

ITEM 6
ADOPTION OF PROPOSED REGULATION AMENDMENTS AFTER
CLOSE OF 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

TABLE OF CONTENTS

Exhibit A	
Order to Initiate Rulemaking, Adopted May 26, 2017	1
Exhibit B	
Notice of Proposed Rulemaking, issued June 5, 2017	1-7
Exhibit C	
Initial Statement of Reasons	1-20
Exhibit D	
Proposed Text, issued June 5, 2017	1-61
Exhibit E	
California Special Districts Association (CSDA), California State Association of Counties (CSAC), and League of California Cities (League) Comments on Proposed Regulation Amendments, filed July 24, 2017	1-4
Exhibit F	
Commission on State Mandates, Excerpt from the Transcript of the July 28, 2017 Commission Meeting	1-18
Exhibit G	
Item 6, September 22, 2017 Commission Hearing, Staff Report on Proposed Substantial Changes and Notice of Modifications to Proposed Regulations	1-22
Exhibit H	
Modified Proposed Text (15 Day Changes), issued September 25, 2017	1-61

Exhibit I

Commission on State Mandates, Excerpt from the Transcript of the September 22, 2017
Commission Meeting 1-18

Exhibit J

CSDA, CSAC, and League Comments on Proposed Regulations as Modified, filed
October 10, 2017..... 1-4

Exhibit K

Proposed Text (With an Additional Minor Non-Substantive Change),
issued November 17, 2017..... 1-61

Exhibit L

Final Statement of Reasons..... 1-19

Exhibit M

Order to Adopt Rulemaking..... 1

Exhibit N

Supporting Documentation 1-15

LAO Report, Key Elements of Mandate Reform – Major Recommendations Proposed,
May 10, 2004

ISOR, FSOR, for the Commission’s 2005 regulation package

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, 2, 3, 4, 5, 6, 7, 8, and 10

No. 17-01

ORDER TO INITIATE RULEMAKING
PROCEEDINGS

General Cleanup Provisions (clarifying
regulations, eliminating duplicative
language, and updating authority and
reference citations)

Pursuant to California Code of Regulations, title 2, section 1189.2, 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, 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.

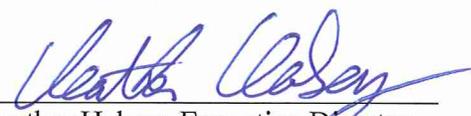
AUTHORITY AND REFERENCE. Government Code section 17527(g) authorizes the Commission to adopt the proposed regulations. The purpose of this rulemaking is to clarify Commission regulations, eliminate duplicative language, and update authority and reference citations.

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 July 24, 2017. 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 July 28, 2017, if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than July 10, 2017.

Date: 5/26/17 By: 
Heather Halsey, Executive Director

**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 July 28, 2017, 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 July 24, 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 proposes 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.

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 PROPOSED REGULATIONS

I. Clarification of the Definition of Interested Person

Section 1181.2. Definitions.

The proposed amendment clarifies the definition of an “interested person” who may participate in Commission proceedings to mean any individual, local agency, school district, state agency, corporation, partnership, association, or other type of entity, who has an interest in a matter before the Commission, but is not a party or interested party with respect to that matter.

II. Clarification of Certification Requirement for New Filings and Written Materials and Submission Requirement that PDFs Include an Original Signature and Remain Searchable

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

The proposed amendment makes clear what is already stated throughout the Commission’s regulations: that all new filings or other written materials must be signed, under penalty of perjury, and with a declaration that the filing is true and correct to the best of the declarant’s personal knowledge, information, or belief. The proposed amendment also requires the filing to include the date, the declarant’s title, address, telephone number, and email address.

In addition, the proposed amendment clarifies how to submit electronic documents with a signature while maintaining the searchability of the document. Electronic signatures interfere with date stamping and do not allow for addition of proofs of service or mailing lists, which Commission staff appends before electronically serving the document. The proposed amendment requires an electronic filer to submit a searchable original PDF document (not a scanned document), along with a scanned signature page (rather than an electronically signed signature page).

Finally, the title of the section is updated to reflect the changes described above.

III. Filing Period Requirements for Test Claims

Section 1183.1. Test Claim Filing.

The regulation provides the requirements for test claim filing, including the period of limitation within which a successful test claim must be filed in accordance with Government Code section 17551(c). Government Code section 17551(c) states that “Local agency or school district test claims shall be filed 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.” The existing regulation, however, confuses the period of limitation for filing test claims with the period of reimbursement identified in parameters and guidelines for approved test claims by stating 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 amendment applies a clear, predictable, and precise one year period of limitation to the filing of all test claims, whether based on the effective date of the test claim statute or executive order or the date that costs were first incurred under the test claim statute or executive order. This amendment deletes the sentence that states “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,” and makes the time for filing test claims under section 1183.1 consistent with Government Code section 17551(c), by adding the words “(365 days)” after the words “must be filed not later than 12 months” following the effective date of a statute or executive order, and adding the words “(365 days)” after the words “or within 12 months” of first incurring increased costs as a result of a statute or executive order, whichever is later.

IV. Joint Test Claim Single Representative Requirement

Section 1183.1. Test Claim Filing.

Test claims may be prepared as a joint effort between two or more claimants, under specified circumstances. The proposed amendment clarifies the requirement that joint claimants must designate one person to act as the sole representative for all claimants on the test claim.

V. Requirement for Use of Audited Claim Data in Amending Parameters and Guidelines to Include Reasonable Reimbursement Methodology

Section 1183.17. Amendments to Parameters and Guidelines.

The proposed amendment harmonizes the regulation with changes made to Government Code section 17518.5, which defines “reasonable reimbursement methodology.” As amended by Statutes 2016, chapter 31, section 17518.5 provides that where a reasonable reimbursement methodology is, in whole or in part, based on costs included in claims submitted to the Controller, only those cost claims that have been audited may be relied upon. The proposed amendment recognizes that these provisions would only arise in the case of an *amendment* to parameters and guidelines, because initial parameters and guidelines proposals including a reasonable reimbursement methodology could not be based on cost claims submitted to the Controller; cost claims cannot be submitted until after the adoption of initial parameters and guidelines and the issuance of claiming instructions by the Controller. The regulations therefore include the new requirements of section 17518.5 only in section 1183.17 of the regulations dealing with amendments to parameters and guidelines, and not in section 1183.12, addressing

the adoption of new parameters and guidelines following a test claim decision. Additionally, the provision requiring a statement that the proposal is based on cost claims submitted to the Controller for reimbursement is necessary to effectuate the requirement in section 17518.5(e)(2-3) that the Commission notify the Controller within 30 days of an amendment request that relies on cost claims, so that the Controller, in turn, may select and audit a representative sample of the claimed costs within 360 days.

VI. Filing and Service of All Documents, and Signature and Certification of Evidence Requirements; Elimination of Duplicative Language

Sections affected: 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.

The above-described regulations address and provide for the filing of findings of significant financial distress, test claims, proposed parameters and guidelines, jointly proposed parameters and guidelines, requests to amend parameters and guidelines, jointly proposed requests for early termination of a reasonable reimbursement methodology, review of the State Controller’s claiming instructions, incorrect reduction claims, requests for inclusion of a reimbursable program in the state mandates apportionment system (SMAS) (all of which are defined as “matters”), requests for extensions of time or postponements of hearings, substitutions of parties, requests for reconsideration, and requests for mandate redeterminations, and all comments, rebuttals, and supporting documentation associated with such matters (which are defined as “written materials”). All such filings 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 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. Each of the sections listed above is either added to or reordered to include language requiring all filings, comments, rebuttals, requests, applications, or other written materials to be “certified, filed, and served” in accordance with section 1181.3 of these regulations, and, where required and not already present, stating that if representations of fact are made, they must be supported by documentary or testimonial evidence submitted in accordance with section 1187.5.

VII. Elimination of Duplicative Language; Consistency; Punctuation and Style

In an effort to “clean-up” the Commission’s regulations, the proposed rulemaking makes terminology consistent, corrects punctuation and spacing, updates authority and reference citations, and fixes clerical or internal reference errors from prior rulemakings.

A. Technical Change

Section 1187.5. Evidence Submitted to the Commission

The proposed amendment removes the word “or” between “personal knowledge” and “information” with respect to the provision requiring persons signing written representations of fact to do so based on the declarant’s personal knowledge or information or belief. The proposed

amendment is a minor, technical change and is consistent with evidentiary standards and the penalty of perjury standard stated in the Government Code, including section 17553 pertaining to test claim filings and section 17570 pertaining to mandate redetermination requests and the substantial evidence requirement applicable to Commission decisions.

Section 1185.4. Joining a Consolidated Incorrect Reduction Claim.

The proposed amendment removes the word “or” between “personal knowledge” and “information” with respect to the provision requiring a party seeking to join a consolidated incorrect reduction claim to file a notice of intent accompanied by a declaration. The proposed amendment is a minor, technical change and is consistent with evidentiary standards and the penalty of perjury standard stated in the Government Code, and with section 1187.5 of these regulations.

Section 1187.7. Witnesses and Subpoenas.

The proposed amendment removes the word “or” between “personal knowledge” and “information” with respect to the provision permitting an application for a subpoena to compel the attendance of a witness, and an application for a subpoena duces tecum for the production of documentation. The proposed amendment is a minor, technical change and is consistent with evidentiary standards and the penalty of perjury standard stated in the Government Code, and with section 1187.5 of these regulations.

B. Use Consistent Terminology

Several sections have been amended to apply consistent terminology or phrasing.

C. Make Clerical Changes of Internal References, Punctuation, and Style

Minor and non-substantive changes in internal references, punctuation, and style are proposed to improve the readability and clarity of the regulations.

Sections affected: 1182.15; 1183.1; 1185.2; 1187.15

The words “and hearing procedures” are replaced with “requirements and procedures relating to applications” in section 1182.15(b). The word “of” is changed to “on” in section 1183.1(a)(1). A space is inserted after “(c)” and before “Within” in section 1185.2(c). The period is replaced with a comma after “and” in section 1187.15(c)(4), because the new section 1187.15(c)(5) is now the last of the list of requirements.

D. Update Authority and Reference Citations

Citations have been updated to maintain consistency throughout the regulations and to add references, where appropriate.

Sections affected: 1183.17 and 1187.5.

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

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, if any, 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 TEXT OF PROPOSED REGULATIONS**

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

Copies may be obtained on the Commission's website (see below) or by contacting Ms. Jill Magee 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, 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) 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, 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, AUTHORITY AND REFERENCE

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

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 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.

I. Clarification of the Definition of Interested Person

Section 1181.2. Definitions.

Specific Purpose of the Regulation

The purpose is to clarify the definition of an “interested person” who may participate in Commission proceedings to mean any individual, local agency, school district, state agency, corporation, partnership, association, or other type of entity, who has an interest in a matter before the Commission, but is not a party or interested party with respect to that matter.

Proposed Change

Language is proposed in section 1181.2(j) as follows:

(j) "Interested person" means any individual, local agency, school district, state agency, corporation, partnership, association, or other type of entity, who has~~ing~~ an interest ~~in the activities of the Commission~~ a matter before the Commission, but is not a party or interested party with respect to that matter.

Necessity and Anticipated Benefit

This proposed change makes clear that an “interested person” is a distinct entity with respect to participating in a matter before the Commission, and is not a party or interested party with respect to that matter.

II. Clarification of Certification Requirement for New Filings and Written Materials and Submission Requirement that PDFs Include an Original Signature and Remain Searchable

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

Specific Purpose of the Regulation

The regulation provides for the filing and service of new filings and written materials. The regulation provides for both paper and e-filing of documents for all Commission matters. The regulation requires that documents e-filed with the Commission must be in a legible and searchable format, but section 1187.5 also requires all written representations of fact to be signed under penalty of perjury by persons authorized and competent to do so. The regulation is amended to clarify that all new filings and all other written materials must be signed under penalty of perjury, with a declaration that the filing is true and correct to the best of the declarant’s personal knowledge, information or belief. The regulation is also amended to specify how e-filed documents should be signed in order to best preserve legibility and searchability.

Proposed Changes

New section 1181.3(a) is added as follows:

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

Language is proposed in section 1181.3(b)(1) as follows:

(1) E-Filing. ~~Submit File~~ the original to the Commission by saving the signed original in a PDF file and submitting it via the Commission’s e-filing system, available on the Commission’s website. Documents e-filed with the Commission must be in a legible and searchable format that allows Commission staff to electronically date stamp the document to verify date of filing, and to append additional pages for posting on the Commission’s website with proof of service, in lieu of the filer serving the document to the entire mail list for the matter. E-filed documents should be filed in their original, searchable form, but the signature page shall be replaced with a scanned copy, rather than digitally signed. The filer is responsible for maintaining the signed original for the duration of the process for the matter, including any period of appeal. Notwithstanding any other provision in these regulations, if a new filing or written material is e-filed, no additional copies shall be submitted to Commission staff. The following shall apply to e-filing:

Renumbering and renaming:

Section 1181.3 is renamed “Certification, Filing and Service of Written Materials and New Filings” and the addition of new subdivision (a) requires renumbering subdivisions (a) and (b) as (b) and (c).

Necessity and Anticipated Benefit

The proposed amendment makes clear what is already stated throughout the Commission's regulations: that all new filings or other written materials must be signed, under penalty of perjury, and with a declaration that the filing is true and correct to the best of the declarant's personal knowledge, information, or belief. The proposed amendment also requires the filing to include the date, the declarant's title, address, telephone number, and email address.

In addition, the proposed amendment clarifies how to submit electronic documents with a signature while maintaining the searchability of the document. Electronic signatures interfere with date stamping and do not allow for addition of proofs of service or mailing lists, which Commission staff appends before electronically serving the document. The proposed amendment requires an electronic filer to submit a searchable original PDF document (not a scanned document), along with a scanned signature page (rather than an electronically signed signature page).

III. Filing Period Requirements for Test Claims

Section 1183.1 Test Claim Filing.

Specific Purpose of the Regulation

The regulation provides the requirements for test claim filing, including the period of limitation within which a successful test claim must be filed in accordance with Government Code section 17551(c). Government Code section 17551(c) states that "Local agency or school district test claims shall be filed 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." The existing regulation, however, confuses the period of limitation for filing test claims with the period of reimbursement identified in parameters and guidelines for approved test claims by stating 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."

Proposed Change

Language is proposed in 1183.1(c) 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.~~

Necessity and Anticipated Benefit

The proposed amendment applies a clear, predictable, and precise one year period of limitation to the filing of all test claims, whether based on the effective date of the test claim statute or executive order or the date that costs were first incurred under the test claim statute or executive order, consistent with Government Code section 17551(c).

IV. Joint Test Claim Single Representative Requirement

Section 1183.1. Test Claim Filing.

Specific Purpose of the Regulation

The regulation provides the requirements for test claim filing, including the provision that a test claim may be prepared jointly by two or more claimants, under specified circumstances.

Proposed Change

Language is proposed in 1183.1(g)(3) as follows:

(3) The claimants have designated one ~~contact~~ person to act as the ~~resource~~ sole representative for all claimants for information regarding the test claim.

Necessity and Anticipated Benefit

The proposed amendment clarifies the third requirement that joint claimants must designate one person to act as the sole representative for all claimants on the test claim.

V. Requirement to Use Audited Claim Data in Amending Parameters and Guidelines to Include Reasonable Reimbursement Methodology (RRM)

Section 1183.17. Amendments to Parameters and Guidelines.

Specific Purpose of the Regulation

The purpose of section 1183.17 is to provide for amendments to existing parameters and guidelines. The section states that an amendment may be filed to make specified changes to parameters and guidelines, including deleting any activity repealed by statute or executive order; updating offsetting revenue and savings as necessary; clarifying reimbursable activities consistent with the test claim decision, or to include a reasonable reimbursement methodology for all or some of the reimbursable activities.

Proposed Changes

Language is proposed in 1183.17(a)(3) as follows:

(3) Include a reasonable reimbursement methodology for all or some of the reimbursable activities in accordance with Government Code section 17518.5. Any request to include a reasonable reimbursement methodology based on, in whole or in part, costs that have been included in claims submitted to the Controller, shall include a statement to this effect on the cover or first page of the request.

Update to Reference in 1183.17 as follows:

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

Necessity and Anticipated Benefit

The proposed amendment harmonizes the regulation with changes made to Government Code section 17518.5, which defines “reasonable reimbursement methodology.” As amended by Statutes 2016, chapter 31, section 17518.5 provides that where a reasonable reimbursement methodology is, in whole or in part, based on costs included in claims submitted to the Controller, only those cost claims that have been audited may be relied upon. The proposed

amendment recognizes that these provisions would only arise in the case of an *amendment* to parameters and guidelines, because initial parameters and guidelines proposals including a reasonable reimbursement methodology could not be based on cost claims submitted to the Controller; cost claims cannot be submitted until after the adoption of initial parameters and guidelines and the issuance of claiming instructions by the Controller. The regulations therefore include the new requirements of section 17518.5 only in section 1183.17 of the regulations dealing with amendments to parameters and guidelines, and not in section 1183.12, addressing the adoption of new parameters and guidelines following a test claim decision. Additionally, the provision requiring a statement that the proposal is based on cost claims submitted to the Controller for reimbursement is necessary to effectuate the requirement in section 17518.5(e)(2-3) that the Commission notify the Controller within 30 days of an amendment request that relies on cost claims, so that the Controller, in turn, may select and audit a representative sample of the claimed costs within 360 days.

VI. Filing and Service of All Documents, and Signature and Certification of Evidence Requirements; Elimination of Duplicative Language

Sections affected: 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.

Specific Purpose of the Regulation

The above-described regulations address and provide for the filing of findings of significant financial distress, test claims, proposed parameters and guidelines, jointly proposed parameters and guidelines, requests to amend parameters and guidelines, jointly proposed requests for early termination of a reasonable reimbursement methodology, review of the State Controller's claiming instructions, incorrect reduction claims, requests for inclusion of a reimbursable program in the state mandates apportionment system (SMAS) (all of which are defined as "matters"), requests for extensions of time or postponements of hearings, substitutions of parties, requests for reconsideration, and requests for mandate redeterminations, and all comments, rebuttals, and supporting documentation associated with such matters. All such filings 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.

Proposed Changes

The proposed amendments 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. Each of the sections listed above is either added to or reordered to include language requiring all filings, comments, rebuttals, requests, applications, or other written materials to be "certified, filed, and served" in accordance with section 1181.3 of these regulations, and, where required and not already present, stating that if representations of fact are made, they must be supported by documentary or testimonial evidence submitted in accordance with section 1187.5. The proposed amendments are identified below:

Section 1182.2 Filing of an Application for a Finding of Significant Financial Distress.

(b) The applicant shall certify, file, and serve an original application, including supporting documents, with the Commission in accordance with section 1181.3 of these regulations.

(d) The written narrative shall be submitted under penalty of perjury. ~~In addition, the financial and other budgetary documents shall be certified under penalty of perjury.~~ If representations of fact are made, they shall be supported by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these regulations.

Section 1182.7 Request for Supplemental Information.

(b) The supplemental information and any attached financial or other budgetary documents shall be ~~submitted under penalty of perjury~~ certified, filed, and served in accordance with section 1181.3 of these regulations. ~~Any attached financial or other budgetary documents shall be certified under penalty of perjury.~~ If representations of fact are made, they shall be supported by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these regulations.

Section 1182.9. Written Comments.

The applicant and any interested persons may file written comments concerning the staff analysis with the Commission. Written comments shall be certified, filed, and served with the Commission in accordance with section 1181.3 of these regulations. If representations of fact are made, they shall be supported by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these regulations. The written comments shall be reviewed by Commission staff and may be incorporated into any revised or supplemental staff analysis of the application.

Section 1182.10. Conduct of Hearing.

~~(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.~~

~~(e)~~ 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.

~~(d)~~ 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.

~~(e)~~ 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.~~

~~(f)~~ 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.

Section 1183.1. Test Claim Filing.

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

Section 1183.2. Review of Test Claim.

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

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

~~(d) The written comments and supporting documentation shall be signed at the end of the document by an authorized representative, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief. The date of signing, the representative's title, address, and telephone number shall be included. If the authorized representative can be reached via e-mail, the e-mail address shall also be included.~~

Section 1183.3. Claimant's Rebuttal.

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

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

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

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

~~(e) The rebuttal shall be signed at the end of the document by the claimant or its authorized representative, with the declaration that the rebuttal is true and complete to the best of the declarant's personal knowledge or information or belief. The date of signing, and the declarant's title, address, and telephone number shall be included. If the declarant can be reached by e-mail, the declarant's e-mail address shall also be included.~~

Section 1183.4. Claimant's Motion to Consolidate or Sever Test Claims.

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

Section 1183.6. Review of Completed Test Claim and Preparation of Proposed Decision.

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

Section 1183.8. Submission and Review of Proposed Parameters and Guidelines; Submission of Comments.

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

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

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

Section 1183.9. Expedited Process for Proposed Parameters and Guidelines.

(a) After adoption of a decision on a test claim, but before claimant submits proposed parameters and guidelines, Commission staff may expedite the parameters and guidelines process by preparing and issuing draft expedited parameters and guidelines to assist the claimant. The draft

expedited parameters and guidelines shall be served to everyone on the mailing list described in section 1181.4 of these regulations, and shall be posted on the Commission's website.

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

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

(c) Within 15 days of service of the comments submitted pursuant to subdivision (b) of this section, parties, interested parties, and interested persons may file and serve rebuttals. Such rebuttals shall be certified, filed, and served in accordance with section 1181.3 of these regulations. If representations of fact are made, they shall be supported by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these regulations.

Section 1183.10. Reasonable Reimbursement Methodology.

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

Section 1183.11. Joint Reasonable Reimbursement Methodology and Statewide Estimate of Costs.

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

(d) The test claimant and Department of Finance shall certify, file, and serve any filings made pursuant to Government Code section 17557.1 in accordance with section 1181.3 of these regulations.

(f) Written comments ~~may be~~ shall be certified, filed, and served in accordance with section 1181.3 of these regulations.

(g) Within seven days of service of the written comments, the test claimant and Department of Finance may submit written rebuttals which shall be certified, filed, and served in accordance with section 1181.3 of these regulations.

Section 1183.12. Reasonable Reimbursement Methodology, Included in Parameters and Guidelines.

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

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

Section 1183.13. Adoption of Parameters and Guidelines.

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

Section 1183.15. Jointly Proposed Request for Early Termination of Reasonable Reimbursement Methodology.

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

(c) Written comments ~~may be~~ shall be certified, filed, and served in accordance with section 1181.3 of these regulations.

(d) Within seven days of service of the written comments, the test claimant and Department of Finance may submit written rebuttals which shall be certified, filed, and served in accordance with section 1181.3 of these regulations.

Section 1183.16. Expiration of Reasonable Reimbursement Methodology.

(c) The test claimant and the Department of Finance may jointly propose amendments to the reasonable reimbursement methodology or the continuation of a reasonable reimbursement methodology by submitting a request made pursuant to Government Code section 17557.2(f), which shall be certified, filed, and served in accordance with section 1181.3 of these regulations.

(e) Written comments shall be certified, filed, and served in accordance with section 1181.3 of these regulations.

(f) Within 15 days of service of the written comments prepared by other parties and interested parties, the test claimant and Department of Finance may submit written rebuttals which shall be certified, filed, and served in accordance with section 1181.3 of these regulations.

Section 1183.17. Amendments to Parameters and Guidelines.

(d) A claimant or state agency requesting an amendment to existing parameters and guidelines shall certify, file, and serve the request in accordance with section 1181.3 of these regulations. If representations of fact are made, they shall be supported by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these regulations.

(g) Written comments on the request to amend the parameters and guidelines shall be certified, filed, and served in accordance with section 1181.3 of these regulations. If representations of fact are made, they shall be supported by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these regulations.

(h) Written rebuttals to the comments may be filed within 21 days of service of the comments. Written rebuttals shall be certified, filed, and served in accordance with section 1181.3 of these regulations. If representations of fact are made, they shall be supported by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these regulations.

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

Section 1184.1. Review of Office of State Controller's Claiming Instructions.

(c) An original request to review claiming instructions shall be ~~submitted to the Commission by the local agency or school district~~ certified, filed, and served in accordance with section 1181.3 of these regulations. If representations of fact are made, they shall be supported by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these regulations.

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

(g) Within 30 days of service of the written comments, the requester may submit a written rebuttal to the Commission which shall be certified, filed, and served in accordance with section 1181.3 of these regulations. If representations of fact are made, they shall be supported by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these regulations.

(i) The requester and any state agency or interested party may file written comments on the draft proposed decision. Written comments shall be certified, filed, and served as described in accordance with section 1181.3 of these regulations, by the date determined and publicized by

the executive director. If representations of fact are made, they ~~must~~shall be supported by documentary ~~or testimonial~~ evidence submitted ~~with the comments~~ in accordance with section 1187.5 of these regulations. A three-week period for comments shall be given, subject to the executive director's authority to expedite all matters pursuant to Government Code section 17530. All written comments timely filed shall be reviewed by Commission staff and may be incorporated into the proposed decision on the request to review and modify the claiming instructions.

Section 1185.1. Incorrect Reduction Claim Filing.

(3) All representations of fact shall be supported by testimonial or documentary evidence, ~~and shall be submitted with the claim~~ in accordance with section 1187.5 of these regulations.

(g) An incorrect reduction claim, or amendment thereto, shall be certified, filed, and served in accordance with section 1181.3 of these regulations~~shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the incorrect reduction claim is true and complete to the best of the declarant's personal knowledge or information or belief. The date signed, the declarant's title, address, telephone number, and e-mail address shall be included.~~

Section 1185.2. Review of Incorrect Reduction Claims.

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

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

Section 1185.3. Consolidation of Claims Initiated by an Individual Claimant.

(b) A claimant that seeks to file a consolidated incorrect reduction claim shall notify the Commission of its intent at the time of filing on a form provided by the Commission. The consolidated incorrect reduction claim shall be filed in accordance with section 1185.1 of these regulations and contain a narrative that explains the elements in subdivision (a) of this section. All representations of fact shall be supported by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these regulations.

Section 1185.7. Review of Completed Incorrect Reduction Claims and Preparation of Proposed Decision.

(d) A three-week period for comments shall be given, subject to the executive director's authority to expedite all matters pursuant to Government Code section 17530. Written comments

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

Section 1185.8. Withdrawal of Incorrect Reduction Claims.

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

Section 1186.2. Request for Inclusion.

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

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

Section 1186.4. Request for Removal.

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

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

Section 1187.8. Representation at Hearing.

(a) A party may appear in person or through an authorized representative. When using an authorized representative, a party shall designate in writing the authorized representative to act as

its sole representative and shall certify, file, and serve written notice identifying the authorized representative in accordance with section 1181.3 of these regulations.

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

(a) Requests for Extensions of Time

Any party or interested party to a matter may request an extension of time by filing a request with the executive director before the date set for filing of comments or rebuttals with Commission staff on that matter. The request shall fully explain the reasons for the extension, propose a new date for filing, and be simultaneously-certified, filed, and served in accordance with section 1181.3 of these regulations. If representations of fact are made, they shall be supported by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these regulations. So long as a postponement of a hearing would not be required, there is no prejudice to any party or interested party, and there is no other good reason for denial, the request shall be approved. A party to a matter may request an extension of time that would necessitate rescheduling a hearing, but shall also include a request for postponement of the hearing, pursuant to section 1187.9(b). Within two business days of receipt of the request, the executive director shall determine whether the extension will be granted and notify all persons on the mailing list prepared pursuant to section 1181.4 of these regulations.

(b) Requests for Postponement of Hearing

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

Section 1187.12. Withdrawal of a Matter.

A matter, or any portion of a matter, other than a test claim, may be withdrawn by written application of the claimant or requester any time before a decision is adopted, or by oral application at the time of hearing. A test claim, or portion thereof, may be withdrawn by the claimant upon written application to the executive director any time before a decision is adopted or after enactment of a legislatively determined mandate on the same statute or executive order pursuant to Government Code section 17574. The claimant or requester shall certify, file, and serve the written application in accordance with section 1181.3 of these regulations. Dismissal of items withdrawn pursuant to this section shall be in accordance with the procedures described in section 1187.15 of these regulations.

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

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

Section 1187.15. Reconsideration of an Adopted Decision.

(c) All requests for reconsideration shall be certified, filed, and served~~submitted to the Commission~~ in accordance with section 1181.3 of these regulations and shall contain the following:

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

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

Section 1190.1 Filing a Request to Adopt a New Test Claim Decision.

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

(d) ~~The requester shall file a~~ request for mandate redetermination and accompanying documents ~~with the Commission~~ shall be certified, filed, and served in accordance with section 1181.3 of these regulations.

Section 1190.2. Review and Response.

(1) If representations of fact are made, they must be supported by documentary or testimonial evidence, which shall be submitted in accordance with section 1187.5 of these regulations~~with the response. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief.~~

~~(e) The written comments and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief. The date of signing, the representative's title, address, telephone number, and e-mail address shall be included.~~

~~(d) Filing. Written comments and supporting documentation concerning a request for mandate redetermination shall be certified, filed, and served in accordance with Section 1181.3 of these regulations. Any representations of fact shall be supported by documentary evidence, submitted with the comments, in accordance with section 1187.5 of these regulations.~~

Section 1190.3. Rebuttal.

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

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

~~(d) The rebuttal shall be signed at the end of the document, under penalty of perjury, with the declaration that the rebuttal is true and complete to the best of the declarant's personal knowledge or information or belief. The date of signing, the declarant's title, address, telephone number, and e-mail address shall be included.~~

Section 1190.5. Hearing Process and Form of Decision.

(3) Written comments concerning the draft proposed decision may submitted to Commission staff. Written comments shall be certified, filed, and served as described in accordance with section 1181.3 of these regulations, by the date determined and publicized by the executive director. A three-week period for comments shall be given, subject to the executive director's authority to expedite all matters pursuant to Government Code section 17530. If representations of fact are made, they shall be supported by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these regulations. All written comments timely filed shall be reviewed by Commission staff and may be incorporated into the proposed decision of the request to adopt a new test claim decision.

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

Necessity and Anticipated Benefit

Section 1183.1 of the Commission's regulations instructs claimants, state agencies, parties, interested parties, and interested persons, regarding the options for either paper or electronic filing and service of documents with the Commission. These filing and service provisions apply to virtually all documents submitted to the Commission on any matter, but they are either referred to or stated slightly differently throughout the Commission's regulations. Similarly, section 1187.5 requires that "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 and belief." This requirement applies generally to any document filed with the Commission that makes an assertion of fact, but the requirement is stated or referred to slightly differently throughout the Commission's regulations.

In some of the above regulations, the specific provisions pertaining to comments, rebuttals, or other filings, refer to the more general provisions; and in some cases they state some or all of the requirements of sections 1183.1 and 1187.5 independently. However, the language used, and the references to these requirements, are not uniform throughout, and may cause confusion, especially where certain requirements are stated, and others are not. The proposed amendment language in reference to all claims, requests, amendments, comments, rebuttals, or any other document to be filed with the Commission, with as little variation as practicable, will ensure that the evidentiary standard and the filing requirements are clear and consistently applied.

VII. Elimination of Duplicative Language; Consistency; Punctuation and Style

Section 1187.5 Evidence Submitted to the Commission.

Specific Purpose of the Regulation

The regulation provides standards for evidence submitted to the Commission.

Proposed Changes

The following amendments are proposed:

(b) 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.

Note: Authority cited: Sections 17527(e), 17527(g), 17553, 17557, 17610, 17621 and 17622, Government Code. Reference: Sections 11514, 11515, 17527(e), 17551, 17553, ~~and~~ 17557, 17559, and 17570, Government Code.

Necessity and Anticipated Benefit

The proposed amendment is a minor, technical change and is consistent with evidentiary standards and the penalty of perjury standard stated in the Government Code, including section 17553 pertaining to test claim filings and section 17570 pertaining to mandate redetermination requests and the substantial evidence requirement applicable to Commission decisions.

Section 1185.4. Joining a Consolidated Incorrect Reduction Claim.

Specific Purpose of the Regulation

The regulation provides for the filing of a notice of intent to join a consolidated incorrect reduction claim.

Proposed Change

The following amendment is proposed:

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

Necessity and Anticipated Benefit

The proposed amendment is a minor, technical change and is consistent with evidentiary standards and the penalty of perjury standard stated in the Government Code, and with section 1187.5 of these regulations.

Section 1187.7. Witnesses and Subpoenas.

Specific Purpose of the Regulation

The regulation provides for the presentation of witnesses at a hearing on a claim and the ability of the Commission to subpoena witnesses and documentation.

Proposed Change

The following amendment is proposed:

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

(d) An application for subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda, or other records, including records of the claimant, shall be made by affidavit and shall give the name and address of the person to be subpoenaed, shall describe the matters or things desired to be produced, shall set forth in detail the relevance to the issues involved in the claim, shall specify the date on which the matters shall be produced, and that, to the best of the applicant's personal knowledge, ~~or~~ information, or belief, the witness has the matters or things in his or her possession or under his or her control and that none of the matters or things desired to be produced are public records accessible to the public pursuant to Section 6250 et seq., of the Government Code. If the applicant is unable to obtain the name of the person who has possession or control of the matters or things desired to be produced, the name of the director or superintendent or custodian of records of the state or local agency or school district may be used for the application.

Necessity and Anticipated Benefit

The proposed amendment is a minor, technical change and is consistent with evidentiary standards and the penalty of perjury standard stated in the Government Code, and with section 1187.5 of these regulations.

Sections 1182.15; 1183.1; 1185.2; 1187.15.

Specific Purpose of Regulation

Section 1182.15 provides for reapplications for a finding of significant financial distress. Section 1183.1 provides for test claim filing. Section 1185.2 provides for review of incorrect reduction claims. Section 1187.15 provides for a request to reconsider a test claim.

Proposed Change

The words “and hearing procedures” are replaced with “requirements and procedures relating to applications” in section 1182.15(b). The word “of” is changed to “on” in section 1183.1(a)(1). A space is inserted after “(c)” and before “Within” in section 1185.2(c). The period is replaced with a comma after “and” in section 1187.15(c)(4), because the new section 1187.15(c)(5) is now the last of the list of requirements.

Necessity and Anticipated Benefit

These changes are clerical or stylistic in nature and are necessary to correct minor errors.

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 processes 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 and by preventing the inclusion of personal identifying information in written material filed with the Commission.

MATERIAL RELIED UPON TO DEVELOP REGULATIONS

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

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.

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 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 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 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 requirements for a new filing for a test claim, proposed
14 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~~ving~~ an interest ~~in the~~
28 ~~activities of the Commission~~ a matter before the Commission, but is not a party or interested
29 party with respect to that matter.
- 30 (k) "New filing" means a test claim, incorrect reduction claim, request to amend parameters and
31 guidelines, joint request for reasonable reimbursement methodology, request for review of
32 claiming instructions, request for removal or inclusion in State Mandates Apportionment System,
33 or request for mandate redetermination.
- 34 (l) "Party" includes a party's representative of record who is expressly authorized to act on the
35 party's behalf. Party means the following for each matter as specified below:
- 36 (1) "Party to a Test Claim" means the test claimant, the Department of Finance, and other
37 affected state agencies.
- 38 (2) "Party to an Incorrect Reduction Claim" means the claimant and the Office of State
39 Controller.
- 40 (3) "Party to a Request to Amend Parameters and Guidelines" means the requester, the

- 1 Department of Finance, the Office of State Controller, affected state and local agencies, and
2 affected school districts.
- 3 (4) "Party to a Joint Request for Reasonable Reimbursement Methodology" means the test
4 claimant and the Department of Finance.
- 5 (5) "Party to a Request for Review of Claiming Instructions" means the requester and the Office
6 of State Controller.
- 7 (6) "Party to a Request for Removal or Inclusion in State Mandates Apportionment System"
8 means the requester, the Department of Finance, and the Office of State Controller.
- 9 (7) "Party to a Request for Mandate Redetermination" means the requester, the Department of
10 Finance, the Office of State Controller, affected state and local agencies, and affected school
11 districts.
- 12 (m) "Real Party in Interest" means any person or entity whose interest will be directly affected
13 by the resolution of the matter.
- 14 (n) "Rulemaking proceeding" means any hearing designed to adopt, amend, or repeal any rule,
15 regulation, or standard of general application that implements, interprets, or makes specific any
16 provision of Title 2, Division 4, Part 7, beginning with Government Code section 17500 or any
17 other statute enforced or administered by the Commission.
- 18 (o) "Statewide cost estimate" means the approximate sum of money that local agencies or school
19 districts may have incurred to implement a state-mandated program or any increased level of
20 service of an existing mandated program. A statewide cost estimate submitted by a test claimant
21 shall be an estimate of the first full fiscal year of actual or estimated costs based on the statutes
22 and executive orders alleged in a test claim, except as provided in Government Code section
23 17557.1(a). A statewide cost estimate adopted by the Commission shall be an estimate based on
24 the Commission's determination of a test claim for the initial period of reimbursement to be
25 reported to the Legislature.
- 26 (p) "Statewide estimate of costs" is based on a reasonable reimbursement methodology proposed
27 by a test claimant and the Department of Finance, adopted by the Commission, and reported to
28 the Legislature pursuant to Government Code section 17557.2.
- 29 (q) "Subsequent change in law" means a change in law that requires a finding that an incurred
30 cost is a cost mandated by the state, as defined by Government Code section 17514, or is not a
31 cost mandated by the state pursuant to Government Code section 17556, or a change in mandates
32 law. Amendments to article XIII B, section 6 of the California Constitution that were approved
33 by the voters on November 2, 2004 and changes in the statutes or executive orders that impose
34 new state-mandated activities and require a finding pursuant to Government Code section
35 17551(a) are not a "subsequent change in law."
- 36 (r) "Teleconference" means a conference of individuals in different locations, connected by
37 electronic means, through audio, video, or both.
- 38 (s) "Test claim" means the first claim filed with the Commission alleging that a particular statute
39 or executive order imposes costs mandated by the state pursuant to Government Code section
40 17521 and also includes a claim filed on a legislatively determined mandate pursuant to
41 Government Code section 17574(c). The test claim procedure functions similarly to a class
42 action and has been established to expeditiously resolve disputes affecting multiple agencies.

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

4 Note: Authority cited: Sections 17527(g), 17553(a) and 17570(d), Government Code. Reference:
5 Sections 11123, 17516-17521, 17527(c), 17529, 17530, 17531, 17551, 17553, 17555, 17557,
6 17557.1, 17557.2, 17558, 17558.5, 17558.7, 17558.8, 17559, 17561, 17561.5, 17570, 17572,
7 17573, 17600 and 17612, Government Code; *Redevelopment Agency v. Commission on State*
8 *Mandates* (1996) 43 Cal.App.4th 1188; and *City of San Jose v. State of California* (1996) 45
9 Cal.App.4th 1802.

10 **§ 1181.3. Certification, Filing and Service of Written Materials and New Filings.**

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

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

23 (1) E-Filing. ~~Submit~~File the original ~~to the Commission~~ by saving the signed original in a PDF
24 file and submitting it via the Commission's e-filing system, available on the Commission's
25 website. Documents e-filed with the Commission must be in a legible and searchable format that
26 allows Commission staff to electronically date stamp the document to verify date of filing, and to
27 append additional pages for posting on the Commission's web site with proof of service, in lieu
28 of the filer serving the document to the entire mail list for the matter. E-filed documents should
29 be filed in their original, searchable form, but the signature page shall be replaced with a scanned
30 copy, rather than digitally signed. The filer is responsible for maintaining the signed original for
31 the duration of the process for the matter, including any period of appeal. Notwithstanding any
32 other provision in these regulations, if a new filing or written material is e-filed, no additional
33 copies shall be submitted to Commission staff. The following shall apply to e-filing:

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

36 (B) An automated notice that the document was successfully sent is immediately available to the
37 person who e-files using the Commission's e-filing system and should be saved or printed for the
38 filer's records. Commission staff shall also reply by e-mail confirming actual receipt of the
39 legible, searchable document by the Commission within two business day of receipt. In the
40 absence of a confirmation e-mail from Commission staff, it is the responsibility of the person
41 who e-files to obtain confirmation that the Commission actually received the filing.

42 (C) By using e-filing, the filing person agrees, in the event of failure of e-filing, to re-file the
43 document, no later than the business day after the business day on which notice of the failure of

1 e-filing is received by the filing party, by any means authorized by these rules, in order to
2 maintain the original filing date. "Failure of e-filing" occurs when the filing person receives
3 notification, in any manner, of non-receipt of an e-filed document or of any other inability of
4 Commission staff to access the document. The filer and Commission staff may agree to any form
5 for re-filing allowed by these regulations.

6 (D) Documents e-filed with the Commission do not need to be served and proof of service does
7 not need to be provided for persons that have provided an e-mail address for the mailing list.
8 Nothing in this regulation excuses a filer from serving hard copies of written material on persons
9 who appear on the mailing list and have not provided an e-mail address for the mailing list or
10 from providing a proof of service with the e-filing to the Commission for the service.

11 (E) Upon confirmation of actual receipt, Commission staff shall notify all persons on the mailing
12 list for the matter that written material may be viewed on the Commission's website. For "new
13 filings" as defined by section 1181.2(k) of these regulations, Commission staff shall notify all
14 persons on the mailing list prepared pursuant to section 1181.4 of these regulations, of the
15 availability of those filings on the Commission's website when Commission staff sends its notice
16 of complete filing to the filing party.

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

19 (G) The executive director may issue any order consistent with these rules to govern e-mail
20 service for a particular matter.

21 (2) By first class mail. Submit the unbound original and seven copies to the Commission.

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

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

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

32 Note: Authority cited: Sections 17527(g), 17553(a), 17570(d) and 11104.5, Government Code.
33 Reference: Section 1798 et seq., Civil Code; Sections 17530, 17551, 17557(d), 17558.7, 17570,
34 17573(b), 17574(c) and 17573(g), Government Code.

35 **§ 1181.4. Mailing Lists and Numbering of Matters.**

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

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

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

5 (1) Test Claim (TC)

6 (2) Incorrect Reduction Claim (I)

7 (3) Request to Amend Parameters and Guidelines (PGA)

8 (4) Joint Request for Reasonable Reimbursement Methodology (RRM)

9 (5) Request for Review of Claiming Instructions (RCI)

10 (6) Request for Removal or Inclusion in State Mandates Apportionment System (SMAS)

11 (7) Joint Request for Legislatively Determined Mandate (LDM)

12 (8) Request for Mandate Redetermination (MR)

13 Note: Authority cited: Sections 17527(g), 17553(a), 17570(d) and 11104.5, Government Code.

14 Reference: Sections 17530, 17551, 17557, 17557.1, 17571, 17557.2, 17570, 17573(b), 17573(g),
15 17574(c) and 17615.1, Government Code.

16 **§ 1181.5. Appointment of Designees and Election and Duties of Officers.**

17 (a) If a Commission member, as defined by Government Code section 17525, with statutory
18 authority to designate a deputy to represent him or her makes a designation, that designee may
19 continue to serve on the Commission until the designation is revoked by the current Commission
20 member.

21 (b) Commission members as defined by Government Code section 17525 shall be officers.
22 Duties of Officers:

23 (1) Duties of Chairperson. The chairperson shall preside over all meetings of the Commission
24 when present. The chairperson has all the rights and responsibilities of the other members,
25 including the right to introduce motions or proposals and to speak and vote on them while
26 presiding. The chairperson has the power to appoint one or more members of the Commission as
27 a subcommittee to investigate and report to the Commission on any matter within the scope of
28 the purposes of the Commission or to form advisory groups to assist the Commission or its
29 subcommittees in fulfilling their purposes.

30 (2) Duties of Vice Chairperson. The vice chairperson shall preside over all meetings of the
31 Commission at which the chairperson is not present. The vice chairperson has all the rights and
32 responsibilities of the other members, including the right to introduce motions or proposals and
33 to speak and vote on them while presiding.

34 (c) Time of Election. The Commission shall elect a chairperson and vice chairperson at the
35 January meeting of each year, or at the next regularly scheduled meeting, if no meeting is held in
36 January. In the calendar year following the statewide election of constitutional officers, the
37 Commission may postpone its election. The Commission may authorize the executive director to
38 conduct the election portion of its meeting.

1 (d) Vacancy. If an office (chairperson or vice-chairperson) held by a public member or local
2 elected official becomes vacant, an election shall be conducted as soon as practicable to fill the
3 vacant office.

4 (e) When Election Takes Effect. An election shall take effect immediately.

5 Note: Authority cited: Sections 17500 and 17527(g), Government Code. Reference: Sections 7.5,
6 7.6, 7.9, 17525, 17528 and 17530, Government Code.

7 **§ 1181.6. Development and Approval of Commission Forms.**

8 (a) In consultation with interested parties and in accordance with applicable law and these
9 regulations, the executive director shall develop the test claim form, incorrect reduction claim
10 form, mandate redetermination form, and other forms, to simplify and improve the efficiency of
11 the Commission's processes.

12 (b) The executive director shall conduct at least one workshop with interested parties,
13 Department of Finance, Office of the State Controller, other affected state agencies, and
14 interested persons before approval of a form.

15 (c) Upon development of a new form, the executive director shall notify claimants, interested
16 parties, affected state agencies, and interested persons, and shall disseminate copies at least 10
17 days before the operative date of a form.

18 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
19 17530, 17553, 17558.7(c), 17558.7(e) and 17570(d)(1), Government Code.

20 **§ 1181.7. Waiver of Requirement to Use Forms.**

21 The executive director may waive a requirement to use any form specified by these regulations.

22 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
23 17530, 17553, 17558.7(c), 17558.7(e) and 17570(d)(1), Government Code.

24 **§ 1181.8. Commission Meeting Quorum and Voting Requirements.**

25 (a) A majority of the existing membership of the Commission shall constitute a quorum.

26 (b) All actions of the Commission, with the exception of requests to reconsider a prior final
27 decision as provided in section 1187.15, shall require the affirmative vote of at least a majority of
28 the existing membership of the Commission.

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

30 (1) Re-hear the claim when the membership of the Commission changes or when an abstaining
31 member completes review of the administrative record;

32 (2) Assign the claim to a hearing panel or to a hearing officer, pursuant to section 1187.2 et seq.,
33 for hearing and preparation of a proposed decision for consideration by the Commission. If the
34 Commission assigns the claim to a hearing panel, the selection of the hearing panel shall be by
35 lot, or other means of random and impartial selection; or

36 (3) Direct staff to prepare another proposed decision based on an interpretation of the law and
37 evidence in the record for consideration by the Commission.

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

4 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
5 17525, 17527(c) and 17532, Government Code; and Section 17000.6, Welfare and Institutions
6 Code.

7 **§ 1181.9. Commission Meeting Notice, Agenda, and Consent Calendar.**

8 (a) Time and distribution. Notices and agendas of meetings shall be given to all members, to all
9 parties and interested parties to proceedings on the agenda, and to all persons who request them
10 in writing. The notice and agenda shall be provided no less than 10 days prior to the scheduled
11 meeting.

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

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

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

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

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

22 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
23 11125, 11125.1, 17527(b), 17527(c) and 17530, Government Code.

24 **§ 1181.10. Commission Meeting Procedures.**

25 (a) Presiding Member. The chairperson shall preside over all meetings of the Commission when
26 present. In the chairperson's absence, the vice chairperson shall preside. If neither the
27 chairperson nor the vice chairperson is in attendance, the member present who has the greatest
28 seniority on the Commission shall preside. The presiding member may yield the chair.

29 (b) Public Comments.

30 (1) Comments in Writing. Any person may submit comments in writing on any agenda item. To
31 be included as a part of the administrative record for the matter, comments must be provided to
32 the Commission members and be made available for public review either before or at the
33 Commission hearing on the matter.

34 (A) Comments received at least 15 days in advance of the meeting shall be included in the
35 Commission's meeting binders, a copy of which is available for public viewing at the
36 Commission meeting.

1 (B) Comments received more than five days in advance of the meeting shall be included in the
2 Commission's meeting binders, if feasible, or shall be provided to the Commission when the item
3 is called, unless otherwise agreed to by the Commission or the executive director.

4 (C) For written comments received less than five days in advance of the meeting, the commenter
5 shall provide 12 copies to Commission staff at the meeting. Commission staff shall provide
6 copies of the comments to the Commission and shall place a copy on a table for public review
7 when the item is called.

8 (2) Oral Comments. Any person present and so desiring shall be given an opportunity to make
9 oral comments on any agenda item, provided, however, that the presiding member may limit or
10 preclude comments as necessary for the orderly conduct of business.

11 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
12 11125.7, 17525 and 17526-17528, Government Code.

13 **§ 1181.11. Permanent Record of Commission Meetings.**

14 (a) The Commission shall keep minutes of its meetings. Minutes shall be approved by the
15 Commission and, upon approval, shall be signed by the chairperson or other person designated
16 by the chairperson. Signed minutes shall be the original evidence of actions taken at any
17 meeting, including the text of any resolutions adopted.

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

22 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section
23 17530, Government Code.

24 **§ 1181.12. Default Rules of Commission Meetings.**

25 In all cases not provided for by Government Code Section 17500 et seq., the Bagley-Keene Open
26 Meeting Act (Government Code Section 11120 et seq.) and the Commission's rules and
27 regulations, the authority shall be Robert's Rules of Order (revised), unless otherwise designated
28 by the Commission at the annual election meeting.

29 Note: Authority cited: Sections 17500, 17527(g) and 17553(a), Government Code. Reference:
30 Sections 11120 et seq. and 17526, Government Code.

31 **§ 1181.13. Commission Meeting by Teleconference.**

32 The Commission may hold an open or closed meeting by teleconference if it is difficult or
33 impossible for the Commission to achieve a quorum. A meeting held by teleconference shall
34 comply with the Bagley-Keene Open Meeting Act.

35 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
36 11123, 17526, 17527(b) and 17527(c), Government Code.

1 **Article 2. Applications for a Finding of Significant Financial Distress**

2 **§ 1182.1. Reduction in Aid Levels; Definitions.**

3 When the county has made a compelling case that basic county services cannot be maintained
4 without a reduction in the level of aid established by Welfare and Institutions Code section
5 17000.5, the Commission shall make a finding of significant financial distress.

6 In making such a finding, the following definitions shall apply:

7 (a) "Application" means a county application filed pursuant to this article requesting the
8 Commission determine that the county has made a compelling case that basic county services
9 cannot be maintained without a reduction in the level of General Assistance aid established by
10 Welfare and Institutions Code section 17000.5, and finding that as a result, the county is in
11 significant financial distress, as defined in Welfare and Institutions Code section 17000.6.

12 (b) "Applicant" means the county that filed the request for a finding of significant financial
13 distress.

14 (c) A "compelling case" sufficient to cause a finding of significant financial distress must be
15 established by clear and convincing evidence.

