may disallow the original test claim filing date. A new
24 test claim may be accepted on the same statute or executive order alleged to impose a
25 reimbursable state-mandated program.

26 ~~(g) Test claims may be prepared as a joint effort between two or more claimants and filed with~~
27 ~~the Commission if the claimants attest to all of the following in the test claim filing:~~

28 ~~(1) The claimants allege state-mandated costs result from the same statute or executive order;~~

29 ~~(2) The claimants agree on all issues of the test claim; and~~

30 ~~(3) The claimants have designated one person to act as the sole representative for all claimants.~~

31 ~~(gh) Any test claim, or portion of a test claim, that the Commission lacks jurisdiction to hear for~~
32 ~~any reason, including that the test claim was not filed within the period of limitation required by~~
33 ~~subdivision (c) of this section, may be rejected or dismissed by the executive director with a~~
34 ~~written notice stating the reason for dismissal therefor. However, for an otherwise timely and~~
35 ~~complete test claim over which the Commission would have jurisdiction, except that it was filed~~
36 ~~by a local agency that is not eligible to seek reimbursement because it is not subject to the taxing~~
37 ~~and spending limitations of article XIII A and B of the California Constitution, the Commission~~
38 ~~shall follow the process outlined in section 1187.14(b).~~

39 Note: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections
40 17521, 17530, 17551, 17553, 17557(e), 17573, 17574, 24000, 24300.5, 26881, 26900, 26970,
41 26972, 34852, 35034, 35035, 37209, 40805.5 and 56723, Government Code.

1 **§ 1183.7. Content of Parameters and Guidelines.**

2 The parameters and guidelines shall describe the claimable reimbursable costs and contain the
3 following information:

4 (a) Summary of the Mandate. A summary of the mandate identifying the statutes or executive
5 orders that contain the mandate and the increased level of service and activities found to be
6 required under those statutes or executive orders.

7 (b) Eligible Claimants. A description of the local governmental entities eligible to file for
8 reimbursement.

9 (c) Period of Reimbursement. A description of the period of reimbursement specifying the
10 beginning and ending (if applicable) of the reimbursement period.

11 (d) Reimbursable Activities. A description of the specific costs and types of costs that are
12 reimbursable, including one-time costs and on-going costs, and reasonably necessary activities
13 required to comply with the mandate. "Reasonably necessary activities" are those activities
14 necessary to comply with the statutes, regulations and other executive orders found to impose a
15 state-mandated program. Activities required by statutes, regulations and other executive orders
16 that were not pled in the test claim may only be used to define reasonably necessary activities to
17 the extent that compliance with the approved state-mandated activities would not otherwise be
18 possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All
19 representations of fact to support any proposed reasonably necessary activities shall be supported
20 by documentary evidence in accordance with section 1187.5 of these regulations.

21 (e) Claim Preparation. Instruction on claim preparation, including instructions for direct and
22 indirect cost reporting for actual costs incurred, or application of a reasonable reimbursement
23 methodology.

24 (f) Record Retention. Notice of the Office of the State Controller's authority to audit claims and
25 the amount of time supporting documents must be retained during the period subject to audit.

26 (g) Any Offsetting Revenues and Reimbursements that reduce the cost of any reimbursable
27 activity, including the identification of:

28 (1) Dedicated state and federal funds appropriated for this program.

29 (2) Non-local agency funds dedicated for this program.

30 (3) Local agency's general purpose funds for this program.

31 (4) Service charge, Fee, or assessment authority to offset part of the costs of this program.

32 (h) Any Offsetting Savings. Identification of any offsetting savings provided by the test claim
33 statute or executive order, or other statute or executive order, which decreases the cost of any
34 reimbursable activity and permits or requires the discontinuance or reduction in the level of
35 service of the program.

36 (i) Claiming Instructions. Notice of the Office of the State Controller's duty to issue claiming
37 instructions, which constitutes notice of the right of local agencies and school districts to file
38 reimbursement claims, based upon the decision and parameters and guidelines adopted by the
39 Commission.

1 (j) Remedies Before the Commission. Instructions for filing requests to review claiming
2 instructions and requests to amend parameters and guidelines with the Commission.

3 (k) Legal and Factual Basis. Notice that the legal and factual basis for the parameters and
4 guidelines are found in the administrative record for the test claim, which is on file with the
5 Commission.

6 Note: Authority cited: Sections 17517.5, 17527(g) and 17553(a), Government Code. Reference:
7 Sections 17518.5, 17530, 17553, 17556(e), 17557 and 17558, Government Code.

8 **§ 1183.17. Amendments to Parameters and Guidelines.**

9 (a) All requests pursuant to Government Code section 17557 to amend parameters and guidelines
10 shall include the proposed language for the specific sections of the existing parameters and
11 guidelines that are to be changed, and include a narrative explaining why the amendment is
12 required.

13 A request to amend parameters and guidelines may be filed to make any of the following
14 changes to the parameters and guidelines:

15 (1) Delete any reimbursable activity that is repealed by statute or executive order after the
16 adoption of the original or last amended parameters and guidelines.

17 (2) Update offsetting revenue and offsetting savings that apply to the mandated program and do
18 not require a new legal finding that there are "no costs mandated by the state" under Government
19 Code section 17556(e).

20 (3) Include a reasonable reimbursement methodology for all or some of the reimbursable
21 activities in accordance with Government Code section 17518.5. Any request to include a
22 reasonable reimbursement methodology based on, in whole or in part, costs that have been
23 included in claims submitted to the Controller, shall include a statement to this effect on the
24 cover or first page of the request.

25 (4) Clarify reimbursable activities consistent with the original decisions on the test claim and
26 parameters and guidelines.

27 (5) Add new reimbursable activities that are reasonably necessary for the performance of the
28 original state-mandated program pursuant to section 1183.47(d) of these regulations.

29 (6) Define what is not reimbursable consistent with the original decisions on the test claim and
30 parameters and guidelines.

31 (7) Consolidate the parameters and guidelines for two or more programs.

32 (8) Amend the "boilerplate" language.

33 (b) For purposes of this section, "boilerplate" language is defined as the language in the
34 parameters and guidelines that is not unique to the state-mandated program that is the subject of
35 the parameters and guidelines.

36 (c) The addition or substitution of requesters and supporting declarations based on the original
37 facts alleged in an existing parameters and guidelines amendment request is not an
38 "amendment." However, new proposals for amendments must be filed as a new parameters and
39 guidelines amendment request.

- 1 (d) A claimant or state agency requesting an amendment to existing parameters and guidelines
2 shall certify, file, and serve the request in accordance with section 1181.3 of these regulations. If
3 representations of fact are made, they shall be supported by documentary or testimonial evidence
4 in accordance with section 1187.5 of these regulations.
- 5 (e) Within 10 days of receipt of a request to amend parameters and guidelines, Commission staff
6 shall issue a copy to those who are on the mailing list described in section 1181.4 of these
7 regulations, and shall post the request on the Commission's website.
- 8 (f) Commission staff shall notify those who are on the mailing list described in section 1181.4 of
9 these regulations that they shall have the opportunity to file written comments concerning the
10 proposed amendment of the parameters and guidelines within 21 days of service, and shall post a
11 copy of the notice on the Commission's website.
- 12 (g) Written comments on the request to amend the parameters and guidelines shall be certified,
13 filed, and served in accordance with section 1181.3 of these regulations. If representations of fact
14 are made, they shall be supported by documentary or testimonial evidence in accordance with
15 section 1187.5 of these regulations.
- 16 (h) Written rebuttals to the comments may be filed within 21 days of service of the comments.
17 Written rebuttals shall be certified, filed, and served in accordance with section 1181.3 of these
18 regulations. If representations of fact are made, they shall be supported by documentary or
19 testimonial evidence in accordance with section 1187.5 of these regulations.
- 20 (i) After review of the proposed amendment to the parameters and guidelines, written comments,
21 and rebuttals filed, Commission staff shall prepare and issue for comment a draft proposed
22 decision recommending whether the requester's proposed amendment to the parameters and
23 guidelines should be adopted.
- 24 (j) Written comments on the draft proposed decision and recommendation on the proposed
25 amendment to the parameters and guidelines shall be certified, filed, and served with the
26 Commission in accordance with section 1181.3 of these regulations, by the date noticed by the
27 executive director. A three-week period for comments shall be given, subject to the executive
28 director's authority to expedite all matters pursuant to Government Code section 17530. If
29 representations of fact are made, they shall be supported by documentary or testimonial evidence
30 in accordance with section 1187.5 of these regulations. All written comments timely filed shall
31 be reviewed by Commission staff and may be incorporated into the proposed decision and
32 recommendation on the proposed amendment to the parameters and guidelines.
- 33 (k) It is the Commission's policy to discourage the introduction of late comments, exhibits, or
34 other evidence filed after the three-week comment period described in subdivision (j) of this
35 section. The Commission need not rely on, and staff need not respond to, late comments,
36 exhibits, or other evidence filed in response to a draft proposed decision after the comment
37 period expires.
- 38 (l) An amendment shall be made only after the Commission has conducted a hearing in
39 accordance with article 7 of these regulations.
- 40 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
41 17518.5, 17530, 17553 and 17557, Government Code.

