

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Vehicle Code Sections 13202, 13202.3, 13352, 13353, 13353.1, 13353.2, 13353.3, 13353.4, 13353.6, 13354, 13551, 13557, 13558, 13559, 14100, 14905, 14907, 23136, 23137, 23138, 23139, 23140, 23157, 23158.2, and 23158.5;

As Added or Amended by Statutes 1989, Chapter 1460; Statutes 1990, Chapter 43 1; Statutes 1992, Chapter 128 1; Statutes 1993, Chapters 899 and 1244; Statutes 1994, Chapter 938; and Statutes 1997, Chapter 5;

Filed on June 11, 1999;

By City of Newport Beach, Claimant.

No. 98-TC-16


Administrative License Suspension – Per Se

ADOPTION OF PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 1183.12

(Adopted on December 2, 2003)

PARAMETERS AND GUIDELINES

On December 2, 2003, the Commission on State Mandates adopted the attached Parameters and Guidelines.



PAULA HIGASHI, Executive Director

12-3-03
Date

PARAMETERS AND GUIDELINES

Vehicle Code Sections 13202.3, 13353, 13353.1, 13353.2, 14100, 23136, 23137¹, 23157², 23158.2³, and 23158.5⁴

Statutes 1989, Chapter 1460

Statutes 1990, Chapter 43 1

Statutes 1992, Chapter 1281

Statutes 1993, Chapters 899 and 1244

Statutes 1994, Chapter 938

Statutes 1997, Chapter 5

Administrative License Suspension -Per Se (98-TC-16)

I. SUMMARY OF THE MANDATE

The *Administrative License Suspension* legislation became effective on July 1, 1990. Generally, the test claim legislation authorizes a peace officer, on behalf of the Department of Motor Vehicles (DMV), to immediately seize a valid California driver's license in the possession of a person arrested or detained for driving under the influence of alcohol (DUI), immediately serve an order of suspension or revocation, and issue a temporary driver's license to the driver.

The Commission on State Mandates partially approved this test claim pursuant to article XIII B, section 6 of the California Constitution, and Government Code section 175 14, for the increased costs in performing the following activities:

- A. Admonishing those drivers, detained under Vehicle Code section 23 136 and not ultimately arrested for having a concentration of alcohol in their blood in violation of a DUI statute, that the failure to submit to, or the failure to complete, a preliminary alcohol screening test or other chemical test as requested will result in the suspension or revocation of the driver's license.
- B. Requesting and administering the alcohol screening test on minors that are detained pursuant to Vehicle Code sections 23 13 6 and 23 13 7 and are not ultimately arrested for having a concentration of alcohol in their blood in violation of a DUI statute.
- C. Taking possession of any driver's license issued by the state and serving the notice of order of suspension or revocation, with the temporary driver's license endorsed on the back of the notice, on the driver if the driver refuses or fails to complete the chemical test,

¹ Renumbered to 13388 (Stats. 1998, ch. 118).

² Renumbered to 23612 (Stats. 1999, ch. 22).

³ Renumbered to 13380 (Stats. 1998, ch. 118).

⁴ Renumbered to 13382 (Stats. 1998. ch. 118).

or has been found to have a concentration of alcohol in the blood in violation of the DUI statutes, as specified in Vehicle Code sections 23137, 23157, 23158.5, 13353, 13353.1, and 13353.2.

- D. Issuing the non-English notice developed under Vehicle Code section 14100 when appropriate.
- E. Completing a sworn report in accordance with Vehicle Code section 23 158.2 for those drivers that are arrested or detained with a blood alcohol concentration higher than the legal limits, and for detained minors who refuse or fail to complete the required preliminary alcohol screening test or other chemical test.
- F. Submitting a copy of the completed notice of order of suspension, driver's license, and sworn report to the DMV pursuant to Vehicle Code sections 23 137, 23 157, 23 158.2, and 23 158.5.
- G. Informing a person arrested for a specified controlled substance offense of the driver's license sanctions either orally or in writing, and indicating that the information was provided orally to the person on the arrest report or notice to appear, or attaching the written notice to the arrest report or notice to appear pursuant to Vehicle Code section 13202.3.

The Commission also found that the following activities were not reimbursable pursuant to article XIII B, section 6 of the California Constitution:

- The collection of evidence, including the vehicle stop, administering all field sobriety tests, administering the evidentiary chemical test, and completing the police report, pursuant to Vehicle Code section 23 157 are directly related to the enforcement of a crime or infraction and, thus, are not subject to article XIII B, section 6.
- Forwarding the results of a blood or urine test to the appropriate forensic laboratory pursuant to Vehicle Code sections 23 137 and 23 157 does not constitute a new program or higher level of service, and thus, reimbursement is not required under article XIII B, section 6.
- The peace officer's time when subpoenaed for the administrative hearings pursuant to Vehicle Code sections 13557, 13558, and 14 100 does not constitute a new program or higher level of service, and thus, reimbursement is not required under article XIII B, section 6.