16 (d) "Basic county services" means those services which are fundamental or essential. The
17 services shall include, but are not limited to, those services required by state or federal law, and
18 may vary from county to county.

19 (e) "Maintained" means the level of service which the county must provide in order to adequately
20 or effectively furnish basic county services.

21 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6(b), Welfare
22 and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

23 **§ 1182.2. Filing of an Application for a Finding of Significant Financial Distress.**

24 (a) Pursuant to Welfare and Institutions Code section 17000.6, in order for the board of
25 supervisors of any county to obtain a finding of significant financial distress, the board of
26 supervisors must submit a written application to the Commission on State Mandates.

27 (b) The applicant shall certify, file, and serve an original application, including supporting
28 documents, with the Commission in accordance with section 1181.3 of these regulations.

29 (c) All applications shall contain at least the following:

30 (1) A table of contents, indicating page numbers.

31 (2) A copy of a resolution from the county board of supervisors stating that compliance with the
32 standards set forth in Welfare and Institutions Code section 17000.5 will result in significant
33 financial distress to the county for a specified period of time, up to 36 months.

34 (3) A written narrative, including a summary, detailing the relevant financial or other budgetary
35 information and documents necessary for a county to make a compelling case that basic county
36 services, including public safety, cannot be maintained without a reduction in the standard of aid
37 as provided in Welfare and Institutions Code section 17000.5. The narrative shall also include:

38 (A) The monthly caseload of General Assistance recipients for each of the 12 months preceding
39 the date the application is filed.

- 1 (B) The current monthly rate of the General Assistance Standard of Aid.
- 2 (C) The proposed reduced rate of the General Assistance Standard of Aid.
- 3 (D) An overview of county finances, including, but not limited to county revenue sources;
4 budget reserve data; budget expenditures; mandated expenditures and maintenance of effort
5 costs.
- 6 (E) A detailed summary of program needs and expenditure flexibility, including, but not limited
7 to department-by-department data on unmet program needs for basic county services.
- 8 (F) The county's total population at the time the application is filed, and the total county
9 population for the two fiscal years prior to the year in which the application was filed.
- 10 (d) The written narrative shall be submitted under penalty of perjury. ~~In addition, the financial~~
11 ~~and other budgetary documents shall be certified under penalty of perjury. If representations of~~
12 fact are made, they shall be supported by documentary or testimonial evidence, submitted in
13 accordance with section 1187.5 of these regulations.
- 14 (e) Each page of the application, including all supporting documentation, shall be consecutively
15 numbered.
- 16 (f) The original application, including all supporting documentation, shall be unbound and
17 single-sided.
- 18 (g) The executive director shall notify an applicant within 10 days of receipt of an application
19 whether its application is incomplete. If the application is incomplete, the executive director may
20 return the application to the county. An application shall be considered incomplete if the
21 elements in subdivisions (b) through (f) of this section have not been satisfied, are illegible or are
22 not included. The requirements for Commission public hearings and decisions, as set forth in
23 Welfare and Institutions Code section 17000.6(c), apply only to complete applications.
- 24 (h) Within 10 days of receipt of a completed application, the executive director shall notify the
25 applicant that the application is complete, and notify the applicant of the schedule. The executive
26 director shall also send the application to interested persons located in the applicant county.
- 27 (i) Prior to filing an application, a county may request a tentative date for conducting the hearing
28 in the county. If a complete application is not received by a specified date, a new tentative
29 hearing date may be set.

30 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6(b), Welfare
31 and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

32 **§ 1182.3. Extension of Period for Preliminary and Final Decision and Current Period of**
33 **Financial Distress.**

- 34 (a) If an application is filed while another county's application is pending, the executive director
35 may extend both the preliminary decision period up to 120 days and the final decision period up
36 to 150 days from the filing date of the application, unless otherwise provided in the current
37 Budget Act. If the preliminary and final decision periods are extended, any current period of
38 significant financial distress of the applicant that has been set, pursuant to Welfare and
39 Institutions Code Section 17000.6(b), shall also be extended for the same period.

1 (b) Within 10 days of receipt of a county's application, the executive director shall provide
2 written notice to the applicant of extensions of the preliminary decision and final decision
3 periods and of any current period of significant financial distress of the applicant.

4 Note: Authority cited: Stats. 1998, c. 324, Item 8885-001-0001, Prov. (2), p. 622 (and subsequent
5 Budget Acts); Section 17527(g), Government Code; and Section 17000.6(b), Welfare and
6 Institutions Code. Reference: Section 17000.6(c), Welfare and Institutions Code.

7 **§ 1182.4. Notice.**

8 (a) Upon receipt of a complete application for a finding of significant financial distress, the
9 Commission shall provide to the applicant a written 30-day notice of the hearing, to be held in
10 the county.

11 (b) The notice shall be publicly posted by the applicant at the county court house and one county
12 welfare office where General Assistance recipients are generally present. The Commission shall
13 publish two notices in a newspaper of general circulation in the county. The first notice shall be
14 published at least 30 days prior to the hearing date. The second notice shall be published at least
15 10 days prior to the hearing date. The cost of publishing the notices shall be paid for by the
16 Commission. Notice shall also be posted on the Commission's website.

17 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6(b), Welfare
18 and Institutions Code. Reference: Section 11125, Government Code; and Section 17000.6(c),
19 Welfare and Institutions Code.

20 **§ 1182.5. Pre-Hearing Conference.**

21 A pre-hearing conference may be scheduled by the executive director for the purpose of
22 identifying issues and determining methods of resolving the issues. The county and other parties
23 known to have an interest in the county's application shall be invited to participate. This
24 conference shall not limit the issues that can be presented to or considered by the Commission at
25 public hearing.

26 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
27 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code; and Section
28 17530, Government Code.

29 **§ 1182.6. Assignment to Hearing Panels/Hearing Officers.**

30 The chairperson may assign an application to a hearing panel consisting of one or more members
31 of the Commission, which shall act on behalf of the Commission, or to a hearing officer for
32 hearing and preparation of a preliminary decision. Assignments by the chairperson of members
33 on the hearing panels shall be rotated among the members with the composition of the members
34 so assigned being varied and changed to assure that there shall never be a fixed and continued
35 composition of members.

36 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
37 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code; and Sections
38 17528 and 17532, Government Code.

1 **§ 1182.7. Request for Supplemental Information.**

2 (a) The executive director may request supplemental information from the applicant to assist the
3 Commission in its review and analysis of the application. The applicant shall provide the
4 supplemental information under the timeline established by the executive director.

5 (b) The supplemental information and any attached financial or other budgetary documents shall
6 be ~~submitted under penalty of perjury~~ certified, filed, and served in accordance with section
7 1181.3 of these regulations. ~~Any attached financial or other budgetary documents shall be~~
8 ~~certified under penalty of perjury.~~ If representations of fact are made, they shall be supported by
9 documentary or testimonial evidence, submitted in accordance with section 1187.5 of these
10 regulations.

11 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
12 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code, and Section
13 17530, Government Code.

14 **§ 1182.8. Review of Completed Application for a Finding of Significant Financial Distress**
15 **and Preparation of Staff Analysis.**

16 (a) Before the hearing is conducted in the applicant county, the executive director shall prepare
17 and distribute a staff analysis of the application, which shall include, but not be limited to, a
18 review of written comments filed by interested persons, and rebuttals filed by the applicant. The
19 staff analysis may also include a review of the applicant's revenue sources, including the
20 applicant's flexibility in directing its resources; review of the applicant's budget expenditures,
21 statutory relief, contingencies, and fund balances; an analysis of the applicant's department-by-
22 department evaluation of unmet need in basic county services; and a preliminary
23 recommendation whether the Commission should approve or deny the application. The staff
24 analysis shall describe the application and assist the Commission in determining whether or not
25 to make a finding of significant financial distress.

26 (b) The executive director shall send the staff analysis out for comment at least 10 days prior to
27 the hearing conducted in the applicant county.

28 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
29 Institutions Code. Reference: Section 17530, Government Code; and Section 17000.6, Welfare
30 and Institutions Code.

31 **§ 1182.9. Written Comments.**

32 The applicant and any interested persons may file written comments concerning the staff analysis
33 with the Commission. Written comments shall be certified, filed, and served with the
34 ~~Commission~~ in accordance with section 1181.3 of these regulations. If representations of fact are
35 made, they shall be supported by documentary or testimonial evidence, submitted in accordance
36 with section 1187.5 of these regulations. The written comments shall be reviewed by
37 Commission staff and may be incorporated into any revised or supplemental staff analysis of the
38 application.

39 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
40 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

1 **§ 1182.10. Conduct of Hearing.**

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

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

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

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

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

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

26 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
27 Institutions Code. Reference: Section 11125.7, Government Code; and Section 17000.6, Welfare
28 and Institutions Code.

29 **§ 1182.11. Representation at Hearing.**

30 (a) The board of supervisors of a county shall designate a county representative.

31 (b) The county representative shall be the lead spokesperson and shall present all matters
32 respecting the interest of the county in the proceeding.

33 (c) Withdrawal of appearance of any representative may be effected by filing a written notice of
34 withdrawal and by serving a copy on the Commission.

35 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
36 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

37 **§ 1182.12. Continuance of Hearings and Further Hearings.**

38 (a) The Commission, hearing panel, or hearing officer may continue a hearing to another time or
39 place.

1 (b) Due to the strict time frames contained in Welfare and Institutions Code section 17000.6(c),
2 continuances will be granted only under compelling and urgent circumstances.

3 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
4 Institutions Code. Reference: Section 11129, Government Code; and Section 17000.6,
5 Welfare and Institutions Code.

6 **§ 1182.13. Preliminary and Final Decisions; Action on Decisions.**

7 (a) Within 60 days after receipt of an application, the executive director shall notify the county of
8 the Commission, hearing panel, or hearing officer's preliminary decision that the county did or
9 did not make a compelling case that it will incur significant financial distress pursuant to Welfare
10 and Institutions Code section 17000.6. If the time period is extended pursuant to section 1182.3
11 of these regulations, notice of the preliminary decision shall be provided within 120 days after
12 receipt of an application, or as otherwise provided by the current Budget Act.

13 (b) If an application is heard by a hearing panel, the panel shall direct staff to prepare the
14 preliminary decision in a form that may be adopted as the final decision by the Commission.
15 When an application is heard by a hearing officer, a preliminary decision shall be presented in a
16 form that may be adopted by the Commission as its final decision on the application. When an
17 application is heard before the Commission itself the Commission shall direct staff to prepare a
18 final decision in accord with the Commission's vote, which will be presented to the Commission
19 for adoption as its final decision.

20 (c) Within 90 days after receipt of an application, the executive director shall give notice to the
21 county of the Commission's final decision that the county did or did not make a compelling case
22 that it will incur significant financial distress pursuant to Welfare and Institutions Code section
23 17000.6. If the time period is extended pursuant to section 1182.3 of these regulations, notice of
24 the final decision shall be provided within 150 days after receipt of an application, or as
25 otherwise provided by the current Budget Act.

26 (d) If the preliminary decision prepared by the hearing panel or hearing officer is not adopted by
27 the Commission as its final decision, the Commission may direct appropriate modification of the
28 preliminary decision and thereafter adopt it as the Commission final decision or decide the
29 application upon the record, with or without taking additional evidence, or may refer the
30 application to a hearing panel or hearing officer to take additional evidence. If the application is
31 so assigned to a hearing panel or hearing officer, the hearing panel or hearing officer shall
32 prepare a preliminary decision, as provided in subdivision (b), which shall be based upon the
33 additional evidence and the transcript and other papers which are a part of the record of the prior
34 hearing.

35 (e) The affirmative vote of at least a majority of the existing membership of the Commission is
36 required for the adoption of a final decision by the Commission. A copy of the final decision
37 shall be filed by the Commission as a public record.

38 (f) A Commission final decision which makes a finding of significant financial distress will be
39 effective for a period not to exceed 36 months. The final decision shall specify whether the
40 effective date of the period of significant financial distress shall commence on the date of the
41 final decision or on a date no more than 60 days from the date of the final decision.

1 Note: Authority cited: Stats. 1998, c. 324, Prov. (2), Item 8885-001-0001, p. 622 (and
2 subsequent Budget Acts); Section 17527(g), Government Code; and Section 17000.6, Welfare
3 and Institutions Code. Reference: Sections 17527(c), 17530 and 17532, Government Code; and
4 Section 17000.6, Welfare and Institutions Code.

5 **§ 1182.14. Form of Decision.**

6 The final decision shall be based on the record, shall be in writing, and shall include a statement
7 of reasons for the decision, findings, and conclusions. A copy of the final decision shall be
8 mailed to or served on the applicant county.

9 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
10 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

11 **§ 1182.15. Reapplications.**

12 (a) A county may file a reapplication for a finding of significant financial distress with the
13 Commission.

14 (b) The application requirements and procedures relating to applications and ~~hearing procedures~~
15 prescribed in article 2 of these regulations shall also apply to reapplications. The applicant shall
16 also provide the following information in its reapplication:

17 (1) How the applicant utilized the savings in reduction of the General Assistance Standard of Aid
18 realized from the preceding finding of significant financial distress.

19 (2) The difference in the county's total population between the date the preceding application was
20 filed and the date the reapplication is filed.

21 (3) Any staff changes or changes to working conditions, including but not limited to reduced
22 work hours or salary increases or decreases that occurred since the date the preceding application
23 was filed.

24 (4) Any statutes enacted since the date the preceding application was filed that change county
25 revenue sources or expenditures, or impose new mandates upon the county.

26 (5) Tables that include the difference between proposed and approved unmet need in the
27 preceding application, and the proposed unmet need in the reapplication. Tables may also be
28 submitted by a predetermined computer medium.

29 (c) A county filing a reapplication of a previously approved finding of significant financial
30 distress must present a compelling case of significant financial distress continuing since the last
31 approved finding by the Commission.

32 (d) For a previously denied application, a county may file a reapplication when the fiscal
33 situation in the county has changed.

34 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
35 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

36 **§ 1182.16. Withdrawal of Applications.**

37 An application may be withdrawn by written notice any time before a final decision is issued or
38 upon request at the time of hearing. When the Commission receives a notice or request to
39 withdraw, the Commission may issue a decision dismissing the application.

1 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
2 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

3 **Article 3. Test Claims**

4 **§ 1183.1. Test Claim Filing.**

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

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

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

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

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

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

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

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

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

38 ~~The claimant shall file the~~ A test claim, or amendment thereto, and accompanying documents
39 ~~with the Commission shall be certified, filed, and served~~ in accordance with section 1181.3 of
40 these regulations. All representations of fact shall be supported by documentary or testimonial
41 evidence, submitted in accordance with section 1187.5 of these regulations.

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

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

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

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

12 (3) The claimants have designated one ~~contact~~ person to act as the ~~resource~~ sole representative
13 for all claimants for information regarding the test claim.

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

17 Note: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections
18 17521, 17530, 17551, 17553, 17557(e), 17573, 17574, 24000, 24300.5, 26881, 26900, 26970,
19 26972, 34852, 35034, 35035, 37209, 40805.5 and 56723, Government Code.

20 **§ 1183.2. Review of Test Claim.**

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

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

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

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

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

40 ~~(d) The written comments and supporting documentation shall be signed at the end of the~~
41 ~~document by an authorized representative, with the declaration that it is true and complete to the~~

1 ~~best of the representative's personal knowledge or information or belief. The date of signing, the~~
2 ~~representative's title, address, and telephone number shall be included. If the authorized~~
3 ~~representative can be reached via e-mail, the e-mail address shall also be included.~~

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

6 **§ 1183.3. Claimant's Rebuttal.**

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

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

12 (1) If ~~new~~ representations of fact are made, they ~~must~~shall be supported by documentary or
13 testimonial evidence, submitted ~~with the rebuttal~~ in accordance with section 1187.5 of these
14 regulations. ~~All documentary evidence shall be in accordance with section 1187.5 of these~~
15 ~~regulations.~~

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

27 (c) ~~The rebuttal shall be signed at the end of the document by the claimant or its authorized~~
28 ~~representative, with the declaration that the rebuttal is true and complete to the best of the~~
29 ~~declarant's personal knowledge or information or belief. The date of signing, and the declarant's~~
30 ~~title, address, and telephone number shall be included. If the declarant can be reached by e-mail,~~
31 ~~the declarant's e-mail address shall also be included.~~

32 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
33 17530 and 17553(a), Government Code.

34 **§ 1183.4. Claimant's Motion to Consolidate or Sever Test Claims.**

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

39 (a) Any motion to consolidate or to sever shall be certified, filed, and served in accordance with
40 section 1181.3 of these regulations. If written representations of fact are made, they shall be

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

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

5 Note: Authority cited: Section 17527(g) and 17553(a), Government Code. Reference: Sections
6 17530, 17553 and 17554, Government Code.

7 **§ 1183.5. Executive Director's Authority to Consolidate or Sever Test Claims.**

8 (a) The executive director may consolidate part or all of any test claim with another test claim or
9 sever a test claim, if necessary to ensure the complete, fair, or timely consideration of any test
10 claim.

11 (b) At least 10 days before the action is taken, the executive director shall simultaneously serve
12 on the parties and interested parties on the mailing list described in section 1181.2 of these
13 regulations, and post on the Commission's website, a notice of any proposed action to
14 consolidate or sever.

15 Note: Authority cited: Section 17527(g), 17553 and 17554, Government Code. Reference:
16 Sections 17530, 17553 and 17554, Government Code.

17 **§ 1183.6. Review of Completed Test Claim and Preparation of Proposed Decision.**

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

23 (b) At least eight weeks before the hearing, or at a time required by the executive director or
24 stipulated to by the parties, Commission staff shall prepare a draft proposed decision and
25 distribute it to the parties, interested parties, and those on the mailing list described in section
26 1181.3 of these regulations, and shall post it on the Commission's website.

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

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

1 Note: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections
2 17514, 17530, 17551 and 17553, Government Code.

3 **§ 1183.7. Content of Parameters and Guidelines.**

4 The parameters and guidelines shall describe the claimable reimbursable costs and contain the
5 following information:

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

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

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

13 (d) Reimbursable Activities. A description of the specific costs and types of costs that are
14 reimbursable, including one-time costs and on-going costs, and reasonably necessary activities
15 required to comply with the mandate. "Reasonably necessary activities" are those activities
16 necessary to comply with the statutes, regulations and other executive orders found to impose a
17 state-mandated program. Activities required by statutes, regulations and other executive orders
18 that were not pled in the test claim may only be used to define reasonably necessary activities to
19 the extent that compliance with the approved state-mandated activities would not otherwise be
20 possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All
21 representations of fact to support any proposed reasonably necessary activities shall be supported
22 by documentary evidence submitted in accordance with section 1187.5 of these regulations.

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

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

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

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

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

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

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

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

38 (i) Claiming Instructions. Notice of the Office of the State Controller's duty to issue claiming
39 instructions, which constitutes notice of the right of local agencies and school districts to file

1 reimbursement claims, based upon the decision and parameters and guidelines adopted by the
2 Commission.

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

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

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

10 **§ 1183.8. Submission and Review of Proposed Parameters and Guidelines; Submission of**
11 **Comments.**

12 (a) Within 30 days of adoption of the decision on a test claim, or the early termination or
13 expiration of a reasonable reimbursement methodology, the successful test claimant shall submit,
14 to the Commission, proposed parameters and guidelines, pursuant to Government Code section
15 17557(a). Proposed parameters and guidelines shall be certified, filed, and served in accordance
16 with section 1181.3 of these regulations. If representations of fact are made, they shall be
17 supported by documentary or testimonial evidence, submitted in accordance with section 1187.5
18 of these regulations.

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

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

26 (d) Commission staff shall notify all recipients that they shall have the opportunity to review and
27 provide written comments concerning the proposed parameters and guidelines within 15 days of
28 service.

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

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

37 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
38 17530, 17553(a), 17557 and 17557.2, Government Code.

1 **§ 1183.9. Expedited Process for Proposed Parameters and Guidelines.**

2 (a) After adoption of a decision on a test claim, but before claimant submits proposed parameters
3 and guidelines, Commission staff may expedite the parameters and guidelines process by
4 preparing and issuing draft expedited parameters and guidelines to assist the claimant. The draft
5 expedited parameters and guidelines shall be served to everyone on the mailing list described in
6 section 1181.4 of these regulations, and shall be posted on the Commission's website.

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

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

18 (c) Within 15 days of service of the comments submitted pursuant to subdivision (b) of this
19 section, parties, interested parties, and interested persons may file and serve rebuttals. Such
20 rebuttals shall be certified, filed, and served in accordance with section 1181.3 of these
21 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 Note: Authority cited: Sections 17517.5, 17527(g), 17530 and 17553(a), Government Code.
24 Reference: Sections 17553(a), 17556(e) and 17557, Government Code.

25 **§ 1183.10. Reasonable Reimbursement Methodology.**

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

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

31 (1) "Costs to implement the mandate in a cost-efficient manner" include only those costs for the
32 activities that were determined to be reimbursable by the Commission in the decision on the test
33 claim, and the costs for the most reasonable methods of complying with the mandate pursuant to
34 section 1183.12(d), of these regulations.

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

38 (c) An interested party may submit cost information or other cost projections that can be the
39 basis of a reasonable reimbursement methodology, and letters in support of a draft reasonable
40 reimbursement methodology submitted pursuant to Government Code section 17557.1. Such
41 information shall be certified, filed and served in accordance with section 1181.3 of these

1 regulations. All representations of fact shall be supported by documentary or testimonial
2 evidence, submitted in accordance with section 1187.5 of these regulations.

3 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
4 17518.5, 17557 and 17557.1, Government Code.

5 **§ 1183.11. Joint Reasonable Reimbursement Methodology and Statewide Estimate of Costs.**

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

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

14 (c) At the request of the test claimant and the Department of Finance, the executive director may
15 provide for up to four extensions of the 180-day period for submittal of the draft reasonable
16 reimbursement methodology and proposed statewide estimate of costs for the initial claiming
17 period and budget year. Any request must be based on good cause as described in section 1187.9
18 and also include an update of all information and filing dates provided in the original written
19 notification submitted pursuant to Government Code section 17557.1(a). If no submittal of a
20 draft and no request for an extension has been made by the filing date specified in the notice of
21 intent to develop a reasonable reimbursement methodology, or if all extensions have been
22 exhausted, the executive director shall issue a letter notifying the test claimant of the duty to
23 submit proposed parameters and guidelines within 30 days under Government Code section
24 17557(a).

25 (d) The test claimant and Department of Finance shall certify, file, and serve any filings made
26 pursuant to Government Code section 17557.1 in accordance with section 1181.3 of these
27 regulations.

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

31 (f) Written comments ~~may be~~ shall be certified, filed, and served in accordance with section
32 1181.3 of these regulations.

33 (g) Within seven days of service of the written comments, the test claimant and Department of
34 Finance may submit written rebuttals which shall be certified, filed, and served in accordance
35 with section 1181.3 of these regulations.

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

40 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
41 17557, 17557.1 and 17557.2, Government Code.

1 **§ 1183.12. Reasonable Reimbursement Methodology, Included in Parameters and**
2 **Guidelines.**

3 (a) If the claimant indicates in the proposed parameters and guidelines or comments that a
4 reasonable reimbursement methodology, as defined in Government Code section 17518.5,
5 should be considered for inclusion in the parameters and guidelines, or if the Department of
6 Finance, Office of the State Controller, any affected state agency, or eligible claimant proposes
7 consideration of a reasonable reimbursement methodology, Commission staff may schedule an
8 informal conference in accordance with section 1187.4 of these regulations to discuss the
9 methodology and plan for submittal of a reasonable reimbursement methodology.

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

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

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

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

26 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
27 17518.5, 17557, 17557.1 and 17557.2, Government Code.

28 **§ 1183.13. Adoption of Parameters and Guidelines.**

29 (a) After review of the test claim decision, claimant's proposed parameters and guidelines or
30 draft expedited parameters and guidelines, written comments, and rebuttals, Commission staff
31 shall prepare a draft proposed decision and parameters and guidelines. Commission staff's
32 recommendation may include a reasonable reimbursement methodology developed pursuant to
33 Government Code section 17518.5.

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

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

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

8 (e) Within 10 days of the adoption of decision and parameters and guidelines, the executive
9 director shall send copies to the Office of the State Controller and to everyone on the mailing list
10 described in section 1181.4 of these regulations, and shall post a copy on the Commission's
11 website.

12 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
13 17518.5, 17530, 17553(a) and 17557, Government Code.

14 **§ 1183.14. Statewide Cost Estimate.**

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

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

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

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

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

31 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
32 17518.5, 17553, 17557(a), 17557.2 and 17600, Government Code.

33 **§ 1183.15. Jointly Proposed Request for Early Termination of Reasonable Reimbursement**
34 **Methodology.**

35 (a) The test claimant and the Department of Finance may file a joint request for early termination
36 of a reasonable reimbursement methodology with the Commission by submitting a request made
37 pursuant to Government Code section 17557.2(e) which shall be certified, filed, and served in
38 accordance with section 1181.3 of these regulations.

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

4 (c) Written comments ~~may be~~ shall be certified, filed, and served in accordance with section
5 1181.3 of these regulations.

6 (d) Within seven days of service of the written comments, the test claimant and Department of
7 Finance may submit written rebuttals which shall be certified, filed, and served in accordance
8 with section 1181.3 of these regulations.

9 (e) At least 10 days prior to the next hearing, Commission staff shall review comments and issue
10 recommendation on whether the Commission should approve the joint request for early
11 termination of a reasonable reimbursement methodology pursuant to Government Code section
12 17557.2(e).

13 (f) If the Commission approves a joint request for early termination, the Commission shall notify
14 the test claimant of the duty to submit proposed parameters and guidelines to the Commission
15 pursuant to Government Code section 17557(a), and section 1183.13 of these regulations.

16 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section
17 17557.2, Government Code.

18 **§ 1183.16. Expiration of Reasonable Reimbursement Methodology.**

19 (a) At least one year before the expiration of a reasonable reimbursement methodology,
20 Commission staff shall notify the test claimant and the Department of Finance, that they may do
21 one of the following within 60 days:

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

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

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

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

38 (c) The test claimant and the Department of Finance may jointly propose amendments to the
39 reasonable reimbursement methodology or the continuation of a reasonable reimbursement
40 methodology by submitting a request made pursuant to Government Code section 17557.2(f),
41 which shall be certified, filed, and served in accordance with section 1181.3 of these regulations.

1 (d) Commission staff shall notify all recipients that they shall have the opportunity to review and
2 provide written comments on the jointly proposed amendments or request for continuation of the
3 reasonable reimbursement methodology within 30 days of service.

4 (e) Written comments shall be certified, filed, and served in accordance with section 1181.3 of
5 these regulations.

6 (f) Within 15 days of service of the written comments prepared by other parties and interested
7 parties, the test claimant and Department of Finance may submit written rebuttals which shall be
8 certified, filed, and served in accordance with section 1181.3 of these regulations.

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

13 (h) Within 10 days of the adoption of the jointly proposed amendments or the continuation of a
14 reasonable reimbursement methodology, the executive director shall send copies to the Office of
15 the State Controller, and to parties and interested parties who are on the mailing list described in
16 section 1181.4 of these regulations.

17 (i) If the test claimant or the Department of Finance fail to respond within 60 days to the notice
18 described in subdivision (a) of this section, Commission staff shall prepare and issue draft
19 expedited parameters and guidelines, pursuant to section 1183.9 of these regulations, within 30
20 days of the parties' failure to respond.

21 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
22 17557, 17557.1 and 17557.2, Government Code.

23 **§ 1183.17. Amendments to Parameters and Guidelines.**

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

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

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

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

35 (3) Include a reasonable reimbursement methodology for all or some of the reimbursable
36 activities in accordance with Government Code section 17518.5. Any request to include a
37 reasonable reimbursement methodology based on, in whole or in part, costs that have been
38 included in claims submitted to the Controller, shall include a statement to this effect on the
39 cover or first page of the request.

40 (4) Clarify reimbursable activities consistent with the original decisions on the test claim and
41 parameters and guidelines.

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

1 evidence, submitted in accordance with section 1187.5 of these regulations. All written
2 comments timely filed shall be reviewed by Commission staff and may be incorporated into the
3 proposed decision and recommendation on the proposed amendment to the parameters and
4 guidelines.

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

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

12 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
13 17518.5, 17530, 17553 and 17557, Government Code.

14 **§ 1183.18. Timelines.**

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

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

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

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

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

35 (5) If the test claimant and the Department of Finance notify the Commission staff in writing of
36 their intent to develop a reasonable reimbursement methodology and statewide estimate of costs
37 for the initial claiming period and budget year for reimbursement pursuant to Government Code
38 section 17557.1, the days following the date of the notification up to the date on which a draft
39 reasonable reimbursement methodology and proposed statewide estimate of costs are developed
40 and submitted to the Commission, shall be tolled and may not be counted toward the date on
41 which a statewide cost estimate must be adopted by the Commission. The days tolled shall not
42 exceed 180 days from the date of the notification.

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

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

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

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

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

16 *PARTY/ACTIVITIES* *DAY NUMBER*

17 TEST CLAIM

18 CLAIMANT files test claim with the commission.	0
19 COMMISSION staff begins counting days on the first day after receipt.	1
20 COMMISSION staff reviews test claim to determine if complete	by 10
21 COMMISSION staff sends test claim to state agencies for review.	by 10
22 COMMISSION staff convenes informal conference with parties, if	
23 necessary.	by 30
24 STATE AGENCIES file comments on test claim.	by 40
25 CLAIMANT submits rebuttal.	by 70
26 COMMISSION staff prepares the draft proposed	
27 decision on the test claim and serves on parties.	by 100
28 PARTIES submit comments on draft proposed decision	
29 on the test claim.	by 130
30 COMMISSION staff completes analysis and issues proposed decision.	
31	by 160
32 COMMISSION hears test claim and adopts decision.	by 180
33 COMMISSION staff issues decision and serves on parties.	by 190
34 COMMISSION staff notifies Legislature of decision	by 210

35 PARAMETERS AND GUIDELINES

36 CLAIMANT submits proposed Parameters and Guidelines.	by 210
37 STATE AGENCIES AND PARTIES may file comments.	by 235
38 CLAIMANT rebuts comments.	by 250
39 COMMISSION staff issues draft proposed decision and	
40 parameters and guidelines and serves on parties.	by 265
41 PARTIES submit comments on draft proposed decision and	
42 parameters and guidelines.	by 275
43 COMMISSION staff issues proposed decision and	

1 parameters and guidelines and serves on parties. by 279
 2 COMMISSION conducts hearing and adopts proposed decision and
 3 parameters and guidelines. by 293
 4 COMMISSION staff issues decision and
 5 parameters and guidelines. by 303

6 STATEWIDE COST ESTIMATE

7 COMMISSION staff prepares draft statewide cost estimate. by 335
 8 ALL PARTIES comment on draft statewide cost estimate. by 345
 9 COMMISSION staff prepares proposed statewide cost estimate. by 350
 10 COMMISSION conducts hearing and adopts statewide cost estimate. by 365
 11 COMMISSION staff reports Statewide Cost Estimate to the Legislature. by 395

12 (2) Timeline for a Test Claim, Reasonable Reimbursement Methodology, and Statewide
 13 Estimate of Costs

14 PARTY/ACTIVITIES DAY NUMBER

15 TEST CLAIM WITH REASONABLE REIMBURSEMENT METHODOLOGY (RRM) AND
 16 STATEWIDE ESTIMATE OF COSTS (SEC)

17 CLAIMANT files test claim with the Commission. 0
 18 COMMISSION staff begins counting days on the first day after receipt. 1
 19 COMMISSION staff reviews test claim to determine if complete. by 10
 20 COMMISSION staff sends test claim to state agencies for review. by 10
 21 COMMISSION staff convenes informal conference with parties,
 22 if necessary. by 30
 23 STATE AGENCIES file comments on test claim. by 40
 24 CLAIMANT submits rebuttal. by 70
 25 COMMISSION staff prepares the draft proposed decision
 26 on the test claim and serves on parties. by 100
 27 PARTIES submit comments on the draft proposed decision
 28 on the test claim. by 130
 29 COMMISSION staff completes analysis and issues proposed
 30 decision. by 160
 31 COMMISSION hears test claim and adopts decision. by 180
 32 COMMISSION staff issues decision and serves on parties. by 190
 33 COMMISSION staff notifies Legislature of decision. by 210

34 REASONABLE REIMBURSEMENT METHODOLOGY (RRM)
 35 AND STATEWIDE ESTIMATE OF COSTS (SEC)

36 CLAIMANT AND DEPARTMENT OF FINANCE
 37 (DOF) notify Commission in writing of their
 38 intent to follow the process in 17557.1 to develop a RRM
 39 and SEC (within 30 days after adoption of test claim decision). by 210
 40 CLAIMANT AND DOF submit plan no later than 6 months after the date of
 41 letter of intent and sixty (60) days before hearing. by 400
 42 COMMISSION staff notifies parties of comment period. by 410
 43 INTERESTED PARTIES submit comments on the draft RRM and SEC. by 425

- 1 CLAIMANT AND DOF submit written rebuttal. by 432
- 2 COMMISSION staff issues submitted comments and staff
- 3 recommendation. by 450
- 4 COMMISSION conducts hearing, approves the draft RRM, and adopts the
- 5 proposed SEC for the initial claiming period and budget year. by 460
- 6 COMMISSION staff submits RRM to the CONTROLLER. by 470
- 7 COMMISSION staff reports SEC to the Legislature. by 490

8 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
 9 17527, 17532, 17553, 17555, 17557(e), 17557.1 and 17557.2, Government Code.

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

11 **§ 1184.1. Review of Office of State Controller's Claiming Instructions.**

- 12 (a) Upon request of a local agency or school district, the Commission shall review claiming
- 13 instructions issued by the Office of State Controller.
- 14 (b) A request to review claiming instructions shall include the following:
- 15 (1) A copy of the disputed claiming instructions.
- 16 (2) If available, correspondence or other documentation that verifies the local agency or school
- 17 district sought to resolve the dispute through the Office of State Controller.
- 18 (3) A narrative that details the suggested changes and the reasons why the local agency or school
- 19 district finds the claiming instructions need to be modified.
- 20 (4) The name, address, telephone number, and e-mail address of the agency contact person.
- 21 (c) An original request to review claiming instructions shall be ~~submitted to the Commission by~~
- 22 ~~the local agency or school district~~ certified, filed, and served in accordance with section 1181.3
- 23 of these regulations. If representations of fact are made, they shall be supported by documentary
- 24 or testimonial evidence, submitted in accordance with section 1187.5 of these regulations.
- 25 (d) Within 10 days of receipt of a request to review claiming instructions, Commission staff shall
- 26 notify the local agency or school district that submitted the request if the submittal is complete or
- 27 incomplete. A request to review the claiming instructions shall be considered incomplete if any
- 28 of the elements required in subdivision (b) or (c) of this section are illegible or not included.
- 29 Incomplete requests shall be returned to the local agency or school district. If a complete request
- 30 is not received by the Commission within 30 days from the date the incomplete request was
- 31 returned, the Commission shall deem the request to be withdrawn.
- 32 (e) Within 10 days of receipt of a complete request to review claiming instructions, Commission
- 33 staff shall send a copy to all persons who are on the mailing list described in section 1181.4 of
- 34 these regulations. Commission staff shall provide notice that written comments concerning the
- 35 request to review claiming instructions may be submitted within 30 days of service of the notice
- 36 of complete filing. A copy of the notice shall also be posted on the Commission's website.
- 37 (f) 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 (g) Within 30 days of service of the written comments, the requester may submit a written
2 rebuttal to the Commission which shall be certified, filed, and served in accordance with section
3 1181.3 of these regulations. If representations of fact are made, they shall be supported by
4 documentary or testimonial evidence, submitted in accordance with section 1187.5 of these
5 regulations.
- 6 (h) Before hearing a request to review claiming instructions, Commission staff shall prepare a
7 draft proposed decision that shall include a review of the request and any comments filed, and a
8 staff recommendation on whether the request should be approved or denied.
- 9 (i) The requester and any state agency or interested party may file written comments on the draft
10 proposed decision. Written comments shall be certified, filed, and served as described in
11 accordance with section 1181.3 of these regulations, by the date determined and publicized by
12 the executive director. If representations of fact are made, they must shall be supported by
13 documentary or testimonial evidence submitted with the comments in accordance with section
14 1187.5 of these regulations. A three-week period for comments shall be given, subject to the
15 executive director's authority to expedite all matters pursuant to Government Code section
16 17530. All written comments timely filed shall be reviewed by Commission staff and may be
17 incorporated into the proposed decision on the request to review and modify the claiming
18 instructions.
- 19 (j) 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 (i) of this
21 section. The Commission need not rely on, and staff need not respond to, late comments,
22 exhibits, or other evidence submitted in response to a draft proposed decision after the comment
23 period expires.
- 24 (k) The Commission shall conduct a hearing in accordance with article 7 of these regulations on
25 the request to review claiming instructions.
- 26 (l) If the Commission determines that the claiming instructions need to be modified, the
27 Commission shall direct the Office of State Controller to modify the claiming instructions to
28 conform to the parameters and guidelines.
- 29 (m) An approved change to the claiming instructions shall be subject to the following schedule:
- 30 (1) A request for review filed before the deadline for initial claims as specified in the claiming
31 instructions shall apply to all years eligible for reimbursement as defined in the original
32 parameters and guidelines.
- 33 (2) A request for review filed after the initial claiming deadline must be submitted on or before
34 the annual reimbursement claim filing deadline set out in Government Code section 17560
35 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.
- 36 (n) A request to review claiming instructions may be withdrawn by written application to the
37 executive director any time before a decision is adopted or by oral application at the time of
38 hearing. The requesters shall file and serve the written application in accordance with section
39 1181.3 of these regulations. Commission staff shall post a copy of the notice on the
40 Commission's website for 60 days prior to dismissal of the request to review claiming
41 instructions. If no other local agency or school district takes over the request to review claiming
42 instructions by substitution of parties within 60 days of service and posting of the application to
43 withdraw, the executive director shall issue a letter to everyone on the mailing list described in

1 section 1181.4 of these regulations dismissing the request to review claiming instructions and
2 shall post the letter on the Commission's website.

3 Note: Authority cited: Sections 17527(g) and 17527(h), Government Code. Reference: Sections
4 17530, 17560 and 17571, Government Code.

5 **Article 5. Incorrect Reduction Claims**

6 **§ 1185.1. Incorrect Reduction Claim Filing.**

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

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

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

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

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

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

20 (b) If a claimant intends to pursue an incorrect reduction claim on behalf of a class of claimants,
21 it must notify the Commission of its intent to do so at the time it files its incorrect reduction
22 claim and meet the requirements of section 1185.3 of these regulations.

23 (c) All incorrect reduction claims shall be filed with the Commission no later than three years
24 following the date a claimant first receives from the Office of State Controller a final state audit
25 report, letter, or other written notice of adjustment to a reimbursement claim, which complies
26 with Government Code section 17558.5(c) by specifying the claim components adjusted, the
27 amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the
28 claimant, and the reason for the adjustment. The filing shall be returned to the claimant for lack
29 of jurisdiction if this requirement is not met.

30 (d) An incorrect reduction claim shall pertain to alleged incorrect reductions in a reimbursement
31 claim filed by one claimant. The incorrect reduction claim may be for more than one fiscal year.

32 (e) All incorrect reduction claims, or amendments thereto, shall be filed on a form provided by
33 the Commission.

34 (f) All incorrect reduction claims, or amendments thereto, shall contain at least the following
35 elements and documents:

36 (1) A copy of the Office of State Controller's claiming instructions that were in effect during the
37 fiscal years of the reimbursement claims.

38 (2) A written detailed narrative that describes the alleged incorrect reductions. The narrative shall
39 include a comprehensive description of the reduced or disallowed areas of costs.

1 (3) All representations of fact shall be supported by testimonial or documentary evidence, ~~and~~
2 ~~shall be submitted with the claim~~ in accordance with section 1187.5 of these regulations.

3 (4) A copy of any final state audit report, letter, or other written notice of adjustment from the
4 Office of State Controller that explains the claim components adjusted, amounts reduced, and the
5 reasons for the reduction or disallowance.

6 (5) A copy of the subject reimbursement claims the claimant submitted to the Office of State
7 Controller.

8 (g) An incorrect reduction claim, or amendment thereto, shall be certified, filed, and served in
9 accordance with section 1181.3 of these regulations~~shall be signed at the end of the document,~~
10 ~~under penalty of perjury by the claimant or its authorized representative, with the declaration that~~
11 ~~the incorrect reduction claim is true and complete to the best of the declarant's personal~~
12 ~~knowledge or information or belief. The date signed, the declarant's title, address, telephone~~
13 ~~number, and e-mail address shall be included.~~

14 (h) The claimant shall file the original incorrect reduction claim, or amendment thereto, and
15 accompanying documents with the Commission in accordance with section 1181.3 of these
16 regulations.

17 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
18 17530, 17551(d), 17553(d), 17558.5(c) and 17558.7(a), Government Code.

19 **§ 1185.2. Review of Incorrect Reduction Claims.**

20 (a) Within 10 days of receipt of an incorrect reduction claim, Commission staff shall notify the
21 claimant if the incorrect reduction claim is complete or incomplete. Incorrect reduction claims
22 will be considered incomplete if any of the elements in section 1185.1(a) and (b) and (d) through
23 (h) are illegible or not included or if the requirements of those subdivisions are not met.
24 Incomplete incorrect reduction claims shall be returned to the claimant. If a complete incorrect
25 reduction claim is not received by the Commission within 30 days from the date the incomplete
26 claim was returned to the claimant, the executive director shall deem the filing to be withdrawn.

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

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

33 (d) Commission staff shall notify the Office of State Controller that written comments and
34 supporting documentation in connection with an incorrect reduction claim shall be filed no more
35 than 90 days from the date the copy of the claim is provided to the Office of State Controller.
36 Written comments and supporting documentation ~~may~~shall be certified, filed, and served in
37 accordance with section 1181.3 of these regulations. ~~If the written comments make~~
38 ~~representations of fact are made, they~~ representations shall be supported by documentary or
39 testimonial evidence ~~and shall be submitted with the comments~~ in accordance with section
40 1187.5 of these regulations.

41 (e) The claimant and interested parties may submit written rebuttals to the Office of State
42 Controller's comments within 30 days of service of the Office of State Controller's comments.

1 Written rebuttals and supporting documentation shall be certified, filed, and served pursuant to
2 accordance with section 1181.3. ~~If the written rebuttal involves representations of fact are made,~~
3 ~~they representations~~ shall be supported by documentary or testimonial evidence ~~and shall be~~
4 ~~submitted with the rebuttal~~ in accordance with section 1187.5 of these regulations.

5 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
6 17551(d), 17553(d), 17558.5(c) and 17558.7(a), Government Code.

7 **§ 1185.3. Consolidation of Claims Initiated by an Individual Claimant.**

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

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

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

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

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

20 (b) A claimant that seeks to file a consolidated incorrect reduction claim shall notify the
21 Commission of its intent at the time of filing on a form provided by the Commission. The
22 consolidated incorrect reduction claim shall be filed in accordance with section 1185.1 of these
23 regulations and contain a narrative that explains the elements in subdivision (a) of this section.
24 All representations of fact shall be supported by documentary or testimonial evidence, submitted
25 in accordance with section 1187.5 of these regulations.

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

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

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

40 (f) Upon receipt of the list from the Office of the State Controller, the Commission shall notify
41 the list of other claimants experiencing similar reductions by the Controller under the same

1 mandate and other interested parties of the original claimant's intent to consolidate an incorrect
2 reduction claim.

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

5 **§ 1185.4. Joining a Consolidated Incorrect Reduction Claim.**

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

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

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

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

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

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

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

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

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

1 **§ 1185.5. Opting Out of a Consolidated Incorrect Reduction Claim.**

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

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

8 (b) No later than one year after opting out, or within the period of limitation under section
9 1185.1(c), whichever is later, a claimant that opts out of a consolidated claim shall file an
10 individual incorrect reduction claim in accordance with section 1185.1 of these regulations in
11 order to preserve its right to challenge a reduction made by the Controller on that same mandate.

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

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

17 **§ 1185.6. Executive Director's Authority to Consolidate or Sever Incorrect Reduction**
18 **Claims.**

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

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

25 (b) During the 30-day notice period, a claimant may serve and file a written request that an
26 individual incorrect reduction claim be severed from a proposed consolidation. Timely requests
27 to sever shall be approved by the executive director.

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

29 Note: Authority cited: Sections 17527(g), 17553(a) and 17558.8(b), Government Code.
30 Reference: Sections 17530, 17554 and 17558.8, Government Code.

31 **§ 1185.7. Review of Completed Incorrect Reduction Claims and Preparation of Proposed**
32 **Decision.**

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

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

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

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

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

20 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
21 17530 and 17551(d), Government Code.

22 **§ 1185.8. Withdrawal of Incorrect Reduction Claims.**

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

27 (b) An incorrect reduction claim, by the original claimant in a consolidated incorrect reduction
28 claim, may be withdrawn by written application any time before a decision is adopted or by oral
29 application at the time of hearing. The original claimant shall certify, file, and serve the written
30 application in accordance with section 1181.3 of these regulations and Commission staff shall
31 post a copy of the notice on the Commission's website for 60 days prior to dismissal of the
32 incorrect reduction claim. If one of the joint claimants takes over the claim, it shall, within 60
33 days of providing notice of its intent to take over the claim, perfect the filing by submitting the
34 written narrative as required by section 1185.1. If none of the joint claimants takes over the claim
35 by substitution of parties within 60 days of service and posting of the application to withdraw,
36 the executive director shall issue a letter to everyone on the mailing list described in section
37 1181.4 of these regulations dismissing the claim and providing the joint claimants with an
38 opportunity to perfect their individual claims within 60 days of service by submitting the written
39 narrative as required by section 1185.1. The letter shall be posted on the Commission's website.

40 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section
41 17551(d), Government Code.

1 **§ 1185.9. Reinstatement of Costs.**

2 If the Commission determines that a reimbursement claim was incorrectly reduced, the
3 Commission shall send the decision to the Office of State Controller and request that the Office
4 of State Controller reinstate the costs that were incorrectly reduced.

5 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section
6 17551(d), Government Code.

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

8 **§ 1186.1. Definitions: State Mandates Apportionment System.**

9 (a) Request for Inclusion. A Request for Inclusion is a factual statement about a mandated cost
10 program and a petition for a review of the described program by the Commission on State
11 Mandates. The review is intended to result in a decision whether or not to include the program in
12 the State Mandates Apportionment System.

13 (b) Stable costs. Stable costs are those costs incurred by local agencies or school districts as a
14 result of implementing a mandated cost program which, when reviewed on a statewide basis over
15 a three-year period, have not fluctuated significantly.

16 (c) Request for Removal. A Request for Removal is a factual statement about significant
17 modifications or amendments to a program which is part of the State Mandates Apportionment
18 System. The statement is intended to result in the discontinuance of the program in the State
19 Mandates Apportionment System.

20 Note: Authority cited: Sections 17527(g) and 17615, Government Code. Reference: Sections
21 17615 and 17615.1, Government Code.

22 **§ 1186.2. Request for Inclusion.**

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

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

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

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

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

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

36 (d) The Commission shall consider the recommendation submitted from the Controller for each
37 new mandate submitted for inclusion in the State Mandates Apportionment System in
38 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 **§ 1186.3. Adoption of Finding for Request for Inclusion.**

11 (a) The Commission, after reviewing the request for inclusion and conducting at least one
12 hearing in accordance with article 7 of these regulations, shall adopt a finding that the mandated
13 program will or will not be included in the State Mandates Apportionment System.

14 (b) The primary criteria to be used by the Commission in making a determination will include a
15 review of the mandated program to determine if the program has a history of stable costs for
16 most claimants, if the mandated program has been recently modified, and if inclusion would
17 accurately reflect the costs of the state mandated program.

18 (c) Upon adoption of a finding that a mandated program should be included in the State
19 Mandates Apportionment System, the Commission shall direct the Controller to include the
20 program in the system.

21 Note: Authority cited: Sections 17527(g) and 17615.1, Government Code. Reference: Sections
22 17615.1 and 17615.4, Government Code.

23 **§ 1186.4. Request for Removal.**

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

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

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

32 (1) The chapter number or executive order of the law which established the mandated cost
33 program.

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

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

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

3 (d) Requests for Removal will be considered incomplete if any of the preceding elements or
4 documents required in subdivision (c) of this section are illegible or not included. Incomplete
5 Requests for Removal shall be returned to the requester for completion.

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

10 Note: Authority cited: Sections 17527(g) and 17615.7, Government Code. Reference: Section
11 17615.7, Government Code.

12 **§ 1186.5. Adoption of Finding for Request for Removal.**

13 (a) The Commission, after reviewing the request for removal and conducting at least one hearing
14 in accordance in article 7 of these regulations, shall adopt a finding that the mandated program
15 will or will not continue to be included in the State Mandates Apportionment System.

16 (b) The primary criteria to be used by the Commission in making a determination regarding
17 removal will include whether the mandated program was significantly modified or amended by
18 the Legislature or by executive order so as to affect the ongoing costs of the program in a way
19 that the historical costs of the program are no longer an accurate reflection of continuing costs.

20 (c) Upon adoption of a finding that a mandated program should be removed from the system, the
21 Commission shall direct the Controller to remove the program from the system. In that direction
22 to the Controller, the Commission shall specify if the program will be removed temporarily or
23 for an indefinite period of time.

24 Note: Authority cited: Sections 17527(g) and 17615.5, Government Code. Reference: Sections
25 17615.5 and 17615.7, Government Code.

26 **§ 1186.6. Reviewing an Apportionment or Base Year Entitlement.**

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

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

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

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

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

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

38 (4) Cost information that outlines the amount of the funding for the total apportionment and the
39 calculations necessary to show that the program needing modification either under or over

1 reimburse the local agency or school district's actual costs by 20 percent or by \$1,000, whichever
2 is less.

3 Note: Authority cited: Sections 17527(g) and 17615.8(a), Government Code. Reference: Section
4 17615.8, Government Code.

5 **§ 1186.7. Adjustment to Apportionment.**

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

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

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

20 Note: Authority cited: Sections 17527(g) and 17615.8(a), Government Code. Reference: Section
21 17615.8, Government Code

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

23 **§ 1187.1. Scheduling and Noticing the Hearing.**

24 (a) A "matter," subject to hearings and decisions under article 7 of these regulations, shall
25 include test claims, proposed parameters and guidelines, requests to amend parameters and
26 guidelines, incorrect reduction claims, requests for inclusion or removal from the State Mandates
27 Apportionment System, requests for review of apportionment or base year entitlement for
28 programs included in the State Mandates Apportionment System, requests for review of the
29 Office of State Controller's claiming instructions, and requests for mandate redetermination.

