

ITEM 6

STAFF REPORT ON PROPOSED SUBSTANTIAL CHANGES, SUBJECT TO 15 DAY COMMENT PERIOD GENERAL CLEANUP PROVISIONS

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5 ARTICLES 1, 2, 3, 4, 5, 6, 7, 8, AND 10

SECTIONS 1181.2 THROUGH 1181.3; 1182.2; 1182.7; 1182.9; 1182.10; 1182.15;
1183.1 THROUGH 1183.4; 1183.6; 1183.8 THROUGH 1183.13; 1183.15 THROUGH 1183.17;
1184.1; 1185.1 THROUGH 1185.3; 1185.7; 1185.8; 1186.2; 1186.4; 1187.5; 1187.8; 1187.9;
1187.12; 1187.14; 1187.15; 1190.1 THROUGH 1190.3; 1190.5

EXECUTIVE SUMMARY

On May 26, 2017, the Commission adopted an order to initiate a rulemaking package to: (1) clarify and streamline Commission regulations; (2) update language for consistency; (3) clarify the definition of interested person; (4) clarify the certification and signature requirements for documents filed with the Commission; (5) clarify the requirements to e-file documents in a searchable PDF format and include an original signature; (6) clarify the period of limitation for filing a test claim consistent with the statutory scheme; (7) clarify the requirement for a single claimant representative for joint test claim filings; (8) clarify the requirements for filing a proposed amendment to parameters and guidelines consistent with changes to the Government Code; (9) clarify evidence submission requirements; (10) clarify that the same certification and filing requirements apply to all new filings and written materials; (11) update authority and reference citations; and (12) update punctuation for consistency throughout the regulations.

The proposed regulatory text was made available to the public for 45 days from June 9, 2017 through the end of the written comment period on July 24, 2017. In addition, the California State Association of Counties (CSAC) filed a request for a public hearing, which was held during the Commission's regularly scheduled hearing on July 28, 2017.

Public Comments, Response to Comments, and Staff's Recommendations

On July 24, 2017, the California Special Districts Association (CSDA), CSAC, and the League of California Cities filed joint written comments on the proposed regulations.¹

On July 28, 2017, the following persons provided testimony at the public hearing:

1. Andy Nichols, of Nichols Consulting

¹ Exhibit A, CSDA, CSAC, and League of Cities Joint Comments on Proposed Regulatory Amendments.

2. Dorothy Johnson, for CSAC
3. Dillon Gibbons, for CSDA²

A summary of the public comments, staff's responses to the comments, and staff's recommendations, are provided below.

1. Section 1183.1(c), period of limitation for filing test claims.

a) Change to section 1183.1(c) as originally proposed

Section 1183.1(c) provides for the period of limitation within which a test claim must be filed in accordance with Government Code section 17551(c). Government Code section 17551(c) provides that a test claim must be filed either “*not later than 12 months* following the effective date of a statute or executive order, or *within 12 months of incurring increased costs* as a result of a statute or executive order, whichever is later.”³ The existing regulation states that “For purposes of claiming based on the date of first incurring costs, ‘within 12 months’ means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.” The proposed regulatory change eliminates this language, and clarifies that “within 12 months” speaks for itself, as follows:

Except as provided in Government Code sections 17573 and 17574, any test claim or amendment filed with the Commission must be filed not later than 12 months (365 days) following the effective date of a statute or executive order, or within 12 months (365 days) of first incurring increased costs as a result of a statute or executive order, whichever is later. ~~For purposes of claiming based on the date of first incurring costs, “within 12 months” means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.~~

This change is intended to make the regulation consistent with the plain language of Government Code section 17551(c).

b) Public Comments

CSDA, CSAC, League of Cities Joint Written Comments

Commenters’ objection to the proposed change rests primarily on the assertion that deleting the language that allows a test claim to be filed by June 30 of the fiscal year following the fiscal year in which increased costs are first incurred “would strongly deter local governments from submitting test claims by hindering their ability to gather the relevant data and file in a timely manner.”⁴ Commenters assert that “[t]he proposed change will result in fewer and less accurate

² Exhibit B, Commission on State Mandates, Excerpt from the Transcript of the July 28, 2017 Meeting.

³ Government Code section 17551(c).

⁴ Exhibit A, CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, page 2.

claims.”⁵ Further, they contend that “the proposed changes will require local governments to file test claims before they can adequately track associated costs, much less audit those costs for accuracy.”⁶ Accordingly, Commenters concede that they routinely treat June 30 as the only deadline for filing a test claim: “The existing language provides local governments that are considering filing a test claim a clearly defined deadline to submit a claim for costs incurred while also reflecting an understanding of the budget planning procedure for local governments.”⁷

Mr. Nichols, Public Comment

At the public hearing on the proposed regulatory amendments, Mr. Nichols acknowledged that most claimants rely on the June 30 date as the only limitation period for filing new test claims: “right now, the existing regulation is very clear and concise and predictable: All test claims must be filed by June 30th, following the year that the costs are either first incurred or enacted.”⁸ Mr. Nichols claimed that the former imposition of a three year period of limitation to file in 2002, and the reduction of that period of limitation to one year in 2005, has had a chilling effect on the filing of test claims. Mr. Nichols asserted that further shortening the limitation period for test claim filings will only further that chilling effect.⁹

Ms. Johnson, Public Comment

Ms. Johnson asserts that June 30 is a “more precise hard deadline” and should be retained.¹⁰ Ms. Johnson further asserts that the June 30 fiscal year end deadline “aligns very well with the local budgeting process, which we think is helpful in ensuring the actual costs incurred will be more accurately reflected when it comes to reviewing the new programs or higher levels of services that are put upon counties and other local agencies.”¹¹

c) Response to Comments

Although the commenters raised some policy arguments for why the Legislature may wish to consider a longer statute of limitations for test claims, staff recommends that the Commission strike the provision in 1183.1(c) that permits a test claim filed on the basis of the date costs were first incurred to be filed by June 30 of the fiscal year following the fiscal year in which costs

⁵ Exhibit A, CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, page 2.

