

COMMENTS for APPEALS PROCEEDINGS TO THE COMMISSION REGULATIONS, CHAPTER 13, Section 100450.100

Comment Period: March 13 – April 27, 2015

Section/Page/Line	Commenter's Name	Comments/ Suggested Revisions	Response
General Comment	County of Kern	The County...objects to portions of the proposed emergency regulations and requests modifications, as outlined, to ensure a fair administrative review process and the opportunity for judicial review, as required by applicable statutes and regulations.	Comment acknowledged. This regulatory packet is no longer classified as "emergency" in nature.
General Comment	El Dorado County EMS Agency	Objection to Rulemaking Process: Allowing the opposing party on an appeal to unilaterally adopt appeal procedures for the hearing body is a denial of due process.	Comment acknowledged. No change made.
General Comment	El Dorado County EMS Agency	The appeal regulations must be proposed and adopted by the Commission, not the Authority.	Comment acknowledged. No change made. Pursuant to Health & Safety Code, Section 1797.107, the EMS Authority has been given the statutory responsibility to promulgate regulations. The Commission on EMS has the statutory responsibility to approve rules and regulations created by the EMS Authority.
General Comment	EMS Administrators' Association of California (EMSAAC)	While EMSAAC supports the adoption of procedural rules for LEMSA appeals of EMSA's refusal to approve local EMS plans, it requests that portions of the proposed Section 100450.100 be revised to insure that: 1) evidence may be presented at public administrative hearings; 2) the decisions resulting from such hearings serve only to exhaust administrative remedies, and not preclude further recourse to the courts; and 3) that all parties to	Comment acknowledged. EMSA has modified the proposed regulation to be consistent with the provisions of the APA.

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		administrative appeals bear their own costs.	
General Comment	Sacramento County EMS Agency (SCEMSA)	While SCEMSA supports the adoption of procedural rules for LEMSA appeals of EMSA's refusal to approve local EMS plans, it requests that portions of the proposed Section 100450.100 be revised to insure that: 1) evidence may be presented at public administrative hearings; 2) the decisions resulting from such hearings serve only to exhaust administrative remedies, and not preclude further recourse to the courts; and 3) that all parties to administrative appeals bear their own costs.	Comment acknowledged. EMSA has modified the proposed regulation to be consistent with the provisions of the APA.
100450.100 Pages 1-2 Lines 7-42	El Dorado County EMS Agency	The proposed regulations do not meet the APA clarity standard (GC § 11349.1) See comments below.	Comment acknowledged.
100450.100(a) Page 1 Lines 9-14	El Dorado County EMS Agency	Proposed regulations 100450.100(a) states that any appeal shall be conducted in accordance with the APA, GC §11500 et seq. and associated regulations in Title 1 of the CCRs; however, this conflicts with Proposed regulation 100450.100(f) which changes the parameters of GC §11517 relating to allowed Commission action on the proposed decision submitted by the ALJ.	Comment acknowledged. All the decision parameters of GC 11517 relating to actions that may be taken on a proposed decision are not available to the Commission on EMS due to the constraints contained in HSC 1797.105.
100450.100(b) Page 1 Lines 15-16	California Ambulance Association	Revise as follows: <i>The Office of Administrative Hearings, using an administrative law judge, shall <u>hold a hearing, receive testimony and evidence presented by the parties, and</u> evaluate all information submitted by the Authority and the</i>	Comment acknowledged. EMSA has modified the proposed regulation to be consistent with the provisions of the APA.

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		<p><i>local EMS agency.</i></p> <p>This additional language was included in the draft emergency regulations, but seems to have been omitted in this version. It must be clear that a hearing will be held and parties will be allowed to present evidence and testimony.</p>	
<p>100450.100(b) Page 1 Lines 15-16</p>	<p>EMS Administrators' Association of California (EMSAAC)</p>	<p>Revise to read: "The Office of Administrative Hearings, using an administrative law judge, shall <i>hold a public hearing, receive such evidence as may be presented by the parties, and</i> evaluate all information submitted by the Authority and the Local EMS Agency." (Please attached letter for further explanation of requested changes.)</p> <p>With regard to subsection (b), concern exists whether EMSA may seek to limit introduction of evidence or testimony at administrative hearings through a strict interpretation of its "evaluate all information" language, and limit appeals simply to the briefs submitted by the parties. Such a limitation would prevent a full and complete hearing of the dispute, and unnecessarily limit the administrative law judge's ability to fully analyze the issues. EMSAAC therefore proposes the addition of the following language to subsection (b):</p> <p>(b) The Office of Administrative Hearings, using an administrative</p>	<p>Comment acknowledged. EMSA has modified the proposed regulation to be consistent with the provisions of the APA.</p>