II. ELIGIBLE CLAIMANTS

Any city, county, and city and county that incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, as amended by Statutes 1998, chapter 68 1, states that a test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. The City of Newport Beach filed the test claim on June 11, 1999. Therefore, costs incurred on or after July 1, 1997, in compliance with Statutes 1989, chapter 1460; Statutes 1990, chapter 43 1; Statutes 1992, chapter 128 1;

Statutes 1993, chapters 899 and 1244; Statutes 1994, chapter 938, and Statutes 1997, chapter 5⁵ are eligible for reimbursement.

Vehicle Code section 13202.3, which was added by Statutes 1997, chapter 5, became inoperative on June 30, 1999, and was repealed on January 1, 2000. Therefore, costs incurred in compliance with Statutes 1997, chapter 5 are reimbursable on or after July 1, 1997, through June 30, 1999.

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

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

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. For activities A through C below, actual costs shall be claimed based on the uniform cost allowance adopted by the Commission. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, notices of order of suspension or revocation, sworn reports, arrest reports, notices to appear, employee time records or time logs, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), activity logs, purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 20 15.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

For each eligible claimant, the following activities are reimbursable:

⁵ Statutes 1997, chapter 5 became effective on April 15, 1997. However, the test claim for this mandate was filed on June 11, 1999, and thus, costs incurred in compliance with the mandate are reimbursable beginning July 1, 1997.

A. Minors (under the age of 21) that Are Detained But Not Ultimately Arrested for Violation of a DUI Statute (Blood Alcohol Level of 0.01 Percent or Greater (Veh. Code, § 23 136).)

Claimants are not eligible for reimbursement for these activities if the driver under the age of 21 is arrested for violation of a DUI statute.

1. Admonishing those drivers, detained under Vehicle Code section 23 136 and *not ultimately arrested* for having a concentration of alcohol in their blood in violation of a DUI statute, that the failure to submit to, or the failure to complete, a preliminary alcohol screening test or other chemical test as requested will result in the suspension or revocation of the driver's license. (Veh. Code, § 23 136.)
2. Requesting and administering the alcohol screening test on minors that are detained pursuant to Vehicle Code sections 23 136 and 23 137 and are *not ultimately arrested* for having a concentration of alcohol in their blood in violation of a DUI statute. (Veh. Code, §§ 23136 and 23137.)
3. Taking possession of any driver's license issued by the state and serving the notice of order of suspension or revocation on the detained minor if the driver refuses or fails to complete the chemical test, or has been found to have a concentration of alcohol in the blood in violation of Vehicle Code section 23 136. This activity includes providing the non-English notice, when appropriate, and issuing the temporary driver's license endorsed on the back of the notice. (Veh. Code, §§ 13353, 13353.1, 13353.2, 14100, 23137, 23157, and 23158.5.)
4. Completing a sworn report for those minors detained under Vehicle Code section 23 136. (Veh. Code, § 23 158.2.)
5. Submitting a copy of the completed notice of order of suspension, driver's license, and sworn report to the DMV. (Veh. Code, §§ 23137, 23157, 23158.2, and 23158.5.)

B. All Drivers (Adults and Minors) that Are Arrested for Violation of a DUI Statute (Blood Alcohol Level of 0.08 Percent or Greater for Adults (Veh. Code, §§ 23 152 and 23 153) and Blood Alcohol Level of 0.05 Percent or Greater for Minors (Veh. Code § 23 140).)

1. Taking possession of any driver's license issued by the state and serving the notice of order of suspension or revocation on the driver if the driver refuses or fails to complete the chemical test, or has been found to have a concentration of alcohol in the blood in violation of Vehicle Code sections 23 140, 23 152 and 23 153. This activity includes providing the non-English notice, when appropriate, and issuing the temporary driver's license endorsed on the back of the notice. (Veh. Code, §§ 13353, 13353.1, 13353.2, 14100, 23137, 23157, and 23158.5.)
2. Completing a sworn report for those drivers that are arrested with a blood alcohol concentration higher than the legal limits. (Veh. Code, § 23 158.2.)
3. Submitting a copy of the completed notice of order of suspension, driver's license, and sworn report to the DMV. (Veh. Code, §§ 23137, 23157, 23158.2, and 23158.5.)