⁶ Exhibit A, CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, page 2.

⁷ Exhibit A, CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, page 2.

⁸ Exhibit B, Commission on State Mandates, Excerpt from the Transcript of the July 28, 2017 Meeting, page 9.

⁹ Exhibit B, Commission on State Mandates, Excerpt from the Transcript of the July 28, 2017 Meeting, pages 9-11.

¹⁰ Exhibit B, Commission on State Mandates, Excerpt from the Transcript of the July 28, 2017 Meeting, page 12.

¹¹ Exhibit B, Commission on State Mandates, Excerpt from the Transcript of the July 28, 2017 Meeting, page 12.

were incurred as originally proposed; and make additional clarifying changes to section 1183.1(c) as described below.

Government Code section 17551(c) provides for test claims to be filed “not later than 12 months following the effective date of the statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” The existing regulatory language defines “within 12 months” for purposes of a test claim filed on the basis of the date costs are first incurred *only*, to mean by June 30 of the fiscal year following the fiscal year in which costs are first incurred. For test claims filed based on the effective date of the test claim statute or executive order, “12 months” currently remains undefined in the Commission’s regulations and therefore retains its common meaning: 365 days.¹² As explained below, this regulation permits the Commission to accept a test claim based on first incurring costs as timely well beyond the 12 month deadline provided in the statute, and appears to confuse the period of limitation in Government Code section 17551 with the period of reimbursement in Government Code section 17557. In addition, the interpretation of this regulation, and local governments’ sole use of the June 30 deadline for filing test claims, conflict with the rules of statutory interpretation. A review of the history of Government Code section 17551 helps to understand the proposed regulatory change.

Before 2002, the Government Code did not contain a period of limitation for filing test claims.¹³ The only limitation for filing a test claim was that the test claim statute or executive order must have been enacted on or after January 1, 1975.¹⁴ Thus, a test claim could be filed 20 or 25 years after the effective date of the statute or executive order and be timely. However, if the test claim was approved by the Commission, the period of reimbursement for all eligible claimants, as identified in the parameters and guidelines, was limited under Government Code section 17557 by the test claim filing date; “A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.”¹⁵ For example, a claimant in the year 2000 could file a test claim on a statute that was enacted and became effective on January 1, 1980. If the test claim was filed by June 30, 2000, and was approved by the Commission, the period of reimbursement for all eligible claimants would begin July 1, 1998 (and not on the effective date of January 1, 1980).

Effective September 30, 2002, the Legislature amended Government Code section 17551 by adding a period of limitation for filing test claims with the Commission.¹⁶ As amended,

¹² See *People v. Valencia* (2017) 3 Cal.5th 347, 357, “We have long recognized that the language used in a statute or constitutional provision should be given its ordinary meaning.”

¹³ Government Code section 17551(a) simply stated the following: “The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution.” (Stats.1986, c. 879.)

¹⁴ Article XIII B, section 6(a)(3).

¹⁵ Former Government Code section 17557(c). The period of reimbursement is currently in section 17557(e).

¹⁶ Statutes 2002, chapter 1124.

Government Code section 17551 allowed the filing of a test claim on any statute, regulation, or alleged executive order that became effective *after* January 1, 2002, no later than three years following the date the alleged mandate became effective and included a grandfather clause to allow the filing of a test claim on any statute, regulation, or executive order enacted after January 1, 1975, and effective *before* January 1, 2002, until September 30, 2003. Thus, a test claim on a statute that became effective on January 1, 2003, had to be filed by January 1, 2006. If the test claim was approved, the period of reimbursement was still limited by the test claim filing date: “A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.”¹⁷ Therefore, if the test claim on a statute that became effective on January 1, 2003, was filed by June 30, 2005 (within the period of limitation), and was approved by the Commission, the period of reimbursement for all eligible claimants would begin July 1, 2003.

Government Code section 17551(c) was amended to its current form in 2004 by AB 2856.¹⁸ AB 2856 changed the period of limitation for filing test claims in section 17551(c) from three years of the effective date of a test claim statute or executive order, to “not later than 12 months following the effective date of the statute or executive order, or within 12 months of the incurring increased costs as a result of a statute or executive order, whichever is later.” AB 2856 also renumbered section 17557(c) to section 17557(e) governing the period of reimbursement, which continues to limit the period of reimbursement for approved test claims based on the test claim filing date: “A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.”¹⁹

The legislative committee analysis and the legislative counsel’s digest on AB 2856 do not indicate why the limitation period for filing a test claim was shortened from three years to one year, but a contemporaneous report by LAO entitled “Key Elements of Mandate Reform – Major Recommendations Proposed” indicated a desire to move the Commission’s test claim processes along faster, in part by requiring claimants to file promptly.²⁰ In addition to speeding up the mandates process, the introduction of the second test in section 17551(c) indicates that the Legislature was cognizant of the fact that local agencies may not incur costs under a particular statute or executive order until some later time, if at all, based on a triggering event, which might leave an otherwise-eligible claim inadvertently time-barred. The second test under section 17551 is consistent with Government Code section 17564(a), which provides that no claim under section 17551 may be made unless the claim exceeds one thousand dollars (\$1,000), and in some cases no costs have been incurred, or may ever be incurred, unless some later triggering event occurs.

