

December 15, 2022

Mr. Kris Cook
Department of Finance
915 L Street, 10th Floor
Sacramento, CA 95814

Mr. Adam Pirrie
City of Claremont
207 Harvard Ave
Claremont, CA 91711

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Draft Proposed Decision and Parameters and Guidelines Amendment, Schedule for Comments, and Notice of Hearing

Racial and Identity Profiling, 21-PGA-01

Government Code Section 12525.5, as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518); California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229, as added by Register 2017, No. 46¹
City of Claremont, Requester

Dear Mr. Cook and Mr. Pirrie:

The Draft Proposed Decision and Parameters and Guidelines Amendment for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision and Parameters and Guidelines Amendment by no later than **5:00 pm on January 5, 2023**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.²

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

¹ Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

² Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Mr. Cook and Mr. Pirrie
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If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, March 24, 2023** at 10:00 a.m., via Zoom. The Proposed Decision and Parameters and Guidelines Amendment will be issued on or about March 10, 2023.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list and so that detailed instructions regarding how to participate as a witness in this meeting on Zoom can be provided to them. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM ____
DRAFT PROPOSED DECISION
AND
PARAMETERS AND GUIDELINES AMENDMENT

Government Code Section 12525.5; as added or amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518)

California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229 as added by Register 2017, No. 46

Racial and Identity Profiling

21-PGA-01 (18-TC-02)

City of Claremont, Requester

EXECUTIVE SUMMARY

I. Summary of the Mandate

On May 22, 2020, the Commission on State Mandates (Commission) adopted the Test Claim Decision on *Racial and Identity Profiling*, 18-TC-02. The Commission found that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and California Code of Regulations, title 11, sections 999.224- 999.229 (Register 2017, No. 46), constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning November 7, 2017.¹ Specifically, the Commission found that city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting) are mandated to electronically report to the Attorney General, on an annual basis, data on all “stops” within their own jurisdiction, conducted by the agency’s peace officers; and on those city and county law enforcement agencies that contract for peace officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions.²

On September 25, 2020, the Commission adopted the Decision and Parameters and Guidelines for claiming costs incurred beginning November 7, 2017.³ Section IV. of the Parameters and Guidelines authorizes reimbursement for, among other activities, local law enforcement to

¹ Exhibit X, Test Claim Decision, *Racial and Identity Profiling*, 18-TC-02, adopted May 22, 2020, pages 4-9, 59-64.

² Exhibit X, Test Claim Decision, *Racial and Identity Profiling*, 18-TC-02, adopted May 22, 2020, pages 5-8, 60-63.

³ Exhibit X, Decision and Parameters and Guidelines, *Racial and Identity Profiling*, 18-TC-02, adopted September 25, 2020, page 3.

electronically report collected data to the DOJ,⁴ and for "One-time installation and testing of software necessary to comply with the state-mandated requirements for the collection and reporting requirements of data on all applicable stops."⁵ Section V.A. of the Parameters and Guidelines authorizes reimbursement for the direct costs to comply with the reimbursable activities, including costs for materials and supplies, fixed assets, and contracted services.⁶

On December 10, 2021, the City of Claremont (requester) filed the Request for Parameters and Guidelines Amendment seeking reimbursement for its purchase of cellular telephones loaded with Racial and Identity Profiling Act (RIPA) reporting software, which the requester alleges are solely to comply with the mandate and necessary to provide to "motor and bicycle units [that] cannot be equipped with the existing in-car mobile data computers."⁷ The requester points out that the original claimant did not request the purchase of hardware to comply with the mandate and seeks to amend the reimbursable activities to add: "On-Going Activity B: Cost of hardware purchase necessary to implement the mandated program, or Fixed Assets - Cost of hardware purchases."⁸

II. Procedural History

The requester filed the Request for Parameters and Guidelines Amendment on December 10, 2021.⁹ No comments were filed on the request. Commission staff issued the Draft Proposed Decision and Parameters and Guidelines Amendment on December 15, 2022.¹⁰

III. Discussion

Government Code section 17557(d) authorizes a local agency, school district, or the state to file a written request with the Commission to amend the parameters and guidelines consistent with the test claim decision for several reasons, including to clarify what constitutes a reimbursable activity, to add reasonably necessary activities, and to amend the boilerplate language in the parameters and guidelines.¹¹

⁴ Exhibit X, Decision and Parameters and Guidelines, *Racial and Identity Profiling*, 18-TC-02, adopted September 25, 2020, page 18.

⁵ Exhibit X, Decision and Parameters and Guidelines, *Racial and Identity Profiling*, 18-TC-02, adopted September 25, 2020, page 15.

⁶ Exhibit X, Decision and Parameters and Guidelines, *Racial and Identity Profiling*, 18-TC-02, adopted September 25, 2020, page 20.

⁷ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, page 1.

⁸ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, pages 1, 2.

⁹ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, page 1.

¹⁰ Exhibit B, Draft Proposed Decision and Parameters and Guidelines Amendment, issued December 15, 2022.

¹¹ See also California Code of Regulations, title 2, section 1183.17(a).

As indicated above, the requester seeks to amend Section IV. of the Parameters and Guidelines to authorize reimbursement for the “Cost of hardware purchase necessary to implement the mandated program, or Fixed Assets - Cost of hardware purchases.”¹² The requester declares that peace officers in motor and bicycle units are mandated to input and submit RIPA data from their stops and need to be equipped with smartphones to comply with the mandate since these units cannot be equipped with a mobile data computer.¹³ The requester seeks reimbursement for the costs to purchase smartphones loaded with RIPA software and cellular service to comply with the mandate.

Staff finds that the Parameters and Guidelines already authorize reimbursement for the costs incurred to comply with the reimbursable activities, including the costs alleged by the requester. Therefore, the amendment is not necessary and the request should be denied. However, staff does recommend amending Section IV.B.3(a) to add clarifying language that “In-car mobile data computers, laptops, tablets, or smartphones may be used to comply with this activity.” As a clarifying change to the existing Parameters and Guidelines, this amendment is effective beginning November 7, 2017, the original effective date of the Parameters and Guidelines.¹⁴

A. Section V.A. of the Parameters and Guidelines Already Authorizes Reimbursement for Materials and Supplies, Fixed Assets, and Contracted Services to Comply with the Mandate. Therefore, the Request for Parameters and Guidelines Amendment Should Be Denied.

