

Hearing Date: January 24, 2014

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**ITEM 8**  
**PROPOSED STATEMENT OF DECISION**  
**AND**  
**AMENDMENTS TO PARAMETERS AND GUIDELINES**

Public Resources Code Section 5164(b)(1) and (b)(2)

Statutes 2001, Chapter 777

*Local Recreational Areas: Background Screenings*

01-TC-11

(amended by 12-MR-02)

As Modified by:

Statutes 2010, Chapter 719 (SB 856)

Department of Finance, Requester

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**EXECUTIVE SUMMARY**

The following is the proposed statement of decision for this matter prepared pursuant to section 1188.1 of the Commission on State Mandates' (Commission's) regulations and functions as the final staff analysis. As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under article 7 of the Commission's regulations.<sup>1</sup> Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is correct as a matter of law and based on substantial evidence in the record.<sup>2</sup> Oral or written testimony is offered under oath or affirmation in article 7 hearings.

Further, the adoption of this item, prepared pursuant to Government Code section 17570(i), is contingent upon the Commission's approval of Item 7 which is the second hearing of the Commission's finding that the state's liability pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17556(d) has been modified based on the subsequent change in law.

**I. Summary of the Mandate**

On December 9, 2005, the Commission adopted a statement of decision finding that Public Resources Code section 5164(b)(1) and (b)(2), as amended by Statutes 2001, chapter 777, imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556 for the following activities:

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<sup>1</sup> California Code of Regulations, Title 2, section 1187.

<sup>2</sup> Government Code section 17559(b); California Code of Regulations, Title 2, 1187.5.

- Requiring each local agency to have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164(a). This means that local agencies must perform the one-time activity of revising and printing job applications that inquire as to the applicants' criminal history.
- Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to Department of Justice (DOJ): (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ's fingerprint processing fee (no fee is required for a prospective volunteer).<sup>3</sup>

The Commission denied any remaining alleged costs or activities because they do not impose a new program or higher level of service, and do not impose costs mandated by the state.

Specifically, the Commission found that the following activities are not reimbursable:

- Taking fingerprints.
- Paying DOJ's fingerprint processing fee for a prospective volunteer.

On May 20, 2013, the Department of Finance (Finance) filed a request for redetermination of the test claim decision pursuant to Government Code section 17570. Finance asserted that Statutes 2010, chapter 719 constitutes a subsequent change in the law, as defined in section 17570, which, pursuant to section 17556(d), results in the state's liability under the test claim statutes being modified.

On January 24, 2014, the Commission adopted a new test claim decision finding that Statutes 2010, chapter 719 (SB 856), effective October 19, 2010, added subdivision (b)(3) to Public Resources Code section 5164, and provided local agencies sufficient fee authority to cover the full costs attributable to mandated activities in Public Resource Code section 5164.

As a result, the Commission concluded that the *Local Recreational Areas: Background Screenings*, 01-TC-11 program does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17556(d), beginning July 1, 2011 because the state's liability to reimburse this program has been eliminated as of June 30, 2011.

## II. Procedural History

On December 12, 2013, Commission staff issued a draft staff analysis for the second hearing on the request for a new test claim decision, and draft expedited parameters and guidelines.<sup>4</sup> No comments were received on the draft staff analysis for the second hearing on the request for a new test claim decision or on the draft expedited parameters and guidelines. On January 24, 2014, the Commission adopted a new test claim decision finding that Statutes 2010, chapter 719 (SB 856), effective October 19, 2010, added subdivision (b)(3) to Public Resources Code section

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<sup>3</sup> Public Resources Code section 5164(b)(2).

5164, and provided local agencies sufficient fee authority to cover the full costs attributable to mandated activities in Public Resource Code section 5164.

### **III. Discussion**

In the new test claim decision, the Commission found that there are no costs mandated by the state, as defined by Government Code section 17514, to implement activities pursuant to Public Resources Code section 5164 (b1) and (b2) based on the subsequent change in law brought about by the passage of SB 856 within the meaning of article XIII B, section 6 of the California Constitution. Section 17570 provides that a request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. This request was filed on May 20, 2013, establishing eligibility beginning July 1, 2011. Therefore, the activities approved for reimbursement in the prior test claim decision are no longer reimbursable as of July 1, 2011.

