

**ITEM 7**  
**ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING**  
**GENERAL CLEANUP PROVISIONS**

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

ARTICLES 1, 3, 4, 5, 6, 7, 8 AND 10

SECTIONS 1181.1; 1181.2; 1181.3; 1181.4; 1181.8; 1181.9; 1183.1; 1183.2; 1183.3; 1183.4;  
1183.6; 1183.7; 1183.8; 1183.9; 1183.10; 1183.11; 1183.12; 1183.13; 1183.14; 1183.15;  
1183.16; 1183.17; 1183.18; 1184.1; 1185.1; 1185.2; 1185.3; 1185.4; 1185.5; 1185.6; 1185.7;  
1185.8; 1185.9; 1186.2; 1186.4; 1186.6; 1186.7; 1187.1; 1187.2; 1187.3; 1187.4; 1187.6;  
1187.7; 1187.8, 1187.9, 1187.13; 1187.14; 1187.15; 1188.1, 1188.2, 1190.1, 1190.2, 1190.3, and  
1190.5

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

In the Matter of:  
Amendments to California Code of  
Regulations, Title 2, Division 2, Chapter 2.5,  
Articles 1, 3, 4, 5, 6, 7, 8, and 10

No. 19-01  
ORDER TO INITIATE RULEMAKING  
PROCEEDINGS  
*General Cleanup Provisions* (requiring  
electronic filing of all new filings and written  
material, streamlining the process for  
expedited parameters and guidelines,  
clarifying the standard of review for requests  
for reconsideration of adopted decisions on  
test claims and incorrect reduction claims,  
and to make numerous nonsubstantive  
changes to clarify the Commission’s  
regulations, improve consistency, eliminate  
duplicative language, and update authority  
and reference citations)

Pursuant to California Code of Regulations, title 2, section 1188.1, the Commission on State Mandates (Commission) hereby adopts this order to institute rulemaking proceedings in accordance with Government Code sections 11346.2, 11346.4, 11346.8, and 11346.9.

**PROPOSED REGULATORY ACTION.** The Commission proposes revised language, punctuation, and citations in Articles 1, 3, 4, 5, 6, 7, 8, and 10 of the California Code of Regulations, Title 2, Division 2, Chapter 2.5 with a proposed effective date of April 1, 2020.

**AUTHORITY AND REFERENCE.** Government Code section 17527(g) authorizes the Commission to adopt the proposed regulations. The purpose of this rulemaking is to require electronic filing for all new filings and written material except in cases of undue hardship, streamline the process for adopting expedited parameters and guidelines, clarify the standard of review for requests for reconsideration of adopted decisions on test claims and incorrect reduction claims, to make numerous nonsubstantive changes to clarify the Commission regulations, improve consistency, eliminate duplicative language, and update authority and reference citations.

**WRITTEN COMMENT PERIOD.** Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The Commission will only consider written comments received at the Commission’s office by 5:00 p.m. on September 23, 2019. Submit comments to:

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

Written comments may be submitted electronically via the Commission website "Drop Box" at:  
<http://www.csm.ca.gov/dropbox.php>

PUBLIC HEARING. The Commission will hold a hearing on September 27, 2019, if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than September 9, 2019.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Heather Halsey, Executive Director

CALIFORNIA CODE OF REGULATIONS

TITLE 2. ADMINISTRATION

DIVISION 2. FINANCIAL OPERATIONS

CHAPTER 2.5. COMMISSION ON STATE MANDATES

Article 1. General

§ 1181.1. Delegation of Certain Functions; Executive Director Appeals.

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

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

(c) A real party in interest to a matter may appeal to the Commission for review of the actions and decisions of the executive director on that matter.

(1) The appellant shall ~~submit~~file the appeal in writing within 10 days of first being served written notice of the executive director's action or decision.

(2) The appellant shall file and serve the appeal in accordance with section 1181.3 of these regulations.

(3) The appeal shall explain the basis for the appeal, state the action being requested of the Commission, and include all facts and materials the ~~applicant~~appellant believes are relevant to the appeal.

(4) The executive director shall schedule the appeal for hearing and vote by the Commission as soon as practicable following receipt of the appeal.

(5) Other parties may ~~submit~~file comments on an appeal in accordance with section 1181.3 of these regulations.

(6) The Commission shall determine whether to uphold the executive director's decision by a majority vote of the members present. The decision shall be final and not subject to reconsideration.

(7) The executive director shall notify the appellant in writing within 10 days of the Commission's decision.

(d) Nothing herein prohibits the executive director from delegating to subordinates as provided in Government Code section 18572.

Note: Authority cited: Sections 17527(g), 17530 and 17531, Government Code. Reference: Section 17530, Government Code; and *Redevelopment Agency v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188.

§ 1181.2. Definitions.

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

- 1 (a) "Affected state agency" means a state department or agency that is responsible, in whole or in  
2 part, for implementation, enforcement, or administration of any statutes or executive orders that  
3 are the subject of a matter.
- 4 (b) "Amendment" of a test claim means the addition of new allegations based on new statutes or  
5 executive orders to an existing test claim. The addition or substitution of parties and supporting  
6 declarations based on the original statutes or executive orders alleged in an existing test claim is  
7 not an "amendment."
- 8 (c) "Claimant" means the local agency or school district filing a test claim or incorrect reduction  
9 claim.
- 10 (d) "Commission staff" means the executive director, legal counsel, or other Commission  
11 employee authorized by the Commission or the executive director to represent the Commission  
12 on a specific claim or request, or to receive filings at the Commission office.
- 13 (e) "Completed" means that all general and specific requirements for a new filing ~~for a test claim,~~  
14 ~~proposed parameters and guidelines, request to amend parameters and guidelines, request for~~  
15 ~~reconsideration, request to review claiming instructions, incorrect reduction claim or request for~~  
16 ~~mandate redetermination~~ have been satisfied by the claimant or requester.
- 17 (f) "Filing date" means the date received at the Commission's office during normal business  
18 hours by any of the methods described in section 1181.3 of these regulations.
- 19 (g) "Incorrect reduction claim" means a claim alleging that the Office of State Controller  
20 incorrectly reduced the reimbursement claim of a local agency or school district.
- 21 (h) "Informational hearing" means any hearing designed to gather and assess information to  
22 assist the Commission in formulating policies, informing the public of Commission actions, or  
23 obtaining public comment and opinion.
- 24 (i) "Interested party" means a local agency, school district, or state agency, with a beneficial  
25 interest in the matter.
- 26 (j) "Interested person" means any individual, local agency, school district, state agency,  
27 corporation, partnership, association, or other type of entity, who has an interest in a matter  
28 before the Commission, but is not a party or interested party with respect to that matter.
- 29 (k) "New filing" means a test claim, incorrect reduction claim, request to amend parameters and  
30 guidelines, joint request for reasonable reimbursement methodology and statewide estimate of  
31 costs, request for review of claiming instructions, request for removal or inclusion of a program  
32 in the State Mandates Apportionment System, request for review of the apportionment or base  
33 year entitlement of a program in the State Mandates Apportionment System, ~~or~~ request for  
34 mandate redetermination, or a legislatively determined mandate.
- 35 (l) "Party" includes a party's representative of record who is expressly authorized in writing to  
36 act on the party's behalf. Party means the following for each matter as specified below:
- 37 (1) "Party to a Test Claim" means the test claimant, the Department of Finance, and other  
38 affected state agencies.
- 39 (2) "Party to an Incorrect Reduction Claim" means the claimant and the Office of State  
40 Controller.

- 1 (3) "Party to a Request to Amend Parameters and Guidelines" means the requester, the  
2 Department of Finance, the Office of State Controller, affected state and local agencies, and  
3 affected school districts.
- 4 (4) "Party to a Joint Request for Reasonable Reimbursement Methodology" and "Party to a  
5 Jointly Proposed Request for Early Termination of Reasonable Reimbursement Methodology"  
6 means the test claimant and the Department of Finance.
- 7 (5) "Party to a Request for Review of Claiming Instructions" means the requester and the Office  
8 of State Controller.
- 9 (6) "Party to a Request for Removal or Inclusion in State Mandates Apportionment System" and  
10 "Party to a Request for Review of the Apportionment or Base Year Entitlement of a Program in  
11 the State Mandates Apportionment System" means the requester, the Department of Finance, and  
12 the Office of State Controller.
- 13 (7) "Party to a Request for Mandate Redetermination" means the requester, the Department of  
14 Finance, the Office of State Controller, affected state and local agencies, and affected school  
15 districts.
- 16 (m) "Real Party in Interest" means any person or entity whose interest will be directly affected  
17 by the resolution of the matter.
- 18 (n) "Rulemaking proceeding" means any hearing designed to adopt, amend, or repeal any rule,  
19 regulation, or standard of general application that implements, interprets, or makes specific any  
20 provision of Title 2, Division 4, Part 7, beginning with Government Code section 17500 or any  
21 other statute enforced or administered by the Commission.
- 22 (o) "Statewide cost estimate" means the approximate sum of money that local agencies or school  
23 districts may have incurred to implement a state-mandated program or any increased level of  
24 service of an existing mandated program. A statewide cost estimate ~~submitted~~prepared by a test  
25 claimant pursuant to Government Code section 17553(b)(1)(E) shall be an estimate of the first  
26 full fiscal year of actual or estimated costs based on the statutes and executive orders alleged in a  
27 test claim, ~~except as provided in Government Code section 17557.1(a).~~ In adopting a statewide  
28 cost estimate adopted by the Commission pursuant to Government Code section 17553(a), which  
29 shall be an estimate based on the Commission's determination of a test claim for the initial  
30 period of reimbursement to be reported to the Legislature, the Commission may consider the  
31 statewide cost estimate prepared by the test claimant, the initial reimbursement claim data, and  
32 other relevant information regarding potential mandated local costs, as applicable.
- 33 (p) "Statewide estimate of costs" is based on a joint reasonable reimbursement methodology  
34 proposed by a test claimant and the Department of Finance, pursuant to Government Code  
35 section 17557.1, that is adopted by the Commission, and reported to the Legislature pursuant to  
36 Government Code section 17557.2.
- 37 (q) "Subsequent change in law" pursuant to Government Code 17570 means a change in law that  
38 requires a finding that an incurred cost is a cost mandated by the state, as defined by Government  
39 Code section 17514, or is not a cost mandated by the state pursuant to Government Code section  
40 17556, or a change in mandates law. Amendments to article XIII B, section 6 of the California  
41 Constitution that were approved by the voters on November 2, 2004 and changes in the statutes  
42 or executive orders that impose new state-mandated activities and require a finding pursuant to  
43 Government Code section 17551(a) are not a "subsequent change in law."

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

3 (s) "Test claim" means the first claim filed with the Commission alleging that a particular statute  
4 or executive order imposes costs mandated by the state pursuant to Government Code section  
5 17521 and also includes a claim filed on a legislatively determined mandate pursuant to  
6 Government Code section 17574(c). The test claim procedure functions similarly to a class  
7 action and has been established to expeditiously resolve disputes affecting multiple agencies.

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

11 Note: Authority cited: Sections 17527(g), 17553(a) and 17570(d), Government Code. Reference:  
12 Sections 11123, 17516-17521, 17527(c), 17529, 17530, 17531, 17551, 17553, 17555, 17557,  
13 17557.1, 17557.2, 17558, 17558.5, 17558.7, 17558.8, 17559, 17561, 17561.5, 17570, 17572,  
14 17573, 17600 and 17612, Government Code; *Redevelopment Agency v. Commission on State*  
15 *Mandates* (1996) 43 Cal.App.4th 1188; and *City of San Jose v. State of California* (1996) 45  
16 Cal.App.4th 1802.

17 **§ 1181.3. Certification, Filing, and Service of Written Materials and New Filings.**

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

23 (b) Documents filed with the Commission shall not contain personal identifying information that  
24 violates state or federal privacy laws, including, but not limited to California Civil Code section  
25 1798 et seq.

26 ~~(c) Filing and Service. Unless otherwise provided in this chapter, new~~ New filings and written  
27 materials may be filed ~~electronically or by hard copy~~ as described in this subdivision. ~~If filed by~~  
28 ~~hard copy, the filer shall simultaneously serve all written material in accordance with subdivision~~  
29 ~~(b) of this regulation. Filing is complete upon receipt by the Commission. Filings shall not~~  
30 ~~contain personal identifying information that violates state or federal privacy laws, including, but~~  
31 ~~not limited to the provisions of California Civil Code section 1798 et seq. New filings and~~  
32 ~~written materials may be filed by any of the following methods:~~

33 (1) E-Filing. Except as provided in subdivision (c)(2) of this section, all new filings and written  
34 materials shall be electronically filed (or e-filed) with the Commission. File the original by saving  
35 by filing the signed original document in an unlocked PDF file and submitting it via the  
36 Commission's e-filing system, available on the Commission's website. Documents e-filed with  
37 the Commission must shall be in a legible and searchable format using a "true PDF" (i.e.,  
38 documents digitally created in PDF, converted to PDF or printed to PDF) or optical character  
39 recognition (OCR) function, as necessary, that allows Commission staff to electronically date  
40 stamp the document to verify date of filing, and to append additional pages for posting on the  
41 Commission's web-site with a proof of service for e-service by the Commission, in lieu of the  
42 filer serving the document to the entire mailing list for the matter. E-filed documents should shall  
43 be saved, converted, or printed to PDF and filed in their original, searchable form, but the

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

18 ~~(A) By providing an e-mail address for the mailing list for a matter, a person consents to e-mail~~  
19 ~~service for that matter.~~

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

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

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

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

1 Commission staff shall notify all persons on the mailing list prepared pursuant to section 1181.4  
2 of these regulations, of the availability of those filings on the Commission's website when  
3 Commission staff ~~sends~~issues its notice of complete filing to the ~~filing party~~filer.

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

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

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

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

15 ~~(3) By overnight delivery. Submit the unbound original and seven copies to the Commission.~~

16 ~~(4) By personal service. Hand the unbound original and seven copies to Commission staff.~~

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

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

28 **§ 1181.4. Mailing Lists and Numbering of Matters.**

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

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

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

40 (1) Test Claim (TC)

- 1 (2) Incorrect Reduction Claim (I)
- 2 (3) Request to Amend Parameters and Guidelines (PGA)
- 3 (4) Joint Request for Reasonable Reimbursement Methodology and Statewide Estimate of Costs
- 4 (RRM)
- 5 (5) Request for Review of Claiming Instructions (RCI)
- 6 (6) Request for Removal, ~~or Inclusion,~~ or Review of the Apportionment or Base Year
- 7 Entitlement of a Program in State Mandates Apportionment System (SMAS)
- 8 (7) Joint Request for Legislatively Determined Mandate (LDM)
- 9 (8) Request for Mandate Redetermination (MR)

10 Note: Authority cited: Sections 17527(g), 17553(a), 17570(d) and 11104.5, Government Code.  
 11 Reference: Sections 17530, 17551, 17557, 17557.1, 17571, 17557.2, 17570, 17573(b), 17573(g),  
 12 17574(c) and 17615.1, Government Code.

13 **§ 1181.8. Commission Meeting Quorum and Voting Requirements.**

- 14 (a) A majority of the existing membership of the Commission shall constitute a quorum.
- 15 (b) All actions of the Commission, with the exception of requests to reconsider a prior final
- 16 decision as provided in section 1187.15, shall require the affirmative vote of at least a majority of
- 17 the existing membership of the Commission.

18 (c) In the case of a tie vote, the Commission may:

19 (1) Re-hear the ~~claim item~~ when the membership of the Commission changes or when an  
 20 abstaining member completes review of the administrative record; or

21 (2) For a “matter” as defined by 1187.1:

22 (~~2A~~) Assign the ~~claim matter~~ to a hearing panel or to a hearing officer, pursuant to section 1187.2  
 23 et seq., for hearing and preparation of a proposed decision for consideration by the Commission.  
 24 If the Commission assigns the ~~claim matter~~ to a hearing panel, the selection of the hearing panel  
 25 shall be by lot, or other means of random and impartial selection. A majority of the votes cast by  
 26 the members assigned to a hearing panel is required for the approval of a preliminary decision on  
 27 matters and applications for a finding of significant financial distress; or

28 (~~3B~~) Direct staff to prepare another proposed decision, based on an interpretation of the law and  
 29 evidence in the record, for consideration by the Commission.

30 (~~d~~) ~~A majority of the votes cast by those members assigned to a hearing panel is required for the~~  
 31 ~~approval of a preliminary decision on claims and applications for a finding of significant~~  
 32 ~~financial distress.~~

33 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
 34 17525, 17527(c) and 17532, Government Code; and Section 17000.6, Welfare and Institutions  
 35 Code.

36 **§ 1181.9. Commission Meeting Notice, Agenda, and Consent Calendar.**

37 (a) Time and distribution. Notices and agendas of meetings shall be given to all members, to all  
 38 parties and interested parties to proceedings on the agenda, and to all persons who request them

1 in writing. The notice and agenda shall be ~~provided~~issued no less than 10 days prior to the  
2 scheduled meeting.

3 (b) Agenda. The meeting agenda shall be prepared by the executive director and shall include  
4 any item proposed by any member, or the executive director.

5 (c) The agenda may include an item designated "the consent calendar."

6 (1) The consent calendar shall include those matters for which there is no known opposition by  
7 any of the parties or interested parties.

8 (2) At the request of any member, party or interested party, any matter shall be removed from the  
9 consent calendar and may be considered at the same meeting as a separate item of business.

10 (3) The chairperson may also remove any matter from a duly noticed meeting agenda and place it  
11 on the consent calendar, provided there is no objection from the parties, interested parties, any  
12 Commission member, or person present and wishing to comment on the matter.

13 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
14 11125, 11125.1, 17527(b), 17527(c) and 17530, Government Code.

### 15 **Article 3. Test Claims**

#### 16 **§ 1183.1. Test Claim Filing.**

17 (a) In order to obtain a mandate determination, a local agency or school district shall file a test  
18 claim with the Commission. A local agency or school district may file a test claim as follows:

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

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

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

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

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

29 (b) Claimants may agree to ~~submit~~file a test claim as a joint effort, as provided in section  
30 1183.1(g) of these regulations. Otherwise, the first claim filed on a statute or executive order by  
31 a similarly situated claimant is the test claim and no duplicate test claims will be accepted by the  
32 Commission. Other similarly situated affected agencies may participate in the process by  
33 submitting filing comments in writing on any agenda item as provided in section 1181.10 of these  
34 regulations, and may attend any Commission hearing on the test claim and provide written or  
35 oral comments to the Commission. Affected agencies that are not similarly situated, meaning  
36 that test claim statutes affect them differently, may file a test claim on the same statutes as the  
37 first claim, but must demonstrate how and why they are affected differently.

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

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

10 (e) A test claim, or amendment thereto, and accompanying documents shall be certified, filed,  
11 and served in accordance with section 1181.3 of these regulations. All representations of fact  
12 shall be supported by documentary or testimonial evidence, ~~submitted~~ in accordance with section  
13 1187.5 of these regulations.

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

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

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

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

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

26 (h) Any test claim, or portion of a test claim, that the Commission lacks jurisdiction to hear for  
27 any reason may be dismissed by the executive director with a written notice stating the reason for  
28 dismissal.

29 Note: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections  
30 17521, 17530, 17551, 17553, 17557(e), 17573, 17574, 24000, 24300.5, 26881, 26900, 26970,  
31 26972, 34852, 35034, 35035, 37209, 40805.5 and 56723, Government Code.

32 **§ 1183.2. Review of Test Claim.**

33 (a) Within 10 days of receipt of a completed test claim, or amendment thereto, Commission staff  
34 shall make a copy of the test claim or amendment available to those named on the mailing list  
35 prepared in accordance with section 1181.4 of these regulations and shall post it on the  
36 Commission's web-site.

37 (b) Written comments concerning the test claim shall be certified, filed, and served within 30  
38 days from the date the test claim or amendment is issued for comment and in accordance with  
39 section 1181.3 of these regulations.

40 (c) Content and Form. Written comments on the test claim shall contain the following  
41 documentary evidence, if applicable:

1 (1) If representations of fact are made, they shall be supported by documentary or testimonial  
2 evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations.

3 (2) A copy of relevant portions of state constitutional provisions, federal statutes, and executive  
4 orders, and a copy of administrative decisions and court decisions that may impact the alleged  
5 mandate, unless the authorities are also cited in the test claim. The specific statutes and chapters,  
6 articles, sections, regulatory registers, and page numbers ~~must~~ shall be identified. Published court  
7 decisions arising from state mandate determinations by the Board of Control and the  
8 Commission on State Mandates, article XIII B, section 6 of the California Constitution, and  
9 Government Code sections 17500 et seq., are exempt from the requirements of this subdivision.

10 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
11 17530 and 17553(a), Government Code.

12 **§ 1183.3. Claimant's Rebuttal.**

13 (a) Written rebuttals to written comments concerning a test claim may be filed, and shall be  
14 certified, filed, and served in accordance with section 1181.3 of these regulations within 30 days  
15 of service of the written comments.

16 (b) Content and Form.

17 (1) If representations of fact are made, they shall be supported by documentary or testimonial  
18 evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations.

19 (2) Include a copy of relevant portions of state constitutional provisions, federal statutes, and  
20 executive orders, and a copy of administrative decisions and court decisions that are cited in the  
21 rebuttal, unless the authorities are also cited in the test claim or any opposition thereto. Published  
22 court decisions arising from state mandate determinations by the Board of Control and the  
23 Commission on State Mandates, article XIII B, section 6 of the California Constitution, and  
24 Government Code sections 17500 et seq., are exempt from the requirement to include ~~submit~~ a  
25 copy. The specific statutes and chapters, articles, sections, regulatory registers, and page  
26 numbers of the authorities shall be identified in the written rebuttal.

27 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
28 17530 and 17553(a), Government Code.

29 **§ 1183.4. Claimant's Motion to Consolidate or Sever Test Claims.**

30 Within 30 days of the filing date of a test claim deemed complete, a claimant may file a motion  
31 with the executive director to consolidate part or all of any test claim with another test claim, or  
32 to sever any part of any test claim, if necessary to ensure the complete, fair, or timely  
33 consideration of any test claim.

34 (a) Any motion to consolidate or to sever shall be certified, filed, and served in accordance with  
35 section 1181.3 of these regulations. If written representations of fact are made, they shall be  
36 supported by documentary or testimonial evidence, ~~submitted~~ in accordance with section 1187.5  
37 of these regulations.

38 (b) Within 30 days after receipt of a motion to consolidate or sever, the executive director may  
39 consolidate or sever any test claim.

40 Note: Authority cited: Section 17527(g) and 17553(a), Government Code. Reference: Sections  
41 17530, 17553 and 17554, Government Code.

1 **§ 1183.6. Review of Completed Test Claim and Preparation of Proposed Decision.**

2 (a) Before the hearing on the test claim, Commission staff shall prepare a proposed decision for  
3 the test claim, which shall include but not be limited to a review of the written comments filed.  
4 The proposed decision shall describe and analyze the test claim to assist the Commission in  
5 determining whether the alleged statutes or executive orders contain a reimbursable state-  
6 mandated program under article XIII B, section 6 of the California Constitution.

7 (b) At least eight weeks before the hearing, or at a time required by the executive director or  
8 stipulated to by the parties, Commission staff shall prepare a draft proposed decision and  
9 distribute it to the parties, interested parties, and those on the mailing list described in section  
10 1181.3 of these regulations, and shall post it on the Commission's website.

11 (c) Anyone may file written comments concerning the draft proposed decision. If representations  
12 of fact are made, they shall be supported by documentary or testimonial evidence, ~~submitted~~ in  
13 accordance with section 1187.5 of these regulations. Written comments shall be certified, filed,  
14 and served in accordance with section 1181.3 of these regulations, by the date determined and  
15 ~~publicized~~ noticed by the executive director. A three-week period for comments shall be given,  
16 subject to the executive director's authority to expedite all matters pursuant to Government Code  
17 section 17530. All written comments timely filed shall be reviewed by Commission staff and  
18 may be incorporated into the proposed decision for the test claim.

19 (d) It is the Commission's policy to discourage the introduction of late comments, exhibits, or  
20 other evidence filed after the three-week comment period described in subdivision (c) of this  
21 section. The Commission need not rely on, and staff need not respond to, late comments,  
22 exhibits, or other evidence ~~filed~~ submitted in response to a draft proposed decision after the  
23 comment period expires.

24 Note: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections  
25 17514, 17530, 17551 and 17553, Government Code.

26 **§ 1183.7. Content of Parameters and Guidelines.**

27 The parameters and guidelines shall describe the claimable reimbursable costs and contain the  
28 following information:

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

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

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

36 (d) Reimbursable Activities. A description of the specific costs and types of costs that are  
37 reimbursable, including one-time costs and on-going costs, and reasonably necessary activities  
38 required to comply with the mandate. "Reasonably necessary activities" are those activities  
39 necessary to comply with the statutes, regulations and other executive orders found to impose a  
40 state-mandated program. Activities required by statutes, regulations and other executive orders  
41 that were not pled in the test claim may only be used to define reasonably necessary activities to

1 the extent that compliance with the approved state-mandated activities would not otherwise be  
2 possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All  
3 representations of fact to support any proposed reasonably necessary activities shall be supported  
4 by documentary evidence ~~submitted~~ in accordance with section 1187.5 of these regulations.

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

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

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

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

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

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

15 (4) Fee authority to offset part of the costs of this program.

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

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

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

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

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

31 **§ 1183.8. Submission Filing and Review of Proposed Parameters and Guidelines;**  
32 **Submission Filing of Comments.**

33 (a) Within 30 days of adoption of the decision on a test claim, or the early termination or  
34 expiration of a reasonable reimbursement methodology, the successful test claimant shall ~~submit,~~  
35 ~~to file with~~ the Commission, proposed parameters and guidelines, pursuant to Government Code  
36 section 17557(a). Proposed parameters and guidelines shall be certified, filed, and served in  
37 accordance with section 1181.3 of these regulations. If representations of fact are made, they  
38 shall be supported by documentary or testimonial evidence, ~~submitted~~ in accordance with section  
39 1187.5 of these regulations.

1 (b) If any of the elements described in section 1183.7 are missing or are not adequately  
2 addressed, Commission staff shall, within 10 days of receipt, deem the proposed parameters and  
3 guidelines incomplete and shall return the proposal to the claimants with a description of the  
4 subjects that are to be redrafted or supplemented.

5 (c) Within 10 days of receipt of completed proposed parameters and guidelines, Commission  
6 staff shall ~~send~~issue a copy to those who are on the mailing list described in section 1181.4 of  
7 these regulations, and shall post it on the Commission's website.

8 (d) Commission staff shall notify all recipients that they shall have the opportunity to ~~review and~~  
9 ~~provide~~file written comments concerning the proposed parameters and guidelines within 15 days  
10 of service.

11 (e) Written comments shall be certified, filed, and served in accordance with section 1181.3 of  
12 these regulations. If representations of fact are made, they shall be supported by documentary or  
13 testimonial evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations.

14 (f) Within 15 days of service of the comments, parties, interested parties, and interested persons  
15 may ~~submit~~file written rebuttals ~~to~~with the Commission. Rebuttals shall be certified, filed, and  
16 served in accordance with section 1181.3 of these regulations. If representations of fact are  
17 made, they shall be supported by documentary or testimonial evidence, ~~submitted~~ in accordance  
18 with section 1187.5 of these regulations.

19 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
20 17530, 17553(a), 17557 and 17557.2, Government Code.

### 21 **§ 1183.9. Expedited Process for Proposed Parameters and Guidelines.**

22 (a) After adoption of a decision on a test claim, but before claimant ~~files~~submits proposed  
23 parameters and guidelines, Commission staff may expedite the parameters and guidelines  
24 process by preparing and issuing draft expedited parameters and guidelines to assist the claimant.  
25 The draft expedited parameters and guidelines shall be served to everyone on the mailing list  
26 described in section 1181.4 of these regulations, and shall be posted on the Commission's  
27 website.

28 In lieu of filing an original proposal pursuant to Government Code section 17557(a), the  
29 successful test claimant may file comments on the draft expedited parameters and guidelines  
30 with the Commission which may include proposed modifications. Such comments shall be  
31 certified, filed, and served in accordance with section 1181.3 of these regulations. If  
32 representations of fact are made, they shall be supported by documentary or testimonial  
33 evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations.

34 (b) Parties, interested parties, and interested persons may file comments on the draft expedited  
35 parameters and guidelines within 21 days of service of Commission staff's draft proposal. Such  
36 comments shall be certified, filed, and served in accordance with section 1181.3 of these  
37 regulations. If representations of fact are made, they shall be supported by documentary or  
38 testimonial evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations.

39 (c) Within 15 days of service of the comments ~~submitted~~filed pursuant to subdivision (b) of this  
40 section, parties, interested parties, and interested persons may file and serve rebuttals. Such  
41 rebuttals shall be certified, filed, and served in accordance with section 1181.3 of these

1 regulations. If representations of fact are made, they shall be supported by documentary or  
2 testimonial evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations.

3 (d) If no comments are filed on the draft expedited parameters and guidelines that raise  
4 substantive issues regarding any of the elements described in section 1183.7, a draft proposed  
5 decision in accordance with section 1183.13(a) of these regulations need not be prepared and the  
6 executive director may schedule the proposed decision and parameters and guidelines for  
7 adoption at the next regularly scheduled hearing in accordance with section 1183.13(d) of these  
8 regulations.

9 Note: Authority cited: Sections 17517.5, 17527(g), 17530 and 17553(a), Government Code.  
10 Reference: Sections 17553(a), 17556(e) and 17557, Government Code.

11 **§ 1183.10. Reasonable Reimbursement Methodology.**

12 (a) Government Code section 17518.5 defines a "reasonable reimbursement methodology" as a  
13 formula for reimbursing local agencies and school districts for costs mandated by the state, as  
14 defined in Section 17514.

15 (b) For purposes of developing a reasonable reimbursement methodology pursuant to  
16 Government Code sections 17557 or 17557.1, the following definitions apply:

17 (1) "Costs to implement the mandate in a cost-efficient manner" include only those costs for the  
18 activities that were determined to be reimbursable by the Commission in the decision on the test  
19 claim, and the costs ~~for of the most reasonable~~ reasonably necessary activities to methods of  
20 complying with the mandate pursuant to section ~~1183.12(d)~~ 1183.7(d); of these regulations.

21 (2) When surveying or otherwise gathering cost data to develop a formula, "representative  
22 sample of claimants" does not include eligible claimants that do not respond to surveys or  
23 otherwise participate in submitting cost data.

24 (c) An interested party may ~~submit~~ file cost information or other cost projections that can be the  
25 basis of a reasonable reimbursement methodology, and letters in support of a draft reasonable  
26 reimbursement methodology ~~submitted~~ proposed pursuant to Government Code section 17557.1.  
27 Such information shall be certified, filed and served in accordance with section 1181.3 of these  
28 regulations. All representations of fact shall be supported by documentary or testimonial  
29 evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations.

30 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
31 17518.5, 17557 and 17557.1, Government Code.

32 **§ 1183.11. Alternative Process: Joint Reasonable Reimbursement Methodology and**  
33 **Statewide Estimate of Costs.**

34 (a) Notwithstanding Government Code section 17557, within 30 days of the adoption of a  
35 decision on a test claim, the successful test claimant and the Department of Finance may notify  
36 the executive director in writing of their intent to follow the process described in Government  
37 Code sections 17557.1-17557.2 to develop a reasonable reimbursement methodology and  
38 statewide estimate of costs.

39 (b) The written notification shall provide all information and filing dates, as specified in  
40 Government Code section 17557.1(a), and shall be certified, filed, and served in accordance with  
41 section 1181.3 of these regulations.

1 (c) At the request of the test claimant and the Department of Finance, the executive director may  
2 provide for up to four extensions of the 180-day period ~~to file for submittal~~ of the draft reasonable  
3 reimbursement methodology and proposed statewide estimate of costs for the initial claiming  
4 period and budget year. Any request must be based on good cause as described in section 1187.9  
5 and also include an update of all information and filing dates provided in the original written  
6 notification ~~filed submitted~~ pursuant to Government Code section 17557.1(a). If no ~~submittal of a~~  
7 draft has been filed and no request for an extension has been made by the filing date specified in  
8 the notice of intent to develop a reasonable reimbursement methodology, or if all extensions  
9 have been exhausted, the executive director shall issue a letter notifying the test claimant of the  
10 duty to ~~file submit~~ proposed parameters and guidelines within 30 days under Government Code  
11 section 17557(a).

12 (d) The test claimant and Department of Finance shall certify, file, and serve any filings made  
13 pursuant to Government Code section 17557.1 in accordance with section 1181.3 of these  
14 regulations. If representations of fact are made, they shall be supported by documentary or  
15 testimonial evidence in accordance with section 1187.5 of these regulations.

16 (e) Commission staff shall notify all recipients that they shall have the opportunity to ~~review and~~  
17 ~~provide file~~ written comments concerning the draft reasonable reimbursement methodology and  
18 proposed statewide estimate of costs within 15 days of service.

19 (f) Written comments shall be certified, filed, and served in accordance with section 1181.3 of  
20 these regulations. If representations of fact are made, they shall be supported by documentary or  
21 testimonial evidence in accordance with section 1187.5 of these regulations.

22 (g) Within seven days of service of the written comments, the test claimant and Department of  
23 Finance may ~~submit file~~ written rebuttals which shall be certified, filed, and served in accordance  
24 with section 1181.3 of these regulations. If representations of fact are made, they shall be  
25 supported by documentary or testimonial evidence in accordance with section 1187.5 of these  
26 regulations.

27 (h) At least 10 days prior to the next hearing, Commission staff shall review comments and issue  
28 a staff recommendation on whether the Commission should approve the draft reasonable  
29 reimbursement methodology and adopt the proposed statewide estimate of costs pursuant to  
30 Government Code section 17557.2.

31 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
32 17557, 17557.1 and 17557.2, Government Code.