Section IV. of the Parameters and Guidelines authorizes reimbursement for, among other activities, local law enforcement to electronically report their collected data to the DOJ:

Submit all required stop data to the system developed by the DOJ in electronic format that complies with the DOJ interface specifications via one of the three approved submission methods: (1) a web-browser based application developed by the DOJ; (2) a system-to-system web service; and (3) a secured file transfer protocol. (Cal Code Regs., tit. 11, § 999.228(a), (b) [Register 2017, No. 46].)¹⁵

Additionally, Section IV.A.2. of the adopted Parameters and Guidelines authorizes reimbursement for: "One-time installation and testing of software necessary to comply with the state-mandated requirements for the collection and reporting requirements of data on all applicable stops."¹⁶ Although the cost to purchase “hardware” (or smartphones) is not specifically approved in the Parameters and Guidelines, it may already be claimed under either Section V.A.2. of the Parameters and Guidelines, as “materials and supplies,” or under Section

¹² Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, pages 1, 2.

¹³ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, page 3.

¹⁴ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

¹⁵ Exhibit X, Decision and Parameters and Guidelines, *Racial and Identity Profiling*, 18-TC-02, adopted September 25, 2020, page 18.

¹⁶ Exhibit X, Decision and Parameters and Guidelines, *Racial and Identity Profiling*, 18-TC-02, adopted September 25, 2020, page 15.

V.A.4., as “fixed assets.” The State Controller’s Office Accounting Manual for Counties, as well as broad definitions of the Government Accounting Standards Board, both support this interpretation of the Parameters and Guidelines.¹⁷ In addition, cellular service may be claimed under Section V.A.3. of the Parameters and Guidelines regarding “Contracted Services.” The Commission’s Test Claim Decision cites the DOJ regulatory materials that state that the mandate “may require up-front costs in technology investment to equip officers in the field with a laptop, tablet, or *smartphone*.”¹⁸ Thus, the purchase of smartphones is consistent with the Test Claim Decision to the extent necessary to comply with the mandate.

Attached to the request is a work order for “Enhancement to SafetyNet Mobile Client to capture data required by Assembly Bill 953 Updates.”¹⁹ The work order provides for Development, Installation, Configuration, Testing, Documentation, and Project Management for \$7,500.00.²⁰ This supports the One-Time Installation and Testing of the RIPA Software already provided for by the Parameters and Guidelines.²¹ As stated above, installation and testing of the software is already reimbursable under the Parameters and Guidelines. However, software development has not been approved as a mandated or reasonably necessary activity in the Test Claim Decision or Parameters and Guidelines, nor was it included in the proposed amendment language: “On-Going Activity B: Cost of hardware purchase necessary to implement the mandated program, or Fixed Assets - Cost of hardware purchases.”

Nonetheless, staff recommends adding the following clarifying language, effective November 7, 2017,²² to Section IV.B.3(a) as indicated in underline:

Submit all required stop data to the system developed by the DOJ in electronic format that complies with the DOJ interface specifications via one of the three approved submission methods: (1) a web-browser based application developed by the DOJ; (2) a system-to-system web service; and (3) a secured file transfer protocol. (Cal Code Regs., tit. 11, § 999.228(a), (b) [Register 2017, No. 46].) In-car mobile data computers, laptops, tablets, or smartphones may be used to comply with this activity.

¹⁷ Exhibit X, Excerpts from Office of the State Controller, Accounting Standards and Procedures for Counties, 2021 Edition, https://www.sco.ca.gov/Files-ARD-Local/asp_manual_2021_edition.pdf (accessed on December 1, 2022), pages 99, 102, 636, 681. Exhibit X, Government Accounting Standards Board, GASB Code, Section 1400.103.

¹⁸ Exhibit X, Test Claim Decision, *Racial and Identity Profiling*, 18-TC-02, adopted May 22, 2020, page 35 (emphasis added).

¹⁹ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, pages 3-8.

²⁰ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, pages 3-8.

²¹ Exhibit X, Decision and Parameters and Guidelines, *Racial and Identity Profiling*, 18-TC-02, adopted September 25, 2020, page 15.

²² This clarifying amendment is effective on the same date as the original Parameters and Guidelines. *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

B. A Citation to Federal Law in Section V.B., of the Parameters and Guidelines Addressing Indirect Cost Rates Should Be Corrected.

Staff also recommends that the Commission update Section V.B., Indirect Cost Rates, to correct the citation to the federal law on indirect costs from the OMB Circular A-87, which was superseded on December 26, 2013, by the OMB Circular 2 CFR, Chapter I and Chapter II, Part 200 et seq.

The Office of Management and Budget (“OMB”) adopted 2 CFR Part 200 on December 26, 2013, which is referred to as the “Super Circular,” to supersede and streamline requirements from several previous OMB Circulars, including OMB Circular A-87. The provisions within OMB Circular A-87 existed prior to the establishment of Part 200 of title 2 of the Code of Federal Regulations (CFR), have been incorporated into Part 200 of title 2, and have not substantively changed.²³ Moreover, the Claiming Instructions issued by the State Controller’s Office for this program refer to “2 CFR, Chapter I and Chapter II, Part 200, et al.” and not OMB Circular A-87.²⁴ Thus, the amendment simply corrects the citation to this federal law, which has been in place before the period of reimbursement for this program.

The courts have recognized that “a statute that merely clarifies existing law, rather than changes the law, can properly be applied to transactions predating the clarification since the clarification describes what the law has always been.”²⁵ Thus, the correction to the citation for indirect costs applies to the entire period of reimbursement, beginning November 7, 2017.²⁶

IV. Conclusion

Staff recommends that the Commission adopt the Proposed Decision and Parameters and Guidelines Amendment to deny the Request for Parameters and Guidelines Amendment, but recommends adding clarifying language, effective November 7, 2017,²⁷ to Section IV.B.3(a) of the Parameters and Guidelines: “In-car mobile data computers, laptops, tablets, or smartphones may be used to comply with this activity.” Staff also recommends that the Commission correct the citations to Federal law in Section V.B. of the Parameters and Guidelines addressing Indirect Costs, consistent with the Claiming Instructions for this program, as discussed above.

In addition, staff recommends that the Commission authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

²³ Code of Federal Regulations, title 2, section 1.215.