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

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

37 **§ 1187.2. Assignment to Hearing Panels/Hearing Officers.**

38 (a) After an informational hearing, in accordance with Article 8 of these regulations, the
39 Commission's chairperson may assign a matter before the Commission to a hearing panel

1 consisting of one or more members or to a hearing officer for hearing and preparation of a
2 proposed decision that may be adopted as the decision in the case.

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

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

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

10 **§ 1187.3. Objection to Hearing Panel, Hearing Officer, or Commission Member.**

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

13 (b) Any party may request the disqualification of any hearing officer or Commission member
14 before the taking of evidence at a hearing by filing an affidavit stating with particularity the
15 grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the
16 request concerns a Commission member, the issue shall be determined by the other members of
17 the Commission. Where the request concerns the hearing officer, the issue shall be determined
18 by the Commission itself, if the Commission itself hears the case with the hearing officer;
19 otherwise the issue shall be determined by the hearing officer.

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

22 **§ 1187.4. Informal Conference.**

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

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

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

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

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

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

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

- 1 (5) Identify issues and determine methods of resolving those issues.
- 2 (d) Any party may notify the executive director of any interested parties who should be invited to
3 attend an informal conference.
- 4 (e) Anything said, any document disclosed, and any new representations of fact made during an
5 informal conference shall not be made part of the administrative record of a test claim unless
6 properly admitted into the record through the submission of an amendment to a test claim,
7 written comment, rebuttal, or public testimony.
- 8 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
9 17518.5, 17530, 17551, 17553(a) and 17557.1, Government Code.

10 **§ 1187.5. Evidence Submitted to the Commission.**

- 11 (a) The hearings will not be conducted according to technical rules relating to evidence and
12 witnesses. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on
13 which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and
14 unduly repetitious evidence shall be excluded. Hearsay evidence may be used for the purpose of
15 supplementing or explaining other evidence but shall not be sufficient in itself to support a
16 finding unless it would be admissible over objection in civil actions.
- 17 (b) Oral or written representations of fact offered by any person at an article 7 hearing shall be
18 under oath or affirmation. All written representations of fact submitted to the Commission must
19 be signed under penalty of perjury by persons who are authorized and competent to do so and
20 must be based upon the declarant's personal knowledge, ~~or~~ information, or belief.
- 21 (c) Official notice may be taken in the manner and of the information described in Government
22 Code Section 11515.
- 23 (d) Each party shall have the right to present witnesses, introduce exhibits, and propose to the
24 chairperson questions for opposing witnesses. Evidence may be submitted to support or rebut
25 any issue. If declarations are to be used in lieu of testimony, the party proposing to use the
26 declaration shall comply with Government Code Section 11514.
- 27 Note: Authority cited: Sections 17527(e), 17527(g), 17553, 17557, 17610, 17621 and 17622,
28 Government Code. Reference: Sections 11514, 11515, 17527(e), 17551, 17553, and 17557,
29 17559, and 17570, Government Code.

30 **§ 1187.6. Conduct of Hearing.**

- 31 (a) Each party shall have the right to present witnesses, to introduce exhibits, and to propose to
32 the chairperson questions for opposing witnesses in support or rebuttal of any matter relevant to
33 the issues even though that matter was not covered in the direct examination.
- 34 (b) The presiding member, Commission members, hearing panel member or hearing officer may
35 question any party or witness and may admit any relevant and material evidence.
- 36 (c) The taking of evidence in a hearing shall be controlled by the Commission or hearing officer
37 in the manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to
38 taking evidence, the issues and the order of presenting evidence will be explained.
- 39 (d) The hearing will ordinarily proceed in the following manner. Staff of the Commission will
40 summarize the matter. The claimant will state its position and present its evidence. The

1 Department of Finance or other affected state agency will thereafter state its position and present
2 its evidence. The claimant will then be given an opportunity to reply.

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

6 (f) The Commission or the executive director may require that prepared written testimony or
7 other evidence be submitted in advance of any hearing, for the purpose of facilitating the orderly
8 consideration of issues at the hearing.

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

13 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
14 17527(c), 17532, 17551 and 17553(a), Government Code.

15 **§ 1187.7. Witnesses and Subpoenas.**

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

17 (b) A subpoena may be issued upon a majority vote of the Commission. A party requesting a
18 subpoena shall submit a written application to the Commission at least six weeks prior to the
19 Commission meeting at which the request will be considered.

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

28 (d) An application for subpoena duces tecum for the production by a witness of books, papers,
29 correspondence, memoranda, or other records, including records of the claimant, shall be made
30 by affidavit and shall give the name and address of the person to be subpoenaed, shall describe
31 the matters or things desired to be produced, shall set forth in detail the relevance to the issues
32 involved in the claim, shall specify the date on which the matters shall be produced, and that, to
33 the best of the applicant's personal knowledge, ~~or~~ information, or belief, the witness has the
34 matters or things in his or her possession or under his or her control and that none of the matters
35 or things desired to be produced are public records accessible to the public pursuant to Section
36 6250 et seq., of the Government Code. If the applicant is unable to obtain the name of the person
37 who has possession or control of the matters or things desired to be produced, the name of the
38 director or superintendent or custodian of records of the state or local agency or school district
39 may be used for the application.

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

1 (f) Before service, all appropriate portions of the blank subpoena or subpoena duces tecum shall
2 be completed by the requesting party, and the name, address, and telephone number of the
3 requesting party shall be included on the form. Service of subpoenas and subpoenas duces tecum
4 shall be made with a copy of the affidavit and shall be arranged for by requesting parties.

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

8 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
9 17527(d), 17551 and 17553(a), Government Code.

10 **§ 1187.8. Representation at Hearing.**

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

15 (b) A representative of a party shall be deemed to control all matters respecting the interest of
16 that party in the proceeding. All correspondence and communications shall be forwarded to the
17 authorized representative.

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

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

24 **§ 1187.9. Extensions of Time to File Comments or Rebuttals and Postponements and**
25 **Continuances of Hearings.**

26 (a) Requests for Extensions of Time

27 Any party or interested party to a matter may request an extension of time by filing a request
28 with the executive director before the date set for filing of comments or rebuttals with
29 Commission staff on that matter. The request shall fully explain the reasons for the extension,
30 propose a new date for filing, and be simultaneously certified, filed, and served in accordance
31 with section 1181.3 of these regulations. If representations of fact are made, they shall be
32 supported by documentary or testimonial evidence, submitted in accordance with section 1187.5
33 of these regulations. So long as a postponement of a hearing would not be required, there is no
34 prejudice to any party or interested party, and there is no other good reason for denial, the
35 request shall be approved. A party to a matter may request an extension of time that would
36 necessitate rescheduling a hearing, but shall also include a request for postponement of the
37 hearing, pursuant to section 1187.9(b). Within two business days of receipt of the request, the
38 executive director shall determine whether the extension will be granted and notify all persons on
39 the mailing list prepared pursuant to section 1181.4 of these regulations.

40 (b) Requests for Postponement of Hearing

1 A party to an article 7 matter may request a postponement of a hearing on that matter, until the
2 next regularly scheduled hearing. Although postponements of hearings are disfavored, each
3 request for a postponement must be considered on its own merits. The request shall fully explain
4 the reasons for the postponement, and be certified, filed, and served in accordance with section
5 1181.3 of these regulations. If representations of fact are made, they shall be supported by
6 documentary or testimonial evidence, submitted in accordance with section 1187.5 of these
7 regulations. Within two business days of receipt of the request, the executive director shall
8 determine whether the postponement will be granted and notify all persons on the mailing list
9 prepared pursuant to section 1181.4 of these regulations. The executive director may postpone
10 the matter only on an affirmative showing of good cause.

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

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

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

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

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

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

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

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

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

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

28 (A) The proximity of the hearing date;

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

31 (C) The length of the postponement requested;

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

34 (E) The prejudice that parties or witnesses will suffer as a result of the postponement;

35 (F) If the matter was granted expedited scheduling, the reasons for that status and whether the
36 need for a postponement outweighs the need to avoid delay;

37 (G) The Commission's backlog of matters and the impact of granting a postponement on other
38 pending matters;

- 1 (H) Whether the claimant or requester representative is engaged in a trial or other hearing that
2 conflicts with the Commission hearing;
- 3 (I) Whether, pursuant to Government Code 17554, all parties have stipulated to a postponement;
4 and
- 5 (J) Whether the interests of justice are best served by a postponement, by moving forward with
6 the hearing on the matter, or by imposing conditions on the postponement.

7 (3) Approval of Requests for Postponement

- 8 (A) A request filed by the claimant or requester at least 15 days before the hearing shall be
9 approved by the executive director for good cause.
- 10 (B) A request filed by stipulation of the parties, including the claimant or requester, shall be
11 approved by the executive director for good cause.
- 12 (C) A request filed by the claimant or requester less than 15 days before the hearing may be
13 approved by the executive director for good cause.
- 14 (D) A request filed by an interested party may be approved by the executive director for good
15 cause. If a state agency makes a request before filing comments on the test claim, that request
16 shall be accompanied by a notice of intent to oppose the test claim in whole or in part.

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

20 (c) Continuance of a Hearing

- 21 (1) Prior to the adoption of its written decision on the matter being heard, the Commission on its
22 own motion, or upon a clear showing of good cause at the request of a party, may continue a
23 hearing to another time or place. Written notice of the time and place of the continued hearing,
24 except as provided herein, shall be in accordance with section 1187.1 of these regulations. When
25 a continuance is ordered during a hearing, oral notice of the time and place of the continued
26 hearing may also be given to each party present at the hearing.
- 27 (2) In determining whether there is good cause for a continuance within the meaning of
28 subdivision (a) the following policy should be taken into consideration: Continuances are not
29 favored by the Commission. The parties are expected to submit for decision all matters in
30 controversy at a single hearing and to produce at the hearing all necessary evidence, including
31 witnesses, documents and all other matters considered essential in the proof of a party's
32 allegations. Continuances will be granted only upon a clear showing of good cause.

33 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
34 17527, 17551 and 17553(a), Government Code; and California Rules of Court, Rule 3.1332.

35 **§ 1187.10. Decision; Action on Proposed Decision.**

- 36 (a) The Commission shall adopt a decision for all matters subject to hearings and decisions under
37 article 7 of these regulations.
- 38 (b) If a matter is heard before the Commission itself, the Commission may adopt the proposed
39 decision on the same day as the hearing.

1 (c) If a matter is heard by a hearing panel or a hearing officer alone, the panel or hearing officer
2 shall prepare a proposed decision that may be adopted as the decision of the Commission at the
3 next Commission meeting.

4 (d) A copy of the proposed decision shall be filed by Commission staff as a public record and a
5 copy of the proposed decision shall be served by Commission staff on each party. The
6 Commission itself may adopt the proposed decision or decide the case itself, provided that the
7 Commission itself shall decide no matters provided for in this subdivision without affording the
8 parties the opportunity to present either oral or written argument before the Commission.

9 (e) If the proposed decision of Commission staff is not adopted by the Commission, as provided
10 in subsections (b) or (c), the Commission shall direct appropriate modification of the proposed
11 decision and thereafter adopt it as the Commission's decision.

12 (f) Except as provided for in subdivision (b), the proposed decision shall be prepared within a
13 reasonable time following submission of the matter to the hearing officer or panel, and within a
14 reasonable time after the evidentiary hearing. It shall be served on the parties promptly
15 thereafter.

16 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
17 17532, 17551 and 17553(a), Government Code.

18 **§ 1187.11. Form of Decision.**

19 (a) Any decision adopted pursuant to evidence introduced at an adjudicatory hearing shall be in
20 writing, be based on the record, and shall include a statement of reasons for the decision,
21 findings and conclusions. A copy of the decision shall be served on those identified on the
22 mailing list established pursuant to section 1181.4 of these regulations. The effective date of the
23 decision is the date it is first mailed or served.

24 (b) After a decision has been adopted and served, it shall not be changed except to correct
25 clerical errors, in which case a corrected decision shall be prepared and served on all persons on
26 the mailing list prepared pursuant to section 1181.4 of these regulations.

27 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code; and *Topanga*
28 *Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. Reference:
29 Sections 17551 and 17553(a), Government Code.

30 **§ 1187.12. Withdrawal of a Matter.**

31 A matter, or any portion of a matter, other than a test claim, may be withdrawn by written
32 application of the claimant or requester any time before a decision is adopted, or by oral
33 application at the time of hearing. A test claim, or portion thereof, may be withdrawn by the
34 claimant upon written application to the executive director any time before a decision is adopted
35 or after enactment of a legislatively determined mandate on the same statute or executive order
36 pursuant to Government Code section 17574. The claimant or requester shall certify, file, and
37 serve the written application in accordance with section 1181.3 of these regulations. Dismissal of
38 items withdrawn pursuant to this section shall be in accordance with the procedures described in
39 section 1187.15 of these regulations.

40 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
41 17551 and 17553, Government Code.

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 does not respond, within 60 days of service, to a written notification sent to the
4 superintendent of the school district or chief administrative officer of the local agency or director
5 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 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;

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

17 (C) Delays or postponements, made at the request of the claimant or requesting party, pending
18 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 1187.12 or
23 deemed abandoned in accordance with section 1187.13, may be dismissed by the executive
24 director. Commission staff shall provide written notice of dismissal to everyone on the mailing
25 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 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 written comments on the proposed dismissal of the test claim. A copy of
36 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 (c) The hearing on a dismissal of a matter shall be conducted in accordance with article 7 of
5 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.**

9 (a) Notwithstanding section 1187.11(b) of these regulations, the Commission may make
10 substantive changes to an adopted decision under this section or order a reconsideration of all or
11 part of a matter on petition of any party. The power to order a reconsideration or amend a test
12 claim decision shall expire 30 days after the adopted decision is delivered or mailed to the
13 claimant. If additional time is needed to evaluate a petition for reconsideration filed before the
14 expiration of the 30-day period, the Commission may grant a stay of that expiration for no more
15 than 30 days, solely for the purpose of considering the petition. A request for reconsideration
16 shall be deemed automatically stayed for the 30-day period. If no action is taken on a petition
17 within the time allowed for ordering reconsideration, the petition shall be deemed denied.

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

21 (c) All requests for reconsideration shall be certified, filed, and served ~~submitted to the~~
22 ~~Commission~~ in accordance with section 1181.3 of these regulations and shall contain the
23 following:

24 (1) The name and address of the requesting party;

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

26 (3) A detailed statement of the reasons for the request, including:

27 (A) An explanation of the reasons for the request for reconsideration; and,

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

29 (4) A description of the proposed change; and ;

30 (5) 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.

32 (d) Commission member requests may be made orally during a regularly scheduled Commission
33 meeting. Commission staff shall prepare the written request, as specified in subsections (c)(1-4)
34 above.

35 (e) Any signatory to a written agreement that settles a matter may not request reconsideration of
36 that matter if the matter is settled with prejudice.

37 (f) Before the Commission considers the request for reconsideration, Commission staff shall
38 prepare a written analysis regarding whether the adopted decision is contrary to law which shall
39 include but not be limited to a review of the written comments filed by other state agencies,

1 interested parties, and the requester. Commission staff shall make a recommendation in the
2 analysis on whether the request for reconsideration should be granted. The Commission shall
3 consider the request for reconsideration at a scheduled meeting. Five affirmative votes shall be
4 required to grant the request for reconsideration.

5 (g) If the Commission grants the request for reconsideration, a hearing shall be conducted to
6 determine if the adopted decision in question must be revised to correct an error of law.

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

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

14 (B) Written comments may be filed with Commission staff concerning the draft proposed
15 decision. All representations of fact shall be supported by documentary or testimonial evidence,
16 submitted in accordance with section 1187.5 of these regulations. Written comments shall be
17 certified, filed, and served in accordance with section 1181.3 of these regulations. A three-week
18 period for comments shall be given, subject to the executive director's authority to expedite all
19 matters pursuant to Government Code section 17530. All written comments timely filed shall be
20 reviewed by Commission staff and may be incorporated into the proposed decision regarding
21 whether the adopted decision is contrary to law and presented to the Commission before the
22 scheduled meeting.

23 (2) The procedures set forth in article 7 shall govern the Commission's hearings and decisions
24 process, except that five affirmative votes shall be required to change an adopted decision.

25 (h) If the Commission changes an adopted decision, the procedures set forth in Sections 1183.7
26 through 1183.14 of these regulations shall govern the adoption of parameters and guidelines and
27 the statewide cost estimate, if applicable.

28 (i) Failure to seek Commission reconsideration of an adopted decision shall not affect a
29 claimant's or state agency's right to seek judicial review pursuant to Government Code section
30 17559(b).

31 (j) This section only applies to reconsiderations requested pursuant to Government Code section
32 17759(a); it does not apply to remands or reconsiderations directed by the courts or by statute.

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

35 **Article 8. Rulemaking and Informational Hearings**

36 **§ 1188.1. Scheduling and Noticing of an Informational Hearing**

37 (a) The Commission may, upon its own motion, set an informational hearing on any subject
38 within its jurisdiction. Matters subject to informational hearings under article 8 of these
39 regulations include: a proposed assignment of an article 7 matter to a hearing officer, a
40 rulemaking proceeding, the adoption of a statewide cost estimate, and any other subject that

1 meets the definition of "informational hearing" in section 1181.2 of these regulations and is not
2 subject to hearings under article 7 of these regulations.

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

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

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

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

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

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

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

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

19 Note: Authority cited: Sections 17527(c) and 17527(g), Government Code. Reference: Sections
20 11125, 17527(c) and 17532, Government Code.

21 **§ 1188.2. Rulemaking.**

22 (a) Petitions:

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

25 (A) The name, address, and telephone number of the petitioner;

26 (B) The substance or nature of the regulation, amendment, or repeal requested;

27 (C) The reasons for the request; and

28 (D) Reference to the authority of the Commission to take the action requested.

29 (2) The petition shall be filed with the executive director who shall, within seven days after its
30 filing, determine whether the petition contains the information specified in subsection (1).

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

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

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

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

5 (c) Notice.

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

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

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

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

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

21 Note: Authority cited: Section 17527(g), Government Code. Reference: Sections 11340.6,
22 11346.2, 11346.4, 11346.8, 11346.9, 17527(c), 17527(g), 17530, 11346.4 and 17551,
23 Government Code.

24 **Article 10. Mandate Redetermination Process**

25 **§ 1190.1. Filing a Request to Adopt a New Test Claim Decision.**

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

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

40 (c) The detailed analysis of how and why the state's liability for mandate reimbursement has
41 been modified pursuant to article XIII B, section 6(a) of the California Constitution based on a

1 "subsequent change in law" as defined by Government Code section 17570 requires more than a
2 written narrative or simple statement of the facts and law. It requires the application of the law
3 (Gov. Code § 17570 (a) and (b)) to the facts (i.e. the alleged subsequent change in law)
4 discussing, for each activity addressed in the prior test claim decision, how and why the state's
5 liability for that activity has been modified. Specific references shall be made to statutes and
6 chapters, articles, sections, and page numbers that are alleged to impose or not impose a
7 reimbursable state-mandated program.

8 (d) ~~The requester shall file a~~A request for mandate redetermination and accompanying
9 documents ~~with the Commission~~shall be certified, filed, and served in accordance with section
10 1181.3 of these regulations.

11 (e) Within 10 days of receipt of a request for mandate redetermination, Commission staff shall
12 notify the requester if the request is complete or incomplete and refer the requester to these
13 regulations. Requests for mandate redetermination shall be considered incomplete if any of the
14 elements required in subdivisions (b), (c), or (d) of this section are illegible or are not included. If
15 a complete request for mandate redetermination is not received within 30 calendar days from the
16 date the incomplete request was returned, the executive director shall disallow the original
17 request filing date. New requests for mandate redetermination may be accepted on the same
18 subsequent change in law alleged to modify the state's liability pursuant to article XIII B, section
19 6(a) of the California Constitution.

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

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

25 (h) Any request for mandate redetermination that fails to allege a "subsequent change in law," as
26 defined by Government Code section 17570, shall be returned by the executive director with a
27 written notice stating the reason that the request is being returned. These filings may include, but
28 are not limited to, requests that meet the requirements for a proposed parameters and guidelines
29 amendment or a new test claim filing.

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

32 **§ 1190.2. Review and Response.**

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

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

38 (2) Written comments concerning the request for mandate redetermination may be filed within
39 30 days and evidence may also be presented at the hearing on the request for mandate
40 redetermination.

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

1 (1) If representations of fact are made, they must be supported by documentary or testimonial
2 evidence, ~~which shall be submitted in accordance with section 1187.5 of these regulations with~~
3 ~~the response. All documentary evidence shall be authenticated by declarations under penalty of~~
4 ~~perjury signed by persons who are authorized and competent to do so and must be based on the~~
5 ~~declarant's personal knowledge or information or belief.~~

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

15 ~~(e) The written comments and supporting documentation shall be signed at the end of the~~
16 ~~document, under penalty of perjury by an authorized representative, with the declaration that it is~~
17 ~~true and complete to the best of the representative's personal knowledge or information or belief.~~
18 ~~The date of signing, the representative's title, address, telephone number, and e-mail address~~
19 ~~shall be included.~~

20 ~~(dc) Filing. Written comments and supporting documentation concerning a request for mandate~~
21 ~~redetermination shall be certified, filed, and served in accordance with Section 1181.3 of these~~
22 ~~regulations. Any representations of fact shall be supported by documentary evidence, submitted~~
23 ~~with the comments, in accordance with section 1187.5 of these regulations.~~

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

26 **§ 1190.3. Rebuttal.**

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

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

32 (1) If ~~new~~ representations of fact are made, they must be supported by documentary or
33 testimonial evidence, ~~which shall be submitted with the rebuttal~~ in accordance with section
34 1187.5 of these regulations.

35 (2) A copy of relevant portions of state constitutional provisions, federal statutes, and executive
36 orders, and a copy of administrative decisions and court decisions that are cited in the rebuttal,
37 unless the authorities are also cited in the request to adopt a new test claim decision or any
38 response thereto. The specific statutes and chapters, articles, sections, and page numbers shall be
39 identified. Published court decisions arising from state mandate determinations by the Board of
40 Control and the Commission, article XIII B, section 6 of the California Constitution, and
41 Government Code sections 17500 et seq., are exempt from the requirements of this subsection.

1 When an omnibus bill is relevant to the rebuttal, only the relevant pages of the statute, including
2 the Legislative Counsel's Digest and the specific statutory changes at issue shall be filed.

3 (c) The rebuttal to a comment concerning a request for mandate redetermination shall be
4 certified, filed, ~~with Commission staff~~ and served in accordance with section 1181.3 of these
5 regulations.

6 ~~(d) The rebuttal shall be signed at the end of the document, under penalty of perjury, with the
7 declaration that the rebuttal is true and complete to the best of the declarant's personal knowledge
8 or information or belief. The date of signing, the declarant's title, address, telephone number, and
9 e-mail address shall be included.~~

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

12 **§ 1190.4. Executive Director's Authority to Consolidate Requests for Mandate**
13 **Redetermination.**

14 (a) The executive director may consolidate two or more requests for mandate redetermination for
15 the second hearing, if some or all of the same statutes, regulations or executive orders are at
16 issue, if necessary to ensure the complete, fair, or timely consideration of any request for
17 mandate redetermination.

18 (b) At least 10 days before the action is taken, the executive director shall serve on the parties
19 and interested parties on the mailing list described in section 1181.4 of these regulations, and
20 post on the Commission's website, a notice of any proposed action to consolidate.

21 Note: Authority cited: Section 17527(g), 17553(a) and 17570(d), Government Code. Reference:
22 Sections 17530, 17554 and 17570, Government Code.

23 **§ 1190.5. Hearing Process and Form of Decision.**

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

27 (a) The First Hearing:

28 (1) The first hearing shall be limited to the issue of whether the requester has made an adequate
29 showing which identifies a subsequent change in law as defined by Government Code section
30 17570, material to the prior test claim decision, that may modify the state's liability pursuant to
31 article XIII B, section 6(a) of the California Constitution. The Commission shall find that the
32 requester has made an adequate showing if it finds that the request, when considered in light of
33 all of the written comments and supporting documentation in the record of this request, has a
34 substantial possibility of prevailing at the second hearing.

35 (2) At least eight weeks before the hearing or at another time required by the executive director
36 or stipulated to by the parties, Commission staff shall prepare a draft proposed decision and
37 distribute it to the parties, interested parties, and any person who requests a copy, and shall post
38 it on the Commission's website. A request for mandate redetermination is set for the first hearing
39 when Commission staff issues its draft proposed decision. A written notice of the date, time, and
40 place of the first hearing shall be served on everyone on the mailing list described in section
41 1181.4 of these regulations and posted on the Commission's website.

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

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

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

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

24 (A) The requester has not made an adequate showing, when considered in light of all of the
25 written comments, rebuttals and supporting documentation in the record and testimony at the
26 hearing, that the request for mandate redetermination has a substantial possibility of prevailing at
27 the second hearing, the Commission shall publish a decision denying the request for mandate
28 redetermination.

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

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

38 (b) The Second Hearing:

39 (1) If the Commission proceeds to the second hearing, it shall consider whether the state's
40 liability pursuant to article XIII B, section 6(a) of the California Constitution has been modified
41 based on the subsequent change in law alleged by the requester, thus requiring adoption of a new
42 test claim decision to supersede the previously adopted test claim decision. If the Commission
43 finds that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution

1 has been modified based on the subsequent change in law alleged by the requester, it shall adopt
2 a new decision that reflects the modified liability of the state.

3 (2) Before the second hearing, Commission staff shall prepare a proposed decision. At least eight
4 weeks before the hearing or at another time required by the executive director or stipulated to by
5 the parties, Commission staff shall prepare a draft proposed decision and distribute it to everyone
6 on the mailing list described in section 1181.4 of these regulations and post it on the
7 Commission's website. The proposed decision shall consider the request, and any written
8 comments and rebuttals and supporting documentation filed.

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

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

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

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

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

30 (5) Everyone on the mailing list described in section 1181.4 of these regulations shall be
31 provided written notice that a copy of the decision has been posted on the Commission's
32 website.

33 (6) After a decision or proposed decision has been served or posted on the Commission's
34 website, it shall not be changed except to correct clerical errors, in which case a corrected
35 decision or proposed decision shall be prepared and posted on the Commission's website.
36 Everyone on the mailing list described in section 1181.4 of these regulations shall be provided
37 written notice that a copy of the revised decision has been posted on the Commission's website.

38 (7) If a new decision is adopted that finds that the State's liability under article XIII B, section
39 6(a) of the California Constitution has been modified, the amount and method of reimbursement
40 shall be determined in accordance with article 3 of these regulations.

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



RECEIVED
July 24, 2017
*Commission on
State Mandates*

July 24, 2017

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

**Re: Written Comments Regarding Proposed Regulatory Action Before the
Commission on State Mandates.**

Public Hearing Date: July 28, 2017

Dear Ms. Magee:

The California Special Districts Association (CSDA), California State Association of Counties (CSAC), and League of California Cities (League), hereby submit these comments in response to the request for written comment on proposed regulations intended to clarify and streamline regulations governing the Commission on State Mandates (Commission). Our feedback is intended to assist the Commission as it considers whether the proposed regulatory changes will achieve the anticipated benefits of increased clarity for participating in the Commission's processes and faster decision making.

As noted in the Commission's "Notice of Proposed Rulemaking," the Commission must determine that no reasonable alternative brought to the attention of the Commission would be more effective in carrying out the purpose of any proposal, or would be less burdensome and more cost effective for interested parties.¹ In keeping with the stated purpose of making the proposed changes cost effective and less burdensome for both the Commission and interested parties, our organizations offer the following comments with respect to the proposed regulations:

1. Filing Period Requirements for Test Claims

a. Test Claim Filing – Section 1183.1

The Commission asserts the "Necessity and Anticipated Benefit" for the proposed change to Section 1183.1(c) of the California Code of Regulations is to apply a "clear, predictable, and precise one year period of limitation to the filing of all test claims, whether based on the effective date of the test claim statute or executive order or the date that costs were first incurred under the test claim statute or executive order, consistent with Government Code section 17551(c)."

¹ Cal. Gov. Code § 11346.5(a)(13).

As currently enacted, California Code of Regulations Section 1183.1(c) has a clear, predictable and precise test claim submission deadline. It properly recognizes the distinction between the “effective date of a statute or executive order” and “first incurring increased costs” by clarifying that for the 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. 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.

The proposed change would strongly deter local governments from submitting test claims by hindering their ability to gather the relevant data and file in a timely manner. For example, under the proposed regulations, if the “effective date” or “date that costs were first incurred” were to fall on January 1, the result will be a reduction of 181 days, or 33.2% of time, from 546 days to file to 365 days. A July 1 “effective” or “first incurred” date would result in a 364 day, or 49.9%, reduction in time under the proposed regulations.

The proposed change builds on two previous efforts to shorten the test claim filing period. In 2002, Assembly Bill 3000 (Chapter No. 1124, Statutes of 2002) authorized the Commission to enforce a statute of limitations, requiring that local entities file test claims within three years following the effective date of the related requirement. As a result, the Commission experienced a decrease in the number of test claims submitted.² Subsequently, in 2005, the Legislature further reduced the existing statute of limitations for filing new test claims from three years to one year.³ This reduction contributed to another decline in submissions.

Proposed Alternative: *Retain existing language in Section 1183.41(c).* The proposed change will result in fewer and less accurate claims. In many instances, 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. Moreover, the increased costs may not yet be realized or the process for tracking the increased costs may not be complete if the mandate is complicated or affects a long running project. In sum, the proposed regulation will either deter local governments from submitting an otherwise viable test claim because of the shortened deadline, or will force many to file a test claim prior to having accumulated all relevant data for the submission of the test claim.

² California State Auditor Report: “*State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and in Controlling Costs and Liabilities*” (Report Number 2009-501), dated October 15, 2009.

³ AB 2856.

2. Joint Test Claim Single Representative Requirement

a. Test Claim Filing – Section 1183.1(g)(3)

The statement of reasons for this proposed change does not provide sufficient information to explain the purpose of the change or how it would be beneficial to the Commission or interested parties. The existing language for Section 1183.1(g) permits a joint 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 for the Commission. (emphasis added).

The proposed regulation would change this requirement entirely, mandating that joint claimants designate one “sole representative” for all claimants, while striking language that denotes the representative acting as the “resource for information.” The revised language could be construed to require an unanimity of factual and legal concerns by all claimants. This would have a harmful effect on 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 in certain circumstances on narrow issues that would not otherwise deter a joint test claim. This will result in an increased burden and cost to the Commission, as test claims that would otherwise have been filed as part of a joint effort will likely be filed as separate test claims under the proposed regulations.

Proposed Alternative: *Amend existing language as follows:*

1183.1(g)(3) The claimants have designated one ~~contact~~ person to act as the ~~resource~~ sole representative for all claimants for information for all claimants regarding the test claim.

Our organizations seek additional information and clarification regarding the problem the Commission proposes to solve with the proposed regulation, along with a thorough explanation of the necessity and anticipated benefit.

3. Filing and Service of All Documents

a. Conduct of Hearing – Section 1182.10(b)

The proposed regulation regarding the “Conduct of Hearing” for an application for a finding of significant distress strikes out existing language that provides the hearings will not be conducted according to technical rules relating to evidence and witnesses, and permitting hearsay evidence in certain circumstances. No information is provided regarding the necessity or anticipated benefit of the 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).

Proposed Alternative: *Retain existing language in Section 1182.10(b).*

Our organizations seek information regarding the necessity or anticipated benefit of the proposed regulation, and seek to ensure that Commission hearings will continue to be conducted under the existing rules of California Code of Regulations section 1187.5(a).

4. **Filing and Service of All Documents**

- a. Various – Sections 1182.2(d), 1182.7(b), 1182.10(d), etc.

The numerous proposed regulations contain amendments wherein language has been inserted to require that “all representations of fact shall be supported by documentary or testimonial evidence[.]” Although common law definitions for “documentary evidence” and “testimonial evidence” exist, our organizations seek clarification regarding what the terms mean in the Commission’s quasi-judicial context.

Proposed Alternative: *Add definitions of “documentary evidence” and “testimonial evidence” to Section 1181.2.*

We would be happy to provide additional information or answer any follow-up questions the Commission may have. Please do not hesitate to contact Mustafa Hessabi at CSDA at (916) 442-7887, Dorothy Johnson at CSAC at (916) 327-7500, or Dan Carrigg at the League at (916) 658-8222.

Sincerely,



Mustafa Hessabi
Legislative Analyst
California Special Districts Association



Dorothy Johnson
Legislative Representative
California State Association of Counties



Dan Carrigg
Deputy Executive Director, Legislative Director
League of California Cities

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AUG 07 2017

PUBLIC MEETING

**COMMISSION ON
STATE MANDATES**

COMMISSION ON STATE MANDATES



TIME: 10:00 a.m.

DATE: Friday, July 28, 2017

PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA
Representative for MICHAEL COHEN, Director
Department of Finance
(Chair of the Commission)

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

MARK HARIRI
Representative for JOHN CHIANG
State Treasurer

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member
Local Agency Member



PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(Item 9)

HEIDI PALCHIK
Assistant Executive Director

ERIC FELLER
Senior Legal Counsel
(Item 4)

MATTHEW B. JONES
Commission Counsel

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF PRESENT

(continued)

JILL MAGEE
Program Analyst
(Item 6)

KERRY ORTMAN
Program Analyst
(Item 7)

CAMILLE N. SHELTON
Chief Legal Counsel
(Item 3 and Item 8)



PUBLIC TESTIMONY

Appearing Re Item 3:

For the State Controller's Office:

JIM VENNEMAN
Audit Manager, Division of Audits
State of California
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

Appearing Re Item 4:

For the State Controller's Office:

LISA KUROKAWA
Audit Manager, Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 6:

DILLON GIBBONS
California Special Districts Association
1112 I Street, Suite 200
Sacramento, California 95814

DOROTHY JOHNSON
California State Association of Counties
1100 K Street, Suite 101
Sacramento, California 95814

ANDY NICHOLS
Nichols Consulting



1 motion?

2 MEMBER RAMIREZ: I'll make the motion.

3 CHAIR ORTEGA: Moved by Ms. Ramirez.

4 MEMBER OLSEN: I'll second.

5 CHAIR ORTEGA: Second by Ms. Olsen.

6 All in favor approving the staff recommendation,

7 please say "aye."

8 *(A chorus of "ayes" was heard.)*

9 CHAIR ORTEGA: It's approved unanimously.

10 We'll move on to Item 5.

11 MS. HALSEY: Item 5 is reserved for county
12 applications for a finding of significant financial
13 distress, or SB 1033 applications.

14 No SB 1033 applications have been filed.

15 Program Analyst Jill Magee will present Item 6, the
16 public hearing on Proposed Regulation Amendments.

17 MS. MAGEE: Good morning.

18 The purpose of this public hearing on the proposed
19 regulations is to take public comment. The written
20 comment period for this rulemaking closed July 24th,
21 2017.

22 The Commission received written comments from the
23 California Special Districts Association, California
24 State Association of Counties, and League of Cities on
25 July 24th, 2017. However, the Commission did receive a

1 timely request for a public hearing on this matter; and
2 that is what brings us here today.

3 A public hearing for a rulemaking is intended to
4 provide the public an opportunity to voice opinions on
5 the rulemaking. Agencies, however, are not required to
6 provide a response to comments at the public hearing.
7 Instead, all comments will be included in the rulemaking
8 record; and Commission staff will prepare written
9 responses to the comments as part of the final statement
10 of reasons.

11 If changes to the proposed regulatory text are
12 proposed by the commenters, Commission staff will prepare
13 an analysis and recommendation on such changes for the
14 Commission's consideration.

15 Procedurally, if staff recommends no changes to the
16 proposed regulatory text, the matter, including written
17 responses to all comments received, will be set for final
18 adoption at the September 22nd, 2017, Commission hearing;
19 and if the Commission adopts the regulations without
20 additional changes at that time, it will retain its
21 January 1st, 2015 [*sic*], effective date.

22 If changes to the proposed regulatory text are
23 proposed and are recommended by staff, Commission staff
24 will prepare the revised text analysis and recommendation
25 for the Commission's consideration and approval at the

Commission on State Mandates – July 28, 2017

1 September 22nd, 2017, hearing.

2 If the Commission approves any substantive changes
3 to the text, Commission staff will provide notice of an
4 additional 15-day public-comment period and set the
5 rulemaking package for adoption at the next regularly
6 scheduled hearing, with an effective date of April 1st,
7 2018.

8 Will those who wish to comment on this item please
9 come forward and state your name for the record?

10 MR. NICHOLS: Andy Nichols, state mandated cost
11 consultant for local government.

12 MS. JOHNSON: Dorothy Johnson, California State
13 Association of Counties.

14 Mr. GIBBONS: Dillon Gibbons, with the California
15 Special Districts Association.

16 CHAIR ORTEGA: Thank you.

17 Please, go ahead.

18 MR. NICHOLS: I am here this morning to just chat
19 about the item regarding the test-claim period for filing
20 based on a test-claim statute, whether it's the date of
21 enactment or the cost-first-incurred date. And as CSDA
22 and CSAC and the League identified in their letter, the
23 proposed regulation, although I understand the
24 Commission's motivation for trying to get a uniformity
25 regarding the changes in the regulations, the concern

Commission on State Mandates – July 28, 2017

1 from local government, and consultants as well, is the
2 effect it will have on the test-claim filing window.

3 And as a result, once again, as described in the letter,
4 with the change occurring, it will reduce -- to use the
5 two examples from that letter -- if there is a
6 January 1 effective or first-cost date, this will reduce
7 the eligible time period to file a test claim by
8 181 days, or 33 percent of what it will become.

9 If the effective date, or cost-incurred date, is
10 July 1 -- and these are the two most common examples
11 whenever legislation is passed -- it will reduce it
12 basically by 50 percent, or 364 days.

13 So the concern for locals in this matter is looking
14 at the Commission, asserting that the necessity and
15 anticipated benefit of making this change to a precise,
16 clear, predictable one-year period of limits, a
17 limitation to the filing of all test claims, right now,
18 the existing regulation is very clear and concise and
19 predictable: All test claims must be filed by June 30th,
20 following the year that the costs are either first
21 incurred or enacted. So in that respect, local
22 government already knows when they have to get the test
23 claim here to the Commission for its review.

24 The other issues that were mentioned in the letter,
25 and I just wanted to expand upon, AB 3000 of 2002 reduced

1 what was a pretty wide-open window, down to three years.
2 And follow-up legislation also described in that letter,
3 back in 2005, reduced it to the current state that we
4 have, with regard to this regulation.

5 Reducing this, as was noted in the Bureau of
6 State Audits' report from -- I believe it was 2009 -- I
7 apologize, I don't have that particular report in front
8 of me -- but they identified both instances, that there
9 was a dramatic decrease in the amount of test claims
10 filed. And that is of concern to local government.

11 At the same time, I recognize AB 3000, there were
12 some other moving parts that did result a large number
13 of filings at one time; but since 2005, the test claims
14 have dramatically dropped.

15 And I would even point to Item Number 9 in today's
16 agenda, the Executive Director report. If you look to
17 Roman numeral II, Item B, if I'm reading it correctly --
18 I may be misinterpreting it -- it appears that dating
19 back to last July of 2016, there have been two test
20 claims filed by local government agencies. And if you
21 look -- I decided to look at last July's Executive
22 Director report. Under that same item, there appears to
23 only have been one test claim filed. So we're talking
24 over 4,000 local government agencies in the last
25 24 months -- maybe I'm misinterpreting these numbers --

1 there have been three test claims?

2 Now, I don't believe it's the intent of the
3 Commission; but if these changes are made to, once again,
4 in every single example, reduce the time period that
5 local government can file a test claim, we are starting
6 to work that number towards zero. And that's the
7 concern, is Article XIII B, Section 6. It's very
8 difficult.

9 I know, for the Commission, it's very painstaking
10 to go through and look back and find out what is and
11 isn't preexisting and what is new and unique to local
12 government. Local government has that same challenge;
13 and they have one year to get it from the first date of
14 cost incurment or enactment. And that is why there is a
15 dramatic decrease since 2005, and as you've seen in the
16 last two years -- once again, assuming I've got my
17 numbers properly interpreted.

18 Thank you.

19 CHAIR ORTEGA: Thank you, Mr. Nichols.

20 Ms. Johnson?

21 MS. JOHNSON: Good morning.

22 Dorothy Johnson with the California State
23 Association of Counties. We appreciate the opportunity
24 to address the Commission on this issue. And we do hope
25 that these comments will prove helpful in clarifying the

1 regulations and assist with expediting decision-making
2 before this body.

3 I won't reiterate the comments made by Mr. Nichols;
4 but I do want to stress that we do think that under the
5 test-claim filing period requirement for section 1183.1,
6 the more precise hard deadline of June 30th is
7 appropriate and should be retained. This also aligns
8 very well with the local budgeting process, which we
9 think is helpful in ensuring the actual costs incurred
10 will be more accurately reflected when it comes to
11 reviewing the new programs or higher levels of services
12 that are put upon counties and other local agencies.

13 The other item I wish to address -- and then I'll
14 turn it over to my colleague from the special
15 districts -- and this is reflected as well in our
16 letter -- but it deals with the single-representative
17 requirement proposal. And here, we're asking for further
18 clarification.

19 CSAC, the League of California Cities, and the
20 Special Districts Association, it's unclear to us why
21 the opportunity for a single claimant to serve as a
22 communication channel, but then also have to serve as the
23 only representative for the body would be a service and
24 create greater decision-making efficiency for the body.
25 We do believe that there are often broad, common themes

1 for test claimants representing numerous agencies.
2 However, those individual agencies may have further
3 unique aspects that they wish to bring to the table; and
4 we feel that opportunity would be severely limited with
5 the proposed changes.

6 So what we've put in our letter as Item Number 2,
7 we would like to see more information as to why having a
8 single representative from multiple claimants is the
9 appropriate solution forward, when using that single
10 representative as a channel to communicate with the
11 Commission, which is currently in place, seems to be an
12 appropriate way to create efficiency in the
13 decision-making process.

14 Thank you.

15 CHAIR ORTEGA: Thank you.

16 Mr. Gibbons?

17 Mr. GIBBONS: Ms. Chair, Members of the Commission,
18 Dillon Gibbons with the California Special Districts
19 Association.

20 I'd like to echo the comments of my colleagues and
21 add a few more regarding some of the other proposed
22 changes.

23 First, with regard to the proposed changes to the
24 filing service of all documents and the conduct of the
25 Commission hearings in section 1182.10(b), the proposed

1 regulation regarding the conduct hearing, strikes out
2 existing language that provides that the hearing will not
3 be conducted according to technical rules related to
4 evidence and witnesses and permitting hearsay evidence in
5 certain circumstances. Unfortunately, no information is
6 provided regarding the necessity or anticipated benefit
7 of the proposed change.

8 The Commission is a quasi-judicial body, and
9 therefore should not be required to act in accordance
10 with traditional courtroom rules. However, by striking
11 out section 1182.10(b), it's unclear whether or not the
12 Commission will be required to act as such and continue
13 as that quasi-judicial body.

14 Moreover, the proposed regulation conflicts with
15 other regulations governing the conduct of hearings
16 before the Commission.

17 So section 1187.5, regarding evidence submitted to
18 the Commission in a quasi-judicial hearing, will continue
19 to contain the same language as it relates to hearsay
20 evidence being submitted. But that is being stricken
21 in the changes in 1182.10(b). So we have a proposed
22 alternative, and that would be to, at this time, retain
23 the existing language in 1182.10(b).

24 If the Commission still wishes to make changes to
25 that section, we ask that you hold off on the changes

1 until the Commission staff is able to provide the public
2 with information regarding the necessity or anticipated
3 benefit of the proposed regulation and we have an
4 opportunity to respond to those comments.

5 Now -- and I think I made a misstatement that there
6 is no information provided regarding the necessity.
7 There is some information, but it's not specific to that
8 section. So I think that I want to be clear on that.

9 And for the impacts that that would have on our
10 special districts and our local governments, the changes
11 that are proposed would be significant cost increases
12 regarding bringing a claim as far as our attorneys' fees.

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

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

24 So the second part -- this is a much shorter part --
25 I'd like to comment on the proposed changes to the filing

1 and service documents. And this is various sections:
2 There's section 1182.2(d), 1182.7(b), and 1182.10(d).
3 The numerous proposed regulations contain amendments
4 where language has been inserted into -- to require that
5 all representations of facts shall be supported by
6 documentary or testimonial evidence. And although
7 there's common-law definitions of "documentary evidence"
8 and "testimonial evidence," we would like to see
9 clarification to be put into the proposed language that
10 has the definitions as they would apply to this
11 Commission for the documentary and testimonial evidence.
12 And it just adds clarity for our districts and for our
13 local governments.

14 That's it. Thank you.

15 CHAIR ORTEGA: Thank you, Mr. Gibbons.

16 Any other public comment on this item?

17 *(No response)*

18 CHAIR ORTEGA: Okay, so I think at this point, the
19 plan would be to accept these comments, and then ask the
20 staff to provide a written response. Then we could
21 consider the issue in September.

22 Is there any objection to that?

23 Ms. Ramirez?

24 MEMBER RAMIREZ: No objection. I would just like to
25 thank the members of the various agencies for coming and

Commission on State Mandates – July 28, 2017

1 talking to us.

2 Thank you.

3 CHAIR ORTEGA: Anything else?

4 *(No response)*

5 CHAIR ORTEGA: Okay. With that, that will be the
6 direction.

7 And then we'll move on to Item 7.

8 MS. HALSEY: Program Analyst Kerry Ortman will
9 present Item 7, the Legislative Update.

10 MS. ORTMAN: Good morning.

11 On June 27th, 2017, the Governor signed the 2017-18
12 Budget Act, AB 97, which includes \$601 million in
13 additional Proposition 98 related funding, of which
14 \$287 million would be used to pay down the K-12 mandates
15 backlog.

16 The Budget Act adds \$8 million and two mandates
17 to the K-12 mandate block grant. Those would be the
18 *California Assessment of Student Performance and*
19 *Progress, or "CAASPP," and Training for School Employee*
20 *Mandated Reporters.*

21 The Budget Act makes no changes to the list of
22 suspended K-12 mandates or to funded or suspended
23 community college and local government mandates as
24 compared to the 2016-17 budget year.

25 We continue to monitor AB 268, which was introduced

REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on the 1st day of August 2017.



Daniel P. Feldhaus
California CSR #6949
Registered Diplomate Reporter
Certified Realtime Reporter

Hearing: September 22, 2017

J:\Regulations\2017\General Cleanup\Working Docs\8. SUBSTANTIAL CHANGES SUBJECT TO 15 DAY COMMENT PERIOD\Staff Report on Proposed Changes.docx

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>.

1 CALIFORNIA CODE OF REGULATIONS

2 TITLE 2. ADMINISTRATION

3 DIVISION 2. FINANCIAL OPERATIONS

4 CHAPTER 2.5. COMMISSION ON STATE MANDATES

5 Article 1. General

6 § 1181.1. Delegation of Certain Functions; Executive Director Appeals.

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

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

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

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

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

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

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

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

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

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

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

32 Note: Authority cited: Sections 17527(g), 17530 and 17531, Government Code. Reference:
33 Section 17530, Government Code; and *Redevelopment Agency v. Commission on State Mandates*
34 (1996) 43 Cal.App.4th 1188.

35 § 1181.2. Definitions.

36 Unless otherwise indicated, the following definitions and those found in Government Code
37 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 requirements for a new filing for a test claim, proposed
14 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 ~~having~~ an interest ~~in the~~
28 ~~activities of the Commission~~ a matter before the Commission, but is not a party or interested
29 party with respect to that matter.
- 30 (k) "New filing" means a test claim, incorrect reduction claim, request to amend parameters and
31 guidelines, joint request for reasonable reimbursement methodology, request for review of
32 claiming instructions, request for removal or inclusion in State Mandates Apportionment System,
33 or request for mandate redetermination.
- 34 (l) "Party" includes a party's representative of record who is expressly authorized to act on the
35 party's behalf. Party means the following for each matter as specified below:
- 36 (1) "Party to a Test Claim" means the test claimant, the Department of Finance, and other
37 affected state agencies.
- 38 (2) "Party to an Incorrect Reduction Claim" means the claimant and the Office of State
39 Controller.
- 40 (3) "Party to a Request to Amend Parameters and Guidelines" means the requester, the

- 1 Department of Finance, the Office of State Controller, affected state and local agencies, and
2 affected school districts.
- 3 (4) "Party to a Joint Request for Reasonable Reimbursement Methodology" means the test
4 claimant and the Department of Finance.
- 5 (5) "Party to a Request for Review of Claiming Instructions" means the requester and the Office
6 of State Controller.
- 7 (6) "Party to a Request for Removal or Inclusion in State Mandates Apportionment System"
8 means the requester, the Department of Finance, and the Office of State Controller.
- 9 (7) "Party to a Request for Mandate Redetermination" means the requester, the Department of
10 Finance, the Office of State Controller, affected state and local agencies, and affected school
11 districts.
- 12 (m) "Real Party in Interest" means any person or entity whose interest will be directly affected
13 by the resolution of the matter.
- 14 (n) "Rulemaking proceeding" means any hearing designed to adopt, amend, or repeal any rule,
15 regulation, or standard of general application that implements, interprets, or makes specific any
16 provision of Title 2, Division 4, Part 7, beginning with Government Code section 17500 or any
17 other statute enforced or administered by the Commission.
- 18 (o) "Statewide cost estimate" means the approximate sum of money that local agencies or school
19 districts may have incurred to implement a state-mandated program or any increased level of
20 service of an existing mandated program. A statewide cost estimate submitted by a test claimant
21 shall be an estimate of the first full fiscal year of actual or estimated costs based on the statutes
22 and executive orders alleged in a test claim, except as provided in Government Code section
23 17557.1(a). A statewide cost estimate adopted by the Commission shall be an estimate based on
24 the Commission's determination of a test claim for the initial period of reimbursement to be
25 reported to the Legislature.
- 26 (p) "Statewide estimate of costs" is based on a reasonable reimbursement methodology proposed
27 by a test claimant and the Department of Finance, adopted by the Commission, and reported to
28 the Legislature pursuant to Government Code section 17557.2.
- 29 (q) "Subsequent change in law" means a change in law that requires a finding that an incurred
30 cost is a cost mandated by the state, as defined by Government Code section 17514, or is not a
31 cost mandated by the state pursuant to Government Code section 17556, or a change in mandates
32 law. Amendments to article XIII B, section 6 of the California Constitution that were approved
33 by the voters on November 2, 2004 and changes in the statutes or executive orders that impose
34 new state-mandated activities and require a finding pursuant to Government Code section
35 17551(a) are not a "subsequent change in law."
- 36 (r) "Teleconference" means a conference of individuals in different locations, connected by
37 electronic means, through audio, video, or both.
- 38 (s) "Test claim" means the first claim filed with the Commission alleging that a particular statute
39 or executive order imposes costs mandated by the state pursuant to Government Code section
40 17521 and also includes a claim filed on a legislatively determined mandate pursuant to
41 Government Code section 17574(c). The test claim procedure functions similarly to a class
42 action and has been established to expeditiously resolve disputes affecting multiple agencies.