In 2005, the Commission amended section 1183.1(c) of the regulations to implement AB 2856 by defining the date costs are first incurred under the second test of Government Code section 17551(c) to mean by June 30 of the fiscal year following the fiscal year in which costs are first

¹⁷ Former Government Code section 17557(c).

¹⁸ Statutes 2004, chapter 890.

¹⁹ Government Code section 17557(e) (Stats. 2004, ch. 890 (AB 2856)).

²⁰ Exhibit D, LAO Report, Key Elements of Mandate Reform – Major Recommendations Proposed.

incurred.²¹ The statement of reasons for that amendment simply states that “This section proposes substantive and technical conforming changes that update the statute of limitations requirement.” There was no analysis of the regulatory language or of the Government Code, and no comments were filed on that rulemaking.²²

The comments on the proposed regulatory change suggest that claimants generally rely on the “whichever is later” language to file their test claims based on the date costs are first incurred, and avail themselves of the June 30 deadline, all but ignoring the first test under section 17551(c) to file a test claim “not later than 12 months following the effective date” of the statute or executive order. This practice is consistent with staff’s observations of current and recently-closed test claim filings, and is consistent with an interpretation that Government Code section 17551 allows a test claimant to always choose the later deadline since reimbursable costs can never be incurred *before* the effective date of a statute or executive order. For example, if the effective date of a given statute is January 1, 2015, then under the first test in section 17551(c), the period of limitation for filing the test claim would be January 1, 2016.²³ But if a test claimant alleges that it began first incurring costs on January 2, 2015 (one day after the effective date of the statute, and in fiscal year 2015-2016), the claimant could avail itself of the language in the current regulation allowing a test claim filing by “June 30 of the fiscal year following the fiscal year in which costs are first incurred,” and extend the period of limitation to June 30 of the following fiscal year (2016-2017), or to June 30, 2017; *two and a half years after the statute became effective*.²⁴

There is nothing in the language of section 17551 or in the legislative history AB 2856, however, to suggest the Legislature intended local government to ignore the first test in section 17551 as pure surplusage or to grant local governments the option to always choose the later filing deadline no matter when they first incurred costs. Given that state-mandated increased costs cannot, by definition, be incurred before the effective date of the statute, an interpretation of section 17551(c) that relies only on the second test renders the first test surplusage and essentially without effect.

The courts have made it clear that an interpretation of a statute that renders statutory language surplusage is to be avoided:

We have long recognized that the language used in a statute or constitutional provision should be given its ordinary meaning, and “[i]f the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in

²¹ Register 2005, No. 36.

²² Exhibit D, ISOR, FSOR, and proposed language for the Commission’s 2005 regulation package.

²³ If the test claim was approved, the period of reimbursement under Government Code section 17557, using a January 1, 2016, filing date would be January 1, 2015, the effective date of the statute.

²⁴ If the test claim was approved, under the facts in this hypothetical, the period of reimbursement under Government Code section 17557, using a June 30, 2017, filing date would be July 1, 2015 (and not the effective date of January 1, 2015).

the case of a provision adopted by the voters).” (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) To that end, we generally must “accord [] significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose,” and have warned that “[a] construction making some words surplusage is to be avoided.” (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.)

But “[t]he words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.” (*Dyna-Med, Inc. v. Fair Employment & Housing Com.*, *supra*, 43 Cal.3d at p. 1387.) “Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation.” (*Ibid.*)²⁵

Thus, under the rules of construction, Government Code section 17551(c) is more correctly interpreted to require a test claim filing 12 months following the effective date of a statute or executive order that imposes new mandated activities and costs immediately (which is the more usual case). If costs are not incurred within 12 months following the effective date of a statute or executive order (as is sometimes the case where an independent triggering event causes local entities to incur costs), then a test claim may be filed no later than 12 months following the date of first incurring increased costs as a result of a statute or regulation.

Although section 1183.1(c) of the Commission’s regulations has never been challenged, if a court were to examine the Government Code section closely, it could determine that section 1183.1(c) of the Commission’s regulations is inconsistent with the Code. Under such circumstances a court could find that a Commission decision on a test claim filed more than 12 months after costs are first incurred could be considered void and in excess of the Commission’s jurisdiction.²⁶ Thus, the proposed regulatory action seeks to amend the regulation to make it consistent with the plain language of Government Code section 17551, and consistent with the rules of statutory construction.

The commenters’ also suggest that the proposed change striking the June 30 language in section 1183.1(c) will have a chilling effect on the filing of test claims. In this respect, Ms. Johnson stated in testimony that the existing deadline of June 30 is consistent with the timing of the local budgeting process and is “helpful” to the claimants “in ensuring the actual costs incurred will be more accurately reflected” in the allegations of the claim. Although these are valid concerns, extending the period of limitation to reflect a June 30 deadline requires a statutory change to section 17551. In addition, under the current requirements of Government Code section 17551(c) and the proposed regulatory language to section 1183.1(c), local government can still go through a budget cycle before a test claim would have to be filed 12 months after either the effective date of the statute or executive order, or the date of first incurring costs. Under either test, a test claimant need only show for purposes of jurisdiction that it has or will incur actual increased costs of \$1,000.

²⁵ *People v. Valencia* (2017) 3 Cal.5th 347, 357-358, emphasis added.