²⁴ Exhibit X, State Controller’s Office, State-Mandated Costs Claiming Instructions No. 2020-03 Racial and Identity Profiling – Program No. 375, Revised October 1, 2022, page 9.

²⁵ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

²⁶ Since this amendment does not change the Parameters and Guidelines, but merely clarifies a citation, Government Code section 17557(d)(2)(H), which addresses the period of reimbursement for *changes* to boilerplate language, does not apply.

²⁷ This clarifying amendment is effective on the same date as the original Parameters and Guidelines. *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

**IN RE PARAMETERS AND GUIDELINES
 AMENDMENT FOR:**

Government Code Section 12525.5; as added or amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518); California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229 as added by Register 2017, No. 46.

Filed on December 10, 2021

By the City of Claremont, Requester

Case No.: 21-PGA-01 (18-TC-02)

Racial and Identity Profiling

DECISION PURSUANT TO
 GOVERNMENT CODE SECTION
 17500, ET SEQ.; CALIFORNIA CODE
 OF REGULATIONS, TITLE 2,
 DIVISION 2, CHAPTER 2.5,
 ARTICLE 7.

(Adopted March 24, 2023)

DECISION AND PARAMETERS AND GUIDELINES AMENDEMNT

The Commission on State Mandates (Commission) heard and decided this Request for Parameters and Guidelines Amendment (PGA) during a regularly scheduled hearing on March 24, 2023. [Witness list will be included in the adopted decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision and Parameters and Guidelines Amendment by a vote of [vote count will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Scott Morgan, Representative of the Director of the Office of Planning and Research	
Sarah Olsen, Public Member	
Renee Nash, School District Board Member	
Shawn Silva, Representative of the State Controller	
Spencer Walker, Representative of the State Treasurer, Vice-Chairperson	

I. Summary of the Mandate

On May 22, 2020, the Commission on State Mandates (Commission) adopted the Test Claim Decision on *Racial and Identity Profiling*, 18-TC-02. The Commission found that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and California Code of Regulations, title 11, sections 999.224- 999.229 (Register 2017, No. 46), constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning November 7, 2017, on city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting).²⁸ Specifically, the Commission found that the test claim statutes and regulations imposed a mandate on these local agencies to electronically report to the Attorney General, on an annual basis, data on all “stops” within their own jurisdiction, conducted by the agency’s peace officers; and on those city and county law enforcement agencies that contract for peace officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions.²⁹

On September 25, 2020, the Commission adopted the Decision and Parameters and Guidelines for claiming costs incurred beginning November 7, 2017.³⁰ Section IV. of the Parameters and Guidelines authorizes reimbursement for, among other activities, local law enforcement to electronically report their collected data to the DOJ:

Submit all required stop data to the system developed by the DOJ in electronic format that complies with the DOJ interface specifications via one of the three approved submission methods: (1) a web-browser based application developed by the DOJ; (2) a system-to-system web service; and (3) a secured file transfer protocol. (Cal Code Regs., tit. 11, § 999.228(a), (b) [Register 2017, No. 46].)³¹

Additionally, Section IV.A.2. of the adopted Parameters and Guidelines authorizes reimbursement for: "One-time installation and testing of software necessary to comply with the state-mandated requirements for the collection and reporting requirements of data on all applicable stops."³²

Section V.A. of the Parameters and Guidelines identifies the direct costs that may be specifically incurred for the reimbursable activities and are eligible for reimbursement including, as relevant here, the following:

²⁸ Exhibit X, Test Claim Decision, *Racial and Identity Profiling*, 18-TC-02, adopted May 22, 2020, pages 4-9, 59-64

²⁹ Exhibit X, Test Claim Decision, *Racial and Identity Profiling*, 18-TC-02, adopted May 22, 2020, pages 5-8, 60-63.

³⁰ Exhibit X, Decision and Parameters and Guidelines, *Racial and Identity Profiling*, 18-TC-02, adopted September 25, 2020, page 3.

³¹ Exhibit X, Decision and Parameters and Guidelines, *Racial and Identity Profiling*, 18-TC-02, adopted September 25, 2020, page 18.

³² Exhibit X, Decision and Parameters and Guidelines, *Racial and Identity Profiling*, 18-TC-02, adopted September 25, 2020, page 15.

2. Materials and Supplies

Report the cost of materials and supplies 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.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.³³

The City of Claremont (requester) seeks to amend the Parameters and Guidelines to authorize reimbursement for purchasing smartphones loaded with Racial and Identity Profiling Act (RIPA) reporting software by adding to Section IV.: “On-Going Activity B: Cost of hardware purchase necessary to implement the mandated program,” or “Fixed Assets - Cost of hardware purchases.”³⁴

II. Procedural History

On December 10, 2021, the requester filed the Request for Parameters and Guidelines Amendment.³⁵ The request was issued for comment on December 16, 2021. No comments were filed on the request. Commission staff issued the Draft Proposed Decision and Parameters and Guidelines Amendment on December 15, 2022.³⁶

³³ Exhibit X, Decision and Parameters and Guidelines, *Racial and Identity Profiling*, 18-TC-02, adopted September 25, 2020, page 20.

³⁴ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, pages 1, 2.

³⁵ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, pages 1, 2.

³⁶ Exhibit B, Draft Proposed Decision and Parameters and Guidelines Amendment, issued December 15, 2022.

III. Positions of the Parties

A. City of Claremont, Requester

The requester requests that the Commission amend the Parameters and Guidelines to authorize reimbursement for: "On-Going Activity B: Cost of hardware purchase necessary to implement the mandated program," or "Fixed Assets - Cost of hardware purchases."³⁷ No other proposed parameters and guidelines language is included in the request.

However, in the narrative of the request, the requester more specifically seeks reimbursement to purchase several smartphones *loaded with RIPA data collection software*:

Now that the city has begun exploring how to most efficiently implement this program, it has been determined that the Department will have to purchase equipment (cellular telephones loaded with RIPA data collection software) in order to implement the mandate. This is because the city's motor and bicycle units cannot be equipped with the existing in-car mobile data computers (MDCs).

The city believes that this expenditure on equipment purchase is a reasonably necessary expense necessary to comply with the mandated program and therefore requests that the Commission's Parameters and Guidelines be amended to add in "On-Going Activity B: Cost of hardware purchase necessary to implement the mandated program."

