

ITEM 22

**ADOPTION OF PROPOSED REGULATORY ACTION
IMPLEMENTATION OF AB 2856**

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

- Article 1. General
- Article 3. Test Claims
- Article 4. Mandates Recognized By The Legislature
- Article 7. Hearings
- Article 8.5. Forms

Table of Contents

Executive Summary 1

Exhibit A

Proposed text of amendments 5

Exhibit B

Notice of Proposed Rulemaking published April 15, 2005 35

Exhibit C

Initial Statement of Reasons 41

ITEM 22

ADOPTION OF PROPOSED REGULATORY ACTION IMPLEMENTATION OF AB 2856

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

- Article 1. General
- Article 3. Test Claims
- Article 4. Mandates Recognized By The Legislature
- Article 7. Hearings
- Article 8.5. Forms

EXECUTIVE SUMMARY

The purpose of this rulemaking is to conform the Commission's regulations to statutory changes made by AB 2856 (Stats. 2004, ch. 890) regarding filing, hearing, and determining test claims and adopting parameters and guidelines.

The Notice of Proposed Rulemaking was mailed on April 15, 2005, which is 45 days prior to the close of the public comment period on May 30, 2005. The proposed text was made available to the public from April 15, 2005, through May 30, 2005, but no comments were received.

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

Staff Recommendation

Therefore, staff recommends that the Commission —

- Find that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.
- Adopt the proposed amendments to California Code of Regulations, Title 2, Division 2, Chapter 2.5, Articles 1, 3, 4, 7, and 8.5 as originally proposed.
- Authorize staff to make any non-substantive, technical corrections requested by the Office of Administrative Law or Barclays Official California Code of Regulations prior to publication.

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, 4, 7, and 8.5.

No. 05-1

ADOPTION OF PROPOSED
REGULATORY ACTION

Implementation of AB 2856

On July 28, 2005, at a duly noticed public hearing held in Room 126 of the State Capitol, Sacramento, California, the Commission on State Mandates adopted the proposed regulatory action after close of the public comment period:

PROPOSED REGULATORY ACTION. The Commission proposes to amend sections 1181, 1181.1, 1181.2, 1181.3, 1183, 1183.01, 1183.02, 1183.03, 1183.04, 1183.05, 1183.06, 1183.07, 1183.08, 1183.1, 1183.11, 1183.12, 1183.2, 1183.21, 1183.3, 1187, 1187.2, 1187.3, 1187.4, 1188.1, 1188.3, 1188.4, and 1189.6; to add sections 1183.12, 1183.13, and 1183.14; and to repeal sections 1184, 1184.1, 1184.2, and 1187.1 of the California Code of Regulations, title 2, chapter 2.5, division 2.

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

The purpose of this rulemaking is to conform the Commission's regulations to statutory changes made by AB 2856 (Stats. 2004, ch. 890) regarding filing, hearing, and determining test claims and adopting parameters and guidelines.

Date: _____ By: _____
Paula Higashi, Executive Director

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

Article 1. General

§ 1181. Delegation of Certain Functions.

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

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

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

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

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

§ 1181.1. Definitions.

Unless otherwise indicated, the definitions in this chapter and those found in Government Code sections 17510 through 17524 apply to Articles 1, 2, 3, 4.5, 5, 6, 7, 8, and 8.5 of this chapter:

(a) “Affected state agency” means a state department or agency that is responsible, in whole or in part, for implementation, enforcement, or administration of any statute(s) or executive order(s) that is the subject of a claim.

~~(b) “Amendment” means either: (1) a document that replaces and supersedes or adds new material that substantially relates to a pending claim or request; or (2) the addition or substitution of parties to a pending claim or request.~~

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

(c) “Claim” means test claim or incorrect reduction claim.

(d) “Claimant” means the local agency or school district filing a test claim or incorrect reduction claim.

(e) “Commission staff” means the executive director, legal counsel, or other commission employee authorized by the commission or the executive director to represent the commission on a specific claim or request, or to receive filings at the commission office.

(f) “Completed” means that all requirements for filing a claim, proposed parameters and guidelines, request to amend parameters and guidelines, request for reconsideration, or request to review claiming instructions have been satisfied by the claimant or requestor.

(g) “Filing date” means the date of delivery to the commission’s office during normal business hours. For purposes of meeting the filing deadlines required by statute, the filing is timely if:

(1) the filing was mailed by certified or express mail or a common carrier promising overnight delivery, and

(2) the time for its filing had not expired on the date of its mailing by certified or express mail as shown on the postal receipt or postmark, or the date of its delivery to a common carrier promising overnight delivery as shown on the carrier’s receipt.

(h) “Good cause” may include, but is not limited to, the following factors: (1) the number and complexity of the issues raised; (2) a party is new to the case, or other counsel is needed; (3) the individual responsible for preparing the document has other time-limited commitments during the affected period; (4) the individual responsible for appearing at the hearing has other time-limited commitments; (5) illness of a party; (6) a personal emergency; (7) a planned vacation that cannot reasonably be rearranged; (8) a pending public records request; and, (9) any other factor, which in the context of a particular claim constitutes good cause. Good cause may be established by a specific showing of other obligations involving deadlines that as a practical matter preclude filing the document by the due date without impairing quality.

(i) “Incorrect reduction claim” means a claim alleging that the Office of State Controller incorrectly reduced the reimbursement claim of a local agency or school district.

(j) “Informational proceeding” means any hearing designed to gather and assess information to assist the commission in formulating policies, informing the public of commission actions, or obtaining public comment and opinion.

(k) “Interested party” means a local agency or school district; an organization or association representing local agencies or school districts; or a person authorized to represent a local agency or school district, having an interest in a specific claim or request other than the claimant.

(l) “Interested person” means any individual, local agency, school district, state agency, corporation, partnership, association, or other type of entity, having an interest in the activities of the commission.

(m) “Party” means the test claimant, the Department of Finance, Office of State Controller, or affected state agency.

(n) “Rulemaking proceeding” means any hearing designed to adopt, amend, or repeal any rule, regulation, or standard of general application, that implements, interprets, or makes specific any provision of Title 2, Division 4, Part 7, beginning with Government Code section 17500 or any other statute enforced or administered by the commission.

(o) “Statewide cost estimate” means the approximate sum of money that local agencies or school districts may have incurred to implement a state-mandated program or any increased level of service of an existing mandated program. A statewide cost estimate submitted by a test claimant shall be an estimate of the first full fiscal year of actual or estimated costs based on the statutes and executive orders alleged in a test claim. A statewide cost estimate adopted by the commission shall be an estimate based on the commission’s determination of a test claim for the initial period of reimbursement to be reported to the Legislature.

(p) “Teleconference” means a conference of individuals in different locations, connected by electronic means, through audio, video, or both.

~~(q) “Test claim” means the first claim, including claims joined or consolidated with the first claim, filed with the commission alleging costs mandated by the state as defined in Government Code section 17514.~~

~~(q)~~ “Written material” shall include, but is not limited to, requests and correspondence on substantive and procedural matters, e.g., informal conferences, prehearing conferences, postponements of hearings, extensions of due dates for submission of opposition, recommendations, comments, supplemental declarations, stipulations, applications for subpoenas and subpoenas duces tecum, witness lists, etc. Test claims, incorrect reduction claims, or amendments thereto, are not considered written material.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 11123, 17516-17521, 17527(c), 17529, 17530, 17531, 17532, 17551, ~~and~~ 17553, 17557, and 17600, Government Code.

§ 1181.2. Filing and Service of Written Materials

(a) For each completed claim, ~~the~~ commission staff shall promulgate and make available a mailing list of the names, addresses, phone numbers, and facsimile phone numbers of the parties and interested parties who have requested inclusion on the mailing list for a specific claim. The mailing list shall include only one representative for each party or interested party. This mailing list shall be provided by ~~the~~ commission staff to the parties and interested parties to the claim and to any person who requests a copy.

(b) Unless otherwise provided in this chapter, when a party or interested party files with ~~the~~ commission staff any written material concerning a claim, it shall simultaneously serve a copy of the written material on the other parties and interested parties to the claim identified on the mailing list provided by ~~the~~ commission staff. ~~—A proof of service form approved by the commission or~~ A proof of service in compliance with Code of Civil Procedure §section 417.10 and following of the Code of Civil Procedure shall be included with any written material filed with the commission staff.

(c) Service of any written material may be effected by delivering or simultaneously mailing a copy of the document by first-class mail to commission staff and each party and interested party whose name is on the commission's mailing list, ~~and to the commission~~. Delivery may be made by handing a copy of the document to the addressee or leaving it in a place where the addressee may reasonably be expected to obtain actual and timely receipt. Service by mail is complete when the document is deposited in the mail. The executive director may require more expeditious service or a particular form of service in appropriate circumstances.

(d) With the prior consent of the party or interested party being served or at the direction of the ~~commission~~ executive director, service may be made to commission staff by facsimile transmission, by electronic mail (e-mail), ~~internet~~, or by other ~~means~~ electronic media. Such service is complete upon successful transmission or notification to the mailing list described in subdivision (a) of this Section that written material has been filed. Following successful transmission or notification, commission staff may notify all parties and interested parties that written material may be viewed on the commission's website.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17530 and 17553(a), Government Code.

§ 1181.3. Submissions of Written Materials in Other Media.

To facilitate the timely hearing of test claims, parameters and guidelines, and statewide cost estimates, a test claimant, state agency, or interested party may electronically submit a pdf file of the original text of a document filed with ~~the~~ commission staff by saving it in an Adobe Acrobat PDF file and submitting it by e-mail, ~~internet~~, or other ~~means~~ electronic media.

NOTE: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections 17530, 17553, 17554 and 17557, Government Code.

Article 3. Test Claims

§ 1183. Test Claim Filing.