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

4 Note: Authority cited: Sections 17527(g), 17553(a) and 17570(d), Government Code. Reference:
5 Sections 11123, 17516-17521, 17527(c), 17529, 17530, 17531, 17551, 17553, 17555, 17557,
6 17557.1, 17557.2, 17558, 17558.5, 17558.7, 17558.8, 17559, 17561, 17561.5, 17570, 17572,
7 17573, 17600 and 17612, Government Code; *Redevelopment Agency v. Commission on State*
8 *Mandates* (1996) 43 Cal.App.4th 1188; and *City of San Jose v. State of California* (1996) 45
9 Cal.App.4th 1802.

10 **§ 1181.3. Certification, Filing and Service of Written Materials and New Filings.**

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

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

23 (1) E-Filing. ~~Submit~~File the original ~~to the Commission~~ by saving the signed original in a PDF
24 file and submitting it via the Commission's e-filing system, available on the Commission's
25 website. Documents e-filed with the Commission must be in a legible and searchable format that
26 allows Commission staff to electronically date stamp the document to verify date of filing, and to
27 append additional pages for posting on the Commission's web site with proof of service, in lieu
28 of the filer serving the document to the entire mail list for the matter. E-filed documents should
29 be filed in their original, searchable form, but the signature page shall be replaced with a scanned
30 copy, rather than digitally signed. The filer is responsible for maintaining the signed original for
31 the duration of the process for the matter, including any period of appeal. Notwithstanding any
32 other provision in these regulations, if a new filing or written material is e-filed, no additional
33 copies shall be submitted to Commission staff. The following shall apply to e-filing:

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

36 (B) An automated notice that the document was successfully sent is immediately available to the
37 person who e-files using the Commission's e-filing system and should be saved or printed for the
38 filer's records. Commission staff shall also reply by e-mail confirming actual receipt of the
39 legible, searchable document by the Commission within two business day of receipt. In the
40 absence of a confirmation e-mail from Commission staff, it is the responsibility of the person
41 who e-files to obtain confirmation that the Commission actually received the filing.

42 (C) By using e-filing, the filing person agrees, in the event of failure of e-filing, to re-file the
43 document, no later than the business day after the business day on which notice of the failure of

1 e-filing is received by the filing party, by any means authorized by these rules, in order to
2 maintain the original filing date. "Failure of e-filing" occurs when the filing person receives
3 notification, in any manner, of non-receipt of an e-filed document or of any other inability of
4 Commission staff to access the document. The filer and Commission staff may agree to any form
5 for re-filing allowed by these regulations.

6 (D) Documents e-filed with the Commission do not need to be served and proof of service does
7 not need to be provided for persons that have provided an e-mail address for the mailing list.
8 Nothing in this regulation excuses a filer from serving hard copies of written material on persons
9 who appear on the mailing list and have not provided an e-mail address for the mailing list or
10 from providing a proof of service with the e-filing to the Commission for the service.

11 (E) Upon confirmation of actual receipt, Commission staff shall notify all persons on the mailing
12 list for the matter that written material may be viewed on the Commission's website. For "new
13 filings" as defined by section 1181.2(k) of these regulations, Commission staff shall notify all
14 persons on the mailing list prepared pursuant to section 1181.4 of these regulations, of the
15 availability of those filings on the Commission's website when Commission staff sends its notice
16 of complete filing to the filing party.

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

19 (G) The executive director may issue any order consistent with these rules to govern e-mail
20 service for a particular matter.

21 (2) By first class mail. Submit the unbound original and seven copies to the Commission.

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

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

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

32 Note: Authority cited: Sections 17527(g), 17553(a), 17570(d) and 11104.5, Government Code.
33 Reference: Section 1798 et seq., Civil Code; Sections 17530, 17551, 17557(d), 17558.7, 17570,
34 17573(b), 17574(c) and 17573(g), Government Code.

35 **§ 1181.4. Mailing Lists and Numbering of Matters.**

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

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

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

5 (1) Test Claim (TC)

6 (2) Incorrect Reduction Claim (I)

7 (3) Request to Amend Parameters and Guidelines (PGA)

8 (4) Joint Request for Reasonable Reimbursement Methodology (RRM)

9 (5) Request for Review of Claiming Instructions (RCI)

10 (6) Request for Removal or Inclusion in State Mandates Apportionment System (SMAS)

11 (7) Joint Request for Legislatively Determined Mandate (LDM)

12 (8) Request for Mandate Redetermination (MR)

13 Note: Authority cited: Sections 17527(g), 17553(a), 17570(d) and 11104.5, Government Code.

14 Reference: Sections 17530, 17551, 17557, 17557.1, 17571, 17557.2, 17570, 17573(b), 17573(g),
15 17574(c) and 17615.1, Government Code.

16 **§ 1181.5. Appointment of Designees and Election and Duties of Officers.**

17 (a) If a Commission member, as defined by Government Code section 17525, with statutory
18 authority to designate a deputy to represent him or her makes a designation, that designee may
19 continue to serve on the Commission until the designation is revoked by the current Commission
20 member.

21 (b) Commission members as defined by Government Code section 17525 shall be officers.
22 Duties of Officers:

23 (1) Duties of Chairperson. The chairperson shall preside over all meetings of the Commission
24 when present. The chairperson has all the rights and responsibilities of the other members,
25 including the right to introduce motions or proposals and to speak and vote on them while
26 presiding. The chairperson has the power to appoint one or more members of the Commission as
27 a subcommittee to investigate and report to the Commission on any matter within the scope of
28 the purposes of the Commission or to form advisory groups to assist the Commission or its
29 subcommittees in fulfilling their purposes.

30 (2) Duties of Vice Chairperson. The vice chairperson shall preside over all meetings of the
31 Commission at which the chairperson is not present. The vice chairperson has all the rights and
32 responsibilities of the other members, including the right to introduce motions or proposals and
33 to speak and vote on them while presiding.

34 (c) Time of Election. The Commission shall elect a chairperson and vice chairperson at the
35 January meeting of each year, or at the next regularly scheduled meeting, if no meeting is held in
36 January. In the calendar year following the statewide election of constitutional officers, the
37 Commission may postpone its election. The Commission may authorize the executive director to
38 conduct the election portion of its meeting.

1 (d) Vacancy. If an office (chairperson or vice-chairperson) held by a public member or local
2 elected official becomes vacant, an election shall be conducted as soon as practicable to fill the
3 vacant office.

4 (e) When Election Takes Effect. An election shall take effect immediately.

5 Note: Authority cited: Sections 17500 and 17527(g), Government Code. Reference: Sections 7.5,
6 7.6, 7.9, 17525, 17528 and 17530, Government Code.

7 **§ 1181.6. Development and Approval of Commission Forms.**

8 (a) In consultation with interested parties and in accordance with applicable law and these
9 regulations, the executive director shall develop the test claim form, incorrect reduction claim
10 form, mandate redetermination form, and other forms, to simplify and improve the efficiency of
11 the Commission's processes.

12 (b) The executive director shall conduct at least one workshop with interested parties,
13 Department of Finance, Office of the State Controller, other affected state agencies, and
14 interested persons before approval of a form.

15 (c) Upon development of a new form, the executive director shall notify claimants, interested
16 parties, affected state agencies, and interested persons, and shall disseminate copies at least 10
17 days before the operative date of a form.

18 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
19 17530, 17553, 17558.7(c), 17558.7(e) and 17570(d)(1), Government Code.

20 **§ 1181.7. Waiver of Requirement to Use Forms.**

21 The executive director may waive a requirement to use any form specified by these regulations.

22 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
23 17530, 17553, 17558.7(c), 17558.7(e) and 17570(d)(1), Government Code.

24 **§ 1181.8. Commission Meeting Quorum and Voting Requirements.**

25 (a) A majority of the existing membership of the Commission shall constitute a quorum.

26 (b) All actions of the Commission, with the exception of requests to reconsider a prior final
27 decision as provided in section 1187.15, shall require the affirmative vote of at least a majority of
28 the existing membership of the Commission.

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

30 (1) Re-hear the claim when the membership of the Commission changes or when an abstaining
31 member completes review of the administrative record;

32 (2) Assign the claim to a hearing panel or to a hearing officer, pursuant to section 1187.2 et seq.,
33 for hearing and preparation of a proposed decision for consideration by the Commission. If the
34 Commission assigns the claim to a hearing panel, the selection of the hearing panel shall be by
35 lot, or other means of random and impartial selection; or

36 (3) Direct staff to prepare another proposed decision based on an interpretation of the law and
37 evidence in the record for consideration by the Commission.

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

4 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
5 17525, 17527(c) and 17532, Government Code; and Section 17000.6, Welfare and Institutions
6 Code.

7 **§ 1181.9. Commission Meeting Notice, Agenda, and Consent Calendar.**

8 (a) Time and distribution. Notices and agendas of meetings shall be given to all members, to all
9 parties and interested parties to proceedings on the agenda, and to all persons who request them
10 in writing. The notice and agenda shall be provided no less than 10 days prior to the scheduled
11 meeting.

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

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

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

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

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

22 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
23 11125, 11125.1, 17527(b), 17527(c) and 17530, Government Code.

24 **§ 1181.10. Commission Meeting Procedures.**

25 (a) Presiding Member. The chairperson shall preside over all meetings of the Commission when
26 present. In the chairperson's absence, the vice chairperson shall preside. If neither the
27 chairperson nor the vice chairperson is in attendance, the member present who has the greatest
28 seniority on the Commission shall preside. The presiding member may yield the chair.

29 (b) Public Comments.

30 (1) Comments in Writing. Any person may submit comments in writing on any agenda item. To
31 be included as a part of the administrative record for the matter, comments must be provided to
32 the Commission members and be made available for public review either before or at the
33 Commission hearing on the matter.

34 (A) Comments received at least 15 days in advance of the meeting shall be included in the
35 Commission's meeting binders, a copy of which is available for public viewing at the
36 Commission meeting.

1 (B) Comments received more than five days in advance of the meeting shall be included in the
2 Commission's meeting binders, if feasible, or shall be provided to the Commission when the item
3 is called, unless otherwise agreed to by the Commission or the executive director.

4 (C) For written comments received less than five days in advance of the meeting, the commenter
5 shall provide 12 copies to Commission staff at the meeting. Commission staff shall provide
6 copies of the comments to the Commission and shall place a copy on a table for public review
7 when the item is called.

8 (2) Oral Comments. Any person present and so desiring shall be given an opportunity to make
9 oral comments on any agenda item, provided, however, that the presiding member may limit or
10 preclude comments as necessary for the orderly conduct of business.

11 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
12 11125.7, 17525 and 17526-17528, Government Code.

13 **§ 1181.11. Permanent Record of Commission Meetings.**

14 (a) The Commission shall keep minutes of its meetings. Minutes shall be approved by the
15 Commission and, upon approval, shall be signed by the chairperson or other person designated
16 by the chairperson. Signed minutes shall be the original evidence of actions taken at any
17 meeting, including the text of any resolutions adopted.

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

22 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section
23 17530, Government Code.

24 **§ 1181.12. Default Rules of Commission Meetings.**

25 In all cases not provided for by Government Code Section 17500 et seq., the Bagley-Keene Open
26 Meeting Act (Government Code Section 11120 et seq.) and the Commission's rules and
27 regulations, the authority shall be Robert's Rules of Order (revised), unless otherwise designated
28 by the Commission at the annual election meeting.

29 Note: Authority cited: Sections 17500, 17527(g) and 17553(a), Government Code. Reference:
30 Sections 11120 et seq. and 17526, Government Code.

31 **§ 1181.13. Commission Meeting by Teleconference.**

32 The Commission may hold an open or closed meeting by teleconference if it is difficult or
33 impossible for the Commission to achieve a quorum. A meeting held by teleconference shall
34 comply with the Bagley-Keene Open Meeting Act.

35 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
36 11123, 17526, 17527(b) and 17527(c), Government Code.

1 **Article 2. Applications for a Finding of Significant Financial Distress**

2 **§ 1182.1. Reduction in Aid Levels; Definitions.**

3 When the county has made a compelling case that basic county services cannot be maintained
4 without a reduction in the level of aid established by Welfare and Institutions Code section
5 17000.5, the Commission shall make a finding of significant financial distress.

6 In making such a finding, the following definitions shall apply:

7 (a) "Application" means a county application filed pursuant to this article requesting the
8 Commission determine that the county has made a compelling case that basic county services
9 cannot be maintained without a reduction in the level of General Assistance aid established by
10 Welfare and Institutions Code section 17000.5, and finding that as a result, the county is in
11 significant financial distress, as defined in Welfare and Institutions Code section 17000.6.

12 (b) "Applicant" means the county that filed the request for a finding of significant financial
13 distress.

14 (c) A "compelling case" sufficient to cause a finding of significant financial distress must be
15 established by clear and convincing evidence.

16 (d) "Basic county services" means those services which are fundamental or essential. The
17 services shall include, but are not limited to, those services required by state or federal law, and
18 may vary from county to county.

19 (e) "Maintained" means the level of service which the county must provide in order to adequately
20 or effectively furnish basic county services.

21 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6(b), Welfare
22 and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

23 **§ 1182.2. Filing of an Application for a Finding of Significant Financial Distress.**

24 (a) Pursuant to Welfare and Institutions Code section 17000.6, in order for the board of
25 supervisors of any county to obtain a finding of significant financial distress, the board of
26 supervisors must submit a written application to the Commission on State Mandates.

27 (b) The applicant shall certify, file, and serve an original application, including supporting
28 documents, with the Commission in accordance with section 1181.3 of these regulations.

29 (c) All applications shall contain at least the following:

30 (1) A table of contents, indicating page numbers.

31 (2) A copy of a resolution from the county board of supervisors stating that compliance with the
32 standards set forth in Welfare and Institutions Code section 17000.5 will result in significant
33 financial distress to the county for a specified period of time, up to 36 months.

34 (3) A written narrative, including a summary, detailing the relevant financial or other budgetary
35 information and documents necessary for a county to make a compelling case that basic county
36 services, including public safety, cannot be maintained without a reduction in the standard of aid
37 as provided in Welfare and Institutions Code section 17000.5. The narrative shall also include:

38 (A) The monthly caseload of General Assistance recipients for each of the 12 months preceding
39 the date the application is filed.

- 1 (B) The current monthly rate of the General Assistance Standard of Aid.
- 2 (C) The proposed reduced rate of the General Assistance Standard of Aid.
- 3 (D) An overview of county finances, including, but not limited to county revenue sources;
4 budget reserve data; budget expenditures; mandated expenditures and maintenance of effort
5 costs.
- 6 (E) A detailed summary of program needs and expenditure flexibility, including, but not limited
7 to department-by-department data on unmet program needs for basic county services.
- 8 (F) The county's total population at the time the application is filed, and the total county
9 population for the two fiscal years prior to the year in which the application was filed.
- 10 (d) The written narrative shall be submitted under penalty of perjury. ~~In addition, the financial~~
11 ~~and other budgetary documents shall be certified under penalty of perjury. If representations of~~
12 fact are made, they shall be supported by documentary or testimonial evidence, submitted in
13 accordance with section 1187.5 of these regulations.
- 14 (e) Each page of the application, including all supporting documentation, shall be consecutively
15 numbered.
- 16 (f) The original application, including all supporting documentation, shall be unbound and
17 single-sided.
- 18 (g) The executive director shall notify an applicant within 10 days of receipt of an application
19 whether its application is incomplete. If the application is incomplete, the executive director may
20 return the application to the county. An application shall be considered incomplete if the
21 elements in subdivisions (b) through (f) of this section have not been satisfied, are illegible or are
22 not included. The requirements for Commission public hearings and decisions, as set forth in
23 Welfare and Institutions Code section 17000.6(c), apply only to complete applications.
- 24 (h) Within 10 days of receipt of a completed application, the executive director shall notify the
25 applicant that the application is complete, and notify the applicant of the schedule. The executive
26 director shall also send the application to interested persons located in the applicant county.
- 27 (i) Prior to filing an application, a county may request a tentative date for conducting the hearing
28 in the county. If a complete application is not received by a specified date, a new tentative
29 hearing date may be set.

30 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6(b), Welfare
31 and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

32 **§ 1182.3. Extension of Period for Preliminary and Final Decision and Current Period of**
33 **Financial Distress.**

- 34 (a) If an application is filed while another county's application is pending, the executive director
35 may extend both the preliminary decision period up to 120 days and the final decision period up
36 to 150 days from the filing date of the application, unless otherwise provided in the current
37 Budget Act. If the preliminary and final decision periods are extended, any current period of
38 significant financial distress of the applicant that has been set, pursuant to Welfare and
39 Institutions Code Section 17000.6(b), shall also be extended for the same period.

1 (b) Within 10 days of receipt of a county's application, the executive director shall provide
2 written notice to the applicant of extensions of the preliminary decision and final decision
3 periods and of any current period of significant financial distress of the applicant.

4 Note: Authority cited: Stats. 1998, c. 324, Item 8885-001-0001, Prov. (2), p. 622 (and subsequent
5 Budget Acts); Section 17527(g), Government Code; and Section 17000.6(b), Welfare and
6 Institutions Code. Reference: Section 17000.6(c), Welfare and Institutions Code.

7 **§ 1182.4. Notice.**

8 (a) Upon receipt of a complete application for a finding of significant financial distress, the
9 Commission shall provide to the applicant a written 30-day notice of the hearing, to be held in
10 the county.

11 (b) The notice shall be publicly posted by the applicant at the county court house and one county
12 welfare office where General Assistance recipients are generally present. The Commission shall
13 publish two notices in a newspaper of general circulation in the county. The first notice shall be
14 published at least 30 days prior to the hearing date. The second notice shall be published at least
15 10 days prior to the hearing date. The cost of publishing the notices shall be paid for by the
16 Commission. Notice shall also be posted on the Commission's website.

17 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6(b), Welfare
18 and Institutions Code. Reference: Section 11125, Government Code; and Section 17000.6(c),
19 Welfare and Institutions Code.

20 **§ 1182.5. Pre-Hearing Conference.**

21 A pre-hearing conference may be scheduled by the executive director for the purpose of
22 identifying issues and determining methods of resolving the issues. The county and other parties
23 known to have an interest in the county's application shall be invited to participate. This
24 conference shall not limit the issues that can be presented to or considered by the Commission at
25 public hearing.

26 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
27 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code; and Section
28 17530, Government Code.

29 **§ 1182.6. Assignment to Hearing Panels/Hearing Officers.**

30 The chairperson may assign an application to a hearing panel consisting of one or more members
31 of the Commission, which shall act on behalf of the Commission, or to a hearing officer for
32 hearing and preparation of a preliminary decision. Assignments by the chairperson of members
33 on the hearing panels shall be rotated among the members with the composition of the members
34 so assigned being varied and changed to assure that there shall never be a fixed and continued
35 composition of members.

36 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
37 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code; and Sections
38 17528 and 17532, Government Code.

1 **§ 1182.7. Request for Supplemental Information.**

2 (a) The executive director may request supplemental information from the applicant to assist the
3 Commission in its review and analysis of the application. The applicant shall provide the
4 supplemental information under the timeline established by the executive director.

5 (b) The supplemental information and any attached financial or other budgetary documents shall
6 be ~~submitted under penalty of perjury~~ certified, filed, and served in accordance with section
7 1181.3 of these regulations. ~~Any attached financial or other budgetary documents shall be~~
8 ~~certified under penalty of perjury.~~ If representations of fact are made, they shall be supported by
9 documentary or testimonial evidence, submitted in accordance with section 1187.5 of these
10 regulations.

11 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
12 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code, and Section
13 17530, Government Code.

14 **§ 1182.8. Review of Completed Application for a Finding of Significant Financial Distress**
15 **and Preparation of Staff Analysis.**

16 (a) Before the hearing is conducted in the applicant county, the executive director shall prepare
17 and distribute a staff analysis of the application, which shall include, but not be limited to, a
18 review of written comments filed by interested persons, and rebuttals filed by the applicant. The
19 staff analysis may also include a review of the applicant's revenue sources, including the
20 applicant's flexibility in directing its resources; review of the applicant's budget expenditures,
21 statutory relief, contingencies, and fund balances; an analysis of the applicant's department-by-
22 department evaluation of unmet need in basic county services; and a preliminary
23 recommendation whether the Commission should approve or deny the application. The staff
24 analysis shall describe the application and assist the Commission in determining whether or not
25 to make a finding of significant financial distress.

26 (b) The executive director shall send the staff analysis out for comment at least 10 days prior to
27 the hearing conducted in the applicant county.

28 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
29 Institutions Code. Reference: Section 17530, Government Code; and Section 17000.6, Welfare
30 and Institutions Code.

31 **§ 1182.9. Written Comments.**

32 The applicant and any interested persons may file written comments concerning the staff analysis
33 with the Commission. Written comments shall be certified, filed, and served with the
34 ~~Commission~~ in accordance with section 1181.3 of these regulations. If representations of fact are
35 made, they shall be supported by documentary or testimonial evidence, submitted in accordance
36 with section 1187.5 of these regulations. The written comments shall be reviewed by
37 Commission staff and may be incorporated into any revised or supplemental staff analysis of the
38 application.

39 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
40 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

1 **§ 1182.10. Conduct of Hearing.**

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

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

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

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

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

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

26 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
27 Institutions Code. Reference: Section 11125.7, Government Code; and Section 17000.6, Welfare
28 and Institutions Code.

29 **§ 1182.11. Representation at Hearing.**

30 (a) The board of supervisors of a county shall designate a county representative.

31 (b) The county representative shall be the lead spokesperson and shall present all matters
32 respecting the interest of the county in the proceeding.

33 (c) Withdrawal of appearance of any representative may be effected by filing a written notice of
34 withdrawal and by serving a copy on the Commission.

35 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
36 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

37 **§ 1182.12. Continuance of Hearings and Further Hearings.**

38 (a) The Commission, hearing panel, or hearing officer may continue a hearing to another time or
39 place.

1 (b) Due to the strict time frames contained in Welfare and Institutions Code section 17000.6(c),
2 continuances will be granted only under compelling and urgent circumstances.

3 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
4 Institutions Code. Reference: Section 11129, Government Code; and Section 17000.6,
5 Welfare and Institutions Code.

6 **§ 1182.13. Preliminary and Final Decisions; Action on Decisions.**

7 (a) Within 60 days after receipt of an application, the executive director shall notify the county of
8 the Commission, hearing panel, or hearing officer's preliminary decision that the county did or
9 did not make a compelling case that it will incur significant financial distress pursuant to Welfare
10 and Institutions Code section 17000.6. If the time period is extended pursuant to section 1182.3
11 of these regulations, notice of the preliminary decision shall be provided within 120 days after
12 receipt of an application, or as otherwise provided by the current Budget Act.

13 (b) If an application is heard by a hearing panel, the panel shall direct staff to prepare the
14 preliminary decision in a form that may be adopted as the final decision by the Commission.
15 When an application is heard by a hearing officer, a preliminary decision shall be presented in a
16 form that may be adopted by the Commission as its final decision on the application. When an
17 application is heard before the Commission itself the Commission shall direct staff to prepare a
18 final decision in accord with the Commission's vote, which will be presented to the Commission
19 for adoption as its final decision.

20 (c) Within 90 days after receipt of an application, the executive director shall give notice to the
21 county of the Commission's final decision that the county did or did not make a compelling case
22 that it will incur significant financial distress pursuant to Welfare and Institutions Code section
23 17000.6. If the time period is extended pursuant to section 1182.3 of these regulations, notice of
24 the final decision shall be provided within 150 days after receipt of an application, or as
25 otherwise provided by the current Budget Act.

26 (d) If the preliminary decision prepared by the hearing panel or hearing officer is not adopted by
27 the Commission as its final decision, the Commission may direct appropriate modification of the
28 preliminary decision and thereafter adopt it as the Commission final decision or decide the
29 application upon the record, with or without taking additional evidence, or may refer the
30 application to a hearing panel or hearing officer to take additional evidence. If the application is
31 so assigned to a hearing panel or hearing officer, the hearing panel or hearing officer shall
32 prepare a preliminary decision, as provided in subdivision (b), which shall be based upon the
33 additional evidence and the transcript and other papers which are a part of the record of the prior
34 hearing.

35 (e) The affirmative vote of at least a majority of the existing membership of the Commission is
36 required for the adoption of a final decision by the Commission. A copy of the final decision
37 shall be filed by the Commission as a public record.

38 (f) A Commission final decision which makes a finding of significant financial distress will be
39 effective for a period not to exceed 36 months. The final decision shall specify whether the
40 effective date of the period of significant financial distress shall commence on the date of the
41 final decision or on a date no more than 60 days from the date of the final decision.

1 Note: Authority cited: Stats. 1998, c. 324, Prov. (2), Item 8885-001-0001, p. 622 (and
2 subsequent Budget Acts); Section 17527(g), Government Code; and Section 17000.6, Welfare
3 and Institutions Code. Reference: Sections 17527(c), 17530 and 17532, Government Code; and
4 Section 17000.6, Welfare and Institutions Code.

5 **§ 1182.14. Form of Decision.**

6 The final decision shall be based on the record, shall be in writing, and shall include a statement
7 of reasons for the decision, findings, and conclusions. A copy of the final decision shall be
8 mailed to or served on the applicant county.

9 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
10 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

11 **§ 1182.15. Reapplications.**

12 (a) A county may file a reapplication for a finding of significant financial distress with the
13 Commission.

14 (b) The application requirements and procedures relating to applications and hearing procedures
15 prescribed in article 2 of these regulations shall also apply to reapplications. The applicant shall
16 also provide the following information in its reapplication:

17 (1) How the applicant utilized the savings in reduction of the General Assistance Standard of Aid
18 realized from the preceding finding of significant financial distress.

19 (2) The difference in the county's total population between the date the preceding application was
20 filed and the date the reapplication is filed.

21 (3) Any staff changes or changes to working conditions, including but not limited to reduced
22 work hours or salary increases or decreases that occurred since the date the preceding application
23 was filed.

24 (4) Any statutes enacted since the date the preceding application was filed that change county
25 revenue sources or expenditures, or impose new mandates upon the county.

26 (5) Tables that include the difference between proposed and approved unmet need in the
27 preceding application, and the proposed unmet need in the reapplication. Tables may also be
28 submitted by a predetermined computer medium.

29 (c) A county filing a reapplication of a previously approved finding of significant financial
30 distress must present a compelling case of significant financial distress continuing since the last
31 approved finding by the Commission.

32 (d) For a previously denied application, a county may file a reapplication when the fiscal
33 situation in the county has changed.

34 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
35 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

36 **§ 1182.16. Withdrawal of Applications.**

37 An application may be withdrawn by written notice any time before a final decision is issued or
38 upon request at the time of hearing. When the Commission receives a notice or request to
39 withdraw, the Commission may issue a decision dismissing the application.

1 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
2 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

3 **Article 3. Test Claims**

4 **§ 1183.1. Test Claim Filing.**

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

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

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

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

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

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

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

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

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

39 (e) ~~The claimant shall file the~~ A test claim, or amendment thereto, and accompanying documents
40 with the Commission shall be certified, filed, and served in accordance with section 1181.3 of

1 these regulations. All representations of fact shall be supported by documentary or testimonial
2 evidence, submitted in accordance with section 1187.5 of these regulations.

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

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

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

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

14 (3) The claimants have designated one ~~contact~~ person to act as the ~~resource~~ sole representative
15 for all claimants for information regarding the test claim.

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

19 Note: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections
20 17521, 17530, 17551, 17553, 17557(e), 17573, 17574, 24000, 24300.5, 26881, 26900, 26970,
21 26972, 34852, 35034, 35035, 37209, 40805.5 and 56723, Government Code.

22 **§ 1183.2. Review of Test Claim.**

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

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

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

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

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

1 ~~(d) The written comments and supporting documentation shall be signed at the end of the~~
2 ~~document by an authorized representative, with the declaration that it is true and complete to the~~
3 ~~best of the representative's personal knowledge or information or belief. The date of signing, the~~
4 ~~representative's title, address, and telephone number shall be included. If the authorized~~
5 ~~representative can be reached via e-mail, the e-mail address shall also be included.~~

6 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
7 17530 and 17553(a), Government Code.

8 **§ 1183.3. Claimant's Rebuttal.**

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

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

14 (1) ~~If new representations of fact are made, they must~~shall be supported by documentary or
15 testimonial evidence, submitted ~~with the rebuttal~~ in accordance with section 1187.5 of these
16 regulations. ~~All documentary evidence shall be in accordance with section 1187.5 of these~~
17 ~~regulations.~~

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

29 ~~(e) The rebuttal shall be signed at the end of the document by the claimant or its authorized~~
30 ~~representative, with the declaration that the rebuttal is true and complete to the best of the~~
31 ~~declarant's personal knowledge or information or belief. The date of signing, and the declarant's~~
32 ~~title, address, and telephone number shall be included. If the declarant can be reached by e-mail,~~
33 ~~the declarant's e-mail address shall also be included.~~

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

36 **§ 1183.4. Claimant's Motion to Consolidate or Sever Test Claims.**

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

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

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

7 Note: Authority cited: Section 17527(g) and 17553(a), Government Code. Reference: Sections
8 17530, 17553 and 17554, Government Code.

9 **§ 1183.5. Executive Director's Authority to Consolidate or Sever Test Claims.**

10 (a) The executive director may consolidate part or all of any test claim with another test claim or
11 sever a test claim, if necessary to ensure the complete, fair, or timely consideration of any test
12 claim.

13 (b) At least 10 days before the action is taken, the executive director shall simultaneously serve
14 on the parties and interested parties on the mailing list described in section 1181.2 of these
15 regulations, and post on the Commission's website, a notice of any proposed action to
16 consolidate or sever.

17 Note: Authority cited: Section 17527(g), 17553 and 17554, Government Code. Reference:
18 Sections 17530, 17553 and 17554, Government Code.

19 **§ 1183.6. Review of Completed Test Claim and Preparation of Proposed Decision.**

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

25 (b) At least eight weeks before the hearing, or at a time required by the executive director or
26 stipulated to by the parties, Commission staff shall prepare a draft proposed decision and
27 distribute it to the parties, interested parties, and those on the mailing list described in section
28 1181.3 of these regulations, and shall post it on the Commission's website.

29 (c) Anyone may file written comments concerning the draft proposed decision. If representations
30 of fact are made, they ~~must~~ shall be supported by documentary or testimonial evidence, submitted
31 ~~with the comments~~ in accordance with section 1187.5 of these regulations. Written comments
32 shall be certified, filed, and served as described in accordance with section 1181.3 of these
33 regulations, by the date determined and publicized by the executive director. 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 for the test
37 claim.

38 (d) It is the Commission's policy to discourage the introduction of late comments, exhibits, or
39 other evidence filed after the three-week comment period described in subdivision (c) of this
40 section. The Commission need not rely on, and staff need not respond to, late comments,

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

3 Note: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections
4 17514, 17530, 17551 and 17553, Government Code.

5 **§ 1183.7. Content of Parameters and Guidelines.**

6 The parameters and guidelines shall describe the claimable reimbursable costs and contain the
7 following information:

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

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

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

15 (d) Reimbursable Activities. A description of the specific costs and types of costs that are
16 reimbursable, including one-time costs and on-going costs, and reasonably necessary activities
17 required to comply with the mandate. "Reasonably necessary activities" are those activities
18 necessary to comply with the statutes, regulations and other executive orders found to impose a
19 state-mandated program. Activities required by statutes, regulations and other executive orders
20 that were not pled in the test claim may only be used to define reasonably necessary activities to
21 the extent that compliance with the approved state-mandated activities would not otherwise be
22 possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All
23 representations of fact to support any proposed reasonably necessary activities shall be supported
24 by documentary evidence submitted in accordance with section 1187.5 of these regulations.

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

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

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

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

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

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

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

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

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

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

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

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

12 **§ 1183.8. Submission and Review of Proposed Parameters and Guidelines; Submission of**
13 **Comments.**

14 (a) Within 30 days of adoption of the decision on a test claim, or the early termination or
15 expiration of a reasonable reimbursement methodology, the successful test claimant shall submit,
16 to the Commission, proposed parameters and guidelines, pursuant to Government Code section
17 17557(a). Proposed parameters and guidelines shall be certified, filed, and served in accordance
18 with section 1181.3 of these regulations. If representations of fact are made, they shall be
19 supported by documentary or testimonial evidence, submitted in accordance with section 1187.5
20 of these regulations.

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

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

28 (d) Commission staff shall notify all recipients that they shall have the opportunity to review and
29 provide written comments concerning the proposed parameters and guidelines within 15 days of
30 service.

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

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

39 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
40 17530, 17553(a), 17557 and 17557.2, Government Code.

1 **§ 1183.9. Expedited Process for Proposed Parameters and Guidelines.**

2 (a) After adoption of a decision on a test claim, but before claimant submits proposed parameters
3 and guidelines, Commission staff may expedite the parameters and guidelines process by
4 preparing and issuing draft expedited parameters and guidelines to assist the claimant. The draft
5 expedited parameters and guidelines shall be served to everyone on the mailing list described in
6 section 1181.4 of these regulations, and shall be posted on the Commission's website.

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

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

18 (c) Within 15 days of service of the comments submitted pursuant to subdivision (b) of this
19 section, parties, interested parties, and interested persons may file and serve rebuttals. Such
20 rebuttals shall be certified, filed, and served in accordance with section 1181.3 of these
21 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 Note: Authority cited: Sections 17517.5, 17527(g), 17530 and 17553(a), Government Code.
24 Reference: Sections 17553(a), 17556(e) and 17557, Government Code.

25 **§ 1183.10. Reasonable Reimbursement Methodology.**

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

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

31 (1) "Costs to implement the mandate in a cost-efficient manner" include only those costs for the
32 activities that were determined to be reimbursable by the Commission in the decision on the test
33 claim, and the costs for the most reasonable methods of complying with the mandate pursuant to
34 section 1183.12(d), of these regulations.

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

38 (c) An interested party may submit cost information or other cost projections that can be the
39 basis of a reasonable reimbursement methodology, and letters in support of a draft reasonable
40 reimbursement methodology submitted pursuant to Government Code section 17557.1. Such
41 information shall be certified, filed and served in accordance with section 1181.3 of these

1 regulations. All representations of fact shall be supported by documentary or testimonial
2 evidence, submitted in accordance with section 1187.5 of these regulations.

3 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
4 17518.5, 17557 and 17557.1, Government Code.

5 **§ 1183.11. Joint Reasonable Reimbursement Methodology and Statewide Estimate of Costs.**

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

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

14 (c) At the request of the test claimant and the Department of Finance, the executive director may
15 provide for up to four extensions of the 180-day period for submittal of the draft reasonable
16 reimbursement methodology and proposed statewide estimate of costs for the initial claiming
17 period and budget year. Any request must be based on good cause as described in section 1187.9
18 and also include an update of all information and filing dates provided in the original written
19 notification submitted pursuant to Government Code section 17557.1(a). If no submittal of a
20 draft and no request for an extension has been made by the filing date specified in the notice of
21 intent to develop a reasonable reimbursement methodology, or if all extensions have been
22 exhausted, the executive director shall issue a letter notifying the test claimant of the duty to
23 submit proposed parameters and guidelines within 30 days under Government Code section
24 17557(a).

25 (d) The test claimant and Department of Finance shall certify, file, and serve any filings made
26 pursuant to Government Code section 17557.1 in accordance with section 1181.3 of these
27 regulations.

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

31 (f) Written comments ~~may be~~ shall be certified, filed, and served in accordance with section
32 1181.3 of these regulations.

33 (g) Within seven days of service of the written comments, the test claimant and Department of
34 Finance may submit written rebuttals which shall be certified, filed, and served in accordance
35 with section 1181.3 of these regulations.

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

40 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
41 17557, 17557.1 and 17557.2, Government Code.

1 **§ 1183.12. Reasonable Reimbursement Methodology, Included in Parameters and**
2 **Guidelines.**

3 (a) If the claimant indicates in the proposed parameters and guidelines or comments that a
4 reasonable reimbursement methodology, as defined in Government Code section 17518.5,
5 should be considered for inclusion in the parameters and guidelines, or if the Department of
6 Finance, Office of the State Controller, any affected state agency, or eligible claimant proposes
7 consideration of a reasonable reimbursement methodology, Commission staff may schedule an
8 informal conference in accordance with section 1187.4 of these regulations to discuss the
9 methodology and plan for submittal of a reasonable reimbursement methodology.

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

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

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

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

26 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
27 17518.5, 17557, 17557.1 and 17557.2, Government Code.

28 **§ 1183.13. Adoption of Parameters and Guidelines.**

29 (a) After review of the test claim decision, claimant's proposed parameters and guidelines or
30 draft expedited parameters and guidelines, written comments, and rebuttals, Commission staff
31 shall prepare a draft proposed decision and parameters and guidelines. Commission staff's
32 recommendation may include a reasonable reimbursement methodology developed pursuant to
33 Government Code section 17518.5.

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

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

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

8 (e) Within 10 days of the adoption of decision and parameters and guidelines, the executive
9 director shall send copies to the Office of the State Controller and to everyone on the mailing list
10 described in section 1181.4 of these regulations, and shall post a copy on the Commission's
11 website.

12 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
13 17518.5, 17530, 17553(a) and 17557, Government Code.

14 **§ 1183.14. Statewide Cost Estimate.**

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

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

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

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

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

31 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
32 17518.5, 17553, 17557(a), 17557.2 and 17600, Government Code.

33 **§ 1183.15. Jointly Proposed Request for Early Termination of Reasonable Reimbursement**
34 **Methodology.**

35 (a) The test claimant and the Department of Finance may file a joint request for early termination
36 of a reasonable reimbursement methodology with the Commission by submitting a request made
37 pursuant to Government Code section 17557.2(e) which shall be certified, filed, and served in
38 accordance with section 1181.3 of these regulations.

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

4 (c) Written comments ~~may be~~ shall be certified, filed, and served in accordance with section
5 1181.3 of these regulations.

6 (d) Within seven days of service of the written comments, the test claimant and Department of
7 Finance may submit written rebuttals which shall be certified, filed, and served in accordance
8 with section 1181.3 of these regulations.

9 (e) At least 10 days prior to the next hearing, Commission staff shall review comments and issue
10 recommendation on whether the Commission should approve the joint request for early
11 termination of a reasonable reimbursement methodology pursuant to Government Code section
12 17557.2(e).

13 (f) If the Commission approves a joint request for early termination, the Commission shall notify
14 the test claimant of the duty to submit proposed parameters and guidelines to the Commission
15 pursuant to Government Code section 17557(a), and section 1183.13 of these regulations.

16 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section
17 17557.2, Government Code.

18 **§ 1183.16. Expiration of Reasonable Reimbursement Methodology.**

19 (a) At least one year before the expiration of a reasonable reimbursement methodology,
20 Commission staff shall notify the test claimant and the Department of Finance, that they may do
21 one of the following within 60 days:

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

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

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

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

38 (c) The test claimant and the Department of Finance may jointly propose amendments to the
39 reasonable reimbursement methodology or the continuation of a reasonable reimbursement
40 methodology by submitting a request made pursuant to Government Code section 17557.2(f),
41 which shall be certified, filed, and served in accordance with section 1181.3 of these regulations.

1 (d) Commission staff shall notify all recipients that they shall have the opportunity to review and
2 provide written comments on the jointly proposed amendments or request for continuation of the
3 reasonable reimbursement methodology within 30 days of service.

4 (e) Written comments shall be certified, filed, and served in accordance with section 1181.3 of
5 these regulations.

6 (f) Within 15 days of service of the written comments prepared by other parties and interested
7 parties, the test claimant and Department of Finance may submit written rebuttals which shall be
8 certified, filed, and served in accordance with section 1181.3 of these regulations.

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

13 (h) Within 10 days of the adoption of the jointly proposed amendments or the continuation of a
14 reasonable reimbursement methodology, the executive director shall send copies to the Office of
15 the State Controller, and to parties and interested parties who are on the mailing list described in
16 section 1181.4 of these regulations.

17 (i) If the test claimant or the Department of Finance fail to respond within 60 days to the notice
18 described in subdivision (a) of this section, Commission staff shall prepare and issue draft
19 expedited parameters and guidelines, pursuant to section 1183.9 of these regulations, within 30
20 days of the parties' failure to respond.

21 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
22 17557, 17557.1 and 17557.2, Government Code.

23 **§ 1183.17. Amendments to Parameters and Guidelines.**

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

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

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

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

35 (3) Include a reasonable reimbursement methodology for all or some of the reimbursable
36 activities in accordance with Government Code section 17518.5. Any request to include a
37 reasonable reimbursement methodology based on, in whole or in part, costs that have been
38 included in claims submitted to the Controller, shall include a statement to this effect on the
39 cover or first page of the request.

40 (4) Clarify reimbursable activities consistent with the original decisions on the test claim and
41 parameters and guidelines.

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

1 evidence, submitted in accordance with section 1187.5 of these regulations. All written
2 comments timely filed shall be reviewed by Commission staff and may be incorporated into the
3 proposed decision and recommendation on the proposed amendment to the parameters and
4 guidelines.

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

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

12 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
13 17518.5, 17530, 17553 and 17557, Government Code.

14 **§ 1183.18. Timelines.**

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

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

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

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

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

35 (5) If the test claimant and the Department of Finance notify the Commission staff in writing of
36 their intent to develop a reasonable reimbursement methodology and statewide estimate of costs
37 for the initial claiming period and budget year for reimbursement pursuant to Government Code
38 section 17557.1, the days following the date of the notification up to the date on which a draft
39 reasonable reimbursement methodology and proposed statewide estimate of costs are developed
40 and submitted to the Commission, shall be tolled and may not be counted toward the date on
41 which a statewide cost estimate must be adopted by the Commission. The days tolled shall not
42 exceed 180 days from the date of the notification.

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

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

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

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

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

16 *PARTY/ACTIVITIES* *DAY NUMBER*

17 TEST CLAIM

18 CLAIMANT files test claim with the commission.	0
19 COMMISSION staff begins counting days on the first day after receipt.	1
20 COMMISSION staff reviews test claim to determine if complete	by 10
21 COMMISSION staff sends test claim to state agencies for review.	by 10
22 COMMISSION staff convenes informal conference with parties, if	
23 necessary.	by 30
24 STATE AGENCIES file comments on test claim.	by 40
25 CLAIMANT submits rebuttal.	by 70
26 COMMISSION staff prepares the draft proposed	
27 decision on the test claim and serves on parties.	by 100
28 PARTIES submit comments on draft proposed decision	
29 on the test claim.	by 130
30 COMMISSION staff completes analysis and issues proposed decision.	
31	by 160
32 COMMISSION hears test claim and adopts decision.	by 180
33 COMMISSION staff issues decision and serves on parties.	by 190
34 COMMISSION staff notifies Legislature of decision	by 210

35 PARAMETERS AND GUIDELINES

36 CLAIMANT submits proposed Parameters and Guidelines.	by 210
37 STATE AGENCIES AND PARTIES may file comments.	by 235
38 CLAIMANT rebuts comments.	by 250
39 COMMISSION staff issues draft proposed decision and	
40 parameters and guidelines and serves on parties.	by 265
41 PARTIES submit comments on draft proposed decision and	
42 parameters and guidelines.	by 275
43 COMMISSION staff issues proposed decision and	

1 parameters and guidelines and serves on parties. by 279
 2 COMMISSION conducts hearing and adopts proposed decision and
 3 parameters and guidelines. by 293
 4 COMMISSION staff issues decision and
 5 parameters and guidelines. by 303

6 STATEWIDE COST ESTIMATE

7 COMMISSION staff prepares draft statewide cost estimate. by 335
 8 ALL PARTIES comment on draft statewide cost estimate. by 345
 9 COMMISSION staff prepares proposed statewide cost estimate. by 350
 10 COMMISSION conducts hearing and adopts statewide cost estimate. by 365
 11 COMMISSION staff reports Statewide Cost Estimate to the Legislature. by 395

12 (2) Timeline for a Test Claim, Reasonable Reimbursement Methodology, and Statewide
 13 Estimate of Costs

14 PARTY/ACTIVITIES DAY NUMBER

15 TEST CLAIM WITH REASONABLE REIMBURSEMENT METHODOLOGY (RRM) AND
 16 STATEWIDE ESTIMATE OF COSTS (SEC)

17 CLAIMANT files test claim with the Commission. 0
 18 COMMISSION staff begins counting days on the first day after receipt. 1
 19 COMMISSION staff reviews test claim to determine if complete. by 10
 20 COMMISSION staff sends test claim to state agencies for review. by 10
 21 COMMISSION staff convenes informal conference with parties,
 22 if necessary. by 30
 23 STATE AGENCIES file comments on test claim. by 40
 24 CLAIMANT submits rebuttal. by 70
 25 COMMISSION staff prepares the draft proposed decision
 26 on the test claim and serves on parties. by 100
 27 PARTIES submit comments on the draft proposed decision
 28 on the test claim. by 130
 29 COMMISSION staff completes analysis and issues proposed
 30 decision. by 160
 31 COMMISSION hears test claim and adopts decision. by 180
 32 COMMISSION staff issues decision and serves on parties. by 190
 33 COMMISSION staff notifies Legislature of decision. by 210

34 REASONABLE REIMBURSEMENT METHODOLOGY (RRM)
 35 AND STATEWIDE ESTIMATE OF COSTS (SEC)

36 CLAIMANT AND DEPARTMENT OF FINANCE
 37 (DOF) notify Commission in writing of their
 38 intent to follow the process in 17557.1 to develop a RRM
 39 and SEC (within 30 days after adoption of test claim decision). by 210
 40 CLAIMANT AND DOF submit plan no later than 6 months after the date of
 41 letter of intent and sixty (60) days before hearing. by 400
 42 COMMISSION staff notifies parties of comment period. by 410
 43 INTERESTED PARTIES submit comments on the draft RRM and SEC. by 425

- 1 CLAIMANT AND DOF submit written rebuttal. by 432
- 2 COMMISSION staff issues submitted comments and staff
- 3 recommendation. by 450
- 4 COMMISSION conducts hearing, approves the draft RRM, and adopts the
- 5 proposed SEC for the initial claiming period and budget year. by 460
- 6 COMMISSION staff submits RRM to the CONTROLLER. by 470
- 7 COMMISSION staff reports SEC to the Legislature. by 490

8 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
 9 17527, 17532, 17553, 17555, 17557(e), 17557.1 and 17557.2, Government Code.

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

11 **§ 1184.1. Review of Office of State Controller's Claiming Instructions.**

- 12 (a) Upon request of a local agency or school district, the Commission shall review claiming
- 13 instructions issued by the Office of State Controller.
- 14 (b) A request to review claiming instructions shall include the following:
- 15 (1) A copy of the disputed claiming instructions.
- 16 (2) If available, correspondence or other documentation that verifies the local agency or school
- 17 district sought to resolve the dispute through the Office of State Controller.
- 18 (3) A narrative that details the suggested changes and the reasons why the local agency or school
- 19 district finds the claiming instructions need to be modified.
- 20 (4) The name, address, telephone number, and e-mail address of the agency contact person.
- 21 (c) An original request to review claiming instructions shall be ~~submitted to the Commission by~~
- 22 ~~the local agency or school district~~ certified, filed, and served in accordance with section 1181.3
- 23 of these regulations. If representations of fact are made, they shall be supported by documentary
- 24 or testimonial evidence, submitted in accordance with section 1187.5 of these regulations.
- 25 (d) Within 10 days of receipt of a request to review claiming instructions, Commission staff shall
- 26 notify the local agency or school district that submitted the request if the submittal is complete or
- 27 incomplete. A request to review the claiming instructions shall be considered incomplete if any
- 28 of the elements required in subdivision (b) or (c) of this section are illegible or not included.
- 29 Incomplete requests shall be returned to the local agency or school district. If a complete request
- 30 is not received by the Commission within 30 days from the date the incomplete request was
- 31 returned, the Commission shall deem the request to be withdrawn.
- 32 (e) Within 10 days of receipt of a complete request to review claiming instructions, Commission
- 33 staff shall send a copy to all persons who are on the mailing list described in section 1181.4 of
- 34 these regulations. Commission staff shall provide notice that written comments concerning the
- 35 request to review claiming instructions may be submitted within 30 days of service of the notice
- 36 of complete filing. A copy of the notice shall also be posted on the Commission's website.
- 37 (f) 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 (g) Within 30 days of service of the written comments, the requester may submit a written
2 rebuttal to the Commission which shall be certified, filed, and served in accordance with section
3 1181.3 of these regulations. If representations of fact are made, they shall be supported by
4 documentary or testimonial evidence, submitted in accordance with section 1187.5 of these
5 regulations.
- 6 (h) Before hearing a request to review claiming instructions, Commission staff shall prepare a
7 draft proposed decision that shall include a review of the request and any comments filed, and a
8 staff recommendation on whether the request should be approved or denied.
- 9 (i) The requester and any state agency or interested party may file written comments on the draft
10 proposed decision. Written comments shall be certified, filed, and served ~~as described in~~
11 accordance with section 1181.3 of these regulations, by the date determined and publicized by
12 the executive director. If representations of fact are made, they ~~must~~shall be supported by
13 documentary or testimonial evidence submitted ~~with the comments~~ in accordance with section
14 1187.5 of these regulations. A three-week period for comments shall be given, subject to the
15 executive director's authority to expedite all matters pursuant to Government Code section
16 17530. All written comments timely filed shall be reviewed by Commission staff and may be
17 incorporated into the proposed decision on the request to review and modify the claiming
18 instructions.
- 19 (j) 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 (i) of this
21 section. The Commission need not rely on, and staff need not respond to, late comments,
22 exhibits, or other evidence submitted in response to a draft proposed decision after the comment
23 period expires.
- 24 (k) The Commission shall conduct a hearing in accordance with article 7 of these regulations on
25 the request to review claiming instructions.
- 26 (l) If the Commission determines that the claiming instructions need to be modified, the
27 Commission shall direct the Office of State Controller to modify the claiming instructions to
28 conform to the parameters and guidelines.
- 29 (m) An approved change to the claiming instructions shall be subject to the following schedule:
- 30 (1) A request for review filed before the deadline for initial claims as specified in the claiming
31 instructions shall apply to all years eligible for reimbursement as defined in the original
32 parameters and guidelines.
- 33 (2) A request for review filed after the initial claiming deadline must be submitted on or before
34 the annual reimbursement claim filing deadline set out in Government Code section 17560
35 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.
- 36 (n) A request to review claiming instructions may be withdrawn by written application to the
37 executive director any time before a decision is adopted or by oral application at the time of
38 hearing. The requesters shall file and serve the written application in accordance with section
39 1181.3 of these regulations. Commission staff shall post a copy of the notice on the
40 Commission's website for 60 days prior to dismissal of the request to review claiming
41 instructions. If no other local agency or school district takes over the request to review claiming
42 instructions by substitution of parties within 60 days of service and posting of the application to
43 withdraw, the executive director shall issue a letter to everyone on the mailing list described in

1 section 1181.4 of these regulations dismissing the request to review claiming instructions and
2 shall post the letter on the Commission's website.