The attached declaration and supporting documentation from Lieutenant Michael Ciszek show the costs that the city will have to incur to allow their motor and bicycle units to input and submit the mandated RIPA data.

We respectfully request the inclusion of "Fixed Assets - Cost of hardware purchases" as an allowable reimbursable component for this mandated program.³⁸

The attached Declaration from Lieutenant Michael Ciszek states that the smartphones are solely for complying with the mandate and makes additional requests that are not included in the proposed language in the request:

- 2) The CPD [Claremont Police Department] has contracted with a software provider to develop our RIPA reporting requirements, which will be conducted through our existing in-car mobile data computers (MDCs).
- 3) However, the CPD has motor officers and bicycle officers which cannot be equipped with an MDC. Since these officers are also mandated to input and submit RIPA data from their contacts, the Department has determined that the most efficient manner of implementing this program for those employees is to purchase several cellular telephones and upload the RIPA reporting software to the cellphones so that the data can be collected to comply with the state mandate.

³⁷ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, pages 1, 2.

³⁸ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, pages 1-2.

- 4) The CPD has never provided nor paid for cellular equipment or service for any of its sworn patrol employees in the past and would be incurring these costs specifically and only to comply with this new State mandate RIPA program.
- 5) At the time the parameters and guidelines were being considered and approved for this program, the CPD did not know what measures would be necessary to implement the mandated program as the legislation did not require us to implement the program until FY 2021-22. Therefore, we would request that parameters and guidelines and claiming instructions be amended to include provisions to allow the inclusion of equipment (cellphone/hardware) purchases.
- 6) In addition, because ongoing costs for the monthly cellular service would be required as long as the State mandated program is in effect, we also request that these costs be included as a part of the allowable scope of the reimbursable costs of this mandate program.³⁹

No comments were filed on the Request for Parameters and Guidelines Amendment.

IV. Discussion

Government Code section 17557(d) authorizes a local agency, school district, or the state to file a written request with the Commission to amend the parameters or guidelines consistent with the test claim decision for the following reasons:

- (A) Delete any reimbursable activity that has been repealed by statute or executive order after the adoption of the original or last amended parameters and guidelines.
- (B) Update offsetting revenues and offsetting savings that apply to the mandated program and do not require a new legal finding that there are no costs mandated by the state pursuant to subdivision (e) of Section 17556.
- (C) Include a reasonable reimbursement methodology for all or some of the reimbursable activities.
- (D) Clarify what constitutes reimbursable activities.
- (E) Add new reimbursable activities that are reasonably necessary for the performance of the state-mandated program.
- (F) Define what activities are not reimbursable.
- (G) Consolidate the parameters and guidelines for two or more programs.
- (H) Amend the boilerplate language.⁴⁰

As indicated above, the requester seeks to amend Section IV. of the Parameters and Guidelines, to authorize reimbursement for the “Cost of hardware purchase necessary to implement the

³⁹ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, page 3 (Declaration of Lieutenant Michael Cizek, para. 4.).

⁴⁰ See also California Code of Regulations, title 2, section 1183.17(a).

mandated program,” or “Fixed Assets - Cost of hardware purchases.”⁴¹ The request, however, is really seeking reimbursement for the costs to comply with the reimbursable activities.

For the reasons below, the Commission finds that the Parameters and Guidelines already authorize reimbursement for the direct costs incurred to comply with the reimbursable activities, including the costs alleged by the requester here. Therefore, the amendment is not necessary and the Request for Parameters and Guidelines Amendment is denied. However, adding the following language to clarify Section IV.B.3(a) is approved: “In-car mobile data computers, laptops, tablets, or smartphones may be used to comply with this activity.”

A. Section V.A. of the Parameters and Guidelines Already Authorizes Reimbursement for Materials and Supplies, Fixed Assets, and Contracted Services to Comply With the Mandated Activity. Therefore, the Request for the Parameters and Guidelines Amendment Is Denied.

This state-mandated program requires county and city law enforcement agencies to electronically report to the DOJ, on an annual basis, data on all “stops” within their own jurisdiction. The requester wants to add a reimbursable activity to purchase hardware and declares that motor and bicycle units, which cannot be equipped with a mobile data computer, are also mandated to input and submit RIPA data from their stops and need to be equipped with cellular telephones to comply with the mandate.⁴²

The test claim statute and implementing regulations do not expressly mention the form of transportation a peace officer may use when detaining someone and making a reportable stop.⁴³ The test claim statute, however, applies to “all stops” by all county and city “peace officers” as defined in Penal Code sections 830 et seq.⁴⁴ who make “stops:”

⁴¹ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, pages 1, 2.

⁴² Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, page 3.

⁴³ California Code of Regulations, title 11, section 999.224 et seq.

⁴⁴ Penal Code section 830 states, “Any person who comes within the provisions of this chapter and who otherwise meets all standards imposed by law on a peace officer is a peace officer, and notwithstanding any other provision of law, no person other than those designated in this chapter is a peace officer.” And Penal Code section 830.1(a) broadly defines peace officers to include “any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions, any police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city” whose “authority extends to any place in the state as follows:

- (1) As to any offense committed or which there is probable cause to believe has been committed within the political subdivision that employs the peace officer or in which the peace officer serves.
- (2) Where the peace officer has the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety

(g)(1) For purposes of this section, “peace officer,” as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, is limited to members of the California Highway Patrol, a city or county law enforcement agency, and California state or university educational institutions. “Peace officer,” as used in this section, does not include probation officers and officers in a custodial setting.

(2) For purposes of this section, “stop” means any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person’s body or property in the person’s possession or control.⁴⁵

Based on the broad definitions of “peace officers” and “stops” in the test claim statutes, the requester correctly concludes that city and county peace officers, whether traveling by vehicle, bicycle, or on foot, are mandated by the state to comply with this program when they make a stop. In addition, the Commission’s Test Claim Decision cites the DOJ regulatory materials that state that the mandate “may require up-front costs in technology investment to equip officers in the field with a laptop, tablet, or *smartphone*.”⁴⁶ Thus, the purchase of hardware, including smartphones to the extent necessary to comply with the mandate, is consistent with the Test Claim Decision.

However, as indicated below, the Parameters and Guidelines already authorize reimbursement for the costs to purchase hardware, including smartphones, one-time installation and testing of RIPA software on the smartphones, and contracts for cellular service.