(a) A local agency or school district shall file a "test claim" with the commission to obtain a mandate determination. ~~The test claim shall be filed not later than three (3) years following the effective date of the statute or executive order alleged to impose a mandate, or in the case of statutes or executive orders that became effective before January 1, 2002, the test claim shall be filed on or before September 30, 2003. The test claim filed first with the commission shall be deemed the first test claim. The claimant may amend a test claim at any time prior to a commission hearing on the claim without affecting the original filing date as long as the amendment substantially relates to the test claim as it was originally filed.~~

(b) Any test claim filed with the commission must ~~involve alleged mandated~~ allege increased costs as a result of the statute or executive order ~~costs that exceed the amount set in Government Code section 17564. one thousand dollars (\$1,000). A county superintendent of schools or a county that is the fiscal agent for multiple districts may submit a combined claim on behalf of school districts, direct service districts, or special districts if the combined claim exceeds one thousand dollars (\$1,000). Commission staff shall return all test claims filed with the commission for less than one thousand dollars (\$1,000) to the claimant.~~

(c) Any test claim or amendment filed with the commission must be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later. For purposes of this subsection, "within 12 months" means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.

~~(e)-(d) All test claims, or amendments thereto, shall be filed on a form provided developed by the commission executive director. (d) All test claims or amendments thereto and shall contain at least the following elements and documents: all of the elements and supplemental documents required by the form and statute.~~

~~—(1) A copy of the statute or executive order alleged to impose a mandate. The specific sections of the chaptered bill or executive order alleged to impose a mandate must be identified.~~

~~—(2) A copy of relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate, and a copy of administrative decisions and court decisions that may impact the alleged mandate. The specific chapters, articles, sections, or page numbers must be identified. Published court decisions arising from a state mandate determination by the Board of Control or the commission are exempt from the requirements of this subsection.~~

~~—(3) A written narrative that includes a detailed description of:~~

~~(A) The activities required under prior law or executive order, and~~

~~(B) The new program or higher level of service required under the statute or executive order alleged to impose a mandate, and~~

~~(C) The increased costs mandated by the state as defined in Government Code sections 17514 and 17556.~~

~~(4) If the narrative describing an alleged mandate involves more than discussion of statutes, regulations, or legal argument and utilizes assertions or representations of fact, such assertions or representations must be supported by documentary evidence and shall be submitted with the test claim. All documentary evidence must be authenticated by declarations under penalty of perjury~~

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

~~(5) A statement that actual and/or estimated costs resulting from the alleged mandate exceed one thousand dollars (\$1,000).~~

~~—(6) A test claim, or amendment thereto, shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief. The date signed, the declarant's title, address, telephone number, and, if available, electronic mail address and facsimile number, shall be included.~~

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

(f) The claimant shall also file seven (7) copies of the test claim, or amendment thereto, and accompanying documents with the commission. The copies may be ~~two~~double-sided and shall not include tabs.

(g) Within ten (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 and send a copy of these regulations unless a correct copy was previously provided. Test claims will be considered incomplete if any of the elements required in subsections ~~(e)~~, (d), (e), or (f) of this ~~s~~Section are illegible or are not included. If a complete test claim is not received within thirty (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(s) may be accepted on the same statute or executive order alleged to impose a mandate.

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

- (1) The claimants allege state-mandated costs result from the same statute or executive order;
- (2) The claimants agree on all issues of the test claim; and,
- (3) The claimants have designated one contact person to act as the resource for information regarding the test claim.

~~(i) More than one test claim on the same statute or executive order may be filed with the commission.~~

~~(1) The executive director shall accept more than one test claim on the same statute or executive order under the following circumstances:~~

~~(A) Each test claim is filed by a different type of claimant or each test claim presents issues that require separate representation, and~~

~~(B) The test claim is filed with the commission within sixty (60) days from the date the first test claim was filed.~~

~~(C) The test claim includes:~~

~~1. The content and filing requirements of a test claim, as described in section 1183, subdivisions (b) through (f); and~~

~~2. A narrative detailing the reasons why the first test claim filing will not result in a complete and fair consideration of the test claim.~~

~~(2) Within ten (10) days of receipt of an additional test claim filing on the same statute or executive order, commission staff shall notify the claimant if the test claim is complete or incomplete. The test claim will be considered incomplete if any of the elements required in subsection (i)(1) of this section are illegible or not included, and it shall be returned to the~~

~~claimant. The claimant shall have ten (10) days from the date the incomplete test claim was returned to submit a complete test claim.~~

~~(3) Claimants may designate a single claimant as the lead claimant. If the commission does not receive notice from the claimants designating a lead claimant within 90 days from the date the first test claim was filed, the executive director shall designate the claimant who filed the first test claim as the lead claimant. The lead claimant shall be the single contact for information regarding the test claim.~~

~~(4) When the executive director accepts more than one test claim under this subdivision, the executive director shall consolidate part or all of the test claims within 90 days of the date the original test claim was filed, pursuant to section 1183.06 of these regulations.~~

~~(i) Any test claim, or portion of a test claim, that the commission lacks jurisdiction to hear for any reason may be dismissed by the executive director with a written notice stating the reason for dismissal.~~

~~(j) Any party may appeal to the commission for review of the actions and decisions of the executive director under this sSection pursuant to sSection 1181 of these regulations.~~

NOTE: Authority cited: Sections 17527(g) and 17553, Government Code.

Reference: Sections 17521, 17530, 17551, 17553, ~~17555-17557(e)~~ and 17564, Government Code.

§ 1183.01. Timelines.

(a) In computing any period of time prescribed by these regulations and applicable statutes, the following rules shall apply:

(1) The day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, ~~a~~-Sunday, or ~~a~~-state holiday.

(2) Days representing extensions of time and postponements of hearings granted to the parties shall be tolled and may not be counted toward the date on which a statewide cost estimate must be adopted by the commission.

(3) Days following a test claimant's submission of incomplete information to the commission, from the date on which commission staff returns the incomplete information to the claimant up to the date on which the commission receives complete information from the test claimant, shall be tolled and may not be counted toward the date on which a statewide cost estimate must be adopted by the commission.

(4) If a party or interested party to a test claim notifies commission staff that a reasonable reimbursement methodology may be developed for inclusion in pending parameters and guidelines, more than one test claim is filed with the commission as provided in section 1183, the days following the date of the notification first test claim is filed, up to the date the executive director consolidates part or all of the claims pursuant to section 1183.06 on which a reasonable reimbursement methodology is developed, shall be tolled and may not be counted toward the date on which a statewide cost estimate must be adopted by the commission. The days tolled shall not exceed ~~ninety (90)~~ sixty (60) days ~~from the first test claim filing from the date of the notification date.~~

(5) Three (3) days shall be added to any prescribed period in which a party or interested party is required or permitted to do an act after service of a document upon that party or interested party by mail. For purposes of this ~~s~~Section, “mail” includes interdepartmental mail between state agencies. The three (3) days added for mail service shall be tolled and may not be counted toward the date on which a statewide cost estimate must be adopted.

(6) Solely for the purpose of determining when a statewide cost estimate shall be adopted, test claims that are amended, severed, or consolidated shall be deemed received on the effective date of the last amendment, severance, or consolidation, unless otherwise stipulated by the parties and approved by the ~~commission executive director.~~

(7) Days between the effective date of the parameters and guidelines and the date the initial reimbursement claims for initial fiscal years' costs are due to the Office of the State Controller shall be tolled and may not be counted toward the date on which a statewide cost estimate must be adopted by the commission.

(b) The following timelines shall be used by commission staff as a reference for the timely processing of test claims and adoption of a statewide cost estimate:

(1) Timeline for a Test Claim (12 Months)

PARTY/ACTIVITIES	DAY NUMBER
CLAIMANT files test claim with the commission.	0
COMMISSION staff begins counting days on the first day after receipt.	1
COMMISSION staff reviews test claim to determine if complete	by 10
COMMISSION staff sends test claim to state agencies for review.	by 10
COMMISSION staff convenes informal conference with parties, if necessary.	by 30
STATE AGENCIES file comments on test claim.	by 40
CLAIMANT submits rebuttal.	by 70
COMMISSION staff completes draft analysis of test claim and serves on parties.	by 100
PARTIES submit comments on staff's draft analysis of test claim.	by 130
COMMISSION staff completes analysis and issues Proposed Statement of Decision.	by 160
COMMISSION hears test claim and adopts Proposed Statement of Decision.	by 180
COMMISSION staff issues Statement of Decision and serves on parties.	by 190

PARAMETERS AND GUIDELINES

CLAIMANT submits proposed Parameters and Guidelines.	by 220
STATE AGENCIES AND PARTIES may file comments.	by 235
CLAIMANT rebuts comments.	by 250
COMMISSION staff completes draft Parameters and Guidelines and serves on parties.	by 265
PARTIES submit comments on staff's draft Parameters and Guidelines.	by 275
COMMISSION staff completes Parameters and Guidelines and serves on parties.	by 279
COMMISSION conducts hearing and adopts Parameters and Guidelines.	by 293
COMMISSION staff issues adopted Parameters and Guidelines.	by 303

STATEWIDE COST ESTIMATE

COMMISSION staff develops Statewide Cost Estimate.	by 335
ALL PARTIES comment on Statewide Cost Estimate.	by 345
COMMISSION staff revises Statewide Cost Estimate.	by 350
COMMISSION conducts hearing and adopts Statewide Cost Estimate.	by 365

(c) Extensions of Time and Postponements of Hearings

(1) Any party or interested party may request an extension of time by filing a request with the ~~commission- executive director before prior to~~ the date set for filing of responses, opposition, recommendations, rebuttals, or comments with ~~the~~ commission staff. Such request shall fully explain the reason(s) for the extension, propose a new date for filing, and be simultaneously served on all parties and interested parties who are on the mailing list pursuant to ~~s~~Section 1181.2 of these regulations. Any request for extension of time to file comments that would necessitate rescheduling a hearing shall also include a request for postponement of the hearing, pursuant to ~~s~~Section 1183.01 (c)(2). Within forty-eight (48) hours of receipt of the request, the executive director shall make a determination and shall notify all parties and interested parties who are on the mailing list of the determination.

(A) A request filed by stipulation of the parties, including the claimant, shall be approved by the executive director for good cause.

(B) A request filed by the claimant, a state agency or interested party may be approved by the executive director for good cause.

