

TITLE 2. ADMINISTRATION  
DIVISION 2. FINANCIAL OPERATIONS  
CHAPTER 2.5. COMMISSION ON STATE MANDATES

**NOTICE OF PROPOSED RULEMAKING**

The Commission on State Mandates (Commission) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

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

**WRITTEN COMMENT PERIOD**

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

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

**AUTHORITY AND REFERENCE**

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

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

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

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

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

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

#### Anticipated Benefits of the Proposed Regulation

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

#### Consistency and Compatibility with Existing State Regulations

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

### **DESCRIPTION OF PROPOSED REGULATIONS**

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

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

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

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

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

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

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

### Section 1183.1. Test Claim Filing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **VI. Minor, Nonsubstantive Consistency Edits and Corrections**

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

#### Update Usage and Increase Clarity

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

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

#### Correct Minor Errors

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

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

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

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

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

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

**DISCLOSURES REGARDING THE PROPOSED ACTION**

The Commission has made the following initial determinations:

Mandate on local agencies and school district:	None
Cost or savings to any state agency:	None
Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:	None
Other non-discretionary cost or savings imposed on local agencies:	None
Cost or savings in federal funding to the state:	None
Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:	None
Significant effect on housing costs:	None
Cost impacts on a representative private person or business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.	

Results of the Economic Impact Analysis/Assessment

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

Small Business Determination

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

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5(a)(13), the Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which

the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

### **CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

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(jill.magee@csm.ca.gov)

The backup contact person for these inquiries is:

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(heidi.palchik@csm.ca.gov)

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information on which the rulemaking is based to Ms. Jill Magee (see contact information above) or download it from the Commission's website at <http://www.csm.ca.gov/rulemaking.php>.

### **AVAILABILITY OF STATEMENT OF REASONS, AND TEXT OF PROPOSED REGULATIONS**

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Commission order to initiate rulemaking proceedings.

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

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT AND DOCUMENTS RELIED ON**

After considering all timely and relevant comments received, and holding a public hearing, if necessary, the Commission may adopt the proposed regulations substantially as described in this notice. If the Commission makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) and any

documents relied on available to the public for at least 15 days before the Commission adopts the regulations as revised. Please send requests for copies of any modified regulations or documents relied on to the attention of Ms. Jill Magee (see contact information above). The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons and any Documents Relied Upon may be obtained by contacting Ms. Jill Magee at the address, phone number, or email address listed above.

#### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Commission's website at <http://www.csm.ca.gov/rulemaking.php>.