As indicated in Section IV. of the Parameters and Guidelines, cities and counties are mandated by the state to electronically report to the Attorney General data on all “stops” within their jurisdiction. The Request for Parameters and Guidelines Amendment seeks to authorize reimbursement for the “cost of hardware purchase necessary to implement the mandated program,” or “Fixed Assets - Cost of hardware purchases.”⁴⁷ Attached to the Request for

agency, or person authorized by him or her to give consent, if the place is within a city, or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

(3) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.”

⁴⁵ Government Code section 12525.5, as amended by Statutes 2015, chapter 466 (AB 953) and Statutes 2017, chapter 328 (AB 1518). See also Exhibit X, Test Claim Decision, *Racial and Identity Profiling*, 18-TC-02, adopted May 22, 2020, page 16.

⁴⁶ Exhibit X, Test Claim Decision, *Racial and Identity Profiling*, 18-TC-02, adopted May 22, 2020, page 35 (emphasis added).

⁴⁷ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, pages 1, 2.

Parameters and Guidelines Amendment is a price quotation from Verizon dated October 2021 for new activation for six cell phones, totaling \$2,555.94.⁴⁸

However, the costs incurred to purchase hardware, such as smartphones, to comply with the mandate is already eligible for reimbursement under Section V. of the Parameters and Guidelines (Direct Costs), and smartphones may be claimed under either Section V.A.2., as “materials and supplies,” or Section V.A.4., as “fixed assets,” as stated below:

2. Materials and Supplies

Report the cost of materials and supplies 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.

¶ . . . ¶

4. Fixed Assets

Report the purchase price paid for fixed assets necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.⁴⁹

The State Controller’s Office Accounting Manual for Counties, as well as Government Accounting Standards both support this interpretation of the Parameters and Guidelines. The State Controller’s Accounting Manual for Counties classifies smartphones as “services and supplies.”⁵⁰

⁴⁸ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, pages 4.

⁴⁹ Exhibit X, Decision and Parameters and Guidelines, *Racial and Identity Profiling*, 18-TC-02, adopted September 25, 2020, page 20.

⁵⁰ Exhibit X, Excerpts from Office of the State Controller, Accounting Standards and Procedures for Counties, 2021 Edition, https://www.sco.ca.gov/Files-ARD-Local/asp_manual_2021_edition.pdf (accessed on December 1, 2022), page 102. See also Code of Federal Regulations, title 2, section 200.1 that defines “supplies” as: “all tangible personal property other than those described in the definition of equipment in this section. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life.” The same regulation defines computing device as: “machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic information.”

As an alternative, the Government Accounting Standards Board (GASB) website, which has definitions that also apply to cities, defines “capital asset,” (which is synonymous with “fixed asset”)⁵¹ broadly enough to encompass smartphones:

As used in this section, the term *capital assets* includes land, improvements to land, easements, buildings, building improvements, vehicles, machinery, equipment, works of art and historical treasures, infrastructure, and all other tangible or intangible assets that are used in operations and that have initial useful lives extending beyond a single reporting period.⁵²

This GASB definition comports with the “capital asset” definition in the State Controller’s Accounting Manual for Counties, which also defines capital assets broadly to include “machinery and equipment:”

Capital Assets. Assets including land, improvements to land, easements, buildings, building improvements, vehicles, machinery, equipment, works of art and historical treasures, infrastructure, and all other tangible or intangible assets that are used in operations and that have initial useful lives extending beyond a single reporting period.⁵³

And the following definition of “machinery and equipment” in the State Controller’s Manual is also broad enough to apply to smartphones:

Machinery and Equipment. Property that does not lose its identity when removed from its location and is not changed materially or consumed immediately—within one year—by use.⁵⁴

The State Controller’s Manual recognizes: “Many items are coded as both Services and Supplies and Capital Assets. The determination as to the proper account classification should be made by applying the capital asset policy.”⁵⁵

Accordingly, whether claimed under materials and supplies or fixed assets, the pro rata cost of smartphones used directly for the mandate may be claimed under Section V.A. of the Parameters and Guidelines. Therefore, the Request for Parameters and Guidelines Amendment to authorize reimbursement for the “cost of hardware purchase necessary to implement the mandated

⁵¹ Exhibit X, AccountingTools, *Capital Asset Definition*, <https://www.accountingtools.com/articles/capital-asset> (accessed on October 26, 2022), page 1, stating “A capital asset is also known as a fixed asset or as property, plant and equipment.”

⁵² Exhibit X, Government Accounting Standards Board, GASB Code, Section 1400.103.

⁵³ Exhibit X, Office of the State Controller, Accounting Standards and Procedures for Counties, 2021 Edition, https://www.sco.ca.gov/Files-ARD-Local/asp_manual_2021_edition.pdf (accessed on December 1, 2022), page 636.

⁵⁴ Exhibit X, Office of the State Controller, Accounting Standards and Procedures for Counties, 2021 Edition, https://www.sco.ca.gov/Files-ARD-Local/asp_manual_2021_edition.pdf (accessed on December 1, 2022), page 681.

⁵⁵ Exhibit X, Office of the State Controller, Accounting Standards and Procedures for Counties, 2021 Edition, https://www.sco.ca.gov/Files-ARD-Local/asp_manual_2021_edition.pdf, page 99.

program,” or “Fixed Assets - Cost of hardware purchases,” including the purchase of smartphones and service, is denied as unnecessary.

In addition, cellular service is a contracted activity that may be claimed under Section V.A.3. of the Parameters and Guidelines, which states:

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.⁵⁶

Attached to the declaration is a work order, signed in April 2021, for “Enhancement to SafetyNet Mobile Client to capture data required by Assembly Bill 953 Updates.”⁵⁷ The work order provides for Development, Installation, Configuration, Testing, Documentation, and Project Management for \$7,500.00.”⁵⁸ This supports the One-Time Installation and Testing of the RIPA Software already provided for in Section IV.A.2. of the Parameters and Guidelines.⁵⁹ However, software development has not been approved as a mandated or reasonably necessary activity in the Test Claim Decision or Parameters and Guidelines.