²⁶ *California School Boards Association v. State Board of Education* (2010) 191 Cal.App.4th 530, 544.

d) Staff's recommendation for additional amendments to section 1183.1(c)

Based on the above discussion, staff recommends the following additional clarifying edits to section 1183.1(c) to make the regulation consistent with section 17551, as interpreted under the rules of construction (additional amendments noted in double underline and double strikeout):

Except as provided in Government Code sections 17573 and 17574, any test claim or amendment filed with the Commission ~~must~~ shall be filed not later than 12 months (365 days) following the effective date of a statute or executive order. ~~If costs are not incurred within 12 months following the effective date of a statute or executive order, then a test claim may be filed within 12 months (365 days) of first incurring increased costs as a result of a statute or executive order, whichever is later. For purposes of claiming based on the date of first incurring costs, "within 12 months" means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.~~

Under the Administrative Procedures Act (APA), each substantial, sufficiently related change to the initial proposal must be made available for public comment for an additional 15 days.²⁷ Staff recommends that the Commission approve the above changes to section 1183.1(c) and authorize staff to issue a notice of modification and the proposed regulatory text as modified for an additional 15 day public comment period beginning Monday, September 25, 2017 and ending Tuesday, October 10, 2017.

2. Section 1183.1(g), joint test claims.

a) Proposed regulatory change to section 1181.3(g)

The Commission's regulations allow test claims to be prepared as a joint effort between two or more claimants under specified circumstances. The proposed amendment clarifies the existing requirement that joint claimants must designate one person to act as the sole representative for all claimants on the test claim. Language is proposed in 1183.1(g)(3) as follows:

- (g) Test claims may be prepared as a joint effort between two or more claimants and filed with the Commission if the claimants attest to all of the following in the test claim filing:
- (1) The claimants allege state-mandated costs result from the same statute or executive order;
 - (2) The claimants agree on all issues of the test claim; and
 - (3) The claimants have designated one ~~contact~~ person to act as the ~~resource~~ sole representative for all claimants for information regarding the test claim.

b) Public Comments

CSDA, CSAC, League of Cities Joint Written Comments

Commenters state that the initial notice and statement of reasons "does not provide sufficient information to explain the purpose of the change..." and that "existing language...permits a joint

²⁷ Government Code section 11346.8(c).

effort between two or more claimants so long as, among other provisions, the claimants designate one contact person to act as the resource for information regarding the test claim...”²⁸ Commenters assert that “[t]he proposed regulation would change this requirement entirely...[and] could be construed to require an unanimity of factual and legal concerns by all claimants.”²⁹ Commenters assert that this would be “harmful” to the “efforts of joint claimants by requiring such unanimity, and by forcing them to select a single representative for their efforts despite the fact that they may have diverging concerns...on narrow issues that would not otherwise deter a joint test claim.”³⁰

Accordingly, commenters suggest the following language: “1183.1(g)(3) The claimants have designated one ~~contact~~ resource sole representative for all claimants for information for all claimants regarding the test claim.”

Dorothy Johnson, CSAC

Ms. Johnson testified at the public hearing that the reason for this change is unclear, and that while joint test claims involve “often broad, common themes...those individual agencies may have further unique aspects that they wish to bring to the table; and we feel that opportunity would be severely limited with the proposed changes.”³¹

c) Response to Comments

Staff recommends that the Commission reject the proposed modifications by the commenters.

The comments state that the proposed regulatory change could be construed to require unanimity of factual and legal concerns by all claimants. However, section 1183.1(g)(2) has long required that joint test claimants “agree on all issues of the test claim . . .,” and no amendments to section 1183.1(g)(2) have been proposed.

The requirement that joint test claimants agree on all issues of the test claim is consistent with the Government Code and the court’s interpretation of the Commission’s process. As originally enacted, Government Code section 17521 defined a “test claim” to mean “the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state.”³² Thus, the Commission was authorized to take jurisdiction over the first test claim on a statute or executive order only, and was not authorized to accept duplicate test claims.

In 1999, the Legislature amended section 17521 to define a “test claim” to mean “the first claim, including claims joined or consolidated with the first claim, filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state.” The Legislature

²⁸ Exhibit A, CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, page 3.

²⁹ Exhibit A, CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, page 3.

³⁰ Exhibit A, CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, page 3.

³¹ Exhibit B, Commission on State Mandates, Excerpt from the Transcript of the July 28, 2017 Meeting, page 13.

³² Statutes 1984, chapter 1459.

also amended section 17553(b) to direct the Commission to include provisions in regulation for the acceptance of more than one claim on the same statute or executive order, provisions for consolidation of such claims, and provisions for claimants to designate a single claimant for a test claim relating to the same statute or executive order.³³

In 2004, AB 2856 deleted the language allowing multiple test claims on the same statute or executive order. The language in section 17521 was brought back to its original form to provide that “‘Test claim’ means the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state.” And the language in section 17553(b) regarding the acceptance of more than one claim was deleted. The question of whether costs are reimbursable under article XIII B, section 6 of the California Constitution is purely a question of law and multiple test claims on the same statute or executive order is contrary to the purpose of the quasi-judicial process established in sections 17500, et seq.³⁴ As recognized by the California Supreme Court, Government Code sections 17500 and following were established for the “express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created.”³⁵

The Commission’s current regulations allow a single test claim on a statute or executive order to be filed and prepared as a joint effort between two or more claimants, as long as the local government parties comply with section 1183.2(g) and allege state-mandated costs resulting from the same statute or executive order, agree on all issues of the test claim, and designate one contact person to act as the sole representative on the claim. The designation of one person as a sole representative on a joint test claim is necessary to comply with Government Code section 17521, requiring that a test claim be the first claim filed on a statute or executive order, and with section 1187.8 of the Commission’s regulations and the test claim filing form, which requires that a party before the Commission designate an authorized representative to act as its “sole representative.” The “sole representative” shall be “deemed to control all matters respecting the interest of that party in the proceeding. All correspondence and communications shall be forwarded to the authorized representative.”