1 **Article 5. Incorrect Reduction Claims**

2 **§ 1185.2. Review of Incorrect Reduction Claims.**

3 (a) Within 10 days of receipt of an incorrect reduction claim, Commission staff shall notify the
4 claimant if the incorrect reduction claim is complete or incomplete. Incorrect reduction claims
5 will be considered incomplete if any of the ~~elements in~~ requirements of section 1185.1(a) and (b)
6 ~~and (d) through (h)~~ are illegible or not included or if the requirements of those subdivisions are
7 not met. Incomplete incorrect reduction claims shall be returned to the claimant. If a complete
8 incorrect reduction claim is not received by the Commission within 30 days from the date the
9 incomplete claim was returned to the claimant, the executive director shall deem the filing to be
10 withdrawn.

11 (b) Any incorrect reduction claim, or portion of an incorrect reduction claim, that the
12 Commission lacks jurisdiction to hear for any reason, including that the incorrect reduction claim
13 was not filed within the period of limitation required by section 1185.1(c) of these regulations,
14 may be rejected or dismissed by the executive director with a written notice stating the reason ~~for~~
15 ~~dismissal~~ therefor.

16 (c) Within 10 days of receipt of a complete incorrect reduction claim, Commission staff shall
17 provide a copy of the claim to the Office of State Controller.

18 (d) Commission staff shall notify the Office of State Controller that written comments and
19 supporting documentation in connection with an incorrect reduction claim shall be filed no more
20 than 90 days from the date the copy of the claim is provided to the Office of State Controller.
21 Written comments and supporting documentation shall be certified, filed, and served in
22 accordance with section 1181.3 of these regulations. If representations of fact are made, they
23 shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of
24 these regulations.

25 (e) The claimant and interested parties may file written rebuttals to the Office of State
26 Controller's comments within 30 days of service of the Office of State Controller's comments.
27 Written rebuttals and supporting documentation shall be certified, filed, and served in accordance
28 with section 1181.3 of these regulations. If representations of fact are made, they shall be
29 supported by documentary or testimonial evidence in accordance with section 1187.5 of these
30 regulations.

31 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
32 17551(d), 17553(d), 17558.5(c) and 17558.7(a), Government Code.

33 **§ 1185.3. Consolidation of Claims Initiated by an Individual Claimant.**

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

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

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

- 1 (3) The consolidation of similar claims by individual claimants would result in consistent
2 decision making by the Commission.
- 3 (4) The claimant filing the consolidated claim would fairly and adequately protect the interests of
4 the other claimants.
- 5 (b) A claimant that seeks to file a consolidated incorrect reduction claim shall notify the
6 Commission of its intent at the time of filing on a form provided by the Commission. The
7 consolidated incorrect reduction claim shall be filed in accordance with section 1185.1 of these
8 regulations and contain a narrative that explains the elements in subdivision (a) of this section.
9 All representations of fact shall be supported by documentary or testimonial evidence in
10 accordance with section 1187.5 of these regulations.
- 11 (c) Within 10 days of receipt of a consolidated incorrect reduction claim, Commission staff shall
12 notify the claimant if the consolidated incorrect reduction claim is complete or incomplete. A
13 consolidated incorrect reduction claim is incomplete if the claim has not been filed in accordance
14 with subdivision (b) of this section, or is illegible. Incomplete consolidated incorrect reduction
15 claims shall be returned to the claimant. If a complete consolidated incorrect reduction claim is
16 not received by the Commission within 30 days from the date the incomplete claim was returned
17 to the claimant, the executive director shall deem the filing to be withdrawn.
- 18 (d) Any consolidated incorrect reduction claim, or portion of a consolidated incorrect reduction
19 claim, that the Commission lacks jurisdiction to hear for any reason may be rejected or dismissed
20 by the executive director in accordance with section 1185.2(b) of these regulations.
- 21 (e) If the consolidated incorrect reduction claim is complete, Commission staff shall request the
22 Office of the State Controller to provide the Commission, within 30 days, a list of claimants for
23 whom the Controller has reduced similar claims under the same mandate, and the date each
24 claimant was notified of an adjustment.
- 25 (f) Upon receipt of the list from the Office of the State Controller, the Commission shall notify
26 the list of other claimants experiencing similar reductions by the Controller under the same
27 mandate and other interested parties of the original claimant's intent to consolidate an incorrect
28 reduction claim.
- 29 Note: Authority cited: Sections 17527(g), 17553(a) and 17558.7(g), Government Code.
30 Reference: Sections 17558.5(c) and 17558.7, Government Code.

31 **§ 1185.4. Joining a Consolidated Incorrect Reduction Claim.**

- 32 (a) Within 30 days of receipt of the Commission's notice regarding the original claimant's notice
33 of intent to consolidate an incorrect reduction claim, any other eligible claimant may, on a form
34 provided by the Commission, file a notice of intent to join the consolidated incorrect reduction
35 claim.
- 36 (b) All notices of intent to join a consolidated incorrect reduction claim shall comply with
37 section 1185.1(c) and contain at least the following elements and documents:
- 38 (1) A copy of the final state audit report, letter, or other written notice of adjustment from the
39 Office of State Controller that explains the claim components adjusted, amounts reduced, and the
40 reasons for the reduction.
- 41 (2) A copy of the subject reimbursement claims submitted to the Office of State Controller.

1 (3) A notice of intent to join a consolidated incorrect reduction claim shall include a certification
2 by the joining claimant authorizing the original claimant to act as its representative in the
3 consolidated incorrect reduction claim, and a declaration under penalty of perjury that the filing
4 is true and complete to the best of the declarant's personal knowledge, information, or belief. The
5 date signed, the declarant's title, address, telephone number, and e-mail address shall be
6 included. All representations of fact shall be supported by testimonial or documentary evidence
7 in accordance with section 1187.5 of these regulations.

8 (4) The joining claimant shall file one original notice of intent to join and accompanying
9 documents with the Commission in accordance with section 1181.3 of these regulations.

10 (c) Within 10 days of receipt of a notice of intent to join a consolidated incorrect reduction claim,
11 Commission staff shall notify the joining claimant if the notice of intent to join is complete or
12 incomplete. Notices of intent to join a consolidated incorrect reduction claim will be considered
13 incomplete if any of the elements required in subdivision (b) of this section are illegible or not
14 included. Incomplete notices of intent shall be returned to the joining claimant. If a complete
15 notice of intent to join a consolidated incorrect reduction claim is not received by the
16 Commission within 30 days from the date the incomplete notice of intent was returned to the
17 joining claimant, the Commission shall deem the filing to be withdrawn.

18 (d) Any notice of intent to join the consolidated incorrect reduction claim, or portion thereof, that
19 the Commission lacks jurisdiction to hear for any reason, including that the notice was not filed
20 within the period of limitation required by section 1185.1(c) of these regulations, may be rejected
21 or dismissed by the executive director with a written notice stating the reason ~~for~~
22 ~~dismissal therefor~~.

23 Note: Authority cited: Sections 17527(g), 17553(a) and 17558.7(g), Government Code.
24 Reference: Sections 17558.5(c) and 17558.7, Government Code.