In sum, the Commission finds that Section V. of the Parameters and Guidelines already authorizes reimbursement for the costs incurred to comply with the reimbursable activities, including the costs for hardware and contracted services to the extent necessary to comply with the mandated activities. Therefore, the requested amendment is not necessary and the request is denied. However, Section IV.B.3(a), is amended to add the following clarifying language: “In-car mobile data computers, laptops, tablets, or smartphones may be used to comply with this activity.” As an amendment that merely clarifies the existing Parameters and Guidelines, this amendment is effective beginning November 7, 2017, the original effective date of the Parameters and Guidelines.⁶⁰

⁵⁶ Exhibit X, Decision and Parameters and Guidelines, *Racial and Identity Profiling*, 18-TC-02, adopted September 25, 2020, page 20.

⁵⁷ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, pages 3-8.

⁵⁸ Exhibit A, Request for Parameters and Guidelines Amendment, filed December 10, 2021, pages 3-8.

⁵⁹ Exhibit X, Decision and Parameters and Guidelines, *Racial and Identity Profiling*, 18-TC-02, adopted September 25, 2020, page 15.

⁶⁰ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

B. A Citation to Federal Law in Section V.B., of the Parameters and Guidelines Addressing Indirect Cost Rates, Is Corrected.

The Commission is also updating Section V.B., Indirect Cost Rates, to correct the citation to the Federal law on indirect costs from the OMB Circular A-87, which was superseded on December 26, 2013, by title 2 of the Code of Federal Regulations (CFR), Chapter I and Chapter II, Part 200 et seq., as follows (changes in underline and strikeout):

B. 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 2 Code of Federal Regulations (CFR) part 225 (Office of Management and Budget (OMB) Circular A-87)~~ in accordance with the Office of Management and Budget Circular 2 CFR, Chapter I and Chapter II, Part 200 et al.. Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs ~~(as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al. part 225, appendices A and B (OMB Circular A-87 attachments A & B))~~ and the indirect costs shall exclude capital expenditures and unallowable costs ~~(as defined and described in 2 CFR, Chapter I and Chapter II, Part 200, et al. part 225, appendices A and B (OMB Circular A-87 attachments A & B))~~. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

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 & B-2 CFR, Chapter I and Chapter II, Part 200 et al.)~~ 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 that the total amount of 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 & B-2 CFR, Chapter I and Chapter II, Part 200 et al.)~~ 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 of allowable indirect costs bears to the base selected.

The Office of Management and Budget ("OMB") adopted 2 CFR Part 200 on December 26, 2013, which is referred to as the "Super Circular," to supersede and streamline requirements from several previous OMB Circulars, including OMB Circular A-87. The provisions within OMB Circular A-87 existed prior to the establishment of Part 200 of title 2 of the CFR, have been incorporated into Part 200 of title 2, and have not substantively changed.⁶¹ Moreover, the Claiming Instructions issued by the State Controller's Office for this program refer to "2 CFR, Chapter I and Chapter II, Part 200 et al.," and not to OMB Circular A-87.⁶² Thus, the amendment simply corrects the citation to this federal law, which has been in place before the period of reimbursement for this program.

The courts have recognized that "a statute that merely clarifies existing law, rather than changes the law, can properly be applied to transactions predating the clarification since the clarification describes what the law has always been."⁶³ Thus, the correction to the citation for indirect costs applies to the entire period of reimbursement, beginning November 7, 2017.⁶⁴

V. Conclusion

Based on the foregoing analysis, the Commission denies the Request for Parameters and Guidelines Amendment. However, the Commission adds, effective November 7, 2017, the following clarifying language to Section IV.B.3(a) of the Parameters and Guidelines: "In-car mobile data computers, laptops, tablets, or smartphones may be used to comply with this activity." The Commission also corrects the citations to Federal law in Section V.B. of the Parameters and Guidelines, consistent with the Claiming Instructions for this program, as specified above.

PARAMETERS AND GUIDELINES⁶⁵

Government Code Section 12525.5, as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518)

⁶¹ Code of Federal Regulations, title 2, section 1.215.

⁶² Exhibit X, State Controller's Office, State-Mandated Costs Claiming Instructions No. 2020-03 Racial and Identity Profiling – Program No. 375, Revised October 1, 2022, page 9.

⁶³ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

⁶⁴ Since this amendment does not change the Parameters and Guidelines, but merely clarifies a citation, Government Code section 17557(d)(2)(H), which addresses the period of reimbursement for *changes* to boilerplate language, does not apply.

⁶⁵ Please note that the Decision and Parameters and Guidelines is a single document and must be read as a whole. It is not intended to be separated and should be read in its entirety.

California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229 as added by Register 2017, No. 46⁶⁶

Racial and Identity Profiling

18-TC-02

Reimbursement for this program begins November 7, 2017.

I. SUMMARY OF THE MANDATE

On May 22, 2020, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and California Code of Regulations, title 11, sections 999.224- 999.229 (Register 2017, No. 46), constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning November 7, 2017, on city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting) to electronically report to the Attorney General, on an annual basis, data on all “stops” within their own jurisdiction, conducted by the agency’s peace officers; and on those city and county law enforcement agencies that contract for peace officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions.

II. ELIGIBLE CLAIMANTS

Any city, county, city and county is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the city or county’s law enforcement agencies that meet the following criteria:

- Employ peace officers (other than probation officers and officers in a custodial setting) to perform the requirements of the test claim statute and regulations for stops within their own jurisdictions; *or*
- Contract for peace officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions.

K-12 school districts and community college districts are not eligible to claim for this program. Cities and counties may not claim the costs of their peace officer employees that are incurred while they are assigned out to work for other government or private entities based on a contract or memorandum of understanding.

PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on June 14, 2019, establishing eligibility for reimbursement for the 2017-2018 fiscal year, beginning July 1, 2017. However, the regulations adopted by DOJ to implement section 12525.5 (Cal. Code Regs., tit. 11, §§ 999.224 through

⁶⁶ Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

999.229, Register 2017, No. 46) became operative and effective on November 7, 2017,⁶⁷ establishing the period of reimbursement beginning November 7, 2017.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. 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(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

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. 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, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), 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 2015.5. 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.

⁶⁷ The Legislature, in Government Code section 12525.5(a)(2) and (e), delayed local agency compliance with the program to a date after the regulations were required to be adopted.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

A. One-Time Activities

1. One-time training per peace officer employee and supervisor assigned to perform the reimbursable activities listed in Section IV.B. of these Parameters and Guidelines.
2. One-time installation and testing of software necessary to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.