C. Drivers Arrested for a Specified Controlled Substance Offense

1. Informing a person arrested for a specified controlled substance offense of the driver's license sanctions of suspension or delay of driving privileges either orally or in writing. If

the information is provided orally, indicating on the arrest report or on the notice to appear the time and date that the information was provided. If the information is provided in written form, attaching the written form to the arrest report or notice to appear. Preparing the arrest report and/or the notice to appear is not reimbursable. (Veh. Code, § 13202.3, subd. (e).) (*Reimbursement period: July 1, 1997 -June 30, 1999.*)”

V. CLAIM PREPARATION AND SUBMISSION

Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Uniform Allowances (Time)

The uniform time allowances cover the cost of the salaries and benefits of the employees performing the activities listed in section IV. of these parameters and guidelines. For purposes of the following calculations, productive hours means: “Time spent performing any kind of mental or physical work. Paid leave is not included.”

1. Minors (under the age of 21) that Are Detained But Not Ultimately Arrested for Violation of a DUI Statute (Blood Alcohol Level of 0.01 Percent or Greater (Veh. Code, § 23 136).)

a. For activities IV. A. 1. and IV. A. 2., multiply as follows:

(the number of cases) x (0.2667 hours⁷) x (the productive hourly rate [total wages and related benefits divided by productive hours] for employees performing the reimbursable activities).

b. For activities IV. A. 3. through IV. A. 5., multiply as follows:

(the number of cases > x (0.2500 hours⁸) x (the productive hourly rate [total wages and related benefits divided by productive hours] for employees performing the reimbursable activities).

2. All Drivers (Adults and Minors) that Are Arrested for Violation of a DUI Statute (Blood Alcohol Level of 0.08 Percent or Greater for Adults (Veh. Code, §§ 23 152 and 23 153) and Blood Alcohol Level of 0.05 Percent or Greater for Minors (Veh. Code § 23140).)

a. For activities IV. B. 1. through IV. B. 3., multiply as follows:

(the number of cases > x (0.2500 hours⁹) x (the productive hourly rate [total wages and related benefits divided by productive hours] for employees performing the reimbursable activities).

⁶ This activity was added by the Legislature by Statutes 1997, chapter 5 and became effective on April 15, 1997. Vehicle Code section 13202.3 became inoperative on June 30, 1999, and was repealed on January 1, 2000.

⁷ Equivalent to 16 minutes.

⁸ Equivalent to 15 minutes.

⁹ Equivalent to 15 minutes.

3. Drivers Arrested for a Specified Controlled Substance Offense

- a. For activity IV. C. 1., multiply as follows:¹⁰

(the number of cases) x (0.0083 hours¹¹) x (the productive hourly rate [total wages and related benefits divided by productive hours] for employees performing the reimbursable activity).

The Commission has not identified any circumstances that would cause an eligible claimant to incur additional costs to perform the reimbursable activities in section IV. of these parameters and guidelines, which have not already been incorporated in the uniform time allowance.

Eligible claimants incurring any such costs within the scope of the reimbursable activities may submit a request to amend the parameters and guidelines to the Commission for such costs to be approved for reimbursement, subject to the provisions of California Code of Regulations, title 2, section 1183.2.

B. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. Direct costs that are eligible for reimbursement in addition to the uniform time allowances are:

1. Materials and Supplies

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

C. Indirect Cost Rates

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

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

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

¹⁰ Activity IV. F. is only reimbursable through June 30, 1999.

¹¹ Equivalent to 30 seconds.

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

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

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

VI. RECORD RETENTION

Pursuant to Government Code section 1755 8.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹² is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, including fees collected pursuant to Vehicle Code section 14905; federal funds and other state funds; and grant monies received by the state and passed through to local agencies (obtained by Public Law 100-690, which added United States Code, title 23, sections 408 and 410), shall be identified and deducted from this claim.

¹² This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

Pursuant to Government Code section 1756 1, subdivision (d)(l), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 1757 1. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 958 14.

December 3, 2003, I served the:

Adopted Parameters and Guidelines

Administrative License Suspension - Per Se, 98-TC-16

Vehicle Code Sections 13202.3, 13353, 13353.1, 13353.2, 14100, 23136, 23137, 23157, 23158.2, and 23158.5

As Added or Amended by Statutes 1989, Chapter 1460; Statutes 1990, Chapter 43 1; Statutes 1992, Chapter 128 1; Statutes 1993, Chapters 899 and 1244; Statutes 1994, Chapter 938; and Statutes 1997, Chapter 5
City of Newport Beach, Claimant

by placing a true copy thereof in an envelope addressed to:

Ms. Pamela A. Stone
Legal Counsel
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. Mike Havey
State Controller's Office
Division of Accounting and Reporting
Local Reimbursement Section
3301 C Street, Suite 501
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 3, 2003, at Sacramento, California.


VICTORIA SORIANO