33 **§ 1183.12. Reasonable Reimbursement Methodology, Included in Parameters and**  
34 **Guidelines.**

35 (a) If the claimant indicates in the proposed parameters and guidelines or comments that a  
36 reasonable reimbursement methodology, as defined in Government Code section 17518.5,  
37 should be considered for inclusion in the parameters and guidelines, or if the Department of  
38 Finance, Office of the State Controller, any affected state agency, or eligible claimant proposes  
39 consideration of a reasonable reimbursement methodology, Commission staff may schedule an  
40 informal conference in accordance with section 1187.4 of these regulations to discuss the  
41 methodology and plan for ~~proposingsubmittal of~~ a reasonable reimbursement methodology.

1 (b) A proposed reasonable reimbursement methodology, as described in Government Code  
2 section 17518.5, shall include any documentation or assumption relied upon to develop the  
3 proposed methodology.

4 (c) Commission staff shall notify all recipients that they shall have the opportunity to ~~review and~~  
5 ~~provide~~ file written comments concerning the proposed reasonable reimbursement methodology  
6 within 15 days of service.

7 (d) Proposed reasonable reimbursement methodologies and comments regarding those proposals  
8 shall be certified, filed, and served in accordance with section 1181.3 of these regulations. If  
9 representations of fact are made, they shall be supported by documentary or testimonial  
10 evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations.

11 (e) Within 15 days of service of the written comments prepared by other parties and interested  
12 parties, the party that proposed the reasonable reimbursement methodology may ~~submit~~ file a  
13 written rebuttal ~~to~~ with the Commission, and shall certify, file, and serve the rebuttal in  
14 accordance with section 1181.3 of these regulations. If representations of fact are made, they  
15 shall be supported by documentary or testimonial evidence, ~~submitted~~ in accordance with section  
16 1187.5 of these regulations.

17 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
18 17518.5, 17557, 17557.1 and 17557.2, Government Code.

19 **§ 1183.13. Adoption of Parameters and Guidelines.**

20 (a) Except as provided in section 1183.9(d) of these regulations, After ~~after~~ review of the test  
21 claim decision, claimant's proposed parameters and guidelines or draft expedited parameters and  
22 guidelines, and written comments, and rebuttals, Commission staff shall prepare a draft proposed  
23 decision and parameters and guidelines. Commission staff's recommendation may include a  
24 reasonable reimbursement methodology developed pursuant to Government Code section  
25 17518.5 and proposed pursuant to section 1183.12 of these regulations.

26 (b) Written comments on the draft proposed decision and parameters and guidelines shall be  
27 certified, filed, and served in accordance with section 1181.3 of these regulations, by the date  
28 noticed by the executive director. A three-week period for comments shall be given, subject to  
29 the executive director's authority to expedite all matters pursuant to Government Code section  
30 17530. If representations of fact are made, they shall be supported by documentary or testimonial  
31 evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations. All written  
32 comments timely filed shall be reviewed by Commission staff and may be incorporated into the  
33 proposed decision and parameters and guidelines.

34 (c) It is the Commission's policy to discourage the introduction of late comments, exhibits, or  
35 other evidence filed after the three-week comment period described in subdivision (b) of this  
36 section. The Commission need not rely on, and staff need not respond to, late comments,  
37 exhibits, or other evidence filed ~~submitted~~ in response to a draft proposed decision and  
38 parameters and guidelines after the comment period expires.

39 (d) The Commission shall conduct a hearing in accordance with article 7 of these regulations  
40 before adoption of the proposed decision and parameters and guidelines.

41 (e) Within 10 days ~~of~~ after the adoption of the decision and parameters and guidelines, the  
42 executive director shall ~~send copies~~ issue it to the Office of the State Controller and to everyone

1 on the mailing list described in section 1181.4 of these regulations, and shall post a copy on the  
2 Commission's website.

3 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
4 17518.5, 17530, 17553(a) and 17557, Government Code.

5 **§ 1183.14. Statewide Cost Estimate.**

6 (a) If the Commission determines that there are state-mandated costs pursuant to Government  
7 Code sections 17514, it shall adopt a statewide cost estimate of the amount within 12 months  
8 after receipt of a completed test claim unless extended to 18 months by the Commission or  
9 executive director.

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

14 (c) Before presenting a statewide cost estimate to the Commission for adoption, Commission  
15 staff shall disclose to the parties and interested parties the methodology, basis for any  
16 assumptions made, and sources of any data used to develop the estimate.

17 (d) Before adopting the statewide cost estimate, the Commission shall hold at least one  
18 informational hearing under article 8 of these regulations.

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

22 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
23 17518.5, 17553, 17557(a), 17557.2 and 17600, Government Code.

24 **§ 1183.15. Jointly Proposed Request for Early Termination of Reasonable Reimbursement**  
25 **Methodology.**

26 (a) The test claimant and the Department of Finance may file a joint request, in accordance with  
27 Government Code section 17557.2(e), for early termination of a joint reasonable reimbursement  
28 methodology adopted pursuant to Government Code sections 17557.1 and 17557.2, with the  
29 Commission by submitting a request made pursuant to Government Code section 17557.2(e)  
30 which shall be certified, filed, and served in accordance with section 1181.3 of these regulations.

31 (b) Commission staff shall notify all recipients that they shall have the opportunity to ~~review and~~  
32 ~~provide~~ file written comments on the joint request for early termination of a reasonable  
33 reimbursement methodology within 15 days of service.

34 (c) Written comments shall be certified, filed, and served in accordance with section 1181.3 of  
35 these regulations. If representations of fact are made, they shall be supported by documentary or  
36 testimonial evidence in accordance with section 1187.5 of these regulations.

37 (d) Within seven days of service of the written comments, the test claimant and Department of  
38 Finance may ~~submit~~ file written rebuttals which shall be certified, filed, and served in accordance  
39 with section 1181.3 of these regulations. If representations of fact are made, they shall be

1 supported by documentary or testimonial evidence in accordance with section 1187.5 of these  
2 regulations.

3 (e) At least 10 days prior to the next hearing, Commission staff shall review comments and issue  
4 a recommendation on whether the Commission should approve the joint request for early  
5 termination of a reasonable reimbursement methodology pursuant to Government Code section  
6 17557.2(e).

7 (f) If the Commission approves a joint request for early termination, the Commission shall notify  
8 the test claimant of the duty to ~~submit~~file proposed parameters and guidelines to the Commission  
9 pursuant to Government Code section 17557(a), and section 1183.13 of these regulations or  
10 request that Commission staff prepare expedited parameters and guidelines pursuant to section  
11 1183.9 of these regulations to replace the joint reasonable reimbursement methodology.

12 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section  
13 17557.2, Government Code.

14 **§ 1183.16. Expiration of a Joint Reasonable Reimbursement Methodology.**

15 (a) At least one year before the expiration of a joint reasonable reimbursement methodology  
16 adopted pursuant to Government Code sections 17557.1 and 17557.2, Commission staff shall  
17 issue a notice~~notify~~ to the test claimant and the Department of Finance, which shall also be  
18 served to everyone on the mailing list described in section 1181.4 of these regulations and posted  
19 on the Commission's website, that they~~the test claimant and Department of Finance~~ may do one  
20 of the following within 60 days:

21 (1) Jointly propose amendments to the reasonable reimbursement methodology by  
22 ~~filing~~submitting: (A) the draft reasonable reimbursement methodology, (B) a description of the  
23 steps the test claimant and the Department of Finance undertook to determine the level of  
24 support by local agencies or school districts for the draft reasonable reimbursement  
25 methodology, (C) an agreement that the reasonable reimbursement methodology developed and  
26 approved under Government Code section 17557.2 shall be in effect for a period of five years  
27 unless a different term is approved by the Commission, and (D) an estimate of the mandate's  
28 annual cost for the subsequent budget year.

29 (2) Jointly propose that the reasonable reimbursement methodology remain in effect.

30 (3) Allow the joint reasonable reimbursement methodology to expire and notify the Commission  
31 that the test claimant will ~~submit~~file proposed parameters and guidelines to the Commission  
32 pursuant to Government Code section 17557(a) and section 1183.-8 of these regulations or  
33 request that Commission staff prepare expedited parameters and guidelines pursuant to section  
34 1183.9 of these regulations to replace the joint reasonable reimbursement methodology.

35 (b) Copies of the ~~proposals filed~~notice provided under subdivision (a) shall be filed and served in  
36 accordance with section 1181.3 of these regulations.

37 (c) The test claimant and the Department of Finance may jointly propose amendments to the  
38 joint reasonable reimbursement methodology or the continuation of a joint reasonable  
39 reimbursement methodology by ~~submitting~~filing a request made pursuant to Government Code  
40 section 17557.2(f), which shall be certified, filed, and served in accordance with section 1181.3  
41 of these regulations. If representations of fact are made, they shall be supported by documentary  
42 or testimonial evidence in accordance with section 1187.5 of these regulations.

1 (d) Commission staff shall notify everyone on the mailing list described in section 1181.4 of  
2 these regulations ~~all recipients~~ that they shall have the opportunity to review and ~~provide~~ file  
3 written comments on the jointly proposed amendments or request for continuation of the joint  
4 reasonable reimbursement methodology within 30 days of service, and shall post a copy of the  
5 notice on the Commission's website.

6 (e) Written comments shall be certified, filed, and served in accordance with section 1181.3 of  
7 these regulations. If representations of fact are made, they shall be supported by documentary or  
8 testimonial evidence in accordance with section 1187.5 of these regulations.

9 (f) Within 15 days of service of the written comments ~~filed~~ ~~prepared~~ by other parties and  
10 interested parties, the test claimant and Department of Finance may ~~submit~~ file written rebuttals  
11 which shall be certified, filed, and served in accordance with section 1181.3 of these regulations.  
12 If representations of fact are made, they shall be supported by documentary or testimonial  
13 evidence in accordance with section 1187.5 of these regulations.

14 (g) At least 10 days prior to the next hearing, Commission staff shall review the comments and  
15 issue a ~~staff~~-recommendation on whether the Commission should approve the jointly proposed  
16 amendments or the continuation of a joint reasonable reimbursement methodology pursuant to  
17 Government Code section 17557.2(g).

18 (h) Within 10 days of the adoption of the jointly proposed amendments or ~~the~~ continuation of a  
19 joint reasonable reimbursement methodology, the executive director shall issue the decision ~~send~~  
20 ~~copies~~ to the Office of the State Controller, and to ~~parties and interested parties who are~~  
21 everyone on the mailing list described in section 1181.4 of these regulations, and shall post it on  
22 the Commission's website.

23 (i) If the test claimant or the Department of Finance ~~fail~~ ~~fails~~ to respond within 60 days to the  
24 notice described in subdivision (a) of this section, Commission staff shall prepare and issue draft  
25 expedited parameters and guidelines, pursuant to Government Code section 17557(a) and section  
26 1183.9 of these regulations, within 30 days of the parties' failure to respond.

27 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
28 17557, 17557.1 and 17557.2, Government Code.

29 **§ 1183.17. Amendments to Parameters and Guidelines.**

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

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

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

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

- 1 (3) Include a reasonable reimbursement methodology for all or some of the reimbursable  
2 activities in accordance with Government Code section 17518.5. Any request to include a  
3 reasonable reimbursement methodology based on, in whole or in part, costs that have been  
4 included in claims submitted to the Controller, shall include a statement to this effect on the  
5 cover or first page of the request.
- 6 (4) Clarify reimbursable activities consistent with the original decisions on the test claim and  
7 parameters and guidelines.
- 8 (5) Add new reimbursable activities that are reasonably necessary for the performance of the  
9 original state-mandated program pursuant to section 1183.1(d) of these regulations.
- 10 (6) Define what is not reimbursable consistent with the original decisions on the test claim and  
11 parameters and guidelines.
- 12 (7) Consolidate the parameters and guidelines for two or more programs.
- 13 (8) Amend the "boilerplate" language.
- 14 (b) For purposes of this section, "boilerplate" language is defined as the language in the  
15 parameters and guidelines that is not unique to the state-mandated program that is the subject of  
16 the parameters and guidelines.
- 17 (c) The addition or substitution of requesters and supporting declarations based on the original  
18 facts alleged in an existing parameters and guidelines amendment request is not an  
19 "amendment." However, new proposals for amendments must be filed~~submitted~~ as a new  
20 parameters and guidelines amendment request.
- 21 (d) A claimant or state agency requesting an amendment to existing parameters and guidelines  
22 shall certify, file, and serve the request in accordance with section 1181.3 of these regulations. If  
23 representations of fact are made, they shall be supported by documentary or testimonial  
24 evidence,~~submitted~~ in accordance with section 1187.5 of these regulations.
- 25 (e) Within 10 days of receipt of a request to amend parameters and guidelines, Commission staff  
26 shall ~~send~~issue a copy to those who are on the mailing list described in section 1181.4 of these  
27 regulations, and shall post the request on the Commission's website.
- 28 (f) Commission staff shall notify those who are on the mailing list described in section 1181.4 of  
29 these regulations~~all recipients~~ that they shall have the opportunity to ~~review and provide~~file  
30 written comments concerning the proposed amendment of the parameters and guidelines within  
31 21 days of service, and shall post a copy of the notice on the Commission's website.
- 32 (g) Written comments on the request to amend the parameters and guidelines shall be certified,  
33 filed, and served in accordance with section 1181.3 of these regulations. If representations of fact  
34 are made, they shall be supported by documentary or testimonial evidence,~~submitted~~ in  
35 accordance with section 1187.5 of these regulations.
- 36 (h) Written rebuttals to the comments may be filed within 21 days of service of the comments.  
37 Written rebuttals shall be certified, filed, and served in accordance with section 1181.3 of these  
38 regulations. If representations of fact are made, they shall be supported by documentary or  
39 testimonial evidence,~~submitted~~ in accordance with section 1187.5 of these regulations.
- 40 (i) After review of the proposed amendment to the parameters and guidelines, written comments,  
41 and rebuttals ~~submitted~~filed, Commission staff shall prepare and issue for comment a draft

1 proposed decision ~~and recommend~~ recommending whether the requester’s proposed amendment  
2 to the parameters and guidelines should be adopted.

3 (j) Written comments on the draft proposed decision and recommendation on the proposed  
4 amendment to the parameters and guidelines shall be certified, filed, and served with the  
5 Commission in accordance with section 1181.3 of these regulations, by the date noticed by the  
6 executive director. A three-week period for comments shall be given, subject to the executive  
7 director’s authority to expedite all matters pursuant to Government Code section 17530. If  
8 representations of fact are made, they shall be supported by documentary or testimonial  
9 evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations. All written  
10 comments timely filed shall be reviewed by Commission staff and may be incorporated into the  
11 proposed decision and recommendation on the proposed amendment to the parameters and  
12 guidelines.

13 (k) It is the Commission’s policy to discourage the introduction of late comments, exhibits, or  
14 other evidence filed after the three-week comment period described in subdivision (j) of this  
15 section. The Commission need not rely on, and staff need not respond to, late comments,  
16 exhibits, or other evidence filed ~~submitted~~ in response to a draft proposed decision after the  
17 comment period expires.

18 (l) An amendment shall be made only after the Commission has conducted a hearing in  
19 accordance with article 7 of these regulations.

20 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
21 17518.5, 17530, 17553 and 17557, Government Code.

22 **§ 1183.18. Timelines.**

23 (a) In computing any period of time prescribed by these regulations and applicable statutes,  
24 including the filing date as defined in section 1181.2 of these regulations, the following rules  
25 shall apply:

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

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

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

37 (4) If a party or interested party to a test claim notifies Commission staff that a reasonable  
38 reimbursement methodology may be developed for inclusion in pending parameters and  
39 guidelines, the days following the date of the notification up to the date on which a reasonable  
40 reimbursement methodology is developed, shall be tolled and may not be counted toward the  
41 date on which a statewide cost estimate must be adopted by the Commission. The days tolled  
42 shall not exceed 60 days from the date of the notification.

1 (5) If the test claimant and the Department of Finance notify the Commission staff in writing of  
 2 their intent to develop a reasonable reimbursement methodology and statewide estimate of costs  
 3 for the initial claiming period and budget year for reimbursement pursuant to Government Code  
 4 section 17557.1, the days following the date of the notification up to the date on which a draft  
 5 reasonable reimbursement methodology and proposed statewide estimate of costs are developed  
 6 and ~~submitted to~~ filed with the Commission, shall be tolled and may not be counted toward the  
 7 date ~~on~~by which a statewide cost estimate must be adopted by the Commission. The days tolled  
 8 shall not exceed 180 days from the date of the notification.

9 (6) Three days shall be added to any prescribed period in which a party or interested party is  
 10 required or permitted to do an act after service of a document upon that party or interested party  
 11 by mail. The three days added for mail service shall be tolled and may not be counted toward the  
 12 date on which a statewide cost estimate must be adopted.

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

17 (8) Days between the effective date of the parameters and guidelines and the date the initial  
 18 reimbursement claims are due to the Office of the State Controller shall be tolled and may not be  
 19 counted toward the date on which a statewide cost estimate must be adopted by the Commission.

20 (b) The following timelines shall be used by Commission staff as a reference for the timely  
 21 processing of test claims, adoption of statewide cost estimates or statewide estimates of costs:

22 (1) Timeline for a Test Claim, Parameters and Guidelines, and Statewide Cost Estimate (12  
 23 Months)

| <i>PARTY/ACTIVITIES</i>  | <i>DAY NUMBER</i> |
|--|-------------------|
| TEST CLAIM   |                   |
| CLAIMANT files test claim with the <u>COMMISSION</u> <del>commission</del> .   | 0                 |
| COMMISSION staff begins counting days on the first day after receipt.  | 1                 |
| COMMISSION staff reviews test claim to determine if complete   | by 10             |
| COMMISSION staff <del>sends</del> <u>issues</u> test claim to state agencies <u>and</u><br><u>those on the mailing list</u> for <del>review</del> <u>comment</u> . | by 10             |
| COMMISSION staff convenes informal conference with parties, if<br>necessary.   | by 30             |
| <u>STATE AGENCIES, PARTIES, INTERESTED PARTIES,</u><br><u>AND INTERESTED PERSONS</u> may file comments on test claim.  | by 40             |
| CLAIMANT <del>submits</del> <u>may file</u> rebuttal.  | by 70             |
| COMMISSION staff prepares the draft proposed decision on the<br>test claim and <del>serves on parties</del> <u>issues to those on the mailing list</u> .           | by 100            |
| <u>PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS</u><br><u>submit</u> <u>may file</u> <u>c</u> omments on draft proposed decision on the test claim.         | by 130            |
| COMMISSION staff completes analysis and issues proposed decision<br><u>to those on the mailing list</u> .  | by 160            |
| COMMISSION hears test claim and adopts decision.   | by 180            |
| COMMISSION staff issues decision <u>to those on the mailing list</u>   |                   |

|    |  |                          |
|----|--|--------------------------|
| 1  | and serves on parties.   | by 190                   |
| 2  | COMMISSION staff notifies Legislature of decision  | by 210                   |
| 3  | <b>PARAMETERS AND GUIDELINES</b>   |                          |
| 4  | CLAIMANT <del>submits</del> files proposed Parameters and Guidelines.                    | by 210                   |
| 5  | <u>STATE AGENCIES, AND PARTIES, INTERESTED PARTIES,</u>                                  |                          |
| 6  | <u>AND INTERESTED PERSONS</u> may file comments.   | by 235                   |
| 7  | CLAIMANT <del>may file rebuttals</del> <del>comments</del> .                             | by 250                   |
| 8  | COMMISSION staff issues draft proposed decision and parameters                           |                          |
| 9  | and <del>guidelines to those on the mailing list</del> and serves on parties.            | by 265                   |
| 10 | <u>PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS</u>                               |                          |
| 11 | <del>submit</del> may file comments on draft proposed decision and                       |                          |
| 12 | parameters and guidelines.   | by 275                   |
| 13 | COMMISSION staff issues proposed decision and  |                          |
| 14 | parameters and <del>guidelines to those on the mailing list</del> and serves on parties. | by 279                   |
| 15 | COMMISSION conducts hearing and adopts <del>proposed</del> decision and                  |                          |
| 16 | parameters and guidelines.   | by 293                   |
| 17 | COMMISSION staff issues decision and parameters and guidelines                           |                          |
| 18 | <u>to those on the mailing list and serves on parties.</u>                               | by 303                   |
| 19 | <b>STATEWIDE COST ESTIMATE</b>   |                          |
| 20 | COMMISSION staff prepares <u>and issues the</u> draft statewide cost estimate            |                          |
| 21 | <u>to those on the mailing list.</u>   | by 335                   |
| 22 | <u>ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS</u>                           |                          |
| 23 | <u>may</u> comment on draft statewide cost estimate.                                     | by 345                   |
| 24 | COMMISSION staff prepares <u>and issues the</u> proposed                                 |                          |
| 25 | statewide cost estimate <u>to those on the mailing list.</u>                             | by 350                   |
| 26 | COMMISSION conducts hearing and adopts statewide cost estimate.                          | by 365                   |
| 27 | <u>COMMISSION staff issues statewide cost estimate to those</u>                          |                          |
| 28 | <u>on the mailing list.</u>  | by 375                   |
| 29 | COMMISSION staff reports Statewide Cost Estimate to the Legislature.                     | by 395                   |
| 30 | (2) Timeline for a Test Claim, Reasonable Reimbursement Methodology, and Statewide       |                          |
| 31 | Estimate of Costs  |                          |
| 32 | <u><i>PARTY/ACTIVITIES</i></u>   | <u><i>DAY NUMBER</i></u> |
| 33 | TEST CLAIM WITH <u>JOINT</u> REASONABLE REIMBURSEMENT METHODOLOGY (RRM)                  |                          |
| 34 | AND STATEWIDE ESTIMATE OF COSTS (SEC)  |                          |
| 35 | CLAIMANT files test claim with the Commission.   | 0                        |
| 36 | COMMISSION staff begins counting days on the first day after receipt.                    | 1                        |
| 37 | COMMISSION staff reviews test claim to determine if complete.                            | by 10                    |
| 38 | COMMISSION staff <del>sends</del> issues test claim to state agencies <u>and</u>         |                          |
| 39 | <u>those on the mailing list</u> for <u>comment</u> review.                              | by 10                    |
| 40 | COMMISSION staff convenes informal conference with parties,                              |                          |
| 41 | if necessary.  | by 30                    |
| 42 | <u>STATE AGENCIES, PARTIES, INTERESTED PARTIES, AND</u>                                  |                          |
| 43 | <u>INTERESTED PERSONS</u> may file comments on test claim.                               | by 40                    |

1 CLAIMANT ~~submits~~ may file rebuttal. by 70  
2 COMMISSION staff prepares and issues the draft proposed decision  
3 on the test claim to those on the mailing list ~~and serves on parties.~~ by 100  
4 PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS  
5 submit ~~may file~~ comments on the draft proposed decision on the test claim. by 130  
6 COMMISSION staff completes analysis and issues proposed  
7 decision to those on the mailing list. by 160  
8 COMMISSION hears test claim and adopts decision. by 180  
9 COMMISSION staff issues decision to those on the mailing list ~~and serves on parties.~~  
10 by 190  
11 COMMISSION staff notifies Legislature of decision. by 210

12 JOINT REASONABLE REIMBURSEMENT METHODOLOGY (RRM)  
13 AND STATEWIDE ESTIMATE OF COSTS (SEC)

14 CLAIMANT AND DEPARTMENT OF FINANCE  
15 (DOF) notify Commission in writing of their  
16 intent to follow the process in 17557.1 to develop a joint RRM  
17 and SEC (within 30 days after adoption of test claim decision). by 210  
18 CLAIMANT AND DOF ~~submit~~ file plan no later than 6 months after the  
19 date of letter of intent and sixty (60) days before hearing. by 400  
20 COMMISSION staff notifies ~~parties~~ those on the mailing list  
21 of comment period. by 410  
22 PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS  
23 ~~submit~~ may file comments on the draft RRM and SEC. by 425  
24 CLAIMANT AND DOF ~~submit~~ may file ~~written~~ rebuttal. by 432  
25 COMMISSION staff issues ~~submitted~~ filed comments and staff  
26 recommendation. by 450  
27 COMMISSION conducts hearing, approves the draft RRM, and adopts the  
28 proposed SEC for the initial claiming period and budget year. by 460  
29 COMMISSION staff ~~submits~~ issues RRM to the CONTROLLER and  
30 to those on the mailing list. by 470  
31 COMMISSION staff reports SEC to the Legislature. by 490

32 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
33 17527, 17532, 17553, 17555, 17557(e), 17557.1 and 17557.2, Government Code.

34 **Article 4. Review of Office of State Controller's Claiming Instructions**

35 **§ 1184.1. Review of Office of State Controller's Claiming Instructions.**

- 36 (a) Upon request of a local agency or school district, the Commission shall review claiming  
37 instructions issued by the Office of State Controller.
- 38 (b) A request to review claiming instructions shall include the following:
- 39 (1) A copy of the disputed claiming instructions.
- 40 (2) If available, correspondence or other documentation that verifies the local agency or school  
41 district sought to resolve the dispute through the Office of State Controller.

- 1 (3) A narrative that details the suggested changes and the reasons why the local agency or school  
2 district finds the claiming instructions need to be modified.
- 3 (4) The name, address, telephone number, and e-mail address of the agency contact person.
- 4 (c) An original request to review claiming instructions shall be certified, filed, and served in  
5 accordance with section 1181.3 of these regulations. If representations of fact are made, they  
6 shall be supported by documentary or testimonial evidence, ~~submitted~~ in accordance with section  
7 1187.5 of these regulations.
- 8 (d) Within 10 days of receipt of a request to review claiming instructions, Commission staff shall  
9 notify the local agency or school district that ~~submitted~~filed the request if the ~~submittal~~filing is  
10 complete or incomplete. A request to review the claiming instructions shall be considered  
11 incomplete if any of the elements required in subdivision (b) or (c) of this section are illegible or  
12 not included. Incomplete requests shall be returned to the local agency or school district. If a  
13 complete request is not received by the Commission within 30 days from the date the incomplete  
14 request was returned, the Commission shall deem the request to be withdrawn.
- 15 (e) Within 10 days of receipt of a complete request to review claiming instructions, Commission  
16 staff shall ~~send~~issue a copy to all persons who are on the mailing list described in section 1181.4  
17 of these regulations. Commission staff shall provide notice that written comments concerning the  
18 request to review claiming instructions may be ~~filed~~submitted within 30 days of service of the  
19 notice of complete filing. A copy of the notice shall also be posted on the Commission's website.
- 20 (f) Written comments shall be certified, filed, and served in accordance with section 1181.3 of  
21 these regulations. If representations of fact are made, they shall be supported by documentary or  
22 testimonial evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations.
- 23 (g) Within 30 days of service of the written comments, the requester may ~~submit~~file a written  
24 rebuttal to the Commission which shall be certified, filed, and served in accordance with section  
25 1181.3 of these regulations. If representations of fact are made, they shall be supported by  
26 documentary or testimonial evidence, ~~submitted~~ in accordance with section 1187.5 of these  
27 regulations.
- 28 (h) Before hearing a request to review claiming instructions, Commission staff shall prepare a  
29 draft proposed decision that shall include a review of the request and any comments filed, and a  
30 staff recommendation on whether the request should be approved or denied.
- 31 (i) The requester and any state agency or interested party may file written comments on the draft  
32 proposed decision. Written comments shall be certified, filed, and served in accordance with  
33 section 1181.3 of these regulations, by the date determined and ~~publicized~~noticed by the  
34 executive director. If representations of fact are made, they shall be supported by documentary or  
35 testimonial evidence ~~submitted~~ in accordance with section 1187.5 of these regulations. A three-  
36 week period for comments shall be given, subject to the executive director's authority to  
37 expedite all matters pursuant to Government Code section 17530. All written comments timely  
38 filed shall be reviewed by Commission staff and may be incorporated into the proposed decision  
39 on the request to review and modify the claiming instructions.
- 40 (j) It is the Commission's policy to discourage the introduction of late comments, exhibits, or  
41 other evidence filed after the three-week comment period described in subdivision (i) of this  
42 section. The Commission need not rely on, and staff need not respond to, late comments,

1 exhibits, or other evidence ~~submitted~~filed in response to a draft proposed decision after the  
2 comment period expires.

3 (k) The Commission shall conduct a hearing in accordance with article 7 of these regulations on  
4 the request to review claiming instructions.

5 (~~l~~) If the Commission determines that the claiming instructions need to be modified, the  
6 Commission shall direct the Office of State Controller to modify the claiming instructions to  
7 conform to the parameters and guidelines.

8 (m) An approved change to the claiming instructions shall be subject to the following schedule:

9 (1) A request for review filed before the deadline for initial claims as specified in the claiming  
10 instructions shall apply to all years eligible for reimbursement as defined in the original  
11 parameters and guidelines.

12 (2) A request for review filed after the initial claiming deadline must be ~~submitted~~filed on or  
13 before the annual reimbursement claim filing deadline set out in Government Code section  
14 17560 following a fiscal year ~~in order~~ to establish eligibility for reimbursement for that fiscal  
15 year.

16 (n) A request to review claiming instructions may be withdrawn by written application to the  
17 executive director any time before a decision is adopted or by oral application at the time of  
18 hearing. The requesters shall file and serve the written application in accordance with section  
19 1181.3 of these regulations. Commission staff shall post a copy of the notice on the  
20 Commission's website for 60 days prior to dismissal of the request to review claiming  
21 instructions. If no other local agency or school district takes over the request to review claiming  
22 instructions by substitution of parties within 60 days of service and posting of the application to  
23 withdraw, the executive director shall issue a letter to everyone on the mailing list described in  
24 section 1181.4 of these regulations dismissing the request to review claiming instructions and  
25 shall post the letter on the Commission's website.

26 Note: Authority cited: Sections 17527(g) and 17527(h), Government Code. Reference: Sections  
27 17530, 17560 and 17571, Government Code.

## 28 **Article 5. Incorrect Reduction Claims**

### 29 **§ 1185.1. Incorrect Reduction Claim Filing.**

30 (a) To obtain a determination that the Office of State Controller incorrectly reduced a  
31 reimbursement claim, a claimant shall file an "incorrect reduction claim" with the Commission  
32 as follows:

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

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

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

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

- 1 (5) A general manager or other officer with authority delegated by the governing body by  
2 ordinance or resolution may file on behalf of a special district.
- 3 (b) If a claimant intends to pursue an incorrect reduction claim on behalf of a class of claimants,  
4 it must notify the Commission of its intent to do so at the time it files its incorrect reduction  
5 claim and meet the requirements of section 1185.3 of these regulations.
- 6 (c) All incorrect reduction claims and amendments thereto shall be filed with the Commission no  
7 later than three years following the date a claimant first receives from the Office of State  
8 Controller a final state audit report, letter, or other written notice of adjustment to a  
9 reimbursement claim, which complies with Government Code section 17558.5(c) by specifying  
10 the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to  
11 reduce the overall reimbursement to the claimant, and the reason for the adjustment. The filing  
12 shall be returned to the claimant for lack of jurisdiction if this requirement is not met.
- 13 (d) An incorrect reduction claim shall pertain to alleged incorrect reductions in a reimbursement  
14 claim filed by one claimant. The incorrect reduction claim may be for more than one fiscal year.
- 15 (e) All incorrect reduction claims, or amendments thereto, shall be filed on a form provided by  
16 the Commission.
- 17 (f) All incorrect reduction claims, or amendments thereto, shall contain at least the following  
18 elements and documents:
- 19 (1) A copy of the Office of State Controller's claiming instructions that were in effect during the  
20 fiscal years of the reimbursement claims.
- 21 (2) A written detailed narrative that describes the alleged incorrect reductions. The narrative shall  
22 include a comprehensive description of the reduced or disallowed areas of costs.
- 23 (3) All representations of fact shall be supported by testimonial or documentary evidence,  
24 ~~submitted~~ in accordance with section 1187.5 of these regulations.
- 25 (4) A copy of any final state audit report, letter, or other written notice of adjustment from the  
26 Office of State Controller that explains the claim components adjusted, amounts reduced, and the  
27 reasons for the reduction or disallowance.
- 28 (5) A copy of the subject reimbursement claims the claimant submitted to the Office of State  
29 Controller.
- 30 (g) An incorrect reduction claim, or amendment thereto, shall be certified, filed, and served in  
31 accordance with section 1181.3 of these regulations.
- 32 (h) The claimant shall file the original incorrect reduction claim, or amendment thereto, and  
33 accompanying documents with the Commission in accordance with section 1181.3 of these  
34 regulations.

35 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
36 17530, 17551(d), 17553(d), 17558.5(c) and 17558.7(a), Government Code.

37 **§ 1185.2. Review of Incorrect Reduction Claims.**

- 38 (a) Within 10 days of receipt of an incorrect reduction claim, Commission staff shall notify the  
39 claimant if the incorrect reduction claim is complete or incomplete. Incorrect reduction claims  
40 will be considered incomplete if any of the elements in section 1185.1(a) and (b) and (d) through

1 (h) are illegible or not included or if the requirements of those subdivisions are not met.  
2 Incomplete incorrect reduction claims shall be returned to the claimant. If a complete incorrect  
3 reduction claim is not received by the Commission within 30 days from the date the incomplete  
4 claim was returned to the claimant, the executive director shall deem the filing to be withdrawn.

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

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

11 (d) Commission staff shall notify the Office of State Controller that written comments and  
12 supporting documentation in connection with an incorrect reduction claim shall be filed no more  
13 than 90 days from the date the copy of the claim is provided to the Office of State Controller.  
14 Written comments and supporting documentation shall be certified, filed, and served in  
15 accordance with section 1181.3 of these regulations. If representations of fact are made, they  
16 shall be supported by documentary or testimonial evidence ~~submitted~~ in accordance with section  
17 1187.5 of these regulations.

18 (e) The claimant and interested parties may ~~submit~~file written rebuttals to the Office of State  
19 Controller's comments within 30 days of service of the Office of State Controller's comments.  
20 Written rebuttals and supporting documentation shall be certified, filed, and served in accordance  
21 with section 1181.3 of these regulations. If representations of fact are made, they shall be  
22 supported by documentary or testimonial evidence ~~submitted~~ in accordance with section 1187.5  
23 of these regulations.