B. Ongoing Activities

1. Identification of the peace officers required to report stops, and maintenance of a system to match individual officers to their Officer I.D. number.
 - a. On January 1 of each year until the agency begins reporting data to the DOJ, each reporting agency shall count the number of peace officers it employs who are required to report stops to determine the date that agency must start collecting stop data and reporting to the DOJ pursuant to Government Code section 12525.5(a)(1)(2). (Cal. Code Regs, tit. 11, § 999.227(a)(8) [Register 2017, No. 46].)
 - b. Reporting agencies shall create the Officer's I.D. Number for each officer required to report stops. (Cal. Code Regs, tit. 11, § 999.227(a)(11) [Register 2017, No. 46].)
 - c. Reporting agencies shall maintain a system to match an individual officer required to report stops to his or her Officer's I.D. Number. (Cal. Code Regs, tit. 11, § 999.227(a)(11) [Register 2017, No. 46].)
2. Collection and reporting data on all stops, as defined,⁶⁸ conducted by that agency's peace officers for the preceding calendar year in accordance with sections 999.226(a) and 999.227 of the regulations.
 - a. Begin collecting and reporting data on all stops on or before the following dates (Gov. Code, § 12525.5(a)(2), Stats. 2017, ch. 328):
 - (1) An agency that employs 1,000 or more peace officers shall begin collecting data on or before July 1, 2018, and shall issue its first round of reports on or before April 1, 2019.
 - (2) An agency that employs 667 or more but less than 1,000 peace officers shall begin collecting data on or before January 1, 2019, and shall issue its first round of reports on or before April 1, 2020.

⁶⁸ See Government Code section 12525.5(g)(2) (Stats.2015, ch.466) and California Code of Regulations, title 11, section 999.224(a)(14) (Register 2017, No. 46), which define a "stop" as "any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control;" section 999.227(b) and (c) for interactions that are not reportable as "stops;" and section 999.227(d) for peace officer interactions that are reportable only if the officer takes additional specified actions.

- (3) An agency that employs 334 or more but less than 667 peace officers shall begin collecting data on or before January 1, 2021, and shall issue its first round of reports on or before April 1, 2022.
- (4) An agency that employs one or more but less than 334 peace officers shall begin collecting data on or before January 1, 2022, and shall issue its first round of reports on or before April 1, 2023.

The following are **not** reportable:

- Data elements described in section 999.226(a) for passengers in vehicles subject to a stop who have not been observed or suspected of violating the law, or who have not been subjected to the officer’s actions listed in section 999.226(a)(12)(A), excluding “Vehicle impounded” and “None.”⁶⁹
- Stops made during public safety mass evacuations.⁷⁰
- Stops during an active shooter incident.⁷¹
- Stops that occur during or as a result of routine security screenings required of all persons to enter a building or special event, including metal detector screenings, including any secondary searches that result from the screening.⁷²
- The following interactions are **not** reportable unless a person is detained based upon individualized suspicion or personal characteristics, or the officer engages in the actions described in the data values in section 999.226(a)(12)(A)(1)-(22): Interactions during: traffic control of vehicles due to a traffic accident or emergency situation that requires that vehicles are stopped for public safety purposes; any type of crowd control in which pedestrians are made to remain in a location or routed to a different location for public safety purposes; interactions during which persons are detained at a residence so that the officer may check for proof of age for purposes of investigating underage drinking; and checkpoints and roadblocks in which an officer detains a person as the result of a blanket regulatory activity or neutral formula that is not based on individualized suspicion or personal characteristics.⁷³
- Interactions that take place with a person in his or her residence who is the subject of a warrant or search condition.⁷⁴

⁶⁹ California Code of Regulations, title 11, section 999.227(b) (Register 2017, No. 46).

⁷⁰ California Code of Regulations, title 11, section 999.227(c)(1) (Register 2017, No. 46).

⁷¹ California Code of Regulations, title 11, section 999.227(c)(2) (Register 2017, No. 46).

⁷² California Code of Regulations, title 11, section 999.227(c)(3) (Register 2017, No. 46).

⁷³ California Code of Regulations, title 11, section 999.227(d)(1).

⁷⁴ California Code of Regulations, title 11, section 999.227(d)(2) (Register 2017, No. 46).

- Interactions that take place with a person in his or her residence who is the subject of home detention or house arrest while an officer is on home detention or house arrest assignment.⁷⁵
 - Stops in a custodial setting.⁷⁶
 - Stops that occur while the officer is off-duty.⁷⁷
- b. The agency’s peace officers shall collect the following required categories of stop data, and all applicable “data elements,” “data values,” and narrative explanatory fields described in section 999.226(a) for every person stopped, and in accordance with section 999.227(a)(4)-(6), (b) and (d) of the regulations, and complete all stop reports for stops made during the officer’s shift by the end of the officer’s shift, or if exigent circumstances preclude doing so, as soon as practicable: (Gov. Code, §12525.5(b), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, §§999.226(a), 999.227(a)(1)(2)(4)(5)(6)(9), (b) and (d) [Register 2017, No. 46].)
- (1) “ORI number,” which is “the data element that refers to the reporting agency’s Originating Agency Identifier, a unique identification code number assigned by the Federal Bureau of Investigation.” (Cal Code Regs., tit. 11, § 999.226(a)(1) [Register 2017, No. 46].)
 - (2) “Date, Time, and Duration of Stop.” (Gov. Code, §12525.5(b)(1), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(2) [Register 2017, No. 46].)
 - (3) “Location of Stop.” (Gov. Code, §12525.5(b)(1), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(3) [Register 2017, No. 46].)
 - (4) “Perceived Race or Ethnicity of Person Stopped.” (Gov. Code, § 12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(4) [Register 2017, No. 46].)
 - (5) “Perceived Gender of Person Stopped.” (Gov. Code, §12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(5) [Register 2017, No. 46].)
 - (6) “Person Stopped Perceived to be LGBT.” (Cal Code Regs., tit. 11, § 999.226(a)(6) [Register 2017, No. 46].)
 - (7) “Perceived Age of Person Stopped.” (Gov. Code, §12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(7) [Register 2017, No. 46].)