3 Note: Authority cited: Sections 17527(g) and 17527(h), Government Code. Reference: Sections
4 17530, 17560 and 17571, Government Code.

5 **Article 5. Incorrect Reduction Claims**

6 **§ 1185.1. Incorrect Reduction Claim Filing.**

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

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

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

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

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

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

20 (b) If a claimant intends to pursue an incorrect reduction claim on behalf of a class of claimants,
21 it must notify the Commission of its intent to do so at the time it files its incorrect reduction
22 claim and meet the requirements of section 1185.3 of these regulations.

23 (c) All incorrect reduction claims shall be filed with the Commission no later than three years
24 following the date a claimant first receives from the Office of State Controller a final state audit
25 report, letter, or other written notice of adjustment to a reimbursement claim, which complies
26 with Government Code section 17558.5(c) by specifying the claim components adjusted, the
27 amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the
28 claimant, and the reason for the adjustment. The filing shall be returned to the claimant for lack
29 of jurisdiction if this requirement is not met.

30 (d) An incorrect reduction claim shall pertain to alleged incorrect reductions in a reimbursement
31 claim filed by one claimant. The incorrect reduction claim may be for more than one fiscal year.

32 (e) All incorrect reduction claims, or amendments thereto, shall be filed on a form provided by
33 the Commission.

34 (f) All incorrect reduction claims, or amendments thereto, shall contain at least the following
35 elements and documents:

36 (1) A copy of the Office of State Controller's claiming instructions that were in effect during the
37 fiscal years of the reimbursement claims.

38 (2) A written detailed narrative that describes the alleged incorrect reductions. The narrative shall
39 include a comprehensive description of the reduced or disallowed areas of costs.

1 (3) All representations of fact shall be supported by testimonial or documentary evidence, ~~and~~
2 ~~shall be submitted with the claim~~ in accordance with section 1187.5 of these regulations.

3 (4) A copy of any final state audit report, letter, or other written notice of adjustment from the
4 Office of State Controller that explains the claim components adjusted, amounts reduced, and the
5 reasons for the reduction or disallowance.

6 (5) A copy of the subject reimbursement claims the claimant submitted to the Office of State
7 Controller.

8 (g) An incorrect reduction claim, or amendment thereto, shall be certified, filed, and served in
9 accordance with section 1181.3 of these regulations~~shall be signed at the end of the document,~~
10 ~~under penalty of perjury by the claimant or its authorized representative, with the declaration that~~
11 ~~the incorrect reduction claim is true and complete to the best of the declarant's personal~~
12 ~~knowledge or information or belief. The date signed, the declarant's title, address, telephone~~
13 ~~number, and e-mail address shall be included.~~

14 (h) The claimant shall file the original incorrect reduction claim, or amendment thereto, and
15 accompanying documents with the Commission in accordance with section 1181.3 of these
16 regulations.

17 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
18 17530, 17551(d), 17553(d), 17558.5(c) and 17558.7(a), Government Code.

19 **§ 1185.2. Review of Incorrect Reduction Claims.**

20 (a) Within 10 days of receipt of an incorrect reduction claim, Commission staff shall notify the
21 claimant if the incorrect reduction claim is complete or incomplete. Incorrect reduction claims
22 will be considered incomplete if any of the elements in section 1185.1(a) and (b) and (d) through
23 (h) are illegible or not included or if the requirements of those subdivisions are not met.
24 Incomplete incorrect reduction claims shall be returned to the claimant. If a complete incorrect
25 reduction claim is not received by the Commission within 30 days from the date the incomplete
26 claim was returned to the claimant, the executive director shall deem the filing to be withdrawn.

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

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

33 (d) Commission staff shall notify the Office of State Controller that written comments and
34 supporting documentation in connection with an incorrect reduction claim shall be filed no more
35 than 90 days from the date the copy of the claim is provided to the Office of State Controller.
36 Written comments and supporting documentation ~~may~~shall be certified, filed, and served in
37 accordance with section 1181.3 of these regulations. ~~If the written comments make~~
38 ~~representations of fact are made, they~~ representations shall be supported by documentary or
39 testimonial evidence ~~and shall be submitted with the comments~~ in accordance with section
40 1187.5 of these regulations.

41 (e) The claimant and interested parties may submit written rebuttals to the Office of State
42 Controller's comments within 30 days of service of the Office of State Controller's comments.

1 Written rebuttals and supporting documentation shall be certified, filed, and served pursuant to
2 accordance with section 1181.3. ~~If the written rebuttal involves representations of fact are made,~~
3 ~~they representations~~ shall be supported by documentary or testimonial evidence ~~and shall be~~
4 ~~submitted with the rebuttal~~ in accordance with section 1187.5 of these regulations.

5 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
6 17551(d), 17553(d), 17558.5(c) and 17558.7(a), Government Code.

7 **§ 1185.3. Consolidation of Claims Initiated by an Individual Claimant.**

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

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

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

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

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

20 (b) A claimant that seeks to file a consolidated incorrect reduction claim shall notify the
21 Commission of its intent at the time of filing on a form provided by the Commission. The
22 consolidated incorrect reduction claim shall be filed in accordance with section 1185.1 of these
23 regulations and contain a narrative that explains the elements in subdivision (a) of this section.
24 All representations of fact shall be supported by documentary or testimonial evidence, submitted
25 in accordance with section 1187.5 of these regulations.

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

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

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

40 (f) Upon receipt of the list from the Office of the State Controller, the Commission shall notify
41 the list of other claimants experiencing similar reductions by the Controller under the same

1 mandate and other interested parties of the original claimant's intent to consolidate an incorrect
2 reduction claim.

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

5 **§ 1185.4. Joining a Consolidated Incorrect Reduction Claim.**

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

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

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

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

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

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

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

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

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

1 **§ 1185.5. Opting Out of a Consolidated Incorrect Reduction Claim.**

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

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

8 (b) No later than one year after opting out, or within the period of limitation under section
9 1185.1(c), whichever is later, a claimant that opts out of a consolidated claim shall file an
10 individual incorrect reduction claim in accordance with section 1185.1 of these regulations in
11 order to preserve its right to challenge a reduction made by the Controller on that same mandate.

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

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

17 **§ 1185.6. Executive Director's Authority to Consolidate or Sever Incorrect Reduction**
18 **Claims.**

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

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

25 (b) During the 30-day notice period, a claimant may serve and file a written request that an
26 individual incorrect reduction claim be severed from a proposed consolidation. Timely requests
27 to sever shall be approved by the executive director.

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

29 Note: Authority cited: Sections 17527(g), 17553(a) and 17558.8(b), Government Code.
30 Reference: Sections 17530, 17554 and 17558.8, Government Code.

31 **§ 1185.7. Review of Completed Incorrect Reduction Claims and Preparation of Proposed**
32 **Decision.**

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

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

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

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

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

20 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
21 17530 and 17551(d), Government Code.

22 **§ 1185.8. Withdrawal of Incorrect Reduction Claims.**

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

27 (b) An incorrect reduction claim, by the original claimant in a consolidated incorrect reduction
28 claim, may be withdrawn by written application any time before a decision is adopted or by oral
29 application at the time of hearing. The original claimant shall certify, file, and serve the written
30 application in accordance with section 1181.3 of these regulations and Commission staff shall
31 post a copy of the notice on the Commission's website for 60 days prior to dismissal of the
32 incorrect reduction claim. If one of the joint claimants takes over the claim, it shall, within 60
33 days of providing notice of its intent to take over the claim, perfect the filing by submitting the
34 written narrative as required by section 1185.1. If none of the joint claimants takes over the claim
35 by substitution of parties within 60 days of service and posting of the application to withdraw,
36 the executive director shall issue a letter to everyone on the mailing list described in section
37 1181.4 of these regulations dismissing the claim and providing the joint claimants with an
38 opportunity to perfect their individual claims within 60 days of service by submitting the written
39 narrative as required by section 1185.1. The letter shall be posted on the Commission's website.

40 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section
41 17551(d), Government Code.

1 **§ 1185.9. Reinstatement of Costs.**

2 If the Commission determines that a reimbursement claim was incorrectly reduced, the
3 Commission shall send the decision to the Office of State Controller and request that the Office
4 of State Controller reinstate the costs that were incorrectly reduced.

5 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section
6 17551(d), Government Code.

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

8 **§ 1186.1. Definitions: State Mandates Apportionment System.**

9 (a) Request for Inclusion. A Request for Inclusion is a factual statement about a mandated cost
10 program and a petition for a review of the described program by the Commission on State
11 Mandates. The review is intended to result in a decision whether or not to include the program in
12 the State Mandates Apportionment System.

13 (b) Stable costs. Stable costs are those costs incurred by local agencies or school districts as a
14 result of implementing a mandated cost program which, when reviewed on a statewide basis over
15 a three-year period, have not fluctuated significantly.

16 (c) Request for Removal. A Request for Removal is a factual statement about significant
17 modifications or amendments to a program which is part of the State Mandates Apportionment
18 System. The statement is intended to result in the discontinuance of the program in the State
19 Mandates Apportionment System.

20 Note: Authority cited: Sections 17527(g) and 17615, Government Code. Reference: Sections
21 17615 and 17615.1, Government Code.

22 **§ 1186.2. Request for Inclusion.**

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

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

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

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

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

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

36 (d) The Commission shall consider the recommendation submitted from the Controller for each
37 new mandate submitted for inclusion in the State Mandates Apportionment System in
38 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 **§ 1186.3. Adoption of Finding for Request for Inclusion.**

11 (a) The Commission, after reviewing the request for inclusion and conducting at least one
12 hearing in accordance with article 7 of these regulations, shall adopt a finding that the mandated
13 program will or will not be included in the State Mandates Apportionment System.

14 (b) The primary criteria to be used by the Commission in making a determination will include a
15 review of the mandated program to determine if the program has a history of stable costs for
16 most claimants, if the mandated program has been recently modified, and if inclusion would
17 accurately reflect the costs of the state mandated program.

18 (c) Upon adoption of a finding that a mandated program should be included in the State
19 Mandates Apportionment System, the Commission shall direct the Controller to include the
20 program in the system.

21 Note: Authority cited: Sections 17527(g) and 17615.1, Government Code. Reference: Sections
22 17615.1 and 17615.4, Government Code.

23 **§ 1186.4. Request for Removal.**

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

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

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

32 (1) The chapter number or executive order of the law which established the mandated cost
33 program.

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

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

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

3 (d) Requests for Removal will be considered incomplete if any of the preceding elements or
4 documents required in subdivision (c) of this section are illegible or not included. Incomplete
5 Requests for Removal shall be returned to the requester for completion.

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

10 Note: Authority cited: Sections 17527(g) and 17615.7, Government Code. Reference: Section
11 17615.7, Government Code.

12 **§ 1186.5. Adoption of Finding for Request for Removal.**

13 (a) The Commission, after reviewing the request for removal and conducting at least one hearing
14 in accordance in article 7 of these regulations, shall adopt a finding that the mandated program
15 will or will not continue to be included in the State Mandates Apportionment System.

16 (b) The primary criteria to be used by the Commission in making a determination regarding
17 removal will include whether the mandated program was significantly modified or amended by
18 the Legislature or by executive order so as to affect the ongoing costs of the program in a way
19 that the historical costs of the program are no longer an accurate reflection of continuing costs.

20 (c) Upon adoption of a finding that a mandated program should be removed from the system, the
21 Commission shall direct the Controller to remove the program from the system. In that direction
22 to the Controller, the Commission shall specify if the program will be removed temporarily or
23 for an indefinite period of time.

24 Note: Authority cited: Sections 17527(g) and 17615.5, Government Code. Reference: Sections
25 17615.5 and 17615.7, Government Code.

26 **§ 1186.6. Reviewing an Apportionment or Base Year Entitlement.**

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

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

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

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

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

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

38 (4) Cost information that outlines the amount of the funding for the total apportionment and the
39 calculations necessary to show that the program needing modification either under or over

1 reimburse the local agency or school district's actual costs by 20 percent or by \$1,000, whichever
2 is less.

3 Note: Authority cited: Sections 17527(g) and 17615.8(a), Government Code. Reference: Section
4 17615.8, Government Code.

5 **§ 1186.7. Adjustment to Apportionment.**

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

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

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

20 Note: Authority cited: Sections 17527(g) and 17615.8(a), Government Code. Reference: Section
21 17615.8, Government Code

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

23 **§ 1187.1. Scheduling and Noticing the Hearing.**

24 (a) A "matter," subject to hearings and decisions under article 7 of these regulations, shall
25 include test claims, proposed parameters and guidelines, requests to amend parameters and
26 guidelines, incorrect reduction claims, requests for inclusion or removal from the State Mandates
27 Apportionment System, requests for review of apportionment or base year entitlement for
28 programs included in the State Mandates Apportionment System, requests for review of the
29 Office of State Controller's claiming instructions, and requests for mandate redetermination.

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

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

37 **§ 1187.2. Assignment to Hearing Panels/Hearing Officers.**

38 (a) After an informational hearing, in accordance with Article 8 of these regulations, the
39 Commission's chairperson may assign a matter before the Commission to a hearing panel

1 consisting of one or more members or to a hearing officer for hearing and preparation of a
2 proposed decision that may be adopted as the decision in the case.

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

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

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

10 **§ 1187.3. Objection to Hearing Panel, Hearing Officer, or Commission Member.**

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

13 (b) Any party may request the disqualification of any hearing officer or Commission member
14 before the taking of evidence at a hearing by filing an affidavit stating with particularity the
15 grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the
16 request concerns a Commission member, the issue shall be determined by the other members of
17 the Commission. Where the request concerns the hearing officer, the issue shall be determined
18 by the Commission itself, if the Commission itself hears the case with the hearing officer;
19 otherwise the issue shall be determined by the hearing officer.

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

22 **§ 1187.4. Informal Conference.**

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

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

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

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

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

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

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

- 1 (5) Identify issues and determine methods of resolving those issues.
- 2 (d) Any party may notify the executive director of any interested parties who should be invited to
3 attend an informal conference.
- 4 (e) Anything said, any document disclosed, and any new representations of fact made during an
5 informal conference shall not be made part of the administrative record of a test claim unless
6 properly admitted into the record through the submission of an amendment to a test claim,
7 written comment, rebuttal, or public testimony.
- 8 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
9 17518.5, 17530, 17551, 17553(a) and 17557.1, Government Code.

10 **§ 1187.5. Evidence Submitted to the Commission.**

- 11 (a) The hearings will not be conducted according to technical rules relating to evidence and
12 witnesses. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on
13 which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and
14 unduly repetitious evidence shall be excluded. Hearsay evidence may be used for the purpose of
15 supplementing or explaining other evidence but shall not be sufficient in itself to support a
16 finding unless it would be admissible over objection in civil actions.
- 17 (b) Oral or written representations of fact offered by any person at an article 7 hearing shall be
18 under oath or affirmation. All written representations of fact submitted to the Commission must
19 be signed under penalty of perjury by persons who are authorized and competent to do so and
20 must be based upon the declarant's personal knowledge, ~~or~~ information, or belief.
- 21 (c) Official notice may be taken in the manner and of the information described in Government
22 Code Section 11515.
- 23 (d) Each party shall have the right to present witnesses, introduce exhibits, and propose to the
24 chairperson questions for opposing witnesses. Evidence may be submitted to support or rebut
25 any issue. If declarations are to be used in lieu of testimony, the party proposing to use the
26 declaration shall comply with Government Code Section 11514.
- 27 Note: Authority cited: Sections 17527(e), 17527(g), 17553, 17557, 17610, 17621 and 17622,
28 Government Code. Reference: Sections 11514, 11515, 17527(e), 17551, 17553, and 17557,
29 17559, and 17570, Government Code.

30 **§ 1187.6. Conduct of Hearing.**

- 31 (a) Each party shall have the right to present witnesses, to introduce exhibits, and to propose to
32 the chairperson questions for opposing witnesses in support or rebuttal of any matter relevant to
33 the issues even though that matter was not covered in the direct examination.
- 34 (b) The presiding member, Commission members, hearing panel member or hearing officer may
35 question any party or witness and may admit any relevant and material evidence.
- 36 (c) The taking of evidence in a hearing shall be controlled by the Commission or hearing officer
37 in the manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to
38 taking evidence, the issues and the order of presenting evidence will be explained.
- 39 (d) The hearing will ordinarily proceed in the following manner. Staff of the Commission will
40 summarize the matter. The claimant will state its position and present its evidence. The

1 Department of Finance or other affected state agency will thereafter state its position and present
2 its evidence. The claimant will then be given an opportunity to reply.

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

6 (f) The Commission or the executive director may require that prepared written testimony or
7 other evidence be submitted in advance of any hearing, for the purpose of facilitating the orderly
8 consideration of issues at the hearing.

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

13 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
14 17527(c), 17532, 17551 and 17553(a), Government Code.

15 **§ 1187.7. Witnesses and Subpoenas.**

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

17 (b) A subpoena may be issued upon a majority vote of the Commission. A party requesting a
18 subpoena shall submit a written application to the Commission at least six weeks prior to the
19 Commission meeting at which the request will be considered.

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

28 (d) An application for subpoena duces tecum for the production by a witness of books, papers,
29 correspondence, memoranda, or other records, including records of the claimant, shall be made
30 by affidavit and shall give the name and address of the person to be subpoenaed, shall describe
31 the matters or things desired to be produced, shall set forth in detail the relevance to the issues
32 involved in the claim, shall specify the date on which the matters shall be produced, and that, to
33 the best of the applicant's personal knowledge, ~~or~~ information, or belief, the witness has the
34 matters or things in his or her possession or under his or her control and that none of the matters
35 or things desired to be produced are public records accessible to the public pursuant to Section
36 6250 et seq., of the Government Code. If the applicant is unable to obtain the name of the person
37 who has possession or control of the matters or things desired to be produced, the name of the
38 director or superintendent or custodian of records of the state or local agency or school district
39 may be used for the application.

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

1 (f) Before service, all appropriate portions of the blank subpoena or subpoena duces tecum shall
2 be completed by the requesting party, and the name, address, and telephone number of the
3 requesting party shall be included on the form. Service of subpoenas and subpoenas duces tecum
4 shall be made with a copy of the affidavit and shall be arranged for by requesting parties.

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

8 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
9 17527(d), 17551 and 17553(a), Government Code.

10 **§ 1187.8. Representation at Hearing.**

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

15 (b) A representative of a party shall be deemed to control all matters respecting the interest of
16 that party in the proceeding. All correspondence and communications shall be forwarded to the
17 authorized representative.

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

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

24 **§ 1187.9. Extensions of Time to File Comments or Rebuttals and Postponements and**
25 **Continuances of Hearings.**

26 (a) Requests for Extensions of Time

27 Any party or interested party to a matter may request an extension of time by filing a request
28 with the executive director before the date set for filing of comments or rebuttals with
29 Commission staff on that matter. The request shall fully explain the reasons for the extension,
30 propose a new date for filing, and be simultaneously certified, filed, and served in accordance
31 with section 1181.3 of these regulations. If representations of fact are made, they shall be
32 supported by documentary or testimonial evidence, submitted in accordance with section 1187.5
33 of these regulations. So long as a postponement of a hearing would not be required, there is no
34 prejudice to any party or interested party, and there is no other good reason for denial, the
35 request shall be approved. A party to a matter may request an extension of time that would
36 necessitate rescheduling a hearing, but shall also include a request for postponement of the
37 hearing, pursuant to section 1187.9(b). Within two business days of receipt of the request, the
38 executive director shall determine whether the extension will be granted and notify all persons on
39 the mailing list prepared pursuant to section 1181.4 of these regulations.

40 (b) Requests for Postponement of Hearing

1 A party to an article 7 matter may request a postponement of a hearing on that matter, until the
2 next regularly scheduled hearing. Although postponements of hearings are disfavored, each
3 request for a postponement must be considered on its own merits. The request shall fully explain
4 the reasons for the postponement, and be certified, filed, and served in accordance with section
5 1181.3 of these regulations. If representations of fact are made, they shall be supported by
6 documentary or testimonial evidence, submitted in accordance with section 1187.5 of these
7 regulations. Within two business days of receipt of the request, the executive director shall
8 determine whether the postponement will be granted and notify all persons on the mailing list
9 prepared pursuant to section 1181.4 of these regulations. The executive director may postpone
10 the matter only on an affirmative showing of good cause.

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

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

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

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

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

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

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

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

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

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

28 (A) The proximity of the hearing date;

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

31 (C) The length of the postponement requested;

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

34 (E) The prejudice that parties or witnesses will suffer as a result of the postponement;

35 (F) If the matter was granted expedited scheduling, the reasons for that status and whether the
36 need for a postponement outweighs the need to avoid delay;

37 (G) The Commission's backlog of matters and the impact of granting a postponement on other
38 pending matters;

- 1 (H) Whether the claimant or requester representative is engaged in a trial or other hearing that
2 conflicts with the Commission hearing;
- 3 (I) Whether, pursuant to Government Code 17554, all parties have stipulated to a postponement;
4 and
- 5 (J) Whether the interests of justice are best served by a postponement, by moving forward with
6 the hearing on the matter, or by imposing conditions on the postponement.

7 (3) Approval of Requests for Postponement

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

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

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

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

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

20 (c) Continuance of a Hearing

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

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

33 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
34 17527, 17551 and 17553(a), Government Code; and California Rules of Court, Rule 3.1332.

35 **§ 1187.10. Decision; Action on Proposed Decision.**

36 (a) The Commission shall adopt a decision for all matters subject to hearings and decisions under
37 article 7 of these regulations.

38 (b) If a matter is heard before the Commission itself, the Commission may adopt the proposed
39 decision on the same day as the hearing.

1 (c) If a matter is heard by a hearing panel or a hearing officer alone, the panel or hearing officer
2 shall prepare a proposed decision that may be adopted as the decision of the Commission at the
3 next Commission meeting.

4 (d) A copy of the proposed decision shall be filed by Commission staff as a public record and a
5 copy of the proposed decision shall be served by Commission staff on each party. The
6 Commission itself may adopt the proposed decision or decide the case itself, provided that the
7 Commission itself shall decide no matters provided for in this subdivision without affording the
8 parties the opportunity to present either oral or written argument before the Commission.

9 (e) If the proposed decision of Commission staff is not adopted by the Commission, as provided
10 in subsections (b) or (c), the Commission shall direct appropriate modification of the proposed
11 decision and thereafter adopt it as the Commission's decision.

12 (f) Except as provided for in subdivision (b), the proposed decision shall be prepared within a
13 reasonable time following submission of the matter to the hearing officer or panel, and within a
14 reasonable time after the evidentiary hearing. It shall be served on the parties promptly
15 thereafter.

16 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
17 17532, 17551 and 17553(a), Government Code.

18 **§ 1187.11. Form of Decision.**

19 (a) Any decision adopted pursuant to evidence introduced at an adjudicatory hearing shall be in
20 writing, be based on the record, and shall include a statement of reasons for the decision,
21 findings and conclusions. A copy of the decision shall be served on those identified on the
22 mailing list established pursuant to section 1181.4 of these regulations. The effective date of the
23 decision is the date it is first mailed or served.

24 (b) After a decision has been adopted and served, it shall not be changed except to correct
25 clerical errors, in which case a corrected decision shall be prepared and served on all persons on
26 the mailing list prepared pursuant to section 1181.4 of these regulations.

27 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code; and *Topanga*
28 *Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. Reference:
29 Sections 17551 and 17553(a), Government Code.

30 **§ 1187.12. Withdrawal of a Matter.**

31 A matter, or any portion of a matter, other than a test claim, may be withdrawn by written
32 application of the claimant or requester any time before a decision is adopted, or by oral
33 application at the time of hearing. A test claim, or portion thereof, may be withdrawn by the
34 claimant upon written application to the executive director any time before a decision is adopted
35 or after enactment of a legislatively determined mandate on the same statute or executive order
36 pursuant to Government Code section 17574. The claimant or requester shall certify, file, and
37 serve the written application in accordance with section 1181.3 of these regulations. Dismissal of
38 items withdrawn pursuant to this section shall be in accordance with the procedures described in
39 section 1187.15 of these regulations.

40 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
41 17551 and 17553, Government Code.

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 does not respond, within 60 days of service, to a written notification sent to the
4 superintendent of the school district or chief administrative officer of the local agency or director
5 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 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;

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

17 (C) Delays or postponements, made at the request of the claimant or requesting party, pending
18 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 1187.12 or
23 deemed abandoned in accordance with section 1187.13, may be dismissed by the executive
24 director. Commission staff shall provide written notice of dismissal to everyone on the mailing
25 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 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 written comments on the proposed dismissal of the test claim. A copy of
36 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 (c) The hearing on a dismissal of a matter shall be conducted in accordance with article 7 of
5 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.**

9 (a) Notwithstanding section 1187.11(b) of these regulations, the Commission may make
10 substantive changes to an adopted decision under this section or order a reconsideration of all or
11 part of a matter on petition of any party. The power to order a reconsideration or amend a test
12 claim decision shall expire 30 days after the adopted decision is delivered or mailed to the
13 claimant. If additional time is needed to evaluate a petition for reconsideration filed before the
14 expiration of the 30-day period, the Commission may grant a stay of that expiration for no more
15 than 30 days, solely for the purpose of considering the petition. A request for reconsideration
16 shall be deemed automatically stayed for the 30-day period. If no action is taken on a petition
17 within the time allowed for ordering reconsideration, the petition shall be deemed denied.

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

21 (c) All requests for reconsideration shall be certified, filed, and served ~~submitted to the~~
22 ~~Commission~~ in accordance with section 1181.3 of these regulations and shall contain the
23 following:

24 (1) The name and address of the requesting party;

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

26 (3) A detailed statement of the reasons for the request, including:

27 (A) An explanation of the reasons for the request for reconsideration; and,

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

29 (4) A description of the proposed change; and ;

30 (5) 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.

32 (d) Commission member requests may be made orally during a regularly scheduled Commission
33 meeting. Commission staff shall prepare the written request, as specified in subsections (c)(1-4)
34 above.

35 (e) Any signatory to a written agreement that settles a matter may not request reconsideration of
36 that matter if the matter is settled with prejudice.

37 (f) Before the Commission considers the request for reconsideration, Commission staff shall
38 prepare a written analysis regarding whether the adopted decision is contrary to law which shall
39 include but not be limited to a review of the written comments filed by other state agencies,

1 interested parties, and the requester. Commission staff shall make a recommendation in the
2 analysis on whether the request for reconsideration should be granted. The Commission shall
3 consider the request for reconsideration at a scheduled meeting. Five affirmative votes shall be
4 required to grant the request for reconsideration.

5 (g) If the Commission grants the request for reconsideration, a hearing shall be conducted to
6 determine if the adopted decision in question must be revised to correct an error of law.

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

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

14 (B) Written comments may be filed with Commission staff concerning the draft proposed
15 decision. All representations of fact shall be supported by documentary or testimonial evidence,
16 submitted in accordance with section 1187.5 of these regulations. Written comments shall be
17 certified, filed, and served in accordance with section 1181.3 of these regulations. A three-week
18 period for comments shall be given, subject to the executive director's authority to expedite all
19 matters pursuant to Government Code section 17530. All written comments timely filed shall be
20 reviewed by Commission staff and may be incorporated into the proposed decision regarding
21 whether the adopted decision is contrary to law and presented to the Commission before the
22 scheduled meeting.

23 (2) The procedures set forth in article 7 shall govern the Commission's hearings and decisions
24 process, except that five affirmative votes shall be required to change an adopted decision.

25 (h) If the Commission changes an adopted decision, the procedures set forth in Sections 1183.7
26 through 1183.14 of these regulations shall govern the adoption of parameters and guidelines and
27 the statewide cost estimate, if applicable.

28 (i) Failure to seek Commission reconsideration of an adopted decision shall not affect a
29 claimant's or state agency's right to seek judicial review pursuant to Government Code section
30 17559(b).

31 (j) This section only applies to reconsiderations requested pursuant to Government Code section
32 17759(a); it does not apply to remands or reconsiderations directed by the courts or by statute.

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

35 **Article 8. Rulemaking and Informational Hearings**

36 **§ 1188.1. Scheduling and Noticing of an Informational Hearing**

37 (a) The Commission may, upon its own motion, set an informational hearing on any subject
38 within its jurisdiction. Matters subject to informational hearings under article 8 of these
39 regulations include: a proposed assignment of an article 7 matter to a hearing officer, a
40 rulemaking proceeding, the adoption of a statewide cost estimate, and any other subject that

1 meets the definition of "informational hearing" in section 1181.2 of these regulations and is not
2 subject to hearings under article 7 of these regulations.

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

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

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

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

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

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

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

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

19 Note: Authority cited: Sections 17527(c) and 17527(g), Government Code. Reference: Sections
20 11125, 17527(c) and 17532, Government Code.

21 **§ 1188.2. Rulemaking.**

22 (a) Petitions:

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

25 (A) The name, address, and telephone number of the petitioner;

26 (B) The substance or nature of the regulation, amendment, or repeal requested;

27 (C) The reasons for the request; and

28 (D) Reference to the authority of the Commission to take the action requested.

29 (2) The petition shall be filed with the executive director who shall, within seven days after its
30 filing, determine whether the petition contains the information specified in subsection (1).

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

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

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

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

5 (c) Notice.

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

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

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

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

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

21 Note: Authority cited: Section 17527(g), Government Code. Reference: Sections 11340.6,
22 11346.2, 11346.4, 11346.8, 11346.9, 17527(c), 17527(g), 17530, 11346.4 and 17551,
23 Government Code.

24 **Article 10. Mandate Redetermination Process**

25 **§ 1190.1. Filing a Request to Adopt a New Test Claim Decision.**

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

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

40 (c) The detailed analysis of how and why the state's liability for mandate reimbursement has
41 been modified pursuant to article XIII B, section 6(a) of the California Constitution based on a

1 "subsequent change in law" as defined by Government Code section 17570 requires more than a
2 written narrative or simple statement of the facts and law. It requires the application of the law
3 (Gov. Code § 17570 (a) and (b)) to the facts (i.e. the alleged subsequent change in law)
4 discussing, for each activity addressed in the prior test claim decision, how and why the state's
5 liability for that activity has been modified. Specific references shall be made to statutes and
6 chapters, articles, sections, and page numbers that are alleged to impose or not impose a
7 reimbursable state-mandated program.

8 (d) ~~The requester shall file a~~A request for mandate redetermination and accompanying
9 documents ~~with the Commission~~shall be certified, filed, and served in accordance with section
10 1181.3 of these regulations.

11 (e) Within 10 days of receipt of a request for mandate redetermination, Commission staff shall
12 notify the requester if the request is complete or incomplete and refer the requester to these
13 regulations. Requests for mandate redetermination shall be considered incomplete if any of the
14 elements required in subdivisions (b), (c), or (d) of this section are illegible or are not included. If
15 a complete request for mandate redetermination is not received within 30 calendar days from the
16 date the incomplete request was returned, the executive director shall disallow the original
17 request filing date. New requests for mandate redetermination may be accepted on the same
18 subsequent change in law alleged to modify the state's liability pursuant to article XIII B, section
19 6(a) of the California Constitution.

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

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

25 (h) Any request for mandate redetermination that fails to allege a "subsequent change in law," as
26 defined by Government Code section 17570, shall be returned by the executive director with a
27 written notice stating the reason that the request is being returned. These filings may include, but
28 are not limited to, requests that meet the requirements for a proposed parameters and guidelines
29 amendment or a new test claim filing.

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

32 **§ 1190.2. Review and Response.**

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

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

38 (2) Written comments concerning the request for mandate redetermination may be filed within
39 30 days and evidence may also be presented at the hearing on the request for mandate
40 redetermination.

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

1 (1) If representations of fact are made, they must be supported by documentary or testimonial
2 evidence, ~~which shall be submitted in accordance with section 1187.5 of these regulations with~~
3 ~~the response. All documentary evidence shall be authenticated by declarations under penalty of~~
4 ~~perjury signed by persons who are authorized and competent to do so and must be based on the~~
5 ~~declarant's personal knowledge or information or belief.~~

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

15 ~~(e) The written comments and supporting documentation shall be signed at the end of the~~
16 ~~document, under penalty of perjury by an authorized representative, with the declaration that it is~~
17 ~~true and complete to the best of the representative's personal knowledge or information or belief.~~
18 ~~The date of signing, the representative's title, address, telephone number, and e-mail address~~
19 ~~shall be included.~~

20 ~~(dc) Filing. Written comments and supporting documentation concerning a request for mandate~~
21 ~~redetermination shall be certified, filed, and served in accordance with Section 1181.3 of these~~
22 ~~regulations. Any representations of fact shall be supported by documentary evidence, submitted~~
23 ~~with the comments, in accordance with section 1187.5 of these regulations.~~

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

26 **§ 1190.3. Rebuttal.**

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

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

32 (1) If ~~new~~ representations of fact are made, they must be supported by documentary or
33 testimonial evidence, ~~which shall be submitted with the rebuttal~~ in accordance with section
34 1187.5 of these regulations.

35 (2) A copy of relevant portions of state constitutional provisions, federal statutes, and executive
36 orders, and a copy of administrative decisions and court decisions that are cited in the rebuttal,
37 unless the authorities are also cited in the request to adopt a new test claim decision or any
38 response thereto. The specific statutes and chapters, articles, sections, and page numbers shall be
39 identified. Published court decisions arising from state mandate determinations by the Board of
40 Control and the Commission, article XIII B, section 6 of the California Constitution, and
41 Government Code sections 17500 et seq., are exempt from the requirements of this subsection.

1 When an omnibus bill is relevant to the rebuttal, only the relevant pages of the statute, including
2 the Legislative Counsel's Digest and the specific statutory changes at issue shall be filed.

3 (c) The rebuttal to a comment concerning a request for mandate redetermination shall be
4 certified, filed, ~~with Commission staff~~ and served in accordance with section 1181.3 of these
5 regulations.

6 ~~(d) The rebuttal shall be signed at the end of the document, under penalty of perjury, with the
7 declaration that the rebuttal is true and complete to the best of the declarant's personal knowledge
8 or information or belief. The date of signing, the declarant's title, address, telephone number, and
9 e-mail address shall be included.~~

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

12 **§ 1190.4. Executive Director's Authority to Consolidate Requests for Mandate**
13 **Redetermination.**

14 (a) The executive director may consolidate two or more requests for mandate redetermination for
15 the second hearing, if some or all of the same statutes, regulations or executive orders are at
16 issue, if necessary to ensure the complete, fair, or timely consideration of any request for
17 mandate redetermination.

18 (b) At least 10 days before the action is taken, the executive director shall serve on the parties
19 and interested parties on the mailing list described in section 1181.4 of these regulations, and
20 post on the Commission's website, a notice of any proposed action to consolidate.

21 Note: Authority cited: Section 17527(g), 17553(a) and 17570(d), Government Code. Reference:
22 Sections 17530, 17554 and 17570, Government Code.

23 **§ 1190.5. Hearing Process and Form of Decision.**

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

27 (a) The First Hearing:

28 (1) The first hearing shall be limited to the issue of whether the requester has made an adequate
29 showing which identifies a subsequent change in law as defined by Government Code section
30 17570, material to the prior test claim decision, that may modify the state's liability pursuant to
31 article XIII B, section 6(a) of the California Constitution. The Commission shall find that the
32 requester has made an adequate showing if it finds that the request, when considered in light of
33 all of the written comments and supporting documentation in the record of this request, has a
34 substantial possibility of prevailing at the second hearing.

35 (2) At least eight weeks before the hearing or at another time required by the executive director
36 or stipulated to by the parties, Commission staff shall prepare a draft proposed decision and
37 distribute it to the parties, interested parties, and any person who requests a copy, and shall post
38 it on the Commission's website. A request for mandate redetermination is set for the first hearing
39 when Commission staff issues its draft proposed decision. A written notice of the date, time, and
40 place of the first hearing shall be served on everyone on the mailing list described in section
41 1181.4 of these regulations and posted on the Commission's website.

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

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

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

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

24 (A) The requester has not made an adequate showing, when considered in light of all of the
25 written comments, rebuttals and supporting documentation in the record and testimony at the
26 hearing, that the request for mandate redetermination has a substantial possibility of prevailing at
27 the second hearing, the Commission shall publish a decision denying the request for mandate
28 redetermination.

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

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

38 (b) The Second Hearing:

39 (1) If the Commission proceeds to the second hearing, it shall consider whether the state's
40 liability pursuant to article XIII B, section 6(a) of the California Constitution has been modified
41 based on the subsequent change in law alleged by the requester, thus requiring adoption of a new
42 test claim decision to supersede the previously adopted test claim decision. If the Commission
43 finds that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution

1 has been modified based on the subsequent change in law alleged by the requester, it shall adopt
2 a new decision that reflects the modified liability of the state.

3 (2) Before the second hearing, Commission staff shall prepare a proposed decision. At least eight
4 weeks before the hearing or at another time required by the executive director or stipulated to by
5 the parties, Commission staff shall prepare a draft proposed decision and distribute it to everyone
6 on the mailing list described in section 1181.4 of these regulations and post it on the
7 Commission's website. The proposed decision shall consider the request, and any written
8 comments and rebuttals and supporting documentation filed.

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

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

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

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

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

30 (5) Everyone on the mailing list described in section 1181.4 of these regulations shall be
31 provided written notice that a copy of the decision has been posted on the Commission's
32 website.

33 (6) After a decision or proposed decision has been served or posted on the Commission's
34 website, it shall not be changed except to correct clerical errors, in which case a corrected
35 decision or proposed decision shall be prepared and posted on the Commission's website.
36 Everyone on the mailing list described in section 1181.4 of these regulations shall be provided
37 written notice that a copy of the revised decision has been posted on the Commission's website.

38 (7) If a new decision is adopted that finds that the State's liability under article XIII B, section
39 6(a) of the California Constitution has been modified, the amount and method of reimbursement
40 shall be determined in accordance with article 3 of these regulations.

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

ORIGINAL

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MEETING OF THE
STATE OF CALIFORNIA

OCT 04 2017
COMMISSION ON
STATE MANDATES

COMMISSION ON STATE MANDATES



TIME: 10:00 a.m.

DATE: Friday, September 22, 2017

PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA
Representative for MICHAEL COHEN, Director
Department of Finance
(Chair of the Commission)

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

RICHARD CHIVARO
Representative for BETTY T. YEE
State Controller
(Vice Chair of the Commission)

MARK HARIRI
Representative for JOHN CHIANG
State Treasurer

SCOTT MORGAN
Representative for KEN ALEX
Director
Office of Planning & Research

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member
Local Agency Member



PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(Item 9)

HEIDI PALCHIK
Assistant Executive Director

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF PRESENT

(continued)

ERIC FELLER
Senior Legal Counsel
(Item 3 and Item 4)

MATTHEW B. JONES
Commission Counsel
(Item 6)

JILL MAGEE
Program Analyst
(Item 7)

CAMILLE N. SHELTON
Chief Legal Counsel
(Item 8)



PUBLIC TESTIMONY

Appearing Re Item 3:

For Claimant Fresno Unified School District:

ARTHUR M. PALKOWITZ
Artiano Shinoff
2488 Historic Decatur Road, Suite 200
San Diego, California 92106

For Department of Finance:

KIMBERLY LEAHY
Education Unit
Department of Finance
915 L Street
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4:

For the State Controller's Office:

LISA KUROKAWA
Audit Manager, Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816



Commission on State Mandates – September 22, 2017

1 applications for a finding of significant financial
2 distress or SB 1033 applications. No SB 1033
3 applications have been filed.

4 Commission Counsel Matt Jones will present Item 6,
5 staff's response to public comments and report on
6 proposed substantial changes to the proposed regulatory
7 package subject to an additional 15-day comment period.

8 MR. JONES: Good morning.

9 On May 26th, 2017, the Commission adopted an order
10 to initiate a rule-making package. On July 7th, 2017,
11 the California State Association of Counties requested
12 a public hearing on those proposed regulations. On
13 July 24th, 2017, the California Special Districts
14 Association, CSAC, and the League of Cities filed written
15 comments on the proposed regulations. The public hearing
16 was held on July 28th; and CSDA, CSAC, and the League
17 each presented oral comments in addition to the submitted
18 written comments.

19 Staff has addressed those comments for today's
20 hearing and recommends one additional modification to
21 the previously noticed changes with respect to
22 section 1183.1(c), governing the period of limitation to
23 file a test claim. The proposed modification to that
24 regulation makes it clear, consistent with the Government
25 Code and the rules of interpretation, that test claims

Commission on State Mandates – September 22, 2017

1 can only be filed within 12 months of first incurring
2 costs when costs are not incurred within the first
3 12 months of the effective date of a statute or executive
4 order.

5 Staff further recommends that the Commission
6 authorize staff to issue a notice of modification and the
7 proposed regulatory text, as modified, for an additional
8 15-day comment period.

9 If approved and following the receipt of comments
10 on the modification, staff will prepare the final
11 rulemaking package for the Commission's consideration at
12 the December 1st, 2017, hearing.

13 CHAIR ORTEGA: Thank you, Mr. Jones.

14 Any questions or comments from commissioners?

15 Ms. Olsen, then Mr. Adams.

16 MEMBER OLSEN: I have to say, I have some sort of
17 philosophical problem with the approach of this
18 regulatory change, in that on its face, it seems to make
19 it more difficult for local governments to bring
20 legitimate claims before the Commission. And if we had
21 had a lot of illegitimate claims or spurious claims or
22 things like that, I would say, "Okay, maybe this makes
23 sense. Let's tamp down on the window that they can apply
24 for some redress."

25 But, honestly, I don't think that that's the

Commission on State Mandates – September 22, 2017

1 situation we're in; and I don't see that this actually
2 improves the situation for local governments coming
3 before the State, which is what we're here for.

4 CHAIR ORTEGA: Let's take Mr. Adams' comment, and
5 then maybe have Ms. Shelton talk about maybe kind of the
6 impetus for bringing this before the Commission.

7 MEMBER ADAMS: Just a process question.

8 Does the 15-day rereview start once we adopt this
9 today?

10 MS. SHELTON: Once we issue a notice of
11 modification; and I think the dates are in there,
12 starting --

13 MS. HALSEY: Monday.

14 MS. SHELTON: -- Monday.

15 MEMBER ADAMS: I will be interested to see what the
16 folks that were frustrated with this have to say after
17 that. So, yes, thank you.

18 MS. SHELTON: Just the whole purpose of the change
19 to this reg, really, are the claims that are pending that
20 you have not seen. Okay, there's a bunch of them there.
21 And what is happening, you have the Government Code that
22 says you have to file your test claim within the first --
23 within 12 months of the effective date of the statute,
24 which requires local government to track legislation and
25 disregard their own budget, but to track legislation.

1 It does provide a second sentence that says, "or
2 the date of incurring costs under the mandate."

3 What is happening is, as an example that we provided
4 in the staff report, is that if you have a statute or
5 an executive order that becomes effective on January 1,
6 2015 -- whatever the hypo was we gave -- 2015, under the
7 first sentence, you have to file a test claim by
8 January 1, 2016. But what claimants are doing, are
9 saying that "Well, we first incurred costs on January 2,
10 2015." And then we get a whole other six months, so then
11 it becomes 18 months, in that hypo, and sometimes over
12 two years of the effective date of the statute.

13 The problem is, the way that they're interpreting
14 the Government Code, it makes that second sentence
15 completely absurd because costs can never be incurred
16 before the effective date.

17 MEMBER OLSEN: Right.

18 MS. SHELTON: So we can't be interpreting the
19 section that way. And so that is -- we're trying to
20 define what it really means. And if we accept
21 jurisdiction on those cases, Finance can always come
22 and say that we have not satisfied the statute of
23 limitations, and that our reg is improper. Then the
24 Court would set aside the whole thing. So it could be
25 a costly mistake for that to occur. So this is what is

1 happening.

2 And the whole point of that second provision was to
3 track those types of programs, like LAFCo or sometimes
4 POBOR, where a triggering event never occurs for a local
5 government; and so the Legislature didn't want to force
6 them to file a test claim when nothing is occurring.

7 That said, under the Government Code, you can file
8 a test claim even if you have not yet incurred the costs
9 by estimating your costs. You can estimate the costs and
10 have it be okay. So it's functioning like litigation.

11 MEMBER OLSEN: Okay, so how would this affect those
12 cases we haven't yet seen that are already before the
13 Commission?

14 MS. HALSEY: It wouldn't.

15 MEMBER OLSEN: It wouldn't? They would be
16 grandfathered in, essentially?

17 MS. SHELTON: Oh, yes.

18 MEMBER OLSEN: So it would just be future cases that
19 would be affected by this?

20 MS. SHELTON: Right.

21 MEMBER OLSEN: All right, okay.

22 MS. SHELTON: Yes, those are still going to be all
23 up in the air. But, yes.

24 CHAIR ORTEGA: Mr. Morgan, did you have a question?

25 MEMBER MORGAN: No.

Commission on State Mandates – September 22, 2017

1 CHAIR ORTEGA: Okay, Ms. Ramirez?

2 MEMBER RAMIREZ: I'd just like to ask, I see that
3 the major associations have made comments.

4 Do we have comments from individual groups that are
5 not involved in those agencies? And do you sense that
6 there's a problem with getting the word out to people?

7 MS. SHELTON: Maybe. You know, this is -- it does
8 have a history; and maybe I need to kind of explain the
9 history.

10 One, on the consulting groups, they have
11 historically provided representation to cities, counties,
12 and school districts; and they have been the primary
13 spokespeople for local government. So it's the typical
14 players involved.

15 And a lot of -- they've gone through a change in
16 recent times; and we see a new group of people in those
17 associations coming before the Commission. So they seem
18 to be functioning under the old rules, which all occurred
19 before the Legislature put in a statute of limitations.

20 So under the old rules, the only limitation was to
21 the period of reimbursement. And if you wanted to save
22 and get reimbursed for a fiscal year cost, you had to
23 file your test claim before June 30. And so in their
24 mind, June 30 has always been an important date, because
25 then they could get reimbursed for the prior fiscal year

1 costs. So that's always been an important date for them.

2 But then as soon as the Legislature put in a statute
3 of limitations, the focus changed. It's because of the
4 Legislature. The focus changed to, "You'd better be
5 tracking legislation and not just tracking your budget.
6 You need to track the legislation now."

7 And so they're not getting that, I think. It may be
8 a learning curve, but that is the point.

9 I do think if they want to preserve the June 30
10 fiscal year idea in a statute of limitations, they do
11 need a legislative fix to get that, because they're still
12 operating under old rules.

13 MEMBER RAMIREZ: What can we do to -- "we," all of
14 us -- do to inform entities of the new scene?

15 MS. SHELTON: Well, I think Heather is doing that on
16 a daily basis with phone calls and walking them through
17 the rules --

18 MS. HALSEY: For filing.

19 But we are also getting ready to have a process
20 with local governments to update all of our claim forms
21 because a lot of them are out of date. And not only
22 that, but we're finding people are having trouble filing
23 complete claims.

24 As Camille was mentioning, a lot of people who are
25 participating in mandates now are new to the process, and

1 they don't understand what needs to be in there. And
2 we have to have a lot of back and forth before we have a
3 completed claim. So we're going to update those forms
4 to make them more user-friendly and more clear. And we
5 do that in an interactive process with the local
6 governments.

7 And so we're going to be doing that in the next few
8 months. And so that will be going through all the
9 process of how do you file, when do you file, what needs
10 to be included, and all those things would be involved in
11 that.

12 MEMBER RAMIREZ: Well, I wanted to say that I'm
13 involved with Southern California Association of
14 Governments, which is six counties and a zillion cities.
15 And I think every area has a planning organization, like
16 Southern California Association. And I think maybe just,
17 I could help to let people know this process is
18 happening, so perhaps others could do that, too. Because
19 I'm sure that the representatives come and take that
20 information back to their -- they are local government;
21 they're not school districts; they're cities, counties.

22 MEMBER OLSEN: And I guess that's part of my problem
23 here, is that it seems like an ad hoc process, that --
24 you know, this isn't going to be a problem for the City
25 of Los Angeles. They've got a leg. unit. They're going

1 to know exactly what's happening, and they're going to
2 conform to whatever they need to do to put their claims
3 in.

4 I'm just going to pick another town out of the air
5 that I don't think has a leg. unit -- I could be wrong --
6 but let's say the City of Banning. And they're not
7 necessarily going to know. And that, I guess, is my
8 concern, is that we have a process that is working. And
9 I understand the desire to control workload at the
10 Commission level. It's a small group of people who are
11 doing phenomenal work on behalf of the local governments
12 and the State of California. But I don't know that this
13 change is necessary to make things work better for --
14 universally, for local governments coming before the
15 Commission. I don't even know if there's a way of
16 communicating it universally to local governments.

17 CHAIR ORTEGA: Mr. Morgan?

18 MEMBER MORGAN: Yes, I don't think that's an issue;
19 but I think, for me, it's a disconnect between the
20 current reg, the June 30th date, and what's in statute,
21 right. So I think that's -- I mean, we're kind of in
22 this -- the legislation has a specific time period; and
23 our current regs are not consistent with that. And so
24 I think this is a change that needs to happen. But
25 is there a way that we can better work with local

1 governments?

2 MEMBER OLSEN: Right.

3 MS. SHELTON: Also, just to kind of put it into
4 perspective, all of these statute-of-limitation changes
5 occurred in 2002, 2004, during the Laird Committee. And
6 the whole point of that committee was to try to speed
7 things up. Because, remember, that they had -- there was
8 no statute of limitations; so that you could, 20 years
9 after a statute was enacted, file a new test claim. And
10 that was very difficult for the Legislature to deal with,
11 because then you have -- you know, it's hard to get
12 records and determine what they were thinking 20 years
13 later.

14 And it's supposed to help local government, too. So
15 the whole thing is supposed to -- the idea was to speed
16 up the process.

17 Local government was initially not happy with the
18 statute of limitations, as I recall. But it did work in
19 their favor because you are getting it going and getting
20 it done, and while everybody -- employees are still there
21 and available, and the Legislature can deal with the cost
22 right away. So it is a learning curve.

23 And I think partly we're dealing with these issues
24 more in the last few years because we did have a backlog
25 and didn't really reach a lot of these issues until the

Commission on State Mandates – September 22, 2017

1 most recent, last couple of years.