24 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
25 17551(d), 17553(d), 17558.5(c) and 17558.7(a), Government Code.

26 **§ 1185.3. Consolidation of Claims Initiated by an Individual Claimant.**

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

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

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

35 (3) The consolidation of similar claims by individual claimants would result in consistent  
36 decision making by the Commission.

37 (4) The claimant filing the consolidated claim would fairly and adequately protect the interests of  
38 the other claimants.

39 (b) A claimant that seeks to file a consolidated incorrect reduction claim shall notify the  
40 Commission of its intent at the time of filing on a form provided by the Commission. The  
41 consolidated incorrect reduction claim shall be filed in accordance with section 1185.1 of these

1 regulations and contain a narrative that explains the elements in subdivision (a) of this section.  
2 All representations of fact shall be supported by documentary or testimonial evidence, ~~submitted~~  
3 in accordance with section 1187.5 of these regulations.

4 (c) Within 10 days of receipt of a consolidated incorrect reduction claim, Commission staff shall  
5 notify the claimant if the consolidated incorrect reduction claim is complete or incomplete. A  
6 consolidated incorrect reduction claim is incomplete if the claim has not been filed in accordance  
7 with subdivision (b) of this section, or is illegible. Incomplete consolidated incorrect reduction  
8 claims shall be returned to the claimant. If a complete consolidated incorrect reduction claim is  
9 not received by the Commission within 30 days from the date the incomplete claim was returned  
10 to the claimant, the executive director shall deem the filing to be withdrawn.

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

14 (e) If the consolidated incorrect reduction claim is complete, Commission staff shall request the  
15 Office of the State Controller to provide the Commission, within 30 days, a list of claimants for  
16 whom the Controller has reduced similar claims under the same mandate, and the date each  
17 claimant was notified of an adjustment.

18 (f) Upon receipt of the list from the Office of the State Controller, the Commission shall notify  
19 the list of other claimants experiencing similar reductions by the Controller under the same  
20 mandate and other interested parties of the original claimant's intent to consolidate an incorrect  
21 reduction claim.

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

24 **§ 1185.4. Joining a Consolidated Incorrect Reduction Claim.**

25 (a) Within 30 days of receipt of the Commission's notice regarding the original claimant's notice  
26 of intent to consolidate an incorrect reduction claim, any other eligible claimant may, on a form  
27 provided by the Commission, file a notice of intent to join the consolidated incorrect reduction  
28 claim.

29 (b) All notices of intent to join a consolidated incorrect reduction claim shall comply with  
30 section 1185.1(c) and contain at least the following elements and documents:

31 (1) A copy of the final state audit report, letter, or other written notice of adjustment from the  
32 Office of State Controller that explains the claim components adjusted, amounts reduced, and the  
33 reasons for the reduction.

34 (2) A copy of the subject reimbursement claims submitted to the Office of State Controller.

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

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

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

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

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

17 **§ 1185.5. Opting Out of a Consolidated Incorrect Reduction Claim.**

18 Pursuant to Government Code section 17558.7(f), each claimant that files a notice of intent to  
19 join a consolidated incorrect reduction claim may opt out and not be bound by any determination  
20 made on the consolidated claim.

21 (a) To opt out of a consolidated incorrect reduction claim, claimants shall file a written notice  
22 with the Commission within 15 days of service of the Office of State Controller's comments. A  
23 copy of the notice must be served in accordance with section 1181.3 of these regulations.

24 (b) No later than one year after opting out, or within the period of limitation under section  
25 1185.1(c) of these regulations, whichever is later, a claimant that opts out of a consolidated claim  
26 shall file an individual incorrect reduction claim in accordance with section 1185.1 of these  
27 regulations in order to preserve its right to challenge a reduction made by the Controller on that  
28 same mandate.

29 (c) If a claimant opts out of a consolidated incorrect reduction claim and an individual incorrect  
30 reduction claim for that entity is already on file with the Commission, the individual filing is  
31 automatically reinstated.

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

34 **§ 1185.6. Executive Director's Authority to Consolidate or Sever Incorrect Reduction**  
35 **Claims.**

36 The executive director may consolidate or sever part or all of any incorrect reduction claim with  
37 another incorrect reduction claim, if necessary to ensure the complete, fair, or timely  
38 consideration of any incorrect reduction claim.

39 (a) At least 30 days before the action is taken, the executive director shall simultaneously serve  
40 on all persons on the mailing list described in section 1181.4 of these regulations a notice of any  
41 proposed action to consolidate or sever and shall post the notice on the Commission's website.

1 (b) During the 30-day notice period, a claimant may ~~serve and~~ file a written request that an  
2 individual incorrect reduction claim be severed from a proposed consolidation, which shall be  
3 filed and served, in accordance with section 1181.3 of these regulations. Timely requests to sever  
4 shall be approved by the executive director.

5 (c) Late requests for severing an individual incorrect reduction claim shall be denied.

6 Note: Authority cited: Sections 17527(g), 17553(a) and 17558.8(b), Government Code.

7 Reference: Sections 17530, 17554 and 17558.8, Government Code.

8 **§ 1185.7. Review of Completed Incorrect Reduction Claims and Preparation of Proposed**  
9 **Decision.**

10 (a) The Commission shall conduct a hearing in accordance with article 7 of these regulations  
11 before adopting a decision on an individual or consolidated incorrect reduction claim.

12 (b) Before hearing an individual or consolidated incorrect reduction claim, Commission staff  
13 shall prepare a proposed decision for the incorrect reduction claim that shall include a review of  
14 the incorrect reduction claim, comments and rebuttals filed on the claim and, to the extent that it  
15 is relevant to the claim, a review of the test claim decision and decision and parameters and  
16 guidelines. The proposed decision shall also include a staff recommendation on whether the  
17 claimant's reimbursement claim was incorrectly reduced.

18 (c) At least eight weeks before the hearing or at a time required by the executive director or  
19 stipulated to by the claimant and the Office of State Controller, Commission staff shall  
20 ~~issue~~distribute the draft proposed decision to all those on the mailing list described in section  
21 1181.4 of these regulations.

22 (d) A three-week period for comments shall be given, subject to the executive director's  
23 authority to expedite all matters pursuant to Government Code section 17530. Written comments  
24 may be filed and shall be certified, filed, and served in accordance with section 1181.3 of these  
25 regulations, by the date determined and ~~publicized~~noticed by the executive director. If  
26 representations of fact are made, they shall be supported by documentary or testimonial  
27 evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations. All written  
28 comments timely filed shall be reviewed by Commission staff and may be incorporated into the  
29 proposed decision for the incorrect reduction claim.

30 (e) It is the Commission's policy to discourage the introduction of late comments, exhibits, or  
31 other evidence filed after the three-week comment period described in subdivision (d) of this  
32 section. The Commission need not rely on, and staff need not respond to, late comments,  
33 exhibits, or other evidence filed~~submitted~~ in response to a draft proposed decision after the  
34 comment period expires.

35 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
36 17530 and 17551(d), Government Code.

37 **§ 1185.8. Withdrawal of Incorrect Reduction Claims.**

38 (a) An incorrect reduction claim, except for a claim by the original claimant in a consolidated  
39 incorrect reduction claim, may be withdrawn by written application any time before a decision is  
40 adopted or by oral application at the time of hearing. If an application is made, the executive  
41 director shall issue a letter to the claimant and the State Controller dismissing the claim.

1 (b) An incorrect reduction claim, by the original claimant in a consolidated incorrect reduction  
2 claim, may be withdrawn by written application any time before a decision is adopted or by oral  
3 application at the time of hearing. The original claimant shall certify, file, and serve the written  
4 application in accordance with section 1181.3 of these regulations and Commission staff shall  
5 post a copy of the notice on the Commission's website for 60 days prior to dismissal of the  
6 incorrect reduction claim. If one of the joint claimants takes over the claim, it shall, within 60  
7 days of providing notice of its intent to take over the claim, perfect the filing by ~~submitting~~filing  
8 the written narrative as required by section 1185.1 of these regulations. If none of the joint  
9 claimants takes over the claim by substitution of parties within 60 days of service and posting of  
10 the application to withdraw, the executive director shall issue a letter to everyone on the mailing  
11 list described in section 1181.4 of these regulations dismissing the claim and providing the joint  
12 claimants with an opportunity to perfect their individual claims within 60 days of service by  
13 ~~submitting~~filing the written narrative as required by section 1185.1 of these regulations. The  
14 letter shall be posted on the Commission's website.

15 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section  
16 17551(d), Government Code.

17 **§ 1185.9. Reinstatement of Costs.**

18 If the Commission determines that a reimbursement claim was incorrectly reduced, the  
19 Commission shall ~~send~~issue the decision to the Office of State Controller and request that the  
20 Office of State Controller reinstate the costs that were incorrectly reduced.

21 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section  
22 17551(d), Government Code.

23 **Article 6. State Mandates Apportionment System**

24 **§ 1186.2. Request for Inclusion.**

25 (a) Any local agency, school district, the Department of Finance or the State Controller's Office  
26 may request that the Commission review a mandated cost program for possible inclusion in the  
27 State Mandates Apportionment System in accordance with Government Code section 17615.1.

28 (b) In order to obtain a review and determination regarding inclusion in the system, a local  
29 agency, school district or state agency must certify, file, and serve a "Request for Inclusion" in  
30 accordance with section 1181.3 of these regulations.

31 (c) The request for inclusion must contain at least the following:

32 (1) The chapter number of the law ~~which~~that established the mandated cost program(s).

33 (2) A detailed narrative describing the mandated cost program with an explanation of the reasons  
34 why the mandated cost program should be included in the State Mandates Apportionment  
35 System.

36 (3) Any other pertinent information ~~which~~that will substantiate the request or ~~which~~that would  
37 have a bearing on the decision of the Commission in this matter.

38 (d) The Commission shall consider the recommendation ~~submitted from~~of the Controller for  
39 each new mandate ~~proposed~~submitted for inclusion in the State Mandates Apportionment  
40 System in accordance with Government Code section 17615.4(c).

1 (e) Requests for inclusion will be considered incomplete if any of the ~~preceding~~ elements or  
2 documents required in subdivision (c) of this section are illegible or not included. Incomplete  
3 requests for inclusion shall be returned to the requester for completion.

4 (f) Requests for inclusion filings and any state agency recommendations shall be subject to the  
5 requirements of article 7 of these regulations beginning at section 1187.1. If representations of  
6 fact are made, they shall be supported by documentary or testimonial evidence, ~~submitted~~ in  
7 accordance with section 1187.5 of these regulations.

8 Note: Authority cited: Sections 17527(g), 17615 and 17615.1, Government Code. Reference:  
9 Sections 17615, 17615.1 and 17615.4, Government Code.

10 **§ 1186.4. Request for Removal.**

11 (a) Any local agency, school district, or state agency may request that the Commission review a  
12 mandated program included in the State Mandates Apportionment System that has been modified  
13 or amended by the Legislature or an executive order for possible removal of the program from  
14 the system in accordance with Section 17615.7 of the Government Code.

15 (b) In order to obtain a review and determination regarding removal of a program from the  
16 system, a local agency, school district, or state agency must certify, file, and serve a "Request for  
17 Removal" in accordance with section 1181.3 of these regulations.

18 (c) The request for removal must contain at least the following elements:

19 (1) The chapter number or executive order of the law ~~which~~that established the mandated cost  
20 program.

21 (2) The chapter number of the law or the executive order which significantly modified or  
22 amended the costs of the program or a detailed description of the circumstances or events which  
23 have caused the changes.

24 (3) A detailed narrative describing the mandated cost program with an explanation of the reasons  
25 ~~why~~ the mandated program should no longer be included in the State Mandates Apportionment  
26 System.

27 (4) Any other information ~~which~~that will substantiate the request or ~~which~~that would have a  
28 bearing on the decision of the Commission in this matter.

29 (d) Requests for ~~Removal~~removal will be considered incomplete if any of the ~~preceding~~ elements  
30 or documents required in subdivision (c) of this section are illegible or not included. Incomplete  
31 ~~Requests for Removal~~requests for removal shall be returned to the requester for completion.

32 (e) Request for removal filings and any state agency recommendations shall be subject to the  
33 requirements of article 7 of these regulations beginning at section 1187. If representations of fact  
34 are made, they shall be supported by documentary or testimonial evidence, ~~submitted~~ in  
35 accordance with section 1187.5 of these regulations.

36 Note: Authority cited: Sections 17527(g) and 17615.7, Government Code. Reference: Section  
37 17615.7, Government Code.

38 **§ 1186.6. Request for Reviewing of an Apportionment or Base Year Entitlement.**

39 (a) Upon request of a local agency, school district or state agency the Commission shall review  
40 the apportionment or base year entitlement pursuant to Government Code section 17615.8(a).

1 (b) In order to obtain a review of an apportionment or base year entitlement a "Request for  
2 Review" shall be filed with the Commission.

3 (c) The request for review shall contain at least the following elements:

4 (1) Identification of the mandated program that is alleged to require review.

5 (2) A detailed narrative describing the need to modify the apportionment or base year  
6 entitlement.

7 (3) A statement to the effect that the other mandated programs included in the local agency or  
8 school district's apportionment are not overfunded in an amount sufficient to offset any  
9 underfunding.

10 (4) Cost information that outlines the amount of the funding for the total apportionment and the  
11 calculations necessary to show that the program needing modification either under or over  
12 reimburse the local agency or school district's actual costs by 20 percent or by \$1,000, whichever  
13 is less.

14 (d) Requests for review will be considered incomplete if any of the elements required in  
15 subdivision (c) of this section are illegible or not included. Incomplete requests for review shall  
16 be returned to the requester for completion. If a complete request is not received by the  
17 Commission within 30 days from the date the incomplete request was returned, the Commission  
18 shall deem the request to be withdrawn.

19 Note: Authority cited: Sections 17527(g) and 17615.8(a), Government Code. Reference: Section  
20 17615.8, Government Code.

21 **§ 1186.7. Adjustment to Apportionment.**

22 (a) The Commission, after reviewing an apportionment or base year entitlement and conducting  
23 at least one hearing in accordance with article 7 of these regulations, shall adopt a finding that  
24 the apportionment or base year entitlement will or will not be adjusted.

25 (b) If the Commission determines that a local agency or school district's apportionment falls  
26 short of reimbursing ~~for~~ all mandates upon which the apportionment or base year entitlement is  
27 based by 20 percent or by \$1,000, whichever is less, then the Commission shall direct the  
28 Controller to adjust the apportionment accordingly.

29 (c) If the Commission determines that a local agency or school district's apportionment  
30 adequately reflects the costs incurred by the local agency or school district for all mandates upon  
31 which that apportionment is based, the Commission may, in its discretion, direct the Controller  
32 to withhold the costs of the Commission's review from the next apportionment to the local  
33 agency or school district. A direction to withhold costs from the next apportionment will be  
34 made only when the Commission determines that the request to review an apportionment was  
35 frivolous and without merit.

36 Note: Authority cited: Sections 17527(g) and 17615.8(a), Government Code. Reference: Section  
37 17615.8, Government Code.

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

2 **§ 1187.1. Scheduling and Noticing the Hearing.**

3 (a) A "matter," subject to hearings and decisions under article 7 of these regulations, shall  
4 include test claims, proposed parameters and guidelines, requests to amend parameters and  
5 guidelines, incorrect reduction claims, requests to approve a joint reasonable reimbursement  
6 methodology and statewide estimate of costs, joint requests for early termination of a joint  
7 reasonable reimbursement methodology, requests for inclusion or removal from the State  
8 Mandates Apportionment System, requests for review of apportionment or base year entitlement  
9 for programs included in the State Mandates Apportionment System, requests for review of the  
10 Office of State Controller's claiming instructions, and requests for mandate redetermination.

11 (b) A matter is set for hearing when Commission staff issues its draft proposed decision. A  
12 written notice of the date, time, and place of hearing shall be ~~issued~~provided to everyone on the  
13 mailing list as described in section 1181.4 of these regulations and shall be posted on the  
14 Commission's web-site.

15 Note: Authority cited: Sections 17527(g), 17553(a), 17558.7(g) and 17558.8(b), Government  
16 Code. Reference: Sections 17551, 17553(a), 17557, 17571, 17615.1, 17615.4, 17615.7, 17615.8  
17 and 17615.9, Government Code.

18 **§ 1187.2. Assignment to Hearing Panels/Hearing Officers.**

19 (a) After an informational hearing, in accordance with Article 8 of these regulations, the  
20 Commission's chairperson may assign a matter before the Commission to a hearing panel  
21 consisting of one or more members or to a hearing officer for hearing and preparation of a  
22 proposed decision that may be adopted as the decision in the case.

23 (b) Assignments by the Commission chairperson of members on hearing panels shall be rotated  
24 among the members with the composition of the members so assigned being varied and changed  
25 to assure that there shall never be a fixed and continued composition of members.

26 (c) A matter shall be heard and decided by the Commission itself at the request of any two  
27 members of the Commission.

28 Note: Authority cited: Sections 17527(c), 17527(g), 17532, and 17553(a), Government Code.  
29 Reference: Sections 17532 and 17551, Government Code.

30 **§ 1187.3. Objection to Hearing Panel, Hearing Officer, or Commission Member.**

31 (a) Any party may ask that a matter be heard by the Commission itself rather than by a hearing  
32 panel or hearing officer.

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

1 Note: Authority cited: Sections 17527(c), 17527(g) and 17553(a), Government Code. Reference:  
2 Sections 17527, 17532 and 17551, Government Code.

3 **§ 1187.4. Informal Conference.**

4 (a) An informal conference may be scheduled by the Commission or the executive director of  
5 their own accord or by request of a party or interested party to the matter in question. The parties  
6 and interested parties to the matter shall be invited to participate. With the consent of the parties,  
7 the informal conference may be a teleconference.

8 (b) At least 10 days before any informal conference, Commission staff shall serve notice of the  
9 conference to those on the mailing list for the matter in question as established pursuant to  
10 section 1181.4 of these regulations.

11 (c) The purpose of an informal conference may be to:

12 (1) Set dates for receiving comments or ~~claimant~~ rebuttal comments; completing the proposed  
13 decision; and hearing the matter.

14 (2) Give the claimant or requester the opportunity to present the matter and to respond to  
15 questions from Commission staff and parties and interested parties for the purpose of resolving  
16 or clarifying issues of fact or law.

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

19 (4) Review a draft reasonable reimbursement methodology and proposed statewide estimate of  
20 costs that are jointly prepared by the test claimant and the Department of Finance pursuant to  
21 Government Code section 17557.1.

22 (5) Identify issues and determine methods of resolving those issues.

23 (d) Any party may notify the executive director of any interested parties who should be invited to  
24 attend an informal conference.

25 (e) Anything said, any document disclosed, and any new representations of fact made during an  
26 informal conference shall not be made part of the administrative record of a ~~test claim~~ matter  
27 unless properly admitted into the record through the submission of an amendment to a ~~test~~  
28 claim matter, written comment, rebuttal, or public testimony.

29 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
30 17518.5, 17530, 17551, 17553(a) and 17557.1, Government Code.

31 **§ 1187.6. Conduct of Hearing.**

32 (a) Each party shall have the right to present witnesses, to introduce exhibits, and to propose to  
33 the chairperson questions for opposing witnesses in support or rebuttal of any matter relevant to  
34 the issues even ~~though~~ if that matter was not covered in the direct examination. The Commission  
35 chair or hearing officer, however, may limit the length of testimony to a specific amount of time,  
36 or limit the time for each party or witness.

37 (b) The presiding member, Commission members, hearing panel member or hearing officer may  
38 question any party or witness and may admit any relevant and material evidence.

1 (c) The taking of evidence in a hearing shall be controlled by the Commission or hearing officer  
2 in the manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to  
3 taking evidence, the issues and the order of presenting evidence will be explained.

4 (d) The hearing will ordinarily proceed in the following manner. ~~Staff of the Commission~~ staff  
5 will summarize the matter. The claimant or requester and aligned parties and interested parties  
6 will state ~~their~~its positions and present ~~its~~its evidence. ~~The Department of Finance or other affected~~  
7 ~~state agency~~Opposing parties or interested parties will thereafter state ~~its~~their positions and  
8 present ~~its~~its evidence. The claimant or requester will then be given an opportunity to reply.

9 (e) The Commission or hearing officer may call a party, or any other person who is present, to  
10 testify under oath or affirmation. Any member of the Commission, its executive director, or  
11 hearing officer may question witnesses.

12 (f) The Commission or the executive director may require that prepared written testimony or  
13 other evidence be ~~filed~~submitted in advance of any hearing, ~~for the purpose of facilitating to~~  
14 facilitate the orderly consideration of issues at the hearing.

15 (g) Commission public hearings shall be recorded by stenographic reporter or electronic  
16 recording or both. The transcript or recordings shall be kept for the period of time required by  
17 applicable law governing the retention of records of state agency public proceedings, or until the  
18 conclusion of administrative or judicial proceedings, whichever is later.

19 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
20 11125.7, 17527(c), 17532, 17551 and 17553(a), Government Code.

#### 21 **§ 1187.7. Witnesses and Subpoenas.**

22 (a) A party shall arrange for the presence of its own witnesses at a hearing ~~on a claim~~.

23 (b) A subpoena may be issued upon a majority vote of the Commission. A party requesting a  
24 subpoena shall ~~submit~~file a written application ~~with~~to the Commission at least six weeks prior to  
25 the Commission meeting at which the request will be considered.

26 (c) An application for a subpoena to compel the attendance of a witness shall be made by  
27 affidavit and shall give the name and address of the person to be subpoenaed, shall describe the  
28 matters to be testified on, shall set forth in detail the relevance to the issues involved in the  
29 ~~claim~~matter, shall specify the date, time, and place of the hearing on the ~~claim~~matter and that, to  
30 the best of the applicant's personal knowledge, information, or belief, the person to be  
31 subpoenaed has knowledge of the matters. If the applicant is unable to obtain the name of the  
32 person who has knowledge of the matters, the name of the director of the state or local agency or  
33 superintendent of a school district may be used for the application.

34 (d) An application for subpoena duces tecum for the production by a witness of books, papers,  
35 correspondence, memoranda, or other records, including records of the claimant or requester,  
36 shall be made by affidavit and shall give the name and address of the person to be subpoenaed,  
37 shall describe the ~~documents~~matters or things desired to be produced, shall set forth in detail the  
38 relevance to the issues involved in the ~~claim~~matter, shall specify the date on which the  
39 documents or things~~matters~~ shall be produced, and that, to the best of the applicant's personal  
40 knowledge, information, or belief, the witness has the ~~matters~~documents or things in his or her  
41 possession or under his or her control and that none of the ~~matters~~documents or things desired to  
42 be produced are public records accessible to the public pursuant to Section 6250 et seq., of the

1 Government Code. If the applicant is unable to obtain the name of the person who has possession  
2 or control of the ~~matters~~documents or things desired to be produced, the name of the director or  
3 superintendent or custodian of records of the state or local agency or school district may be used  
4 for the application.

5 (e) When a request for subpoena or subpoena duces tecum is approved by the Commission, the  
6 subpoena or subpoena duces tecum shall be issued signed by the executive director, but  
7 otherwise be blank.

8 (f) Before service, all appropriate portions of the blank subpoena or subpoena duces tecum shall  
9 be completed by the ~~requesting party~~applicant, and the name, address, and telephone number of  
10 the ~~requesting party~~applicant shall be included on the form. Service of subpoenas and subpoenas  
11 duces tecum shall be made with a copy of the affidavit and shall be arranged for by ~~requesting~~  
12 ~~parties~~applicants.

13 (g) Except as otherwise provided in this section, service of subpoenas or subpoenas duces tecum  
14 shall be in accordance with the provisions of Section 1985 et seq., of the Code of Civil  
15 Procedure.

16 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
17 17527(d), 17551 and 17553(a), Government Code.

#### 18 **§ 1187.8. Representation at Hearing.**

19 (a) A party may appear in person or through an authorized representative. When using an  
20 authorized representative, a party shall designate in writing the authorized representative to act as  
21 its sole representative and shall certify, file, and serve written notice identifying the authorized  
22 representative in accordance with section 1181.3 of these regulations.

23 (b) A representative of a party shall be deemed to control all matters respecting the interest of  
24 that party in the proceeding. All correspondence and communications shall be ~~forwarded~~issued  
25 to the authorized representative.

26 (c) Withdrawal of appearance of any representative may be effected by filing and serving a  
27 written notice of withdrawal in accordance with section 1181.3 of these regulations. Any change  
28 in representation shall be authorized by the party in writing and filed and served in accordance  
29 with section 1181.3 of these regulations.

30 Note: Authority cited: 17527(c), 17527(g), 17551, 17553(a), 17555, 17620, 17621 and 17622,  
31 Government Code. Reference: Sections 17527(c), 17551 and 17553, Government Code.

#### 32 **§ 1187.9. Extensions of Time to File Comments or Rebuttals and Postponements and** 33 **Continuances of Hearings.**

34 (a) Requests for Extensions of Time

35 Any party or interested party to a matter may request an extension of time by filing a request  
36 with the executive director before the date set for filing of comments or rebuttals with  
37 Commission staff on that matter. The request shall fully explain the reasons for the extension,  
38 propose a new date for filing, and be certified, filed, and served in accordance with section  
39 1181.3 of these regulations. If representations of fact are made, they shall be supported by  
40 documentary or testimonial evidence, ~~submitted~~ in accordance with section 1187.5 of these  
41 regulations. So long as a postponement of a hearing would not be required, there is no prejudice

1 to any party or interested party, and there is no other good reason for denial, the request shall be  
2 approved. A party to a matter may request an extension of time that would necessitate  
3 rescheduling a hearing, but shall also include a request for postponement of the hearing, pursuant  
4 to ~~section 1187.9~~subdivision (b) of this section. Within two business days of receipt of the  
5 request, the executive director shall determine whether the extension will be granted and notify  
6 all persons on the mailing list prepared pursuant to section 1181.4 of these regulations.

7 (b) Requests for Postponement of Hearing

8 A party to an article 7 matter may request a postponement of a hearing on that matter, until the  
9 next regularly scheduled hearing. Although postponements of hearings are disfavored, each  
10 request for a postponement must be considered on its own merits. The request shall fully explain  
11 the reasons for the postponement, and be certified, filed, and served in accordance with section  
12 1181.3 of these regulations. If representations of fact are made, they shall be supported by  
13 documentary or testimonial evidence, ~~submitted~~ in accordance with section 1187.5 of these  
14 regulations. Within two business days of receipt of the request, the executive director shall  
15 determine whether the postponement will be granted and notify all persons on the mailing list  
16 prepared pursuant to section 1181.4 of these regulations. The executive director may postpone  
17 the matter only on an affirmative showing of good cause.

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

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

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

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

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

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

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

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

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

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

35 (A) The proximity of the hearing date;

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

38 (C) The length of the postponement requested;

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

- 1 (E) The prejudice that parties or witnesses will suffer as a result of the postponement;
- 2 (F) If the matter was granted expedited scheduling, the reasons for that status and whether the  
3 need for a postponement outweighs the need to avoid delay;
- 4 (G) The Commission's backlog of matters and the impact of granting a postponement on other  
5 pending matters;
- 6 (H) Whether the claimant or requester representative is engaged in a trial or other hearing that  
7 conflicts with the Commission hearing;
- 8 (I) Whether, pursuant to Government Code 17554, all parties have stipulated to a postponement;  
9 and
- 10 (J) Whether the interests of justice are best served by a postponement, by moving forward with  
11 the hearing on the matter, or by imposing conditions on the postponement.

12 (3) Approval of Requests for Postponement

13 (A) A request filed by the claimant or requester at least 15 days before the hearing shall be  
14 approved by the executive director for good cause.

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

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

19 (D) A request filed by an interested party may be approved by the executive director for good  
20 cause. If a state agency makes a request before filing comments on the test claim, that request  
21 shall be accompanied by a notice of intent to oppose the test claim in whole or in part.

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

25 (c) Continuance of a Hearing

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

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

38 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
39 17527, 17551 and 17553(a), Government Code; and California Rules of Court, Rule 3.1332.

1    **§ 1187.13. Abandonment of a Matter.**

2    (a) The executive director may deem a matter "abandoned" if any of the following ~~events~~ occurs:

3    (1) The claimant or requester does not respond, within 60 days of service, to a written  
4    notification sent to the superintendent of the school district or chief administrative officer of the  
5    local agency or director of a state agency that the matter will be deemed "abandoned."

6    ~~(2) The claimant or requester provides written notification to the Commission of its withdrawal  
7    from a test claim.~~

8    ~~(3)~~ The matter has been postponed or placed on inactive status by the claimant or requester for a  
9    period of more than one year. However, delays or postponements under the following  
10   circumstances will not be considered for purposes of computing whether a matter has been  
11   postponed or placed on inactive status by the claimant or requester for more than one year:

12   (A) Delays or postponements made at the request of the Commission or opposing party to the  
13   ~~claim or request~~matter;

14   (B) Delays or postponements, made at the request of the claimant or ~~requesting party~~requester,  
15   pending the resolution of a matter currently before the Commission of an issue similar to or  
16   related to the postponed matter; and

17   (C) Delays or postponements, made at the request of the claimant or ~~requesting party~~requester,  
18   pending the resolution of litigation of an issue similar to or related to the postponed matter.

19   Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
20   17530 and 17553(a), Government Code.

21   **§ 1187.14. Substitution of Parties and Dismissal of a Matter.**

22   (a) A matter, other than a test claim, that has been withdrawn in accordance with section 1187.12  
23   or deemed abandoned in accordance with section 1187.13, may be dismissed by the executive  
24   director. Commission staff shall ~~provide~~issue a written notice of dismissal to everyone on the  
25   mailing list for the matter to be dismissed.

26   (b) A test claim that has been withdrawn or deemed abandoned may be dismissed by the  
27   Commission on its own motion or by a motion of a party after notice and an opportunity to be  
28   heard has been ~~made~~provided to the claimant, parties and interested parties as provided below.

29   (1) For test claims that are withdrawn, deemed abandoned, or filed by an agency that is not  
30   eligible to seek reimbursement because it is not subject to the taxing and spending limitations of  
31   article XIII A and B of the California Constitution, Commission staff shall serve written notice to  
32   initiate dismissal of the test claim to everyone on the mailing list for the matter. The notice shall  
33   announce that another local agency or school district may take over the claim by substitution of  
34   parties within 60 days of the issuance of the notice. The notice shall also announce the  
35   opportunity to ~~provide~~file written comments on the proposed dismissal of the test claim. A copy  
36   of the notice shall also be posted on the Commission's website.

37   (2) Written comments shall be certified, filed, and served in accordance with section 1181.3 of  
38   these regulations. If representations of fact are made, they shall be supported by documentary or  
39   testimonial evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations.

1 (3) If no other local agency or school district takes over the test claim by substitution of parties  
2 within 60 days of the issuance of the notice, the Commission shall hear the proposed dismissal of  
3 the test claim.

4 (4e) The hearing on a dismissal of a ~~matter~~ test claim shall be conducted in accordance with  
5 article 7 of these regulations.

6 Note: Authority cited: Sections 17527(c), 17527(g) and 17553(a), Government Code. Reference:  
7 Sections 17551 and 17553(a), Government Code.

8 **§ 1187.15. Reconsideration of an Adopted Decision on a Test Claim or Incorrect Reduction**  
9 **Claim.**

10 (a) Notwithstanding section 1187.11(b) of these regulations, the Commission may ~~make~~  
11 ~~substantive changes to an adopted decision under this section or order a reconsideration or~~  
12 ~~amend~~ of all or part of an adopted matter decision on a test claim (including a new test claim  
13 decision adopted pursuant to a mandate redetermination) or incorrect reduction claim on petition  
14 of any party, interested party, or Commission member only upon a showing of new or different  
15 facts, circumstances, or law, or a clerical error. The power to order a reconsideration or amend an  
16 adopted decision on a test claim decision or incorrect reduction claim shall expire 30 days after  
17 the adopted decision is ~~delivered or mailed to~~ served on the claimant or requester. If additional  
18 time is needed to evaluate a petition for reconsideration filed before the expiration of the 30-day  
19 period, the Commission may grant a stay of that expiration for no more than 30 days, solely for  
20 the purpose of considering the petition. A request for reconsideration shall be deemed  
21 automatically stayed for the 30-day period. If no action is taken on a petition within the time  
22 allowed for ordering reconsideration, the petition shall be deemed denied.

23 (b) ~~Except as provided elsewhere in this section, any party, interested party, or Commission~~  
24 ~~member may request that the Commission reconsider and change an adopted decision to correct~~  
25 ~~an error of law.~~

26 (be) All requests for reconsideration from any party or interested party shall be certified, filed,  
27 and served in accordance with section 1181.3 of these regulations and shall contain the  
28 following:

29 (1) The name and address of the ~~requesting party~~ requester;

30 (2) A copy of the Commission's adopted decision;

31 (3) A detailed statement of the clerical error or the new or different facts, circumstances, or law  
32 reasons for supporting the request, including and all documentation to support the request. For  
33 the purposes of this section, an alleged new or different law shall not include a later enacted  
34 statute without a retroactive application.

35 (A) ~~An explanation of the reasons for the request for reconsideration; and~~

36 (B) ~~All documentation the requester intends to submit to support the request;~~

37 (4) A description of the proposed ~~change~~ amendment to the decision on the test claim or incorrect  
38 reduction claim; and

39 (5) If representations of fact are made, they shall be supported by documentary or testimonial  
40 evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations.

1 (~~dc~~) Commission member requests may be made orally during a regularly scheduled  
2 Commission meeting. Commission staff shall prepare the written request; based on the elements  
3 specified in subsections (be)(1-45) above.

4 (~~ed~~) Any signatory to a written agreement that settles a matter may not request reconsideration of  
5 that matter if the matter is settled with prejudice.