(2) Any party may request the postponement of a hearing on a test claim, parameters and guidelines, or statewide cost estimate, until the next regularly scheduled hearing, or other date if specified. Such request shall fully explain the reason(s) for the postponement, and be simultaneously served on all parties and interested parties who are on the mailing list pursuant to ~~s~~Section 1181.2 of these regulations. Within forty-eight (48) hours of receipt of such a request, the executive director shall make a determination and shall notify all parties and interested parties who are on the mailing list of the determination.

(A) A request filed by the claimant at least fifteen (15) days before the hearing, shall be approved by the executive director for good cause.

(B) A request filed by stipulation of the parties, including the claimant, shall be approved by the executive director for good cause.

(C) A request filed by the claimant, less than fifteen (15) days before the hearing, may be approved by the executive director for good cause.

(D) A request filed by a state agency may be approved by the executive director for good cause. If a state agency makes such a request before filing a response, opposition, or recommendation on the test claim, such request shall be accompanied by a notice of intent to oppose the test claim in whole or in part.

(3) The executive director may postpone a hearing on a test claim, parameters and guidelines, and a statewide cost estimate for good cause and shall notify all parties and interested parties who are on the mailing list.

NOTE: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections 17530, 17553, ~~17555~~ and 17557, Government Code.

§ 1183.02. Review of Test Claim.

(a) Within ten (10) days of receipt of a completed test claim, or amendment thereto, ~~the~~ commission staff shall send a copy of the test claim or ~~the~~ amendment to the Department of Finance, Office of the State Controller, any affected state agency, and any known interested parties.

(b) The ~~commission executive director~~ shall notify the Department of Finance, Office of the State Controller, and any affected state agency that ~~it~~ they shall have the opportunity to review and provide written response, opposition, or recommendations concerning the test claim within thirty (30) days and to present evidence at the hearing on the test claim.

(c) Content and Form. Written responses, opposition, or recommendations on the test claim shall contain the following documentary evidence, if applicable:

(1) If assertions or representations of fact are made, they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief.

(2) Include Aa copy of relevant portions of state constitutional provisions, federal statutes, and executive orders ~~that may impact the alleged mandate,~~ and a copy of administrative decisions and court decisions that may impact the alleged mandate, unless such authorities are also cited in the test claim. The specific chapters, articles, sections, or page numbers must be identified. Published court decisions arising from state mandate determinations by the Board of Control and the Commission on State Mandates, article XIII B, section 6 of the California Constitution, and Government Code sections 17500 and following are exempt from the requirements of this subsection.

(d) The written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief. The date of signing, the representative's title, address, and telephone number shall be included. If the authorized representative can be reached via facsimile machine, that phone number should also be included.

(e) Filing. An original and two (2) copies of a written response, opposition, or recommendations and supporting documentation concerning a test claim shall be filed with ~~the~~ commission staff. ~~and aA~~ copy shall also be simultaneously served on the test claimant, other parties, and interested parties who are on the mailing list described in Section 1181.2 of these regulations. Proof of simultaneous service must be included with the response, opposition, or recommendations filed with ~~the~~ commission staff.

(f) The original document shall be unbound and single-sided.

NOTE: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections 17530, ~~and~~ 17553(a), and 17557(e), Government Code.

§ 1183.03. Claimant's Rebuttal.

(a) Test claimants and interested parties shall be given an opportunity to respond to state agencies' written responses, opposition, or recommendations concerning a test claim and to file written rebuttals within thirty (30) days of service of the responses, opposition, or recommendations.

(b) Content and Form. A written rebuttal shall contain the following documentary evidence, if applicable:

(1) If new assertions or representations of fact are made, they must be supported by documentary evidence which shall be submitted with the rebuttal. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge or information or belief.

(2) Include Aa copy of relevant portions of state constitutional provisions, federal statutes, and executive orders, and a copy of administrative decisions and court decisions that are cited in the rebuttal, unless such authorities are also cited in the test claim and/or any opposition thereto. The specific chapters, articles, sections, or page numbers shall be identified. Published court decisions arising from state mandate determinations by the Board of Control and the Commission on State Mandates, article XIII B, section 6 of the California Constitution, and Government Code sections 17500 and following are exempt from the requirements of this subsection.

(c) An original and two (2) copies of the written rebuttal to state agencies' responses, opposition, or recommendations concerning a test claim shall be filed with ~~the~~ commission staff and a A copy shall also be simultaneously served on the other parties and interested parties, who are on the mailing list described in Section 1181.2 of these regulations. ~~Proof of simultaneous service must be filed simultaneously included~~ with the rebuttal and supporting documentation.

(d) The rebuttal shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the rebuttal is true and complete to the best of the declarant's personal knowledge or information or belief. The date of signing, the declarant's title, address, and telephone number shall be included. If the declarant can be reached by facsimile machine, that telephone number shall also be included.

NOTE: Authority cited: Sections 17527 (g), 17553 (a), Government Code.

Reference: Sections 17530 and 17553 (a), Government Code.

§ 1183.04. Informal Conference.

(a) ~~After a completed test claim has been filed, the~~ The executive director may schedule an informal conference with the test claimant, the Department of Finance, Office of the State Controller, ~~and~~ other affected state agencies and interested parties upon request. With the consent of the parties, the informal conference may be a teleconference.

(b) The purpose of an informal conference may be to

(1) Set set dates for ~~receipt of receiving~~ state agency responses, opposition, ~~or~~ recommendations, or claimant rebuttal; ~~completion of completing~~ the staff analysis; and ~~the~~ hearing ~~on~~ the test claim.

(2) Give The the test claimant ~~may be given~~ the opportunity to present the test claim and to respond to questions from ~~the~~ commission staff and other state agency staff or representatives for the purpose of resolving or clarifying issues of fact or law.

(3) Consider whether a reasonable reimbursement methodology may be developed and included in the parameters and guidelines.

(c) ~~The test claimant~~ Any party may notify the executive director of any interested parties who should be invited to attend an informal conference.

(d) ~~Unless waived by the parties, The commission staff shall provide parties and any interested parties identified by the claimant shall receive~~ at least ten (10) days notice of the informal conference by mail, ~~or~~ facsimile ~~machine transmission, e-mail, or by other electronic media, unless waived by the parties.~~

(e) Anything said, any document disclosed, and any new assertions and representations of fact made during an informal conference shall not be made part of the administrative record of a test claim; unless properly admitted into the record through the submission of an amendment to a test claim, a written response, opposition, recommendations, comments, rebuttal, and/or public testimony.

NOTE: Authority cited: Sections 17527 (g), 17553 (a), Government Code. Reference: Sections 17518.5, 17530, 17553 (a), ~~and 17555~~, Government Code.

§ 1183.05. Claimant’s Motion to Consolidate or Sever Test Claims.

Within thirty (30) days of filing a completed test claim, a claimant may file a motion with the ~~commission executive director~~ to consolidate part or all of any test claim with another test claim, or to sever any part of any test claim, if necessary to ensure the complete, fair, or timely consideration of any test claim.

(a) Any motion to consolidate or to sever shall be simultaneously served on all the parties and interested parties with the supporting documentation and proof of service.

(b) Within thirty (30) days after receipt of a motion to consolidate, the executive director may consolidate any test claims if they were submitted by two or more claimants and if the following exist in the filings: the test claimants allege state-mandated costs resulting from the same statute or executive order, and the claimants have designated one contact person to act as the resource for information regarding the test claim.

(c) Within thirty (30) days after receipt of a motion to sever, the executive director may sever part of any test claim.

(d) Any party may appeal to the commission for review of the actions and decisions of the executive director under this Section pursuant to Section 1181 of these regulations.

NOTE: Authority cited: Section 17527 (g) and 17553 (a), Government Code. Reference: Sections 17530, 17553, Government Code.

§ 1183.06. Executive Director’s Authority to Consolidate Test Claims.

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

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

~~(c) Test claims may be consolidated if submitted by two or more claimants and if the following exist in the filings: the test claimants allege state-mandated costs resulting from the same statute or executive order,; and the claimants have designated one contact person to act as the resource for information regarding the test claim.~~

~~(d)~~ Any party may appeal to the commission for review of the actions and decisions of the executive director under this Section pursuant to Section 1181 of these regulations.

NOTE: Authority cited: Sections 17527 (g) and 17553, Government Code. Reference: Sections 17530, 17553, and 17554, Government Code.

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

(a) Before the hearing on the test claim, commission staff shall prepare a final written analysis of the test claim, which shall include but not be limited to a review of the written responses, opposition, recommendations, and comments filed by other state agencies, ~~comments from~~ interested parties, and ~~rebuttal by the~~ claimant. The final staff analysis shall describe the test claim and assist the commission in determining whether the alleged statutes or executive orders contain a reimbursable state--mandated program.

(b) At least eight (8) weeks before the hearing, or at such other time as required by the executive director or stipulated to by the parties, ~~the~~ commission staff shall prepare a draft staff analysis and distribute it to the parties, interested parties, and any person who requests a copy. ~~The draft staff analysis may be presented to the parties and interested parties at a prehearing or informal conference.~~

(c) Any party or interested party may file written comments concerning the draft staff analysis with ~~the~~ commission staff. Written comments shall be ~~filed with the commission and~~ simultaneously served upon the parties and interested parties ~~to the test claim, at least five (5) weeks before the hearing, or as otherwise stipulated to by the parties or on the mailing list by the date~~ determined and publicized by the executive director. A three (3) week period for comments shall be given, subject to the executive director's authority to expedite all matters pursuant to Government Code section 17530. ~~The~~All written comments timely filed shall be reviewed by commission staff and may be incorporated into the final written analysis of the test claim.

NOTE: Authority cited: Sections 17527 (g), and 17553, Government Code. Reference: Sections 17514, 17530, 17551, and 17553, Government Code.

§ 1183.08. Withdrawal of Test Claims.

A test claim, or any portion of a test claim, may be withdrawn by the claimant(s) upon written application to the ~~Commission executive director~~ any time before a decision is adopted. The claimant(s) shall serve a copy of the application to all parties and interested parties on the mailing list described in Section ~~1181.1~~ 1181.2 of these regulations. If no other local agency or school district takes over the claim by substitution of parties within sixty (60) days of service of the application to withdraw, a decision dismissing the claim shall be issued by the commission.