2 So it seems like it happened a long time ago; but
3 really, we're just now -- it's catching up.

4 CHAIR ORTEGA: Any additional comments from
5 commissioners?

6 *(No response)*

7 CHAIR ORTEGA: Is there any additional public
8 comment on this item?

9 *(No response)*

10 CHAIR ORTEGA: All right, seeing none, is there a
11 motion?

12 MEMBER MORGAN: I move to accept the staff's
13 recommendation.

14 CHAIR ORTEGA: Okay, moved by Mr. Morgan.

15 MEMBER CHIVARO: Second.

16 CHAIR ORTEGA: Second by Mr. Chivaro.

17 Please call the roll.

18 MS. HALSEY: Mr. Adams?

19 MEMBER ADAMS: Aye.

20 MS. HALSEY: Mr. Chivaro?

21 MEMBER CHIVARO: Aye.

22 MS. HALSEY: Mr. Hariri?

23 MEMBER HARIRI: Aye.

24 MS. HALSEY: Mr. Morgan?

25 MEMBER MORGAN: Aye.

Commission on State Mandates – September 22, 2017

1 MS. HALSEY: Ms. Olsen?

2 MEMBER OLSEN: Aye.

3 MS. HALSEY: Ms. Ortega?

4 CHAIR ORTEGA: Aye.

5 MS. HALSEY: Ms. Ramirez?

6 MEMBER RAMIREZ: Aye.

7 CHAIR ORTEGA: Thank you.

8 MS. HALSEY: Program Analyst Jill Magee will present
9 Item 7, the Legislative Update.

10 MS. MAGEE: Good morning. The following is an
11 end-of-session review of 2017 legislation regarding
12 mandates.

13 As we reported at our last hearing, the Governor
14 signed the 2017-18 Budget Act, AB 97, which includes
15 601 million in additional Prop. 98 funding to pay down
16 the K-12 mandates backlog, and adds 8 million and two
17 mandates to the K-12 mandate block grant.

18 The Budget Act makes no changes to the list of
19 suspended K-12 mandates, or to funded or suspended
20 community college and local government mandates as
21 compared to 2016-2017.

22 We also monitored two other bills this legislative
23 session.

24 AB 268 proposes a technical nonsubstantive change to
25 Government Code section 17552. This is a spot bill, and

REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on the 3rd day of October 2017.



Daniel P. Feldhaus
California CSR #6949
Registered Diplomat Reporter
Certified Realtime Reporter



October 10, 2017

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

Re: Written Comments Regarding Modifications to Text of Proposed Regulations
 Public Hearing Date: December 1, 2017

Dear Ms. Magee:

The California Special Districts Association (CSDA), California State Association of Counties (CSAC), and League of California Cities (LOCC) hereby submit these comments in response to the notice of changes made to proposed regulation Section 1183.1(c) which dictates the test claim filing period. While our organizations appreciate the attention that Commission Staff gave to our previous written comments and the responses provided, the modifications to Section 1183.1(c), as outlined in the “Staff Report on Proposed Substantial Changes,” (Staff Report) give us additional cause for concern.

Commission Staff proposes the following language as a modification to the California Code of Regulations Section 1183.1(c):¹

Except as provided in Government Code sections 17573 and 17574, any test claim or amendment filed with the Commission 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.

As the rationale for the proposed modification, the Staff Report states, in part, “[T]he 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.”²

However, the plain language of Government Code section 17551(c) clearly states:

*Local agency and school district test claims shall be filed 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.** (emphasis added.)*

¹ Staff Report, Page 8, ¶1.

² Staff Report, Page 7, ¶2.

The Proposed Regulation, As Modified, Conflicts with Statutory Authority

The Staff Report’s succinct history of the evolution of Government Code Section 17551, governing the period of limitation for filing test claims, makes it clear why the proposed modifications under consideration go far beyond legislative intent. Before 2002, the Government Code did not contain a period of limitation for filing test claims.³ In 2002, Government Code Section 17551 was amended to add a three-year period of limitation.⁴ Finally, in 2004, AB 2856 further shortened the period of limitation to, “not later than 12 months following the effective date of the statute or executive order, or within 12 months of first incurring increased costs as a result of the statute or executive order, **whichever is later** [emphasis added].”⁵

One finds the intent of the Legislature and the public in the words of statutes and initiatives, not elsewhere.⁶ Despite no information regarding legislative intent in the committee analysis and legislative counsel’s digest, the Staff Report points to a contemporaneous report by the Legislative Analyst’s Office that, “indicated a desire to move the Commission’s test claim processes along faster, in part by requiring claimants to file promptly.”⁷ Notwithstanding the purported effort to require prompt filing by claimants however, the very next year, 2005, the Commission amended 1183.1(c) to add the section recommended to be stricken now: defining the date costs are first incurred to mean by June 30 of the fiscal year following the fiscal year in which costs are first incurred. No analysis or comments were filed on that rulemaking, but they were presumably adopted as technical conforming changes to assist the Commission Staff with processing complete and accurate test claims from local governments.

Although associations representing local government urged the Commission to reject the prior version of the proposed regulatory changes in previous written comments, at the July 28, 2017 hearing, they nonetheless conceded that the proposed changes would align the language of Section 1183.1(c) with that of Government Code section 17551(c). The recent modifications, however, propose a regulation that subtracts entitlements enacted in statute and may cause the Commission to act in excess of its statutory authority. An administrative agency may not, under the guise of rulemaking, abridge or enlarge its authority or exceed the powers given to it by the statute – the source of its power.⁸ A regulation is void if it was promulgated in excess of statutory authority.⁹ Courts must strike down a regulation that attempts to add or subtract from the statute.¹⁰ Administrative regulations in conflict with the Constitution or statutes are generally declared to be null and void.¹¹

The regulation modification under consideration here, striking “whichever is later” from Section 1183.1(c), would subtract from the plain statutory language for the period of limitation authority prescribed in Government Code section 17551(c). If enacted, this modification would undoubtedly invite a writ action by a test claimant to declare the changes to Section 1183.1(c) void and compel the Commission’s compliance with the plain statutory language of 17551(c). Simply put, lawfully

³ Staff Report on Proposed Substantial Changes, posted September 8, 2017 [Staff Report], Page 4, ¶12.

⁴ Staff Report, Page 4, ¶13.

⁵ Statutes, 2004, Chapter 890.

⁶ *Prof'l Eng'rs in Cal. Gov't v. State Pers. Bd.* (2001) 90 Cal.App.4th 678, 688.

⁷ Staff Report, Page 5, ¶13.

⁸ *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467, 1480.

⁹ *Ibid.* at 1479.

¹⁰ *Ibid.* at 1480.

¹¹ *Pardee Construction Co. v. California Coastal Comm'n*, (1979) 95 Cal.App.3d 471, 479.

striking “whichever is later” from Section 1183.1(c) requires an act of the Legislature to change section 17551.

As discussed further below, the interpretation of Section 1183.1(c) proposed in the Staff Report would potentially lead to likely unintended if not absurd consequences for the test claims filed before the Commission.

Impact of the Proposed Regulation, As Modified

The Staff Report assures local governments that under the current requirements of Government Code Section 17551(c) and the proposed regulatory language to Section 1183.1(c) agencies “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.”¹² This is simply untrue under the modified text. By striking out the “whichever is later” test and inserting an exclusionary clause, not only does the modified text diverge from Government Code Section 17551(c), it also creates a situation where local governments may have as little as a month or even a few days between first incurred costs and the deadline to submit a test claim.

For instance, Governor Brown recently signed Assembly Bill 918, also known as the “California Voting for All Act,” into law. As a result, county elections officials will be required, starting January 1, 2018, to expand the availability and accessibility of facsimile ballots in languages other than English. Counties, however, will likely not incur costs until halfway into the year, commensurate with the June statewide primary date. Under Government Code Section 17551(c), counties have one year after the date of first incurred costs regardless of the statute’s effective date. The modified version of the proposed regulations, however, disregards the date of first incurred costs if it falls within one year of the statute becoming effective. Therefore, counties would have significantly less time to gather the relevant date and file a test claim. This becomes even more problematic if a local government does not begin incurring costs until month 11 of a statute taking effect, thereby potentially leaving a claimant with less than a month to file a test claim.

“It is a well settled principle of statutory interpretation that [the] language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.’ [Citations.] ... Thus, ‘[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.’ [Citation.]”¹³ A strict interpretation of the modified proposed changes could potentially lead to a scenario where, for a statute enacted January 1, 2018, a test claimant that first incurs increased costs on December 1, 2018 has until December 31, 2018 to file a test claim. But a test claimant that first incurs increased costs on January 2, 2018, only one month later, has until January 3, 2019 to file their test claim. Such a result would not conform with the spirit or intent of the Legislature, particularly in contrast with Government Code section 17551(c), which includes the provision “whichever is later.”

As Commissioner Olsen noted during the September 22, 2017 hearing, the proposed modifications would only serve to make it “more difficult to bring legitimate claims.” If the Commission had a history of “spurious” claims, the changes could be construed as reasonably necessary; but that is not the situation facing the Commission.

¹² Staff Report, Page 7, ¶3.

¹³ *McLaughlin v. State Bd. of Education* (1999) 186 Cal.App.4th 1298, 1315.

As an alternative, we ask the Commission to consider restoring the earlier version of changes to Section 1183.1(c) as originally proposed. Doing so would realign the regulations with Government Code Section 17551(c) and lessen the burden on local governments that incur costs within the first year of a statute's effective date.

Please do not hesitate to contact Dillon Gibbons (CSDA) at 916-442-7887, Dorothy Johnson (CSAC) at 916-327-7500, or Dan Carrigg (LOCC) at 916-658-8222 should you have any questions.

Sincerely,



Dillon Gibbons
Legislative Representative
California Special Districts Association



Dorothy Johnson
Legislative Representative
California State Association of Counties



Dan Carrigg
Deputy Executive Director, Legislative Director
League of California Cities

1 CALIFORNIA CODE OF REGULATIONS

2 TITLE 2. ADMINISTRATION

3 DIVISION 2. FINANCIAL OPERATIONS

4 CHAPTER 2.5. COMMISSION ON STATE MANDATES

5 Article 1. General

6 § 1181.1. Delegation of Certain Functions; Executive Director Appeals.

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

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

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

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

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

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

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

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

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

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

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

32 Note: Authority cited: Sections 17527(g), 17530 and 17531, Government Code. Reference:
33 Section 17530, Government Code; and *Redevelopment Agency v. Commission on State Mandates*
34 (1996) 43 Cal.App.4th 1188.

35 § 1181.2. Definitions.

36 Unless otherwise indicated, the following definitions and those found in Government Code
37 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 requirements for a new filing for a test claim, proposed
14 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~~ving~~ an interest ~~in the~~
28 ~~activities of the Commission~~ a matter before the Commission, but is not a party or interested
29 party with respect to that matter.
- 30 (k) "New filing" means a test claim, incorrect reduction claim, request to amend parameters and
31 guidelines, joint request for reasonable reimbursement methodology, request for review of
32 claiming instructions, request for removal or inclusion in State Mandates Apportionment System,
33 or request for mandate redetermination.
- 34 (l) "Party" includes a party's representative of record who is expressly authorized to act on the
35 party's behalf. Party means the following for each matter as specified below:
- 36 (1) "Party to a Test Claim" means the test claimant, the Department of Finance, and other
37 affected state agencies.
- 38 (2) "Party to an Incorrect Reduction Claim" means the claimant and the Office of State
39 Controller.
- 40 (3) "Party to a Request to Amend Parameters and Guidelines" means the requester, the

- 1 Department of Finance, the Office of State Controller, affected state and local agencies, and
2 affected school districts.
- 3 (4) "Party to a Joint Request for Reasonable Reimbursement Methodology" means the test
4 claimant and the Department of Finance.
- 5 (5) "Party to a Request for Review of Claiming Instructions" means the requester and the Office
6 of State Controller.
- 7 (6) "Party to a Request for Removal or Inclusion in State Mandates Apportionment System"
8 means the requester, the Department of Finance, and the Office of State Controller.
- 9 (7) "Party to a Request for Mandate Redetermination" means the requester, the Department of
10 Finance, the Office of State Controller, affected state and local agencies, and affected school
11 districts.
- 12 (m) "Real Party in Interest" means any person or entity whose interest will be directly affected
13 by the resolution of the matter.
- 14 (n) "Rulemaking proceeding" means any hearing designed to adopt, amend, or repeal any rule,
15 regulation, or standard of general application that implements, interprets, or makes specific any
16 provision of Title 2, Division 4, Part 7, beginning with Government Code section 17500 or any
17 other statute enforced or administered by the Commission.
- 18 (o) "Statewide cost estimate" means the approximate sum of money that local agencies or school
19 districts may have incurred to implement a state-mandated program or any increased level of
20 service of an existing mandated program. A statewide cost estimate submitted by a test claimant
21 shall be an estimate of the first full fiscal year of actual or estimated costs based on the statutes
22 and executive orders alleged in a test claim, except as provided in Government Code section
23 17557.1(a). A statewide cost estimate adopted by the Commission shall be an estimate based on
24 the Commission's determination of a test claim for the initial period of reimbursement to be
25 reported to the Legislature.
- 26 (p) "Statewide estimate of costs" is based on a reasonable reimbursement methodology proposed
27 by a test claimant and the Department of Finance, adopted by the Commission, and reported to
28 the Legislature pursuant to Government Code section 17557.2.
- 29 (q) "Subsequent change in law" means a change in law that requires a finding that an incurred
30 cost is a cost mandated by the state, as defined by Government Code section 17514, or is not a
31 cost mandated by the state pursuant to Government Code section 17556, or a change in mandates
32 law. Amendments to article XIII B, section 6 of the California Constitution that were approved
33 by the voters on November 2, 2004 and changes in the statutes or executive orders that impose
34 new state-mandated activities and require a finding pursuant to Government Code section
35 17551(a) are not a "subsequent change in law."
- 36 (r) "Teleconference" means a conference of individuals in different locations, connected by
37 electronic means, through audio, video, or both.
- 38 (s) "Test claim" means the first claim filed with the Commission alleging that a particular statute
39 or executive order imposes costs mandated by the state pursuant to Government Code section
40 17521 and also includes a claim filed on a legislatively determined mandate pursuant to
41 Government Code section 17574(c). The test claim procedure functions similarly to a class
42 action and has been established to expeditiously resolve disputes affecting multiple agencies.

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

4 Note: Authority cited: Sections 17527(g), 17553(a) and 17570(d), Government Code. Reference:
5 Sections 11123, 17516-17521, 17527(c), 17529, 17530, 17531, 17551, 17553, 17555, 17557,
6 17557.1, 17557.2, 17558, 17558.5, 17558.7, 17558.8, 17559, 17561, 17561.5, 17570, 17572,
7 17573, 17600 and 17612, Government Code; *Redevelopment Agency v. Commission on State*
8 *Mandates* (1996) 43 Cal.App.4th 1188; and *City of San Jose v. State of California* (1996) 45
9 Cal.App.4th 1802.

10 **§ 1181.3. Certification, Filing and Service of Written Materials and New Filings.**

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

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

23 (1) E-Filing. ~~Submit~~File the original ~~to the Commission~~ by saving the signed original in a PDF
24 file and submitting it via the Commission's e-filing system, available on the Commission's
25 website. Documents e-filed with the Commission must be in a legible and searchable format that
26 allows Commission staff to electronically date stamp the document to verify date of filing, and to
27 append additional pages for posting on the Commission's web site with proof of service, in lieu
28 of the filer serving the document to the entire mail list for the matter. E-filed documents should
29 be filed in their original, searchable form, but the signature page shall be replaced with a scanned
30 copy, rather than digitally signed. The filer is responsible for maintaining the signed original for
31 the duration of the process for the matter, including any period of appeal. Notwithstanding any
32 other provision in these regulations, if a new filing or written material is e-filed, no additional
33 copies shall be submitted to Commission staff. The following shall apply to e-filing:

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

36 (B) An automated notice that the document was successfully sent is immediately available to the
37 person who e-files using the Commission's e-filing system and should be saved or printed for the
38 filer's records. Commission staff shall also reply by e-mail confirming actual receipt of the
39 legible, searchable document by the Commission within two business day of receipt. In the
40 absence of a confirmation e-mail from Commission staff, it is the responsibility of the person
41 who e-files to obtain confirmation that the Commission actually received the filing.

42 (C) By using e-filing, the filing person agrees, in the event of failure of e-filing, to re-file the
43 document, no later than the business day after the business day on which notice of the failure of

1 e-filing is received by the filing party, by any means authorized by these rules, in order to
2 maintain the original filing date. "Failure of e-filing" occurs when the filing person receives
3 notification, in any manner, of non-receipt of an e-filed document or of any other inability of
4 Commission staff to access the document. The filer and Commission staff may agree to any form
5 for re-filing allowed by these regulations.

6 (D) Documents e-filed with the Commission do not need to be served and proof of service does
7 not need to be provided for persons that have provided an e-mail address for the mailing list.
8 Nothing in this regulation excuses a filer from serving hard copies of written material on persons
9 who appear on the mailing list and have not provided an e-mail address for the mailing list or
10 from providing a proof of service with the e-filing to the Commission for the service.

11 (E) Upon confirmation of actual receipt, Commission staff shall notify all persons on the mailing
12 list for the matter that written material may be viewed on the Commission's website. For "new
13 filings" as defined by section 1181.2(k) of these regulations, Commission staff shall notify all
14 persons on the mailing list prepared pursuant to section 1181.4 of these regulations, of the
15 availability of those filings on the Commission's website when Commission staff sends its notice
16 of complete filing to the filing party.

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

19 (G) The executive director may issue any order consistent with these rules to govern e-mail
20 service for a particular matter.

21 (2) By first class mail. Submit the unbound original and seven copies to the Commission.

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

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

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

32 Note: Authority cited: Sections 17527(g), 17553(a), 17570(d) and 11104.5, Government Code.
33 Reference: Section 1798 et seq., Civil Code; Sections 17530, 17551, 17557(d), 17558.7, 17570,
34 17573(b), 17574(c) and 17573(g), Government Code.

35 **§ 1181.4. Mailing Lists and Numbering of Matters.**

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

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

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

5 (1) Test Claim (TC)

6 (2) Incorrect Reduction Claim (I)

7 (3) Request to Amend Parameters and Guidelines (PGA)

8 (4) Joint Request for Reasonable Reimbursement Methodology (RRM)

9 (5) Request for Review of Claiming Instructions (RCI)

10 (6) Request for Removal or Inclusion in State Mandates Apportionment System (SMAS)

11 (7) Joint Request for Legislatively Determined Mandate (LDM)

12 (8) Request for Mandate Redetermination (MR)

13 Note: Authority cited: Sections 17527(g), 17553(a), 17570(d) and 11104.5, Government Code.

14 Reference: Sections 17530, 17551, 17557, 17557.1, 17571, 17557.2, 17570, 17573(b), 17573(g),
15 17574(c) and 17615.1, Government Code.

16 **§ 1181.5. Appointment of Designees and Election and Duties of Officers.**

17 (a) If a Commission member, as defined by Government Code section 17525, with statutory
18 authority to designate a deputy to represent him or her makes a designation, that designee may
19 continue to serve on the Commission until the designation is revoked by the current Commission
20 member.

21 (b) Commission members as defined by Government Code section 17525 shall be officers.
22 Duties of Officers:

23 (1) Duties of Chairperson. The chairperson shall preside over all meetings of the Commission
24 when present. The chairperson has all the rights and responsibilities of the other members,
25 including the right to introduce motions or proposals and to speak and vote on them while
26 presiding. The chairperson has the power to appoint one or more members of the Commission as
27 a subcommittee to investigate and report to the Commission on any matter within the scope of
28 the purposes of the Commission or to form advisory groups to assist the Commission or its
29 subcommittees in fulfilling their purposes.

30 (2) Duties of Vice Chairperson. The vice chairperson shall preside over all meetings of the
31 Commission at which the chairperson is not present. The vice chairperson has all the rights and
32 responsibilities of the other members, including the right to introduce motions or proposals and
33 to speak and vote on them while presiding.

34 (c) Time of Election. The Commission shall elect a chairperson and vice chairperson at the
35 January meeting of each year, or at the next regularly scheduled meeting, if no meeting is held in
36 January. In the calendar year following the statewide election of constitutional officers, the
37 Commission may postpone its election. The Commission may authorize the executive director to
38 conduct the election portion of its meeting.

1 (d) Vacancy. If an office (chairperson or vice-chairperson) held by a public member or local
2 elected official becomes vacant, an election shall be conducted as soon as practicable to fill the
3 vacant office.

4 (e) When Election Takes Effect. An election shall take effect immediately.

5 Note: Authority cited: Sections 17500 and 17527(g), Government Code. Reference: Sections 7.5,
6 7.6, 7.9, 17525, 17528 and 17530, Government Code.

7 **§ 1181.6. Development and Approval of Commission Forms.**

8 (a) In consultation with interested parties and in accordance with applicable law and these
9 regulations, the executive director shall develop the test claim form, incorrect reduction claim
10 form, mandate redetermination form, and other forms, to simplify and improve the efficiency of
11 the Commission's processes.

12 (b) The executive director shall conduct at least one workshop with interested parties,
13 Department of Finance, Office of the State Controller, other affected state agencies, and
14 interested persons before approval of a form.

15 (c) Upon development of a new form, the executive director shall notify claimants, interested
16 parties, affected state agencies, and interested persons, and shall disseminate copies at least 10
17 days before the operative date of a form.

18 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
19 17530, 17553, 17558.7(c), 17558.7(e) and 17570(d)(1), Government Code.

20 **§ 1181.7. Waiver of Requirement to Use Forms.**

21 The executive director may waive a requirement to use any form specified by these regulations.

22 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
23 17530, 17553, 17558.7(c), 17558.7(e) and 17570(d)(1), Government Code.

24 **§ 1181.8. Commission Meeting Quorum and Voting Requirements.**

25 (a) A majority of the existing membership of the Commission shall constitute a quorum.

26 (b) All actions of the Commission, with the exception of requests to reconsider a prior final
27 decision as provided in section 1187.15, shall require the affirmative vote of at least a majority of
28 the existing membership of the Commission.

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

30 (1) Re-hear the claim when the membership of the Commission changes or when an abstaining
31 member completes review of the administrative record;

32 (2) Assign the claim to a hearing panel or to a hearing officer, pursuant to section 1187.2 et seq.,
33 for hearing and preparation of a proposed decision for consideration by the Commission. If the
34 Commission assigns the claim to a hearing panel, the selection of the hearing panel shall be by
35 lot, or other means of random and impartial selection; or

36 (3) Direct staff to prepare another proposed decision based on an interpretation of the law and
37 evidence in the record for consideration by the Commission.

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

4 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
5 17525, 17527(c) and 17532, Government Code; and Section 17000.6, Welfare and Institutions
6 Code.

7 **§ 1181.9. Commission Meeting Notice, Agenda, and Consent Calendar.**

8 (a) Time and distribution. Notices and agendas of meetings shall be given to all members, to all
9 parties and interested parties to proceedings on the agenda, and to all persons who request them
10 in writing. The notice and agenda shall be provided no less than 10 days prior to the scheduled
11 meeting.

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

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

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

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

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

22 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
23 11125, 11125.1, 17527(b), 17527(c) and 17530, Government Code.

24 **§ 1181.10. Commission Meeting Procedures.**

25 (a) Presiding Member. The chairperson shall preside over all meetings of the Commission when
26 present. In the chairperson's absence, the vice chairperson shall preside. If neither the
27 chairperson nor the vice chairperson is in attendance, the member present who has the greatest
28 seniority on the Commission shall preside. The presiding member may yield the chair.

29 (b) Public Comments.

30 (1) Comments in Writing. Any person may submit comments in writing on any agenda item. To
31 be included as a part of the administrative record for the matter, comments must be provided to
32 the Commission members and be made available for public review either before or at the
33 Commission hearing on the matter.

34 (A) Comments received at least 15 days in advance of the meeting shall be included in the
35 Commission's meeting binders, a copy of which is available for public viewing at the
36 Commission meeting.

1 (B) Comments received more than five days in advance of the meeting shall be included in the
2 Commission's meeting binders, if feasible, or shall be provided to the Commission when the item
3 is called, unless otherwise agreed to by the Commission or the executive director.

4 (C) For written comments received less than five days in advance of the meeting, the commenter
5 shall provide 12 copies to Commission staff at the meeting. Commission staff shall provide
6 copies of the comments to the Commission and shall place a copy on a table for public review
7 when the item is called.

8 (2) Oral Comments. Any person present and so desiring shall be given an opportunity to make
9 oral comments on any agenda item, provided, however, that the presiding member may limit or
10 preclude comments as necessary for the orderly conduct of business.

11 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
12 11125.7, 17525 and 17526-17528, Government Code.

13 **§ 1181.11. Permanent Record of Commission Meetings.**

14 (a) The Commission shall keep minutes of its meetings. Minutes shall be approved by the
15 Commission and, upon approval, shall be signed by the chairperson or other person designated
16 by the chairperson. Signed minutes shall be the original evidence of actions taken at any
17 meeting, including the text of any resolutions adopted.

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

22 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section
23 17530, Government Code.

24 **§ 1181.12. Default Rules of Commission Meetings.**

25 In all cases not provided for by Government Code Section 17500 et seq., the Bagley-Keene Open
26 Meeting Act (Government Code Section 11120 et seq.) and the Commission's rules and
27 regulations, the authority shall be Robert's Rules of Order (revised), unless otherwise designated
28 by the Commission at the annual election meeting.

29 Note: Authority cited: Sections 17500, 17527(g) and 17553(a), Government Code. Reference:
30 Sections 11120 et seq. and 17526, Government Code.

31 **§ 1181.13. Commission Meeting by Teleconference.**

32 The Commission may hold an open or closed meeting by teleconference if it is difficult or
33 impossible for the Commission to achieve a quorum. A meeting held by teleconference shall
34 comply with the Bagley-Keene Open Meeting Act.

35 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
36 11123, 17526, 17527(b) and 17527(c), Government Code.

1 **Article 2. Applications for a Finding of Significant Financial Distress**

2 **§ 1182.1. Reduction in Aid Levels; Definitions.**

3 When the county has made a compelling case that basic county services cannot be maintained
4 without a reduction in the level of aid established by Welfare and Institutions Code section
5 17000.5, the Commission shall make a finding of significant financial distress.

6 In making such a finding, the following definitions shall apply:

7 (a) "Application" means a county application filed pursuant to this article requesting the
8 Commission determine that the county has made a compelling case that basic county services
9 cannot be maintained without a reduction in the level of General Assistance aid established by
10 Welfare and Institutions Code section 17000.5, and finding that as a result, the county is in
11 significant financial distress, as defined in Welfare and Institutions Code section 17000.6.

12 (b) "Applicant" means the county that filed the request for a finding of significant financial
13 distress.

14 (c) A "compelling case" sufficient to cause a finding of significant financial distress must be
15 established by clear and convincing evidence.

16 (d) "Basic county services" means those services which are fundamental or essential. The
17 services shall include, but are not limited to, those services required by state or federal law, and
18 may vary from county to county.

19 (e) "Maintained" means the level of service which the county must provide in order to adequately
20 or effectively furnish basic county services.

21 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6(b), Welfare
22 and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

23 **§ 1182.2. Filing of an Application for a Finding of Significant Financial Distress.**

24 (a) Pursuant to Welfare and Institutions Code section 17000.6, in order for the board of
25 supervisors of any county to obtain a finding of significant financial distress, the board of
26 supervisors must submit a written application to the Commission on State Mandates.

27 (b) The applicant shall certify, file, and serve an original application, including supporting
28 documents, with the Commission in accordance with section 1181.3 of these regulations.

29 (c) All applications shall contain at least the following:

30 (1) A table of contents, indicating page numbers.

31 (2) A copy of a resolution from the county board of supervisors stating that compliance with the
32 standards set forth in Welfare and Institutions Code section 17000.5 will result in significant
33 financial distress to the county for a specified period of time, up to 36 months.

34 (3) A written narrative, including a summary, detailing the relevant financial or other budgetary
35 information and documents necessary for a county to make a compelling case that basic county
36 services, including public safety, cannot be maintained without a reduction in the standard of aid
37 as provided in Welfare and Institutions Code section 17000.5. The narrative shall also include:

38 (A) The monthly caseload of General Assistance recipients for each of the 12 months preceding
39 the date the application is filed.

- 1 (B) The current monthly rate of the General Assistance Standard of Aid.
- 2 (C) The proposed reduced rate of the General Assistance Standard of Aid.
- 3 (D) An overview of county finances, including, but not limited to county revenue sources;
4 budget reserve data; budget expenditures; mandated expenditures and maintenance of effort
5 costs.
- 6 (E) A detailed summary of program needs and expenditure flexibility, including, but not limited
7 to department-by-department data on unmet program needs for basic county services.
- 8 (F) The county's total population at the time the application is filed, and the total county
9 population for the two fiscal years prior to the year in which the application was filed.
- 10 (d) The written narrative shall be submitted under penalty of perjury. ~~In addition, the financial~~
11 ~~and other budgetary documents shall be certified under penalty of perjury. If representations of~~
12 fact are made, they shall be supported by documentary or testimonial evidence, submitted in
13 accordance with section 1187.5 of these regulations.
- 14 (e) Each page of the application, including all supporting documentation, shall be consecutively
15 numbered.
- 16 (f) The original application, including all supporting documentation, shall be unbound and
17 single-sided.
- 18 (g) The executive director shall notify an applicant within 10 days of receipt of an application
19 whether its application is incomplete. If the application is incomplete, the executive director may
20 return the application to the county. An application shall be considered incomplete if the
21 elements in subdivisions (b) through (f) of this section have not been satisfied, are illegible or are
22 not included. The requirements for Commission public hearings and decisions, as set forth in
23 Welfare and Institutions Code section 17000.6(c), apply only to complete applications.
- 24 (h) Within 10 days of receipt of a completed application, the executive director shall notify the
25 applicant that the application is complete, and notify the applicant of the schedule. The executive
26 director shall also send the application to interested persons located in the applicant county.
- 27 (i) Prior to filing an application, a county may request a tentative date for conducting the hearing
28 in the county. If a complete application is not received by a specified date, a new tentative
29 hearing date may be set.

30 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6(b), Welfare
31 and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

32 **§ 1182.3. Extension of Period for Preliminary and Final Decision and Current Period of**
33 **Financial Distress.**

- 34 (a) If an application is filed while another county's application is pending, the executive director
35 may extend both the preliminary decision period up to 120 days and the final decision period up
36 to 150 days from the filing date of the application, unless otherwise provided in the current
37 Budget Act. If the preliminary and final decision periods are extended, any current period of
38 significant financial distress of the applicant that has been set, pursuant to Welfare and
39 Institutions Code Section 17000.6(b), shall also be extended for the same period.

1 (b) Within 10 days of receipt of a county's application, the executive director shall provide
2 written notice to the applicant of extensions of the preliminary decision and final decision
3 periods and of any current period of significant financial distress of the applicant.

4 Note: Authority cited: Stats. 1998, c. 324, Item 8885-001-0001, Prov. (2), p. 622 (and subsequent
5 Budget Acts); Section 17527(g), Government Code; and Section 17000.6(b), Welfare and
6 Institutions Code. Reference: Section 17000.6(c), Welfare and Institutions Code.

7 **§ 1182.4. Notice.**

8 (a) Upon receipt of a complete application for a finding of significant financial distress, the
9 Commission shall provide to the applicant a written 30-day notice of the hearing, to be held in
10 the county.

11 (b) The notice shall be publicly posted by the applicant at the county court house and one county
12 welfare office where General Assistance recipients are generally present. The Commission shall
13 publish two notices in a newspaper of general circulation in the county. The first notice shall be
14 published at least 30 days prior to the hearing date. The second notice shall be published at least
15 10 days prior to the hearing date. The cost of publishing the notices shall be paid for by the
16 Commission. Notice shall also be posted on the Commission's website.

17 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6(b), Welfare
18 and Institutions Code. Reference: Section 11125, Government Code; and Section 17000.6(c),
19 Welfare and Institutions Code.

20 **§ 1182.5. Pre-Hearing Conference.**

21 A pre-hearing conference may be scheduled by the executive director for the purpose of
22 identifying issues and determining methods of resolving the issues. The county and other parties
23 known to have an interest in the county's application shall be invited to participate. This
24 conference shall not limit the issues that can be presented to or considered by the Commission at
25 public hearing.

26 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
27 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code; and Section
28 17530, Government Code.

29 **§ 1182.6. Assignment to Hearing Panels/Hearing Officers.**

30 The chairperson may assign an application to a hearing panel consisting of one or more members
31 of the Commission, which shall act on behalf of the Commission, or to a hearing officer for
32 hearing and preparation of a preliminary decision. Assignments by the chairperson of members
33 on the hearing panels shall be rotated among the members with the composition of the members
34 so assigned being varied and changed to assure that there shall never be a fixed and continued
35 composition of members.

36 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
37 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code; and Sections
38 17528 and 17532, Government Code.

1 **§ 1182.7. Request for Supplemental Information.**

2 (a) The executive director may request supplemental information from the applicant to assist the
3 Commission in its review and analysis of the application. The applicant shall provide the
4 supplemental information under the timeline established by the executive director.

5 (b) The supplemental information and any attached financial or other budgetary documents shall
6 be ~~submitted under penalty of perjury~~ certified, filed, and served in accordance with section
7 1181.3 of these regulations. ~~Any attached financial or other budgetary documents shall be~~
8 ~~certified under penalty of perjury.~~ If representations of fact are made, they shall be supported by
9 documentary or testimonial evidence, submitted in accordance with section 1187.5 of these
10 regulations.

11 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
12 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code, and Section
13 17530, Government Code.

14 **§ 1182.8. Review of Completed Application for a Finding of Significant Financial Distress**
15 **and Preparation of Staff Analysis.**

16 (a) Before the hearing is conducted in the applicant county, the executive director shall prepare
17 and distribute a staff analysis of the application, which shall include, but not be limited to, a
18 review of written comments filed by interested persons, and rebuttals filed by the applicant. The
19 staff analysis may also include a review of the applicant's revenue sources, including the
20 applicant's flexibility in directing its resources; review of the applicant's budget expenditures,
21 statutory relief, contingencies, and fund balances; an analysis of the applicant's department-by-
22 department evaluation of unmet need in basic county services; and a preliminary
23 recommendation whether the Commission should approve or deny the application. The staff
24 analysis shall describe the application and assist the Commission in determining whether or not
25 to make a finding of significant financial distress.

26 (b) The executive director shall send the staff analysis out for comment at least 10 days prior to
27 the hearing conducted in the applicant county.

28 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
29 Institutions Code. Reference: Section 17530, Government Code; and Section 17000.6, Welfare
30 and Institutions Code.

31 **§ 1182.9. Written Comments.**

32 The applicant and any interested persons may file written comments concerning the staff analysis
33 with the Commission. Written comments shall be certified, filed, and served with the
34 ~~Commission~~ in accordance with section 1181.3 of these regulations. If representations of fact are
35 made, they shall be supported by documentary or testimonial evidence, submitted in accordance
36 with section 1187.5 of these regulations. The written comments shall be reviewed by
37 Commission staff and may be incorporated into any revised or supplemental staff analysis of the
38 application.

39 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
40 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

1 **§ 1182.10. Conduct of Hearing.**

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

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

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

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

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

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

26 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
27 Institutions Code. Reference: Section 11125.7, Government Code; and Section 17000.6, Welfare
28 and Institutions Code.

29 **§ 1182.11. Representation at Hearing.**

30 (a) The board of supervisors of a county shall designate a county representative.

31 (b) The county representative shall be the lead spokesperson and shall present all matters
32 respecting the interest of the county in the proceeding.

33 (c) Withdrawal of appearance of any representative may be effected by filing a written notice of
34 withdrawal and by serving a copy on the Commission.

35 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
36 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

37 **§ 1182.12. Continuance of Hearings and Further Hearings.**

38 (a) The Commission, hearing panel, or hearing officer may continue a hearing to another time or
39 place.

1 (b) Due to the strict time frames contained in Welfare and Institutions Code section 17000.6(c),
2 continuances will be granted only under compelling and urgent circumstances.

3 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
4 Institutions Code. Reference: Section 11129, Government Code; and Section 17000.6,
5 Welfare and Institutions Code.

6 **§ 1182.13. Preliminary and Final Decisions; Action on Decisions.**

7 (a) Within 60 days after receipt of an application, the executive director shall notify the county of
8 the Commission, hearing panel, or hearing officer's preliminary decision that the county did or
9 did not make a compelling case that it will incur significant financial distress pursuant to Welfare
10 and Institutions Code section 17000.6. If the time period is extended pursuant to section 1182.3
11 of these regulations, notice of the preliminary decision shall be provided within 120 days after
12 receipt of an application, or as otherwise provided by the current Budget Act.

13 (b) If an application is heard by a hearing panel, the panel shall direct staff to prepare the
14 preliminary decision in a form that may be adopted as the final decision by the Commission.
15 When an application is heard by a hearing officer, a preliminary decision shall be presented in a
16 form that may be adopted by the Commission as its final decision on the application. When an
17 application is heard before the Commission itself the Commission shall direct staff to prepare a
18 final decision in accord with the Commission's vote, which will be presented to the Commission
19 for adoption as its final decision.

20 (c) Within 90 days after receipt of an application, the executive director shall give notice to the
21 county of the Commission's final decision that the county did or did not make a compelling case
22 that it will incur significant financial distress pursuant to Welfare and Institutions Code section
23 17000.6. If the time period is extended pursuant to section 1182.3 of these regulations, notice of
24 the final decision shall be provided within 150 days after receipt of an application, or as
25 otherwise provided by the current Budget Act.

26 (d) If the preliminary decision prepared by the hearing panel or hearing officer is not adopted by
27 the Commission as its final decision, the Commission may direct appropriate modification of the
28 preliminary decision and thereafter adopt it as the Commission final decision or decide the
29 application upon the record, with or without taking additional evidence, or may refer the
30 application to a hearing panel or hearing officer to take additional evidence. If the application is
31 so assigned to a hearing panel or hearing officer, the hearing panel or hearing officer shall
32 prepare a preliminary decision, as provided in subdivision (b), which shall be based upon the
33 additional evidence and the transcript and other papers which are a part of the record of the prior
34 hearing.

35 (e) The affirmative vote of at least a majority of the existing membership of the Commission is
36 required for the adoption of a final decision by the Commission. A copy of the final decision
37 shall be filed by the Commission as a public record.

38 (f) A Commission final decision which makes a finding of significant financial distress will be
39 effective for a period not to exceed 36 months. The final decision shall specify whether the
40 effective date of the period of significant financial distress shall commence on the date of the
41 final decision or on a date no more than 60 days from the date of the final decision.

1 Note: Authority cited: Stats. 1998, c. 324, Prov. (2), Item 8885-001-0001, p. 622 (and
2 subsequent Budget Acts); Section 17527(g), Government Code; and Section 17000.6, Welfare
3 and Institutions Code. Reference: Sections 17527(c), 17530 and 17532, Government Code; and
4 Section 17000.6, Welfare and Institutions Code.

5 **§ 1182.14. Form of Decision.**

6 The final decision shall be based on the record, shall be in writing, and shall include a statement
7 of reasons for the decision, findings, and conclusions. A copy of the final decision shall be
8 mailed to or served on the applicant county.

9 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
10 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

11 **§ 1182.15. Reapplications.**

12 (a) A county may file a reapplication for a finding of significant financial distress with the
13 Commission.

14 (b) The application requirements and procedures relating to applications and ~~hearing procedures~~
15 prescribed in article 2 of these regulations shall also apply to reapplications. The applicant shall
16 also provide the following information in its reapplication:

17 (1) How the applicant utilized the savings in reduction of the General Assistance Standard of Aid
18 realized from the preceding finding of significant financial distress.

19 (2) The difference in the county's total population between the date the preceding application was
20 filed and the date the reapplication is filed.

21 (3) Any staff changes or changes to working conditions, including but not limited to reduced
22 work hours or salary increases or decreases that occurred since the date the preceding application
23 was filed.

24 (4) Any statutes enacted since the date the preceding application was filed that change county
25 revenue sources or expenditures, or impose new mandates upon the county.

26 (5) Tables that include the difference between proposed and approved unmet need in the
27 preceding application, and the proposed unmet need in the reapplication. Tables may also be
28 submitted by a predetermined computer medium.

29 (c) A county filing a reapplication of a previously approved finding of significant financial
30 distress must present a compelling case of significant financial distress continuing since the last
31 approved finding by the Commission.

32 (d) For a previously denied application, a county may file a reapplication when the fiscal
33 situation in the county has changed.

34 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
35 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

36 **§ 1182.16. Withdrawal of Applications.**

37 An application may be withdrawn by written notice any time before a final decision is issued or
38 upon request at the time of hearing. When the Commission receives a notice or request to
39 withdraw, the Commission may issue a decision dismissing the application.

1 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and
2 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

3 **Article 3. Test Claims**

4 **§ 1183.1. Test Claim Filing.**

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

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

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

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

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

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

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

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

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

38 ~~The claimant shall file the~~ A test claim, or amendment thereto, and accompanying documents
39 ~~with the Commission shall be certified, filed, and served~~ in accordance with section 1181.3 of
40 these regulations. All representations of fact shall be supported by documentary or testimonial
41 evidence, submitted in accordance with section 1187.5 of these regulations.

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

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

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

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

12 (3) The claimants have designated one ~~contact~~ person to act as the ~~resource~~ sole representative
13 for all claimants for information regarding the test claim.

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

17 Note: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections
18 17521, 17530, 17551, 17553, 17557(e), 17573, 17574, 24000, 24300.5, 26881, 26900, 26970,
19 26972, 34852, 35034, 35035, 37209, 40805.5 and 56723, Government Code.

20 **§ 1183.2. Review of Test Claim.**

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

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

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

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

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

40 ~~(d) The written comments and supporting documentation shall be signed at the end of the~~
41 ~~document by an authorized representative, with the declaration that it is true and complete to the~~

1 ~~best of the representative's personal knowledge or information or belief. The date of signing, the~~
2 ~~representative's title, address, and telephone number shall be included. If the authorized~~
3 ~~representative can be reached via e-mail, the e-mail address shall also be included.~~

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

6 **§ 1183.3. Claimant's Rebuttal.**

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

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

12 (1) If ~~new~~ representations of fact are made, they ~~must~~shall be supported by documentary or
13 testimonial evidence, submitted ~~with the rebuttal~~ in accordance with section 1187.5 of these
14 regulations. ~~All documentary evidence shall be in accordance with section 1187.5 of these~~
15 ~~regulations.~~

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

27 (c) ~~The rebuttal shall be signed at the end of the document by the claimant or its authorized~~
28 ~~representative, with the declaration that the rebuttal is true and complete to the best of the~~
29 ~~declarant's personal knowledge or information or belief. The date of signing, and the declarant's~~
30 ~~title, address, and telephone number shall be included. If the declarant can be reached by e-mail,~~
31 ~~the declarant's e-mail address shall also be included.~~

32 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
33 17530 and 17553(a), Government Code.

34 **§ 1183.4. Claimant's Motion to Consolidate or Sever Test Claims.**

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

39 (a) Any motion to consolidate or to sever shall be certified, filed, and served in accordance with
40 section 1181.3 of these regulations. If written representations of fact are made, they shall be

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

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

5 Note: Authority cited: Section 17527(g) and 17553(a), Government Code. Reference: Sections
6 17530, 17553 and 17554, Government Code.

7 **§ 1183.5. Executive Director's Authority to Consolidate or Sever Test Claims.**

8 (a) The executive director may consolidate part or all of any test claim with another test claim or
9 sever a test claim, if necessary to ensure the complete, fair, or timely consideration of any test
10 claim.

11 (b) At least 10 days before the action is taken, the executive director shall simultaneously serve
12 on the parties and interested parties on the mailing list described in section 1181.2 of these
13 regulations, and post on the Commission's website, a notice of any proposed action to
14 consolidate or sever.

15 Note: Authority cited: Section 17527(g), 17553 and 17554, Government Code. Reference:
16 Sections 17530, 17553 and 17554, Government Code.

17 **§ 1183.6. Review of Completed Test Claim and Preparation of Proposed Decision.**

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

23 (b) At least eight weeks before the hearing, or at a time required by the executive director or
24 stipulated to by the parties, Commission staff shall prepare a draft proposed decision and
25 distribute it to the parties, interested parties, and those on the mailing list described in section
26 1181.3 of these regulations, and shall post it on the Commission's website.

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

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

1 Note: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections
2 17514, 17530, 17551 and 17553, Government Code.

3 **§ 1183.7. Content of Parameters and Guidelines.**

4 The parameters and guidelines shall describe the claimable reimbursable costs and contain the
5 following information:

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

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

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

13 (d) Reimbursable Activities. A description of the specific costs and types of costs that are
14 reimbursable, including one-time costs and on-going costs, and reasonably necessary activities
15 required to comply with the mandate. "Reasonably necessary activities" are those activities
16 necessary to comply with the statutes, regulations and other executive orders found to impose a
17 state-mandated program. Activities required by statutes, regulations and other executive orders
18 that were not pled in the test claim may only be used to define reasonably necessary activities to
19 the extent that compliance with the approved state-mandated activities would not otherwise be
20 possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All
21 representations of fact to support any proposed reasonably necessary activities shall be supported
22 by documentary evidence submitted in accordance with section 1187.5 of these regulations.

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

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

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

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

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

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

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

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

38 (i) Claiming Instructions. Notice of the Office of the State Controller's duty to issue claiming
39 instructions, which constitutes notice of the right of local agencies and school districts to file

1 reimbursement claims, based upon the decision and parameters and guidelines adopted by the
2 Commission.

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

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

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

10 **§ 1183.8. Submission and Review of Proposed Parameters and Guidelines; Submission of**
11 **Comments.**

12 (a) Within 30 days of adoption of the decision on a test claim, or the early termination or
13 expiration of a reasonable reimbursement methodology, the successful test claimant shall submit,
14 to the Commission, proposed parameters and guidelines, pursuant to Government Code section
15 17557(a). Proposed parameters and guidelines shall be certified, filed, and served in accordance
16 with section 1181.3 of these regulations. If representations of fact are made, they shall be
17 supported by documentary or testimonial evidence, submitted in accordance with section 1187.5
18 of these regulations.

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

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

26 (d) Commission staff shall notify all recipients that they shall have the opportunity to review and
27 provide written comments concerning the proposed parameters and guidelines within 15 days of
28 service.

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

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

37 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
38 17530, 17553(a), 17557 and 17557.2, Government Code.

1 **§ 1183.9. Expedited Process for Proposed Parameters and Guidelines.**

2 (a) After adoption of a decision on a test claim, but before claimant submits proposed parameters
3 and guidelines, Commission staff may expedite the parameters and guidelines process by
4 preparing and issuing draft expedited parameters and guidelines to assist the claimant. The draft
5 expedited parameters and guidelines shall be served to everyone on the mailing list described in
6 section 1181.4 of these regulations, and shall be posted on the Commission's website.

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

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

18 (c) Within 15 days of service of the comments submitted pursuant to subdivision (b) of this
19 section, parties, interested parties, and interested persons may file and serve rebuttals. Such
20 rebuttals shall be certified, filed, and served in accordance with section 1181.3 of these
21 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 Note: Authority cited: Sections 17517.5, 17527(g), 17530 and 17553(a), Government Code.
24 Reference: Sections 17553(a), 17556(e) and 17557, Government Code.

25 **§ 1183.10. Reasonable Reimbursement Methodology.**

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

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

31 (1) "Costs to implement the mandate in a cost-efficient manner" include only those costs for the
32 activities that were determined to be reimbursable by the Commission in the decision on the test
33 claim, and the costs for the most reasonable methods of complying with the mandate pursuant to
34 section 1183.12(d), of these regulations.

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

38 (c) An interested party may submit cost information or other cost projections that can be the
39 basis of a reasonable reimbursement methodology, and letters in support of a draft reasonable
40 reimbursement methodology submitted pursuant to Government Code section 17557.1. Such
41 information shall be certified, filed and served in accordance with section 1181.3 of these

1 regulations. All representations of fact shall be supported by documentary or testimonial
2 evidence, submitted in accordance with section 1187.5 of these regulations.

3 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
4 17518.5, 17557 and 17557.1, Government Code.

5 **§ 1183.11. Joint Reasonable Reimbursement Methodology and Statewide Estimate of Costs.**

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

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

14 (c) At the request of the test claimant and the Department of Finance, the executive director may
15 provide for up to four extensions of the 180-day period for submittal of the draft reasonable
16 reimbursement methodology and proposed statewide estimate of costs for the initial claiming
17 period and budget year. Any request must be based on good cause as described in section 1187.9
18 and also include an update of all information and filing dates provided in the original written
19 notification submitted pursuant to Government Code section 17557.1(a). If no submittal of a
20 draft and no request for an extension has been made by the filing date specified in the notice of
21 intent to develop a reasonable reimbursement methodology, or if all extensions have been
22 exhausted, the executive director shall issue a letter notifying the test claimant of the duty to
23 submit proposed parameters and guidelines within 30 days under Government Code section
24 17557(a).

25 (d) The test claimant and Department of Finance shall certify, file, and serve any filings made
26 pursuant to Government Code section 17557.1 in accordance with section 1181.3 of these
27 regulations.

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

31 (f) Written comments ~~may be~~ shall be certified, filed, and served in accordance with section
32 1181.3 of these regulations.

33 (g) Within seven days of service of the written comments, the test claimant and Department of
34 Finance may submit written rebuttals which shall be certified, filed, and served in accordance
35 with section 1181.3 of these regulations.

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

40 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
41 17557, 17557.1 and 17557.2, Government Code.

1 **§ 1183.12. Reasonable Reimbursement Methodology, Included in Parameters and**
2 **Guidelines.**

3 (a) If the claimant indicates in the proposed parameters and guidelines or comments that a
4 reasonable reimbursement methodology, as defined in Government Code section 17518.5,
5 should be considered for inclusion in the parameters and guidelines, or if the Department of
6 Finance, Office of the State Controller, any affected state agency, or eligible claimant proposes
7 consideration of a reasonable reimbursement methodology, Commission staff may schedule an
8 informal conference in accordance with section 1187.4 of these regulations to discuss the
9 methodology and plan for submittal of a reasonable reimbursement methodology.

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

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

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

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

26 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
27 17518.5, 17557, 17557.1 and 17557.2, Government Code.

28 **§ 1183.13. Adoption of Parameters and Guidelines.**

29 (a) After review of the test claim decision, claimant's proposed parameters and guidelines or
30 draft expedited parameters and guidelines, written comments, and rebuttals, Commission staff
31 shall prepare a draft proposed decision and parameters and guidelines. Commission staff's
32 recommendation may include a reasonable reimbursement methodology developed pursuant to
33 Government Code section 17518.5.

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

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

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

8 (e) Within 10 days of the adoption of decision and parameters and guidelines, the executive
9 director shall send copies to the Office of the State Controller and to everyone on the mailing list
10 described in section 1181.4 of these regulations, and shall post a copy on the Commission's
11 website.

