

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

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

SPECIFIC PURPOSE OF THE REGULATIONS

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

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

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

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

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

Specific Purpose of the Regulation

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

Proposed Changes

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

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

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

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

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

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

Necessity and Anticipated Benefit

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

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

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

Specific Purpose of the Regulation

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

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

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

Proposed Changes

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

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

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

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

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

Necessity and Anticipated Benefit

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

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

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

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

Section 1181.8. Commission Meeting and Voting Requirements.

Specific Purpose of the Regulation

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

The proposed amendment clarifies Commission actions on tie votes.

Proposed Changes

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

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

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

Necessity and Anticipated Benefit

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

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

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

Specific Purpose of the Regulation

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

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

Proposed Changes

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

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

Necessity and Anticipated Benefit

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

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

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

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

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

Specific Purpose of the Regulation

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

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

Proposed Changes

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

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

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

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

Necessity and Anticipated Benefit

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

VI. Clarify Actions in the Timeline in Section 1183.18.

Section 1183.18. Timelines.

Specific Purpose of the Regulation

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

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

Proposed Change

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

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

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

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

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

Necessity and Anticipated Benefit

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

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

Section 1185.1. Incorrect Reduction Claim Filing.

Specific Purpose of the Regulation

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

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

Proposed Change

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

Necessity and Anticipated Benefit

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

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

Section 1186.6. Reviewing an Apportionment or Base Year Entitlement.

Specific Purpose of the Regulation

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

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

Proposed Change

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

Necessity and Anticipated Benefit

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

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

Section 1187.1. Scheduling and Noticing the Hearing.

Specific Purpose of the Regulation

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

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

Proposed Change

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

Necessity and Anticipated Benefit

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

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

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

Specific Purpose of the Regulation

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

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

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

Proposed Change

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

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

Necessity and Anticipated Benefit

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

XI. Clarifies Procedures During Hearings in Section 1187.6.

Section 1187.6. Conduct of Hearing.

Specific Purpose of the Regulation

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

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

Proposed Change

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

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

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

Necessity and Anticipated Benefit

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

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

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

Section 1187.13. Abandonment of a Matter.

Specific Purpose of the Regulation

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

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

Proposed Change

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

Necessity and Anticipated Benefit

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

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

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

Specific Purpose of the Regulation

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

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

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

Proposed Change

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

Necessity and Anticipated Benefit

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

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

1187.15. Reconsideration of an Adopted Decision.

Specific Purpose of the Regulation

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

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

Proposed Change

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

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

Necessity and Anticipated Benefit

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

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

XV. Minor, Nonsubstantive Consistency Edits and Corrections

The following proposed amendments make minor, nonsubstantive consistency edits or correct usage and errors in sections 1181.1, 1181.2, 1181.3, 1181.9, 1183.1, 1183.2; 1183.3; 1183.4; 1183.6; 1183.7; 1183.8, 1183.9, 1183.10, 1183.11, 1183.12, 1183.13, 1183.14, 1183.15, 1183.16, 1183.17, 1183.18, 1184.1, 1185.1, 1185.2, 1185.3, 1185.4, 1185.5, 1185.6, 1185.7, 1185.8, 1185.9, 1186.2, 1186.4, 1186.7, 1187.1, 1187.3, 1187.6, 1187.7, 1187.8, 1187.9, 1187.13, 1187.14, 1187.15, 1188.1, 1188.2, 1190.1, 1190.2, 1190.3, and 1190.5 of the regulations.

Proposed Change

Update Usage and Increase Clarity

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

agency” with “party” (proposed § 1187.15(h) [current § 1187.15(i)]; and replace “staff of the Commission” with “Commission staff” (§ 1187.6).

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

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

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

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

Correct Minor Errors

These amendments are also proposed to correct errors in the current regulations, including to change “applicant” to “appellant” (§ 1181.1(c)(3)); replace “of” with “after” (§ 1183.13(e)); to

correct erroneous citations (§§ 1183.10(b)(1), proposed 1187.15(i) [current § 1187.15(j)]); to add the word “section” (§ 1187.14(a)); to add the word “a” (§§ proposed 1181.3(c)(1) [current § 1181.3(b)(1)], 1183.15(e), 1187.14(a)); to add the word “and” (§ 1183.13(a)); to add the word “the” (§§ 1183.13(e), 1183.16(g), 1187.6(g), 1190.5(b)(3)); to replace “sections” with “section” (§ 1183.14(a)); to replace “fail” with “fails” (§ 1183.16(i)); to replace “on” with “by” (§ 1183.18(a)(5)); and to make capitalization consistent (§§ 1183.13(a), 1183.18(b)(1), 1186.4(d)).

Necessity and Anticipated Benefit

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

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

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

Specific Purpose of the Regulation

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

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

Proposed Change

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

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

Necessity and Anticipated Benefit

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

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

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

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

(accessed on April 26, 2019); and on a guide prepared by the California Second District Court of Appeal titled *Electronic Formatting Requirements and Guidelines of the Second District Pursuant to California Rules of Court rules 8.72(a) and 8.74(b)*, effective October 2017, Revised June 18, 2018 <https://www.courts.ca.gov/documents/2DCA-Electronic-Formatting-Req->

[Guide.pdf](#) (accessed on April 26, 2019). The Commission also relied upon the statutes and cases cited in the authority and reference sections for the regulations.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Creation or Elimination of Jobs within the State of California

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

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

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

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

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

Benefits of the Regulations

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

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

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

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

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

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

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