6 (~~fe~~) Before the Commission considers the request for reconsideration, Commission staff shall  
7 prepare a written analysis ~~that includes regarding whether the adopted decision is contrary to law~~  
8 ~~which shall include but not be limited to~~ a review of the request and written comments filed by  
9 other state agencies, interested parties, and the requester. ~~Commission staff shall make a~~  
10 ~~recommendation in the analysis on whether the request for reconsideration should be granted.~~  
11 The written analysis shall address whether the request for reconsideration is timely, complete,  
12 diligent, and is based on a clerical error or new or different facts, circumstances, or law that is  
13 likely to support an amendment to the findings or conclusions in the adopted decision on the test  
14 claim or incorrect reduction claim, and include a recommendation on whether or not the request  
15 for reconsideration should be granted. The Commission shall consider the request for  
16 reconsideration and the written staff analysis at a scheduled meeting. Five affirmative votes shall  
17 be required to grant the request for reconsideration and schedule the request for a second hearing  
18 on the merits.

19 (~~gf~~) If the Commission grants the request for reconsideration, a second hearing shall be  
20 conducted to determine if the adopted decision on a test claim or incorrect reduction claim ~~in a~~  
21 ~~question~~ must be amended revised to correct an error of law based on a clerical error or new or  
22 different facts, circumstances, or law.

23 (1) The following procedures shall govern the Commission's reconsideration of the adopted  
24 decision:

25 (A) At least eight weeks before the Commission is scheduled to ~~consider whether reconsider~~ an  
26 adopted decision ~~is contrary to law~~, or at another time determined required by the executive  
27 director, Commission staff shall prepare a draft proposed decision and ~~distribute~~ issue it to those  
28 ~~identified~~ on the mailing list for the matter established pursuant to section 1181.4 of these  
29 regulations ~~and any person who requests a copy.~~

30 (B) Written comments may be filed with the Commission staff ~~concerning~~ on the draft proposed  
31 decision. All representations of fact shall be supported by documentary or testimonial evidence,  
32 ~~submitted~~ in accordance with section 1187.5 of these regulations. Written comments shall be  
33 certified, filed, and served in accordance with section 1181.3 of these regulations. A three-week  
34 period for comments shall be given, subject to the executive director's authority to expedite all  
35 matters pursuant to Government Code section 17530. All written comments timely filed shall be  
36 reviewed by Commission staff and may be incorporated into the proposed decision regarding  
37 ~~whether the adopted decision is contrary to law and presented to the Commission before the~~  
38 scheduled meeting.

39 (2) The procedures set forth in article 7 shall govern the Commission's hearings and decisions  
40 process, except that five affirmative votes shall be required to ~~change~~ amend an adopted decision  
41 on a test claim or incorrect reduction claim.

42 (~~hg~~) If the Commission changes an adopted decision on a test claim, the procedures set forth in  
43 Sections 1183.7 through 1183.14 of these regulations shall govern the adoption of parameters

1 and guidelines or amended parameters and guidelines, and the statewide cost estimate, if  
2 applicable.

3 (ih) Failure to seek Commission reconsideration of an adopted decision shall not affect a  
4 ~~claimant's or state agency~~ party's right to seek judicial review pursuant to Government Code  
5 section 17559(b).

6 (ji) This section only applies to reconsiderations requested pursuant to Government Code section  
7 ~~17759(a)~~ 17559(a); it does not apply to remands or reconsiderations directed by the courts or by  
8 statute.

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

## 11 **Article 8. Rulemaking and Informational Hearings**

### 12 **§ 1188.1. Scheduling and Noticing of an Informational Hearing**

13 (a) The Commission may, upon its own motion, set an informational hearing on any subject  
14 within its jurisdiction. Matters subject to informational hearings under article 8 of these  
15 regulations include: a proposed assignment of an article 7 matter to a hearing officer, a  
16 rulemaking proceeding, the adoption of a statewide cost estimate, and any other subject that  
17 meets the definition of "informational hearing" in section 1181.2 of these regulations and is not  
18 subject to hearings under article 7 of these regulations.

19 (b) An article 8 matter is set for hearing when Commission staff issues its notice and agenda  
20 providing the date, time, and place of the hearing to everyone on the mailing list described in  
21 section 1181.4 of these regulations.

22 (c) Commission staff shall ~~provide~~ issue notice of an informational hearing in accordance with  
23 Government Code section 11120 et seq. The notice shall include the following:

24 (1) A statement of the authority pursuant to which the hearing is ordered, and a reference to any  
25 code sections or other provisions of law pursuant to which the information is to be gathered or  
26 disseminated;

27 (2) A statement of the nature and purpose of the proceedings;

28 (3) A statement requiring the presence and participation of any persons the Commission may  
29 direct, consistent with the nature and purpose of the proceedings;

30 (4) A statement indicating the time during which written comments will be received and the  
31 manner by which the comments shall be filed;

32 (5) A statement that any person may make oral comments on the subject of the hearing; and

33 (6) A statement setting forth additional procedures deemed necessary by the Commission and not  
34 inconsistent with these regulations.

35 Note: Authority cited: Sections 17527(c) and 17527(g), Government Code. Reference: Sections  
36 11125, 17527(c) and 17532, Government Code.

### 37 **§ 1188.2. Rulemaking.**

38 (a) Petitions:

1 (1) Any person may petition the Commission to request rulemaking hearings. The petition shall  
2 be filed and served in accordance with section 1181.3 of these regulations and shall include:

3 (A) The name, address, and telephone number of the petitioner;  
4 (B) The substance or nature of the regulation, amendment, or repeal requested;  
5 (C) The reasons for the request; and  
6 (D) Reference to the authority of the Commission to take the action requested.

7 (2) The petition shall be filed with the executive director who shall, within seven days after its  
8 filing, determine whether the petition contains the information specified in subsection (a)(1) of  
9 this section.

10 (A) If the executive director determines that the petition is complete, it shall be certified in  
11 writing as complete and the petitioner shall be so notified.

12 (B) If the executive director determines that the petition is not complete, it shall be returned to  
13 the petitioner accompanied by a statement of its defects. The petitioner may correct the petition  
14 and resubmit it at any time.

15 (3) Upon certification by the executive director, the Commission shall, within 60 days from the  
16 filing of the petition, deny the petition, stating the reason for the denial in writing, or grant the  
17 petition, directing staff to prepare an appropriate order pursuant to subdivision (b) of this section.

18 (b) Commission Order to ~~Institute~~Initiate a Rulemaking Proceeding. The Commission may, upon  
19 its own motion or upon granting a petition filed pursuant to subdivision (a) of this section, adopt  
20 an order to ~~institute~~initiate a rulemaking proceeding in accordance with the procedures of  
21 Government Code sections 11346.2, 11346.4, 11346.8, and 11346.9.

22 (c) Notice.

23 (1) Notice of a rulemaking proceeding shall be given in accordance with Government Code  
24 section 11346.4.

25 (2) At least 10 days prior to the first hearing in a proceeding ordered pursuant to subdivision (b)  
26 of this section, the executive director shall cause notice of the hearing to be ~~mailed~~issued to  
27 every person requested to participate in the proceedings, and to any person who the executive  
28 director determines to be concerned with the subject matter of the proceeding, and shall post a  
29 copy of the notice on the Commission's website.

30 (3) In addition to the requirements of subsections (c)(1) and (2) of this section, notice of  
31 additional hearing shall be required at least 10 days prior to the commencement of the hearing  
32 unless continuation is orally announced in a public hearing.

33 (4) Nothing in this section shall preclude the Commission from publishing notice in additional  
34 forms or media as the executive director may prescribe.

35 (5) A copy of the order adopted pursuant to subdivision (b) of this section shall accompany the  
36 initial notice prepared and ~~mailed~~issued pursuant to this section, unless a copy of the order has  
37 been previously ~~mailed~~issued to those persons who would receive the notice.

38 Note: Authority cited: Section 17527(g), Government Code. Reference: Sections 11340.6,  
39 11346.2, 11346.4, 11346.8, 11346.9, 17527(c), 17527(g), 17530, 11346.4 and 17551,  
40 Government Code.

1 **Article 10. Mandate Redetermination Process**

2 **§ 1190.1. Filing a Request to Adopt a New Test Claim Decision.**

3 (a) A local agency or a school district, statewide association of local agencies or school districts,  
4 the Department of Finance, Office of the State Controller, or other affected state agency, may file  
5 a request to adopt a new test claim decision to supersede a previously adopted test claim decision  
6 by making a showing that the state’s liability pursuant to Article XIII B, section 6(a) of the  
7 California Constitution for the previously adopted test claim decision has been modified based  
8 on a "subsequent change in law" as defined by Government Code section 17570(a)(2). Such a  
9 request is known as a "request for mandate redetermination."

10 (b) All requests for mandate redetermination shall be filed on a form developed by the executive  
11 director and shall contain a detailed analysis of how and why the state’s liability for mandate  
12 reimbursement has been modified pursuant to article XIII B, section 6(a) of the California  
13 Constitution and all of the elements and accompanying documents required by the form and  
14 Government Code section 17570(d). If representations of fact are made, they shall be supported  
15 by documentary or testimonial evidence, ~~submitted~~ in accordance with section 1187.5 of these  
16 regulations.

17 (c) The detailed analysis of how and why the state’s liability for mandate reimbursement has  
18 been modified pursuant to article XIII B, section 6(a) of the California Constitution based on a  
19 "subsequent change in law" as defined by Government Code section 17570 requires more than a  
20 written narrative or simple statement of the facts and law. It requires the application of the law  
21 (Gov. Code § 17570 (a) and (b)) to the facts (i.e. the alleged subsequent change in law)  
22 discussing, for each activity addressed in the prior test claim decision, how and why the state’s  
23 liability for that activity has been modified. Specific references shall be made to statutes and  
24 chapters, articles, sections, and page numbers that are alleged to impose or not impose a  
25 reimbursable state-mandated program.

26 (d) A request for mandate redetermination and accompanying documents shall be certified, filed,  
27 and served in accordance with section 1181.3 of these regulations.

28 (e) Within 10 days of receipt of a request for mandate redetermination, Commission staff shall  
29 notify the requester if the request is complete or incomplete and refer the requester to these  
30 regulations. Requests for mandate redetermination shall be considered incomplete if any of the  
31 elements required in subdivisions (b), (c), or (d) of this section are illegible or are not included. If  
32 a complete request for mandate redetermination is not received within 30 calendar days from the  
33 date the incomplete request was returned, the executive director shall disallow the original  
34 request filing date. New requests for mandate redetermination may be accepted on the same  
35 subsequent change in law alleged to modify the state’s liability pursuant to article XIII B, section  
36 6(a) of the California Constitution.

37 (f) A request for mandate redetermination shall be filed on or before June 30 following a fiscal  
38 year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal  
39 year.

40 (g) A requester may not add a new subsequent change in law to a request for mandate  
41 redetermination after the request has been deemed complete.

42 (h) Any request for mandate redetermination that fails to allege a "subsequent change in law," as

1 defined by Government Code section 17570, shall be returned by the executive director with a  
2 written notice stating the reason that the request is being returned. These filings may include, but  
3 are not limited to, requests that meet the requirements for a proposed parameters and guidelines  
4 amendment or a new test claim filing.

5 Note: Authority cited: Sections 17527(g), 17553(a) and 17570(d), Government Code. Reference:  
6 Sections 17530 and 17570, Government Code.

7 **§ 1190.2. Review and Response.**

8 (a) Within 10 days of receipt of a complete request for mandate redetermination, Commission  
9 staff shall ~~send~~issue a written notice to the Department of Finance, Office of the State Controller,  
10 any affected state agency, the original test claimant, and any known interested party, that:

11 (1) A copy of the request for mandate redetermination has been posted on the Commission's  
12 website, and

13 (2) Written comments concerning the request for mandate redetermination may be filed within  
14 30 days and evidence may also be presented at the hearing on the request for mandate  
15 redetermination.

16 (b) Content and Form. Written comments on the request for mandate redetermination shall  
17 contain the following documentary evidence, if applicable:

18 (1) If representations of fact are made, they must be supported by documentary or testimonial  
19 evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations.

20 (2) A copy of relevant portions of state constitutional provisions, state and federal statutes, and  
21 executive orders, and a copy of administrative decisions and court decisions that may impact the  
22 alleged mandate, unless the authorities are also cited in the request to adopt a new test claim  
23 decision. The specific statutes and chapters, articles, sections, and page numbers must be  
24 identified. Published court decisions arising from state mandate determinations by the Board of  
25 Control and the Commission, article XIII B, section 6 of the California Constitution, and  
26 Government Code sections 17500 et seq., are exempt from the requirements of this subsection.  
27 When an omnibus bill is relevant to the response, only the relevant pages of the statute, including  
28 the Legislative Counsel's Digest and the specific statutory ~~changes~~amendments at issue shall be  
29 filed.

30 (c) Filing. Written comments and supporting documentation concerning a request for mandate  
31 redetermination shall be certified, filed, and served in accordance with Section 1181.3 of these  
32 regulations.

33 Note: Authority cited: Sections 17527(g), 17553(a) and 17570(d), Government Code. Reference:  
34 Section 17570, Government Code.

35 **§ 1190.3. Rebuttal.**

36 (a) Parties and interested parties shall be given an opportunity to rebut written comments  
37 concerning a request for mandate redetermination by filing written rebuttals within 30 days of  
38 service of the comments.

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

1 (1) If representations of fact are made, they must be supported by documentary or testimonial  
2 evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations.

3 (2) A copy of relevant portions of state constitutional provisions, federal statutes, and executive  
4 orders, and a copy of administrative decisions and court decisions that are cited in the rebuttal,  
5 unless the authorities are also cited in the request to adopt a new test claim decision or any  
6 response thereto. The specific statutes and chapters, articles, sections, and page numbers shall be  
7 identified. Published court decisions arising from state mandate determinations by the Board of  
8 Control and the Commission, article XIII B, section 6 of the California Constitution, and  
9 Government Code sections 17500 et seq., are exempt from the requirements of this subsection.  
10 When an omnibus bill is relevant to the rebuttal, only the relevant pages of the statute, including  
11 the Legislative Counsel's Digest and the specific statutory ~~changes~~ amendments at issue shall be  
12 filed.

13 (c) The rebuttal to a comment concerning a request for mandate redetermination shall be  
14 certified, filed, and served in accordance with section 1181.3 of these regulations.

15 Note: Authority cited: Sections 17527(g), 17553(a) and 17570(d), Government Code. Reference:  
16 Section 17570, Government Code.

#### 17 **§ 1190.5. Hearing Process and Form of Decision.**

18 Notwithstanding any other provision of these regulations, mandate redetermination process  
19 hearings and decisions shall be subject to article 7 of these regulations. There shall be a two-step  
20 hearing process for requests to adopt a new test claim decision as follows:

##### 21 (a) The First Hearing:

22 (1) The first hearing shall be limited to the issue of whether the requester has made an adequate  
23 showing ~~which~~ that identifies a subsequent change in law as defined by Government Code  
24 section 17570, material to the prior test claim decision, ~~that~~ which may modify the state's liability  
25 pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find  
26 that the requester has made an adequate showing if it finds that the request, when considered in  
27 light of all of the written comments and supporting documentation in the record of this request,  
28 has a substantial possibility of prevailing at the second hearing.

29 (2) At least eight weeks before the hearing or at another time required by the executive director  
30 or stipulated to by the parties, Commission staff shall prepare a draft proposed decision and  
31 ~~distribute~~ issue it to the parties, interested parties, and any person who requests a copy, and shall  
32 post it on the Commission's website. A request for mandate redetermination is set for the first  
33 hearing when Commission staff issues its draft proposed decision. A written notice of the date,  
34 time, and place of the first hearing shall be served on everyone on the mailing list described in  
35 section 1181.4 of these regulations and posted on the Commission's website.

36 (3) Written comments concerning the draft proposed decision may be filed with the ~~submitted to~~  
37 ~~Commission staff~~. Written comments shall be certified, filed, and served in accordance with  
38 section 1181.3 of these regulations, by the date determined and ~~publicized~~ noticed by the  
39 executive director. A three-week period for comments shall be given, subject to the executive  
40 director's authority to expedite all matters pursuant to Government Code section 17530. If  
41 representations of fact are made, they shall be supported by documentary or testimonial  
42 evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations. All written

1 comments timely filed shall be reviewed by Commission staff and may be incorporated into the  
2 proposed decision of the request to adopt a new test claim decision.

3 (A) It is the Commission's policy to discourage the introduction of late comments, exhibits, or  
4 other evidence filed after the three-week comment period described in subdivision (a)(3) of this  
5 section. The Commission need not rely on, and staff need not respond to, late comments,  
6 exhibits, or other evidence ~~filed~~submitted in response to a draft proposed decision.

7 (4) Before the first hearing on the request for mandate redetermination, Commission staff shall  
8 prepare a proposed decision limited to the issue of whether the requester has made a showing  
9 that identifies a subsequent change in law, material to the prior test claim decision, which may  
10 modify the state's liability pursuant to article XIII B, section 6(a) of the California Constitution.  
11 This proposed decision shall consider the request, written comment, rebuttals and supporting  
12 documentation filed by the parties and interested parties. The proposed decision for the first  
13 hearing shall find that the requester has made an adequate showing if staff finds that the request,  
14 when considered in light of all of the written comments and supporting documentation in the  
15 record of this request, has a substantial possibility of prevailing at the second hearing.

16 (5) If, at the first hearing, the Commission finds that:

17 (A) The requester has not made an adequate showing, when considered in light of all of the  
18 written comments, rebuttals and supporting documentation in the record and testimony at the  
19 hearing, that the request for mandate redetermination has a substantial possibility of prevailing at  
20 the second hearing, the Commission shall ~~publish~~issue a decision denying the request for  
21 mandate redetermination.

22 (B) The requester has made an adequate showing, when considered in light of all of the written  
23 comments, rebuttals, and supporting documentation in the record and testimony at the hearing,  
24 the Commission shall ~~publish~~issue a decision finding that an adequate showing has been made  
25 and setting the second hearing on whether the Commission shall adopt a new test claim decision  
26 to supersede the previously adopted test claim decision.

27 (6) Everyone on the mailing list described in section 1181.4 of these regulations shall be  
28 ~~provided~~issued written notice that the Commission's decision has been posted on the  
29 Commission's website and, if applicable, that the date, time, and place of the second hearing  
30 have also been posted on the Commission's website.

31 (b) The Second Hearing:

32 (1) If the Commission proceeds to the second hearing, it shall consider whether the state's  
33 liability pursuant to article XIII B, section 6(a) of the California Constitution has been modified  
34 based on the subsequent change in law alleged by the requester, thus requiring adoption of a new  
35 test claim decision to supersede the previously adopted test claim decision. If the Commission  
36 finds that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution  
37 has been modified based on the subsequent change in law alleged by the requester, it shall adopt  
38 a new decision that reflects the modified liability of the state.

39 (2) Before the second hearing, Commission staff shall prepare a proposed decision. At least eight  
40 weeks before the hearing or at another time required by the executive director or stipulated to by  
41 the parties, Commission staff shall prepare a draft proposed decision and ~~distribute~~issue it to  
42 everyone on the mailing list described in section 1181.4 of these regulations and post it on the

1 Commission’s website. The proposed decision shall consider the request, and any written  
2 comments and rebuttals and supporting documentation filed.

3 (3) Any party or interested party may file written comments concerning the draft proposed  
4 decision with the Commission-staff. Written comments shall be certified, filed, and served in  
5 accordance with section 1181.3 of these regulations, by the date determined and  
6 ~~publicized~~noticed by the executive director. A three-week period for comments shall be given,  
7 subject to the executive director's authority to expedite all matters pursuant to Government Code  
8 section 17530. If representations of fact are made, they shall be supported by documentary or  
9 testimonial evidence, ~~submitted~~ in accordance with section 1187.5 of these regulations. All  
10 written comments timely filed shall be reviewed by Commission staff and may be incorporated  
11 into the proposed decision.

12 (A) It is the Commission’s policy to discourage the introduction of late comments, exhibits, or  
13 other evidence filed after the three-week comment period described in subdivision (b)(3) of this  
14 section. The Commission need not rely on, and staff need not respond to, late comments,  
15 exhibits, or other evidence filed~~submitted~~ in response to a draft proposed decision.

16 (4) If, at the second hearing, the Commission finds that the state’s liability pursuant to article  
17 XIII B, section 6(a) of the California Constitution:

18 (A) has not been modified based on a subsequent change in law as defined by Government Code  
19 section 17570 (a)(2), the Commission shall publish~~issue~~ a decision denying the request.

20 (B) has been modified based on a subsequent change in law, as defined by Government Code  
21 section 17570 (a)(2) the Commission shall adopt a new decision to supersede the prior decision.  
22 The new decision shall be prepared in writing, based on the record, and shall include a statement  
23 of reasons for the decision, findings, and conclusions.

24 (5) Everyone on the mailing list described in section 1181.4 of these regulations shall be  
25 ~~provided~~issued written notice that a copy of the decision has been posted on the Commission’s  
26 website.

27 (6) After a decision or proposed decision has been served or posted on the Commission’s  
28 website, it shall not be changed except to correct clerical errors, in which case a corrected  
29 decision or proposed decision shall be prepared and posted on the Commission’s website.  
30 Everyone on the mailing list described in section 1181.4 of these regulations shall be  
31 ~~provided~~issued written notice that a copy of the revised decision has been posted on the  
32 Commission’s website.

33 (7) If a new decision is adopted that finds that the State’s liability under article XIII B, section  
34 6(a) of the California Constitution has been modified, the amount and method of reimbursement  
35 shall be determined in accordance with article 3 of these regulations.

36 Note: Authority cited: Section 17527(g), 17553(a) and 17570(d), Government Code. Reference:  
37 Sections 17530 and 17570, Government Code.

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

**NOTICE OF PROPOSED RULEMAKING**

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

**PUBLIC HEARING**

The Commission 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 his or her authorized representative no later than 15 days before the close of the written comment period, the Commission will conduct a public hearing on this proposed action on September 27, 2019, 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 his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at **5:00 p.m. on September 23, 2019**. The Commission will consider only comments received at the Commission offices by that time. Submit comments to:

Jill Magee, Program Analyst  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Written comments may be submitted electronically via the Commission website "Drop Box" at <http://www.csm.ca.gov/dropbox.php>

**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 is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state-mandated local programs (Gov. Code, § 17500 et seq.) and to hear matters involving county applications for a finding of significant financial distress (Welf. & Inst. Code, § 17000.6).

The purpose of this rulemaking is to generally clean-up, clarify, and streamline Commission regulations and update language for consistency. Specifically, the proposed regulations: (1) clarify the definitions of "completed," "new filing," "party," "statewide cost estimate," "statewide estimate of costs," and "subsequent change in the law;" and clarify the types of matters for which the executive director issues sequential numbers for matters; (2) require electronic filing for all new filings and written materials except as specified, and add electronic

formatting requirements; (3) clarify that the tie vote procedures apply to all action items and that the option of assigning a matter to a hearing panel or hearing officer in the case of a tie vote applies to all quasi-judicial “matters” and not only to test claims and incorrect reduction claims; (4) streamline the process for adopting expedited parameters and guidelines; (5) clarify the joint reasonable reimbursement methodology (RRM) regulations, which implement Government Code sections 17557.1 and 17557.2, to make it clear that it is an alternative process and not the same as an RRM included in parameters and guidelines adopted by the Commission pursuant to Government Code section 17557; (6) clarify Commission and party actions in the timeline regulation; (7) clarify that the three-year limitation period that applies to filing incorrect reduction claims also applies to filing amendments to incorrect reduction claims; (8) add completeness language to a request to review the apportionment or base year entitlement of a program in the State Mandates Apportionment System (SMAS) consistent with the other SMAS requests for inclusion and removal; (9) clarify the definition of “matter” in article 7 to include joint reasonable reimbursement methodologies and statewide estimates of costs (joint RRMs and SECs), and joint requests for early termination of a joint RRM; (10) clarify that the informal conference regulation and witnesses/subpoena regulations apply to all quasi-judicial “matters” subject to the article 7 regulations; (11) authorize limits to the length of testimony in Commission hearings consistent with the Bagley-Keene Open Meeting Act; (12) clarify that the regulation for abandoning a matter applies to all quasi-judicial “matters” subject to the article 7 regulations; (13) clarify the regulation on dismissal of a test claim or other matter; (14) clarify the regulation governing the limited authority to reconsider a prior final decision on a test claim or incorrect reduction claim to make it consistent with Government Code section 17559(a), to clarify the standard of review to reconsider a prior final decision, and to make other clarifying amendments; (15) make minor, non-substantive consistency edits, corrections; and (16) update authority and reference citations.

Therefore, the Commission proposes revised language and citations in Articles 1, 3, 4, 5, 6, 7, 8 and 10 of the California Code of Regulations, Division 2, Title 2, Chapter 2.5 (Sections 1181.1; 1181.2; 1181.3; 1181.4; 1181.8; 1181.9; 1183.1; 1183.2; 1183.3; 1183.4; 1183.6; 1183.7; 1183.8; 1183.9; 1183.10; 1183.11; 1183.12; 1183.13; 1183.14; 1183.15; 1183.16; 1183.17; 1183.18; 1184.1; 1185.1; 1185.2; 1185.3; 1185.4; 1185.5; 1185.6; 1185.7; 1185.8; 1185.9; 1186.2; 1186.4; 1186.6; 1186.7; 1187.1; 1187.2; 1187.3; 1187.4; 1187.6; 1187.7; 1187.8, 1187.9, 1187.13; 1187.14; 1187.15; 1188.1, 1188.2, 1190.1, 1190.2, 1190.3, 1190.5) with a proposed effective date of April 1, 2020.

#### Anticipated Benefits of the Proposed Regulation

The specific benefits anticipated from the regulation are increased clarity for local agencies, school districts, state agencies, and interested parties/persons participating in the Commission's processes, consistency in the use of terms, adding requirements for electronic filing so the Commission can more easily manage its records, increasing the speed of hearing and deciding expedited parameters and guidelines, and clarifying the standard of review for requests for reconsideration of test claim and incorrect reduction claim decisions made pursuant to Government Code section 17559(a).

#### 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. Clarify the Definitions in Section 1181.2 and Clarify the Types of Matters for which the Executive Director Assigns Matter Numbers for New Filings in Section 1181.4.**

The proposed amendments to the definitions in 1181.2(k) and (l) of “new filing” and “party” are to clarify that there are three types of new filings with respect to a program funded through SMAS, only two of which are identified in the current definitions. The three types of SMAS requests are a request for inclusion of a program in SMAS (§ 1186.2), a request for removal of a program from SMAS (§ 1186.4), and request for a review of the apportionment or base year entitlement of a program in SMAS (§ 1186.6).

The definition of “completed” in 1181.2(e), is amended to make clear that it applies to all types of new filings, consistent with Commission practice. There are general requirements for filing and service of all new filings (§ 1181.3), and to include documentary evidence to support an assertion of fact (§ 1187.5), and there are specific requirements for filing of new matters that are included in the specific sections of the Government Code and the Commission’s regulations that pertain to each type of matter.

Government Code citations are added to the definition of “Statewide Cost Estimate” in 1181.2(o) for clarity, and the factors the Commission may consider when adopting a statewide cost estimate are added.

Government Code citations are also added to the definition of “Statewide Estimate of Costs” in 1181.2(p), and clarification that the estimate is based on a “joint” RRM. And a Government Code citation is added to the definition of “subsequent change in the law” in 1181.2(q) for clarification.

In addition, language is proposed in section 1181.2(k) to clarify that a “joint request for an RRM” is actually by statute a “joint request for reasonable reimbursement methodology and statewide estimate of costs,” (Joint RRM and SEC) pursuant to Government Code sections 17557.1 and 17557.2, and section 1183.11 of the Commission’s regulations; and in section 1181.2(l)(4) to clarify the parties to a jointly proposed request to terminate a joint RRM filed pursuant to Government Code section 17557.2 and section 1183.15 of the Commission’s regulations. Similar clarifying changes to the types of new filings in section 1181.4(c)(4) and 1181.4(c)(6) are proposed.

### **II. Add Requirement to Electronically File All Documents in Specified Formats, and Limit Filing by Other Methods in Section 1181.3.**

The proposed amendments require e-filing of all documents unless the executive director approves the filer’s written request that demonstrates e-filing legible and searchable PDF documents would cause undue hardship or significant prejudice.

The proposed amendment also requires that e-filed documents be unlocked, and the searchable format must use a “true PDF” (i.e., documents digitally created in PDF, converted to PDF, or printed to PDF) or optical character recognition (OCR) function, as necessary, that allows the text to be electronically searched. The proposed amendments further limit file size (500

megabytes), require specific organization and bookmarks, and discourage color documents unless necessary for readability or comprehension.

The proposed amendment prohibits filing scanned documents that are available or obtainable electronically, but provides that documents not available or obtainable in electronic form may be scanned and OCR'd and filed in a separate volume.

The remaining proposed amendments are necessary to clarify the filing and service requirements.

Redundant provisions are deleted, and service requirements for e-filing are clarified. In addition, the requirement that filings shall not contain personal identifying information that violates state or federal privacy laws has been moved for clarity to subdivision (b).

**III. Clarify, in Section 1181.8, that the Tie Vote Procedures Apply to All Action Items and that the Option of Assigning a “Matter” to a Hearing Panel or Hearing Officer in the Case of Tie Vote Applies to All “Matters.”**

The proposed amendment clarifies that the rules on tie votes apply to all agenda items and that the option of assigning a matter to a hearing panel or hearing officer in the case of a tie vote pursuant to section 1187.2 of the regulations applies to all quasi-judicial “matters,” as defined in section 1187.1.

In addition, the requirement that a majority of the votes cast by the members assigned to a hearing panel is required for the approval of a preliminary decision on matters and applications for a finding of significant financial distress is moved for clarity to proposed § 1181.8(c)(2)(A) [current § 1181.8(c)(1)(A)].

**IV. Streamline the Process for Adopting Expedited Parameters and Guidelines in Sections 1183.9 and 1183.13.**

A new subdivision (d) is proposed to be added to section 1183.9 to provide that if no substantive comments are filed on the draft expedited parameters and guidelines, a draft proposed decision need not be prepared.

Language is also proposed in section 1183.13(a) to clarify that a draft proposed decision is prepared for all proposed parameters and guidelines *except* as provided in section 1183.9(d) for draft expedited parameters and guidelines on which no substantive comments are filed.

**V. Clarify the Joint Reasonable Reimbursement Methodology Regulations With Amendments to Sections 1183.11, 1183.15, 1183.16 and 1183.17.**

Amendments are proposed to these regulations to clarify that the joint RRM and SEC authorized by Government Code sections 17557.1 and 17557.2 is an alternative process to the parameters and guidelines adopted by the Commission pursuant to Government Code section 17557. Thus, in section 1183.11, “Alternative Process” is added to the title. Language is proposed in section 1183.15(a) to clarify that the regulation addresses the early termination of *joint* RRMs and SECs adopted pursuant to Government Code sections 17557.1 and 17557.2 and section 1183.11 of the Commission’s regulations. In addition, proposed language is included in section 1183.15(f) to allow the test claimant to request that Commission staff prepare expedited parameters and guidelines when a joint RRM and SEC is terminated early, which is consistent with the process described in section 1183.16 when the term of a joint RRM and SEC expires. A sentence is added to section 1183.11(d), (f), and (g), and to section 1183.15(c) and (d) to remind the parties

that “if representations of facts are made” in submitted comments, “they shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of these regulations.”

Clarifying language is also proposed in section 1183.16, which governs the expiration of a joint RRM and SEC, to make clear in the title that the regulation addresses *joint* RRMs and SECs, and clarify that this RRM and SEC is adopted pursuant to Government Code sections 17557.1 and 17557.2 (in contrast to RRMs proposed for inclusion in parameters and guidelines pursuant to Government Code sections 17518.5 and 17557(f)). Additional amendments clarify that Commission staff issues notices and draft proposed decisions regarding Joint RRMs and SECs to everyone on the mailing list and posts them on the Commission’s website. Language is proposed in section 1183.16(c), (e), and (f) to remind the parties that in submitting joint RRMs and SECs, and comments, “if representations of fact are made, they shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of these regulations,” and that notices are issued to everyone on the mailing list, and notices and decisions are posted on the Commission’s website.

Sections 1183.16(a), (d), and (h) and 1183.17(f) are proposed to be amended to add that notices must include “everyone on the mailing list described in section 1183.14” to remind parties that the Commission follows section 1183.14 in notifying parties, and to add that the Commission “shall post a copy of the notice on the Commission’s website” to remind parties that this is also a Commission procedure. Section 1183.17(i) is proposed to be amended to add that Commission staff issues draft proposed decisions regarding parameters and guidelines amendments for comment.

#### **VI. Clarify Actions in the Timeline in Section 1183.18.**

The proposed amendments clarify that “parties, interested parties, and interested persons,” in addition to state agencies, may file comments on the test claim and the draft proposed decision, and that in addition to parties, “interested parties and interested persons” may also file comments on proposed parameters and guidelines and the draft proposed decision on parameters and guidelines, as well as on statewide cost estimates (SCEs).

Another amendment clarifies that Commission staff issues the SCE within 375 days after the test claim is filed, and 10 days after the SCE is adopted. Adoption of the SCE within 365 days is already part of the regulation, and the addition of “issuing” the SCE by day 375 merely makes this provision consistent with the Commission’s practice to issue matters within 10 days of their adoption.

The proposed amendments also clarify that “parties, interested parties, and interested persons” in addition to state agencies may file comments on the test claim with joint RRM and SEC, as well as comment on the draft proposed decision. And amendments to the timelines for joint RRMs and SECs are proposed to clarify that “interested persons” may also file comments and to add “joint” to the title of RRM.

Finally, the section is proposed to be amended in several places to clarify that the Commission notifies or issues decisions to “those on the mailing list,” which is an existing practice.

#### **VII. Clarify the Deadline for Filing Amendments to Incorrect Reduction Claims in Section 1185.1.**

The proposed amendment clarifies that the three-year limitations period for filing IRCs also applies to filing amendments to IRCs.