25 **Article 7. Quasi-Judicial Hearing Procedures and Decisions**

26 **§ 1187.9. Extensions of Time to File Comments or Rebuttals and Postponements and** 27 **Continuances of Hearings.**

28 (a) Requests for Extensions of Time

29 Any party or interested party to a matter may request an extension of time by filing a request
30 with the executive director before the date set for filing of comments or rebuttals with
31 Commission staff on that matter. The request shall fully explain the reasons for the extension,
32 propose a new date for filing, and be certified, filed, and served in accordance with section
33 1181.3 of these regulations. ~~If representations of fact are made, they shall be supported by~~
34 ~~documentary or testimonial evidence in accordance with section 1187.5 of these regulations.~~ So
35 long as a postponement of a hearing would not be required, there is no prejudice to any party or
36 interested party, and there is no other good reason for denial, the request shall be approved. A
37 party to a matter may request an extension of time that would necessitate rescheduling a hearing,
38 but shall also include a request for postponement of the hearing, pursuant to subdivision (b) of
39 this section. Within two business days of receipt of the request, the executive director shall
40 determine whether the extension will be granted and notify all persons on the mailing list
41 prepared pursuant to section 1181.4 of these regulations.

42 (b) Requests for Postponement of Hearing

1 A party to an article 7 matter may request a postponement of a hearing on that matter, until the
2 next regularly scheduled hearing. Although postponements of hearings are disfavored, each
3 request for a postponement must be considered on its own merits. The request shall fully explain
4 the reasons for the postponement, and be certified, filed, and served in accordance with section
5 1181.3 of these regulations. ~~If representations of fact are made, they shall be supported by~~
6 ~~documentary or testimonial evidence in accordance with section 1187.5 of these regulations.~~
7 Within two business days of receipt of the request, the executive director shall determine
8 whether the postponement will be granted and notify all persons on the mailing list prepared
9 pursuant to section 1181.4 of these regulations. The executive director may postpone the matter
10 only on an affirmative showing of good cause.

11 (1) Circumstances that may indicate good cause include:

12 (A) The unavailability of a party, party representative, or witness because of death, illness, or
13 other excusable circumstances;

14 (B) The substitution of a party representative, but only where there is an affirmative showing that
15 the substitution is required in the interests of justice;

16 (C) The addition of a new party if:

17 1. The new party has not had a reasonable opportunity to prepare for hearing; or

18 2. The other parties have not had a reasonable opportunity to prepare for hearing in regard to the
19 new party's involvement in the matter;

20 (D) A party's excused inability to obtain essential testimony, documents, or other material
21 evidence despite diligent efforts;

22 (E) A significant, unanticipated change in the status of the matter as a result of which the matter
23 is not ready for hearing; or

24 (F) The number and complexity of the issues.

25 (2) Other factors to be considered: In determining whether to grant a postponement, the
26 executive director shall consider the facts and circumstances that are relevant to the
27 determination. These may include:

28 (A) The proximity of the hearing date;

29 (B) Whether there was any previous postponement, extension of time, or delay of hearing due to
30 any party;

31 (C) The length of the postponement requested;

32 (D) The availability of alternative means to address the problem that gave rise to the request for a
33 postponement;

34 (E) The prejudice that parties or witnesses will suffer as a result of the postponement;

35 (F) If the matter was granted expedited scheduling, the reasons for that status and whether the
36 need for a postponement outweighs the need to avoid delay;

37 (G) The Commission's backlog of matters and the impact of granting a postponement on other
38 pending matters;

- 1 (H) Whether the claimant or requester representative is engaged in a trial or other hearing that
2 conflicts with the Commission hearing;
- 3 (I) Whether, pursuant to Government Code 17554, all parties have stipulated to a postponement;
4 and
- 5 (J) Whether the interests of justice are best served by a postponement, by moving forward with
6 the hearing on the matter, or by imposing conditions on the postponement.

7 (3) Approval of Requests for Postponement

- 8 (A) A request filed by the claimant or requester at least 15 days before the hearing shall be
9 approved by the executive director for good cause.
- 10 (B) A request filed by stipulation of the parties, including the claimant or requester, shall be
11 approved by the executive director for good cause.
- 12 (C) A request filed by the claimant or requester less than 15 days before the hearing may be
13 approved by the executive director for good cause.
- 14 (D) A request filed by an interested party may be approved by the executive director for good
15 cause. If a state agency makes a request before filing comments on the test claim, that request
16 shall be accompanied by a notice of intent to oppose the test claim in whole or in part.

17 (4) Postponement on Commission Staff's Own Motion: The executive director may postpone a
18 hearing on a matter for good cause and shall notify all persons on the mailing list prepared
19 pursuant to section 1181.4 of these regulations.

20 (c) Continuance of a Hearing

21 (1) Prior to the adoption of its written decision on the matter being heard, the Commission on its
22 own motion, or upon a clear showing of good cause at the request of a party, may continue a
23 hearing to another time or place. Written notice of the time and place of the continued hearing,
24 except as provided herein, shall be in accordance with section 1187.1 of these regulations. When
25 a continuance is ordered during a hearing, oral notice of the time and place of the continued
26 hearing may also be given to each party present at the hearing.

27 (2) Continuances will be granted only upon a clear showing of good cause as described in
28 subdivision (b). In determining whether there is good cause for a continuance ~~within the meaning~~
29 ~~of subdivision (a)~~ the following policy should be taken into consideration: Continuances are not
30 favored by the Commission. The parties are expected to submit for decision all matters in
31 controversy at a single hearing and to produce at the hearing all necessary evidence, including
32 witnesses, documents and anything considered essential in the proof of a party's allegations.
33 ~~Continuances will be granted only upon a clear showing of good cause.~~

34 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
35 17527, 17551 and 17553(a), Government Code; and California Rules of Court, Rule 3.1332.

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 regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Commission has not scheduled a public hearing for this proposed action. However, if it receives a written request for a public hearing from any interested person or their authorized representative no later than 15 days before the close of the written comment period, by March 8, 2021, the Commission will conduct a public hearing on this proposed action on March 26, 2021, and will notify all persons of the date, time, and location of the hearing pursuant to Government Code section 11346.8(a).

WRITTEN COMMENT PERIOD

Any interested person or their authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The comment period closes at **5:00 p.m. on March 22, 2021**. The Commission will only consider written comments received at the Commission offices by that time. Commenters are strongly encouraged to submit their written comments electronically if possible (to prevent the spread of COVID-19) via the Commission website “Drop Box” at: <http://www.csm.ca.gov/dropbox.php>. Written comments may also be submitted to:

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

AUTHORITY AND REFERENCE

Government Code section 17527(g) authorizes the Commission to adopt the proposed regulations. Reference citations: Government Code sections 11123, 11346.4, 11347, 11347.1, and 17500 et seq.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Commission on State Mandates (Commission) is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state-mandated local programs (Government Code section 17500 et seq.) and to hear matters involving county applications for a finding of significant financial distress (Welfare and Institutions Code section 17000.6).

The purpose of this rulemaking is to generally clean-up, clarify, and streamline Commission regulations and update language for consistency. The proposed regulations: (1) add a definition of “normal business hours” to clarify the Commission’s normal business hours from 8 a.m. until 5 p.m. of each day from Monday to Friday, excluding state holidays, and that 5 p.m. is the filing cutoff for new filings and written materials to be deemed filed that day; (2) clarify the

requirements for test claim filing; (3) clarify that test claims and incorrect reduction claims may be either rejected or dismissed for lack of jurisdiction and clarify the process for rejecting or dismissing a test claim for lack of jurisdiction; (4) clarify that service charge and assessment authority are to be included as offsetting revenues and reimbursements in parameters and guidelines consistent with the purpose of article XIII B, section 6 of the California Constitution; (5) clarify the evidentiary standard for requests for extension of time and postponement of hearing; (6) make minor, non-substantive consistency edits, corrections; and (7) update reference citations.

Therefore, the Commission proposes revised language and citations in Articles 1, 3, 5, and 7 of the California Code of Regulations, Division 2, Title 2, Chapter 2.5 (Sections 1181.2; 1181.3; 1181.4; 1183.1; 1183.7; 1183.17; 1185.2, 1185.3, 1185.4, 1187.9) with a proposed effective date of October 1, 2021.

Anticipated Benefits of the Proposed Regulation

The specific benefits anticipated from the proposed regulations are: clarifying the Commission’s “normal business hours” for purposes of determining the date and time of filing new filings and written materials with the Commission; clarifying the requirements for test claim filing; clarifying that test claims and incorrect reduction claims may be either rejected or dismissed for lack of jurisdiction and clarifying the processes for dismissing and rejecting test claims filed by ineligible claimants; clarifying the offsetting revenues and reimbursements which must be included in parameters and guidelines; clarifying the evidentiary standards applicable to requests for extensions of time and postponement of hearings; increased accessibility in the mandates process for local agencies, school districts, state agencies, and interested parties/persons participating in the Commission’s processes; consistency in the use of terms; improved readability; and a more complete and accurate listing of references.