Section 1183.1(g)(3), in its current form states the following: “The claimants have designated one contact person to act as the resource for information regarding the test claim.” The commenters and some local government test claimants, however, have interpreted section 1183.1(g) to mean that a joint test claim requires the identification of a single contact person to act as a resource for information, but not a single representative to act as the sole representative on the claim on behalf of all joint test claimants. Such an interpretation contradicts the sole representative requirement in section 1187.8. Nevertheless, the current language is not entirely clear and is subject to different interpretations. Thus, the proposed regulatory amendment is intended to clarify that joint test claimants designate one person to act as the sole representative for all claimants on the test claim.

³³ Statutes 1999, chapter 643 (AB 1679).

³⁴ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64 and 71, fn. 15; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

³⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 333.

Joint test claim filings are not required. The Government Code only requires one test claim to be filed by a local government entity for the Commission to have jurisdiction to determine if a statute or executive order requires reimbursement under article XIII B, section 6 of the California Constitution. If another local government entity has a beneficial interest in the test claim or has “further unique aspects that [it] wish[es] to bring to the table...” on the test claim, it is free to file written comments as an interested party and provide testimony before the Commission.³⁶ Even if they have no beneficial interest in a particular matter, but just a general interest in the proceedings of the Commission, they have the opportunity to file comments and evidence and provide testimony on any matter pending before the Commission.³⁷

Accordingly, staff recommends the Commission reject commenters’ proposed modification.

3. Section 1182.10(b), evidentiary requirements for a finding of significant financial distress.

a) Proposed regulatory change to section 1182.10(b)

Section 1182.10 governs the conduct of the Commission’s hearing of a county’s application for a finding of significant financial distress under Welfare and Institutions Code section 17000.6. Subdivision (a) of section 17000.6 states the following:

The board of supervisors of any county may adopt a standard of aid below the level established in Section 17000.5 if the Commission on State Mandates makes a finding that meeting the standards in Section 17000.5 would result in a significant financial distress to the county. When the commission makes a finding of significant financial distress concerning a county, the board of supervisors may establish a level of aid which is not less than 40 percent of the 1991 federal official poverty level, which may be further reduced pursuant to Section 17001.5 for shared housing. The commission shall not make a finding of significant financial distress unless the county has made a compelling case that, absent the finding, basic county services, including public safety, cannot be maintained.

In 1997, the Third District Court of Appeal, in *Goff v. Commission on State Mandates*, held that the issue before the Commission on a county’s application for a finding of significant financial distress is “whether the County had made a compelling case that providing general assistance at the level contemplated by section 17000.5 would cause significant financial distress such that the County could not maintain basic services, including public safety.” Such an issue is a question of law, requiring the Commission to exercise its quasi-judicial authority.³⁸

³⁶ California Code of Regulations, title 2, section 1181.2(i); Government Code section 11123 (Bagley-Keene Open Meeting Act).

³⁷ California Code of Regulations, title 2, section 1181.2(j); Government Code section 11123 (Bagley-Keene Open Meeting Act).

³⁸ *Goff v. Commission on State Mandates* (Third District Court of Appeal, Case No. C02243469, Nov. 25, 1997) [review denied and opinion ordered nonpublished by the California Supreme Court March 11, 1998].

Section 1187.5 of the Commission's regulations governs the evidentiary requirements for all quasi-judicial matters, including findings of significant financial distress. That section states the following with respect to the Commission's quasi-judicial hearings:

- The hearing will not be conducted according to technical rules relating to evidence and witnesses.
- Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- Irrelevant and unduly repetitious evidence shall be excluded.
- Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
- Oral or written representations of fact offered by any person at an article 7 hearing shall be under oath or affirmation. All written representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge or information or belief.
- Official notice may be taken in the manner and of the information described in Government Code Section 11515.
- Each party shall have the right to present witnesses, introduce exhibits, and propose to the chairperson questions for opposing witnesses. Evidence may be submitted to support or rebut any issue. If declarations are to be used in lieu of testimony, the party proposing to use the declaration shall comply with Government Code Section 11514.

The proposed amendment to section 1182.10 was merely intended to streamline the Commission's regulations by simply referring to the evidentiary requirements of section 1187.5, and deleting the duplicative requirements in section 1182.10. The proposed amendment is not a substantive change and does not change the evidentiary requirements for findings of significant financial distress. The proposed amendment to section 1182.10 is as follows:

(a) Each party shall have the right to present witnesses, to introduce exhibits, and to propose questions to the chairperson, hearing panel, or hearing officer for opposing witnesses in support or rebuttal of any matter relevant to the issues even though that matter was not covered in the direct examination.

~~(b) The hearings will not be conducted according to technical rules relating to evidence and witnesses. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.~~

(eb) The Commission, hearing panel, or hearing officer may question any party or witness, may admit any relevant and material evidence, and may limit the length of testimony to a specific amount of time for any party or witness.

(ec) The taking of evidence and testimony in a hearing shall be controlled by the Commission, hearing panel, or hearing officer in the manner best suited to ascertain the facts.