**VIII. Add Completeness Language and Clarify in the Title that It Is a “Request” to Review the Apportionment or Base Year Entitlement of a Program in SMAS in Section 1186.6.**

The proposed amendments clarify the title of the regulation to indicate that it addresses a “request” for a review of an apportionment or base year entitlement, and to add a subdivision requiring that the request must conform to the filing requirements or be deemed incomplete and returned to the requester for completion. This proposed amendment makes this provision consistent with sections 1186.2 and 1186.4, which address requests for inclusion and removal of a program from SMAS and consistent with Commission requirements and practice for all new filings to be determined complete.

**IX. Clarify the Definition of “Matters” that Are Subject to Article 7 in Section 1187.1.**

The proposed amendment expands the definition of “matter” subject to hearings and decisions under article 7 to include requests to approve joint RRM and SECs and joint requests for early termination of a joint RRM and SEC in accordance with Government Code sections 17557.1 and 17557.2.

**X. Clarify that the Informal Conference and Witnesses/Subpoena Regulations Apply to All “Matters” Subject to the Article 7 Regulations by Amending Sections 1187.4 and 1187.7.**

The proposed amendment clarifies that 1187.4(e) applies to all “matters,” as defined, and is not limited to records on a test claim. Another proposed amendment changes “claimant rebuttal” to “rebuttal comments” because conferences may be held on any matter as defined in article 7 of the regulations, and for some matters a party other than a “claimant” has an opportunity to rebut.

The proposed amendments to section 1187.7 (regarding witnesses and issuing subpoenas) replace “claim” with “matters,” and makes other conforming changes consistent with the definition of “matters” in article 7 of the regulations. Conforming amendments are proposed to section 1187.7, to delete references to “matters” (replacing it with “documents”), to avoid confusion with the use of the term “matter” as defined in section 1187.1(a).

**XI. Clarifies Procedures During Hearings in Section 1187.6.**

The proposed amendment to section 1187.6(a) authorizes the Commission chair or a hearing officer to limit the length of testimony or the time allotted for each witness in accordance with the requirements of the Bagley-Keene Open Meeting Act, and consistent with section 1182.10 of the Commission’s regulations, which regulates Commission hearings on county applications for findings of significant financial distress.

Another proposed amendment to section 1187.6(d) clarifies the Commission’s existing hearing procedure that not only the claimant (adding “or requester” if the matter is not a claim) may present its case, but also “aligned parties or interested parties” to present their positions, and then for “opposing parties or interested parties” (rather than the more specific “Department of Finance or affected state agency”) to present their positions. This amendment conforms Commission hearing procedures to a wider variety of matters beyond test claims and IRCs.

**XII. Clarify the Abandonment of a Matter in Section 1187.13.**

The proposed amendment clarifies that the regulation authorizing matters to be deemed abandoned applies to all “matters” subject to article 7 of the regulations, and not just to test claims or IRCs, and makes the terms used consistent (e.g., “claim or request” is amended to “matter”). In addition, subdivision (a)(2), which addresses the withdrawal of a test claim, is deleted because it is redundant with section 1187.12 governing the withdrawal of matters, including test claims. Any matter that has been withdrawn or abandoned is subject to the dismissal procedures in section 1187.14 of the regulations.

**XIII. Clarify the Dismissal of a Matter in 1187.14.**

Language is proposed in section 1187.14 to clarify that a Commission hearing on a dismissal is only required for test claims, and not for other “matters” in accordance with subdivisions (a) and (b) of this regulation.

**XIV. Clarify the Standard of Review for Reconsideration of an Adopted Decision on a Test Claim or Incorrect Reduction Claim in Section 1187.15.**

The proposed amendment clarifies in the title and body of the regulation that only test claims and IRCs are subject to reconsideration by the Commission, as authorized by Government Code section 17559(a). This amendment also provides that the standard of review of a request for reconsideration, is consistent with the standard in Code of Procedure section 1008, which authorizes the courts to reconsider a decision only to consider new or different facts, circumstances, or law, as was established in a recent Commission Decision on Reconsideration. The proposed amendment includes language from Code of Civil Procedure section 1008(f), which clarifies that new or different law does “not include a later enacted statute without a retroactive application.” Additional language is proposed to authorize a reconsideration to consider a clerical error, and to clarify that the written analysis of a request for reconsideration shall address whether the request is timely, complete, diligent, and is based on new or different facts, circumstances, or law that is likely to support an amendment to the findings or conclusions in the adopted decision on the test claim or IRC, or is based on a clerical error. If the Commission grants the request for reconsideration, a second hearing shall be conducted to determine if the adopted decision must be amended based on a clerical error or new or different facts, circumstances, or law. Redundant language stating that the draft proposed decision shall be distributed to “any person who requests a copy” is proposed for deletion since any person may request to be placed on the mailing list and the draft proposed decision is issued to everyone on the mailing list. Additional language is proposed to clarify that the specified procedures that apply in the event of a “changed decision” apply exclusively to changed test claim decisions and that they also include amendments to parameters and guidelines.

**XV. Minor, Nonsubstantive Consistency Edits and Corrections**

The following proposed amendments make minor, nonsubstantive consistency edits or correct usage and errors in sections 1181.1, 1181.3, 1181.9, 1183.1, 1183.2; 1183.3; 1183.4; 1183.6; 1183.7; 1183.8, 1183.9, 1183.10, 1183.11, 1183.12, 1183.13, 1183.14, 1183.15, 1183.16, 1183.17, 1183.18, 1184.1, 1185.1, 1185.2, 1185.3, 1185.4, 1185.5, 1185.6, 1185.7, 1185.8, 1185.9, 1186.2, 1186.4, 1186.7, 1187.1, 1187.3, 1187.6, 1187.7, 1187.8, 1187.9, 1187.13, 1187.14, 1187.15, 1188.1, 1188.2, 1190.1, 1190.2, 1190.3, and 1190.5 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 replace “web site” with “website” (proposed §§ 1181.3(c)(1) [current § 1181.3(b)(1)], 1183.2, 1187.1); replace “comments” with “may file rebuttals” (§ 1183.18); replace “which” with “that” (§§ 1186.2, 1186.4, 1190.5); replace “filing party,” “filing person,” and “person who e-files,” with “filer” (proposed § 1181.3(c)(1)(A)-(D) [current § 1181.3(b)(1)(A-E)]); replace “requesting party” with “requester” (proposed §§ 1187.13(a)(2)(B) & (a)(2)(C) [current § 1187.13(a)(3)(B) & (a)(3)(C)], 1187.15(a)(1) [current § 1187.15(b)(1)]); replace “requesting party” with “applicant” (§ 1187.6(f)); add “or requester” (§§ 1187.6, 1187.7, 1187.13, 1187.15); replace “publicized” with “noticed” (§§ 1183.6, 1184.1, 1185.7, 1190.5); replace “must” with “shall” (proposed §§ 1181.3(c)(1) [current § 1181.3(b)(1)], 1181.3(c)(2)(B) [current § 1181.3(c)], and 1183.2(c)(2)); replace “most reasonable method” with “reasonably necessary activities” (§ 1183.10(b)); replace “Commission Staff” with “Commission” (proposed §§ 1181.3(c)(1) & (c)(2)(B) [current §§ 1181.3(b)(1) & (c)], 1187.15(f)(1)(B) [current § 1187.15(g)(1)(B)], 1190.5(a)(3) & (b)(3)); replace “claimant’s or state agency” with “party” (proposed § 1187.15(h) [current § 1187.15(i)]); and replace “staff of the Commission” with “Commission staff” (§ 1187.6).

Additional proposed amendments replace the words “distribute,” “publish,” “provide,” “send,” “forward,” and “mail,” with “issue” or “issued” (proposed §§ 1181.3(c)(1)(D) [current § 1181.3(b)(1)(E)], 1181.9, 1183.8, 1183.13, 1183.16, 1183.17, 1183.18, 1184.1, 1185.7, 1185.9, 1187.1, 1187.8, 1187.14, 1187.15(f)(1)(A) [current § 1187.15(g)(1)(A)], 1188.1, 1188.2, 1190.2, 1190.5); replace “review” with “comment” (§ 1183.18); replace “to” with “with” (§§ 1183.8, 1183.12, 1183.18, 1187.7); replace “submit,” “submit to,” “submittal,” “submitting,” “for submittal,” “prepared,” “provide,” “review and provide,” and “received,” with “file,” “filed,” “filing,” “filed with,” “to file,” or “may file,” as applicable (§§ 1181.1, proposed 1181.3(c)(1) [current § 1181.3(b)(1)], 1183.1, 1183.6, 1183.8, 1183.9, 1183.10, 1183.11, 1183.12, 1183.13, 1183.15, 1183.16, 1183.17, 1183.18, 1184.1, 1185.2, 1185.7, 1185.8, 1187.6, 1187.7, 1187.14, 1190.5); replace “submit” and “submitted” with “include” or “prepared” (§§ 1181.2, 1183.3); replace “submitted” and “submittal of” with “proposed” or “proposing” (§§ 1183.10, 1183.12, 1186.2); replace “claimed” with “alleged” (§ 1187.3); replace “accorded” with “provided” (§ 1187.3); replace “though” with “if” (§ 1187.6); replace “for the purpose of facilitating” with “to facilitate” (§ 1187.6); replace “all other matters” with “anything” (§ 1187.9); replace “made” with “provided” (§ 1187.14); replace “delivered” and “mailed” with “served on” (§ 1187.15); replace “required” with “determined” (proposed § 1187.15(f)(1)(A) [current § 1187.15(g)(1)(A)]); replace “change or changes” with “amend or amendments” (proposed §§ 1187.15(b)(4) [current § 1187.15(c)(4)], 1190.2, 1190.3); replace “and recommend” with “recommending” (§ 1183.17); and replace “institute” with “initiate” (§ 1188.2).

Additional proposed amendments delete unnecessary words including “as was” (proposed § 1181.3(c)(2)(B) [current § 1181.3(c)]), “staff” (§ 1183.16), “in order” (§ 1184.1), “serve and” (§ 1185.6), “for” (§ 1186.7), “claimant” (§ 1187.4), “or” (§ 1181.4(c)(6)), “the” (§ 1183.16), “submitted,” “and shall be submitted,” and “submitted from” (§§ 1183.1, 1183.2, 1183.3, 1183.4, 1183.6, 1183.7, 1183.8, 1183.9, 1183.10, 1183.12, 1183.13, 1183.17, 1184.1, 1185.1, 1185.2, 1185.3, 1185.4, 1185.7, 1186.2, 1186.4, 1187.9, 1187.14, proposed § 1187.15(b)(5) & (f)(1)(B)

[current § 1187.15(c)(5) & (g)(1)(B)], 1190.1, 1190.2, 1190.3, 1190.5), “events” (§ 1187.13), and “preceding” (§§ 1186.2, 1186.4).

Additional proposed amendments add internal citations to other regulations (proposed §§ 1181.3(c)(1)(C) [current § 1181.3(b)(1)(D)], 1183.16(i), 1185.6(b)); replace “section 1187.9” with “subdivision (b) of this section” (§ 1187.9(a)); add “(a)” and “of this section” to a citation (§ 1188.2(A)(2)); and add “of these regulations” to citations (§§ 1185.2(e), 1185.5(a) & (b), 1185.8(b)).

An additional proposed amendment adds that requests to sever an IRC from a proposed consolidation shall be “filed and served, in accordance with section 1181.3 of these regulations,” (§ 1185.6(b)) to remind parties and interested parties of the need to follow the Commission’s certification, filing, and service procedures.

#### Correct Minor Errors

These amendments are also proposed to correct errors in the current regulations, including to change “applicant” to “appellant” (§ 1181.1(c)(3)); replace “of” with “after” (§ 1183.13(e)); to correct erroneous citations (§§ 1183.10(b)(1), proposed 1187.15(i) [current § 1187.15(j)]); to add the word “section” (§ 1187.14(a)); to add the word “a” (§§ proposed 1181.3(c)(1) [current § 1181.3(b)(1)], 1187.14(a), 1183.15(e)); to add the word “and” (§ 1183.13(a)); to add the word “the” (§§ 1183.13(e), 1183.16(g), 1187.6(g), 1190.5(b)(3)); to add the word “comments” (§ 1187.4(a)(1)); to replace “sections” with “section” (§ 1183.14(a)); to replace “fail” with “fails” (§ 1183.16(i)); to replace “on” with “by” (§ 1183.18(a)(5)); and to make capitalization consistent (§§ 1183.13(a), 1186.4(d), 1183.18(b)(1)).

#### **XVI. Update to Authority and Reference Citations in Sections 1187.2 and 1187.6.**

The authority statutes for section 1187.2, which addresses the assignment of a matter to a hearing panel or hearing officer, are proposed to be amended to add Government Code section 17532, which authorizes the Commission to designate any commissioner or commissioners for “any investigation, inquiry, or hearing which the commission has power to undertake or to hold.”

The reference statutes for section 1187.6, which governs the conduct of Commission hearings, are proposed to be amended to add Government Code section 11125.7, which authorizes state bodies to adopt “regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.”

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

The Commission relied on a guide prepared by the California Courts of Appeal titled *Guide to Creating Electronic Documents/Filings*, November 1, 2017 <https://www.courts.ca.gov/documents/DCA-Guide-To-Electronic-Appellate-Documents.pdf> (accessed on April 26, 2019); and on a guide prepared by the California Second District Court of Appeal titled *Electronic Formatting Requirements and Guidelines of the Second District Pursuant to California Rules of Court rules 8.72(a) and 8.74(b)*, effective October 2017, Revised June 18, 2018 <https://www.courts.ca.gov/documents/2DCA-Electronic-Formatting-Req-Guide.pdf> (accessed on April 26, 2019). The Commission also relied upon the statutes and cases cited in the authority and reference sections for the regulations.

## DISCLOSURES REGARDING THE PROPOSED ACTION

The Commission has made the following initial determinations:

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

### Results of the Economic Impact Analysis/Assessment

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

### Small Business Determination

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

## CONSIDERATION OF ALTERNATIVES

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

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

## CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Jill Magee, Program Analyst  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Telephone: (916) 323-3562  
(jill.magee@csm.ca.gov)

The backup contact person for these inquiries is:

Heidi Palchik, Assistant Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
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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 full text of documents relied on, the modified text of the regulations, if any, or other information on which the rulemaking is based to Ms. Jill Magee at the above address or download it from the Commission's website at <http://www.csm.ca.gov/rulemaking.php>.

**AVAILABILITY OF STATEMENT OF REASONS,  
TEXT OF PROPOSED REGULATIONS, AND  
FULL TEXT OF DOCUMENTS RELIED ON**

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, the full text of the documents relied on, 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 at the address or phone number listed 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  
ADDITIONAL 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 additional 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 additional documents relied on to the attention of Ms. Jill Magee at the address indicated above. The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons and any Additional Documents Relied on may be obtained by contacting Ms. Jill Magee at the above address.

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

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

**INITIAL STATEMENT OF REASONS**  
**CALIFORNIA CODE OF REGULATIONS**  
**TITLE 2. ADMINISTRATION**  
**DIVISION 2. FINANCIAL OPERATIONS**  
**CHAPTER 2.5. COMMISSION ON STATE MANDATES**  
**GENERAL CLEANUP PROVISIONS**  
**ARTICLES 1, 3, 4, 5, 6, 7, 8, AND 10**

SECTIONS 1181.1; 1181.2; 1181.3; 1181.4; 1181.8; 1181.9; 1183.1; 1183.2; 1183.3; 1183.4;  
1183.6; 1183.7; 1183.8; 1183.9; 1183.10; 1183.11; 1183.12; 1183.13; 1183.14; 1183.15;  
1183.16; 1183.17; 1183.18; 1184.1; 1185.1; 1185.2; 1185.3; 1185.4; 1185.5; 1185.6; 1185.7;  
1185.8; 1185.9; 1186.2; 1186.4; 1186.6; 1186.7; 1187.1; 1187.2; 1187.3; 1187.4; 1187.6;  
1187.7; 1187.8; 1187.9; 1187.13; 1187.14; 1187.15; 1188.1, 1188.2, 1190.1, 1190.2, 1190.3,  
1190.5

**SPECIFIC PURPOSE OF THE REGULATIONS**

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

The purpose of this rulemaking is to generally clean-up, clarify, and streamline Commission regulations and update language for consistency. Specifically, the proposed regulations: (1) clarify the definitions of “completed,” “new filing,” “party,” “statewide cost estimate,” “statewide estimate of costs,” and “subsequent change in the law;” and clarify the types of matters for which the executive director issues sequential numbers for matters; (2) require electronic filing for all new filings and written materials except as specified, and add electronic formatting requirements; (3) clarify that the tie vote procedures apply to all action items and that the option of assigning a matter to a hearing panel or hearing officer in the case of a tie vote applies to all quasi-judicial “matters” and not only to test claims and incorrect reduction claims; (4) streamline the process for adopting expedited parameters and guidelines; (5) clarify the joint reasonable reimbursement methodology (RRM) regulations, which implement Government Code sections 17557.1 and 17557.2, to make it clear that it is an alternative process and not the same as an RRM included in parameters and guidelines adopted by the Commission pursuant to Government Code section 17557; (6) clarify Commission and party actions in the timeline regulation; (7) clarify that the three-year limitation period that applies to filing incorrect reduction claims also applies to filing amendments to incorrect reduction claims; (8) add completeness language to a request to review the apportionment or base year entitlement of a program in the State Mandates Apportionment System (SMAS) consistent with the other SMAS requests for inclusion and removal; (9) clarify the definition of “matter” in article 7 to include joint reasonable reimbursement methodologies and statewide estimates of costs (joint RRM and SECs), and joint requests for early termination of a joint RRM; (10) clarify that the informal conference regulation and witnesses/subpoena regulations apply to all quasi-judicial “matters” subject to the article 7 regulations; (11) authorize limits to the length of testimony in Commission hearings consistent with the Bagley-Keene Open Meeting Act; (12) clarify that the regulation for abandoning a matter applies to all quasi-judicial “matters” subject to the article 7

regulations; (13) clarify the regulation on dismissal of a test claim or other matter; (14) clarify the regulation governing the limited authority to reconsider a prior final decision on a test claim or incorrect reduction claim to make it consistent with Government Code section 17559(a), to clarify the standard of review to reconsider a prior final decision, and to make other clarifying amendments; (15) make minor, non-substantive consistency edits, corrections; and (16) update authority and reference citations.

**I. Clarify the Definitions in Section 1181.2 and Clarify the Types of Matters for which the Executive Director Assigns Matter Numbers for New Filings in Section 1181.4.**

Section 1181.2. Definitions; Section 1181.4. Mailing Lists and Numbering of Matters.

*Specific Purpose of the Regulation*

Section 1181.2 of the regulations defines terms in the Government Code and the Commission's regulations. Section 1181.4(c) of the regulations requires the executive director to issue sequential matter numbers by fiscal year for "new filings." The proposed amendments to section 1181.2(e), (k), (l), (o), (p) and (q) and section 1181.4(c) of the regulations are intended to clarify the definitions and make them consistent with other Commission regulations.

*Proposed Changes*

The proposed amendments to the definitions in 1181.2(k) and (l) of "new filing" and "party" are to clarify that there are three types of new filings with respect to a program funded through SMAS, only two of which are identified in the current definitions. The three types of SMAS requests are a request for inclusion of a program in SMAS (§ 1186.2), a request for removal of a program from SMAS (§ 1186.4), and request for a review of the apportionment or base year entitlement of a program in SMAS (§ 1186.6).

The definition of "completed" in 1181.2(e), is amended to make clear that it applies to all types of new filings, consistent with Commission practice. There are general requirements for filing and service of all new filings (§ 1181.3), and to include documentary evidence to support an assertion of fact (§ 1187.5), and there are specific requirements for filing of new matters that are included in the specific sections of the Government Code and the Commission's regulations that pertain to each type of matter.

Government Code citations are added to the definition of "Statewide Cost Estimate" in 1181.2(o) for clarity, and the factors the Commission may consider when adopting a statewide cost estimate are added.

Government Code citations are also added to the definition of "Statewide Estimate of Costs" in 1181.2(p), and clarification that the estimate is based on a "joint" RRM. And a Government Code citation is added to the definition of "subsequent change in the law" in 1181.2(q) for clarification.

In addition, language is proposed in section 1181.2(k) to clarify that a "joint request for an RRM" is actually by statute a "joint request for reasonable reimbursement methodology and statewide estimate of costs," (Joint RRM and SEC) pursuant to Government Code sections 17557.1 and 17557.2, and section 1183.11 of the Commission's regulations; and in section 1181.2(l)(4) to clarify the parties to a jointly proposed request to terminate a joint RRM filed pursuant to Government Code section 17557.2 and section 1183.15 of the Commission's

regulations. Similar clarifying changes to the types of new filings in section 1181.4(c)(4) and 1181.4(c)(6) are proposed.

*Necessity and Anticipated Benefit*

These proposed amendments are necessary to clarify the definitions and when they apply in accordance with the Government Code and other Commission regulations.

**II. Add Requirement to Electronically File All Documents in Specified Formats, and Limit Filing by Other Methods in Section 1181.3.**

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

*Specific Purpose of the Regulation*

Section 1181.3 of the regulations provides the procedure for filing and serving new filings and written materials both electronically (e-filing) or in hard copy for all Commission matters, and requires that documents e-filed with the Commission be in a legible and searchable format.

The proposed amendments are part of the solution to receive and maintain very large legal documents as permanent electronic records. In addition, the proposed amendments are consistent with court rules, which are moving in the direction of e-filing.

These requirements are intended to assist the Commission in managing its records and are similar to the courts' requirements for electronically filed documents. (E.g., <https://www.courts.ca.gov/documents/DCA-Guide-To-Electronic-Appellate-Documents.pdf> and <https://www.courts.ca.gov/documents/2DCA-Electronic-Formatting-Req-Guide.pdf>.)

*Proposed Changes*

The proposed amendments require e-filing of all documents unless the executive director approves the filer's written request that demonstrates e-filing legible and searchable PDF documents would cause undue hardship or significant prejudice.

The proposed amendment also requires that e-filed documents be unlocked, and the searchable format must use a "true PDF" (i.e., documents digitally created in PDF, converted to PDF, or printed to PDF) or optical character recognition (OCR) function, as necessary, that allows the text to be electronically searched. The proposed amendments further limit file size (500 megabytes), require specific organization and bookmarks, and discourage color documents unless necessary for readability or comprehension.

The proposed amendment prohibits filing scanned documents that are available or obtainable electronically, but provides that documents not available or obtainable in electronic form may be scanned and OCR'd and filed in a separate volume.

The remaining proposed amendments are necessary to clarify the filing and service requirements.

Redundant provisions are deleted, and service requirements for e-filing are clarified. In addition, the requirement that filings shall not contain personal identifying information that violates state or federal privacy laws has been moved for clarity to subdivision (b).

*Necessity and Anticipated Benefit*

The size and complexity of the records filed with the Commission have increased exponentially in recent years. In particular, test claim filings, comments, and administrative records relating to matters involving the State Water Resources Control Board can range from 100,000 to 200,000

pages. The size of these records require between 10-20 cases of paper per single copy and cost approximately \$1,200 to copy in black and white or \$9,000 to copy in color, and increase staff time and storage costs. In addition, these administrative records have included many color maps and diagrams, which vary in paper size and become illegible if printed on 8x11 inch paper in black and white. These colored exhibits are often located in the middle of thousands of pages of black and white text and can be very difficult to identify. To include these oversized and colored maps and diagrams in the correct size and color, they need to be folded and inserted manually into the printed paper copy. This process is extremely labor intensive, costly, and subject to human error. In addition, the electronic files are so large and often are not searchable (or not completely searchable) such that they are difficult or impossible to download on many devices, or to find relevant information in, making them inaccessible and of limited use to the parties and the public.

The proposed amendments are consistent with court rules, which are moving in the direction of e-filing and several of the Commission's decisions (in particular those on the most complex and contentious claims with the largest records) are eventually litigated and the records for them must be filed with the courts. For example, Code of Civil Procedure section 1010.6(c) authorizes courts to require filing electronically unless doing so would cause undue hardship or significant prejudice to a party; and California Rules of Court, Rule 2.253 authorizes trial courts to require electronically filed documents if the courts "have a process for parties or other persons, including represented parties or other represented persons, to apply for relief and a procedure for parties or other persons excused from filing documents electronically to file them by conventional means." It is anticipated that these changes will streamline and make more efficient the mandate determination process and will enable staff to more easily review, analyze, post, serve, and store large, complex legal documents. These changes will also increase accessibility and ease of participation in the mandates process for parties, interested parties and interested persons who will be able to more easily download and search supporting documents.

**III. Clarify, in Section 1181.8, that the Tie Vote Procedures Apply to All Action Items and that the Option of Assigning a "Matter" to a Hearing Panel or Hearing Officer in the Case of Tie Vote Applies to All "Matters."**

Section 1181.8. Commission Meeting and Voting Requirements.

*Specific Purpose of the Regulation*

Section 1181.8(c) of the regulations governs the procedures in case of a tie vote on a "claim" and the option and procedure for assigning a quasi-judicial "claim" to a hearing panel or hearing officer under these circumstances.

The proposed amendment clarifies Commission actions on tie votes.

*Proposed Changes*

The proposed amendment clarifies that the rules on tie votes apply to all agenda items and that the option of assigning a matter to a hearing panel or hearing officer in the case of a tie vote pursuant to section 1187.2 of the regulations applies to all quasi-judicial "matters," as defined in section 1187.1.

In addition, the requirement that a majority of the votes cast by the members assigned to a hearing panel is required for the approval of a preliminary decision on matters and applications

for a finding of significant financial distress is moved for clarity to proposed § 1181.8(c)(2)(A) [current § 1181.8(c)(1)(A)].

*Necessity and Anticipated Benefit*

The proposed amendment is necessary to clarify that all items (not only “claims”) may be reheard in case of a tie vote. The proposed amendment is also necessary to make this regulation consistent with section 1187.1(a) of the Commission’s regulations, which defines the “matters” subject to the article 7 quasi-judicial procedures, and section 1187.2, which governs assigning the “matter” to a hearing panel or hearing officer in the case of a tie vote.

**IV. Streamline the Process for Adopting Expedited Parameters and Guidelines in Sections 1183.9 and 1183.13.**

Section 1183.9. Expedited Process for Proposed Parameters and Guidelines; Section 1183.13. Adoption of Parameters and Guidelines.

*Specific Purpose of the Regulation*

Section 1183.9 of the regulations outlines the process for expediting parameters and guidelines after the Commission approves or partially approves a test claim. The current procedure allows Commission staff to issue draft expedited parameters and guidelines for comment. Whether or not comments are filed, the current procedures in section 1183.13(a) then require that staff prepare and issue a draft proposed decision and parameters and guidelines for an additional three-week comment period, before the matter can be heard by the Commission thereby missing the timeline to make it on the next Commission agenda. Thus, even if there are no substantive comments filed on the draft expedited parameters and guidelines, the additional comment period on the draft proposed decision increases by two months the time the matter can be heard by the Commission, which results in a two-month delay in the time to adopt a Statewide Cost Estimate. This hinders the Commission’s ability to adopt a Statewide Cost Estimate within 12-18 months, as required by Government Code section 17553(a)(2).

The proposed amendment would streamline the process for expedited parameters and guidelines and remove this impediment to adopting a Statewide Cost Estimate within 12-18 months.

*Proposed Changes*

A new subdivision (d) is proposed to be added to section 1183.9 to provide that if no substantive comments are filed on the draft expedited parameters and guidelines, a draft proposed decision need not be prepared.

Language is also proposed in section 1183.13(a) to clarify that a draft proposed decision is prepared for all proposed parameters and guidelines *except* as provided in section 1183.9(d) for draft expedited parameters and guidelines on which no substantive comments are filed.

*Necessity and Anticipated Benefit*

The proposed amendments to sections 1183.9(d) and 1183.13(a) are necessary to streamline the process by authorizing expedited parameters and guidelines to be heard without issuing a draft proposed decision only if no comments on the draft expedited parameters and guidelines are filed that raise substantive issues regarding any of the parameters and guidelines elements described in section 1183.7. Under these circumstances, the matter is set for the next Commission hearing

and a proposed decision and proposed parameters and guidelines are prepared for the Commission's consideration.

This change will also improve the ability of the Commission to adopt statewide cost estimates within the statutory timeframe set out in Government Code section 17553.

**V. Clarify the Joint Reasonable Reimbursement Methodology Regulations With Amendments to Sections 1183.11, 1183.15, 1183.16 and 1183.17.**

Section 1183.11. Joint Reasonable Reimbursement Methodology and Statewide Estimate of Costs; Section 1183.15. Jointly Proposed Request for Early Termination of Reasonable Reimbursement Methodology; Section 1183.16. Expiration of Reasonable Reimbursement Methodology; Section 1183.17. Amendments to Parameters and Guidelines.

*Specific Purpose of the Regulation*

Section 1183.11 governs the alternative process for the successful test claimant and the Department of Finance to develop a joint RRM and SEC for the initial claiming period and budget year pursuant to Government Code section 17557.1 and 17557.2. Under these code sections, the Commission shall approve a joint RRM and SEC if the parties have complied with the process outlined in Government Code section 17557.1, and the proposal has broad support from a wide range of local agencies or school districts. Section 1183.17 governs amendments to parameters and guidelines which may include proposed RRMs requested for inclusion in the parameters and guidelines adopted by the Commission pursuant to Government Code section 17557. Unlike for proposed RRMs requested for inclusion in the parameters and guidelines pursuant to 1183.7, the Commission does not analyze the merits of whether the joint RRM and SEC proposed in accordance with sections 17557.1 and 17557.2 reasonably represents the costs mandated by the state for the approved program in joint RRM and SECs pursuant to 1183.11. Sections 1183.15 and 1183.16 of the regulations govern the early termination and expiration of the joint RRM and SEC.

The proposed amendments would clarify the distinction between the separate RRM procedures in 1183.11 and 1183.17.

*Proposed Changes*

Amendments are proposed to these regulations to clarify that the joint RRM and SEC authorized by Government Code sections 17557.1 and 17557.2 is an alternative process to the parameters and guidelines adopted by the Commission pursuant to Government Code section 17557. Thus, in section 1183.11, "Alternative Process" is added to the title. Language is proposed in section 1183.15(a) to clarify that the regulation addresses the early termination of *joint* RRMs and SECs adopted pursuant to Government Code sections 17557.1 and 17557.2 and section 1183.11 of the Commission's regulations. In addition, proposed language is included in section 1183.15(f) to allow the test claimant to request that Commission staff prepare expedited parameters and guidelines when a joint RRM and SEC is terminated early, which is consistent with the process described in section 1183.16 when the term of a joint RRM and SEC expires. A sentence is added to section 1183.11(d), (f), and (g), and to section 1183.15(c) and (d) to remind the parties that "if representations of facts are made" in submitted comments, "they shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of these regulations."

Clarifying language is also proposed in section 1183.16, which governs the expiration of a joint RRM and SEC, to make clear in the title that the regulation addresses *joint* RRMs and SECs, and

clarify that this RRM and SEC is adopted pursuant to Government Code sections 17557.1 and 17557.2 (in contrast to RRMs proposed for inclusion in parameters and guidelines pursuant to Government Code sections 17518.5 and 17557(f)). Additional amendments clarify that Commission staff issues notices and draft proposed decisions regarding Joint RRMs and SECs to everyone on the mailing list and posts them on the Commission’s website. Language is proposed in section 1183.16(c), (e), and (f) to remind the parties that in submitting joint RRMs and SECs, and comments, “if representations of fact are made, they shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of these regulations,” and that notices are issued to everyone on the mailing list, and notices and decisions are posted on the Commission’s website.

Sections 1183.16(a), (d), and (h) and 1183.17(f) are proposed to be amended to add that notices must include “everyone on the mailing list described in section 1183.14” to remind parties that the Commission follows section 1183.14 in notifying parties, and to add that the Commission “shall post a copy of the notice on the Commission’s website” to remind parties that this is also a Commission procedure. Section 1183.17(i) is proposed to be amended to add that Commission staff issues draft proposed decisions regarding parameters and guidelines amendments for comment.

#### *Necessity and Anticipated Benefit*

The proposed amendments are necessary to provide greater clarity regarding the differences between the joint RRM and SEC process pursuant to Government Code sections 17557.1 and 17557.2 (1183.11) and an RRM pursuant to Government Code sections 17557 and 17518.5 (1183.17). The amendments also clarify that notices and draft proposed decisions regarding joint RRMs are issued to everyone on the mailing list and posted on the Commission’s website, and that representations of fact must be supported by documentary or testimonial evidence.

### **VI. Clarify Actions in the Timeline in Section 1183.18.**

#### Section 1183.18. Timelines.

##### *Specific Purpose of the Regulation*

Section 1183.18 of the regulations governs the timelines for the actions of the Commission, parties, interested parties, and interested persons as “a reference for the timely processing” of Commission matters. Specifically, the section specifies how many days after a matter is filed with the Commission that subsequent events take place. Also included are instructions on how to compute the periods of time prescribed in the regulations.

The proposed amendment clarifies the timeframes, actions, and entities or persons participating in Commission matters.

##### *Proposed Change*

The proposed amendments clarify that “parties, interested parties, and interested persons,” in addition to state agencies, may file comments on the test claim and the draft proposed decision, and that in addition to parties, “interested parties and interested persons” may also file comments on proposed parameters and guidelines and the draft proposed decision on parameters and guidelines, as well as on statewide cost estimates (SCEs).

Another amendment clarifies that Commission staff issues the SCE within 375 days after the test claim is filed, and 10 days after the SCE is adopted. Adoption of the SCE within 365 days is

already part of the regulation, and the addition of “issuing” the SCE by day 375 merely makes this provision consistent with the Commission’s practice to issue matters within 10 days of their adoption.

The proposed amendments also clarify that “parties, interested parties, and interested persons” in addition to state agencies may file comments on the test claim with joint RRM and SEC, as well as comment on the draft proposed decision. And amendments to the timelines for joint RRMs and SECs are proposed to clarify that “interested persons” may also file comments and to add “joint” to the title of RRM.