Consistency and Compatibility with Existing State Regulations

After conducting a review of existing regulations, the Commission has concluded that California Code of Regulations, title 2, sections 1181.1 et seq., are the only regulations concerning the Commission’s process. Therefore, the proposed regulations are consistent and compatible with existing state regulations.

DESCRIPTION OF PROPOSED REGULATIONS

I. Add a Definition of “Normal Business Hours” to Section 1181.2 and Clarify Filing Cutoff Times in Section 1181.3.

Section 1181.2. Definitions; Section 1181.3. Certification, Filing, and Service of Written Materials and New Filings.

The proposed amendments to section 1181.2(f) and section 1181.3(c) of the regulations are intended to clarify the Commission’s normal business hours, which are the hours that the Commission’s office is open: from 8 a.m. to 5 p.m., Monday through Friday, excluding state holidays. This is consistent with Government Code section 11020(a), which requires all state agency offices to remain open, at a minimum and subject to certain exceptions not applicable to the Commission, from 8 a.m. to 5 p.m., Monday through Friday, excluding state holidays.

Section 1181.2(f) defines “filing date” as the date received at the Commission’s office during normal business hours. The definition of “normal business hours” is being added to section

1181.2(f) to clarify that the Commission’s normal business hours are from 8 a.m. to 5 p.m., Monday through Friday, excluding state holidays.

The proposed addition of subdivision (c)(3) to section 1181.3 is to clarify that new filings and written materials filed with the Commission must be filed no later than 5 p.m. on a business day to be deemed filed that day.

II. Clarify the Requirements for Test Claim Filing in Section 1183.1.

Section 1183.1. Test Claim Filing.

The proposed changes clarify that test claims must comply with the requirements of Government Code sections 17551 and 17553 and must be filed by a person who meets the requirements of subdivision (a). Removing “may file” from subdivision (a) is intended to clarify that the individual who files the test claim on behalf of a local agency or school district must fall into one of the categories enumerated in subdivision(a)(1)-(5). This change is consistent with 1185.1(a), pertaining to who may file an incorrect reduction claim on behalf of a local agency or school district. Language is proposed to be added to subdivision (f) to clarify that for a test claim to be considered complete, the requirements of Government Code section 17553 and section 1183.1 of the Commission’s regulations must be met. The proposed amendments also move the requirements for when a test claim may be filed as a joint effort from subdivision (g) to subdivision (b) for greater readability and clarity. Current subdivision (g) is eliminated, and current subdivision (h) is renumbered as subdivision (g).

III. Clarify Rejection and Dismissal for Lack of Jurisdiction of Test Claims in Section 1183.1 and of Incorrect Reduction Claims in Sections 1185.2, 1185.3, and 1185.4.

Section 1183.1. Test Claim Filing; Section 1185.2. Review of Incorrect Reduction Claims; Section 1185.3. Consolidation of Claims Initiated by an Individual Claimant; Section 1185.4. Joining a Consolidated Incorrect Reduction Claim.

The proposed changes to proposed section 1183.1(g) (which is being renumbered from 1183.1(h)) are intended to clarify that when the Commission lacks jurisdiction to hear and determine a timely and otherwise complete test claim filed by a local agency that is not eligible to claim reimbursement under article XIII B, section 6 because it is not subject to the tax and spend provisions of articles XIII A and B of the California Constitution, the test claim must proceed under section 1187.14, which requires notice, the opportunity for an eligible claimant to take over the claim by a substitution of parties, a written comment period on the proposed dismissal, and a hearing by the Commission to dismiss the claim if no party is substituted in.

Sections 1185.2, 1185.3, and 1185.4 pertain to incorrect reduction claim filings. These regulations currently provide that an incorrect reduction claim, consolidated incorrect reduction claim, or notice of intent to join a consolidated incorrect reduction claim, respectively, or portions thereof, may be dismissed by the executive director for lack of jurisdiction with a written notice explaining the reason for the dismissal. The proposed changes to these regulations make them consistent with the proposed language in proposed section 1183.1(g) (renumbered from 1183.1(h)) by clarifying that incorrect reduction claims may be rejected before the claim is deemed complete or dismissed by the executive director for lack of jurisdiction with a written notice explaining the reason for the rejection or dismissal.

IV. Clarify Offsetting Revenues to be Included in Parameters and Guidelines.

Section 1183.7(g). Content of Parameters and Guidelines.

Section 1183.7 of the regulations governs the content of parameters and guidelines, which must describe the claimable reimbursable activities and costs and contain specified information, including offsetting revenues and reimbursements that are required to be deducted from the costs claimed. The proposed amendments are intended to clarify in section 1183.7(g)(4) that, in addition to fee authority, service charge and assessment authority to offset mandate costs are offsetting revenues that reduce the cost of reimbursable activities and which must be identified in the parameters and guidelines consistent with the purpose of article XIII B, section 6 of the California Constitution.

Article XIII B, section 6 was specifically designed to preclude “the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹ Article XIII A imposes a limit on state and local power to adopt and levy taxes. Article XIII B “restricts the amounts state and local governments may appropriate and spend each year from the ‘proceeds of taxes.’”² Article XIII B defines “proceeds of taxes” that are subject to the appropriations limit to include all tax revenues, as well as those revenues from regulatory licenses, user charges, and user fees but only “to the extent such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product, or service.”³ Article XIII B does not place limits on revenues that do not constitute a local entity’s “proceeds of taxes.”⁴ Revenues that do not constitute a local entity’s “proceeds of taxes” include federal funds; and service charges, fees, or assessments.⁵

Thus, when a local government funds the mandated activities with funds that are *not* its proceeds of taxes (e.g., service charges, fees, or assessments authorized to be used on the mandate), then those funds are not reimbursable, and must be identified as offsetting revenue. Because service charges, fees, and assessments authorized to be used on the mandate do not constitute “proceeds of taxes,” the language proposed to be added to subdivision (g)(4) clarifies that, in addition to fee authority, service charge and assessment authority to offset mandated program costs must also be identified and deducted from the reimbursement claim.

V. Clarify the Evidentiary Standards Applicable to Requests for Extensions of Time and Postponement of Hearing in Section 1187.9.

¹ *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763; see also, *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

² *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762.

³ Article XIII B, section 8 of the California Constitution; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

⁴ Article XIII B, section 8 of the California Constitution; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

⁵ Article XIII B, sections 8, 9; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 449, 455; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

Section 1187.9. Extensions of Time to File Comments or Rebuttals and Postponements of Hearings.

Section 1187.9 of the regulations governs requests for extension of time and requests for postponement of hearing. As section 1187.9(a) and (b) currently exist, a request for extension or postponement must be certified under penalty of perjury in accordance with section 1181.3 declaring that the contents are true and correct to the best of the declarant's personal knowledge, information, or belief, *and* if the request is based on facts, must also include additional direct evidence supporting that fact (i.e., another declaration or admissible document supporting the fact that is not based solely on hearsay evidence).

The proposed changes to section 1187.9(a) and (b) remove the requirement that declarations or evidence under section 1187.5 accompany a request for extension or postponement that contains representations of fact because the existing requirement to certify the request under penalty of perjury pursuant to section 1181.3 satisfies the evidentiary standards for procedural requests and is consistent with the Administrative Procedures Act, and the Code of Civil Procedure and the Rules of Court for civil actions. The facts contained in a certified request for extension or postponement are submitted under penalty of perjury that the facts are true and correct to the best of the declarant's personal knowledge, information, or belief, which assures that the facts stated are made in good faith.

VI. Minor, Nonsubstantive Consistency Edits and Corrections

The following proposed amendments make minor, nonsubstantive consistency edits or correct usage and errors in sections 1181.4, 1183.17, 1185.2 and 1187.9 of the regulations.