(ed) Oral or written representations of fact offered by any person shall be ~~under oath or affirmation.~~ supported by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these regulations. ~~Written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge or information or belief.~~

(eg) Public hearings, pursuant to this article, shall be recorded by stenographic reporter or electronic recording or both. The transcript or recordings shall be kept for the period of time required by applicable law governing the retention of records of state agency public proceedings, or until conclusion of administrative or judicial proceedings, whichever is later.³⁹

b) Public Comments

CSDA, CSAC, League of Cities Written Comments

Commenters expressed confusion regarding this proposed change:

The Commission is a quasi-judicial body, and therefore, should not be required to act in accordance with traditional “courtroom” rules and order. However, by striking out Section 1182.10(b), it is unclear whether or not the Commission will be required to act as such. Moreover, the proposed regulation conflicts with other regulations governing the conduct of hearings before the Commission. Section 1187.5, regarding evidence submitted to the Commission in a quasi-judicial hearing, contains the same language being stricken in proposed regulation Section 1182.10(b).⁴⁰

Accordingly, commenters recommend retaining the existing language in section 1182.10(b).

Dillon Gibbons, CSDA

At the public hearing, Mr. Gibbons echoed the written comments, but also stated that the notice provided does not specifically identify the necessity or anticipated benefit of this change.⁴¹

³⁹ Similar amendments are proposed for sections 1182.2; 1182.7; 1182.9; 1183.1; 1183.2; 1183.3; 1183.4; 1183.6; 1183.8; 1183.9; 1183.10; 1183.11; 1183.12; 1183.13; 1183.15; 1183.16; 1183.17; 1184.1; 1185.1; 1185.2; 1185.3; 1185.7; 1185.8; 1186.2; 1186.4; 1187.8; 1187.9; 1187.12; 1187.14; 1187.15; 1190.1; 1190.2; 1190.3; 1190.5 of the Commission’s regulations.

⁴⁰ Exhibit A, CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, pages 3-4.

⁴¹ Exhibit B, Commission on State Mandates, Excerpt from the Transcript of the July 28, 2017 Meeting, pages 13-14.

Further, Mr. Gibbons asserted that the changes would result in significant cost increases for claimants before the Commission:

If we're eliminating hearsay testimony, it will require tremendous investment of time and resources for agency staff to be preparing witnesses. Instead of having a GM be able to come in and say, "You know, I got this information from our auditor, I got this information from these folks; and here's what they said," we would have to be bringing in each one of them, is the understanding -- the way we read that proposed change.

And as it's currently written, there is confusion on how those regulations would be enforced or which ones we should follow. At least I'm confused.⁴²

Accordingly, Mr. Gibbons requested that the Commission retain the existing language of section 1182.10(b), or "[i]f the Commission still wishes to make changes to that section, we ask that you hold off on the changes until the Commission staff is able to provide the public with information regarding the necessity or anticipated benefit of the proposed regulation and we have an opportunity to respond to those comments."

c) Response to Comments

Staff recommends that the Commission reject the commenters' recommendation to retain the existing language in section 1182.10.

Section 1182.10 describes the hearing to be held on a request for a finding of significant financial distress. Subdivision (b), proposed for deletion, currently states that the hearing will not be conducted according to technical rules relating to evidence and witnesses, including the admissibility of hearsay evidence. These provisions echo those in section 1187.5, which applies to all matters heard before the Commission that fall under Article 7, Quasi-Judicial Hearing Procedures and Decisions, including applications for findings of significant financial distress. In this respect, section 1182.10(b) is duplicative, and unnecessary.

However, commenters' confusion may stem from the fact that applications for a finding of significant financial distress are not clearly identified as an Article 7 "matter" in section 1187.1 of the Commission's regulations. Section 1187.1 identifies test claims, proposed parameters and guidelines, incorrect reduction claims, and other matters, but does not expressly list applications for findings of significant financial distress. This is an inadvertent error. Since section 1187.1 was not identified on the Notice of Proposed Rulemaking, section 1187.1 will be revised in the Commission's next review of its regulations to correct that error. The APA prohibits a state agency from adopting or amending a regulation that was not originally made available to the public.⁴³ If an application for a finding of significant financial distress is filed before section 1187.1 is corrected, the Commission will still be bound by the *Goff* case under principles of res judicata, and will be required to conduct the hearing in accordance with sections 1182.10 and 1187.5 as a quasi-judicial matter.

⁴² Exhibit B, Commission on State Mandates, Excerpt from the Transcript of the July 28, 2017 Meeting, page 15.

⁴³ Government Code section 11346.8(c).

4. Filing and service of all documents, and signature and certification of evidence requirements; elimination of duplicative language, sections 1182.2; 1182.7; 1182.9; 1182.10; 1183.1; 1183.2; 1183.3; 1183.4; 1183.6; 1183.8; 1183.9; 1183.10; 1183.11; 1183.12; 1183.13; 1183.15; 1183.16; 1183.17; 1184.1; 1185.1; 1185.2; 1185.3; 1185.7; 1185.8; 1186.2; 1186.4; 1187.8; 1187.9; 1187.12; 1187.14; 1187.15; 1190.1; 1190.2; 1190.3; 1190.5

a) Proposed regulatory changes

As described in the notice and initial statement of reasons, the above sections detail the filing requirements for a number of different types of matters before the Commission. All are subject to the requirements of section 1181.3 (filing and service, including e-filing), and most are also subject to section 1187.5 (evidentiary requirements for article 7 quasi-judicial matters). However, portions of the language from either section 1181.3 or section 1187.5, or both, are repeated throughout the above-described regulations, with varying degrees of consistency and detail. The proposed amendments either add to or reorder the above sections to provide uniformity to those varied references, and ensure that the requirements of section 1181.3 are applied to all documents filed with the Commission, and the provisions of section 1187.5 are followed where applicable for quasi-judicial matters.

b) Public Comments

CSDA, CSAC, League of Cities Written Comments

Commenters acknowledge that “common law definitions for ‘documentary evidence’ and ‘testimonial evidence’ exist,” but ask the Commission to clarify “what the terms mean in the Commission’s quasi-judicial context.”⁴⁴

Dillon Gibbons, CSDA

Mr. Gibbons echoed these statements at the public hearing, saying “we would like to see clarification to be put into the proposed language that has the definitions as they would apply to this Commission for the documentary and testimonial evidence.”⁴⁵

c) Response to Comments

Staff recommends that the Commission reject the modifications proposed by the commenters.