Finally, the section is proposed to be amended in several places to clarify that the Commission notifies or issues decisions to “those on the mailing list,” which is an existing practice.

#### *Necessity and Anticipated Benefit*

The proposed amendments are for clarification on who can file comments on Commission matters, and to clarify the number of days when an SCE is issued after a test claim is filed, and to clarify that the Commission issues decisions or notifications to everyone on the mailing list for the matter. Clarification is important to aid parties, interested parties, and interested persons who participate in the process in understanding the timeline and process for determining Commission matters.

### **VII. Clarify the Deadline for Filing Amendments to Incorrect Reduction Claims in Section 1185.1.**

#### Section 1185.1. Incorrect Reduction Claim Filing.

##### *Specific Purpose of the Regulation*

Section 1185.1 of the regulations governs the filing of incorrect reduction claims (IRCs).

This change is intended to ensure that it is understood that amendments to IRCs are subject to the same period of limitations for filing as IRCs are themselves.

##### *Proposed Change*

The proposed amendment clarifies that the three-year limitations period for filing IRCs also applies to filing amendments to IRCs.

##### *Necessity and Anticipated Benefit*

By clarifying that the three-year limitations period applies not only to filing IRCs, but also to filing amendments thereto, confusion is reduced and the risk of litigation may be avoided regarding the limitations period for IRC amendments.

### **VIII. Add Completeness Language and Clarify in the Title that It Is a “Request” to Review the Apportionment or Base Year Entitlement of a Program in SMAS in Section 1186.6.**

#### Section 1186.6. Reviewing an Apportionment or Base Year Entitlement.

##### *Specific Purpose of the Regulation*

Section 1186.6 of the regulations governs requests made by local agencies, school districts, or the State for review of the apportionment or base year entitlement of a program in SMAS.

The proposed amendment clarifies the title and what constitutes “complete” filing requirements for review of an apportionment or base year entitlement in SMAS.

*Proposed Change*

The proposed amendments clarify the title of the regulation to indicate that it addresses a “request” for a review of an apportionment or base year entitlement, and to add a subdivision requiring that the request must conform to the filing requirements or be deemed incomplete and returned to the requester for completion. This proposed amendment makes this provision consistent with sections 1186.2 and 1186.4, which address requests for inclusion and removal of a program from SMAS and consistent with Commission requirements and practice for all new filings to be determined complete.

*Necessity and Anticipated Benefit*

The proposed amendments are necessary to clarify that the review is a “request,” and to make this regulation consistent with the other regulations regarding complete requests for inclusion to or removal of a program from SMAS.

**IX. Clarify the Definition of “Matters” that Are Subject to Article 7 in Section 1187.1.**

Section 1187.1. Scheduling and Noticing the Hearing.

*Specific Purpose of the Regulation*

Section 1187.1 of the regulations defines “matters” that are subject to quasi-judicial hearings and decisions under article 7 of the regulations. Under current regulations, “matters” include test claims, proposed parameters and guidelines, requests to amend parameters and guidelines, incorrect reduction claims, requests for inclusion or removal from SMAS, requests for review of apportionment or base year entitlement for programs included in SMAS, requests for review of the Controller’s claiming instructions, and requests for mandate redetermination.

The proposed amendment expands and clarifies this definition of Commission “matters.”

*Proposed Change*

The proposed amendment expands the definition of “matter” subject to hearings and decisions under article 7 to include requests to approve joint RRM and SECs and joint requests for early termination of a joint RRM and SEC in accordance with Government Code sections 17557.1 and 17557.2.

*Necessity and Anticipated Benefit*

The proposed amendment is necessary to correctly define quasi-judicial “matters” to include requests made pursuant to Government Code sections 17557.1 and 17557.2. These statutes require that the Commission determine whether the joint request for the RRM and SEC, and joint requests for termination of a RRM and SEC, comply with applicable requirements of Government Code section 17557.2(a) to have broad support from a wide range of local agencies and school districts.

**X. Clarify that the Informal Conference and Witnesses/Subpoena Regulations Apply to All “Matters” Subject to the Article 7 Regulations by Amending Sections 1187.4 and 1187.7.**

Section 1187.4. Informal Conference; Section 1187.7. Witnesses and Subpoenas.

*Specific Purpose of the Regulation*

Section 1187.4 of the regulations authorizes an informal conference on a matter to be scheduled by the executive director or requested by a party or interested party to a matter. Section 1187.4(e) currently states that anything said or document disclosed at the informal conference shall not be part of the administrative record of a “test claim.”

Section 1187.7 of the regulations governs witnesses and the issuance of subpoenas for a “claim.”

The proposed amendment expands the applicability of these regulations to all Commission “matters,” not only test claims and incorrect reduction claims.

*Proposed Change*

The proposed amendment clarifies that 1187.4(e) applies to all “matters,” as defined, and is not limited to records on a test claim. Another proposed amendment changes “claimant rebuttal” to “rebuttal comments” because conferences may be held on any matter as defined in article 7 of the regulations, and for some matters a party other than a “claimant” has an opportunity to rebut.

The proposed amendments to section 1187.7 (regarding witnesses and issuing subpoenas) replace “claim” with “matters,” and makes other conforming changes consistent with the definition of “matters” in article 7 of the regulations. Conforming amendments are proposed to section 1187.7, to delete references to “matters” (replacing it with “documents”), to avoid confusion with the use of the term “matter” as defined in section 1187.1(a).

*Necessity and Anticipated Benefit*

The proposed amendments are necessary to clarify that an informal conference and subpoena are tools that may be used for all matters subject to the article 7 regulations, and are not limited to test claims or incorrect reduction claims.

**XI. Clarifies Procedures During Hearings in Section 1187.6.**

Section 1187.6. Conduct of Hearing.

*Specific Purpose of the Regulation*

Section 1187.6 of the regulations specifies the conduct of parties, witnesses, and Commission members at Commission hearings.

The proposed amendment would authorize the Commission chair or hearing officer to limit the length of testimony or time for each witness in Commission hearings, and clarify other hearing procedures.

*Proposed Change*

The proposed amendment to section 1187.6(a) authorizes the Commission chair or a hearing officer to limit the length of testimony or the time allotted for each witness in accordance with the requirements of the Bagley-Keene Open Meeting Act, and consistent with section 1182.10 of the Commission’s regulations, which regulates Commission hearings on county applications for findings of significant financial distress.

Another proposed amendment to section 1187.6(d) clarifies the Commission’s existing hearing procedure that not only the claimant (adding “or requester” if the matter is not a claim) may

present its case, but also “aligned parties or interested parties” to present their positions, and then for “opposing parties or interested parties” (rather than the more specific “Department of Finance or affected state agency”) to present their positions. This amendment conforms Commission hearing procedures to a wider variety of matters beyond test claims and IRCs.

*Necessity and Anticipated Benefit*

The proposed amendment clarifies that the Commission chair or hearing officer may limit the length of testimony or limit the time for each party or witness, which is authorized under the Bagley Keene Open Meeting Act (Gov. Code, § 11125.7). It also makes the provision consistent with section 1182.10 of the Commission’s regulations, which authorizes the Commission to “limit the length of testimony to a specific amount of time for any party or witness.”

The amendments to section 1187.6(d) clarifies Commission hearing procedures regarding the order of speaker presentation, which is important to all parties, interested parties, and interested persons who appear for or attend Commission hearings.

**XII. Clarify the Abandonment of a Matter in Section 1187.13.**

Section 1187.13. Abandonment of a Matter.

*Specific Purpose of the Regulation*

Section 1187.13 of the regulations states the circumstances under which the executive director may deem a matter abandoned.

The proposed amendment clarifies that the regulation applies to “matters” beyond test claims and IRCs, and deletes a redundant provision.

*Proposed Change*

The proposed amendment clarifies that the regulation authorizing matters to be deemed abandoned applies to all “matters” subject to article 7 of the regulations, and not just to test claims or IRCs, and makes the terms used consistent (e.g., “claim or request” is amended to “matter”). In addition, subdivision (a)(2), which addresses the withdrawal of a test claim, is deleted because it is redundant with section 1187.12 governing the withdrawal of matters, including test claims. Any matter that has been withdrawn or abandoned is subject to the dismissal procedures in section 1187.14 of the regulations.

*Necessity and Anticipated Benefit*

The proposed amendment is necessary to clarify that the regulation on abandoned matters applies to all matters subject to the quasi-judicial article 7 regulations, and for consistency in using the term “requester,” and to remove duplicative language.

**XIII. Clarify the Dismissal of a Matter in Section 1187.14.**

Section 1187.14. Substitution of Parties and Dismissal of a Matter.

*Specific Purpose of the Regulation*

Section 1187.14 of the regulations governs the dismissal of matters that have been abandoned or withdrawn, and dismissal of test claims filed by a local agency that is not eligible to claim reimbursement because it is not subject to the tax and spend provisions of articles XIII A and B of the California Constitution. Under the current regulation, all matters, except for test claims, that have been withdrawn or abandoned may be dismissed by the executive director without a

hearing by the Commission. The dismissal of a test claim for any reason, however, requires a hearing by the Commission after notice, an opportunity for the substitution of parties, and an opportunity to comment has been provided to the claimant and interested parties.

The proposed amendment clarifies the ambiguous use of the word “matter” when the only “matter” for which a dismissal hearing applies is a test claim.

*Proposed Change*

Language is proposed in section 1187.14 to clarify that a Commission hearing on a dismissal is only required for test claims, and not for other “matters” in accordance with subdivisions (a) and (b) of this regulation.

*Necessity and Anticipated Benefit*

The proposed amendment is necessary to clarify the dismissal of test claims, which require a hearing unlike other matters.

**XIV. Clarify the Standard of Review for Reconsideration of an Adopted Decision on a Test Claim or Incorrect Reduction Claim in Section 1187.15.**

1187.15. Reconsideration of an Adopted Decision.

*Specific Purpose of the Regulation*

Section 1187.15 of the regulations governs the procedure for reconsidering an adopted Commission decision within 30 days of serving the decision, pursuant to Government Code section 17559(a). Under the existing regulation, any party or interested party or Commission member may request reconsideration of a prior adopted decision to correct an error of law, but the standard of review is not included in the current regulation.

The proposed amendment adds a standard of review for reconsidering an adopted Commission decision.

*Proposed Change*

The proposed amendment clarifies in the title and body of the regulation that only test claims and IRCs are subject to reconsideration by the Commission, as authorized by Government Code section 17559(a). This amendment also provides that the standard of review of a request for reconsideration, is consistent with the standard in Code of Procedure section 1008, which authorizes the courts to reconsider a decision only to consider new or different facts, circumstances, or law, as was established in a recent Commission Decision on Reconsideration. The proposed amendment includes language from Code of Civil Procedure section 1008(f), which clarifies that new or different law does “not include a later enacted statute without a retroactive application.” Additional language is proposed to authorize a reconsideration to consider a clerical error, and to clarify that the written analysis of a request for reconsideration shall address whether the request is timely, complete, diligent, and is based on new or different facts, circumstances, or law that is likely to support an amendment to the findings or conclusions in the adopted decision on the test claim or IRC, or is based on a clerical error. If the Commission grants the request for reconsideration, a second hearing shall be conducted to determine if the adopted decision must be amended based on a clerical error or new or different facts, circumstances, or law. Redundant language stating that the draft proposed decision shall be distributed to “any person who requests a copy” is proposed for deletion since any person may

request to be placed on the mailing list and the draft proposed decision is issued to everyone on the mailing list. Additional language is proposed to clarify that the specified procedures that apply in the event of a “changed decision” apply exclusively to changed test claim decisions and that they also include amendments to parameters and guidelines.

#### *Necessity and Anticipated Benefit*

Generally, Commission decisions are final and binding on the parties unless set aside by a court pursuant to Government Code section 17559(b). (*California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200-1201.) However, Government Code section 17559(a) provides the Commission limited authority to reconsider a prior final decision on a test claim or IRC within 30 days of service of the adopted decision on the claimant.

The proposed amendments are necessary to clarify in the title and body of the regulation that only test claims and IRCs are subject to reconsideration by the Commission, as authorized by Government Code section 17559(a). The proposed amendments are also necessary to clarify the standard of review for requests for reconsideration to avoid confusion and to clarify that the Commission may not reconsider the same facts and arguments presented during adoption of the prior final decision. The remaining amendments are for clarity and consistency.

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

The following proposed amendments make minor, nonsubstantive consistency edits or correct usage and errors in sections 1181.1, 1181.3, 1181.9, 1183.1, 1183.2; 1183.3; 1183.4; 1183.6; 1183.7; 1183.8, 1183.9, 1183.10, 1183.11, 1183.12, 1183.13, 1183.14, 1183.15, 1183.16, 1183.17, 1183.18, 1184.1, 1185.1, 1185.2, 1185.3, 1185.4, 1185.5, 1185.6, 1185.7, 1185.8, 1185.9, 1186.2, 1186.4, 1186.7, 1187.1, 1187.3, 1187.6, 1187.7, 1187.8, 1187.9, 1187.13, 1187.14, 1187.15, 1188.1, 1188.2, 1190.1, 1190.2, 1190.3, and 1190.5 of the regulations.

#### *Proposed Change*

##### Update Usage and Increase Clarity

These amendments are proposed to update usage or improve style and readability, and for consistency with the existing regulations. The proposed amendments replace “web site” with “website” (proposed §§ 1181.3(c)(1) [current § 1181.3(b)(1)], 1183.2, 1187.1); replace “comments” with “may file rebuttals” (§ 1183.18); replace “which” with “that” (§§ 1186.2, 1186.4, 1190.5); replace “filing party,” “filing person,” and “person who e-files,” with “filer” (proposed § 1181.3(c)(1)(A)-(D) [current § 1181.3(b)(1)(A-E)]); replace “requesting party” with “requester” (proposed §§ 1187.13(a)(2)(B) & (a)(2)(C) [current § 1187.13(a)(3)(B) & (a)(3)(C)], 1187.15(a)(1) [current § 1187.15(b)(1)]); replace “requesting party” with “applicant” (§ 1187.6(f)); add “or requester” (§§ 1187.6, 1187.7, 1187.13, 1187.15); replace “publicized” with “noticed” (§§ 1183.6, 1184.1, 1185.7, 1190.5); replace “must” with “shall” (proposed §§ 1181.3(c)(1) [current § 1181.3(b)(1)], 1181.3(c)(2)(B) [current § 1181.3(c)], and 1183.2(c)(2)); replace “most reasonable method” with “reasonably necessary activities” (§ 1183.10(b)); replace “Commission Staff” with “Commission” (proposed §§ 1181.3(c)(1) & (c)(2)(B) [current §§ 1181.3(b)(1) & (c)], 1187.15(f)(1)(B) [current § 1187.15(g)(1)(B)], 1190.5(a)(3) & (b)(3)); replace “claimant’s or state agency” with “party” (proposed § 1187.15(h) [current § 1187.15(i)]); and replace “staff of the Commission” with “Commission staff” (§ 1187.6).

Additional proposed amendments replace the words “distribute,” “publish,” “provide,” “send,” “forward,” and “mail,” with “issue” or “issued” (proposed §§ 1181.3(c)(1)(D) [current § 1181.3(b)(1)(E)], 1181.9, 1183.8, 1183.13, 1183.16, 1183.17, 1183.18, 1184.1, 1185.7, 1185.9, 1187.1, 1187.8, 1187.14, 1187.15(f)(1)(A) [current § 1187.15(g)(1)(A)], 1188.1, 1188.2, 1190.2, 1190.5); replace “review” with “comment” (§ 1183.18); replace “to” with “with” (§§ 1183.8, 1183.12, 1183.18, 1187.7); replace “submit,” “submit to,” “submittal,” “submitting,” “for submittal,” “prepared,” “provide,” “review and provide,” and “received,” with “file,” “filed,” “filing,” “filed with,” “to file,” or “may file,” as applicable (§§ 1181.1, proposed 1181.3(c)(1) [current § 1181.3(b)(1)], 1183.1, 1183.6, 1183.8, 1183.9, 1183.10, 1183.11, 1183.12, 1183.13, 1183.15, 1183.16, 1183.17, 1183.18, 1184.1, 1185.2, 1185.7, 1185.8, 1187.6, 1187.7, 1187.14, 1190.5); replace “submit” and “submitted” with “include” or “prepared” (§§ 1181.2, 1183.3); replace “submitted” and “submittal of” with “proposed” or “proposing” (§§ 1183.10, 1183.12, 1186.2); replace “claimed” with “alleged” (§ 1187.3); replace “accorded” with “provided” (§ 1187.3); replace “though” with “if” (§ 1187.6); replace “for the purpose of facilitating” with “to facilitate” (§ 1187.6); replace “all other matters” with “anything” (§ 1187.9); replace “made” with “provided” (§ 1187.14); replace “delivered” and “mailed” with “served on” (§ 1187.15); replace “required” with “determined” (proposed § 1187.15(f)(1)(A) [current § 1187.15(g)(1)(A)]); replace “change or changes” with “amend or amendments” (proposed §§ 1187.15(b)(4) [current § 1187.15(c)(4)], 1190.2, 1190.3); replace “and recommend” with “recommending” (§ 1183.17); and replace “institute” with “initiate” (§ 1188.2).

Additional proposed amendments delete unnecessary words including “as was” (proposed § 1181.3(c)(2)(B) [current § 1181.3(c)]), “staff” (§ 1183.16), “in order” (§ 1184.1), “serve and” (§ 1185.6), “for” (§ 1186.7), “claimant” (§ 1187.4), “or” (§ 1181.4(c)(6)), “the” (§ 1183.16), “submitted,” “and shall be submitted,” and “submitted from” (§§ 1183.1, 1183.2, 1183.3, 1183.4, 1183.6, 1183.7, 1183.8, 1183.9, 1183.10, 1183.12, 1183.13, 1183.17, 1184.1, 1185.1, 1185.2, 1185.3, 1185.4, 1185.7, 1186.2, 1186.4, 1187.9, 1187.14, proposed § 1187.15(b)(5) & (f)(1)(B) [current § 1187.15(c)(5) & (g)(1)(B)], 1190.1, 1190.2, 1190.3, 1190.5), “events” (§ 1187.13), and “preceding” (§§ 1186.2, 1186.4).

Additional proposed amendments add internal citations to other regulations (proposed §§ 1181.3(c)(1)(C) [current § 1181.3(b)(1)(D)], 1183.16(i), 1185.6(b)); replace “section 1187.9” with “subdivision (b) of this section” (§ 1187.9(a)); add “(a)” and “of this section” to a citation (§ 1188.2(A)(2)); and add “of these regulations” to citations (§§ 1185.2(e), 1185.5(a) & (b), 1185.8(b)).

An additional proposed amendment adds that requests to sever an IRC from a proposed consolidation shall be “filed and served, in accordance with section 1181.3 of these regulations,” (§ 1185.6(b)) to remind parties and interested parties of the need to follow the Commission’s certification, filing, and service procedures.

### Correct Minor Errors

These amendments are also proposed to correct errors in the current regulations, including to change “applicant” to “appellant” (§ 1181.1(c)(3)); replace “of” with “after” (§ 1183.13(e)); to correct erroneous citations (§§ 1183.10(b)(1), proposed 1187.15(i) [current § 1187.15(j)]); to add the word “section” (§ 1187.14(a)); to add the word “a” (§§ proposed 1181.3(c)(1) [current § 1181.3(b)(1)], 1187.14(a), 1183.15(e)); to add the word “and” (§ 1183.13(a)); to add the word “the” (§§ 1183.13(e), 1183.16(g), 1187.6(g), 1190.5(b)(3)); to add the word “comments”

(§ 1187.4(a)(1)); to replace “sections” with “section” (§ 1183.14(a)); to replace “fail” with “fails” (§ 1183.16(i)); to replace “on” with “by” (§ 1183.18(a)(5)); and to make capitalization consistent (§§ 1183.13(a), 1186.4(d), 1183.18(b)(1)).

*Necessity and Anticipated Benefit*

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

**XVI. Update to Authority and Reference Citations in Sections 1187.2 and 1187.6.**

1187.2. Assignment to Hearing Panels/Hearing Officers. 1187.6 Conduct of Hearing

*Specific Purpose of the Regulation*

Section 1187.2 governs the assignment of a matter to a hearing panel or hearing officer. Section 1187.6 governs the conduct of Commission hearings.

The proposed amendments add statutes to the authority or reference section to sections 1187.2 and 1187.6 of the Commission’s regulations.

*Proposed Change*

The authority statutes for section 1187.2, which addresses the assignment of a matter to a hearing panel or hearing officer, are proposed to be amended to add Government Code section 17532, which authorizes the Commission to designate any commissioner or commissioners for “any investigation, inquiry, or hearing which the commission has power to undertake or to hold.”

The reference statutes for section 1187.6, which governs the conduct of Commission hearings, are proposed to be amended to add Government Code section 11125.7, which authorizes state bodies to adopt “regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.”

*Necessity and Anticipated Benefit*

The added citations are necessary to provide a more complete and accurate listing of the authority and reference sections for these regulations.

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

The Commission relied on a guide prepared by the California Courts of Appeal titled *Guide to Creating Electronic Documents/Filings*, November 1, 2017

<https://www.courts.ca.gov/documents/DCA-Guide-To-Electronic-Appellate-Documents.pdf>

(accessed on April 26, 2019); and on a guide prepared by the California Second District Court of Appeal titled *Electronic Formatting Requirements and Guidelines of the Second District Pursuant to California Rules of Court rules 8.72(a) and 8.74(b)*, effective October 2017, Revised June 18, 2018 <https://www.courts.ca.gov/documents/2DCA-Electronic-Formatting-Req-Guide.pdf> (accessed on April 26, 2019). The Commission also relied upon the statutes and cases cited in the authority and reference sections for the regulations.

**ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

Creation or Elimination of Jobs within the State of California

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

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

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

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

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

Benefits of the Regulations

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

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

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

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

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

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

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



# Guide to Creating Electronic Documents/Filings

I. Briefs/  
Original Proceedings

II. Record on Appeal/  
Exhibits

III. Hyperlinking



California Courts of Appeal

11/01/2017

## Introduction

This guide was created to help filers provide working electronic documents to the Courts of Appeal and the Supreme Court in California. While there are other products that can produce the same result, this guide focuses on Word (2007, 2010 and 2013) and Adobe Acrobat Pro XI. Some of these steps may be similar in other programs.

Be sure to check all rules with the court you are filing with to make sure you have met all their requirements and local rules for electronic documents.

# I. Creating Electronic Appellate Briefs, Original Proceedings, etc.

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## A. Format

Check with the court's website that you are filing your document(s) with to ensure that you meet their requirements or guidelines for formatting.

## B. Tools

### Word processor

The primary tool for creating an electronic brief or original proceeding is your word processor. Microsoft Word provides some helpful features that make creating an electronic document easier. In particular, Word's Styles feature (see [Generating Bookmarks](#) below) allows you to create headings in your brief that will automatically create bookmarks when you *convert* the document as a PDF.

### Adobe Acrobat Pro

Adobe Acrobat sets the standard for creating, combining, editing, redacting and making PDFs searchable. Eventually you will need to do all of these things if you are working with electronic documents. There are other less expensive PDF software programs, but you will find a variety of resources to assist you with Adobe Acrobat. For example, Adobe hosts a free [Acrobat for Legal Professionals Blog](#) that provides tips and techniques for working with electronic legal documents.

## C. Basic Steps

1. Save or convert your document from the original word processing document, such as Word, directly to PDF (do not scan the document to create a PDF).
2. Create bookmarks<sup>1</sup> from the Table of Contents.
3. Redact any information that must be redacted under the rules. (See [Redacting](#).)
4. Make text-searchable.

You can skip step 3 above if your document does not contain any information that must be redacted.

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<sup>1</sup> Bookmarks are a fast and easy way to quickly navigate to different parts of a document and are required by the California Supreme Court and all Courts of Appeal.

## D. Pagination

Before saving/converting the document as a PDF, make sure to number the pages consecutively *beginning with the cover page of the document*, using only the Arabic numbering system, as in 1, 2, 3, with a number on every page. Do *not* use a separate pagination system for tables within the document and the page number does not need to appear on the cover page and can be suppressed.

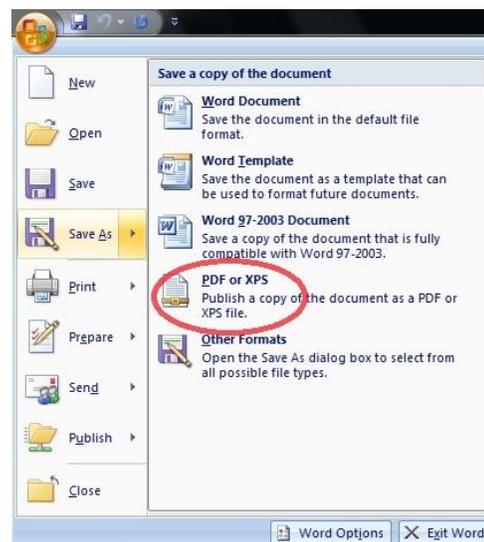
### 1. Saving/Converting directly to PDF

#### Word 2007 (without Adobe Acrobat Pro installed)

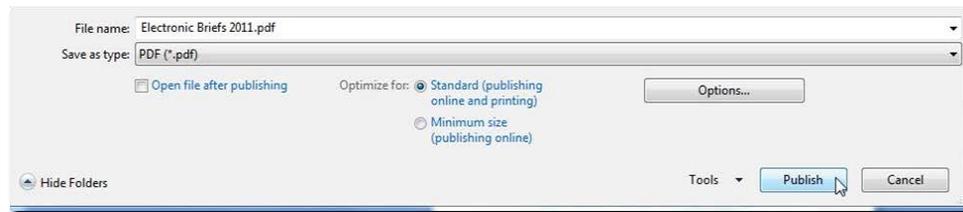
Click the Microsoft Office Button in the top left hand corner of Word.



Choose **Save As** and **PDF or XPS** (see below).

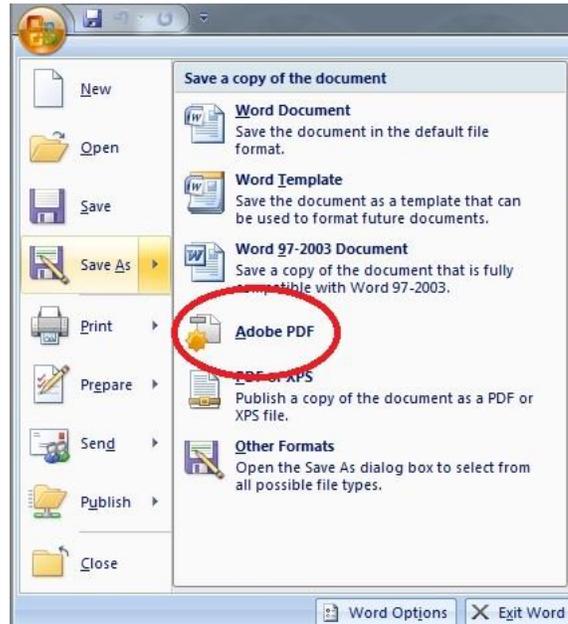


In the dialog box that appears, click the button in the lower right hand corner that says **Publish**.

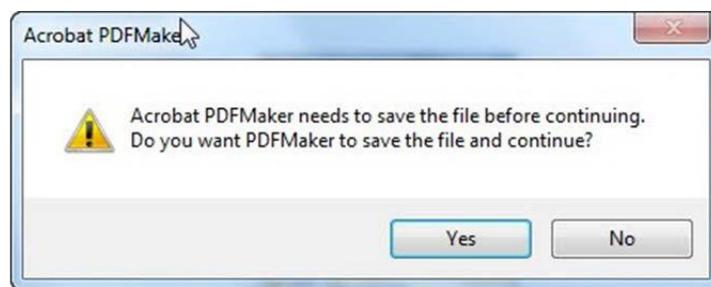


## Word 2007 (with Adobe Acrobat Pro installed)

Choose **Save As** and **Adobe PDF** (see below).

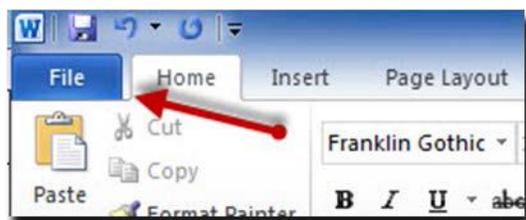


When the box below appears, choose **Yes**.

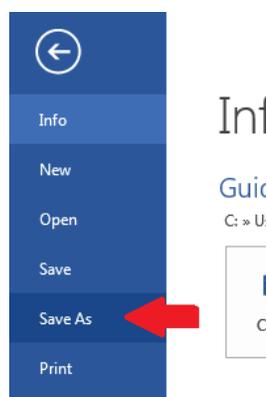


## Word 2010 and 2013

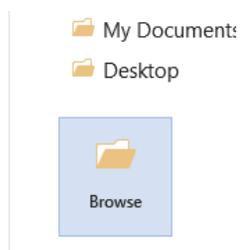
Click on the **File** tab.



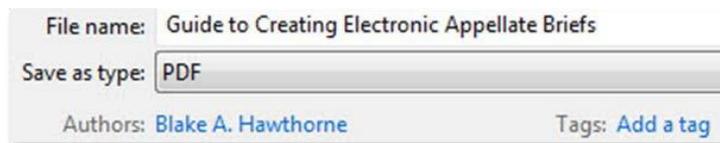
Choose **Save As**.



Click **Browse**



In the dialog box that appears, choose the Save as type = PDF.



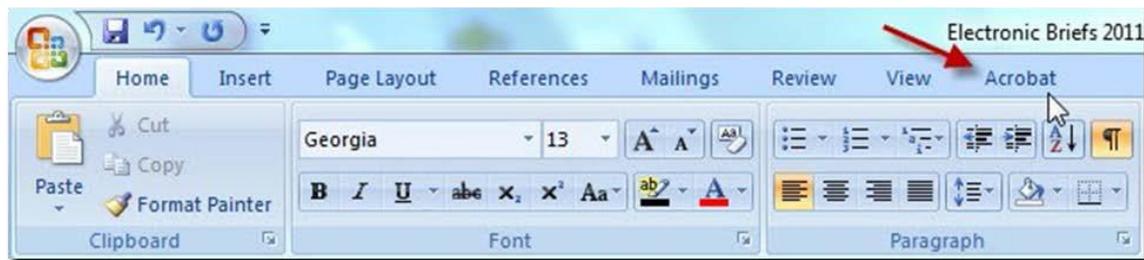
Click **Save**.

## Adobe Acrobat Ribbon in Word

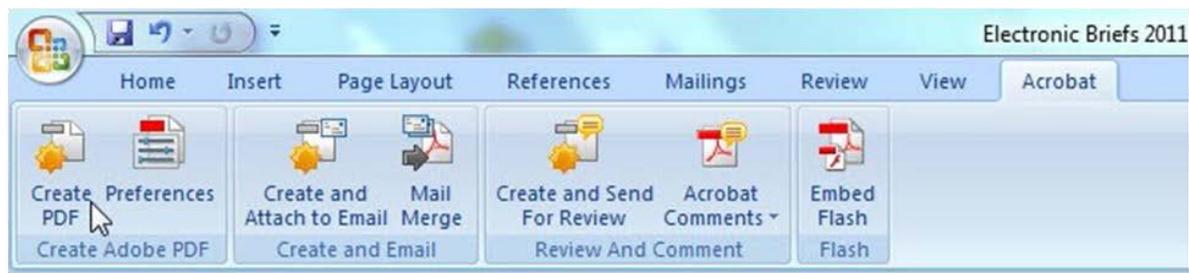
When you install Adobe Acrobat, the installer may add Acrobat buttons or menu commands to Microsoft Office applications (e.g., Word, Excel, PowerPoint).

The advantage of using the Acrobat Ribbon to create PDF from Word is that it will automatically create bookmarks for your document if you have used Word's Styles feature.

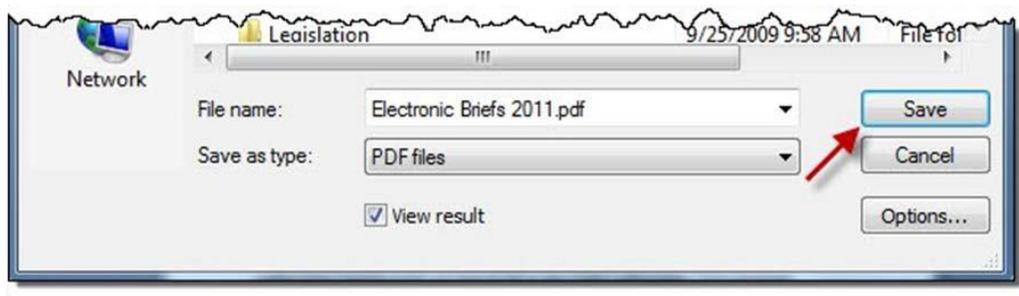
Choose **Acrobat** at the top of the screen (to the right of **View**).



Click **Create PDF** in the menu.



In the dialog box that appears, click **Save**.

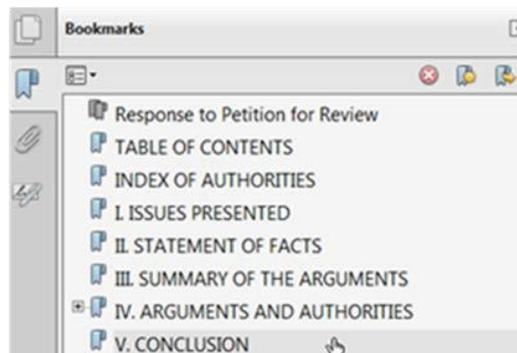


When printing a hard-copy of a document, be sure to use the PDF file to insure that the print exactly replicates the e-file version. Pagination and sentence structure may change when converting a document to a PDF.

## 2. Create bookmarks

A bookmark is a text link that appears in the **Bookmarks Panel** of Adobe Reader and Adobe Acrobat. Readers can use the bookmarks to quickly navigate to different sections of a document. Make sure to include bookmarks in all electronic documents and be sure to use descriptive labels for your bookmarks (e.g. Trial Court Judgment, Court of Appeals Opinion) as illustrated below.