Update Usage and Increase Clarity

These amendments are proposed to update usage or improve style and readability, and for consistency with the existing regulations. The proposed amendments to section 1185.2(a), pertaining to completeness of incorrect reduction claims, change the words "any of the elements in section 1185.1(a) and (b) and (d) through (h)" to "any of the requirements of section 1185.1" to simplify the language and make it consistent with the proposed changes to section 1183.1(f). The amendments also delete unnecessary words in section 1181.4(c)(7) by removing the modifier "Joint Request for" from "Joint Request for Legislatively Determined Mandate."

In section 1187.9(c)(2), the provision "Continuances will be granted only upon a clear showing of good cause" is moved from the last sentence to the first sentence for greater clarity. The phrase "within the meaning of subdivision (a)" is changed to "as described in subdivision (b)" (reference to subdivision (a) is also changed to subdivision (b), as discussed below) and is moved to the end of the new first sentence to clarify where the description of "good cause" for purposes of this subdivision is located.

Correct Minor Errors

These amendments are also proposed to correct errors in the current regulations, including changing the reference in section 1183.17(a)(5) from "section 1183.1(d)" to "section 1183.7(d)" to correct a typographical error and the reference in section 1187.9(c)(2) from "subdivision (a)" to "subdivision (b)" because that is where the description of good cause is located.

VII. Update to Reference Citations in Sections 1181.2 and 1181.3.

Section 1181.2. Definitions; Section 1181.3. Certification, Filing, and Service of Written Materials and New Filings.

The proposed amendments to the reference statutes for sections 1181.2 and 1181.3 add Government Code section 11020(a), which provides that “[u]nless otherwise provided by law, all offices of every state agency shall be kept open for the transaction of business from 8 a.m. until 5 p.m. of each day from Monday to Friday, inclusive, other than legal holidays.”

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

Commission staff did not rely on any technical, theoretical, or empirical studies or reports in proposing the adoption of these regulations. The Commission relied upon the statutes and cases cited in the authority and reference sections for the regulations.

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:	None
Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:	None
Other non-discretionary cost or savings imposed on local agencies:	None
Cost or savings in federal funding to the state:	None
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.	

Results of the Economic Impact Analysis/Assessment

The Commission concludes that the proposal will: (1) not create or eliminate jobs within California; (2) not create new businesses or eliminate existing businesses within California; and (3) not affect the expansion of businesses currently doing business within California.

Small Business Determination

Because the Commission has no jurisdiction over small businesses and small businesses are not parties before the Commission, the proposed regulatory action will have no impact on small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(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 Commission 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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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:

Jill Magee, Program Analyst
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Telephone: (916) 323-3562
(jill.magee@csm.ca.gov)

The backup contact person for these inquiries is:

Heidi Palchik, Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Telephone: (916) 323-3562
(heidi.palchik@csm.ca.gov)

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 on which the rulemaking is based to Ms. Jill Magee (see contact information above) or download it from the Commission's website at <http://www.csm.ca.gov/rulemaking.php>.

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 on the Commission's website (see below) or by contacting Ms. Jill Magee (see contact information above). All persons on the Commission’s interested persons mailing list will be provided a copy of the rulemaking file by making it available on the Commission’s website and providing notice of how to locate it.

AVAILABILITY OF CHANGED OR MODIFIED TEXT AND DOCUMENTS RELIED ON

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) and any

documents relied on 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 or documents relied on to the attention of Ms. Jill Magee (see contact information 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 and any Documents Relied Upon may be obtained by contacting Ms. Jill Magee at the address, phone number, or email address listed above.

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 the Commission's website at <http://www.csm.ca.gov/rulemaking.php>.

INITIAL STATEMENT OF REASONS
CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 2. FINANCIAL OPERATIONS
CHAPTER 2.5. COMMISSION ON STATE MANDATES
GENERAL CLEANUP PROVISIONS
ARTICLES 1, 3, 5, AND 7

SECTIONS 1181.2; 1181.3; 1181.4; 1183.1; 1183.7; 1183.17; 1185.2; 1185.3; 1185.4; and
1187.9

SPECIFIC PURPOSE OF THE REGULATIONS

The Commission on State Mandates (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 county applications for a finding of significant financial distress (Welf. & Inst. Code, § 17000.6).

The purpose of this rulemaking is to generally clean-up, clarify, and streamline Commission regulations and update language for consistency. The proposed regulations: (1) add a definition of “normal business hours” to clarify the Commission’s normal business hours from 8 a.m. until 5 p.m. of each day from Monday to Friday, excluding state holidays, and that 5 p.m. is the filing cutoff for new filings and written materials to be deemed filed that day; (2) clarify the requirements for test claim filing; (3) clarify that test claims and incorrect reduction claims may be either rejected or dismissed for lack of jurisdiction and clarify the process for rejecting or dismissing a test claim for lack of jurisdiction; (4) clarify that service charge and assessment authority are to be included as offsetting revenues and reimbursements in parameters and guidelines consistent with the purpose of article XIII B, section 6 of the California Constitution; (5) clarify the evidentiary standard for requests for extension of time and postponement of hearing; (6) make minor, non-substantive consistency edits, corrections; and (7) update reference citations.

Therefore, the Commission proposes revised language and citations in Articles 1, 3, 5, and 7 of the California Code of Regulations, Division 2, Title 2, Chapter 2.5 (Sections 1181.2; 1181.3; 1181.4; 1183.1; 1183.7; 1183.17; 1185.2, 1185.3, 1185.4, 1187.9) with a proposed effective date of October 1, 2021.

I. Add a Definition of “Normal Business Hours” to Section 1181.2 and Clarify Filing Cutoff Times in Section 1181.3.

Section 1181.2. Definitions; Section 1181.3. Certification, Filing, and Service of Written Materials and New Filings.

Specific Purpose of the Regulation

Section 1181.2 of the regulations defines, clarifies, and makes more specific, terms in the Government Code and the Commission’s regulations. Section 1181.3 provides the procedure for filing and serving new filings and written materials for all Commission matters. The proposed amendments to section 1181.2(f) and section 1181.3(c) of the regulations are intended to clarify

the Commission’s normal business hours, which are the hours that the Commission’s office is open: from 8 a.m. to 5 p.m., Monday through Friday, excluding state holidays. This is consistent with Government Code section 11020(a), which requires all state agency offices to remain open, at a minimum and subject to certain exceptions not applicable to the Commission, from 8 a.m. to 5 p.m., Monday through Friday, excluding state holidays.

Proposed Changes

Section 1181.2(f) defines “filing date” as the date received at the Commission’s office during normal business hours. The definition of “normal business hours” is being added to section 1181.2(f) to clarify that the Commission’s normal business hours are from 8 a.m. to 5 p.m., Monday through Friday, excluding state holidays.

The proposed addition of subdivision (c)(3) to section 1181.3 is to clarify that new filings and written materials filed with the Commission must be filed no later than 5 p.m. on a business day to be deemed filed that day.

Necessity and Anticipated Benefit

The proposed amendments are necessary to clarify the Commission’s “normal business hours” for purposes of determining the date and time of filing new filings and written materials with the Commission and are consistent with the long-standing business practices of the Commission and with Government Code section 11020(a), which establishes state agency business days and hours.

II. Clarify the Requirements for Test Claim Filing in Section 1183.1.

Section 1183.1. Test Claim Filing.

Specific Purpose of the Regulations

Section 1183.1 provides the requirements for test claim filing, including who may file a test claim on behalf of a local agency or school district, when a test claim may be filed jointly, and what must be included for a test claim to be deemed complete. The proposed changes clarify that test claims must comply with the requirements of Government Code sections 17551 and 17553 and must be filed by a person who meets the requirements of subdivision (a). Removing “may file” from subdivision (a) is intended to clarify that the individual who files the test claim on behalf of a local agency or school district must fall into one of the categories enumerated in subdivision(a)(1)-(5). This change is consistent with 1185.1(a), pertaining to who may file an incorrect reduction claim on behalf of a local agency or school district. Changes are proposed to subdivision (f) to clarify what is required for a test claim to be considered complete. The proposed amendments also move the requirements for when a test claim may be filed as a joint effort from subdivision (g) to subdivision (b) for greater readability and clarity. Current subdivision (g) is eliminated and current subdivision (h) is therefore renumbered as subdivision (g).