The regulatory changes proposed are merely clarifying, and commenters’ suggestions are beyond the scope of this regulatory action. Section 1181.3 provides instructions for filing and service of all documents with the Commission, including documents that are intended as evidence, and the regulatory changes in the above-named sections are intended merely to provide consistent reference to those requirements. Section 1187.5 provides for the evidentiary standards applicable to all Article 7 matters before the Commission, including the admissibility of hearsay evidence, and the introduction of evidence and exhibits, including declarations. The regulatory changes proposed are only those necessary to ensure that with respect to all Article 7 matters, a

⁴⁴ Exhibit A, CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, page 4.

⁴⁵ Exhibit B, Commission on State Mandates, Excerpt from the Transcript of the July 28, 2017 Meeting, page 16.

clear and consistent reference to section 1187.5 and its requirements is present. There are no substantive changes proposed to the evidentiary standards, or to the types of evidence that are permitted.

Pursuant to the Commission's regulations, the technical rules of evidence and witnesses that are required in court are not required before the Commission. Under the Commission's process, evidence to support or rebut any issue can be by either oral or written testimony provided under oath or affirmation.⁴⁶

Hearsay evidence may be used only for the purpose of supplementing or explaining other evidence, but shall *not* be sufficient itself to support a finding unless it would be admissible over objection in civil actions.⁴⁷ Hearsay evidence is defined as an out-of-court statement (either oral or written) that is offered to prove the truth of the matter stated. Under the evidentiary requirements for the courts, written testimony in the form of a declaration or affidavit is considered hearsay because the declarant is an out-of-court witness making statements about the truth of the matters asserted and is not available for cross examination. However, under the relaxed rules of evidence in section 1187.5 of the Commission's regulations, written testimony made under oath or affirmation is considered direct evidence and may properly be used to support a fact.⁴⁸

Out-of-court statements that are *not* made under oath or affirmation, however, are hearsay. Unless there is an exception provided by law, hearsay evidence *alone* cannot be used to support a finding under Government Code section 17518.5 because out-of-court statements are generally considered unreliable. The witness is not under oath, there is no opportunity to cross-examine the witness, and the witness cannot be observed at the hearing.⁴⁹ There are many exceptions to the hearsay rule, however. If one of the exceptions applies, then an out-of-court statement is considered trustworthy under the circumstances and may be used to prove the truth of the matter stated.⁵⁰

In addition, the Commission may take judicial notice of any facts which may be judicially noticed by the courts.⁵¹ Such facts include the official acts of any legislative, executive, or judicial body; records of the court; and other facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination.

The Commission's regulation governing evidence is borrowed from the evidence requirements of the Administrative Procedures Act (Gov. Code, § 11513). The courts have interpreted the evidentiary requirement for administrative proceedings as follows:

⁴⁶ California Code of Regulations, title 2, section 1187.5.

⁴⁷ California Code of Regulations, title 2, section 1187.5.

⁴⁸ *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal.App.3d 586, 597.

⁴⁹ *People v. Cudjo* (1993) 6 Cal.4th 585.

⁵⁰ See Evidence Code sections 1200 et seq. for the statutory hearsay exceptions.

⁵¹ California Code of Regulations, title 2, section 1187.5. See also, Evidence Code sections 451 and 452.

While administrative bodies are not expected to observe meticulously all of the rules of evidence applicable to a court trial, common sense and fair play dictate certain basic requirements for the conduct of any hearing at which facts are to be determined. Among these are the following: the evidence must be produced at the hearing by witnesses personally present, or by authenticated documents, maps or photographs; ordinarily, hearsay evidence standing alone can have no weight [citations omitted], and this would apply to hearsay evidence concerning someone else's opinion; furthermore, cross-examination within reasonable limits must be allowed. Telephone calls to one of the officials sitting in the case, statements made in letters and arguments made in petitions should not be considered as evidence.⁵²

Moreover, Government Code section 17559(b) has long provided that “A claimant or the state may commence a proceeding in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure to set aside a decision of the commission on the ground that the commission’s decision is not supported by substantial evidence.” Code of Civil Procedure section 1094.5 is a claim for administrative mandamus that requires the court to determine whether substantial evidence supports the administrative agency’s findings and whether the findings support the agency’s decision. An administrative agency commits an abuse of discretion under section 1094.5 if the decision is not supported by the findings or the findings are not supported by the evidence.⁵³

Finally, evidence submitted to the Commission is evaluated on a case-by-case basis, in accordance with the rules of evidence. Any additional definitions or specifications regarding the type of evidence or the scope of evidence that the Commission accepts or considers would unduly bind the Commission in future matters. Accordingly, staff recommends that the Commission reject the proposed modifications.