⁷⁵ California Code of Regulations, title 11, section 999.227(d)(3) (Register 2017, No. 46).

⁷⁶ California Code of Regulations, title 11, section 999.225(c) (Register 2017, No. 46).

⁷⁷ Exhibit A, Test Claim Decision, page 6; Exhibit F, Final Statement of Reasons, Proposed Regulations, Title 11, Sections 999.224-999.229, pages 12-13, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-fsor-revised-110817.pdf> (accessed on November 8, 2019).

- (8) “Person Stopped Has Limited or No English Fluency.” (Cal Code Regs, tit. 11, § 999.226(a)(8) [Register 2017, No. 46].)
 - (9) “Perceived or Known Disability of Person Stopped.” (Cal Code Regs., tit. 11, § 999.226(a)(9) [Register 2017, No. 46].)
 - (10) “Reason for Stop.” (Gov. Code, §12525.5(b)(2), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(10) [Register 2017, No. 46].)
 - (11) “Stop Made in Response to a Call for Service.” (Cal Code Regs., tit. 11, § 999.226(a)(11) [Register 2017, No. 46].)
 - (12) “Actions Taken by Officer During Stop.” (Gov. Code, §12525.5(b)(7), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(12) [Register 2017, No. 46].)
 - (13) “Result of Stop.” (Gov. Code, §12525.5(b)(3)(4)(5), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(13) [Register 2017, No. 46].)
 - (14) “Officer's Identification (I.D.) Number.” (Cal Code Regs., tit. 11, § 999.226(a)(14) [Register 2017, No. 46].)
 - (15) “Officer's Years of Experience.” (Cal Code Regs., tit. 11, § 999.226(a)(15) [Register 2017, No. 46].)
 - (16) “Type of Assignment of Officer.” (Cal Code Regs., tit. 11, § 999.226(a)(16) [Register 2017, No. 46].)
- c. The following additional data values shall be reported for stops (as defined in section 999.227(e)(3) of the regulations) at a K-12 school: the name of the school where the stop took place; indicate if the stop is of a student, whether there is a perceived disability related to hyperactivity or impulsive behavior of the student, the possible conduct warranting discipline under the Education Code, whether there was an admission or written statement obtained from the student, whether the student is suspected of violating school policy, and whether the student was referred to a school administrator or counselor. (Cal Code Regs., tit. 11, § 999.227(e)(3)(4) [Register 2017, No. 46].)

3. Electronic submission of data to DOJ and retention of stop data collected

- a. Submit all required stop data to the system developed by the DOJ in electronic format that complies with the DOJ interface specifications via one of the three approved submission methods: (1) a web-browser based application developed by the DOJ; (2) a system-to-system web service; and (3) a secured file transfer protocol. (Cal Code Regs., tit. 11, § 999.228(a), (b) [Register 2017, No. 46].) In-car mobile data computers, laptops, tablets, or smartphones may be used to comply with this activity.
- b. Authorize and remove users to the system as necessary. Automated systems handling stop data and the information derived therein shall be secure from unauthorized access, alteration, deletion or release. (Cal Code Regs., tit. 11, § 999.228(e) [Register 2017, No. 46].)
- c. Each reporting agency, *except* those agencies that report stop data via the DOJ web-browser based application, shall keep a record of its source data for three years and to

make it available for inspection by DOJ. (Cal Code Regs., tit. 11, § 999.228(h) [Register 2017, No. 46].)

4. Audits and validation of data collected

- a. Ensure that the technical specifications for data values are consistent with the regulations and follow the data dictionary prepared by DOJ. (Cal Code Regs., tit. 11, § 999.224(a)(5) [Register 2017, No. 46].)
 - b. Ensure that all data elements, data values, and narrative explanatory fields conform to the regulations and correct any errors in the data submission process through the DOJ's error resolution process. (Cal Code Regs., tit. 11, § 999.229(b) [Register 2017, No. 46].)
 - c. Agencies submitting records via the system-to-system web service or the secure file transfer protocol shall include a unique stop record number for each stop, so that DOJ can use the record number to relay information on errors when necessary. (Cal Code Regs., tit. 11, § 999.229(c) [Register 2017, No. 46].)
5. For stop data collected, ensure that the name, address, social security number, or other unique personally identifiable information of the individual stopped, searched, or subjected to property seizure, and the badge number or other unique identifying information of the peace officer involved, is not transmitted to the Attorney General in an open text field. (Gov. Code, § 12525.5, Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.228(d) [Register 2017, No. 46].)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. 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. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies 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.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

B. 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 2 Code of Federal Regulations (CFR) part 225 (Office of Management and Budget (OMB) Circular A-87) in accordance with the Office of Management and Budget Circular 2 CFR, Chapter I and Chapter II, Part 200 et al.~~ Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in ~~2 CFR, Chapter I and Chapter II, Part 200 et al. part 225, appendices A and B (OMB Circular A-87 attachments A & B)~~ and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in ~~2 CFR, Chapter I and Chapter II, Part 200, et al. part 225, appendices A and B (OMB Circular A-87 attachments A & B)~~). However, unallowable costs

must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

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 & B-2~~ CFR, Chapter I and Chapter II, Part 200 et al.) 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 that the total amount of 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 & B-2~~ CFR, Chapter I and Chapter II, Part 200 et al.) 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 of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter⁷⁸ 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. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. 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 REVENUES AND REIMBURSEMENTS

Any offsetting revenue 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 from any source, including but not limited

⁷⁸ This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

to, service fees collected, federal funds, and other applicable state funds, shall be identified and deducted from any claim submitted for reimbursement.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local governments in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the eligible claimants to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of an eligible claimant, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. 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(d), and California Code of Regulations, title 2, section 1183.17.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The decisions adopted for the test claim and parameters and guidelines are legally binding on all parties and interested parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

DECLARATION OF SERVICE BY EMAIL

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 95814.

On December 15, 2022, I served the:

- **Draft Proposed Decision and Parameters and Guidelines Amendment, Schedule for Comments, and Notice of Hearing issued December 15, 2022**

Racial and Identity Profiling, 21-PGA-01

Government Code Section 12525.5, as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518); California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229, as added by Register 2017, No. 46¹

City of Claremont, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 15, 2022 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
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¹ Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/10/22

Claim Number: 21-PGA-01

Matter: Racial and Identity Profiling

Requester: City of Claremont

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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