Proposed Changes

Language is proposed to be added to section 1183.1(a) to reference Government Code sections 17551 and 17553 and make clear that the requirements of section 1183.1(a) are mandatory, not optional. The language “A local agency or school district” is removed because it is duplicative and unnecessary in light of the other proposed changes to subdivision (a). Subdivision (f) is proposed to be changed as follows:

(f) Within 10 days of receipt of a test claim, or amendment thereto, Commission staff shall notify the claimant if the test claim is complete or incomplete. Test claims will be considered incomplete if any of the ~~elements required in subdivisions (e) and (d) requirements of Government Code section 17553 or this section are illegible, or are not included, or are not met.~~ If a complete test claim is not received within 30 calendar days from the date the incomplete test claim was returned, the executive director may disallow the original test claim filing date. A new test claim may be accepted on the same statute or executive order alleged to impose a reimbursable state-mandated program.

The requirements for joint test claims are moved from subdivision (g) to subdivision (b), current subdivision (g) is eliminated, and current subdivision (h) is renumbered as subdivision (g).

Necessity and Anticipated Benefit

The proposed amendments to section 1183.1(a) are necessary to clarify that test claims must be filed pursuant to Government Code sections 17551 and 17553 as well as to clarify that the person filing a test claim on behalf of a local agency or school district must fall into one of the categories enumerated in subdivision (a)(1)-(5). Adding language to subdivision (f) that a test claim that does not meet the requirements of section 1183.1 and Government Code section 17553 will be considered incomplete is necessary to clarify that test claims must meet both the technical and substantive requirements of section 1183.1 and Government Code section 17553 to be deemed complete. The proposal to move the joint test claim filing requirements from subdivision (g) to subdivision (b) is intended to improve the readability and clarity of the test claim filing requirements and procedures and will make the mandates process more accessible to the parties, interested parties, and interested persons. Because the text of subdivision (g) is being moved into subdivision (b), subdivision (g) is being eliminated, therefore subdivision (h) must be renumbered as subdivision (g).

III. Clarify Rejection and Dismissal for Lack of Jurisdiction of Test Claims in Section 1183.1 and of Incorrect Reduction Claims in Sections 1185.2, 1185.3, and 1185.4.

Section 1183.1. Test Claim Filing; Section 1185.2. Review of Incorrect Reduction Claims; Section 1185.3. Consolidation of Claims Initiated by an Individual Claimant; Section 1185.4. Joining a Consolidated Incorrect Reduction Claim.

Specific Purpose of the Regulations

Section 1183.1 provides the requirements for a test claim filing, including that a test claim or any portion thereof may be dismissed by the executive director when the Commission lacks jurisdiction for any reason, with a written notice explaining the reason for the dismissal.

Section 1187.14 also governs the dismissal of a test claim when a test claim has been withdrawn or abandoned by the claimant, or when a test claim has been filed by a local agency that is not eligible to claim reimbursement because it is not subject to the tax and spend provisions of articles XIII A and B of the California Constitution. Dismissal of a test claim under section 1187.14 requires a hearing by the Commission after notice, an opportunity to comment has been provided to the claimant and interested parties, and an opportunity for the substitution of parties allowing the test claim to proceed by another eligible claimant.

The proposed changes to section 1183.1 are intended to clarify that when the Commission lacks jurisdiction to hear and determine a timely and otherwise complete test claim filed by a local

agency that is not eligible to claim reimbursement under article XIII B, section 6 because it is not subject to the tax and spend provisions of articles XIII A and B of the California Constitution, the test claim must proceed under section 1187.14, which requires notice, the opportunity for an eligible claimant to take over the claim by a substitution of parties, a written comment period on the proposed dismissal, and a hearing by the Commission to dismiss the claim if no party is substituted in.

Sections 1185.2, 1185.3, and 1185.4 pertain to incorrect reduction claim filings. Section 1185.2 pertains to review of incorrect reduction claims, section 1185.3 pertains to consolidated incorrect reduction claims, and section 1185.4 pertains to joining a consolidated incorrect reduction claim. These regulations currently provide that an incorrect reduction claim, consolidated incorrect reduction claim, or notice of intent to join a consolidated incorrect reduction claim, respectively, or portions thereof, may be dismissed by the executive director for lack of jurisdiction with a written notice explaining the reason for the dismissal. The proposed changes to these regulations make them consistent with the proposed language in section 1183.1 by clarifying that incorrect reduction claims may be rejected before the claim is deemed complete or dismissed by the executive director for lack of jurisdiction with a written notice explaining the reason for the rejection or dismissal.

Proposed Change

Accordingly, the language in proposed section 1183.1(g) (which is being renumbered from 1183.1(h)) is amended as follows:

~~(g)~~ Any test claim, or portion of a test claim, that the Commission lacks jurisdiction to hear for any reason, including that the test claim was not filed within the period of limitation required by subdivision (c) of this section, may be rejected or dismissed by the executive director with a written notice stating the reason ~~for dismissal~~therefor. However, for an otherwise timely and complete test claim over which the Commission would have jurisdiction, except that it was filed by a local agency that is not eligible to seek reimbursement because it is not subject to the taxing and spending limitations of article XIII A and B of the California Constitution, the Commission shall follow the process outlined in section 1187.14(b).

The proposed changes to sections 1185.2, 1185.3, and 1185.4 make them consistent with the proposed language in proposed section 1183.1(g) (which is being renumbered from 1183.1(h)) by clarifying that an incorrect reduction claim may be rejected before the claim is deemed complete or dismissed for lack of jurisdiction by the executive director with a written notice explaining the reason for the rejection or dismissal.

Accordingly, the language in proposed section 1185.2(b) is amended as follows:

(b) Any incorrect reduction claim, or portion of an incorrect reduction claim, that the Commission lacks jurisdiction to hear for any reason, including that the incorrect reduction claim was not filed within the period of limitation required by section 1185.1(c) of these regulations, may be rejected or dismissed by the executive director with a written notice stating the reason ~~for dismissal~~therefor.

In addition, the language in proposed section 1185.3(d) is amended as follows:

(d) Any consolidated incorrect reduction claim, or portion of a consolidated incorrect reduction claim, that the Commission lacks jurisdiction to hear for any reason may be rejected or dismissed by the executive director in accordance with section 1185.2(b) of these regulations.

Finally, the language in proposed section 1185.4(d) is amended as follows:

(d) Any notice of intent to join the consolidated incorrect reduction claim, or portion thereof, that the Commission lacks jurisdiction to hear for any reason, including that the notice was not filed within the period of limitation required by section 1185.1(c) of these regulations, may be rejected or dismissed by the executive director with a written notice stating the reason ~~for~~ dismissal~~therefor~~.

Necessity and Anticipated Benefit

The proposed amendments to section 1183.1 are necessary to clarify when the process in section 1183.1 applies and when the process in section 1187.14 applies to rejections or dismissals of test claims, and to prevent any conflicting interpretation of these sections. Because of the importance of the test claim process to interested parties that may rely on a test claim filed by another agency to protect their right to reimbursement, it is necessary to clarify that the process under section 1187.14(b), which allows an eligible agency to take over a test claim prior to dismissal and requires a dismissal hearing if no one timely substitutes in for the ineligible claimant, applies to a timely and otherwise complete test claim filed by a local agency that is not eligible to seek reimbursement because it is not subject to the taxing and spending limitations of article XIII A and B of the California Constitution.

The proposed amendments to sections 1185.2, 1185.3, and 1185.4 are to make the regulations pertaining to rejection or dismissal of incorrect reduction claims on jurisdictional grounds consistent with the proposed amendments to proposed section 1183.1(g).

It is anticipated that these changes will increase accessibility in the mandates process for parties, interested parties, and interested persons.

IV. Clarify Offsetting Revenues to be Included in Parameters and Guidelines.

Section 1183.7(g). Content of Parameters and Guidelines.

Specific Purpose of the Regulation

Section 1183.7 of the regulations governs the content of parameters and guidelines, which must describe the claimable reimbursable activities and costs and contain specified information, including offsetting revenues and reimbursements that are required to be deducted from the costs claimed. Section 1183.7(g) currently identifies offsetting revenues and reimbursements as follows:

- (1) Dedicated state and federal funds appropriated for this program.
- (2) Non-local agency funds dedicated for this program.
- (3) Local agency's general purpose funds for this program.
- (4) Fee authority to offset part of the costs of this program.

The proposed amendments are intended to clarify in section 1183.7(g)(4) that, in addition to fee authority, service charge and assessment authority to offset mandate costs are offsetting revenues that reduce the cost of reimbursable activities and which must be identified in the parameters and guidelines consistent with the purpose of article XIII B, section 6 of the California Constitution.