NOTE: Authority cited: Sections 17527 (g) and 17553 (a), Government Code. Reference Cited: Section 17553-(a), Government Code.

§ 1183.1. Submission Content of Proposed Parameters and Guidelines.

~~(a) Within thirty (30) days of adoption of the statement of decision on a test claim determination of the existence of a reimbursable state mandated program, the successful test claimant shall submit proposed parameters and guidelines to the commission. If proposed parameters and guidelines are not submitted within the thirty (30) day period and the commission has not granted an extension, then the commission shall notify the test claimant that the amount of reimbursement the test claimant is entitled to for the first twelve (12) months of incurred costs will be reduced by twenty (20) percent, unless the test claimant can demonstrate to the commission why an extension of the thirty (30) day period is justified. These proposed parameters and guidelines shall describe the claimable reimbursable costs and contain the following information:~~

(1) Summary of the Mandate. A summary of the mandate identifying:

~~(A) the statute(s) or executive order(s) that contain the mandate and/or the increased level of service; and~~

~~(B) the activities found to be required under prior those statute(s) or executive order(s); and;~~
~~(c) the activities found to be required under the statute(s) or executive order(s) that contain the mandate or increased level of service.~~

(2) Eligible Claimants. A description of the types and/or level(s) of local governmental entities that are eligible to file for reimbursement.

(3) Period of Reimbursement. A description of the period of reimbursement specifying the first and subsequent fiscal years that can be reimbursed.

(4) Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and a description of the most reasonable methods of complying with the mandate. “The most reasonable methods of complying with the mandate” are those methods not specified in statute or executive order that are necessary to carry out the mandated program.

~~(5) Supporting data for the claim including reference to required source documents, record keeping, and allowable overhead costs. Claim Preparation. Instruction on claim preparation, including instructions for direct and indirect cost reporting, or application of a reasonable reimbursement methodology.~~

~~(6) Include a signed section indicating that the person that will be submitting reimbursement claim(s) to the State Controller is so authorized. Record Retention. Notice of the Office of the State Controller’s authority to audit claims and the amount of time supporting documents must be retained during the period subject to audit.~~

~~(7) Whenever possible, an allocation formula or uniform allowance should be used as the basis for reimbursement. Offsetting Revenues and Reimbursements (if applicable).~~

Identification of:

i. Dedicated state and federal funds appropriated for this program.

ii. Non-local agency funds dedicated for this program.

iii. Local agency’s general purpose funds for this program.

iv. Fee authority to offset partial costs of this program.

~~(8) All proposed parameters and guidelines must allow for an offset of any other reimbursement received from the federal or state governments or other non-local sources.~~

~~(9) All proposed parameters and guidelines must allow for Offsetting Savings (if applicable). Identification of any offsetting savings in the same program experienced as a result because of the same statute(s) or executive order(s) found to contain a mandate.~~

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

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

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

~~(b) If any of the preceding elements are missing or are not adequately addressed, proposed parameters and guidelines shall be deemed incomplete and shall be returned to the claimants with a description of the subjects that are to be redrafted or supplemented.~~

~~(c) The successful test claimant may recommend how to develop a statewide cost estimate using existing state and local sources for data and/or reports.~~

~~(d) Number of copies. An original and seven (7) copies of proposed parameters and guidelines shall be submitted to the commission by a successful test claimant.~~

NOTE: Authority cited: Sections 17527(g), 17553(a), Government Code. Reference: Sections 17518.5, 17530, ~~17553(a), 17555~~ 17556(e), and 17557, Government Code.

§ 1183.11. Submission and Review of Proposed Parameters and Guidelines; Submission of Comments.

(a) Within thirty (30) days of adoption of the statement of decision on a test claim, the successful test claimant shall submit to commission staff an original and seven (7) copies of proposed parameters and guidelines, pursuant to Government Code section 17557, subdivision (a).

(b) If any of the elements described in Section 1183.1 are missing or are not adequately addressed, commission staff shall, within ten (10) days of receipt, deem the proposed parameters and guidelines incomplete and shall return the proposal to the claimants with a description of the subjects that are to be redrafted or supplemented.

~~(ac)~~ (c) Within ten (10) days of receipt of completed proposed parameters and guidelines, ~~the~~ commission staff shall send a copy to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

~~(bd)~~ (d) ~~The e~~Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the proposed parameters and guidelines within fifteen (15) days of service.

~~(ee)~~ (e) State agencies and interested parties shall submit an original and two (2) copies of written responses to ~~the~~ commission staff and shall simultaneously serve a copy on the test claimant, other affected state agencies, and other interested parties who are on the mailing list described in Section ~~1181.1~~ 1181.2 of these regulations.

~~(df)~~ (f) Within fifteen (15) days of service of the comments and recommendations prepared by state agencies and interested parties, the claimant and other interested parties may submit an original and two (2) copies of written rebuttals to ~~the~~ commission staff, and shall simultaneously

serve a copy on the other parties and interested parties who are on the mailing list described in Section ~~1181.1~~ 1181.2 of these regulations.

NOTE: Authority cited: Sections 17527 (g) and 17553 (a), Government Code. Reference: Sections 17530, 17553 (a), and 17557, Government Code.

§ 1183.12 Alternate Process for Proposed Parameters and Guidelines

(a) Within ten (10) days after adoption of a statement of decision on a test claim, commission staff may expedite the parameters and guidelines process by drafting proposed parameters and guidelines to assist the claimant. The draft proposed parameters and guidelines shall be served on the parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(b) In lieu of filing an original proposal pursuant to Government Code section 17557, subdivision (a), the successful test claimant may file modifications and/or comments on staff's draft proposal with commission staff. The claimant shall review all sections and, if necessary may:

(1) Clarify the reimbursable activities identified by commission staff, and provide an explanation of why the clarification is necessary.

(2) Include additional descriptions of the most reasonable methods of complying with the mandate. "The most reasonable methods of complying with the mandate" are those methods not specified in statute or executive order that are necessary to carry out the mandated program. For each additional method proposed, the test claimant shall provide an explanation of why it is reasonably necessary.

(3) Indicate whether the commission should consider a reasonable reimbursement methodology for this program, and the basis for the recommendation.

(4) Identify offsetting revenues and reimbursements (if applicable), including:

i. Dedicated state and federal funds appropriated for this program.

ii. Non-local agency funds dedicated for this program.

iii. Local agency's general purpose funds for this program.

iv. Fee authority to offset partial costs of this program.

(5) Identify offsetting savings (if applicable), including any offsetting savings in the same program experienced because of the same statute(s) or executive order(s) found to contain a mandate.

(c) The successful test claimant shall file its proposed modifications and/or comments within twenty (20) days of receipt of commission staff's draft proposal.

(d) The opportunity for state agencies and interested parties to comment on staff's draft proposal and the claimant's modifications and/or comments, and the claimant and interested parties' opportunity for rebuttal will be conducted according to the timelines under Section 1181.11 of these regulations.

NOTE: Authority cited: Sections 17527(g), 17530, 17553(a), Government Code. Reference: Sections 17553(a), 17556(e), 17557, and 17564, Government Code.

§ 1183.13. Reasonable Reimbursement Methodology.

(a) If the claimant indicates in the proposed parameters and guidelines or comments that a reasonable reimbursable methodology, as defined in Government Code section 17518.5, should be considered; or if the Department of Finance, Office of the State Controller, any affected state agency, claimant, or interested party proposes consideration of a reasonable reimbursement methodology, commission staff shall immediately schedule an informal conference to discuss the methodology.

(b) Proposed reasonable reimbursement methodologies, as described in Government Code section 17518.5, shall include any documentation or assumptions relied upon to develop the proposed methodology. Proposals shall be submitted to the commission within sixty (60) days following the informal conference.

(c) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of a proposed reasonable reimbursement methodology, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(d) Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the proposed reasonable reimbursement methodology within fifteen (15) days of service.

(e) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of written responses to commission staff and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(f) Within fifteen (15) days of service of the written comments prepared by other parties and interested parties, the party that proposed the reasonable reimbursement methodology may submit an original and two (2) copies of written rebuttals to commission staff, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

NOTE: Authority cited: Sections 17527(g), 17553(a), Government Code. Reference Sections 17518.5, and 17557, Government Code.

§ ~~1183.12~~ 1183.14. Adoption of Parameters and Guidelines.

(a) After review of the proposed parameters and guidelines, written comments, recommendations, and rebuttals submitted by state agencies and interested parties, commission staff shall recommend the adoption of the claimant's proposed parameters and guidelines or adoption of an amended, modified, or supplemented version of the claimant's proposed parameters and guidelines. Commission staff's recommendation may include a reasonable reimbursement methodology.

(b) A draft of ~~the commission~~ staff's recommendation may be presented to the parties and interested parties at a prehearing or informal conference before presentation to the commission.

(c) The commission shall conduct at least one (1) informational hearing on parameters and guidelines ~~prior to before~~ adoption ~~and pursuant to Section 17557 of the~~ Government Code section 17557.

(d) Within ten (10) days of the adoption of parameters and guidelines, the executive director shall send copies to the Office of the State Controller, and to parties and interested parties who are on the mailing list described in Section ~~1181.1~~ 1181.2 of these regulations.

NOTE: Authority cited: Sections 17527 (g) and 17553 (a), Government Code.
Reference cited: Sections 17557 and 17553 (a), Government Code.

§ 1183.2. Amendments to Parameters and Guidelines.

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

~~(b) A parameters and guidelines amendment filed before the deadline for initial claims as specified in the Claiming Instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines.~~

~~(c) A parameters and guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.~~

~~(d)~~(b) Number of copies. A claimant or state agency requesting an amendment to existing parameters and guidelines shall submit An original and seven (7) copies of proposed amendments ~~to parameters and guidelines shall be submitted to the commission~~ staff ~~by a claimant or state agency.~~

~~(e)~~(c) Within ten (10) days of receipt of a request to amend, modify, or supplement parameters and guidelines, ~~the commission~~ staff shall send a copy to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

~~(f)~~(d) ~~The~~ Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the proposed amendment of the parameters and guidelines within thirty (30) days of service.