12 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
13 17518.5, 17530, 17553(a) and 17557, Government Code.

14 **§ 1183.14. Statewide Cost Estimate.**

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

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

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

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

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

31 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
32 17518.5, 17553, 17557(a), 17557.2 and 17600, Government Code.

33 **§ 1183.15. Jointly Proposed Request for Early Termination of Reasonable Reimbursement**
34 **Methodology.**

35 (a) The test claimant and the Department of Finance may file a joint request for early termination
36 of a reasonable reimbursement methodology with the Commission by submitting a request made
37 pursuant to Government Code section 17557.2(e) which shall be certified, filed, and served in
38 accordance with section 1181.3 of these regulations.

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

4 (c) Written comments ~~may be~~ shall be certified, filed, and served in accordance with section
5 1181.3 of these regulations.

6 (d) Within seven days of service of the written comments, the test claimant and Department of
7 Finance may submit written rebuttals which shall be certified, filed, and served in accordance
8 with section 1181.3 of these regulations.

9 (e) At least 10 days prior to the next hearing, Commission staff shall review comments and issue
10 recommendation on whether the Commission should approve the joint request for early
11 termination of a reasonable reimbursement methodology pursuant to Government Code section
12 17557.2(e).

13 (f) If the Commission approves a joint request for early termination, the Commission shall notify
14 the test claimant of the duty to submit proposed parameters and guidelines to the Commission
15 pursuant to Government Code section 17557(a), and section 1183.13 of these regulations.

16 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section
17 17557.2, Government Code.

18 **§ 1183.16. Expiration of Reasonable Reimbursement Methodology.**

19 (a) At least one year before the expiration of a reasonable reimbursement methodology,
20 Commission staff shall notify the test claimant and the Department of Finance, that they may do
21 one of the following within 60 days:

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

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

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

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

38 (c) The test claimant and the Department of Finance may jointly propose amendments to the
39 reasonable reimbursement methodology or the continuation of a reasonable reimbursement
40 methodology by submitting a request made pursuant to Government Code section 17557.2(f),
41 which shall be certified, filed, and served in accordance with section 1181.3 of these regulations.

1 (d) Commission staff shall notify all recipients that they shall have the opportunity to review and
2 provide written comments on the jointly proposed amendments or request for continuation of the
3 reasonable reimbursement methodology within 30 days of service.

4 (e) Written comments shall be certified, filed, and served in accordance with section 1181.3 of
5 these regulations.

6 (f) Within 15 days of service of the written comments prepared by other parties and interested
7 parties, the test claimant and Department of Finance may submit written rebuttals which shall be
8 certified, filed, and served in accordance with section 1181.3 of these regulations.

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

13 (h) Within 10 days of the adoption of the jointly proposed amendments or the continuation of a
14 reasonable reimbursement methodology, the executive director shall send copies to the Office of
15 the State Controller, and to parties and interested parties who are on the mailing list described in
16 section 1181.4 of these regulations.

17 (i) If the test claimant or the Department of Finance fail to respond within 60 days to the notice
18 described in subdivision (a) of this section, Commission staff shall prepare and issue draft
19 expedited parameters and guidelines, pursuant to section 1183.9 of these regulations, within 30
20 days of the parties' failure to respond.

21 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
22 17557, 17557.1 and 17557.2, Government Code.

23 **§ 1183.17. Amendments to Parameters and Guidelines.**

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

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

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

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

35 (3) Include a reasonable reimbursement methodology for all or some of the reimbursable
36 activities in accordance with Government Code section 17518.5. Any request to include a
37 reasonable reimbursement methodology based on, in whole or in part, costs that have been
38 included in claims submitted to the Controller, shall include a statement to this effect on the
39 cover or first page of the request.

40 (4) Clarify reimbursable activities consistent with the original decisions on the test claim and
41 parameters and guidelines.

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

1 evidence, submitted in accordance with section 1187.5 of these regulations. All written
2 comments timely filed shall be reviewed by Commission staff and may be incorporated into the
3 proposed decision and recommendation on the proposed amendment to the parameters and
4 guidelines.

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

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

12 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
13 17518.5, 17530, 17553 and 17557, Government Code.

14 **§ 1183.18. Timelines.**

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

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

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

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

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

35 (5) If the test claimant and the Department of Finance notify the Commission staff in writing of
36 their intent to develop a reasonable reimbursement methodology and statewide estimate of costs
37 for the initial claiming period and budget year for reimbursement pursuant to Government Code
38 section 17557.1, the days following the date of the notification up to the date on which a draft
39 reasonable reimbursement methodology and proposed statewide estimate of costs are developed
40 and submitted to the Commission, shall be tolled and may not be counted toward the date on
41 which a statewide cost estimate must be adopted by the Commission. The days tolled shall not
42 exceed 180 days from the date of the notification.

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

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

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

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

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

16 *PARTY/ACTIVITIES* *DAY NUMBER*

17 TEST CLAIM

18 CLAIMANT files test claim with the commission.	0
19 COMMISSION staff begins counting days on the first day after receipt.	1
20 COMMISSION staff reviews test claim to determine if complete	by 10
21 COMMISSION staff sends test claim to state agencies for review.	by 10
22 COMMISSION staff convenes informal conference with parties, if	
23 necessary.	by 30
24 STATE AGENCIES file comments on test claim.	by 40
25 CLAIMANT submits rebuttal.	by 70
26 COMMISSION staff prepares the draft proposed	
27 decision on the test claim and serves on parties.	by 100
28 PARTIES submit comments on draft proposed decision	
29 on the test claim.	by 130
30 COMMISSION staff completes analysis and issues proposed decision.	
31	by 160
32 COMMISSION hears test claim and adopts decision.	by 180
33 COMMISSION staff issues decision and serves on parties.	by 190
34 COMMISSION staff notifies Legislature of decision	by 210

35 PARAMETERS AND GUIDELINES

36 CLAIMANT submits proposed Parameters and Guidelines.	by 210
37 STATE AGENCIES AND PARTIES may file comments.	by 235
38 CLAIMANT rebuts comments.	by 250
39 COMMISSION staff issues draft proposed decision and	
40 parameters and guidelines and serves on parties.	by 265
41 PARTIES submit comments on draft proposed decision and	
42 parameters and guidelines.	by 275
43 COMMISSION staff issues proposed decision and	

1 parameters and guidelines and serves on parties. by 279
 2 COMMISSION conducts hearing and adopts proposed decision and
 3 parameters and guidelines. by 293
 4 COMMISSION staff issues decision and
 5 parameters and guidelines. by 303

6 STATEWIDE COST ESTIMATE

7 COMMISSION staff prepares draft statewide cost estimate. by 335
 8 ALL PARTIES comment on draft statewide cost estimate. by 345
 9 COMMISSION staff prepares proposed statewide cost estimate. by 350
 10 COMMISSION conducts hearing and adopts statewide cost estimate. by 365
 11 COMMISSION staff reports Statewide Cost Estimate to the Legislature. by 395

12 (2) Timeline for a Test Claim, Reasonable Reimbursement Methodology, and Statewide
 13 Estimate of Costs

14 PARTY/ACTIVITIES DAY NUMBER

15 TEST CLAIM WITH REASONABLE REIMBURSEMENT METHODOLOGY (RRM) AND
 16 STATEWIDE ESTIMATE OF COSTS (SEC)

17 CLAIMANT files test claim with the Commission. 0
 18 COMMISSION staff begins counting days on the first day after receipt. 1
 19 COMMISSION staff reviews test claim to determine if complete. by 10
 20 COMMISSION staff sends test claim to state agencies for review. by 10
 21 COMMISSION staff convenes informal conference with parties,
 22 if necessary. by 30
 23 STATE AGENCIES file comments on test claim. by 40
 24 CLAIMANT submits rebuttal. by 70
 25 COMMISSION staff prepares the draft proposed decision
 26 on the test claim and serves on parties. by 100
 27 PARTIES submit comments on the draft proposed decision
 28 on the test claim. by 130
 29 COMMISSION staff completes analysis and issues proposed
 30 decision. by 160
 31 COMMISSION hears test claim and adopts decision. by 180
 32 COMMISSION staff issues decision and serves on parties. by 190
 33 COMMISSION staff notifies Legislature of decision. by 210

34 REASONABLE REIMBURSEMENT METHODOLOGY (RRM)
 35 AND STATEWIDE ESTIMATE OF COSTS (SEC)

36 CLAIMANT AND DEPARTMENT OF FINANCE
 37 (DOF) notify Commission in writing of their
 38 intent to follow the process in 17557.1 to develop a RRM
 39 and SEC (within 30 days after adoption of test claim decision). by 210
 40 CLAIMANT AND DOF submit plan no later than 6 months after the date of
 41 letter of intent and sixty (60) days before hearing. by 400
 42 COMMISSION staff notifies parties of comment period. by 410
 43 INTERESTED PARTIES submit comments on the draft RRM and SEC. by 425

- 1 CLAIMANT AND DOF submit written rebuttal. by 432
- 2 COMMISSION staff issues submitted comments and staff
- 3 recommendation. by 450
- 4 COMMISSION conducts hearing, approves the draft RRM, and adopts the
- 5 proposed SEC for the initial claiming period and budget year. by 460
- 6 COMMISSION staff submits RRM to the CONTROLLER. by 470
- 7 COMMISSION staff reports SEC to the Legislature. by 490

8 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
 9 17527, 17532, 17553, 17555, 17557(e), 17557.1 and 17557.2, Government Code.

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

11 **§ 1184.1. Review of Office of State Controller's Claiming Instructions.**

- 12 (a) Upon request of a local agency or school district, the Commission shall review claiming
- 13 instructions issued by the Office of State Controller.
- 14 (b) A request to review claiming instructions shall include the following:
- 15 (1) A copy of the disputed claiming instructions.
- 16 (2) If available, correspondence or other documentation that verifies the local agency or school
- 17 district sought to resolve the dispute through the Office of State Controller.
- 18 (3) A narrative that details the suggested changes and the reasons why the local agency or school
- 19 district finds the claiming instructions need to be modified.
- 20 (4) The name, address, telephone number, and e-mail address of the agency contact person.
- 21 (c) An original request to review claiming instructions shall be ~~submitted to the Commission by~~
- 22 ~~the local agency or school district~~ certified, filed, and served in accordance with section 1181.3
- 23 of these regulations. If representations of fact are made, they shall be supported by documentary
- 24 or testimonial evidence, submitted in accordance with section 1187.5 of these regulations.
- 25 (d) Within 10 days of receipt of a request to review claiming instructions, Commission staff shall
- 26 notify the local agency or school district that submitted the request if the submittal is complete or
- 27 incomplete. A request to review the claiming instructions shall be considered incomplete if any
- 28 of the elements required in subdivision (b) or (c) of this section are illegible or not included.
- 29 Incomplete requests shall be returned to the local agency or school district. If a complete request
- 30 is not received by the Commission within 30 days from the date the incomplete request was
- 31 returned, the Commission shall deem the request to be withdrawn.
- 32 (e) Within 10 days of receipt of a complete request to review claiming instructions, Commission
- 33 staff shall send a copy to all persons who are on the mailing list described in section 1181.4 of
- 34 these regulations. Commission staff shall provide notice that written comments concerning the
- 35 request to review claiming instructions may be submitted within 30 days of service of the notice
- 36 of complete filing. A copy of the notice shall also be posted on the Commission's website.
- 37 (f) 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 (g) Within 30 days of service of the written comments, the requester may submit a written
2 rebuttal to the Commission which shall be certified, filed, and served in accordance with section
3 1181.3 of these regulations. If representations of fact are made, they shall be supported by
4 documentary or testimonial evidence, submitted in accordance with section 1187.5 of these
5 regulations.
- 6 (h) Before hearing a request to review claiming instructions, Commission staff shall prepare a
7 draft proposed decision that shall include a review of the request and any comments filed, and a
8 staff recommendation on whether the request should be approved or denied.
- 9 (i) The requester and any state agency or interested party may file written comments on the draft
10 proposed decision. Written comments shall be certified, filed, and served ~~as described in~~
11 accordance with section 1181.3 of these regulations, by the date determined and publicized by
12 the executive director. If representations of fact are made, they ~~must~~shall be supported by
13 documentary or testimonial evidence submitted ~~with the comments~~ in accordance with section
14 1187.5 of these regulations. A three-week period for comments shall be given, subject to the
15 executive director's authority to expedite all matters pursuant to Government Code section
16 17530. All written comments timely filed shall be reviewed by Commission staff and may be
17 incorporated into the proposed decision on the request to review and modify the claiming
18 instructions.
- 19 (j) 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 (i) of this
21 section. The Commission need not rely on, and staff need not respond to, late comments,
22 exhibits, or other evidence submitted in response to a draft proposed decision after the comment
23 period expires.
- 24 (k) The Commission shall conduct a hearing in accordance with article 7 of these regulations on
25 the request to review claiming instructions.
- 26 (l) If the Commission determines that the claiming instructions need to be modified, the
27 Commission shall direct the Office of State Controller to modify the claiming instructions to
28 conform to the parameters and guidelines.
- 29 (m) An approved change to the claiming instructions shall be subject to the following schedule:
- 30 (1) A request for review filed before the deadline for initial claims as specified in the claiming
31 instructions shall apply to all years eligible for reimbursement as defined in the original
32 parameters and guidelines.
- 33 (2) A request for review filed after the initial claiming deadline must be submitted on or before
34 the annual reimbursement claim filing deadline set out in Government Code section 17560
35 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.
- 36 (n) A request to review claiming instructions may be withdrawn by written application to the
37 executive director any time before a decision is adopted or by oral application at the time of
38 hearing. The requesters shall file and serve the written application in accordance with section
39 1181.3 of these regulations. Commission staff shall post a copy of the notice on the
40 Commission's website for 60 days prior to dismissal of the request to review claiming
41 instructions. If no other local agency or school district takes over the request to review claiming
42 instructions by substitution of parties within 60 days of service and posting of the application to
43 withdraw, the executive director shall issue a letter to everyone on the mailing list described in

1 section 1181.4 of these regulations dismissing the request to review claiming instructions and
2 shall post the letter on the Commission's website.

3 Note: Authority cited: Sections 17527(g) and 17527(h), Government Code. Reference: Sections
4 17530, 17560 and 17571, Government Code.

5 **Article 5. Incorrect Reduction Claims**

6 **§ 1185.1. Incorrect Reduction Claim Filing.**

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

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

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

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

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

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

20 (b) If a claimant intends to pursue an incorrect reduction claim on behalf of a class of claimants,
21 it must notify the Commission of its intent to do so at the time it files its incorrect reduction
22 claim and meet the requirements of section 1185.3 of these regulations.

23 (c) All incorrect reduction claims shall be filed with the Commission no later than three years
24 following the date a claimant first receives from the Office of State Controller a final state audit
25 report, letter, or other written notice of adjustment to a reimbursement claim, which complies
26 with Government Code section 17558.5(c) by specifying the claim components adjusted, the
27 amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the
28 claimant, and the reason for the adjustment. The filing shall be returned to the claimant for lack
29 of jurisdiction if this requirement is not met.

30 (d) An incorrect reduction claim shall pertain to alleged incorrect reductions in a reimbursement
31 claim filed by one claimant. The incorrect reduction claim may be for more than one fiscal year.

32 (e) All incorrect reduction claims, or amendments thereto, shall be filed on a form provided by
33 the Commission.

34 (f) All incorrect reduction claims, or amendments thereto, shall contain at least the following
35 elements and documents:

36 (1) A copy of the Office of State Controller's claiming instructions that were in effect during the
37 fiscal years of the reimbursement claims.

38 (2) A written detailed narrative that describes the alleged incorrect reductions. The narrative shall
39 include a comprehensive description of the reduced or disallowed areas of costs.

1 (3) All representations of fact shall be supported by testimonial or documentary evidence, ~~and~~
2 ~~shall be submitted with the claim~~ in accordance with section 1187.5 of these regulations.

3 (4) A copy of any final state audit report, letter, or other written notice of adjustment from the
4 Office of State Controller that explains the claim components adjusted, amounts reduced, and the
5 reasons for the reduction or disallowance.

6 (5) A copy of the subject reimbursement claims the claimant submitted to the Office of State
7 Controller.

8 (g) An incorrect reduction claim, or amendment thereto, shall be certified, filed, and served in
9 accordance with section 1181.3 of these regulations~~shall be signed at the end of the document,~~
10 ~~under penalty of perjury by the claimant or its authorized representative, with the declaration that~~
11 ~~the incorrect reduction claim is true and complete to the best of the declarant's personal~~
12 ~~knowledge or information or belief. The date signed, the declarant's title, address, telephone~~
13 ~~number, and e-mail address shall be included.~~

14 (h) The claimant shall file the original incorrect reduction claim, or amendment thereto, and
15 accompanying documents with the Commission in accordance with section 1181.3 of these
16 regulations.

17 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
18 17530, 17551(d), 17553(d), 17558.5(c) and 17558.7(a), Government Code.

19 **§ 1185.2. Review of Incorrect Reduction Claims.**

20 (a) Within 10 days of receipt of an incorrect reduction claim, Commission staff shall notify the
21 claimant if the incorrect reduction claim is complete or incomplete. Incorrect reduction claims
22 will be considered incomplete if any of the elements in section 1185.1(a) and (b) and (d) through
23 (h) are illegible or not included or if the requirements of those subdivisions are not met.
24 Incomplete incorrect reduction claims shall be returned to the claimant. If a complete incorrect
25 reduction claim is not received by the Commission within 30 days from the date the incomplete
26 claim was returned to the claimant, the executive director shall deem the filing to be withdrawn.

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

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

33 (d) Commission staff shall notify the Office of State Controller that written comments and
34 supporting documentation in connection with an incorrect reduction claim shall be filed no more
35 than 90 days from the date the copy of the claim is provided to the Office of State Controller.
36 Written comments and supporting documentation ~~may~~shall be certified, filed, and served in
37 accordance with section 1181.3 of these regulations. ~~If the written comments make~~
38 ~~representations of fact are made, they~~ representations shall be supported by documentary or
39 testimonial evidence ~~and shall be submitted with the comments~~ in accordance with section
40 1187.5 of these regulations.

41 (e) The claimant and interested parties may submit written rebuttals to the Office of State
42 Controller's comments within 30 days of service of the Office of State Controller's comments.

1 Written rebuttals and supporting documentation shall be certified, filed, and served pursuant to
2 accordance with section 1181.3. ~~If the written rebuttal involves representations of fact are made,~~
3 ~~they representations~~ shall be supported by documentary or testimonial evidence ~~and shall be~~
4 ~~submitted with the rebuttal~~ in accordance with section 1187.5 of these regulations.

5 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
6 17551(d), 17553(d), 17558.5(c) and 17558.7(a), Government Code.

7 **§ 1185.3. Consolidation of Claims Initiated by an Individual Claimant.**

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

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

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

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

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

20 (b) A claimant that seeks to file a consolidated incorrect reduction claim shall notify the
21 Commission of its intent at the time of filing on a form provided by the Commission. The
22 consolidated incorrect reduction claim shall be filed in accordance with section 1185.1 of these
23 regulations and contain a narrative that explains the elements in subdivision (a) of this section.
24 All representations of fact shall be supported by documentary or testimonial evidence, submitted
25 in accordance with section 1187.5 of these regulations.

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

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

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

40 (f) Upon receipt of the list from the Office of the State Controller, the Commission shall notify
41 the list of other claimants experiencing similar reductions by the Controller under the same

1 mandate and other interested parties of the original claimant's intent to consolidate an incorrect
2 reduction claim.

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

5 **§ 1185.4. Joining a Consolidated Incorrect Reduction Claim.**

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

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

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

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

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

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

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

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

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

1 **§ 1185.5. Opting Out of a Consolidated Incorrect Reduction Claim.**

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

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

8 (b) No later than one year after opting out, or within the period of limitation under section
9 1185.1(c), whichever is later, a claimant that opts out of a consolidated claim shall file an
10 individual incorrect reduction claim in accordance with section 1185.1 of these regulations in
11 order to preserve its right to challenge a reduction made by the Controller on that same mandate.

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

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

17 **§ 1185.6. Executive Director's Authority to Consolidate or Sever Incorrect Reduction**
18 **Claims.**

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

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

25 (b) During the 30-day notice period, a claimant may serve and file a written request that an
26 individual incorrect reduction claim be severed from a proposed consolidation. Timely requests
27 to sever shall be approved by the executive director.

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

29 Note: Authority cited: Sections 17527(g), 17553(a) and 17558.8(b), Government Code.
30 Reference: Sections 17530, 17554 and 17558.8, Government Code.

31 **§ 1185.7. Review of Completed Incorrect Reduction Claims and Preparation of Proposed**
32 **Decision.**

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

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

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

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

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

20 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
21 17530 and 17551(d), Government Code.

22 **§ 1185.8. Withdrawal of Incorrect Reduction Claims.**

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

27 (b) An incorrect reduction claim, by the original claimant in a consolidated incorrect reduction
28 claim, may be withdrawn by written application any time before a decision is adopted or by oral
29 application at the time of hearing. The original claimant shall certify, file, and serve the written
30 application in accordance with section 1181.3 of these regulations and Commission staff shall
31 post a copy of the notice on the Commission's website for 60 days prior to dismissal of the
32 incorrect reduction claim. If one of the joint claimants takes over the claim, it shall, within 60
33 days of providing notice of its intent to take over the claim, perfect the filing by submitting the
34 written narrative as required by section 1185.1. If none of the joint claimants takes over the claim
35 by substitution of parties within 60 days of service and posting of the application to withdraw,
36 the executive director shall issue a letter to everyone on the mailing list described in section
37 1181.4 of these regulations dismissing the claim and providing the joint claimants with an
38 opportunity to perfect their individual claims within 60 days of service by submitting the written
39 narrative as required by section 1185.1. The letter shall be posted on the Commission's website.

40 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section
41 17551(d), Government Code.

1 **§ 1185.9. Reinstatement of Costs.**

2 If the Commission determines that a reimbursement claim was incorrectly reduced, the
3 Commission shall send the decision to the Office of State Controller and request that the Office
4 of State Controller reinstate the costs that were incorrectly reduced.

5 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section
6 17551(d), Government Code.

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

8 **§ 1186.1. Definitions: State Mandates Apportionment System.**

9 (a) Request for Inclusion. A Request for Inclusion is a factual statement about a mandated cost
10 program and a petition for a review of the described program by the Commission on State
11 Mandates. The review is intended to result in a decision whether or not to include the program in
12 the State Mandates Apportionment System.

13 (b) Stable costs. Stable costs are those costs incurred by local agencies or school districts as a
14 result of implementing a mandated cost program which, when reviewed on a statewide basis over
15 a three-year period, have not fluctuated significantly.

16 (c) Request for Removal. A Request for Removal is a factual statement about significant
17 modifications or amendments to a program which is part of the State Mandates Apportionment
18 System. The statement is intended to result in the discontinuance of the program in the State
19 Mandates Apportionment System.

20 Note: Authority cited: Sections 17527(g) and 17615, Government Code. Reference: Sections
21 17615 and 17615.1, Government Code.

22 **§ 1186.2. Request for Inclusion.**

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

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

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

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

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

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

36 (d) The Commission shall consider the recommendation submitted from the Controller for each
37 new mandate submitted for inclusion in the State Mandates Apportionment System in
38 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 **§ 1186.3. Adoption of Finding for Request for Inclusion.**

11 (a) The Commission, after reviewing the request for inclusion and conducting at least one
12 hearing in accordance with article 7 of these regulations, shall adopt a finding that the mandated
13 program will or will not be included in the State Mandates Apportionment System.

14 (b) The primary criteria to be used by the Commission in making a determination will include a
15 review of the mandated program to determine if the program has a history of stable costs for
16 most claimants, if the mandated program has been recently modified, and if inclusion would
17 accurately reflect the costs of the state mandated program.

18 (c) Upon adoption of a finding that a mandated program should be included in the State
19 Mandates Apportionment System, the Commission shall direct the Controller to include the
20 program in the system.

21 Note: Authority cited: Sections 17527(g) and 17615.1, Government Code. Reference: Sections
22 17615.1 and 17615.4, Government Code.

23 **§ 1186.4. Request for Removal.**

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

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

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

32 (1) The chapter number or executive order of the law which established the mandated cost
33 program.

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

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

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

3 (d) Requests for Removal will be considered incomplete if any of the preceding elements or
4 documents required in subdivision (c) of this section are illegible or not included. Incomplete
5 Requests for Removal shall be returned to the requester for completion.

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

10 Note: Authority cited: Sections 17527(g) and 17615.7, Government Code. Reference: Section
11 17615.7, Government Code.

12 **§ 1186.5. Adoption of Finding for Request for Removal.**

13 (a) The Commission, after reviewing the request for removal and conducting at least one hearing
14 in accordance in article 7 of these regulations, shall adopt a finding that the mandated program
15 will or will not continue to be included in the State Mandates Apportionment System.

16 (b) The primary criteria to be used by the Commission in making a determination regarding
17 removal will include whether the mandated program was significantly modified or amended by
18 the Legislature or by executive order so as to affect the ongoing costs of the program in a way
19 that the historical costs of the program are no longer an accurate reflection of continuing costs.

20 (c) Upon adoption of a finding that a mandated program should be removed from the system, the
21 Commission shall direct the Controller to remove the program from the system. In that direction
22 to the Controller, the Commission shall specify if the program will be removed temporarily or
23 for an indefinite period of time.

24 Note: Authority cited: Sections 17527(g) and 17615.5, Government Code. Reference: Sections
25 17615.5 and 17615.7, Government Code.

26 **§ 1186.6. Reviewing an Apportionment or Base Year Entitlement.**

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

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

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

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

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

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

38 (4) Cost information that outlines the amount of the funding for the total apportionment and the
39 calculations necessary to show that the program needing modification either under or over

1 reimburse the local agency or school district's actual costs by 20 percent or by \$1,000, whichever
2 is less.

3 Note: Authority cited: Sections 17527(g) and 17615.8(a), Government Code. Reference: Section
4 17615.8, Government Code.

5 **§ 1186.7. Adjustment to Apportionment.**

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

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

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

20 Note: Authority cited: Sections 17527(g) and 17615.8(a), Government Code. Reference: Section
21 17615.8, Government Code

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

23 **§ 1187.1. Scheduling and Noticing the Hearing.**

24 (a) A "matter," subject to hearings and decisions under article 7 of these regulations, shall
25 include test claims, proposed parameters and guidelines, requests to amend parameters and
26 guidelines, incorrect reduction claims, requests for inclusion or removal from the State Mandates
27 Apportionment System, requests for review of apportionment or base year entitlement for
28 programs included in the State Mandates Apportionment System, requests for review of the
29 Office of State Controller's claiming instructions, and requests for mandate redetermination.

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

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

37 **§ 1187.2. Assignment to Hearing Panels/Hearing Officers.**

38 (a) After an informational hearing, in accordance with Article 8 of these regulations, the
39 Commission's chairperson may assign a matter before the Commission to a hearing panel

1 consisting of one or more members or to a hearing officer for hearing and preparation of a
2 proposed decision that may be adopted as the decision in the case.

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

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

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

10 **§ 1187.3. Objection to Hearing Panel, Hearing Officer, or Commission Member.**

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

13 (b) Any party may request the disqualification of any hearing officer or Commission member
14 before the taking of evidence at a hearing by filing an affidavit stating with particularity the
15 grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the
16 request concerns a Commission member, the issue shall be determined by the other members of
17 the Commission. Where the request concerns the hearing officer, the issue shall be determined
18 by the Commission itself, if the Commission itself hears the case with the hearing officer;
19 otherwise the issue shall be determined by the hearing officer.

20 Note: Authority cited: Sections 17527(c), 17527(g) and 17553(a), Government Code. Reference:
21 Sections 17527, 17532 and 17551, Government Code.

22 **§ 1187.4. Informal Conference.**

23 (a) An informal conference may be scheduled by the Commission or the executive director of
24 their own accord or by request of a party or interested party to the matter in question. The parties
25 and interested parties to the matter shall be invited to participate. With the consent of the parties,
26 the informal conference may be a teleconference.

27 (b) At least 10 days before any informal conference, Commission staff shall serve notice of the
28 conference to those on the mailing list for the matter in question as established pursuant to
29 section 1181.4 of these regulations.

30 (c) The purpose of an informal conference may be to:

31 (1) Set dates for receiving comments or claimant rebuttal; completing the proposed decision; and
32 hearing the matter.

33 (2) Give the claimant or requester the opportunity to present the matter and to respond to
34 questions from Commission staff and parties and interested parties for the purpose of resolving
35 or clarifying issues of fact or law.

36 (3) Consider whether a reasonable reimbursement methodology may be developed and included
37 in the parameters and guidelines.

38 (4) Review a draft reasonable reimbursement methodology and proposed statewide estimate of
39 costs that are jointly prepared by the test claimant and the Department of Finance pursuant to
40 Government Code section 17557.1.

- 1 (5) Identify issues and determine methods of resolving those issues.
- 2 (d) Any party may notify the executive director of any interested parties who should be invited to
3 attend an informal conference.
- 4 (e) Anything said, any document disclosed, and any new representations of fact made during an
5 informal conference shall not be made part of the administrative record of a test claim unless
6 properly admitted into the record through the submission of an amendment to a test claim,
7 written comment, rebuttal, or public testimony.
- 8 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
9 17518.5, 17530, 17551, 17553(a) and 17557.1, Government Code.

10 **§ 1187.5. Evidence Submitted to the Commission.**

- 11 (a) The hearings will not be conducted according to technical rules relating to evidence and
12 witnesses. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on
13 which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and
14 unduly repetitious evidence shall be excluded. Hearsay evidence may be used for the purpose of
15 supplementing or explaining other evidence but shall not be sufficient in itself to support a
16 finding unless it would be admissible over objection in civil actions.
- 17 (b) Oral or written representations of fact offered by any person at an article 7 hearing shall be
18 under oath or affirmation. All written representations of fact submitted to the Commission must
19 be signed under penalty of perjury by persons who are authorized and competent to do so and
20 must be based upon the declarant's personal knowledge, ~~or~~ information, or belief.
- 21 (c) Official notice may be taken in the manner and of the information described in Government
22 Code Section 11515.
- 23 (d) Each party shall have the right to present witnesses, introduce exhibits, and propose to the
24 chairperson questions for opposing witnesses. Evidence may be submitted to support or rebut
25 any issue. If declarations are to be used in lieu of testimony, the party proposing to use the
26 declaration shall comply with Government Code Section 11514.
- 27 Note: Authority cited: Sections 17527(e), 17527(g), 17553, 17557, 17610, 17621 and 17622,
28 Government Code. Reference: Sections 11514, 11515, 17527(e), 17551, 17553, and 17557,
29 17559, and 17570, Government Code.

30 **§ 1187.6. Conduct of Hearing.**

- 31 (a) Each party shall have the right to present witnesses, to introduce exhibits, and to propose to
32 the chairperson questions for opposing witnesses in support or rebuttal of any matter relevant to
33 the issues even though that matter was not covered in the direct examination.
- 34 (b) The presiding member, Commission members, hearing panel member or hearing officer may
35 question any party or witness and may admit any relevant and material evidence.
- 36 (c) The taking of evidence in a hearing shall be controlled by the Commission or hearing officer
37 in the manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to
38 taking evidence, the issues and the order of presenting evidence will be explained.
- 39 (d) The hearing will ordinarily proceed in the following manner. Staff of the Commission will
40 summarize the matter. The claimant will state its position and present its evidence. The

1 Department of Finance or other affected state agency will thereafter state its position and present
2 its evidence. The claimant will then be given an opportunity to reply.

3 (e) The Commission or hearing officer may call a party, or any other person who is present, to
4 testify under oath or affirmation. Any member of the Commission, its executive director, or
5 hearing officer may question witnesses.

6 (f) The Commission or the executive director may require that prepared written testimony or
7 other evidence be submitted in advance of any hearing, for the purpose of facilitating the orderly
8 consideration of issues at the hearing.

9 (g) Commission public hearings shall be recorded by stenographic reporter or electronic
10 recording or both. The transcript or recordings shall be kept for the period of time required by
11 applicable law governing the retention of records of state agency public proceedings, or until
12 conclusion of administrative or judicial proceedings, whichever is later.

13 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
14 17527(c), 17532, 17551 and 17553(a), Government Code.

15 **§ 1187.7. Witnesses and Subpoenas.**

16 (a) A party shall arrange for the presence of its own witnesses at a hearing on a claim.

17 (b) A subpoena may be issued upon a majority vote of the Commission. A party requesting a
18 subpoena shall submit a written application to the Commission at least six weeks prior to the
19 Commission meeting at which the request will be considered.

20 (c) An application for a subpoena to compel the attendance of a witness shall be made by
21 affidavit and shall give the name and address of the person to be subpoenaed, shall describe the
22 matters to be testified on, shall set forth in detail the relevance to the issues involved in the claim,
23 shall specify the date, time, and place of the hearing on the claim and that, to the best of the
24 applicant's personal knowledge, ~~or~~ information, or belief, the person to be subpoenaed has
25 knowledge of the matters. If the applicant is unable to obtain the name of the person who has
26 knowledge of the matters, the name of the director of the state or local agency or superintendent
27 of a school district may be used for the application.

28 (d) An application for subpoena duces tecum for the production by a witness of books, papers,
29 correspondence, memoranda, or other records, including records of the claimant, shall be made
30 by affidavit and shall give the name and address of the person to be subpoenaed, shall describe
31 the matters or things desired to be produced, shall set forth in detail the relevance to the issues
32 involved in the claim, shall specify the date on which the matters shall be produced, and that, to
33 the best of the applicant's personal knowledge, ~~or~~ information, or belief, the witness has the
34 matters or things in his or her possession or under his or her control and that none of the matters
35 or things desired to be produced are public records accessible to the public pursuant to Section
36 6250 et seq., of the Government Code. If the applicant is unable to obtain the name of the person
37 who has possession or control of the matters or things desired to be produced, the name of the
38 director or superintendent or custodian of records of the state or local agency or school district
39 may be used for the application.

40 (e) When a request for subpoena or subpoena duces tecum is approved by the Commission, the
41 subpoena or subpoena duces tecum shall be issued signed by the executive director, but
42 otherwise be blank.

1 (f) Before service, all appropriate portions of the blank subpoena or subpoena duces tecum shall
2 be completed by the requesting party, and the name, address, and telephone number of the
3 requesting party shall be included on the form. Service of subpoenas and subpoenas duces tecum
4 shall be made with a copy of the affidavit and shall be arranged for by requesting parties.

5 (g) Except as otherwise provided in this section, service of subpoenas or subpoenas duces tecum
6 shall be in accordance with the provisions of Section 1985 et seq., of the Code of Civil
7 Procedure.

8 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
9 17527(d), 17551 and 17553(a), Government Code.

10 **§ 1187.8. Representation at Hearing.**

11 (a) A party may appear in person or through an authorized representative. When using an
12 authorized representative, a party shall designate in writing the authorized representative to act as
13 its sole representative and shall certify, file, and serve written notice identifying the authorized
14 representative in accordance with section 1181.3 of these regulations.

15 (b) A representative of a party shall be deemed to control all matters respecting the interest of
16 that party in the proceeding. All correspondence and communications shall be forwarded to the
17 authorized representative.

18 (c) Withdrawal of appearance of any representative may be effected by filing and serving a
19 written notice of withdrawal in accordance with section 1181.3 of these regulations. Any change
20 in representation shall be authorized by the party in writing and filed and served in accordance
21 with section 1181.3 of these regulations.

22 Note: Authority cited: 17527(c), 17527(g), 17551, 17553(a), 17555, 17620, 17621 and 17622,
23 Government Code. Reference: Sections 17527(c), 17551 and 17553, Government Code.

24 **§ 1187.9. Extensions of Time to File Comments or Rebuttals and Postponements and**
25 **Continuances of Hearings.**

26 (a) Requests for Extensions of Time

27 Any party or interested party to a matter may request an extension of time by filing a request
28 with the executive director before the date set for filing of comments or rebuttals with
29 Commission staff on that matter. The request shall fully explain the reasons for the extension,
30 propose a new date for filing, and be simultaneously certified, filed, and served in accordance
31 with section 1181.3 of these regulations. If representations of fact are made, they shall be
32 supported by documentary or testimonial evidence, submitted in accordance with section 1187.5
33 of these regulations. So long as a postponement of a hearing would not be required, there is no
34 prejudice to any party or interested party, and there is no other good reason for denial, the
35 request shall be approved. A party to a matter may request an extension of time that would
36 necessitate rescheduling a hearing, but shall also include a request for postponement of the
37 hearing, pursuant to section 1187.9(b). Within two business days of receipt of the request, the
38 executive director shall determine whether the extension will be granted and notify all persons on
39 the mailing list prepared pursuant to section 1181.4 of these regulations.

40 (b) Requests for Postponement of Hearing

1 A party to an article 7 matter may request a postponement of a hearing on that matter, until the
2 next regularly scheduled hearing. Although postponements of hearings are disfavored, each
3 request for a postponement must be considered on its own merits. The request shall fully explain
4 the reasons for the postponement, and be certified, filed, and served in accordance with section
5 1181.3 of these regulations. If representations of fact are made, they shall be supported by
6 documentary or testimonial evidence, submitted in accordance with section 1187.5 of these
7 regulations. Within two business days of receipt of the request, the executive director shall
8 determine whether the postponement will be granted and notify all persons on the mailing list
9 prepared pursuant to section 1181.4 of these regulations. The executive director may postpone
10 the matter only on an affirmative showing of good cause.

11 (1) Circumstances that may indicate good cause include:

12 (A) The unavailability of a party, party representative, or witness because of death, illness, or
13 other excusable circumstances;

14 (B) The substitution of a party representative, but only where there is an affirmative showing that
15 the substitution is required in the interests of justice;

16 (C) The addition of a new party if:

17 1. The new party has not had a reasonable opportunity to prepare for hearing; or

18 2. The other parties have not had a reasonable opportunity to prepare for hearing in regard to the
19 new party's involvement in the matter;

20 (D) A party's excused inability to obtain essential testimony, documents, or other material
21 evidence despite diligent efforts;

22 (E) A significant, unanticipated change in the status of the matter as a result of which the matter
23 is not ready for hearing; or

24 (F) The number and complexity of the issues.

25 (2) Other factors to be considered: In determining whether to grant a postponement, the
26 executive director shall consider the facts and circumstances that are relevant to the
27 determination. These may include:

28 (A) The proximity of the hearing date;

29 (B) Whether there was any previous postponement, extension of time, or delay of hearing due to
30 any party;

31 (C) The length of the postponement requested;

32 (D) The availability of alternative means to address the problem that gave rise to the request for a
33 postponement;

34 (E) The prejudice that parties or witnesses will suffer as a result of the postponement;

35 (F) If the matter was granted expedited scheduling, the reasons for that status and whether the
36 need for a postponement outweighs the need to avoid delay;

37 (G) The Commission's backlog of matters and the impact of granting a postponement on other
38 pending matters;

- 1 (H) Whether the claimant or requester representative is engaged in a trial or other hearing that
2 conflicts with the Commission hearing;
- 3 (I) Whether, pursuant to Government Code 17554, all parties have stipulated to a postponement;
4 and
- 5 (J) Whether the interests of justice are best served by a postponement, by moving forward with
6 the hearing on the matter, or by imposing conditions on the postponement.

7 (3) Approval of Requests for Postponement

8 (A) A request filed by the claimant or requester at least 15 days before the hearing shall be
9 approved by the executive director for good cause.

10 (B) A request filed by stipulation of the parties, including the claimant or requester, shall be
11 approved by the executive director for good cause.

12 (C) A request filed by the claimant or requester less than 15 days before the hearing may be
13 approved by the executive director for good cause.

14 (D) A request filed by an interested party may be approved by the executive director for good
15 cause. If a state agency makes a request before filing comments on the test claim, that request
16 shall be accompanied by a notice of intent to oppose the test claim in whole or in part.

17 (4) Postponement on Commission Staff's Own Motion: The executive director may postpone a
18 hearing on a matter for good cause and shall notify all persons on the mailing list prepared
19 pursuant to section 1181.4 of these regulations.

20 (c) Continuance of a Hearing

21 (1) Prior to the adoption of its written decision on the matter being heard, the Commission on its
22 own motion, or upon a clear showing of good cause at the request of a party, may continue a
23 hearing to another time or place. Written notice of the time and place of the continued hearing,
24 except as provided herein, shall be in accordance with section 1187.1 of these regulations. When
25 a continuance is ordered during a hearing, oral notice of the time and place of the continued
26 hearing may also be given to each party present at the hearing.

27 (2) In determining whether there is good cause for a continuance within the meaning of
28 subdivision (a) the following policy should be taken into consideration: Continuances are not
29 favored by the Commission. The parties are expected to submit for decision all matters in
30 controversy at a single hearing and to produce at the hearing all necessary evidence, including
31 witnesses, documents and all other matters considered essential in the proof of a party's
32 allegations. Continuances will be granted only upon a clear showing of good cause.

33 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
34 17527, 17551 and 17553(a), Government Code; and California Rules of Court, Rule 3.1332.

35 **§ 1187.10. Decision; Action on Proposed Decision.**

36 (a) The Commission shall adopt a decision for all matters subject to hearings and decisions under
37 article 7 of these regulations.

38 (b) If a matter is heard before the Commission itself, the Commission may adopt the proposed
39 decision on the same day as the hearing.

1 (c) If a matter is heard by a hearing panel or a hearing officer alone, the panel or hearing officer
2 shall prepare a proposed decision that may be adopted as the decision of the Commission at the
3 next Commission meeting.

4 (d) A copy of the proposed decision shall be filed by Commission staff as a public record and a
5 copy of the proposed decision shall be served by Commission staff on each party. The
6 Commission itself may adopt the proposed decision or decide the case itself, provided that the
7 Commission itself shall decide no matters provided for in this subdivision without affording the
8 parties the opportunity to present either oral or written argument before the Commission.

9 (e) If the proposed decision of Commission staff is not adopted by the Commission, as provided
10 in subsections (b) or (c), the Commission shall direct appropriate modification of the proposed
11 decision and thereafter adopt it as the Commission's decision.

12 (f) Except as provided for in subdivision (b), the proposed decision shall be prepared within a
13 reasonable time following submission of the matter to the hearing officer or panel, and within a
14 reasonable time after the evidentiary hearing. It shall be served on the parties promptly
15 thereafter.

16 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
17 17532, 17551 and 17553(a), Government Code.

18 **§ 1187.11. Form of Decision.**

19 (a) Any decision adopted pursuant to evidence introduced at an adjudicatory hearing shall be in
20 writing, be based on the record, and shall include a statement of reasons for the decision,
21 findings and conclusions. A copy of the decision shall be served on those identified on the
22 mailing list established pursuant to section 1181.4 of these regulations. The effective date of the
23 decision is the date it is first mailed or served.

24 (b) After a decision has been adopted and served, it shall not be changed except to correct
25 clerical errors, in which case a corrected decision shall be prepared and served on all persons on
26 the mailing list prepared pursuant to section 1181.4 of these regulations.

27 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code; and *Topanga*
28 *Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. Reference:
29 Sections 17551 and 17553(a), Government Code.

30 **§ 1187.12. Withdrawal of a Matter.**

31 A matter, or any portion of a matter, other than a test claim, may be withdrawn by written
32 application of the claimant or requester any time before a decision is adopted, or by oral
33 application at the time of hearing. A test claim, or portion thereof, may be withdrawn by the
34 claimant upon written application to the executive director any time before a decision is adopted
35 or after enactment of a legislatively determined mandate on the same statute or executive order
36 pursuant to Government Code section 17574. The claimant or requester shall certify, file, and
37 serve the written application in accordance with section 1181.3 of these regulations. Dismissal of
38 items withdrawn pursuant to this section shall be in accordance with the procedures described in
39 section 1187.154 of these regulations.

40 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections
41 17551 and 17553, Government Code.

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 does not respond, within 60 days of service, to a written notification sent to the
4 superintendent of the school district or chief administrative officer of the local agency or director
5 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 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;

14 (B) Delays or postponements, made at the request of the claimant or requesting party, pending
15 the resolution of a matter currently before the Commission of an issue similar to or related to the
16 postponed matter; and

17 (C) Delays or postponements, made at the request of the claimant or requesting party, pending
18 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 1187.12 or
23 deemed abandoned in accordance with section 1187.13, may be dismissed by the executive
24 director. Commission staff shall provide written notice of dismissal to everyone on the mailing
25 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 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 written comments on the proposed dismissal of the test claim. A copy of
36 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 (c) The hearing on a dismissal of a matter shall be conducted in accordance with article 7 of
5 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.**

9 (a) Notwithstanding section 1187.11(b) of these regulations, the Commission may make
10 substantive changes to an adopted decision under this section or order a reconsideration of all or
11 part of a matter on petition of any party. The power to order a reconsideration or amend a test
12 claim decision shall expire 30 days after the adopted decision is delivered or mailed to the
13 claimant. If additional time is needed to evaluate a petition for reconsideration filed before the
14 expiration of the 30-day period, the Commission may grant a stay of that expiration for no more
15 than 30 days, solely for the purpose of considering the petition. A request for reconsideration
16 shall be deemed automatically stayed for the 30-day period. If no action is taken on a petition
17 within the time allowed for ordering reconsideration, the petition shall be deemed denied.

18 (b) Except as provided elsewhere in this section, any party, interested party, or Commission
19 member may request that the Commission reconsider and change an adopted decision to correct
20 an error of law.

21 (c) All requests for reconsideration shall be certified, filed, and served ~~submitted to the~~
22 ~~Commission~~ in accordance with section 1181.3 of these regulations and shall contain the
23 following:

24 (1) The name and address of the requesting party;

25 (2) A copy of the Commission's adopted decision;

26 (3) A detailed statement of the reasons for the request, including:

27 (A) An explanation of the reasons for the request for reconsideration; and,

28 (B) All documentation the requester intends to submit to support the request;

29 (4) A description of the proposed change; and ;

30 (5) 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.

32 (d) Commission member requests may be made orally during a regularly scheduled Commission
33 meeting. Commission staff shall prepare the written request, as specified in subsections (c)(1-4)
34 above.

35 (e) Any signatory to a written agreement that settles a matter may not request reconsideration of
36 that matter if the matter is settled with prejudice.

37 (f) Before the Commission considers the request for reconsideration, Commission staff shall
38 prepare a written analysis regarding whether the adopted decision is contrary to law which shall
39 include but not be limited to a review of the written comments filed by other state agencies,

1 interested parties, and the requester. Commission staff shall make a recommendation in the
2 analysis on whether the request for reconsideration should be granted. The Commission shall
3 consider the request for reconsideration at a scheduled meeting. Five affirmative votes shall be
4 required to grant the request for reconsideration.

5 (g) If the Commission grants the request for reconsideration, a hearing shall be conducted to
6 determine if the adopted decision in question must be revised to correct an error of law.

7 (1) The following procedures shall govern the Commission's reconsideration of the adopted
8 decision:

9 (A) At least eight weeks before the Commission is scheduled to consider whether an adopted
10 decision is contrary to law, or at another time required by the executive director, Commission
11 staff shall prepare a draft proposed decision and distribute it to those identified on the mailing list
12 for the matter established pursuant to section 1181.4 of these regulations and any person who
13 requests a copy.

14 (B) Written comments may be filed with Commission staff concerning the draft proposed
15 decision. All representations of fact shall be supported by documentary or testimonial evidence,
16 submitted in accordance with section 1187.5 of these regulations. Written comments shall be
17 certified, filed, and served in accordance with section 1181.3 of these regulations. A three-week
18 period for comments shall be given, subject to the executive director's authority to expedite all
19 matters pursuant to Government Code section 17530. All written comments timely filed shall be
20 reviewed by Commission staff and may be incorporated into the proposed decision regarding
21 whether the adopted decision is contrary to law and presented to the Commission before the
22 scheduled meeting.

23 (2) The procedures set forth in article 7 shall govern the Commission's hearings and decisions
24 process, except that five affirmative votes shall be required to change an adopted decision.

25 (h) If the Commission changes an adopted decision, the procedures set forth in Sections 1183.7
26 through 1183.14 of these regulations shall govern the adoption of parameters and guidelines and
27 the statewide cost estimate, if applicable.

28 (i) Failure to seek Commission reconsideration of an adopted decision shall not affect a
29 claimant's or state agency's right to seek judicial review pursuant to Government Code section
30 17559(b).

31 (j) This section only applies to reconsiderations requested pursuant to Government Code section
32 17759(a); it does not apply to remands or reconsiderations directed by the courts or by statute.

33 Note: Authority cited: Sections 17527(c), 17527(g), 17553(a) and 17559(a), Government Code.
34 Reference: Sections 17532, 17551 and 17559, Government Code.

35 **Article 8. Rulemaking and Informational Hearings**

36 **§ 1188.1. Scheduling and Noticing of an Informational Hearing**

37 (a) The Commission may, upon its own motion, set an informational hearing on any subject
38 within its jurisdiction. Matters subject to informational hearings under article 8 of these
39 regulations include: a proposed assignment of an article 7 matter to a hearing officer, a
40 rulemaking proceeding, the adoption of a statewide cost estimate, and any other subject that

1 meets the definition of "informational hearing" in section 1181.2 of these regulations and is not
2 subject to hearings under article 7 of these regulations.

3 (b) An article 8 matter is set for hearing when Commission staff issues its notice and agenda
4 providing the date, time, and place of the hearing to everyone on the mailing list described in
5 section 1181.4 of these regulations.

6 (c) Commission staff shall provide notice of an informational hearing in accordance with
7 Government Code section 11120 et seq. The notice shall include the following:

8 (1) A statement of the authority pursuant to which the hearing is ordered, and a reference to any
9 code sections or other provisions of law pursuant to which the information is to be gathered or
10 disseminated;

11 (2) A statement of the nature and purpose of the proceedings;

12 (3) A statement requiring the presence and participation of any persons the Commission may
13 direct, consistent with the nature and purpose of the proceedings;

14 (4) A statement indicating the time during which written comments will be received and the
15 manner by which the comments shall be filed;

16 (5) A statement that any person may make oral comments on the subject of the hearing; and

17 (6) A statement setting forth additional procedures deemed necessary by the Commission and not
18 inconsistent with these regulations.

19 Note: Authority cited: Sections 17527(c) and 17527(g), Government Code. Reference: Sections
20 11125, 17527(c) and 17532, Government Code.

21 **§ 1188.2. Rulemaking.**

22 (a) Petitions:

23 (1) Any person may petition the Commission to request rulemaking hearings. The petition shall
24 be filed and served in accordance with section 1181.3 of these regulations and shall include:

25 (A) The name, address, and telephone number of the petitioner;

26 (B) The substance or nature of the regulation, amendment, or repeal requested;

27 (C) The reasons for the request; and

28 (D) Reference to the authority of the Commission to take the action requested.