Article XIII B, section 6 was specifically designed to preclude “the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’

to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹ Article XIII A imposes a limit on state and local power to adopt and levy taxes. Article XIII B “restricts the amounts state and local governments may appropriate and spend each year from the ‘proceeds of taxes.’”² Article XIII B defines “proceeds of taxes” that are subject to the appropriations limit to include all tax revenues, as well as those revenues from regulatory licenses, user charges, and user fees but only “to the extent such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product, or service.”³ Article XIII B does not place limits on revenues that do not constitute a local entity’s “proceeds of taxes.”⁴ Revenues that do not constitute a local entity’s “proceeds of taxes” include federal funds; and service charges, fees, or assessments.⁵

Thus, when a local government funds the mandated activities with funds that are *not* its proceeds of taxes (e.g., service charges, fees, or assessments authorized to be used on the mandate), then those funds are not reimbursable, and must be identified as offsetting revenue. Because service charges, fees, and assessments authorized to be used on the mandate do not constitute “proceeds of taxes,” the language proposed to be added to subdivision (g)(4) clarifies that, in addition to fee authority, service charge and assessment authority to offset mandated program costs must also be identified and deducted from the reimbursement claim.

Proposed Change

The proposed amendments to section 1183.7(g)(4) are as follows:

(g) Any Offsetting Revenues and Reimbursements that reduce the cost of any reimbursable activity, including the identification of:

- (1) Dedicated state and federal funds appropriated for this program.
- (2) Non-local agency funds dedicated for this program.
- (3) Local agency's general purpose funds for this program.
- (4) Service charge, Fee, or assessment authority to offset part of the costs of this program.

Necessity and Anticipated Benefit

The proposed amendments are necessary to clarify that, consistent with the law, service charge and assessment authority to pay for the mandate program are offsetting revenues and reimbursements that reduce the cost of reimbursable activities and which must be included in the parameters and guidelines.

¹ *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763; see also, *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

² *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762.

³ Article XIII B, section 8 of the California Constitution; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

⁴ Article XIII B, section 8 of the California Constitution; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

⁵ Article XIII B, sections 8, 9; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 449, 455; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

V. Clarify the Evidentiary Standards Applicable to Requests for Extensions of Time and Postponement of Hearing in Section 1187.9.

Section 1187.9. Extensions of Time to File Comments or Rebuttals and Postponements of Hearings.

Specific Purpose of the Regulation

Section 1187.9 of the regulations governs requests for extension of time and requests for postponement of hearing. The regulation, in subdivisions (a) and (b), requires an extension or postponement request to be certified and signed under penalty of perjury in accordance with section 1181.3 of the regulations. Under section 1181.3, written materials filed with the Commission must be certified with a signature under penalty of perjury and a declaration that the contents therein are true and correct to the best of the declarant's personal knowledge, information, or belief.

Section 1187.9(a) and (b) also require that a request for extension or postponement that contains representations of fact be supported by documentary or testimonial evidence in accordance with section 1187.5, which sets forth the Commission's evidentiary standards for quasi-judicial decisions. Section 1187.5, in relevant part, states that:

- (a) The hearings will not be conducted according to technical rules relating to evidence and witnesses. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
- (b) Oral or written representations of fact offered by any person at an article 7 hearing shall be under oath or affirmation. All written representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief.

Thus, as section 1187.9(a) and (b) currently exist, a request for extension or postponement must be certified under penalty of perjury in accordance with section 1181.3 declaring that the contents are true and correct to the best of the declarant's personal knowledge, information, or belief, *and* if the request is based on facts, must also include additional direct evidence supporting that fact (i.e., another declaration or admissible document supporting the fact that is not based solely on hearsay evidence).

The proposed changes to section 1187.9(a) and (b) remove the requirement that declarations or evidence under section 1187.5 accompany a request for extension or postponement that contains representations of fact because the existing requirement to certify the request under penalty of perjury pursuant to section 1181.3 satisfies the evidentiary standards for procedural requests and is consistent with the Administrative Procedures Act, and the Code of Civil Procedure and the Rules of Court for civil actions. The facts contained in a certified request for extension or postponement are submitted under penalty of perjury that the facts are true and correct to the best

of the declarant's personal knowledge, information, or belief, which assures that the facts stated are made in good faith.

Proposed Change

The proposed changes remove the following language from subdivisions (a) and (b) of section 1187.9, which pertain to requests for extension of time and postponement of hearing, respectively: "If representations of fact are made, they shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of these regulations," as follows:

(a) Requests for Extensions of Time

Any party or interested party to a matter may request an extension of time by filing a request with the executive director before the date set for filing of comments or rebuttals with Commission staff on that matter. The request shall fully explain the reasons for the extension, propose a new date for filing, and be certified, filed, and served in accordance with section 1181.3 of these regulations. ~~If representations of fact are made, they shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of these regulations.~~ So long as a postponement of a hearing would not be required, there is no prejudice to any party or interested party, and there is no other good reason for denial, the request shall be approved. A party to a matter may request an extension of time that would necessitate rescheduling a hearing, but shall also include a request for postponement of the hearing, pursuant to subdivision (b) of this section. Within two business days of receipt of the request, the executive director shall determine whether the extension will be granted and notify all persons on the mailing list prepared pursuant to section 1181.4 of these regulations.

(b) Requests for Postponement of Hearing

A party to an article 7 matter may request a postponement of a hearing on that matter, until the next regularly scheduled hearing. Although postponements of hearings are disfavored, each request for a postponement must be considered on its own merits. The request shall fully explain the reasons for the postponement, and be certified, filed, and served in accordance with section 1181.3 of these regulations. ~~If representations of fact are made, they shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of these regulations.~~ Within two business days of receipt of the request, the executive director shall determine whether the postponement will be granted and notify all persons on the mailing list prepared pursuant to section 1181.4 of these regulations. The executive director may postpone the matter only on an affirmative showing of good cause.

The sentences proposed for deletion were added to subdivisions (a) and (b) effective April 1, 2018, as part of a larger regulatory cleanup intended to ensure uniformity in the evidentiary standards for all quasi-judicial decisions of the Commission.

The requirement to comply with section 1187.5, however, is not necessary for procedural requests for extensions of time and postponements of hearing, which are approved or denied by the Commission's executive director. Section 1187.9 already requires that requests for extensions of time and postponement of hearing be certified in accordance with section 1181.3, which similarly requires that the request be signed under penalty of perjury with a declaration that the filing is true and correct to the best of the declarant's personal knowledge, information,

or belief. Certification of a request pursuant to section 1181.3 complies with the Administrative Procedures Act and the Code of Civil Procedure, both of which contain exceptions to the hearsay rule that allow for the limited use of out-of-court affidavits and declarations as competent evidence, in lieu of oral testimony.⁶

In addition, the existing requirement that a request for extension or postponement contain a certification pursuant to section 1181.3 assures that the request is made in good faith. The language in section 1181.3 (that the request must be certified with a signature under penalty of perjury and a declaration that the contents therein are true and correct to the best of the declarant's personal knowledge, information, or belief) is consistent with pleadings in civil litigation that are required to be verified to assure good faith. For example, under Code of Civil Procedure section 446, which governs verification of pleadings, a verification generally consists of a signed affidavit stating that the contents of the pleading are true and are based on the affiant's personal knowledge, information, or belief, and may be signed under penalty of perjury. Because the primary purpose of a verification is "to assure good faith in the averments or statements of a party,"⁷ certification under section 1181.3 likewise shows a good faith assertion of the facts contained in the request.

Finally, in the courts of appeal, when a party wants to request an extension of time, the party only needs to file an application and a declaration stating good cause.⁸

Because factual assertions contained in a certified request for extension or postponement are made under penalty of perjury and declared by the person signing the document to be true and correct, the proposed amendments no longer require that additional evidence (e.g., supporting documents or additional declarations) be provided for requests for extensions of time and postponement of hearing.

Necessity and Anticipated Benefit

The proposed amendments are necessary to clarify the evidentiary standards applicable to requests for extensions of time and postponement of hearings, are consistent with evidentiary and penalty of perjury standards for procedural requests under the Administrative Procedures Act, and the Code of Civil Procedure and the Rules of Court for civil actions, and increase the accessibility of the mandates process for the parties and interested parties.