~~(g)~~(e) ~~State agencies Parties~~ and interested parties shall submit an original and two (2) copies of written responses to ~~the commission~~ staff and shall simultaneously serve a copy on the test claimant, other affected state agencies, and other interested parties who are on the mailing list described in Section ~~1181.1~~ 1181.2 of these regulations.

~~(h)~~(f) The requesting party and other interested parties may submit an original and two (2) copies of written rebuttals to commission staff ~~W~~within thirty (30) days of service of the comments and recommendations prepared by ~~state agencies parties~~ and interested parties, ~~the claimant and other interested parties may submit an original and two (2) copies of written rebuttals to the commission, and~~ Written rebuttals shall be simultaneously served ~~a copy~~ on the other parties and interested parties ~~who are~~ on the mailing list described in Section ~~1181.1~~ 1181.2 of these regulations.

~~(i)~~(g) An amendment shall be made only after the commission has conducted at least one (1) informational hearing in accordance with Article 8 of these regulations.

~~(j)~~(h) A request to amend parameters and guidelines may be withdrawn by written application to the executive director any time before a decision is adopted, or by oral application at the time of hearing.

NOTE: Authority cited: Sections 17527 (g) and 17553 (a), Government Code. Reference: Sections 17557 and 17560, Government Code.

§ 1183.21 Dismissal of Requests for Amendments to Parameters and Guidelines.

(a) ~~A r~~Requests ~~s for to~~ amend~~ments to~~ parameters and guidelines ~~which has that have~~ been postponed or placed on inactive status by the requesting party for a period of more than one (1) year may be dismissed by the commission on its own motion, or by a motion of a party after notice and an opportunity to be heard has been made to the ~~claimant,~~ parties and interested parties.

(b) The hearing on a dismissal of a request to amend parameters and guidelines shall be conducted in accordance with Article 7 of these regulations.

(c) Notice of a hearing to dismiss a request to amend parameters and guidelines shall be made within sixty (60) days of the date scheduled for hearing. A copy of the notice shall also be posted electronically. ~~The e~~Commission staff shall notify the ~~claimant,~~ parties, and interested parties that they shall have the opportunity to provide written comments on the motion to dismiss a request to amend parameters and guidelines within forty-five (45) days of receipt of the notice of the hearing. ~~The claimant, p~~Parties, and interested parties shall submit an original and two (2) copies of their written comments to ~~the~~ commission staff and a copy shall be simultaneously served ~~to on~~ all other parties and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

(d) Delays or postponements under the following circumstances will not be considered for purposes of computing whether a request for amendments to parameters and guidelines has been postponed or placed on inactive status by the claimant for more than one (1) year:

1. Delays or postponements made at the request of the commission or other state agency or department;

2. Delays or postponements, made at the request of the requesting party, because pending the resolution of a matter currently before the commission of an issue similar to or related to the proposed amendments to the parameters and guidelines is pending; and

3. Delays or postponements, made at the request of the requesting party, because pending the resolution of litigation of an issue similar to or related to the proposed amendments to the parameters and guidelines is pending.

~~(e) The provisions of this regulation shall only apply to requests filed on or after the operative date of this regulation.~~

NOTE: Authority: Sections 17527(c) and (g) and 17532, Government Code. Reference: Sections 17525, 17527(c), ~~and~~ 17532, and 17557, Government Code.

§1183.3. Statewide Cost Estimate.

(a) If the commission determines that there are state-mandated costs ~~mandated by the state~~ pursuant to Government Code sections 17514 and ~~17555~~ 17556, it shall adopt a statewide cost estimate of the amount within twelve (12) months after receipt of a completed test claim unless extended to eighteen (18) months by the commission or executive director. As provided in ~~s~~Section 1183.01, certain days may be tolled and may not be counted toward the date a statewide cost estimate must be adopted by the commission.

(b) Commission staff may develop the statewide cost estimate based on initial reimbursement claims filed with the Office of the State Controller, application of a reasonable reimbursement methodology, ~~or staff may~~ use a different methodology based on recommendations from the test claimant, the Department of Finance, or other interested parties.

(c) Before presenting a statewide cost estimate to the commission for adoption, commission staff shall disclose to the parties and interested parties the methodology, ~~the~~ basis for any assumptions made, and ~~the~~ sources of any data used to develop the estimate. This information may be disclosed to the parties and interested parties to the test claim during an informal conference or prehearing conference.

(d) Before adopting the statewide cost estimate, the commission shall hold at least one (1) informational hearing.

(e) Upon adoption of the statewide cost estimate by the commission, a summary of the parameters and guidelines and the statewide cost estimate shall be included in the commission's report to the Legislature required ~~pursuant to~~ by Government Code section 17600.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17518.5, 17553, and 17557(~~a~~), Government Code.

Article 4. Mandates Recognized By the Legislature

§1184. — Filing Requests for Reimbursement.

~~(a) A local agency or school district may file a request for reimbursement with the commission to begin the reimbursement process. This request shall contain the following:~~

~~(1) A copy of the statute.~~

~~(2) A copy of draft parameters and guidelines which identify the reimbursable costs claimed. The draft parameters and guidelines shall contain the elements required of parameters and guidelines as contained in Section 1183.1. Parameters and guidelines shall be submitted on or before December 31 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.~~

~~(b) The commission after reviewing draft parameters and guidelines from the claimant, making the determination required by Government Code Section 17556, receiving comment from the Department of Finance, affected state agencies, and interested persons, and conducting at least one (1) informational hearing in accordance with Article 8 of these regulations shall adopt parameters and guidelines.~~

~~NOTE: Authority cited: Section 17527, Government Code. Reference: Sections 17557 and 17610, Government Code.~~

§1184.1 — Statewide Cost Estimate

~~(a) After parameters and guidelines have been adopted pursuant to Section 17610 of the Government Code the commission shall adopt an estimate of statewide costs resulting from the mandate.~~

~~(b) For purposes of adopting the estimate the commission shall seek recommendations from the Department of Finance and any other interested parties. In addition, the commission shall receive and review any other recommendations received from a local agency or school district. Such recommendations shall explain the assumptions the cost estimate is based on and the reasons it is asserted that the cost estimate is more or less than \$1,000,000.~~

~~(c) Prior to adopting such estimate the commission shall hold at least one (1) informational hearing in accordance with Article 8 of these regulations.~~

~~NOTE: Authority cited: Section 17610, Government Code. Reference: Section 17610, Government Code.~~

§1184.2. — Certification of Statewide Cost Estimate.

~~—(a) Costs under \$1,000,000:~~

~~— Upon adoption of a statewide cost estimate the commission shall certify to the Office of the State Controller that claims can be paid from the State Mandates Claim Fund provided that the estimated statewide cost as defined in Government Code section 17577 does not exceed \$1,000,000 and the statute that mandated the new program or higher level of service specifies that reimbursement shall be made from the fund.~~

~~—(b) Costs over \$1,000,000:~~

~~— When the statewide cost estimate exceeds \$1,000,000, the commission shall report the statewide cost estimate to the Legislature pursuant to Government Code section 17600.~~

~~NOTE: Authority cited: Sections 17576, 17577 and 17600, Government Code. Reference: Sections 17576, 17577 and 17600, Government Code.~~

Article 7. Hearings

§ 1187. **Scheduling and Noticing the Hearing on a Test Claim.**

~~(a) The commission shall set a date for a public hearing on a test claim within seventy five (75) days of receipt of a completed test claim or an amendment to a completed test claim unless otherwise agreed to by the parties, including the claimant, and approved by the executive director.~~

~~(b) The commission may continue the hearing on a test claim for up to 180 days after receipt of a completed test claim.~~

~~A test claim shall be set for hearing when commission staff issues its draft staff analysis.~~

~~A written notice of the date, time, and place of hearing shall be mailed to:~~

~~(1) The address of the local agency or school district submitting the claim.~~

~~(2) Any representative designated by the local agency or school district.~~

~~(3) The Department of Finance, the Office of the State Controller, and any other affected state agency.~~

~~(4) Any interested person requesting such notice in writing.~~

NOTE: Authority cited: Sections 17527 (g) and 17553 (a), Government Code. Reference: Sections 17551, 17553 (a), ~~and 17555, and 17557 (e)~~, Government Code.

~~§ 1187.1. — Notice of Hearing.~~

~~(a) Upon receipt of a completed claim the commission shall conduct a public hearing within a reasonable time, except as specified in Section 1187. The commission may refer the claim to a hearing panel of the commission or hearing officer for the conduct of the public hearing.~~

~~(b) Within ten (10) days of receipt of the completed claim, written notice of the date, time and place of hearing shall be mailed to:~~

~~(1) The address of the local agency or school district submitting the claim.~~

~~(2) Any representative designated by the local agency or school district.~~

~~(3) The Department of Finance, the Office of the State Controller, and any other affected state agency.~~

~~(4) Any interested person requesting such notice in writing.~~

~~(c) The written notice of hearing shall include the names and mailing addresses of all claimant(s) and their representatives and all due dates prescribed by these regulations. A copy of these regulations shall be sent to the claimants and their representatives with the notice of hearing unless a correct copy has previously been provided.~~

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17553(a) and 17555, Government Code.

§ 1187.2 Assignment to Hearing Panels/Hearing Officers.

(a) The commission's chairperson may assign claims before the commission to a hearing panel consisting of one or more members or to a hearing officer for hearing and preparation of a proposed decision in such form that it may be adopted as the decision in the case. Assignments by the commission chairperson of members on such hearing panels shall be rotated among the members with the composition of the members so assigned being varied and changed to assure that there shall never be a fixed and continued composition of members. The ~~C~~commission shall hold at least one (1) informational hearing in accordance with Article 8 of these regulations ~~prior to before~~ the assignment of any claim to a hearing panel or hearing officer. The claimant and the parties ~~will shall~~ receive notice ~~prior to before~~ the informational hearing regarding the assignment of any claim to a hearing panel or hearing officer.

(b) A claim shall be heard and decided by the commission itself at the request of any two (2) members of the commission.

NOTE: Authority cited: Sections 17527(c) and (g) and 17532, Government Code.
Reference: Section 17532, Government Code.

§ 1187.3. Objection to Hearing Panel, Hearing Officer, or Commission Member.