⁵² *Desert Turf Club v. Board of Supervisors for Riverside County* (1956) 141 Cal.App.2d 446, 455. In that case, the board of supervisors denied a permit to use land subject to a zoning ordinance as a race track. The board based its decision on testimony, letters and phone calls from members of the public opposing horse racing and betting on moral grounds. The court held that there was no evidence in the record to support the decision. On remand, the court directed the board to “reconsider the petition of appellants as to land use, wholly excluding any consideration as to the alleged immorality of horse racing and betting as authorized by state law, and wholly excluding from such consideration all testimony not received in open hearing, and all statements of alleged fact and arguments in petitions and letters on file, except the bare fact that the petitioners or letter writers approve or oppose the granting of the petition; also wholly excluding each and every instance of hearsay testimony unless supported by properly admissible testimony, it being further required that the attorneys representing any party in interest be granted a reasonable opportunity to examine or cross-examine every new witness produced.” *Id.* at p. 456.

⁵³ *Topanga Assoc. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515.

Conclusion and Staff Recommendation

Based on the foregoing, staff recommends that the Commission approve the proposed modification to section 1183.1(c) as follows (additional amendments noted in double underline and double strikeout):

Except as provided in Government Code sections 17573 and 17574, any test claim or amendment filed with the Commission ~~must~~ shall be filed not later than 12 months (365 days) following the effective date of a statute or executive order.
~~☞ If costs are not incurred within 12 months following the effective date of a statute or executive order, then a test claim may be filed within 12 months (365 days) of first incurring increased costs as a result of a statute or executive order, whichever is later. For purposes of claiming based on the date of first incurring costs, "within 12 months" means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.~~

Staff further recommends that the Commission authorize staff to issue a notice of modification and the proposed regulatory text as modified for an additional 15 day public comment period pursuant to Government Code section 11346.8(c) beginning Monday, September 25, 2017, and ending on Tuesday October 10, 2017.

If approved, and following the receipt of additional comments, staff will prepare the final rulemaking package for the Commission's consideration at the December 1, 2017 hearing.

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

NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS

Pursuant to the requirements of Government Code section 11346.8(c), and section 44 of Title 1 of the California Code of Regulations, the Commission on State Mandates is providing notice of changes made to proposed regulation, section 1183.1. These changes are in response to comments received regarding the proposed regulation.

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 October 10, 2017**. 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 applications for a finding of significant financial distress (Welf. & Inst. Code, § 17000.6). The purpose of this rulemaking is to: (1) clarify and streamline Commission regulations; (2) update language for consistency; (3) clarify the definition of interested person; (4) clarify the certification and signature requirements for documents filed with the Commission; (5) clarify the requirements to e-file documents in a searchable PDF format and include an original signature; (6) clarify the period of limitation for filing a test claim consistent with the statutory scheme; (7) clarify the requirement for a single claimant representative for joint test claim filings; (8) clarify the requirements for filing a proposed amendment to parameters and guidelines consistent with changes to the Government Code; (9) clarify evidence submission requirements; (10) clarify that the same certification and filing requirements apply to all new filings and written materials; (11) update authority and reference citations; and (12) update punctuation for consistency throughout the regulations.

Therefore, the Commission originally proposed revised language and citations in Articles 1, 2, 3, 4, 5, 6, 7, 8, and 10 of the California Code of Regulations, Division 2, Title 2, Chapter 2.5 with a proposed effective date of January 1, 2018.

The purpose of this modification to this rulemaking is to: (1) clarify and streamline Commission regulations; (2) update language for consistency; (6) clarify the period of limitation for filing a test claim consistent with the statutory scheme; (7) clarify the requirement for a single claimant representative for joint test claim filings; (9) clarify evidence submission requirements; (10) clarify that the same certification and filing requirements apply to all new filings and written materials.

Therefore, the Commission proposes modifications to the originally proposed amendment to Article 2 section 1183.1 of the California Code of Regulations, Division 2, Title 2, Chapter 2.5. As a result of the 15 day comment period on the proposed modifications to the proposed amendments, the effective date for this rulemaking will now be April 1, 2018.

Anticipated Benefits of the Proposed Regulation

The specific benefits anticipated from the regulation are increased clarity for local governments, school districts, state agencies, and interested parties/persons participating in the Commission's processes and to increase the speed of hearing and deciding matters filed with the Commission.

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 MODIFICATIONS TO PROPOSED REGULATIONS

I. Clarification of the Period of Limitation for Filing Test Claim

Section 1183.1. Test Claim Filing.

The modification to the proposed amendment clarifies the application of the period of limitation provided in Government Code section 17551; that the second part of the two-part test for timely filing of a test claim applies only when costs are not incurred within one year of the effective date of the statute, such as when a test claim statute or executive order relies on some independent triggering event that may occur at a later time. When costs are incurred immediately and as a direct result of the test claim statute, the effective date of the statute controls the period of limitation.

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 modifications 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
Telephone: (916) 323-3562
(heidi.palchik@csm.ca.gov)

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, or other information upon 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
AND MODIFIED TEXT OF PROPOSED REGULATIONS**

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date the original notice was published in the Notice Register, the rulemaking file consisted of the notice of proposed rulemaking, the proposed text of the regulations, the initial statement of reasons, and the Commission order to initiate rulemaking proceedings. As of the date the notice of modifications to proposed regulations is distributed, the rulemaking file additionally includes the written comments filed on the proposed regulations, the staff report on public comment and proposed modifications after close of public comment period, the notice of modifications to proposed regulations, and the modified proposed text of the regulations.

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

After considering all timely and relevant comments received, the Commission may adopt the proposed regulations as described in the original notice and modifications to the proposed regulations substantially as described in this notice. If the Commission makes additional modifications which are sufficiently related to the proposed text based on additional comments received during the 15 day notice period, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Commission adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Ms. 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 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, Notice of Modifications to Proposed Regulations and the modified proposed text of the regulations in double underline and strikeout can be accessed through the Commission's website at <http://www.csm.ca.gov/rulemaking.php>.