### **IV. Staff Recommendations**

Based on the foregoing, staff recommends that the Commission adopt the attached proposed statement of decision and proposed amendments to the parameters and guidelines. Minor changes, including those to reflect the hearing testimony and the vote count will be included when issuing the adopted parameters and guidelines and statement of decision.

However, if the Commission modifies the proposed statement of decision or amendments to parameters and guidelines, staff recommends that the motion to adopt reflect those changes, which would be made before issuing the adopted parameters and guidelines and statement of decision. In the alternative, if the changes are significant, it is recommended that adoption of the proposed statement of decision and parameters and guidelines be continued to the March 28, 2014 Commission hearing.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:  
PARAMETERS AND GUIDELINES  
AMENDMENT FOR:

Public Resources Code Section 5164(b)(1) and  
(b)(2); Statutes 2001, Chapter 777.

As Modified by:

Statutes 2010, Chapter 719 (SB 856)

The reimbursement period for this program  
ends June 30, 2011 based on subsequent  
change in law.

Case No.: 01-TC-11 (12-MR-02)

*Local Recreational Areas: Background  
Screenings*

STATEMENT OF DECISION PURSUANT  
TO GOVERNMENT CODE SECTION  
17500, ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

*(Adopted January 24, 2014)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) adopted the proposed statement of decision and amendments to parameters and guidelines during a regularly scheduled hearing on January 24, 2014. [Witness list will be included in the final statement of decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the parameters and guidelines and statement of decision by a vote of [Vote count will be included in the final statement of decision].

**I. Summary of the Mandate**

On December 9, 2005, the Commission adopted a test claim statement of decision finding that Public Resources Code section 5164(b)(1) and (b)(2), as amended by Statutes 2001, chapter 777, imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556 for the following activities:

- Requiring each local agency to have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164 (a). This means that local agencies must perform the one-time activity of revising and printing job applications that inquire as to the applicants' criminal history.

- Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to Department of Justice (DOJ): (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ's fingerprint processing fee (no fee is required for a prospective volunteer).<sup>5</sup>

The Commission denied any remaining alleged costs or activities because they do not impose a new program or higher level of service, and do not impose costs mandated by the state.

Specifically, the Commission found that the following activities are not reimbursable:

- Taking fingerprints.
- Paying DOJ's fingerprint processing fee for a prospective volunteer.

On May 20, 2013, the Department of Finance (Finance) filed a request for redetermination of the test claim decision pursuant to Government Code section 17570. Finance asserted that Statutes 2010, chapter 719 constitutes a subsequent change in the law, as defined in section 17570, which, pursuant to section 17556(d), results in the state's liability under the test claim statutes being modified.

On January 24, 2014, the Commission adopted a new test claim decision finding that Statutes 2010, chapter 719 (SB 856), effective October 19, 2010, added subdivision (b)(3) to Public Resources Code section 5164, and provided local agencies sufficient fee authority to cover the full costs attributable to mandated activities in Public Resource Code section 5164.

As a result, the Commission concluded that the *Local Recreational Areas: Background Screenings*, 01-TC-11 program does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17556(d), beginning July 1, 2011 because the state's liability to reimburse this program has been eliminated as of June 30, 2011.

## **II. Procedural History**

On December 12, 2013, Commission staff issued a draft staff analysis for the second hearing on the request for a new test claim decision, and draft expedited parameters and guidelines. No comments were received on the draft staff analysis for the second hearing on the request for a new test claim decision or on the draft expedited parameters and guidelines. On January 24, 2014, the Commission adopted a new test claim decision finding that Statutes 2010, chapter 719 (SB 856), effective October 19, 2010, added subdivision (b)(3) to Public Resources Code section 5164, and provided local agencies sufficient fee authority to cover the full costs attributable to mandated activities in Public Resource Code section 5164.

## **III. Discussion**

In the new test claim decision, the Commission found that there are no costs mandated by the state, as defined by Government Code section 17514, to implement activities pursuant to Public Resources Code section 5164 (b1) and (b2), based on a subsequent change in law brought about by the passage of SB 856, within the meaning of article XIII B, section 6 of the California Constitution. Section

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<sup>5</sup> Public Resources Code section 5164(b)(2).