(a) Any party may ask that a claim be heard by the commission itself rather than by a hearing panel or hearing officer.

(b) Any party may request the disqualification of any hearing officer or commission member before the taking of evidence at a hearing by filing an affidavit, ~~prior to the taking of evidence at a hearing~~, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the request concerns a commission member, the issue shall be determined by the other members of the commission. Where the request concerns the hearing officer, the issue shall be determined by the commission itself, if the commission itself hears the case with the hearing officer; otherwise the issue shall be determined by the hearing officer.

NOTE: Authority cited: Sections 17527(c) and (g) and 17532, Government Code. Reference: Section 17527, Government Code.

§ 1187.4. Pre-Hearing Conference.

(a) A pre-hearing conference may be scheduled by the commission or the executive director for the purpose of identifying issues and determining methods of resolving such issues. The claimant(s), Department of Finance, Office of the State Controller, affected state agencies, and other interested parties to a claim ~~will~~shall be invited to participate. This conference ~~will~~shall not limit the issues that can be presented to or considered by the commission at a public hearing.

(b) Parties and interested parties shall receive notice of any prehearing conference convened under this ~~s~~Section at least ten (10) days before the conference. The notice shall be served on the parties to the claim by mail, ~~or~~ facsimile ~~machine transmission, e-mail, or by other electronic media on the parties to the claim.~~ With the agreement of the parties, the prehearing conference may be a teleconference.

(c) Anything said, any document disclosed, and any new assertions and representations of fact made during a prehearing conference shall not be made part of the administrative record of a claim, unless properly admitted into the record through the submission of an amendment to a test claim, a written response, opposition, recommendations, comments, rebuttal, and/or public testimony.

NOTE: Authority cited: Sections 17527 (g) and 17553 (a), Government Code. Reference: Sections 17527 (c), 17530, 17532, 17551, 17553 (a), Government Code.

§ 1188.1 Decision; Action on Proposed Decision.

(a) If a proceeding is heard before the commission itself, or a panel of the commission, and a hearing officer presided, the hearing officer who presided at the hearing shall be present during consideration of the claim and, if requested, shall assist and advise the commission in preparation of the proposed decision.

(b) If a proceeding is heard before the commission itself, the executive director may, ~~prior to the hearing,~~ prepare and present the proposed statement of decision to the commission and interested parties before the hearing. The commission may adopt the proposed statement of decision on the same day as the hearing if ~~the test claim is approved and~~ there is no objection from the claimant or interested parties.

(c) If a proceeding is heard by a hearing panel or a hearing officer alone, the panel or hearing officer shall prepare a proposed decision in such form that it may be adopted as the decision in the proceeding. When a proceeding is heard before the commission itself, without a hearing officer, the commission shall direct commission staff to prepare a proposed decision in accord with the commission's vote, which will be presented to the commission for adoption as its decision.

(d) A copy of the proposed decision shall be filed by ~~the commission~~ staff as a public record and a copy of the proposed decision shall be served by ~~the commission~~ staff on each party. The commission itself may adopt the proposed decision or decide the case itself as provided in subdivision (e) below.

(e) If the proposed decision of the hearing officer or hearing panel is not adopted by the commission, the commission itself may decide the case upon the record, including the transcript, with or without taking additional evidence or may refer the case to the same hearing panel or hearing officer to take additional evidence. If the case is so assigned to a hearing panel or hearing officer, the hearing panel or hearing officer shall prepare a proposed decision as provided in subdivision (c) upon the additional evidence and the transcript and other papers which are a part of the record of the prior hearing. A copy of such proposed decision shall be furnished to each party as prescribed in subdivision (d).

The commission itself shall decide no cases provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the commission.

(f) If the proposed decision of commission staff is not adopted by the commission, as provided in subsections (b) or (c), ~~it the commission~~ shall direct appropriate modification of the proposed decision and thereafter adopt it as the commission's decision.

(g) Except as provided for in subsection (b), the proposed decision shall be prepared within a reasonable time following submission of the case to the hearing officer or panel or commission vote, and within a reasonable time after the evidentiary hearing. ~~It and~~ shall be served on the parties promptly thereafter. The sole issue is whether the proposed decision accurately reflects the vote of the Commission.

NOTE: Authority cited: Sections 17527 (g) and 17553 (a), Government Code.

Reference: Sections 17551, 17553 (a), ~~17555 (a)~~, Government Code.

§ 1188.3. Withdrawal of Claims and Requests.

A claim, or any portion of a claim, may be withdrawn by written application any time before a decision is ~~issued~~ adopted, or by oral application at the time of hearing. If such application is made, the commission may issue a decision dismissing the claim. If the withdrawal is of a test claim, or portion thereof, the procedures described in Section 1183.08 must be followed before dismissal.

NOTE: Authority and reference cited: Sections 17553 and 17621, Government Code.

§ 1188.4. Reconsideration of a Prior Final Decision.

(a) Notwithstanding Section 1188.2, ~~subsection (b)~~, of these regulations, the commission may make substantive changes to a prior final decision under this ~~s~~Section or order a reconsideration of all or part of a test claim or incorrect reduction claim on petition of any party. The power to order a reconsideration or amend a test claim decision shall expire thirty (30) days after the statement of decision is delivered or mailed to the claimant. If additional time is needed to evaluate a petition for reconsideration filed ~~prior to~~ before the expiration of the thirty (30)-day period, the commission may grant a stay of that expiration for no more than thirty (30) days, solely for the purpose of considering the petition. A request for reconsideration shall be deemed automatically stayed for the thirty (30)-day period. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied. ~~This provision does not apply when the court exercises its authority under Government Code Section 17559 and orders the commission to rehear a claim.~~

(b) Except as provided elsewhere in this ~~s~~Section, any interested party, affected state agency, or commission member may request that the commission reconsider or amend a test claim decision and change a prior final decision to correct an error of law.

(c) All requests for reconsideration shall be submitted to the commission, in writing, and shall contain the following:

- (1) The name and address of the requesting party;
- (2) A copy of the commission's prior final decision;
- (3) A detailed statement of the reasons for the request, including:
 - (A) An explanation of the reasons for the request for reconsideration; and
 - (B) All documentation the requestor intends to submit to support the request.
- (4) A description of the proposed change to be made in the prior final decision; and,
- (5) A statement that the request for reconsideration and all attachments, if any, have been sent to the original claimant, interested parties, and affected state agencies, including their names and addresses.

(d) Commission member requests may be made orally during a regularly scheduled commission meeting. Commission staff shall prepare such written request, as specified in subsection (c)(1-5) above.

(e) Any signatory to a written agreement that settles a claim may not request reconsideration of that claim if the claim is settled with prejudice.

(f) Before the commission considers the request for reconsideration, commission staff shall prepare a written analysis and recommend whether the request for reconsideration should be granted. The commission shall consider the request for reconsideration at a scheduled meeting. Five (5) affirmative votes shall be required to grant the request for reconsideration.

(g) If the commission grants the request for reconsideration, a hearing shall be conducted to determine if the prior final decision is contrary to law and to correct an error of law.

(1) The following procedures shall govern the commission's review of the prior final decision:

(A) Before the commission considers whether a prior final decision is contrary to law, commission staff shall prepare a written analysis regarding whether the prior final decision is contrary to law which shall include but not be limited to a review of the written responses, opposition, recommendations, and comments filed by other state agencies, ~~comments from~~ interested parties, and ~~rebuttal by~~ the requestor. The Commission staff analysis shall describe the request for reconsideration and assist the commission in determining whether the prior final decision is contrary to law.

(B) At least eight (8) weeks before the commission is scheduled to consider whether a prior final decision is contrary to law, or at such other time as required by the executive director, ~~the~~ commission staff shall prepare a draft ~~of the~~ staff analysis and distribute it to the requestor, interested parties, affected state agencies, and any person who requests a copy.

(C) The requestor, interested parties, or affected state agencies may file written comments with commission staff concerning the draft ~~of the~~ staff analysis, ~~with the commission~~. Written comments ~~filed with the commission and shall be~~ simultaneously served upon the requestor, interested parties, and affected state agencies, ~~at least five weeks before the commission is scheduled to consider the request for reconsideration, or as on the mailing list by the date~~ determined and publicized by the executive director. A three (3) week period for comments shall be given, subject to the executive director's authority to expedite all matters pursuant to Government Code section 17530.- All written comments timely filed shall be reviewed by commission staff and may be incorporated into the written analysis regarding whether the prior final decision is contrary to law and presented to the commission ~~prior to~~ before the scheduled meeting.

(2) The procedures set forth in Article 7 shall govern the commission's hearings and decisions process, except that five (5) affirmative votes shall be required to change a prior final decision.

(h) If the commission changes a prior final decision, the procedures set forth in Article 3, Sections 1183.1 through 1183.3, of these regulations shall govern the adoption of parameters and guidelines and the statewide cost estimate, if applicable.

(i) Failure to seek commission reconsideration of a prior final decision shall not affect a claimant's or state agency's right to seek judicial review pursuant to Government Code ~~S~~section 17559, subdivision (b).

~~(j) No prior final decision made by the commission or Board of Control before the operative date of this regulation may be reconsidered.~~

~~—(k) This Section only applies to reconsiderations requested pursuant to Government Code section 17759, subdivision (a); it does not apply to remands or reconsiderations directed by the courts or by statute.~~

NOTE: Authority cited: Sections 17500, 17527(c) and (g), 17553(a) and 17559(a), Government Code. Reference: Sections 17532, 17551, and 17559, Government Code.

Article 8.5. Forms

§ 1189.6. Development and Approval of Commission Forms.

(a) In consultation with interested parties and in accordance with applicable law and these regulations, the executive director shall develop ~~the following the test claim and other forms to simplify and improve the efficiency of the test claim process.~~forms:

~~(1) Test Claim~~

~~(2) Proof of Service~~

~~(3) Declaration/Affidavit~~

~~(4) State Agency Notice of Intention to Oppose Test Claim~~

~~(5) Request for Extension of Time or Postponement of Hearing~~

(b) The executive director may also develop additional forms to simplify and improve the efficiency of the incorrect reduction claims process.