29 (2) The petition shall be filed with the executive director who shall, within seven days after its
30 filing, determine whether the petition contains the information specified in subsection (1).

31 (A) If the executive director determines that the petition is complete, it shall be certified in
32 writing as complete and the petitioner shall be so notified.

33 (B) If the executive director determines that the petition is not complete, it shall be returned to
34 the petitioner accompanied by a statement of its defects. The petitioner may correct the petition
35 and resubmit it at any time.

36 (3) Upon certification by the executive director, the Commission shall, within 60 days from the
37 filing of the petition, deny the petition, stating the reason for the denial in writing, or grant the
38 petition, directing staff to prepare an appropriate order pursuant to subdivision (b) of this section.

1 (b) Commission Order to Institute a Rulemaking Proceeding. The Commission may, upon its
2 own motion or upon granting a petition filed pursuant to subdivision (a) of this section, adopt an
3 order to institute a rulemaking proceeding in accordance with the procedures of Government
4 Code sections 11346.2, 11346.4, 11346.8, and 11346.9.

5 (c) Notice.

6 (1) Notice of a rulemaking proceeding shall be given in accordance with Government Code
7 section 11346.4.

8 (2) At least 10 days prior to the first hearing in a proceeding ordered pursuant to subdivision (b)
9 of this section, the executive director shall cause notice of the hearing to be mailed to every
10 person requested to participate in the proceedings, and to any person who the executive director
11 determines to be concerned with the subject matter of the proceeding, and shall post a copy of
12 the notice on the Commission's website.

13 (3) In addition to the requirements of subsections (c)(1) and (2) of this section, notice of
14 additional hearing shall be required at least 10 days prior to the commencement of the hearing
15 unless continuation is orally announced in a public hearing.

16 (4) Nothing in this section shall preclude the Commission from publishing notice in additional
17 forms or media as the executive director may prescribe.

18 (5) A copy of the order adopted pursuant to subdivision (b) of this section shall accompany the
19 initial notice prepared and mailed pursuant to this section, unless a copy of the order has been
20 previously mailed to those persons who would receive the notice.

21 Note: Authority cited: Section 17527(g), Government Code. Reference: Sections 11340.6,
22 11346.2, 11346.4, 11346.8, 11346.9, 17527(c), 17527(g), 17530, 11346.4 and 17551,
23 Government Code.

24 **Article 10. Mandate Redetermination Process**

25 **§ 1190.1. Filing a Request to Adopt a New Test Claim Decision.**

26 (a) A local agency or a school district, statewide association of local agencies or school districts,
27 the Department of Finance, Office of the State Controller, or other affected state agency, may file
28 a request to adopt a new test claim decision to supersede a previously adopted test claim decision
29 by making a showing that the state's liability pursuant to Article XIII B, section 6(a) of the
30 California Constitution for the previously adopted test claim decision has been modified based
31 on a "subsequent change in law" as defined by Government Code section 17570(a)(2). Such a
32 request is known as a "request for mandate redetermination."

33 (b) All requests for mandate redetermination shall be filed on a form developed by the executive
34 director and shall contain a detailed analysis of how and why the state's liability for mandate
35 reimbursement has been modified pursuant to article XIII B, section 6(a) of the California
36 Constitution and all of the elements and accompanying documents required by the form and
37 Government Code section 17570(d). If representations of fact are made, they shall be supported
38 by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these
39 regulations.

40 (c) The detailed analysis of how and why the state's liability for mandate reimbursement has
41 been modified pursuant to article XIII B, section 6(a) of the California Constitution based on a

1 "subsequent change in law" as defined by Government Code section 17570 requires more than a
2 written narrative or simple statement of the facts and law. It requires the application of the law
3 (Gov. Code § 17570 (a) and (b)) to the facts (i.e. the alleged subsequent change in law)
4 discussing, for each activity addressed in the prior test claim decision, how and why the state's
5 liability for that activity has been modified. Specific references shall be made to statutes and
6 chapters, articles, sections, and page numbers that are alleged to impose or not impose a
7 reimbursable state-mandated program.

8 (d) ~~The requester shall file a~~A request for mandate redetermination and accompanying
9 documents ~~with the Commission~~shall be certified, filed, and served in accordance with section
10 1181.3 of these regulations.

11 (e) Within 10 days of receipt of a request for mandate redetermination, Commission staff shall
12 notify the requester if the request is complete or incomplete and refer the requester to these
13 regulations. Requests for mandate redetermination shall be considered incomplete if any of the
14 elements required in subdivisions (b), (c), or (d) of this section are illegible or are not included. If
15 a complete request for mandate redetermination is not received within 30 calendar days from the
16 date the incomplete request was returned, the executive director shall disallow the original
17 request filing date. New requests for mandate redetermination may be accepted on the same
18 subsequent change in law alleged to modify the state's liability pursuant to article XIII B, section
19 6(a) of the California Constitution.

20 (f) A request for mandate redetermination shall be filed on or before June 30 following a fiscal
21 year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal
22 year.

23 (g) A requester may not add a new subsequent change in law to a request for mandate
24 redetermination after the request has been deemed complete.

25 (h) Any request for mandate redetermination that fails to allege a "subsequent change in law," as
26 defined by Government Code section 17570, shall be returned by the executive director with a
27 written notice stating the reason that the request is being returned. These filings may include, but
28 are not limited to, requests that meet the requirements for a proposed parameters and guidelines
29 amendment or a new test claim filing.

30 Note: Authority cited: Sections 17527(g), 17553(a) and 17570(d), Government Code. Reference:
31 Sections 17530 and 17570, Government Code.

32 **§ 1190.2. Review and Response.**

33 (a) Within 10 days of receipt of a complete request for mandate redetermination, Commission
34 staff shall send a written notice to the Department of Finance, Office of the State Controller, any
35 affected state agency, the original test claimant, and any known interested party, that:

36 (1) A copy of the request for mandate redetermination has been posted on the Commission's
37 website, and

38 (2) Written comments concerning the request for mandate redetermination may be filed within
39 30 days and evidence may also be presented at the hearing on the request for mandate
40 redetermination.

41 (b) Content and Form. Written comments on the request for mandate redetermination shall
42 contain the following documentary evidence, if applicable:

1 (1) If representations of fact are made, they must be supported by documentary or testimonial
2 evidence, ~~which shall be submitted in accordance with section 1187.5 of these regulations with~~
3 ~~the response. All documentary evidence shall be authenticated by declarations under penalty of~~
4 ~~perjury signed by persons who are authorized and competent to do so and must be based on the~~
5 ~~declarant's personal knowledge or information or belief.~~

6 (2) A copy of relevant portions of state constitutional provisions, state and federal statutes, and
7 executive orders, and a copy of administrative decisions and court decisions that may impact the
8 alleged mandate, unless the authorities are also cited in the request to adopt a new test claim
9 decision. The specific statutes and chapters, articles, sections, and page numbers must be
10 identified. Published court decisions arising from state mandate determinations by the Board of
11 Control and the Commission, article XIII B, section 6 of the California Constitution, and
12 Government Code sections 17500 et seq., are exempt from the requirements of this subsection.
13 When an omnibus bill is relevant to the response, only the relevant pages of the statute, including
14 the Legislative Counsel's Digest and the specific statutory changes at issue shall be filed.

15 ~~(e) The written comments and supporting documentation shall be signed at the end of the~~
16 ~~document, under penalty of perjury by an authorized representative, with the declaration that it is~~
17 ~~true and complete to the best of the representative's personal knowledge or information or belief.~~
18 ~~The date of signing, the representative's title, address, telephone number, and e-mail address~~
19 ~~shall be included.~~

20 ~~(dc) Filing. Written comments and supporting documentation concerning a request for mandate~~
21 ~~redetermination shall be certified, filed, and served in accordance with Section 1181.3 of these~~
22 ~~regulations. Any representations of fact shall be supported by documentary evidence, submitted~~
23 ~~with the comments, in accordance with section 1187.5 of these regulations.~~

24 Note: Authority cited: Sections 17527(g), 17553(a) and 17570(d), Government Code. Reference:
25 Section 17570, Government Code.

26 **§ 1190.3. Rebuttal.**

27 (a) Parties and interested parties shall be given an opportunity to rebut written comments
28 concerning a request for mandate redetermination by filing written rebuttals within 30 days of
29 service of the comments.

30 (b) Content and Form. A written rebuttal shall contain the following documentary evidence, if
31 applicable:

32 (1) If ~~new~~ representations of fact are made, they must be supported by documentary or
33 testimonial evidence, ~~which shall be submitted with the rebuttal~~ in accordance with section
34 1187.5 of these regulations.

35 (2) A copy of relevant portions of state constitutional provisions, federal statutes, and executive
36 orders, and a copy of administrative decisions and court decisions that are cited in the rebuttal,
37 unless the authorities are also cited in the request to adopt a new test claim decision or any
38 response thereto. The specific statutes and chapters, articles, sections, and page numbers shall be
39 identified. Published court decisions arising from state mandate determinations by the Board of
40 Control and the Commission, article XIII B, section 6 of the California Constitution, and
41 Government Code sections 17500 et seq., are exempt from the requirements of this subsection.

1 When an omnibus bill is relevant to the rebuttal, only the relevant pages of the statute, including
2 the Legislative Counsel's Digest and the specific statutory changes at issue shall be filed.

3 (c) The rebuttal to a comment concerning a request for mandate redetermination shall be
4 certified, filed, ~~with Commission staff~~ and served in accordance with section 1181.3 of these
5 regulations.

6 ~~(d) The rebuttal shall be signed at the end of the document, under penalty of perjury, with the
7 declaration that the rebuttal is true and complete to the best of the declarant's personal knowledge
8 or information or belief. The date of signing, the declarant's title, address, telephone number, and
9 e-mail address shall be included.~~

10 Note: Authority cited: Sections 17527(g), 17553(a) and 17570(d), Government Code. Reference:
11 Section 17570, Government Code.

12 **§ 1190.4. Executive Director's Authority to Consolidate Requests for Mandate**
13 **Redetermination.**

14 (a) The executive director may consolidate two or more requests for mandate redetermination for
15 the second hearing, if some or all of the same statutes, regulations or executive orders are at
16 issue, if necessary to ensure the complete, fair, or timely consideration of any request for
17 mandate redetermination.

18 (b) At least 10 days before the action is taken, the executive director shall serve on the parties
19 and interested parties on the mailing list described in section 1181.4 of these regulations, and
20 post on the Commission's website, a notice of any proposed action to consolidate.

21 Note: Authority cited: Section 17527(g), 17553(a) and 17570(d), Government Code. Reference:
22 Sections 17530, 17554 and 17570, Government Code.

23 **§ 1190.5. Hearing Process and Form of Decision.**

24 Notwithstanding any other provision of these regulations, mandate redetermination process
25 hearings and decisions shall be subject to article 7 of these regulations. There shall be a two-step
26 hearing process for requests to adopt a new test claim decision as follows:

27 (a) The First Hearing:

28 (1) The first hearing shall be limited to the issue of whether the requester has made an adequate
29 showing which identifies a subsequent change in law as defined by Government Code section
30 17570, material to the prior test claim decision, that may modify the state's liability pursuant to
31 article XIII B, section 6(a) of the California Constitution. The Commission shall find that the
32 requester has made an adequate showing if it finds that the request, when considered in light of
33 all of the written comments and supporting documentation in the record of this request, has a
34 substantial possibility of prevailing at the second hearing.

35 (2) At least eight weeks before the hearing or at another time required by the executive director
36 or stipulated to by the parties, Commission staff shall prepare a draft proposed decision and
37 distribute it to the parties, interested parties, and any person who requests a copy, and shall post
38 it on the Commission's website. A request for mandate redetermination is set for the first hearing
39 when Commission staff issues its draft proposed decision. A written notice of the date, time, and
40 place of the first hearing shall be served on everyone on the mailing list described in section
41 1181.4 of these regulations and posted on the Commission's website.

1 (3) Written comments concerning the draft proposed decision may submitted to Commission
2 staff. Written comments shall be certified, filed, and served as described in accordance with
3 section 1181.3 of these regulations, by the date determined and publicized by the executive
4 director. A three-week period for comments shall be given, subject to the executive director's
5 authority to expedite all matters pursuant to Government Code section 17530. If representations
6 of fact are made, they shall be supported by documentary or testimonial evidence, submitted in
7 accordance with section 1187.5 of these regulations. All written comments timely filed shall be
8 reviewed by Commission staff and may be incorporated into the proposed decision of the request
9 to adopt a new test claim decision.

10 (A) It is the Commission's policy to discourage the introduction of late comments, exhibits, or
11 other evidence filed after the three-week comment period described in subdivision (a)(3) of this
12 section. The Commission need not rely on, and staff need not respond to, late comments,
13 exhibits, or other evidence submitted in response to a draft proposed decision.

14 (4) Before the first hearing on the request for mandate redetermination, Commission staff shall
15 prepare a proposed decision limited to the issue of whether the requester has made a showing
16 that identifies a subsequent change in law, material to the prior test claim decision, which may
17 modify the state's liability pursuant to article XIII B, section 6(a) of the California Constitution.
18 This proposed decision shall consider the request, written comment, rebuttals and supporting
19 documentation filed by the parties and interested parties. The proposed decision for the first
20 hearing shall find that the requester has made an adequate showing if staff finds that the request,
21 when considered in light of all of the written comments and supporting documentation in the
22 record of this request, has a substantial possibility of prevailing at the second hearing.

23 (5) If, at the first hearing, the Commission finds that:

24 (A) The requester has not made an adequate showing, when considered in light of all of the
25 written comments, rebuttals and supporting documentation in the record and testimony at the
26 hearing, that the request for mandate redetermination has a substantial possibility of prevailing at
27 the second hearing, the Commission shall publish a decision denying the request for mandate
28 redetermination.

29 (B) The requester has made an adequate showing, when considered in light of all of the written
30 comments, rebuttals, and supporting documentation in the record and testimony at the hearing,
31 the Commission shall publish a decision finding that an adequate showing has been made and
32 setting the second hearing on whether the Commission shall adopt a new test claim decision to
33 supersede the previously adopted test claim decision.

34 (6) Everyone on the mailing list described in section 1181.4 of these regulations shall be
35 provided written notice that the Commission's decision has been posted on the Commission's
36 website and, if applicable, that the date, time, and place of the second hearing have also been
37 posted on the Commission's website.

38 (b) The Second Hearing:

39 (1) If the Commission proceeds to the second hearing, it shall consider whether the state's
40 liability pursuant to article XIII B, section 6(a) of the California Constitution has been modified
41 based on the subsequent change in law alleged by the requester, thus requiring adoption of a new
42 test claim decision to supersede the previously adopted test claim decision. If the Commission
43 finds that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution

1 has been modified based on the subsequent change in law alleged by the requester, it shall adopt
2 a new decision that reflects the modified liability of the state.

3 (2) Before the second hearing, Commission staff shall prepare a proposed decision. At least eight
4 weeks before the hearing or at another time required by the executive director or stipulated to by
5 the parties, Commission staff shall prepare a draft proposed decision and distribute it to everyone
6 on the mailing list described in section 1181.4 of these regulations and post it on the
7 Commission's website. The proposed decision shall consider the request, and any written
8 comments and rebuttals and supporting documentation filed.

9 (3) Any party or interested party may file written comments concerning the draft proposed
10 decision with Commission staff. Written comments shall be certified, filed, and served as
11 ~~described in accordance with~~ Section 1181.3 of these regulations, by the date determined and
12 publicized by the executive director. A three-week period for comments shall be given, subject to
13 the executive director's authority to expedite all matters pursuant to Government Code section
14 17530. If representations of fact are made, they shall be supported by documentary or testimonial
15 evidence, submitted in accordance with section 1187.5 of these regulations. All written
16 comments timely filed shall be reviewed by Commission staff and may be incorporated into the
17 proposed decision.

18 (A) It is the Commission's policy to discourage the introduction of late comments, exhibits, or
19 other evidence filed after the three-week comment period described in subdivision (b)(3) of this
20 section. The Commission need not rely on, and staff need not respond to, late comments,
21 exhibits, or other evidence submitted in response to a draft proposed decision.

22 (4) If, at the second hearing, the Commission finds that the state's liability pursuant to article
23 XIII B, section 6(a) of the California Constitution:

24 (A) has not been modified based on a subsequent change in law as defined by Government Code
25 section 17570 (a)(2), the Commission shall publish a decision denying the request.

26 (B) has been modified based on a subsequent change in law, as defined by Government Code
27 section 17570 (a)(2) the Commission shall adopt a new decision to supersede the prior decision.
28 The new decision shall be prepared in writing, based on the record, and shall include a statement
29 of reasons for the decision, findings, and conclusions.

30 (5) Everyone on the mailing list described in section 1181.4 of these regulations shall be
31 provided written notice that a copy of the decision has been posted on the Commission's
32 website.

33 (6) After a decision or proposed decision has been served or posted on the Commission's
34 website, it shall not be changed except to correct clerical errors, in which case a corrected
35 decision or proposed decision shall be prepared and posted on the Commission's website.
36 Everyone on the mailing list described in section 1181.4 of these regulations shall be provided
37 written notice that a copy of the revised decision has been posted on the Commission's website.

38 (7) If a new decision is adopted that finds that the State's liability under article XIII B, section
39 6(a) of the California Constitution has been modified, the amount and method of reimbursement
40 shall be determined in accordance with article 3 of these regulations.

41 Note: Authority cited: Section 17527(g), 17553(a) and 17570(d), Government Code. Reference:
42 Sections 17530 and 17570, Government Code.

FINAL STATEMENT OF REASONS

The Notice of Proposed Regulatory Action was published in the Notice Register on June 9, 2017. The proposed text was posted on the Commission’s website and served on the regulatory mailing list on June 5, 2017 and published in the California Regulatory Notice Register 2017, No. 23-Z on June 9, 2017 through July 24, 2017 for the 45-day comment period. A request to hold a public hearing was received on July 7, 2017. At its regular meeting on July 28, 2017, the Commission held a public hearing on Order No. 17-01 in accordance with Government Code section 11346.8(a), and received testimony on the proposed regulations. The Commission considered the comments received, and the proposed modifications to the proposed text of section 1183.1(c) at its hearing on September 22, 2017. The modified proposed text of section 1183.1(c) was made available to the public during the additional 15-day comment period, from September 25, 2017, through October 10, 2017. The Commission, upon consideration of the comments received during the 15-day comment period, adopts all originally proposed regulatory changes including those to section 1183.1(c) without modification.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS

A summary of the public comments and the Commission’s responses are provided below.

1. Section 1183.1(c), period of limitation for filing test claims.

a) Response to Public Comments Received During the 45-Day Comment Period

i. Original Proposed Regulatory Language

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.”¹ 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 regulatory change, as originally proposed, 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.~~

¹ Government Code section 17551(c).

This change is intended to make the regulation consistent with the plain language of Government Code section 17551(c).

ii. Comments Received During 45-Day Comment Period

CSDA, CSAC, League of Cities Joint Written Comments

Commenters' object to the proposed change based 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."² Commenters assert that "[t]he proposed change will result in fewer and less accurate claims."³ 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."⁴ 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."⁵

Andy Nichols, Nichols Consulting, 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."⁶ 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.⁷

² CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, filed July 24, 2017, page 2.

³ CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, filed July 24, 2017, page 2.

⁴ CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, filed July 24, 2017, page 2.

⁵ CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, filed July 24, 2017, page 2.

⁶ Excerpt from the Transcript of the July 28, 2017 Meeting of the Commission on State Mandates, page 9.

⁷ Excerpt from the Transcript of the July 28, 2017 Meeting of the Commission on State Mandates, pages 9-11.

Dorothy Johnson, CSAC, Public Comment

Ms. Johnson asserts that June 30 is a “more precise hard deadline” and should be retained.⁸ 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.”⁹

iii. Response to Comments Received During 45-Day Comment Period

Although the commenters raised some policy arguments for why the Legislature may wish to consider a longer statute of limitations for test claims, the Commission disagrees with these comments and strikes 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 were incurred as originally proposed.

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.¹⁰ 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.¹¹ The only limitation for filing a test claim was that the test claim statute or executive order must

⁸ Excerpt from the Transcript of the July 28, 2017 Meeting of the Commission on State Mandates, page 12.

⁹ Excerpt from the Transcript of the July 28, 2017 Meeting of the Commission on State Mandates, page 12.

¹⁰ 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.”

¹¹ 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.)

have been enacted on or after January 1, 1975.¹² 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.”¹³ 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.¹⁴ As amended, 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.”¹⁵ 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 2856.¹⁶ 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.”¹⁷

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

¹² Article XIII B, section 6(a)(3).

¹³ Former Government Code section 17557(c). The period of reimbursement is currently in section 17557(e).

¹⁴ Statutes 2002, chapter 1124.

¹⁵ Former Government Code section 17557(c).

¹⁶ Statutes 2004, chapter 890.

¹⁷ Government Code section 17557(e) (Stats. 2004, ch. 890 (AB 2856)).

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.¹⁸ 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 incurred.¹⁹ 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.²⁰

The comments on the originally 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.²¹ This practice is consistent with 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 end January 1, 2016.²² 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

¹⁸ LAO Report, Key Elements of Mandate Reform – Major Recommendations Proposed, dated May 10, 2004.

¹⁹ Register 2005, No. 36.

²⁰ ISOR, FSOR, and proposed language for the Commission’s 2005 regulation package.

²¹ CSDA, CSAC, and League Comments, July 24, 2017, page 2.

²² 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.

fiscal year (2016-2017), or to June 30, 2017; *two and a half years after the statute became effective.*²³

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.²⁴ Thus, the proposed regulatory action amends the regulation to make it consistent with the plain language of Government Code section 17551.

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, on behalf of CSAC, 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.

b. Modifications to Proposed Text of Section 1183.1(c), Comments Received During 15-Day Comment Period, Response to Comments Received During 15-Day Comment Period

i. Modifications to Proposed Text of Section 1183.1(c)

Commission staff, in its analysis for the September 22, 2017 hearing interpreted the statute, finding that neither the language of section 17551(c) nor in the legislative history AB 2856 suggested the Legislature intended local government to ignore the first test in section 17551(c) (requiring the filing of a test claim 12 months after the effective date of the statute or executive order) or to grant local governments the option to always choose the later filing deadline (based on when costs are first incurred) no matter when costs are incurred. 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 could render 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.²⁵ Thus, under the rules of construction, Government Code section 17551(c) could be interpreted to require that a test claim

²³ 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).

²⁴ *California School Boards Association v. State Board of Education* (2010) 191 Cal.App.4th 530, 544.

²⁵ *People v. Valencia* (2017) 3 Cal.5th 347, 357-358, emphasis added.

may only be filed within 12 months following the effective date of a statute or executive order that imposes new mandated activities and costs that begin immediately. If newly mandated activities are not performed and 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 executive order.

Thus, the Commission, at its hearing on September 22, 2017, made the following modifications to the proposed text of section 1183.1(c), which was noticed for a 15-day comment period, from September 25, 2017 until October 10, 2017 (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.²⁶

ii. Comments Received on Modified Text Following 15-Day Comment Period

CSDA, CSAC and the League filed joint comments on the proposed modified text during the 15-day comment period. Commenters state that “While our organizations appreciate the attention that Commission Staff gave to our previous written comments and the responses provided, the modifications to Section 1183.1(c)...give us additional cause for concern.”²⁷ Commenters further state that “[a]lthough associations representing local government urged the Commission to reject the prior version of the proposed regulatory changes in previous written comments...they nonetheless conceded that the proposed changes would align the language of Section 1181.3(c) with that of Government Code section 17551(c).”²⁸ Commenters now argue that the additional proposed modifications “propose a regulation that subtracts entitlements enacted in statute and may cause the Commission to act in excess of its statutory authority.”²⁹ As a practical matter, commenters protest that “[b]y striking out the ‘whichever is later’ test and inserting an exclusionary clause,...the modified text diverge[s] from Government Code Section 17551(c), [and] creates a situation where local governments may have as little as a month or

²⁶ Proposed Text (15 Day Changes), page 17 [section 1183.1(c)].

²⁷ CSDA, CSAC, and the League Comments on Proposed Regulations as Modified, filed October 10, 2017, page 1.

²⁸ CSDA, CSAC, and the League Comments on Proposed Regulations as Modified, filed October 10, 2017, page 2.

²⁹ CSDA, CSAC, and the League Comments on Proposed Regulations as Modified, filed October 10, 2017, page 2.

even a few days between first incurred costs and the deadline to submit a test claim.”³⁰ Commenters suggest “[t]his becomes even more problematic if a local government does not begin incurring costs until month 11 of a statute taking effect, thereby potentially leaving a claimant with less than a month to file a test claim.”³¹

Commenters suggest that the Commission “consider restoring the earlier version of changes to Section 1183.1(c) as originally proposed.”³²

iii. Response to Comments on Modified Text

Upon review of the comments on the modified text and the staff analysis, the Commission restores and adopts the original proposed regulatory changes to section 1183.1(c) 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.~~

The Commission agrees with the commenters that the proposed modification eliminating the “whichever is later” language presents the possibility that an otherwise-legitimate test claim might be effectively, if not actually, time barred when costs are first incurred close to the end of the one year period of limitation from the effective date.

And, although the rules of construction militate against an interpretation of the section 17551(c) period of limitation that deems the first part of the statute requiring a test claim filing 12 months from the effective date of the statute or executive order mere surplusage and without effect, the plain language of the statute allows the filing of a test claim based on either test, “whichever is later.” The original proposed regulatory changes to section 1183.1(c) retains the “whichever is later” language consistent with the plain language of the statute.

Therefore, the Commission restores and adopts the originally proposed regulations, included in the Commission’s Order No. 17-01 to initiate rulemaking proceeding adopted May 26, 2017 and issued June 5, 2017³³, which eliminates the June 30 fiscal year-end deadline for filing claims, but still permits the claimant to choose to file a test claim based on either 12 months from the effective date of the statute or executive order, or 12 months from the date costs were first incurred.

³⁰ CSDA, CSAC, and the League Comments on Proposed Regulations as Modified, filed October 10, 2017, page 3.

³¹ CSDA, CSAC, and the League Comments on Proposed Regulations as Modified, filed October 10, 2017, page 3.

³² CSDA, CSAC, and the League Comments on Proposed Regulations as Modified, filed October 10, 2017, page 4.

³³ Proposed Text, Issued June 5, 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 Received During 45-Day Comment Period**

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 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...”³⁴ 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.”³⁵ 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.”³⁶

Accordingly, commenters suggest the following language: “1183.1(g)(3) The claimants have designated one ~~contact~~ person to act as the ~~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

³⁴ CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, filed July 24, 2017, page 3.

³⁵ CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, filed July 24, 2017, page 3.

³⁶ CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, filed July 24, 2017, page 3.

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.”³⁷

c) Response to Comments Received During 45-Day Comment Period

The Commission rejects 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.”³⁸ 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 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.³⁹

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.⁴⁰ 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.”⁴¹

³⁷ Excerpt from the Transcript of the July 28, 2017 Meeting of the Commission on State Mandates, page 13.

³⁸ Statutes 1984, chapter 1459.

³⁹ Statutes 1999, chapter 643 (AB 1679).

⁴⁰ *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.

⁴¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 333.

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.

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.⁴² 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.⁴³

Accordingly, the Commission rejects 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:

⁴² California Code of Regulations, title 2, section 1181.2(i); Government Code section 11123 (Bagley-Keene Open Meeting Act).

⁴³ California Code of Regulations, title 2, section 1181.2(j); Government Code section 11123 (Bagley-Keene Open Meeting Act).

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.⁴⁴

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

⁴⁴ *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].

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.~~

(~~b~~) 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.

(~~c~~) 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.

(~~e~~) 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.~~

(~~g~~) 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.⁴⁵

⁴⁵ 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.

b) Public Comments Received During 45-Day Comment Period

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).⁴⁶

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.⁴⁷ 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.⁴⁸

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 Received During 45-Day Comment Period

The Commission rejects the commenters’ recommendation to retain the existing language in section 1182.10.

⁴⁶ CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, filed July 24, 2017, pages 3-4.

⁴⁷ Excerpt from the Transcript of the July 28, 2017 Meeting of the Commission on State Mandates, pages 13-14.

⁴⁸ Excerpt from the Transcript of the July 28, 2017 Meeting of the Commission on State Mandates, page 15.

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.⁴⁹ 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.

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.

⁴⁹ Government Code section 11346.8(c).

b) Public Comments Received During 45-Day Comment Period

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.”⁵⁰

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.”⁵¹

c) Response to Comments Received During 45-Day Comment Period

The Commission rejects 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 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.⁵²

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.⁵³ 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

⁵⁰ CSDA, CSAC, and League of Cities Comments on Proposed Regulatory Amendments, filed July 24, 2017, page 4.

⁵¹ Excerpt from the Transcript of the July 28, 2017 Meeting of the Commission on State Mandates, page 16.

⁵² California Code of Regulations, title 2, section 1187.5.

⁵³ California Code of Regulations, title 2, section 1187.5.

made under oath or affirmation is considered direct evidence and may properly be used to support a fact.⁵⁴

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.⁵⁵ 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.⁵⁶

In addition, the Commission may take judicial notice of any facts which may be judicially noticed by the courts.⁵⁷ 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:

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.⁵⁸

⁵⁴ *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal.App.3d 586, 597.

⁵⁵ *People v. Cudjo* (1993) 6 Cal.4th 585.

⁵⁶ See Evidence Code sections 1200 et seq. for the statutory hearsay exceptions.

⁵⁷ California Code of Regulations, title 2, section 1187.5. See also, Evidence Code sections 451 and 452.

⁵⁸ *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

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.⁵⁹

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, the Commission rejects the proposed modifications.

ADDITIONAL CLERICAL CHANGE TO INTERNAL REFERENCE

An additional minor and non-substantive change to an internal reference is proposed to improve the readability and clarity of the regulations.

Section affected: 1187.12

Specific Purpose of Regulation

Section 1182.12 provides for the withdrawal of a matter.

Proposed Change

The internal reference in section 1187.12 regarding the dismissal of items withdrawn pursuant to this section should refer to the procedures described in section 1187.14 which describes the procedures for substitution of parties and dismissal of a matter, not section 1187.15 which refers to the reconsideration of an adopted decision.

Necessity and Anticipated Benefit

This change is clerical in nature and is necessary to correct a minor error.

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.)]

⁵⁹ *Topanga Assoc. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515.

**REASONS FOR REJECTING PROPOSED ALTERNATIVES THAT WOULD LESSEN
ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

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.

ALTERNATIVES DETERMINATION

The Commission has determined that no alternative would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed regulations or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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, 2, 3, 4, 5, 6, 7, 8, and 10

No. 17-01

ORDER TO ADOPT PROPOSED
REGULATORY ACTION

General Cleanup Provisions (clarifying
regulations, eliminating duplicative
language, and updating authority and
reference citations)

On December 1, 2017, at a duly noticed public hearing held in Room 447 of the State Capitol, Sacramento, California, the Commission on State Mandates (Commission) adopted the proposed regulatory action after close of the public comment period.

PROPOSED REGULATORY ACTION. The Commission proposes 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 April 1, 2018.

AUTHORITY AND REFERENCE. Government Code section 17527(g) authorizes the Commission to adopt the proposed regulations. The purpose of this rulemaking is to clarify Commission regulations, eliminate duplicative language, and update authority and reference citations.

By: _____
Heather Halsey, Executive Director

Dated: December 1, 2017



May 10, 2004

Key Elements of Mandate Reform— Major Recommendations Proposed

LEGISLATIVE ANALYST'S OFFICE

Presented To:
Assembly Special Committee on State Mandates
Hon. John Laird, Chair





Key Elements of Mandate Reform— Major Recommendations Proposed

1. Little Confidence in Mandate Determination Process

- (a) Revamp the Commission on State Mandates (CSM) membership to address the perception of bias. (LAO and MCS)
- (b) Either (1) replace commission with independent review process or (2) balance state and local membership, provide for a neutral chair, and allow for local alternates. (CSAC and League)
- (c) Assign greater fiscal and policy review responsibility to state agencies. (LAO)
- (d) Cease practice of commission staff representing state interests. (CSAC and League)

2. Lack of Payments Undermines Credibility of System

- (a) Sunset mandates if the state does not pay promptly. (LAO)
- (b) Provide specific date for payment when the state defers reimbursement payments. (MCS)
- (c) Fully fund all mandates, thereby eliminating interest payments (State Controller's Office [SCO]). Assign greater fiscal and policy review responsibility to state agencies. (LAO)
- (d) Repeal the suspension provision—or modify it greatly. (LAO)
- (e) Repeal suspended mandates. (CSAC and League)
- (f) Identify deferred mandate liability in the state's annual audited financial statements and specify repayment date in budget document. (CSAC and League)
- (g) Provide appropriation for mandate one year after SOD is adopted. (EMCN)



Key Elements of Mandate Reform— Major Recommendations Proposed *(Continued)*

3. Delays Decrease Legislative Oversight

- (a) Require local agencies to submit clearer claims, and do so faster. (LAO)
- (b) Fund CSM so that it may meet its statutory deadlines. (LAO and SCO)
- (c) Impose state interest penalties two years after effective date of mandate to encourage adequate staffing of state agencies with mandate responsibilities. (CSAC, League, and MCS)
- (d) Consider independent management audit of mandate determination process and request Legislature's local government committees to examine mandate claims procedures annually. (CSAC and League)
- (e) Provide a specific time period and deadline for the CSM to determine if a law is a mandate. (MCS)
- (f) Set a one-year deadline for the CSM to act upon a final court determination regarding a mandate or accept winning party's final position, unless all parties agree to extend deadline. (CSAC and League)
- (g) Allow parties to amend parameters and guidelines (Ps&Gs) when mandate is amended, rather than require filing of new claim. (CSAC and League)
- (h) The CSM should ensure that it carries out its process in a timely manner, and should continue to assess its caseload and work with the Department of Finance (DOF) and the Legislature to obtain sufficient staffing. (State Auditor)



Key Elements of Mandate Reform— Major Recommendations Proposed *(Continued)*

4. The Legislature Needs Better Information

- (a) Create cost estimating unit to assist during legislative development. (LAO)
- (b) Require the test claimant to submit a statewide cost estimate with the original filed test claim. (SCO)
- (c) Require the SCO to perform fiscal analysis of the test claim prior to the development of the Ps&Gs to assess the validity of potential claimable costs. (SCO)
- (d) Require test claim to adequately identify all offsetting savings within the test claim. (SCO)
- (e) Inform the Legislature of mandate determination costs shortly after mandate enactment. (LAO)
- (f) Require Appropriations Committees to review all bills with a fiscal effect on local agencies, not just bills identified as a “mandate.” (CSAC and League)
- (g) Establish process after adoption of the parameters and guidelines to give Legislature information regarding costs and allow Legislature to request revision or reconsideration. (DOF)
- (h) Impose a sunset on all legislation three years after the initial appropriation for mandate reimbursement to allow Legislature to reexamine need for mandate and its costs. (CSAC and League)
- (i) The CSM staff should analyze more carefully the completeness of the claims data used to develop statewide cost estimates. When reporting statewide cost estimates to the Legislature, CSM staff should disclose the incomplete nature of the claims data and the assumptions used to develop statewide cost estimates. (State Auditor)



Key Elements of Mandate Reform— Major Recommendations Proposed *(Continued)*

5. Claiming System Invites Problems

- (a) Revamp and simplify mandate reimbursement procedures. (LAO and SCO)
- (b) Direct local agencies to submit all claims the year *after* costs are incurred. (LAO)
- (c) Eliminate estimated claims to streamline the process. (SCO)
- (d) Ensure that Ps&Gs are clear and consistent. (MCS)
- (e) Consider establishing an independent review of effectiveness of Ps&Gs after period of, say, three years. (CSAC, League, and SCO)
- (f) Make any change on a prospective basis. (Ed Coalition)
- (g) Base most mandate reimbursements on unit costs. (EMCN, Ed Coalition, and MCS)
- (h) Reform current mandate apportionment option, allowing specific mandates to be an apportionment rather than annual filing of detailed cost claims. (SCO)
- (i) External claim preparers should pay to have their systems and methodologies professionally certified by the SCO for compliance with the specific mandate's interpretation, implementation, and supporting documentation using Generally Accepted Accounting Principals. (MCS)
- (j) The SCO should perform a field review of initial reimbursement claims for selected new mandates before development of the Ps&Gs and statewide cost estimates to identify any inappropriate claiming and to suggest needed changes to the Ps&Gs. (State Auditor)
- (k) Require CSM to adopt the terms, conditions, and rate of reimbursement upon adoption to link mandate finding with accurate measure of its costs. (EMCN)



Key Elements of Mandate Reform— Major Recommendations Proposed *(Continued)*

6. Mandate Determinations Are Stuck in the Past

- (a) Establish process for reconsidering mandates when legal thinking or law changes. (LAO)
- (b) Replace current 30-day open-ended reconsideration period with ongoing authority to reconsider mandates for only two reasons: (1) failure to consider material information and (2) change in law. (DOF)

7. Definition of Mandated Costs Needs Tightening

- (a) Change definition of mandates to limit reimbursement to increased local costs to implement requirement in most cost-effective manner possible. Exclude reimbursement for costs for (1) optional programs, (2) redirected staff time, or (3) activities subsequently mandated by the federal government. (DOF)
- (b) Change standard of proof for cost issues to require local documentation. (DOF)
- (c) Require CSM to consider, and claiming instructions to require information regarding, any funding provided by state to implement mandates. (DOF)
- (d) Oppose efforts to revise statutes to (1) “under-fund local agencies for bona fide local agency mandates” (CSAC and League) or (2) exclude costs for redirected state time or costs from local agencies previously performing the activity. (Ed Coalition)



Key Elements of Mandate Reform— Major Recommendations Proposed *(Continued)*

8. Audit Process Needs Improvement

- (a) The SCO should audit the external claim preparer's process and approach, rather than individual claims filed, to promote standardized processes and documentation requirements that would eliminate the need for claimants to support claimed costs during audit. (MCS)
- (b) The SCO should verify how external claim preparers ensure that their clients have implemented the mandated activities as intended by the Legislature. (MCS)
- (c) The SCO should ensure the documentation of reimbursable activities is properly recorded in a clear auditable format. (MCS)

INITIAL STATEMENT OF REASONS

SPECIFIC PURPOSE OF THE PROPOSED ACTION

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, § 1700.6). The purpose of this rulemaking is to implement AB 2856 (Stats. 2004, ch. 890), which made the following statutory changes that require the Commission to initiate this rulemaking:

- The definition of test claim was modified. (Gov. Code, § 17521)
- The state mandates claims fund was abolished and implementation statutes were repealed. (Gov. Code, §§ 17517 and 17610)
- The content of a test claim filing was specified in statute, adding new requirements and specificity. (Gov. Code, § 17553)
- The statute of limitations for filing test claims was reduced to 12 months. (Gov. Code, § 17551)
- The applicable reimbursement period for filing a test claim amendment was clarified. (Gov. Code, § 17557, subd. (e))
- The Commission was authorized to adopt a *reasonable reimbursement methodology* in parameters and guidelines. (Gov. Code, §§ 17518.5 and 17557, subds. (b), (f))
- The reimbursement period was specified for parameters and guidelines amendments. (Gov. Code, § 17557)
- The Controller's claiming instructions are derived from the test claim decision and adopted parameters and guidelines. (Gov. Code, § 17558)
- Claims for direct and indirect costs must be filed in the manner prescribed in the parameters and guidelines and claiming instructions. (Gov. Code, § 17564, subd. (b))

MINOR, NON-SUBSTANTIVE, CLARIFYING AND TECHNICAL AMENDMENTS

The Commission edited text of the existing regulations for clarity and consistency purposes. Specifically, the Commission proposes minor, non-substantive, or clarifying technical amendments in sections 1181, 1183.02, 1183.03, 1183.05, 1183.06, 1183.07, 1183.08, 1183.11, 1183.21, 1187.2, and 1187.3.

ARTICLE 1. GENERAL

SECTION 1181.1. DEFINITIONS

Specific Purpose of the Regulation

The section defines key terms used in the regulations.

Necessity

The proposed changes amend the definitions of “amendment,” “Commission staff,” “statewide cost estimate,” and “written material,” and delete the former definition of a “test claim.” Amending the definitions of these terms are necessary to clarify the meaning and to implement the statutory provisions. The Commission proposes to delete the definition of “test claim” because it is now codified in Government Code section 17521.

SECTION 1181.2. FILING AND SERVICE OF WRITTEN MATERIALS

Specific Purpose of the Regulation

The section clarifies how written comments should be submitted to the Commission and serviced upon parties and interested parties who have requested inclusion on the mailing list for a specific claim.

Necessity

The proposed changes are necessary to clarify and facilitate the use of electronic mail and the Commission’s website in lieu of service by first-class mail.

SECTION 1181.3. SUBMISSIONS OF WRITTEN MATERIALS IN OTHER MEDIA

Specific Purpose of the Regulation

The section specifies that parties and interested parties may electronically submit documents to the Commission to facilitate the timely hearing of test claims, parameters and guidelines, and statewide cost estimates.

Necessity

The proposed changes are necessary to clarify the manner in which documents submitted through electronic mail, in lieu of service by first-class mail, shall be formatted.

ARTICLE 3. TEST CLAIMS

SECTION 1183. TEST CLAIM FILING

Specific Purpose of the Regulation

This section proposes substantive and technical conforming changes that update the statute of limitations requirement; repeal duplicative content requirements for test claims; and repeal obsolete procedures for filing duplicate test claims. This section would also authorize the executive director to dismiss test claims or portions of a test claim that the Commission lacks jurisdiction to hear for any reason, subject to appeal to the Commission.

Necessity

AB 2856 revised how local agencies and school districts file test claims with the Commission. They have only one year to file test claims on new statutes; they must include additional

information when filing test claims; and they may no longer file duplicate test claims. Therefore, the changes proposed to this section would conform the section to the new statutory changes. This section would also clarify the process when a test claim is improperly filed and the Commission has no jurisdiction to hear the claim.

SECTION 1183.01. TIMELINES

Specific Purpose of the Regulation

Government Code section 17551 requires the Commission to complete test claims within 12 months. This section proposes to toll this timeline for sixty days if a party or interested party notifies the commission that they will be submitting a reasonable reimbursement methodology. Section 1183.01 currently sets a timeline for claimants when they file duplicate test claims. This proposal strikes the language regarding duplicate test claims. Finally, this section allows the executive director to dismiss test claims or portions thereof when the Commission has no jurisdiction over the claim.

Necessity

AB 2856 authorizes state agencies, claimants, and interested parties to propose a reasonable reimbursement methodology to reimburse local agencies and school districts for mandated programs. It is necessary to toll the existing statutory timeline for completing test claims for 60 days to give parties time to submit this new methodology. It is necessary to strike the existing language regarding duplicate test claims because AB 2856 repealed the authority for claimants to file duplicate claims. This section would also allow the executive director to dismiss test claims when they are improperly filed and the Commission has no jurisdiction over the claim.

SECTION 1183.04. INFORMAL CONFERENCE

Specific Purpose of the Regulation

The executive director is currently authorized to conduct informal conferences prior to formal hearings on matters to respond to questions, set dates for receiving written comments, or to resolve or clarify issues of law. This section proposes to allow the conference to be conducted to consider a reasonable reimbursement methodology.

Necessity

AB 2856 authorizes state agencies, parties and interested parties to propose a reasonable reimbursement methodology to reimburse claimants for mandated programs. This section would clarify that informal conferences can be conducted to discuss or resolve issues regarding reasonable reimbursement methodologies.

SECTION 1183.1. CONTENT OF PARAMETERS AND GUIDELINES

Specific Purpose of the Regulation

Government Code section 17557 requires the Commission, once it determines that a new statute or executive order is a mandated program, to adopt parameters and guidelines that provide the claimants with the actual activities that are reimbursable. Currently, the claimant is required to submit proposed parameters and guidelines. This section proposes to clarify and revise the content of proposed parameters and guidelines, to define the “most reasonable methods of complying with the mandate,” to identify offsetting revenues and reimbursements, to provide notice of the Office of the State Controller’s duty to issue claiming instructions, and to specify

the remedies before the Commission and the legal and factual basis for the parameters and guidelines. Also, duplicative language that is in Government Code section 17557 would be deleted.

Necessity

This section would revise the regulations to conform to statutory changes made by AB 2856 to specify the content of test claim filings and to require the Commission to consider a reasonable reimbursement methodology when adopting parameters and guidelines.

SECTION 1183.12. ALTERNATE PROCESS FOR PROPOSED PARAMETERS AND GUIDELINES

Specific Purpose of the Regulation

This proposal would add a new section that authorizes claimants to utilize an alternate process for submitting parameters and guidelines. Under the alternate process, Commission staff would draft proposed parameters and guidelines to assist the claimant. In lieu of filing the proposed parameters and guidelines, claimants would file modifications and/or comments on staff's proposed parameters and guidelines, and may clarify reimbursable activities, include additional activities, describe the most reasonable methods of complying with the mandate, indicate whether the Commission should consider a reasonable reimbursement methodology, identify offsetting revenues and offsetting savings, and provide an explanation of why clarification or additional activities are necessary.

Necessity

Currently, staff makes numerous modifications to claimants' proposed parameters and guidelines to conform them to the format approved by the Commission. This alternate process would expedite adoption of parameters and guidelines and includes the reasonable reimbursement methodology enacted in AB 2856.

SECTION 1183.13. REASONABLE REIMBURSEMENT METHODOLOGY

Specific Purpose of the Regulation

This section establishes the procedures for submitting a reasonable reimbursement methodology. It defines what agencies may submit a proposed methodology, requires the methodology to include any documentation or assumptions used to develop the methodology, provides all parties with the opportunity to comment on the proposed methodology and to rebut any comments.

Necessity

This section conforms to AB 2856 that authorizes the use of reasonable reimbursement methodologies to reimburse local agencies and school districts for mandated programs.

SECTION 1183.14. ADOPTION OF PARAMETERS AND GUIDELINES

Specific Purpose of the Regulation

This section provides that when Commission staff makes a recommendation on proposed parameters and guidelines, it may include a reasonable reimbursement methodology.

Necessity

This section conforms to AB 2856.

SECTION 1183.2. AMENDMENTS TO PARAMETERS AND GUIDELINES

Specific Purpose of the Regulation

This section proposes repeal of duplicative references to filing dates and reimbursement periods, and clarifies the content of a proposed parameters and guidelines amendment.

Necessity

Language that is currently in regulation was added to statute. Therefore, the language is no longer necessary in regulation.

SECTION 1183.3. STATEWIDE COST ESTIMATE

Specific Purpose of the Regulation

Government Code section 17553 requires the Commission to adopt a statewide cost estimate of each approved mandate. This section proposes to add that staff may develop a statewide cost estimate based on the application of a reasonable reimbursement methodology.

Necessity

This section conforms to AB 2856 that authorizes the adoption of a reasonable reimbursement methodology to reimburse local agencies and school districts for mandated programs.

ARTICLE 4. MANDATES RECOGNIZED BY THE LEGISLATURE

SECTIONS 1184, 1184.1, and 1184.2.

Specific Purpose of the Regulation

These sections implement payment of claims from the State Mandates Claims Fund.

Necessity

AB 2856 abolishes the State Mandates Claims Fund and repeals the implementation statutes (Gov. Code, §§ 17517 and 17610). Thus, repeal of Article 4, including sections 1184, 1184.1, and 1184.2, is necessary as these regulations are now obsolete.

ARTICLE 7. HEARINGS

SECTION 1187. SCHEDULING AND NOTICING THE HEARING ON A TEST CLAIM

Specific Purpose of the Regulation

The section specifies when the Commission sets dates for public hearings. The proposed changes repeal obsolete text and add clarifying language.

Necessity

The proposed changes clarify that a test claim is set for hearing when the draft staff analysis is issued, and adds language from section 1187.1 regarding what to include in a notice of hearing and who should receive such notices.

SECTION 1187.1. NOTICE OF HEARING

Specific Purpose of the Regulation

The section specifies the process for issuing a notice of public hearing. The Commission proposes repeal of this section.

Necessity

The proposed repeal of this section is necessary because the notice requirements were moved to section 1187, thus making the text duplicative.

SECTION 1187.4. PREHEARING CONFERENCE

Specific Purpose of the Regulation

The section specifies the purposes of a pre-hearing conference, who shall be invited to participate, and who shall be sent a notice of pre-hearing.

Necessity

The proposed amendment adds other methods for providing public notices, such as electronic mail or other electronic media.

SECTION 1188.1. DECISION; ACTION ON PROPOSED DECISION

Specific Purpose of the Regulation

The section specifies the process for preparing and adopting a proposed Statement of Decision.

Necessity

The proposed amendment is necessary to clarify that the Commission may adopt a proposed decision on the same day as the hearing on the claim.

SECTION 1188.3. WITHDRAWAL OF CLAIMS AND REQUESTS

Specific Purpose of the Regulation

The section specifies that a claim, or any portion of a claim, may be withdrawn by written application any time before a decision is adopted, or by oral application at the time of hearing.

Necessity

The proposed amendment is necessary to clarify that if the withdrawal is of a test claim, or portion thereof, the procedures described in section 1183.08 must be followed before dismissal.

SECTION 1188.4. RECONSIDERATION OF A PRIOR FINAL DECISION

Specific Purpose of the Regulation

The section specifies and clarifies the process for requesting that the Commission reconsider or amend a test claim decision and change a prior final decision to correct an error of law.

Necessity

The proposed amendment is necessary to clarify that the section applies to reconsiderations requested pursuant to Government Code section 17559, subdivision (a), and not to remands or reconsiderations directed by the courts or by statute.

ARTICLE 8.5. FORMS

SECTION 1189.6. DEVELOPMENT AND APPROVAL OF COMMISSION FORMS

Specific Purpose of the Regulation

The section clarifies the process for developing and approving forms necessary to simplify and improve the efficiency of the test claim process.

Necessity

The proposed changes are necessary to clarify the duty of the executive director to develop and issue forms after holding a workshop with interested parties and state agencies, subject to appeal to the Commission.

MATERIAL RELIED UPON TO DEVELOP REGULATIONS

No technical documents, empirical studies, reports or documents have been relied upon to develop these proposed regulations.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTIONS

The Commission has not identified any reasonable alternatives to the proposed regulatory actions. The Commission has no jurisdiction over small businesses. Therefore, there is no adverse impact on small businesses.

ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Commission has made an initial determination that there is no adverse economic impact on any business because the Commission does not have jurisdiction over businesses.

FINAL STATEMENT OF REASONS

NO COMMENTS WERE RECEIVED DURING THE INITIAL NOTICE PERIOD OF APRIL 15, 2005, THROUGH MAY 30, 2005

The proposed text was made available to the public from April 15, 2005, through May 30, 2005. The Commission did not receive any comments on the proposed text.

ALTERNATIVES DETERMINATION

The Commission has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.