17570 provides that a request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. This request was filed on May 20, 2013, establishing eligibility beginning July 1, 2011. Therefore, the activities approved for reimbursement in the prior test claim decision are no longer reimbursable as of July 1, 2011.

#### **IV. Conclusion**

For the foregoing reasons, the Commission hereby adopts the attached proposed statement of decision and proposed amendments to the parameters and guidelines.

Amended: January 24, 2014  
Adopted: June 26, 2008

## **PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES**

Public Resources Code Section 5164, Subdivisions (b)(1) and (b)(2)  
Statutes 2001, Chapter 777

*Local Recreational Areas: Background Screenings*

01-TC-11

(amended by 12-MR-02)

City of Los Angeles, Claimant

As Modified by:

Statutes 2010, Chapter 719 (SB 856)

The reimbursement period for this program ends June 30, 2011

### **I. SUMMARY OF THE MANDATE**

On December 9, 2005, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that Public Resources Code section 5164, subdivisions (b)(1) and (b)(2), as amended by Statutes 2001, chapter 777, imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556 for the following activities:

- Requiring each local agency to have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a). This means that local agencies must perform the one-time activity of revising and printing job applications that inquire as to the applicants' criminal history.
- Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to Department of Justice (DOJ): (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ's fingerprint processing fee (no fee is required for a prospective volunteer).<sup>1</sup>

The Commission denied any remaining alleged costs or activities because they do not impose a new program or higher level of service, and do not impose costs mandated by the state.

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<sup>1</sup> Public Resources Code section 5164, subdivision (b)(2).

Specifically, the Commission found that the following activities are not reimbursable:

- Taking fingerprints.
- Paying DOJ's fingerprint processing fee for a prospective volunteer.

On May 20, 2013, the Department of Finance (Finance) filed a request for redetermination of the test claim decision pursuant to Government Code section 17570. Finance asserted that Statutes 2010, chapter 719 constitutes a subsequent change in the law, as defined in section 17570, which, pursuant to section 17556(d), results in the state's liability under the test claim statutes being modified.

On January 24, 2014, the Commission adopted a new test claim decision finding that Statutes 2010, chapter 719 (SB 856), effective October 19, 2010, added subdivision (b)(3) to Public Resources Code section 5164, and provided local agencies sufficient fee authority to cover the full costs attributable to mandated activities in Public Resource Code section 5164.

As a result, the Commission concluded that the *Local Recreational Areas: Background Screenings*, 01-TC-11 program does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17556(d), beginning July 1, 2011.

## **II. ELIGIBLE CLAIMANTS**

Any city, county, city and county, or special district that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557, subdivision (c), as amended by Statutes 1998, chapter 681, states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The City of Los Angeles filed the test claim on February 8, 2002, establishing eligibility for fiscal year 2000-2001. However, the operative date of Public Resources Code section 5164, subdivisions (b)(1) and (b)(2), as amended by Statutes 2001, chapter 777, is January 1, 2002. Therefore, costs incurred pursuant to Public Resources Code section 5164, subdivisions (b)(1) and (b)(2), as amended by Statutes 2001, chapter 777, are reimbursable on or after January 1, 2002.

Actual costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

Statutes 2010, chapter 719 (SB 856) ended the reimbursement period for this mandate program beginning July 1, 2011.

#### IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents. The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

1. Have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a). (Pub. Res. Code, § 5164, subd. (b)(1)). This is a one-time activity of revising and printing job applications that inquire as to the applicants' criminal history.
2. Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to the Department of Justice (DOJ): (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ's fingerprint processing fee (no fee is required for a prospective volunteer). (Pub. Res. Code, § 5164, subs. (b)(1) & (b)(2)).

The Commission found that the following activities **are not** reimbursable:

- Taking fingerprints.
- Paying DOJ's fingerprint processing fee for a prospective volunteer.

The activities of this program are no longer reimbursable beginning July 1, 2011.

## V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

#### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

#### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

#### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

#### 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

## 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

### B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of

this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>2</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND OTHER REIMBURSEMENTS**

Any offsetting revenues the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and

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<sup>2</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

**X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The ~~Statement~~ statements of Decision ~~decision for the test claim and parameters and guidelines~~ is ~~are~~ legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record ~~for the test claim~~. The administrative record, ~~including the Statement of Decision~~, is on file with the Commission.