(c) The ~~commission executive director~~ shall conduct at least one (1) ~~informational hearing workshop with interested parties, Department of Finance, Office of the State Controller, other affected state agencies, and interested persons prior to~~ before approval of a form.

(d) Upon ~~approval of a form by the commission, development of a new form,~~ the executive director shall notify claimants, interested parties, affected state agencies, and interested persons, and shall disseminate copies at least ten (10) days before a form's operative date.

~~(e) Any party may appeal to the commission for review of the actions and decisions of the executive director under this Section pursuant to Section 1181 of these regulations.~~

~~(e) All forms that are approved by the commission shall be incorporated into these regulations as attachments and shall be consecutively numbered.~~

~~(f) The executive director may recommend modifications to any forms approved by the commission.~~

NOTE: Authority cited: Sections 17527 (g) and 17553 (a), Government Code. Reference: Sections, 17530, 17553, ~~17555 (a)~~, and 17557 (a), Government Code.

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 will conduct a public hearing on May 31, 2005, for this proposed action if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at **5:00 p.m. on May 30, 2005**. The Commission will consider only comments received at the Commission offices by that time. Submit comments to:

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

AUTHORITY AND REFERENCE

Government Code section 17527, subdivision (g), authorizes the Commission to adopt the proposed regulations. The purpose of this rulemaking is to conform the Commission's regulations to statutory changes made by AB 2856 (Stats. 2004, ch. 890) regarding filing, hearing, and determining test claims and adopting parameters and guidelines.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Commission is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state-mandated local programs (Gov. Code, § 17500 et seq.) and to hear matters involving applications for a finding of significant financial distress (Welf. & Inst. Code, § 17000.6). The purpose of this rulemaking is to implement AB 2856 (Stats. 2004, ch. 890), which made the following statutory changes that require the Commission to initiate this rulemaking:

- The definition of test claim was modified. (Gov. Code, § 17521)
- The state mandates claims fund was abolished and implementation statutes were repealed. (Gov. Code, §§ 17517 and 17610)
- The content of a test claim filing was specified in statute, adding new requirements and specificity. (Gov. Code, § 17553)

- The statute of limitations for filing test claims was reduced to 12 months. (Gov. Code, § 17551)
- The applicable reimbursement period for filing a test claim amendment was clarified. (Gov. Code, § 17557, subd. (e))
- The Commission was authorized to adopt a *reasonable reimbursement methodology* in parameters and guidelines. (Gov. Code, §§ 17518.5 and 17557, subds. (b), (f))
- The reimbursement period was specified for parameters and guidelines amendments. (Gov. Code, § 17557)
- The Controller’s claiming instructions are derived from the test claim decision and adopted parameters and guidelines. (Gov. Code, § 17558)
- Claims for direct and indirect costs must be filed in the manner prescribed in the parameters and guidelines and claiming instructions. (Gov. Code, § 17564, subd. (b))

Therefore, the Commission proposes to amend sections 1181, 1181.1, 1181.2, 1181.3, 1183, 1183.01, 1183.02, 1183.03, 1183.04, 1183.05, 1183.06, 1183.07, 1183.08, 1183.1, 1183.11, 1183.12, 1183.2, 1183.21, 1183.3, 1187, 1187.2, 1187.3, 1187.4, 1188.1, 1188.3, 1188.4, and 1189.6; to add sections 1183.12, 1183.13, and 1183.14; and to repeal sections 1184, 1184.1, 1184.2, and 1187.1 of the California Code of Regulations, title 2, chapter 2.5, division 2.

Under Article 1. General, the Commission proposes to make substantive amendments to sections 1181.1, 1181.2, and 1181.3. Section 1181.1 amends the definition of “amendment,” “Commission staff,” “statewide cost estimate,” and “written material.” It also strikes the former definition of a “test claim.” Sections 1181.2 and 1181.3 clarify and facilitate the use of electronic mail and the Commission’s website in lieu of service by first-class mail.

Under Article 3. Test Claims, the Commission proposes to make substantive amendments to sections 1183, 1183.01, 1183.04, 1183.1, 1183.12, 1183.2, 1183.3; and to add sections 1183.12, 1183.13, and 1183.14. Section 1183 will make substantive and technical conforming changes to update the statute of limitations requirement; repeal duplicative content requirements for test claims; repeal obsolete procedures for filing duplicate test claims; and authorize the executive director to dismiss any test claim, or portion of a test claim, that the Commission lacks jurisdiction to hear for any reason, subject to an appeal to the Commission. Section 1183.01 will allow Commission staff to toll the timelines for up to 60 days when it is notified that a reasonable reimbursement methodology may be developed, and will repeal the obsolete 90-day tolling period for consolidation of duplicate test claims. Section 1183.04 will add consideration of a reasonable reimbursement methodology to the purpose of an informal conference, and will specify other methods for providing public notices. Section 1183.1 will update the content of parameters and guidelines to include a reasonable reimbursement methodology; and if applicable, offsetting revenues, reimbursements, fees, and offsetting savings. Section 1183.2 will repeal duplicative references to filing dates and reimbursement periods, and will clarify the content of a proposed amendment. Section 1183.3 will specify that Commission staff may also develop a statewide cost estimate based on the application of a reasonable reimbursement methodology.

The new section 1183.12 will add an alternate expedited process for parameters and guidelines by authorizing Commission staff to prepare draft proposed parameters and guidelines to assist

the successful test claimant. This process proposes that, in lieu of filing proposed parameters and guidelines, the claimant will be required to review and provide comments and clarifications, if necessary, on the draft staff proposal. The new section 1183.13 will specify a process for receiving and reviewing a proposed reasonable reimbursement methodology, as defined in Government Code section 17518.5. The new section 1183.14 is former section 1183.12 renumbered, and will add that staff’s recommendation may include a reasonable reimbursement methodology.

The Commission proposes to repeal Article 4. Mandates Recognized by the Legislature, including sections 1184, 1184.1, and 1184.2 because these regulations are now obsolete. These sections implemented payment of claims from the State Mandates Claims Fund that no longer exists.

Under Article 7. Hearings, the Commission proposes to make substantive amendments to sections 1187, 1187.2, 1187.3, 1187.4, 1188.1, 1188.3, 1188.4, and 1189.6; and to repeal section 1187.1. Section 1187 will repeal obsolete text, will specify that a test claim is set for hearing when the draft staff analysis is issued, and will include language regarding notice of hearing from current section 1187.1. Section 1187.1 will be repealed because notice requirements were moved to section 1187 and the remaining text is duplicative. Section 1187.4. will specify other methods for providing public notices. Section 1188.1 will clarify that the Commission may adopt the proposed decision on the same day as the hearing on the claim. Section 1188.3 will clarify that if the withdrawal is of a test claim, or portion thereof, the procedures described in section 1183.08 must be followed before dismissal. Section 1188.4 will clarify that this section applies to reconsiderations requested pursuant to Government Code section 17559, subdivision (a).

Under Article 8.5, the Commission proposes to make substantive amendments to section 1189.6, which will clarify the duty of the executive director to develop and issue forms, after holding a workshop with interested parties and state agencies, subject to appeal to the Commission.

Sections 1181, 1183.02, 1183.03, 1183.05, 1183.06, 1183.07, 1183.08, 1183.11, 1183.21, 1187.2, and 1187.3 will make only minor, non-substantive, and technical amendments.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Commission has made the following initial determinations:

Mandate on local agencies and school district:	None
Cost or savings to any state agency:	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.

Adoption of these regulations will not:

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

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

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

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

The backup contact person for these inquiries is:

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

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Commission order to initiate rulemaking proceedings. Copies may be obtained by contacting Ms. Cathy Cruz at the address or phone

number listed above. All persons on the Commission's interested persons mailing list will automatically be sent a copy of the rulemaking file.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

AVAILABILITY OF DOCUMENTS ON THE INTERNET

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

INITIAL STATEMENT OF REASONS

SPECIFIC PURPOSE OF THE PROPOSED ACTION

The Commission is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state-mandated local programs (Gov. Code, § 17500 et seq.) and to hear matters involving applications for a finding of significant financial distress (Welf. & Inst. Code, § 1700.6). The purpose of this rulemaking is to implement AB 2856 (Stats. 2004, ch. 890), which made the following statutory changes that require the Commission to initiate this rulemaking:

- The definition of test claim was modified. (Gov. Code, § 17521)
- The state mandates claims fund was abolished and implementation statutes were repealed. (Gov. Code, §§ 17517 and 17610)
- The content of a test claim filing was specified in statute, adding new requirements and specificity. (Gov. Code, § 17553)
- The statute of limitations for filing test claims was reduced to 12 months. (Gov. Code, § 17551)
- The applicable reimbursement period for filing a test claim amendment was clarified. (Gov. Code, § 17557, subd. (e))
- The Commission was authorized to adopt a *reasonable reimbursement methodology* in parameters and guidelines. (Gov. Code, §§ 17518.5 and 17557, subds. (b), (f))
- The reimbursement period was specified for parameters and guidelines amendments. (Gov. Code, § 17557)
- The Controller's claiming instructions are derived from the test claim decision and adopted parameters and guidelines. (Gov. Code, § 17558)
- Claims for direct and indirect costs must be filed in the manner prescribed in the parameters and guidelines and claiming instructions. (Gov. Code, § 17564, subd. (b))

MINOR, NON-SUBSTANTIVE, CLARIFYING AND TECHNICAL AMENDMENTS

The Commission edited text of the existing regulations for clarity and consistency purposes. Specifically, the Commission proposes minor, non-substantive, or clarifying technical amendments in sections 1181, 1183.02, 1183.03, 1183.05, 1183.06, 1183.07, 1183.08, 1183.11, 1183.21, 1187.2, and 1187.3.

ARTICLE 1. GENERAL

SECTION 1181.1. DEFINITIONS

Specific Purpose of the Regulation

The section defines key terms used in the regulations.

Necessity

The proposed changes amend the definitions of “amendment,” “Commission staff,” “statewide cost estimate,” and “written material,” and delete the former definition of a “test claim.”

Amending the definitions of these terms are necessary to clarify the meaning and to implement the statutory provisions. The Commission proposes to delete the definition of “test claim” because it is now codified in Government Code section 17521.