Clicking on the **Bookmarks Icon** (left side of screen) opens the **Bookmarks Panel** revealing the list of bookmarks, as in this illustration.



### Bookmark settings

To maximize the impact of your document, set the bookmarks to open automatically.

While the document is open, click **File > Properties > Initial View tab**  
 Click the Navigation tab dropdown and select **Bookmarks Panel and Page**  
 Click **OK**

Also, make sure to set the zoom settings in the bookmarks to make sure the bookmark view is always the same. See [Adobe PDF Bookmark Zoom Settings](#).

### Generating bookmarks

If you use the paragraph styles available in Word to label the headings in your document, when you use the built-in Acrobat ribbon to generate your PDF, your document will already include bookmarks to the headings in your document.

A tutorial on Word's Styles feature is beyond the scope of these instructions, but Microsoft provides a [tutorial](#) on the web. Word's Styles feature is a tremendous time saver for generating bookmarks, the table of contents, and formatting your document.

### Manually adding bookmarks

To manually add a bookmark, in Adobe Acrobat, follow these steps:

1. Click on the page where you want to create a bookmark
2. Click the **New Bookmark** Icon in the Bookmarks Panel or select **CTRL** and **B** keys on your keyboard at the same time.
3. In the text of the new bookmark, type the name or label that you want to give the bookmark.

OR

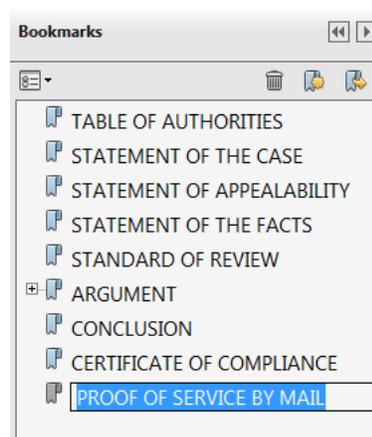
Highlight the text on the page you want to bookmark, then press the **CTRL** and **B** keys on your keyboard at the same time (or right click and select add bookmark). The bookmark will appear in the panel and the name will be the same as the text you highlighted.

### Editing bookmarks

To delete a bookmark, **select the bookmark** and press the **delete key**.

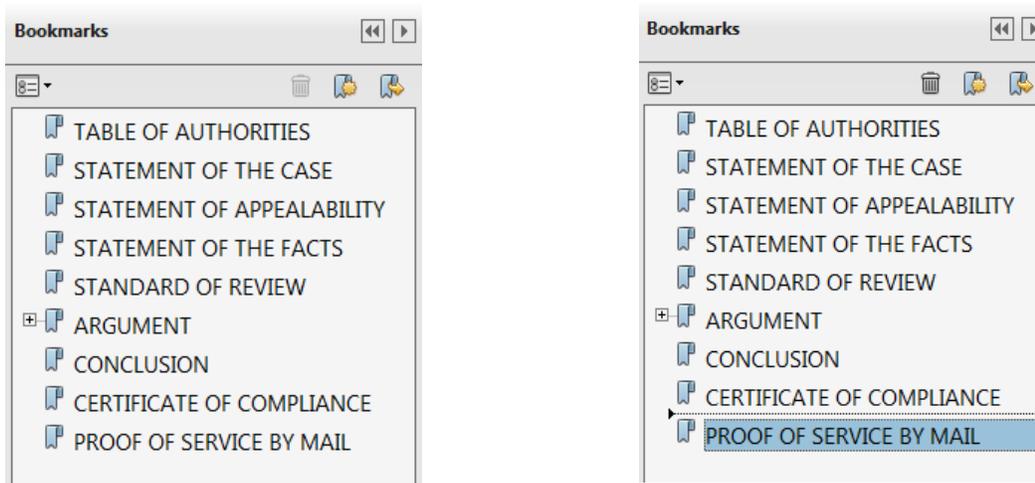
To edit the name of a bookmark, **double click** on the **bookmark**. Once the bookmark text is highlighted, you can edit the text of the bookmark. **Press enter** when you are satisfied with the results.

Avoid using names like Header A, Header B, etc. Instead, try something like Statement of the Case, Conclusion.



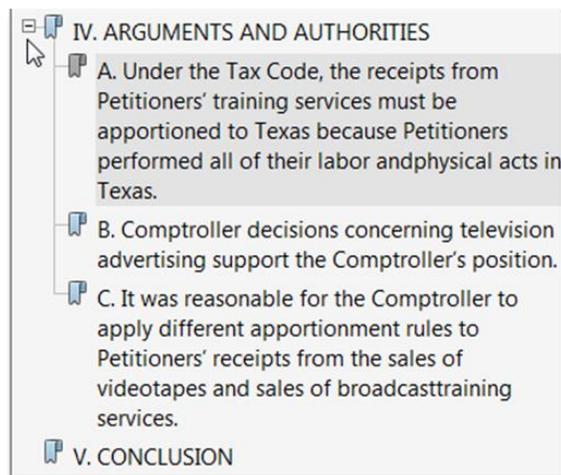
## Moving bookmarks

To move bookmarks up and down in the Bookmarks Panel, left click and hold the text and drag the bookmark to the desired location in the Bookmarks panel. Once the arrow and dotted line are in the new location, release the left mouse button to drop the bookmark in its new location.



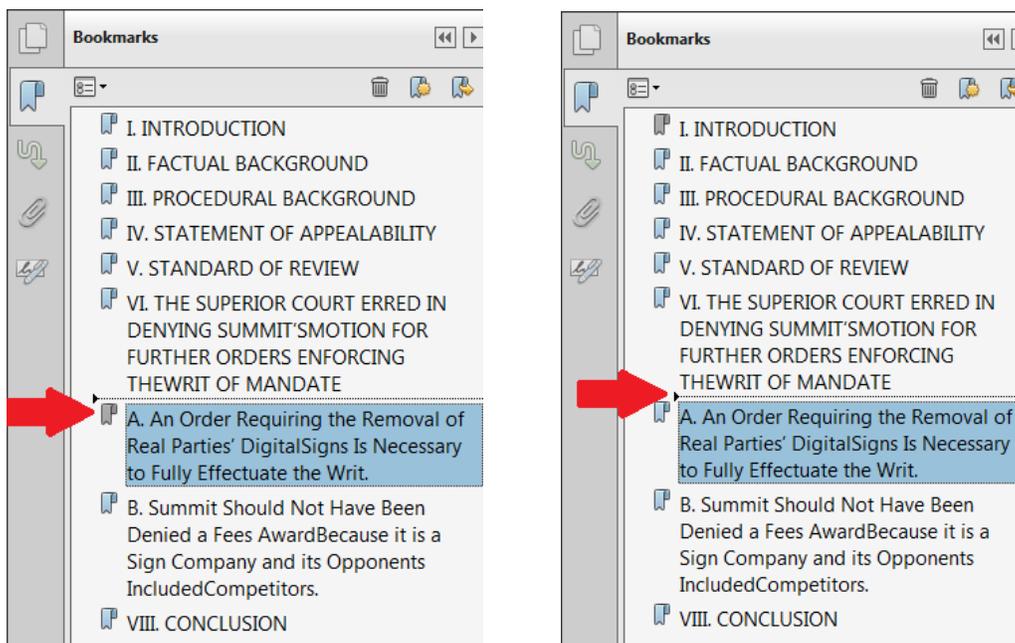
## Nesting bookmarks

Bookmarks can also be nested underneath other bookmarks to create a tiered structure of bookmarks, as in the illustration. Clicking on the minus sign next to the Argument and Authorities bookmarks collapses these bookmarks so that they are not visible. A plus sign then appears next to the Arguments and Authorities bookmark, which will expand the nested bookmarks and make them visible again when selected.



To nest a bookmark underneath another bookmark, move the bookmark as described above. But this time, move the bookmark up and over underneath the bookmark where you want it nested. In other words, select the bookmark by left clicking and holding the mouse button down. Then move it up and to the right without releasing the mouse button. Release the mouse button once the bookmark appears to be

indented. Once you have the bookmarks the way you want them, be sure to save your document in order to save your changes!



### 3. Redacting

Redaction should be done before creating bookmarks and making the appendices text searchable. The steps below will remove bookmarks and text recognition.

Pursuant to Cal. Rules of Court, [rule 1.20](#), you must redact the following information from an appendix submitted to the court:

- Social security numbers
- Birth date
- Home address
- Name of any person who was a minor when the underlying suit was filed
- Driver's license number
- Passport number
- Tax identification number
- Any similar government-issued personal identification number
- Bank account numbers
- Credit card numbers
- Any other financial account number.

The most important thing to remember about redacting documents is to **permanently remove the information from the document. Do not use a black highlighter in Adobe Acrobat to cover up the information!** Highlighter marks can be removed by anyone with Adobe Acrobat and anyone can search the text of the document to find the text that is beneath the highlighter mark.

If you have Adobe Acrobat Pro, you can use the redaction features of the program to redact documents electronically (see [Redacting Using Adobe Acrobat Pro](#) below). *Please note that Adobe Acrobat Standard does not have redaction features.*

### Redacting using Word

If you do not have Adobe Acrobat Pro, then you should edit the text of any document that you have in the original file (e.g., a Word document) to remove the information. Replace any characters that you remove with the letter x and then save the edited document as a new document. Here is an example:

Original text document:

Mike Brown's social security number is 357-57-7372. His home address is 1510 Maple Avenue, New York, 201292. His credit card number is 2138 2912 2938 2919.

Edited Text:

Mike Brown's social security number is xxxxxxxxxxx. His home address is xxxx xxxxx xxxxxxxx xxx xxxxx xxxxxxxx. His credit card number is xxxx xxxx xxxx xxxx.

As you can see, depending on the font you are using, editing the document in this way may slightly alter the layout of your document. Be sure to check the page layout to see if your page numbering has been altered. If you do not have Adobe Acrobat Pro and you only have the documents in paper format, you will need to copy the documents, redact them manually, and then scan the redacted documents.

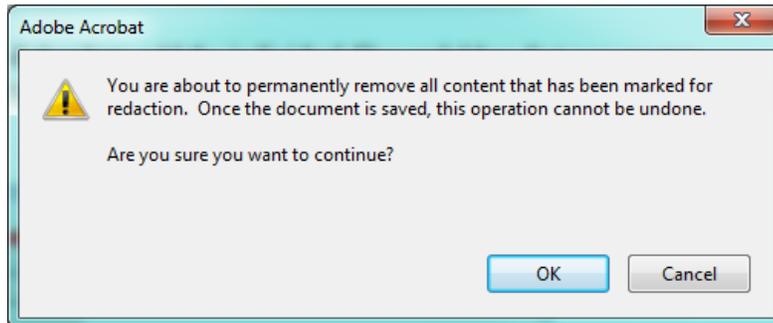
## Redacting Using Adobe Acrobat Pro

Click the **Tools** panel > **Protection** > **Mark for Redaction**.

Select the text you want to redact. To select text, click the left button on the mouse and drag it across the text using the redaction tool. You can also double click a word to mark it for redaction.

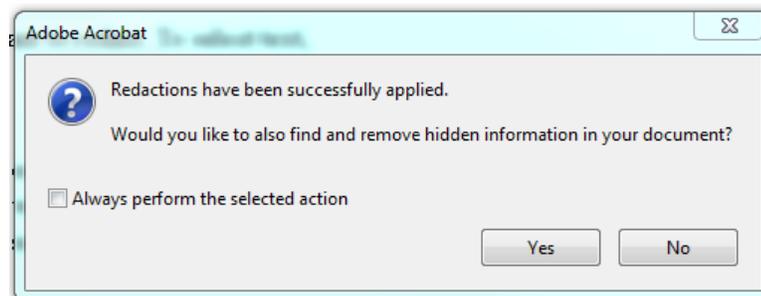
1. Place the cursor over the word marked for redaction to preview what the text will look like when redacted.
2. Once you are satisfied with the appearance, choose **Apply Redactions**.

This window will appear



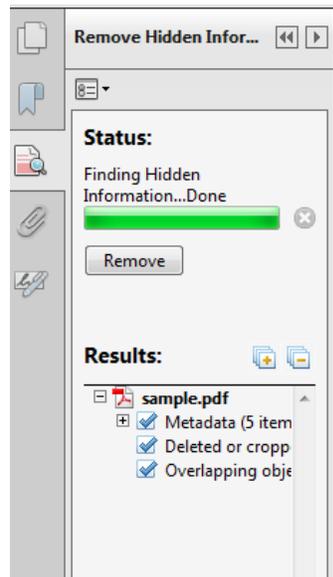
Click **OK**

When this window appears



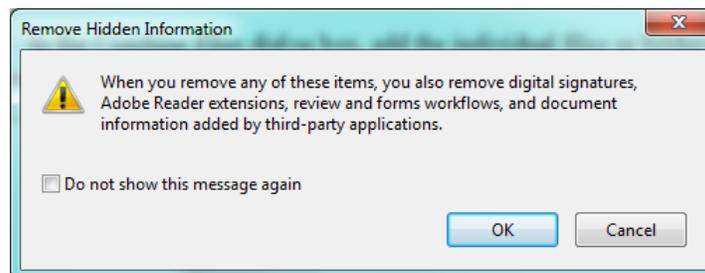
Click **Yes**

Adobe will open the panel below and find hidden information



Click **Remove**

When this window appears



Click **OK**

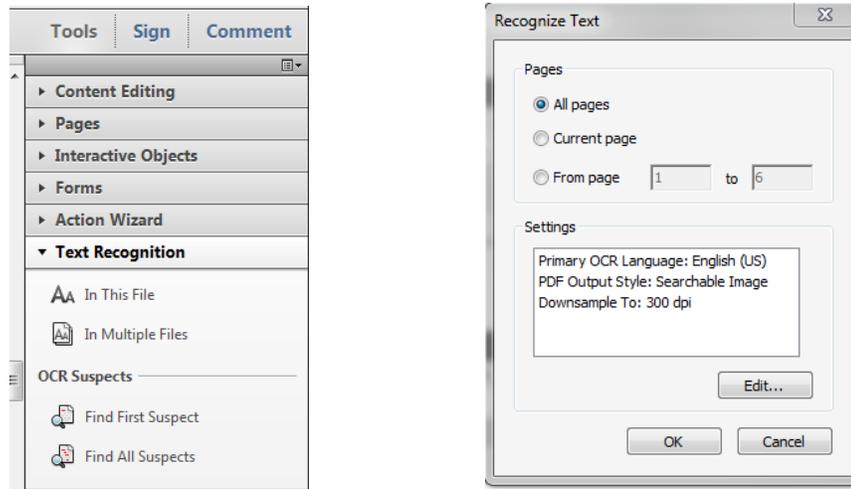
Save the document.

## 4. Text-searchable

All electronic documents must be text-searchable, in PDF (portable document format) while maintaining the original document formatting. If you find your PDF is not text-searchable, follow the instructions below.

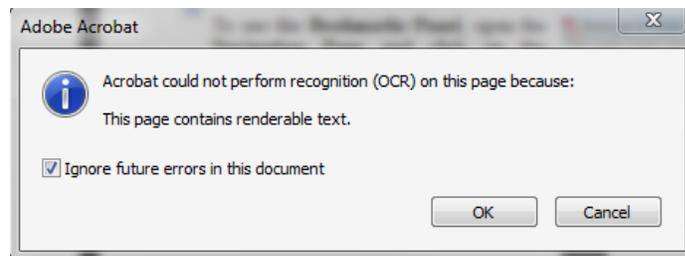
Open the document in Adobe Acrobat Pro.

Click **Tools > Text Recognition > In This File > OK**



If some text has already been rendered searchable, check the box Ignore future errors in document and click on OK. When the Text Recognition process is complete, remember to save the document.

NOTE: If a header, e-filing stamp or bates no. has been added to a non-searchable document, Acrobat will not OCR that page and you will receive the message below.



## E. Fixing Mistakes in Adobe Acrobat Pro

It is not unusual to get to the end of the process of creating an electronic brief and discover that you have made a typographical error. You may be able to fix some simple typographical errors using Adobe Acrobat. The **Edit Text** tool allows you to erase and type in a PDF as though it were a word processing document. Adobe Acrobat automatically recognizes the font type and size, and you can backspace to remove text and then retype.

Select **Tools > Content Editing > Edit Text & Images**. Then place your cursor where you want to edit and type as you would with a word processor.

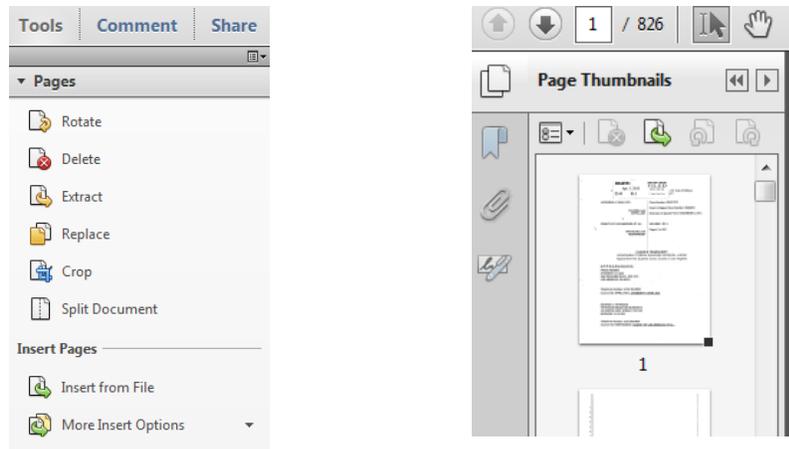
The tool has some limitations and not all fonts are available in Adobe Acrobat. If you used an unusual font you may get the following message.

Also, the **Edit Text** tool cannot reflow all of the text in your document like a word processor, so this tool cannot be used to retype sizeable portions of your brief.

## F. Replacing Pages

If the mistake cannot be fixed with the **Edit Text** tool, you may be able to fix the error by deleting the offending page and replacing it with a corrected page. To replace a page, first fix the mistake in your word processing program. Then convert the corrected word processing document to PDF. Now **Extract** the corrected page from your corrected PDF and save it as a separate PDF document. Then **Delete** the page with the error from your original PDF and **Insert** the corrected page into the proper place in the original PDF.

Click **Tools > Pages > Extract** or click the Page Thumbnail icon on the left, right click on the page(s), select extract Pages



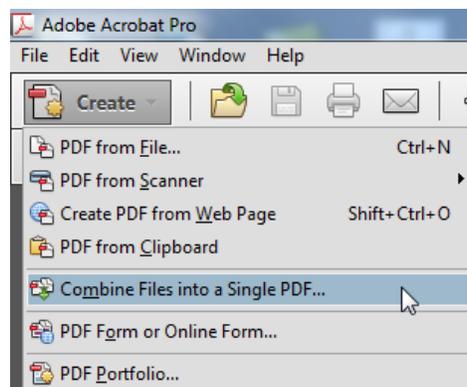
Depending on the mistake, it may just be easier to start over and recombine all your files after fixing the error in your brief. But if you have done a lot of manual bookmarking and hyperlinking, replacing the page using Adobe Acrobat may be easier than starting all over again.

## G. Combine individual files into one PDF file

To combine individual files into a single PDF document, follow these steps:

### Within a document in Adobe Acrobat

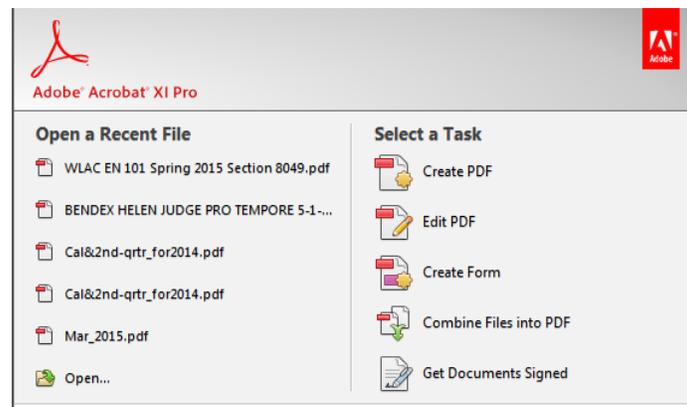
Choose **Create > Combine Files in to a Single PDF**



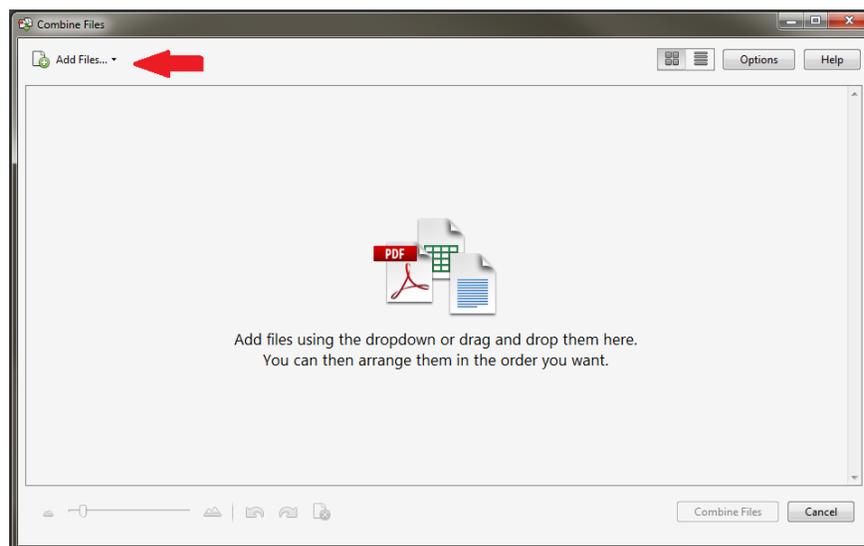
Or

## From the Main Menu in Adobe Acrobat

### Choose **Combine Files into PDF**



In the dialog box, add the individual files or folders that you want to combine into a single PDF. The files can be of any format supported by Adobe Acrobat (Word, PDF, Excel, etc.).



Arrange the files in the order that you want to combine them.  
Select **Combine Files**.  
Save and name the combined document.

## H. File Size

A single PDF file may not exceed a total of 25 megabytes in size. If a filing exceeds this file size limitation, the TrueFiling system will not accept the document and the user must either (a) submit the filing in multiple parts or (b) provide the court with the filing in electronic format on a CD (compact disc), DVD or flash drive. Please note that audio files must be submitted in .wav or mp3 format and any video files must be submitted in .avi or mp4 format.

Be sure to check all rules with the court you are filing with to make sure you have met all their requirements and local rules for electronic documents

## II. Creating Electronic Appellate Record on Appeal/Exhibits

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Appendices must comply with California Rules of Court, [rule 8.124](#), including chronological and alphabetical indices. For Exhibits, see [rule 8.486\(b\)](#). When possible, use PDF files that are converted from native formats, rather than scanned documents. (See *Saving/Converting directly to PDF*.) Counsel or parties should cooperate in providing electronic copies of documents when requested and should check the local rules of the court where they will be filing to make sure all requirements for electronic documents have been met.

### A. Chronological Index

The chronological and alphabetical index should be converted from the word processing program used to create them.

### B. Pagination

Make sure to number the pages consecutively *beginning with the cover page of the document*, using only the Arabic numbering system, as in 1, 2, 3. Every page must have a number. Do *not* use a separate pagination system for chronological or alphabetical index within the document. The page number does not need to appear on the cover page.

### C. Scanning Documents

Although you are prohibited from scanning your documents that are available in electronic format (e.g. cases, statutes, etc.), there are occasions where you will need to scan a document in order to include it in your appendix. For example, a trial court may not have electronic filing so you may have to scan a trial court order. Or maybe you really want to include a contract in your appendix and it is only available in paper form. In those situations the only solution is to scan the document.

You can create a PDF file directly from your scanner using Adobe Acrobat or other software. When scanning, make sure that the scanner settings are:

- 300 dots per inch (dpi)
- Black and white (not gray scale or color, unless scanning an image)
- OCR (optical character recognition)

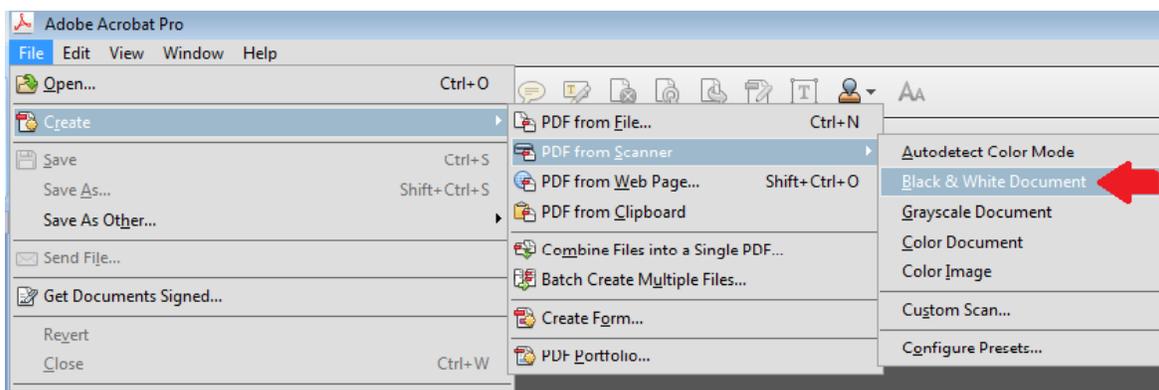
A one hundred page scanned document (that does not include images) with these settings should be about 3.5 megabytes in size. (NOTE: File size may vary with certain documents.) If scanning is creating files that are too large, check the settings on your scanner. Most office copiers, have a menu that allows the scanner settings to be adjusted.

If you have already adjusted the scanner settings, and the file size is still too large, some computer programs have the capability to reduce the file size. Adobe Acrobat Pro can do that (see instructions below). Make sure to do this before bookmarking the appendix. There are also a number of online resources that explain how to reduce the file size of scanned documents.

## Scanning with Adobe Acrobat

If you have a scanner connected to your computer that Adobe Acrobat recognizes, you can scan documents using Adobe Acrobat. Follow these steps:

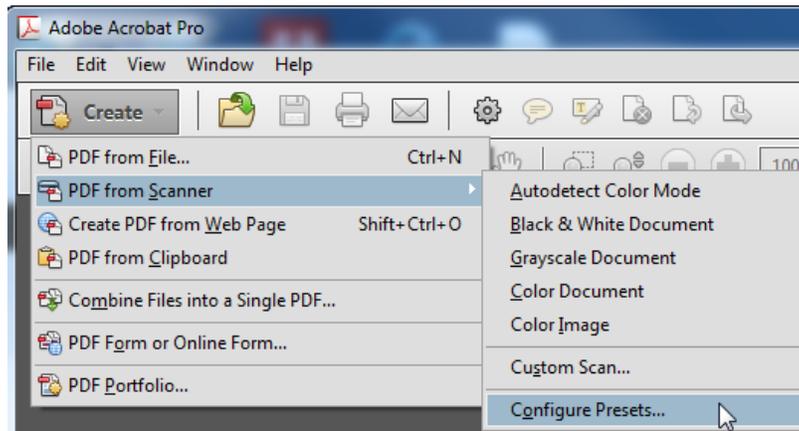
1. Insert the document into your scanner
2. Open Adobe Acrobat
3. In Acrobat, choose **Create> PDF From Scanner**
4. Choose Black and White



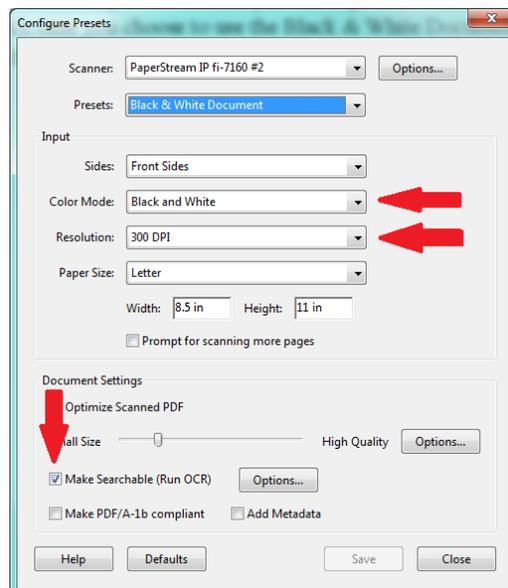
## Preset scanning settings for Adobe Acrobat

Adobe allows you to preset settings for scanning a document.

Select **Create> PDF from Scanner> Configure Presets**



Configure your presets to scan at 300 dpi. Be sure to check **Make Searchable (Run OCR)**. For standard black and white documents you do not need to move the slider to create a high quality scan—smaller file size is preferred. Save your settings before scanning. The default settings are now set and each time you choose to use the Black & White Document preset the document will be scanned using these settings.



## D. Combine individual files into one PDF file

See [Combine individual files into one PDF file](#) above.

## E. Create bookmarks for all documents contained in the appendix

A bookmark is a text link that appears in the Bookmarks Panel of Adobe Acrobat. Some courts require bookmarks for each document that is listed in the index. Be sure to check the local rules of the court you are filing with to make sure you have met all requirements for electronic appendices.

For documents without titles, be sure to use descriptive labels for your bookmarks.

See [Create Bookmarks](#) in Section I. above.

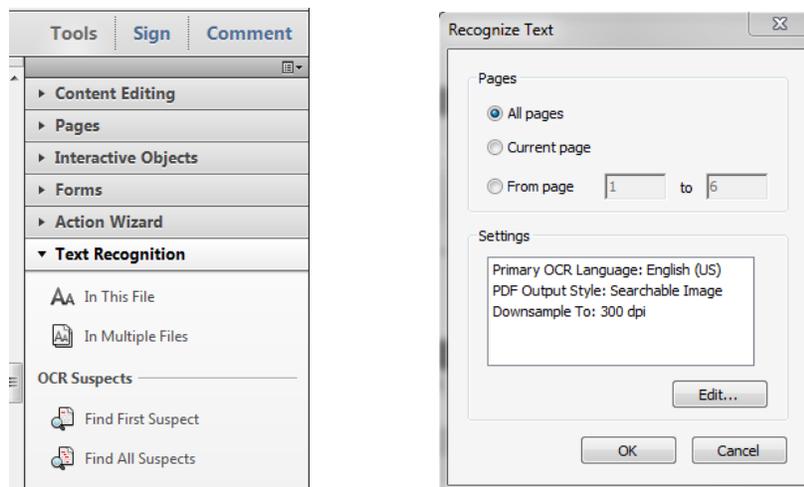
## F. Redacting

See [Redacting](#) in Section I. above

## G. Make a document searchable from any scanned or otherwise non-searchable material searchable by using Text Recognition

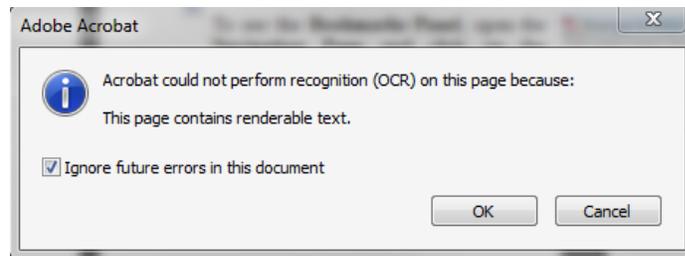
Open the document in Adobe Acrobat Pro.

Click **Tools >Recognize Text> In This File > OK**



If some text has already been rendered searchable, check the box Ignore future errors in document and click on OK. When the OCR process is complete, remember to save the text searchable version of the document.

NOTE: If a header, e-filing stamp or bates no. has been added to a non-searchable document, Acrobat will not OCR that page and you will receive the message below.



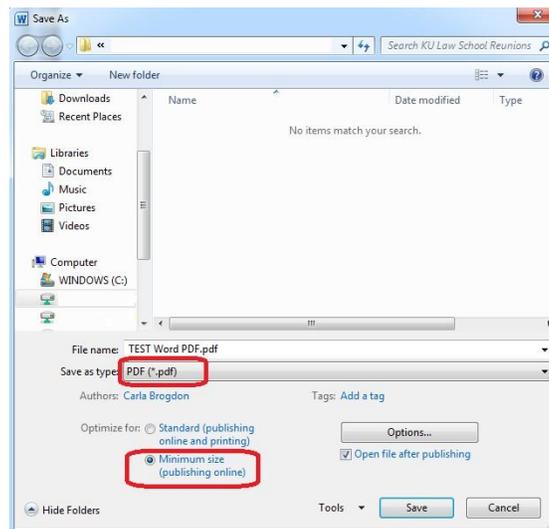
## H. Optimize PDFs to reduce file size

Large documents or documents containing forms, photos or graphics should be saved as an optimized PDF to reduce file storage size.

Select **File** and click **Save As**.

From the **Save as type** dropdown menu, select **PDF**.

From the **Optimize for** radio buttons, select **Minimum size (publishing online)**.



Click **Save**.

# III. Hyperlinking

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## Overview of Hyperlinking

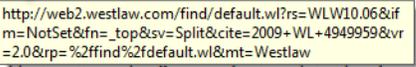
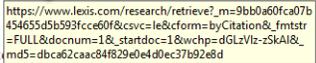
In the internet research world, hyperlinks are a standard way of “drilling down” for more detail or specific information. Just as all web pages contain links to other pages, cases downloaded from legal research services such as Westlaw or Lexis contain links to the cases, statutes, articles, or other sources cited within the opinion. The links allow immediate access by the reader to these referenced materials.

Attorneys can include links to cited law and their Appendix or Clerk’s Transcript and Reporter’s transcript, adding another level of persuasion to their writing. Hyperlinks in briefs and other court filings provide quick, easy, and pinpoint access to particular sections of a case, or to specific filings in the court’s record. The attorney can thereby highlight the precise issue presented, and the specific evidence and controlling or persuasive law the court should consider.