⁶ See, for example, Code of Civil Procedure section 2009, which authorizes the use of affidavits in motion proceedings and "applies to matters of procedure—matters collateral, ancillary, or incidental to an action or proceeding—and has no relation to proof of facts the existence of which are made issues in the case, and which it is necessary to establish to sustain a cause of action" [*Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1335, quoting *Lacrabere v. Wise* (1904) 141 Cal. 554, 556-557]; Code of Civil Procedure section 2015.5, which provides that a declaration or certification under penalty of perjury may be used in lieu of a "sworn statement, declaration, verification, certificate, oath, or affidavit;" and Government Code section 11514 of the Administrative Procedures Act, which allows affidavits and declarations to be used in lieu of oral testimony in administrative proceedings.

⁷ *Star Motor Imports, Inc. v. Superior Court* (1979) 88 Cal.App.3d 201, 204.

⁸ California Rules of Court, Rules 8.60 and 8.63.

VI. Minor, Nonsubstantive Consistency Edits and Corrections

The following proposed amendments make minor, nonsubstantive consistency edits or correct usage and errors in sections 1181.4, 1183.17, 1185.2 and 1187.9 of the regulations.

Proposed Change

Update Usage and Increase Clarity

These amendments are proposed to update usage or improve style and readability, and for consistency with the existing regulations. The proposed amendments to section 1185.2(a), pertaining to completeness of incorrect reduction claims, change the words “any of the elements in section 1185.1(a) and (b) and (d) through (h)” to “any of the requirements of section 1185.1” to simplify the language and make it consistent with the proposed changes to section 1183.1(f). The amendments also delete unnecessary words in section 1181.4(c)(7) by removing the modifier “Joint Request for” from “Joint Request for Legislatively Determined Mandate.”

In section 1187.9(c)(2), the provision “Continuances will be granted only upon a clear showing of good cause” is moved from the last sentence to the first sentence for greater clarity. The phrase “within the meaning of subdivision (a)” is changed to “as described in subdivision (b)” (reference to subdivision (a) is also changed to subdivision (b), as discussed below) and is moved to the end of the new first sentence to clarify where the description of “good cause” for purposes of this subdivision is located.

Correct Minor Errors

These amendments are also proposed to correct errors in the current regulations, including changing the reference in section 1183.17(a)(5) from “section 1183.1(d)” to “section 1183.7(d)” to correct a typographical error and the reference in section 1187.9(c)(2) from “subdivision (a)” to “subdivision (b)” because that is where the description of good cause is located.

Necessity and Anticipated Benefit

These changes are clerical or stylistic in nature and are necessary to correct minor errors, update usage, and improve the readability, clarity, and consistency with the Commission’s other regulations.

VII. Update to Reference Citations in Sections 1181.2 and 1181.3.

Section 1181.2. Definitions; Section 1181.3. Certification, Filing, and Service of Written Materials and New Filings.

Specific Purpose of the Regulations

Section 1181.2 of the regulations defines terms in the Government Code and the Commission’s regulations. Section 1181.3 provides the procedure for filing and serving new filings and written materials for all Commission matters. The proposed amendments add Government Code section 11020(a) to the reference sections of sections 1181.2 and 1181.3.

Proposed Change

The proposed amendments to the reference statutes for sections 1181.2 and 1181.3 add Government Code section 11020(a), which provides that “[u]nless otherwise provided by law, all offices of every state agency shall be kept open for the transaction of business from 8 a.m. until 5 p.m. of each day from Monday to Friday, inclusive, other than legal holidays.”

Necessity and Anticipated Benefit

The added citation is necessary to provide a more complete and accurate listing of the reference sections for these regulations.

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

Commission staff did not rely on any technical, theoretical, or empirical studies or reports in proposing the adoption of these regulations. The Commission relied upon the statutes and cases cited in the authority and reference sections for the regulations.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Creation or Elimination of Jobs within the State of California

The regulations are designed to increase clarity for local governments, school districts, state agencies, and other interested parties and persons who participate in the Commission's processes, and to make minor technical corrections. No jobs in California will be created or eliminated as a result of these regulations.

Creation of New or Elimination of Existing Businesses within the State of California

The Commission has no jurisdiction over small or any other businesses and businesses are not parties before the Commission. Therefore, no new businesses in California will be created or existing businesses eliminated.

Expansion of Businesses or Elimination of Existing Businesses within the State of California

The Commission has no jurisdiction over small or any other businesses and businesses are not parties before the Commission. Additionally, the proposed regulations merely clarify Commission procedures and make technical corrections. Therefore, no existing businesses in California will be expanded or eliminated.

Benefits of the Regulations

The regulations are designed to increase clarity for local governments, school districts, state agencies, and other interested parties and persons who participate in the Commission's processes, and to make minor technical corrections. These regulations may indirectly benefit the health and welfare of California residents by clarifying participation in the Commission's processes, which increases openness and transparency in government.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other alternatives have been presented to or considered by the Commission.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL OR OTHER BUSINESSES

The Commission has no jurisdiction over small or any other businesses and businesses are not parties before the Commission. Therefore, there is no adverse impact on small or other businesses.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC
IMPACT ON ANY BUSINESS**

There are no businesses that are parties or interested parties in matters before the Commission.

FINAL STATEMENT OF REASONS

**NO COMMENTS WERE RECEIVED DURING THE INITIAL NOTICE PERIOD OF
FEBRUARY 5, 2021 THROUGH MARCH 22, 2021**

The Notice of Proposed Regulatory Action, Proposed Text, and the Initial Statement of Reasons (ISOR) were posted on the Commission on State Mandates' (Commission's) website and served on the regulatory mailing list on February 3, 2021. The Notice of Proposed Regulatory Action was published in the California Regulatory Notice Register 2021, Number 6-Z, on February 5, 2021 and was available to the public through March 22, 2021, for the 45-day comment period. The Commission did not receive any comments on the Proposed Text or a request for a public hearing. The Commission adopts all originally proposed regulatory changes without modification.

LOCAL MANDATE DETERMINATION

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

**NO TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR
DOCUMENTS WERE RELIED UPON TO DEVELOP REGULATIONS**

Commission staff did not rely on any technical, theoretical, or empirical studies or reports in proposing the adoption of these regulations. The Commission relied upon the statutes and cases cited in the authority and reference sections for the regulations.

**REASONS FOR REJECTING PROPOSED ALTERNATIVES THAT WOULD LESSEN
ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

Small Business Determination

Because the Commission has no jurisdiction over small businesses and small businesses are not parties before the Commission, the proposed regulatory action will have no impact on small businesses.

ALTERNATIVES DETERMINATION

The Commission has determined that no alternative would be more effective in carrying out the purpose for which the regulations are proposed, would be as effective as and less burdensome to affected private persons than the proposed regulations, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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,
Articles 1, 3, 5, and 7

No. 21-03
ORDER TO ADOPT PROPOSED
REGULATORY ACTION
General Cleanup Provisions

On May 28, 2021, at a duly noticed public hearing held via Zoom, the Commission on State Mandates (Commission) adopted the proposed regulatory action after close of the public comment period.

PROPOSED REGULATORY ACTION. The Commission proposes revised language, punctuation, and citations in Articles 1, 3, 5, and 7 of the California Code of Regulations, Title 2, Division 2, Chapter 2.5, with a proposed effective date of October 1, 2021.

The purpose of this rulemaking is to generally clean-up, clarify, and streamline Commission regulations and update language for consistency. The proposed regulations: (1) add a definition of “normal business hours” to clarify the Commission’s normal business hours from 8 a.m. until 5 p.m. of each day from Monday to Friday, excluding state holidays, and that 5 p.m. is the filing cutoff for new filings and written materials to be deemed filed that day; (2) clarify the requirements for test claim filing; (3) clarify that test claims and incorrect reduction claims may be either rejected or dismissed for lack of jurisdiction and clarify the process for rejecting or dismissing a test claim for lack of jurisdiction; (4) clarify that service charge and assessment authority are to be included as offsetting revenues and reimbursements in parameters and guidelines consistent with the purpose of article XIII B, section 6 of the California Constitution; (5) clarify the evidentiary standard for requests for extension of time and postponement of hearing; (6) make minor, non-substantive consistency edits, corrections; and (7) update reference citations.

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

Date: _____ By: _____

Heather Halsey, Executive Director