SECTION 1181.2. FILING AND SERVICE OF WRITTEN MATERIALS

Specific Purpose of the Regulation

The section clarifies how written comments should be submitted to the Commission and serviced upon parties and interested parties who have requested inclusion on the mailing list for a specific claim.

Necessity

The proposed changes are necessary to clarify and facilitate the use of electronic mail and the Commission’s website in lieu of service by first-class mail.

SECTION 1181.3. SUBMISSIONS OF WRITTEN MATERIALS IN OTHER MEDIA

Specific Purpose of the Regulation

The section specifies that parties and interested parties may electronically submit documents to the Commission to facilitate the timely hearing of test claims, parameters and guidelines, and statewide cost estimates.

Necessity

The proposed changes are necessary to clarify the manner in which documents submitted through electronic mail, in lieu of service by first-class mail, shall be formatted.

ARTICLE 3. TEST CLAIMS

SECTION 1183. TEST CLAIM FILING

Specific Purpose of the Regulation

This section proposes substantive and technical conforming changes that update the statute of limitations requirement; repeal duplicative content requirements for test claims; and repeal obsolete procedures for filing duplicate test claims. This section would also authorize the executive director to dismiss test claims or portions of a test claim that the Commission lacks jurisdiction to hear for any reason, subject to appeal to the Commission.

Necessity

AB 2856 revised how local agencies and school districts file test claims with the Commission. They have only one year to file test claims on new statutes; they must include additional

information when filing test claims; and they may no longer file duplicate test claims. Therefore, the changes proposed to this section would conform the section to the new statutory changes. This section would also clarify the process when a test claim is improperly filed and the Commission has no jurisdiction to hear the claim.

SECTION 1183.01. TIMELINES

Specific Purpose of the Regulation

Government Code section 17551 requires the Commission to complete test claims within 12 months. This section proposes to toll this timeline for sixty days if a party or interested party notifies the commission that they will be submitting a reasonable reimbursement methodology. Section 1183.01 currently sets a timeline for claimants when they file duplicate test claims. This proposal strikes the language regarding duplicate test claims. Finally, this section allows the executive director to dismiss test claims or portions thereof when the Commission has no jurisdiction over the claim.

Necessity

AB 2856 authorizes state agencies, claimants, and interested parties to propose a reasonable reimbursement methodology to reimburse local agencies and school districts for mandated programs. It is necessary to toll the existing statutory timeline for completing test claims for 60 days to give parties time to submit this new methodology. It is necessary to strike the existing language regarding duplicate test claims because AB 2856 repealed the authority for claimants to file duplicate claims. This section would also allow the executive director to dismiss test claims when they are improperly filed and the Commission has no jurisdiction over the claim.

SECTION 1183.04. INFORMAL CONFERENCE

Specific Purpose of the Regulation

The executive director is currently authorized to conduct informal conferences prior to formal hearings on matters to respond to questions, set dates for receiving written comments, or to resolve or clarify issues of law. This section proposes to allow the conference to be conducted to consider a reasonable reimbursement methodology.

Necessity

AB 2856 authorizes state agencies, parties and interested parties to propose a reasonable reimbursement methodology to reimburse claimants for mandated programs. This section would clarify that informal conferences can be conducted to discuss or resolve issues regarding reasonable reimbursement methodologies.

SECTION 1183.1. CONTENT OF PARAMETERS AND GUIDELINES

Specific Purpose of the Regulation

Government Code section 17557 requires the Commission, once it determines that a new statute or executive order is a mandated program, to adopt parameters and guidelines that provide the claimants with the actual activities that are reimbursable. Currently, the claimant is required to submit proposed parameters and guidelines. This section proposes to clarify and revise the content of proposed parameters and guidelines, to define the “most reasonable methods of complying with the mandate,” to identify offsetting revenues and reimbursements, to provide notice of the Office of the State Controller’s duty to issue claiming instructions, and to specify

the remedies before the Commission and the legal and factual basis for the parameters and guidelines. Also, duplicative language that is in Government Code section 17557 would be deleted.

Necessity

This section would revise the regulations to conform to statutory changes made by AB 2856 to specify the content of test claim filings and to require the Commission to consider a reasonable reimbursement methodology when adopting parameters and guidelines.

SECTION 1183.12. ALTERNATE PROCESS FOR PROPOSED PARAMETERS AND GUIDELINES

Specific Purpose of the Regulation

This proposal would add a new section that authorizes claimants to utilize an alternate process for submitting parameters and guidelines. Under the alternate process, Commission staff would draft proposed parameters and guidelines to assist the claimant. In lieu of filing the proposed parameters and guidelines, claimants would file modifications and/or comments on staff's proposed parameters and guidelines, and may clarify reimbursable activities, include additional activities, describe the most reasonable methods of complying with the mandate, indicate whether the Commission should consider a reasonable reimbursement methodology, identify offsetting revenues and offsetting savings, and provide an explanation of why clarification or additional activities are necessary.

Necessity

Currently, staff makes numerous modifications to claimants' proposed parameters and guidelines to conform them to the format approved by the Commission. This alternate process would expedite adoption of parameters and guidelines and includes the reasonable reimbursement methodology enacted in AB 2856.

SECTION 1183.13. REASONABLE REIMBURSEMENT METHODOLOGY

Specific Purpose of the Regulation

This section establishes the procedures for submitting a reasonable reimbursement methodology. It defines what agencies may submit a proposed methodology, requires the methodology to include any documentation or assumptions used to develop the methodology, provides all parties with the opportunity to comment on the proposed methodology and to rebut any comments.

Necessity

This section conforms to AB 2856 that authorizes the use of reasonable reimbursement methodologies to reimburse local agencies and school districts for mandated programs.

SECTION 1183.14. ADOPTION OF PARAMETERS AND GUIDELINES

Specific Purpose of the Regulation

This section provides that when Commission staff makes a recommendation on proposed parameters and guidelines, it may include a reasonable reimbursement methodology.

Necessity

This section conforms to AB 2856.

SECTION 1183.2. AMENDMENTS TO PARAMETERS AND GUIDELINES

Specific Purpose of the Regulation

This section proposes repeal of duplicative references to filing dates and reimbursement periods, and clarifies the content of a proposed parameters and guidelines amendment.

Necessity

Language that is currently in regulation was added to statute. Therefore, the language is no longer necessary in regulation.

SECTION 1183.3. STATEWIDE COST ESTIMATE

Specific Purpose of the Regulation

Government Code section 17553 requires the Commission to adopt a statewide cost estimate of each approved mandate. This section proposes to add that staff may develop a statewide cost estimate based on the application of a reasonable reimbursement methodology.

Necessity

This section conforms to AB 2856 that authorizes the adoption of a reasonable reimbursement methodology to reimburse local agencies and school districts for mandated programs.

ARTICLE 4. MANDATES RECOGNIZED BY THE LEGISLATURE

SECTIONS 1184, 1184.1, and 1184.2.

Specific Purpose of the Regulation

These sections implement payment of claims from the State Mandates Claims Fund.

Necessity

AB 2856 abolishes the State Mandates Claims Fund and repeals the implementation statutes (Gov. Code, §§ 17517 and 17610). Thus, repeal of Article 4, including sections 1184, 1184.1, and 1184.2, is necessary as these regulations are now obsolete.

ARTICLE 7. HEARINGS

SECTION 1187. SCHEDULING AND NOTICING THE HEARING ON A TEST CLAIM

Specific Purpose of the Regulation

The section specifies when the Commission sets dates for public hearings. The proposed changes repeal obsolete text and add clarifying language.

Necessity

The proposed changes clarify that a test claim is set for hearing when the draft staff analysis is issued, and adds language from section 1187.1 regarding what to include in a notice of hearing and who should receive such notices.

SECTION 1187.1. NOTICE OF HEARING

Specific Purpose of the Regulation

The section specifies the process for issuing a notice of public hearing. The Commission proposes repeal of this section.

Necessity

The proposed repeal of this section is necessary because the notice requirements were moved to section 1187, thus making the text duplicative.

SECTION 1187.4. PREHEARING CONFERENCE

Specific Purpose of the Regulation

The section specifies the purposes of a pre-hearing conference, who shall be invited to participate, and who shall be sent a notice of pre-hearing.

Necessity

The proposed amendment adds other methods for providing public notices, such as electronic mail or other electronic media.

SECTION 1188.1. DECISION; ACTION ON PROPOSED DECISION

Specific Purpose of the Regulation

The section specifies the process for preparing and adopting a proposed Statement of Decision.

Necessity

The proposed amendment is necessary to clarify that the Commission may adopt a proposed decision on the same day as the hearing on the claim.

SECTION 1188.3. WITHDRAWAL OF CLAIMS AND REQUESTS

Specific Purpose of the Regulation

The section specifies that a claim, or any portion of a claim, may be withdrawn by written application any time before a decision is adopted, or by oral application at the time of hearing.

Necessity

The proposed amendment is necessary to clarify that if the withdrawal is of a test claim, or portion thereof, the procedures described in section 1183.08 must be followed before dismissal.

SECTION 1188.4. RECONSIDERATION OF A PRIOR FINAL DECISION

Specific Purpose of the Regulation

The section specifies and clarifies the process for requesting that the Commission reconsider or amend a test claim decision and change a prior final decision to correct an error of law.

Necessity

The proposed amendment is necessary to clarify that the section applies to reconsiderations requested pursuant to Government Code section 17559, subdivision (a), and not to remands or reconsiderations directed by the courts or by statute.

ARTICLE 8.5. FORMS

SECTION 1189.6. DEVELOPMENT AND APPROVAL OF COMMISSION FORMS

Specific Purpose of the Regulation

The section clarifies the process for developing and approving forms necessary to simplify and improve the efficiency of the test claim process.

Necessity

The proposed changes are necessary to clarify the duty of the executive director to develop and issue forms after holding a workshop with interested parties and state agencies, subject to appeal to the Commission.

MATERIAL RELIED UPON TO DEVELOP REGULATIONS

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

ALTERNATIVES TO THE PROPOSED REGULATORY ACTIONS

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

ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

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