Though it is not required, rather preferred, hyperlinks in court filings are very beneficial for court chambers. Court submissions which include links to relevant case law and case filings are easy for chambers staff to review. The attorneys’ arguments can be immediately verified in the context of the relevant law. The justice or judicial clerk is able to read the text of the cited case law on one screen while reading the attorney’s brief on the other. And if a brief contains links to referenced exhibits, and even to specific pages within those exhibits, the judge or judicial clerk can access the relevant evidence without having to navigate through the paper record. Particularly when dealing with large and complex cases, links save chambers considerable time and effort. Links make it easy for the court to verify – and adopt – the positions taken by an advocate.

## Types of Permissible Hyperlinks

Subject to the court's local rules, the following types of hyperlinks are typically allowed in court documents.

|   |  |
|---|--|
| <p><b>Internal Links</b></p>  | <p>For example, the Table of Contents located at the beginning of this Guide.</p>  |
| <p><b>Links to attachments and exhibits being filed with your brief</b></p>   | <p><b>Note:</b> Evidence <i>must</i> be filed of record. A hyperlink to a public website where evidence can be found is not a substitute for filing evidence in support of a motion.</p>   |
| <p><b>Links to case and statute citations</b></p> <p><b>Note:</b> Unless a cited case cannot reasonably be found from a public source, it is not necessary to attach copies of cases or statutes to your brief.</p> | <p>For example:</p> <p><b>Westlaw,</b></p> <p>by the attorney-client privilege or the work product doctrine. s, <a href="#">2009 WL 4949959</a>, <a href="#">2009 U.S. Dist. LEXIS 121753</a> (D. Colo. : 502:  when a "subject-matter waiver" occurs due to an intentional or</p> <p><b>Lexis,</b></p> <p>by the attorney-client privilege or the work product doctrine. s, <a href="#">2009 WL 4949959</a>, <a href="#">2009 U.S. Dist. LEXIS 121753</a> (D. Colo. : 502:  when a "subject-matt</p> <p><b>or court websites.</b></p> <p>A party has been fraudulently joined if there is no reasonable basis for predicting that the state law <a href="http://www.ca8.uscourts.gov/opndir/13/04/121892p.pdf">http://www.ca8.uscourts.gov/opndir/13/04/121892p.pdf</a> based upon the facts involved. <a href="#">Bradley Timberland Lumber Co., No. 12-1892 (8th Cir. April 8, 2013)</a> </p> |

## Creating a Hyperlinked Table of Contents

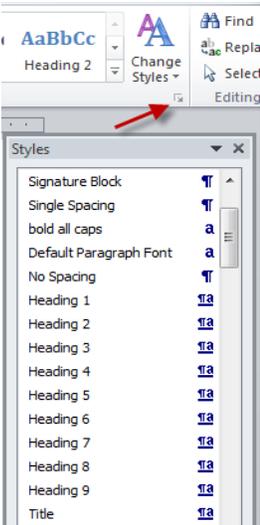
A table of contents in a Word document can include internal hyperlinks for navigating the document. When the document is converted to PDF format, these links will become bookmarks in the PDF document. Note that the Table of Contents is different from the Bookmarks that are required in the PDF version.

Although there are several methods for creating a table of contents in Word, the one most useful to attorneys (and discussed below), is to create the document, include any headings as you write, and then:

- Mark and format the headings to be included in the table of contents;
- Generate and insert the table of contents; and
- Edit as needed.

## Marking and Formatting Table of Contents Entries

To mark and format entries to be included in the table of contents using Microsoft Word:

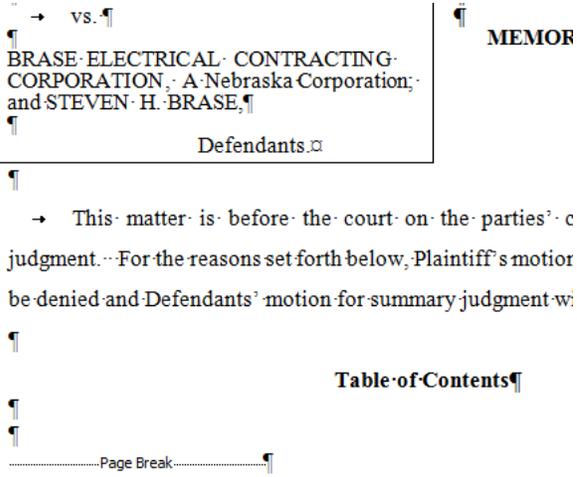
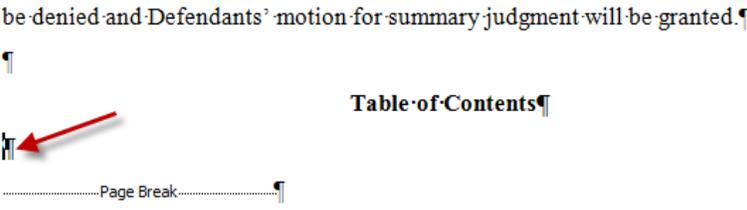
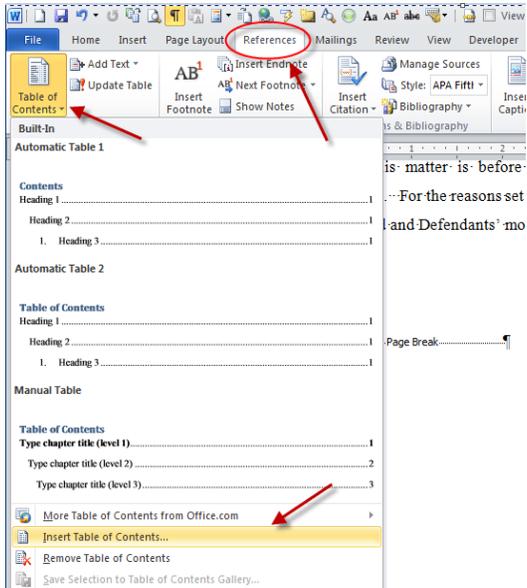
| STEP | ACTION   |
|------|--|
| 1    | Create your document, inserting all headings with the format of your choice.   |
| 2    | Using your cursor, scroll over and select the heading you want to include in the table of contents. <div data-bbox="943 1083 1403 1205" style="text-align: right; margin-top: 10px;"> <p>LEGAL ANALYSIS</p> <p><u>A. ERISA Plan</u></p> </div>   |
| 3    | <p>From the <b>Styles</b> section on your <b>Home</b> tab,</p>  <p>Click the down arrow in the right lower corner.</p>  <p>A drop down list will appear.</p>  <p><b>Note:</b> There are pre-formatted Heading Styles available in MS Word, but only 2 may be visible in your styles drop-down menu. Additional heading options will appear, as you make your selections.</p> |

| If...  | Then...   |
|--|---|
| <p>You want the text of the table of contents entries to <b>match the headings already created</b> within your document:</p>   | <p>Use your cursor to select the heading to be included in the table of contents.</p>  <p>From the Styles list, <b>Right-click</b> the heading level you wish to apply. In the box that appears, select: <b>Update Heading [x] to Match Selection.</b></p> <p>Continue until a heading style has been applied to all heading levels within your brief.</p>  |
| <p>You want to:</p> <p><b>Set a standard format</b> (e.g. font, font color, bold, etc.), for all headings and table of contents entries created with your Word program</p> <p>Or</p> <p><b>Change the heading format</b> in the brief already created:</p> | <p>From the Styles list:</p> <p><b>Right-Click</b> the heading level you wish to modify.</p> <p>In the box that appears, select <b>Modify</b> to open the Modify Style box.</p> <p>Choose text:</p> <ul style="list-style-type: none"> <li>• font</li> <li>• font size</li> <li>• appearance</li> <li>• color</li> <li>• justification</li> <li>• line spacing</li> </ul>  <p>Save settings for:</p> <ul style="list-style-type: none"> <li>• <b>only in this document</b>, or</li> <li>• all documents created using your <b>standard template</b></li> <li>• <b>Add to Quick Style List.</b></li> </ul> <p>Click <b>OK.</b></p> <p><i>To save for future use.</i></p> <p><i>When your choices are complete, click OK.</i></p> |

Scroll through your document. For each heading, select the heading text with the cursor, then click the heading style to be applied.

## Generating and Inserting the Table of Contents

To add the Table of Contents to your document:

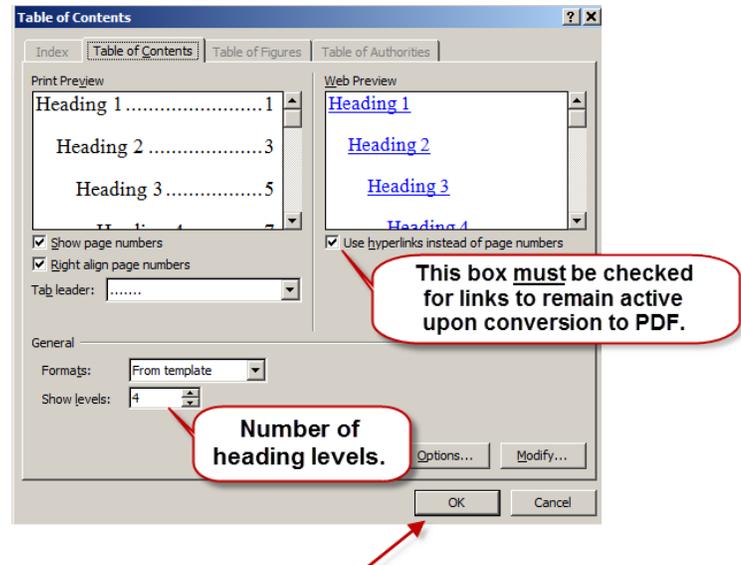
| STEP   | ACTION   |
|--|--|
| <p>Place your cursor in the document at the location you want to insert the table of contents.</p> <p>Add a title for the <b>Table of Contents</b>.</p> <p>Enter a few hard returns.</p> <p><b>Control + Enter</b> to insert a page break.</p> |    |
| <p>Place your cursor where the table of contents entries should begin.</p>   |   |
| <p>From the <b>References</b> tab of your Word ribbon,</p> <p>Select <b>Table of Contents</b>, and from the menu that appears,</p> <p>Select: <b>Insert Table of Contents</b>.</p>   |  |

Make selections for the appearance of the table of contents.

Click **OK**.

**Note:** If your table has more than three levels, you must set **Show levels** to the correct number.

**Note:** The “Use hyperlinks instead of page numbers” must be checked or the table of contents will not have active links upon conversion to PDF.



The Table of Contents, with active section links, will be inserted into your document.

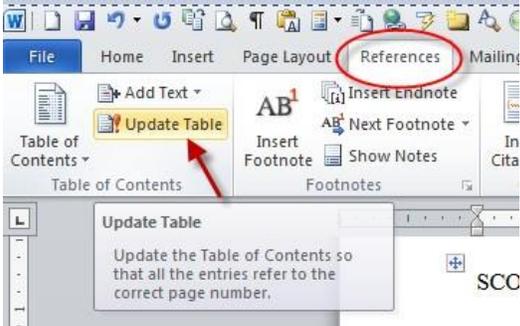
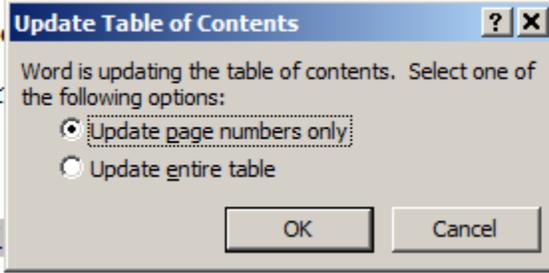
**Note:** You can manually modify the page numbers to appear as other links in your document, blue and underlined).

| Table of Contents   |    |
|---|----|
| PROCEDURAL BACKGROUND .....                                       | 2  |
| STANDARD OF REVIEW .....  | 2  |
| UNDISPUTED FACTS .....  | 5  |
| LEGAL ANALYSIS .....  | 5  |
| A. ERISA Plan .....   | 5  |
| B. ERISA Preemption .....   | 7  |
| C. ERISA Claims .....   | 8  |
| 1. ERISA--The Well-Pleaded Complaint Rule.....                    | 8  |
| 2. The Merits of Plaintiff's Claim for ERISA benefits.....        | 10 |
| a) ERISA Standard of Review .....                                 | 10 |
| b) Right to Recovery under the Terms of the Retirement Plan ..... | 11 |
| c) Right to "Appropriate Equitable Relief" under ERISA.....       | 17 |

## Editing the Table of Contents (if needed)

Inserting the Table of Contents may result in page break changes. For example, hard page breaks or extra lines that were added during drafting to adjust the overall look of the document may no longer be needed, or some may now need to be added.

If the brief was modified after the table of contents was inserted:

| STEP   | ACTION  |
|--|---|
| <p>From the reference tab on the Word ribbon, select <b>Update Table</b>.</p>  |   |
| <p>Select <b>Update page numbers only</b>. Click <b>OK</b>.</p> <p><b>Note:</b> If you have added or changed a heading, choose <b>Update entire table</b>.</p> |  |

When the entire document is complete, using MS Word, **Save** the document as a PDF or **Create PDF**.

**Note:** Do *not* Print to PDF. All active links in your Word document become inactive in PDFs created using Print to PDF.

## Formatting the Appearance of the Links Inserted

Before inserting links into a document, you may choose how those links will appear in the final document. For example, do you want them to appear:

[blue and underlined](#),

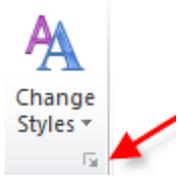
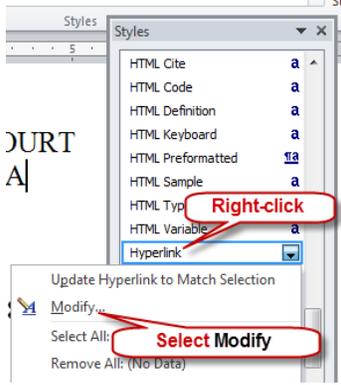
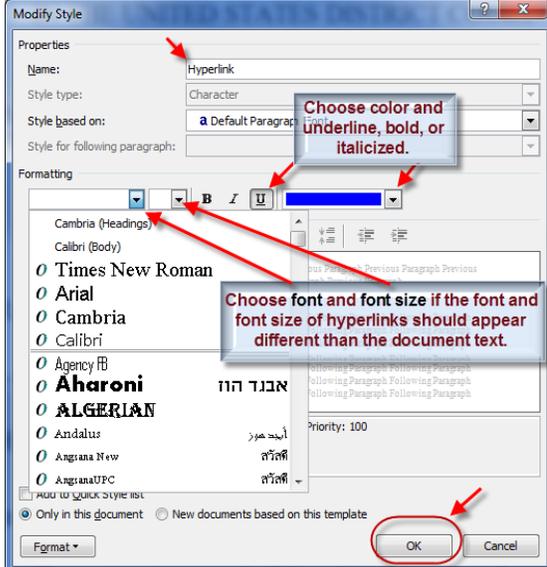
**bold and black**,

*black and italicized*,

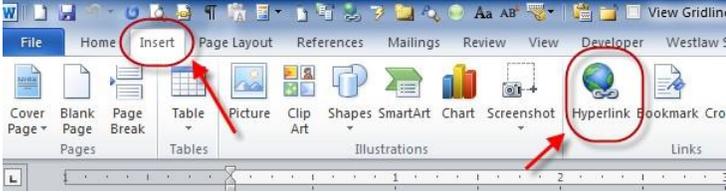
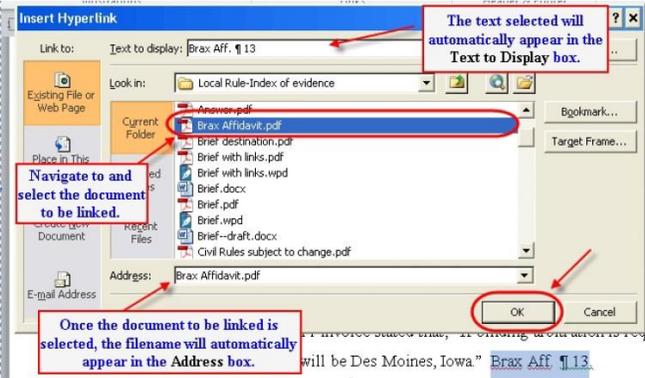
or

some other appearance?

To select the appearance of the links in your document:

| STEP | ACTION   |
|------|--|
| 1    | <p>On the <b>Home</b> tab, click on the tiny arrow under <b>Changes Styles</b>.</p>   |
| 2    | <p>A drop down menu will appear. Scroll down until you see <b>Hyperlink</b>. Right-click on <b>Hyperlink</b>, and from the choices that appear, select <b>Modify</b>.</p>    |
| 3    | <p>A <b>Modify Style</b> box will appear.</p> <p>Change the color, font, and underlining, etc. for hyperlinks.</p> <p><b>Note:</b> Choose a specific font and font size for the linked text <i>only</i> if the linked text font and font size should appear different from that of the document text. Otherwise, leave the font and font size selections blank.</p> <p>Click <b>OK</b>.</p>  |

## Adding Links to Attachments

| STEP | ACTION  |
|------|---|
| 1    | Save all the attachment documents you will cite in your brief into a single folder in your computer. The documents must be in PDF format. Be sure the names of the files do not contain special characters, such as apostrophes or ampersands, as these will break the hyperlinking process.          |
| 2    | While drafting your brief, include the citations to the documents saved in your computer.   |
| 3    | Using your cursor, select the text to which a link will be added.<br><br>for any seed disputes, the 2011 invoice stated that, “If binding arbitration is required (see bag), the place of arbitration will be Des Moines, Iowa.” <a href="#">Brax Aff. ¶ 13.</a>                                      |
| 4    | On the <b>Insert</b> ribbon, select <b>Hyperlink</b> .<br>   |
| 5    | In the <b>Insert Hyperlink</b> dialog box: <ul style="list-style-type: none"> <li>• Navigate to cited file saved on your computer;</li> <li>• <b>Select</b> the file; and</li> <li>• Click <b>OK</b>.</li> </ul>  |

- 6 A link to the file will be added to the text. If you hover over the link with your cursor, you will see the link address.

and conditions sheet, and again putting Plaintiffs on notice that ar  
 for any seed disputes, the 2011 invoice stated that, “If binding ar  
 bag), the place of arbitration will be Des Moines, Iowa.” [Brax Aff. ¶ 13](#) (emphasis added).  
 red  
 see  
 Click to follow link

Add links to all the citations in your brief accordingly.

**Note:** Specific page links can be added by following the directions in the previous section. Use the **PDF** page number, not a Bates number or footer page number, for the citation.

## Automated Links to Legal Citations

Links to legal citations can be added manually or, assuming the software is compatible with your computer and word processing software, by using automated linking software available through Westlaw or Lexis.

### Access to Linking Software

| Tool                       | Cost  | URL   |
|----------------------------|---|---|
| Westlaw InsertLinks        | Must purchase a West BriefTools subscription.<br>Estimated cost: \$100/month for small firms;   | <a href="http://legalsolutions.thomson.com/products/solutions/brief-tools?searchterms=brief+tool">http://legalsolutions.thomson.com/products/solutions/brief-tools?searchterms=brief+tool</a> |
| Lexis for Microsoft Office | This Lexis software product will add links for research and drafting purposes, but those links are lost upon conversion to PDF. Lexis is investigating the issue. | <a href="http://www.lexisnexis.com/en-us/products/lexis-for-microsoft-office.page">http://www.lexisnexis.com/en-us/products/lexis-for-microsoft-office.page</a>                               |

## Linking Software—Compatibility Information

The following graph outlines the compatibility of Shepard's Links 2008, West InsertLinks, and Lexis Links for Microsoft Office for inserting links into MS Word and WordPerfect documents with a Windows XP (SP3) 2GB Memory, Windows Vista (SP2) 4GB Memory, or Windows 7 – 4GB Memory computer.\*

|                           | Shepard's<br>Links<br>2008 | Lexis for<br>Microsoft<br>Office | West<br>InsertLin<br>ks |
|---------------------------|----------------------------|----------------------------------|-------------------------|
| MS Word 2010              |                            | X**                              | X***                    |
| MS Word 2007              |                            | X**                              | X***                    |
| MS Word 2003              | X                          |                                  | X***                    |
| MS Word 2000              | X                          |                                  |                         |
| <b>WordPerfect X6****</b> |                            |                                  |                         |
| WordPerfect X4 – X5       |                            |                                  | X                       |
| WordPerfect X3            | X                          |                                  | X                       |
| WordPerfect 10 – 12       | X                          |                                  |                         |

\* The West and Lexis linking software programs cannot be used on Apple computers. Moreover, although Shepard's Links was not designed to operate on Windows Vista and Windows 7 (as reflected in the Lexis literature), it is working on these computer systems.

\*\* Lexis for Microsoft Office is being developed and tested. However, in its current stage of development, any links added by Lexis for Microsoft Office are being stripped out upon conversion to PDF. Lexis is investigating this issue.

\*\*\* Westlaw product information states InsertLinks is compatible with both 32- and 64-bit Microsoft Word. However, while it works well with 32-bit Word, InsertLinks is not fully compatible or useful with 64-bit Word.

\*\*\*\* West currently has no linking software compatible with WordPerfect X6. West indicates it may develop and release this product during the summer of 2013.

## Westlaw InsertLinks

InsertLinks is a Westlaw computer software program which scans Microsoft Word or Corel WordPerfect<sup>1</sup> documents to locate legal citations, and then automatically inserts hyperlinks to the Westlaw internet address (url) for those citations into the word processing document.

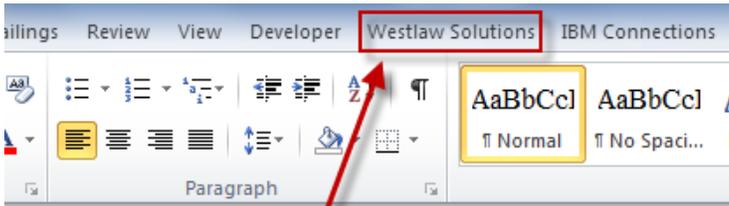
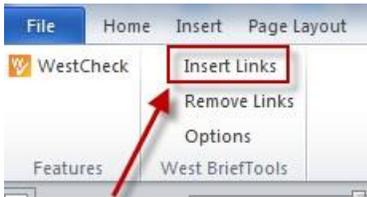
## Installing West InsertLinks

InsertLinks is part of the West BriefTools suite, and a BriefTools subscription is required in order to use this software.

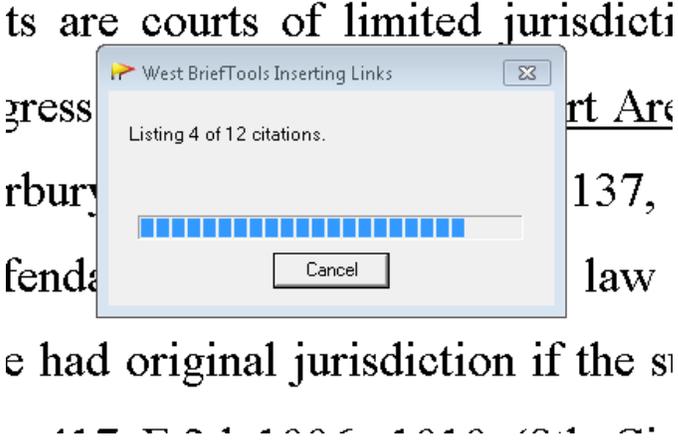
- The current West BriefTools product is Version 2.7.2039, which was updated on December 10, 2012.

## Using West InsertLinks

Once InsertLinks software is installed, Westlaw links can be installed automatically in Microsoft Word documents using the following steps:

| STEP | ACTION   |
|------|--|
| 1    | <p>With the Microsoft Word document to which you are adding links open on your screen:</p>  <p>Select the <b>Westlaw Solutions</b> tab on the Word ribbon.</p> |
| 2    | <p>The West BriefTools options will open.</p>  <p>Select <b>InsertLinks</b>.</p>   |

<sup>1</sup> Currently, InsertLinks is not compatible with, and cannot be used for, automatically inserting links into WordPerfect X6 documents. It does, however, work with prior versions of WordPerfect.

| STEP | ACTION   |
|------|--|
| 3    | <p>The InsertLinks software will begin searching the document for citations and inserting the appropriate links.</p>  <p>The box depicted above will disappear when the process is complete and all links are installed.</p> |

## Manually Inserting Hyperlinks

As previously described, hyperlinks to documents filed can be manually added to a document about to be filed. It is also possible to manually create links to documents available through commercial legal websites (e.g., Lexis or Westlaw), and those posted on the court's website (Local Rules).

Manually adding links can be labor intensive if the document is long, but the process is not difficult. And even if you are primarily using software to add links to a document, understanding the underlying mechanics of hyperlinking within WordPerfect and Word documents is helpful and may be necessary if, for example, you need to make corrections to the automatically created links.

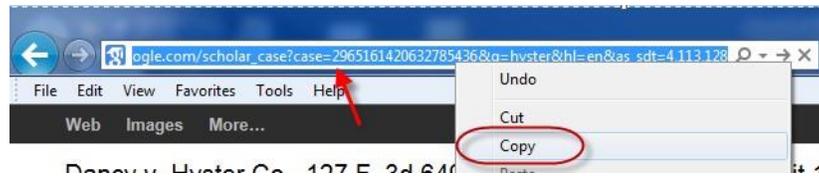
## Manually Creating Links to Online Research Resources

The process for manually adding links to Westlaw, Lexis, Google Scholar, or any other online research resource (LoisLaw, FastCase, etc.) is the same.

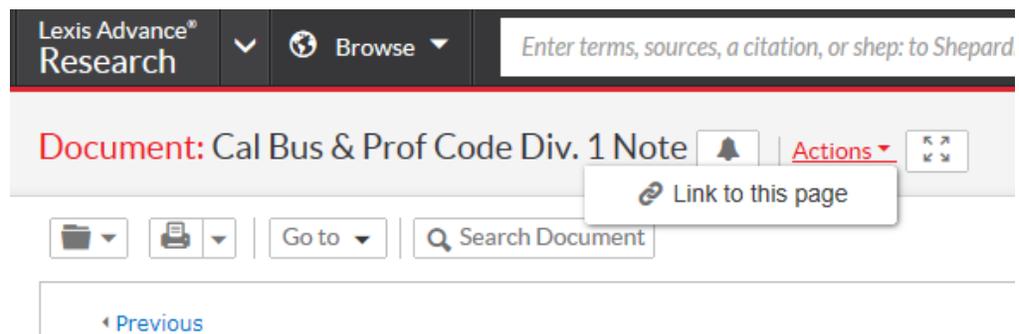
| STEP | ACTION   |
|------|--|
| 1    | <p>In the brief, use your cursor to select the citation to which you are adding a link.</p> <p>The United States Supreme Court has held that the FAA “embodies the national policy favoring arbitration.” <a href="#">Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 443 (2006)</a>. See also <a href="#">Mastrobuono v. Shearson Lehman Hutton, Inc.</a>, 514 U.S. 52, 56 (1995);</p> |
| 2    | <p>Sign into the legal research website and open the cited document. Select the url address for the document.</p> <p><b>Note:</b> When using this method, if the link on the website changes, the link in the document may not work. Right-click, and <b>Copy</b> the address. See below:</p>  |



OR

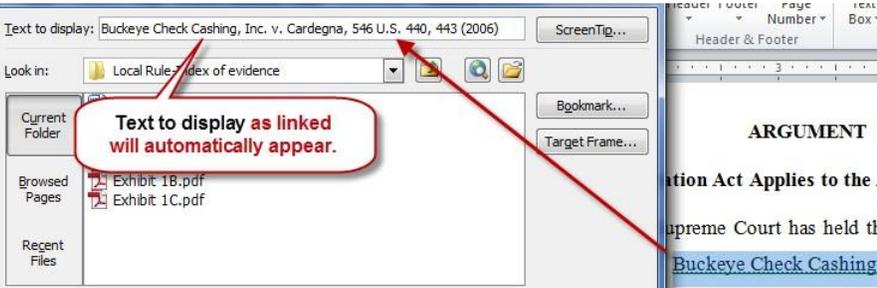
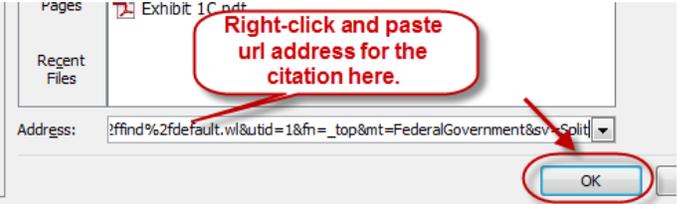


When using Lexis Advance, select Actions > Link to this page. This will use a static link, which should always work.



**Note:** Check your local rules for any authority or limitations on the legal research websites to which links are permitted.

**Note:** Some attorneys have reported difficulty using this method to insert links to Lexis research.

| STEP     | ACTION   |
|----------|--|
| <p>3</p> | <p>a</p> <p>Select the <b>Insert</b> ribbon, then select <b>Hyperlink</b>. An <b>Insert Hyperlink</b> dialog box will appear.</p>  <p><b>Note:</b> The text you selected will automatically appear in the “<b>Text to display</b>” line.</p> |
|          | <p>b</p> <p>Place your cursor in the <b>Address</b> box of the Insert Hyperlink dialog box. Right-click. From the drop-down that appears, select <b>Paste</b>.</p>  <p>Click <b>OK</b>.</p>   |
|          | <p>c</p> <p>The link to the citation will be added in your brief.</p>    |

Special thanks is given to Blake A. Hawthorne, Clerk of the Texas Supreme Court and the Texas Supreme Court for sharing their *Guide to Creating Electronic Appellate Briefs*.

***Electronic Formatting Requirements and Guidelines  
of the Second District***

*Pursuant to California Rules of Court  
rules 8.72(a) and 8.74(b)*

*Effective October 30, 2017*

*Revised June 18, 2018*

**Formatting Requirements**

**1. Text-searchable format**

All documents must be text-searchable, in PDF (portable document format) while maintaining the original document formatting.

**2. Cover Page**

The upper-right corner of the cover page must be left blank in order for TrueFiling to apply a visible file stamp.

**3. Pagination**

The page numbering of a document filed electronically must begin with the first page or cover as page 1 and use only Arabic numerals (e.g., 1, 2, 3). Documents consisting of multiple files must be paginated consecutively across all files. The Adobe Page Counter number must match the consecutive page numbering.

**4. Electronic Bookmarks**

All briefs, original proceedings, motions and applications with attachments must include electronic bookmarks to each heading, subheading and component of the document. This includes such items as the table of contents, table of authorities, petition, verification, points and authorities, declaration, certificate of word count, certificate of interested entities or persons, and proof of service. Each bookmark to a tab, exhibit, or attachment must include the letter or number

of the tab, exhibit or attachment and a description of the tab, exhibit or attachment. The required setting for all bookmarks is “Inherit Zoom” which retains the user’s currently selected zoom setting.

Any appendix filed electronically must have a separate electronic bookmark to the indexes and to the first page of each separate exhibit and attachment. Exhibits or attachments included within an exhibit or attachment must be separately bookmarked.

#### **5. Size**

No single PDF file may exceed 25 megabytes. Notwithstanding provisions to the contrary in the California Rules of Court, electronically filed documents may exceed the 300 page limit as long as the file size is 25 megabytes or smaller. If submitting multiple files in TrueFiling would cause undue hardship, any registered user may file an application in TrueFiling, requesting permission to provide the court with the filing in electronic format (e.g. on a flash drive, or alternatively on CD or DVD), explaining the reason for the manual filing.

Please note, audio and/or video files are not accepted through TrueFiling at this time and must be delivered to the Clerk’s Office on a DVD, CD or flash drive. In addition, audio files must be submitted in .wav or mp3 format and video files must be submitted in .avi or mp4 format.

#### **6. Documents consisting of multiple files**

A document consisting of multiple files must include on the cover page of each file, (i) the file number, (ii) the total number of files, (iii) the page numbers contained in that file, and (iv) the total number of pages for the all the files. The first file must include a master chronological and alphabetical index stating the contents for all files. The remaining files must include a cover page, but an individual index is not required.

## 7. Privacy Protection

Electronic filers must comply with California Rules of Court, rule 1.201 regarding exclusion or redaction of personal identifiers from all documents filed with the court. Neither TrueFiling nor the Clerk of the Court has any responsibility to review documents for compliance with these requirements.

## Formatting Guidelines

Filers are encouraged, but not required, to follow these guidelines which are designed to improve the functionality and readability of documents filed with the court. (See [\*The Leap from E-Filing to E-Briefing, Recommendations and Options for Appellate Courts to Improve the Functionality and Readability of E-Briefs\*](#) (2017).)

### 1. Font Style

**A proportionally spaced serif face**, such as Century School Book. Do not use Times New Roman.

### 2. Font size

**13 pt. text** (including footnotes).

### 3. Spacing

**At least 1.5.** (Footnotes and quotations may be single spaced.)

### 4. Margins

**1.5” on all sides.** An 8½” by 11” page is very large for a publication intended to be read, as distinguished from a reference book or the like that is typically not read for an extended period. Only the economy and convenience of using standard letter-size paper justifies such an oversized page. Letter-size paper avoids the complexities of booklet format, such as laying out signatures, trimming pages, saddle stitching the booklet, etc. See U.S. Government Printing Office Style Manual (30th ed. 2008).

## 5. Alignment

**Left Aligned.** Left aligned text is easier to read than justified text. Like double spacing, justification is a relic of typesetting days, but many legal writers continue to use it out of habit, without thinking about the fact that it is less readable.

## 6. Miscellaneous

Use “curly” or “smart” quotation marks and apostrophes (rather than "straight") Boldface and Italics to be used instead of underlining. Do not use ALL CAPS. Emphasis is an effective tool when used well. In terms of readability, most experts prefer **boldface** and *italics*, and strongly disfavor underlining.

## 7. File Formatting

Whenever possible **do not scan** documents. Convert to PDF format in a word processing program. Compile documents, e.g. appendices, using E-Copies rather than scanned copies with OCR.

## 8. Hyperlink

**Hyperlinked Briefs.** Filers are encouraged to hyperlink their briefs and writs to legal citations and appendices or exhibits.