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		<p>law judge, shall <i>hold a public hearing, receive such evidence as may be presented by the parties, and</i> evaluate all information submitted by the Authority and the Local EMS Agency.</p>	
<p>100450.100(b) Page 1 Lines 15-16</p>	<p>County of Kern</p>	<p>The County requests that subdivision (b) be deleted. See comments in attached letter.</p> <p>The County objects to subdivision (b) of Section 100450.100, which states that "The Office of Administrative Hearings, using an administrative law judge, shall evaluate all information submitted by the Authority and the local EMS agency."</p> <p>Under subdivision (a), proceedings shall be conducted in accordance with the Administrative Procedures Act, Government Code section 11500 et seq., and associated regulations. Under Government Code 11512 (b), the administrative law judge has the authority to determine what information they will evaluate; they may choose not to evaluate all information submitted by EMSA and the local EMS agency.</p> <p>Therefore, the County requests that subdivision (b) be deleted.</p>	<p>Comment acknowledged. Section not deleted but language modified to be consistent with the APA.</p> <p>Comment acknowledged, language has been modified to be consistent with the APA.</p> <p>Comment acknowledged.</p> <p>Comment acknowledged. Section not deleted but language modified to be consistent with the APA.</p>

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100450.100(b) Page 1 Lines 15-16	El Dorado County EMS Agency	<p>Subsection (b) states that the administrative law judge shall evaluate “all information submitted” by the Authority and the LEMSA. “All information” should be clarified to include written briefs, oral testimony and such other evidence as may be presented by the parties. The concern is whether or not the Authority would seek to limit introduction of evidence or testimony at the administrative hearings through its interpretation of “all information.” The following change is proposed”</p> <p>(b) The Office of Administrative Hearings, using an administrative law judge, shall hold a public hearing, receive written briefs, oral testimony and argument and such other evidence as may be presented by the parties, and evaluated all information submitted by the Authority and the Local EMS Agency.</p>	<p>Comment acknowledged. EMSA has modified the proposed regulation to be consistent with the APA.</p>
100450.100(b) Page 1 Lines 15-16	Monterey County Regional Fire District (MCRFD) & San Ramon Valley Fire Protection District (SRVFPD)	<p>Subsection (b) of Section 100450.100 addresses the evidence to be heard by the administrative law judge. Because EMS Plans have important effects on public safety and health, the regulations should expressly allow for evidence at the hearing before the administrative law judge (“ALJ”). Maximizing the scope of relevant evidence that may be submitted will assist the ALJ’s ability to make a well-informed recommendation based on the most current evidence, as well as</p>	<p>Comment acknowledged.</p>

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		<p>adequately granting due process to the involved parties and all potentially involved public stakeholders impacted by the EMS Plan.</p> <p>It is requested that Subsection (b) be amended with the underlined language so as to read:</p> <p>(b) The Office of Administrative Hearings, using an administrative law judge, <u>shall hold a hearing, receive such relevant testimony and evidence presented by the parties,</u> and evaluate all information submitted by the Authority and the Local EMS Agency.</p>	<p>Comment acknowledged. EMSA has modified the proposed section to be consistent with the APA.</p>
<p>100450.100(b) Page 1 Lines 15-16</p>	<p>Sacramento County EMS Agency (SCEMSA)</p>	<p>With regard to subsection (b), concern exists whether EMSA may seek to limit introduction of evidence or testimony at administrative hearings through a strict interpretation of its "evaluate all information" language, and limit appeals simply to the briefs submitted by the parties. Such a limitation would prevent a full and complete hearing of the dispute, and unnecessarily limit the administrative law judge's ability to fully analyze the issues. SCEMSA therefore proposes the addition of the following language to subsection (b):</p> <p>(b) The Office of Administrative Hearings, using an administrative law judge, shall <i>hold a public hearing, receive such evidence as may be presented by the parties,</i> and evaluate</p>	<p>Comment Acknowledged.</p>

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		<p>all information submitted by the Authority and the Local EMS Agency.</p> <p>As written, this section limits the appeals simply to the briefs submitted to the Office of Administrative Hearings (OAH), by the parties. SCEMSA recommends the Section be amended to read: 'The OAH, using an ALJ, shall <i>hold a public hearing, receive such evidence as may be presented by the parties, and</i> evaluate all information submitted by the Authority and the Local EMS Agency'.</p>	<p>Comment acknowledged. EMSA has modified the proposed section to be consistent with the APA.</p>
<p>100450.100(b) Page 1, lines 15-16</p>	<p>County of Marin and ICEMA</p>	<p>With regard to subsection (b), concern exists whether EMSA may seek to limit introduction of evidence or testimony at administrative hearings through a strict interpretation of its "evaluate all information" language, and limit appeals simply to the briefs submitted by the parties. Such a limitation would prevent a full and complete hearing of the dispute, and unnecessarily limit the administrative law judge's ability to fully analyze the issues. County of Marin and ICEMA therefore proposes the addition of the following language to subsection (b):</p> <p>Revise to read: "The Office of Administrative Hearings, using an administrative law judge, shall hold a public hearing, receive such evidence as may be presented by the parties, and evaluate all information submitted by the Authority and the Local EMS</p>	<p>Comment acknowledged. EMSA has modified the proposed section to be consistent with the APA.</p>

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		Agency.”	
100450.100(c) Page 1 Lines 17-22	County of Kern	<p>The County requests that subdivision (c) be modified to provide: “<u>The administrative law judge, in make a proposed decision to the Commission shall make and articulate findings of fact and conclusions of law, and either grant the appeal, approving the local EMS plan as submitted to the Authority, or deny the appeal, disapproving the local EMS plan as submitted to the Authority, consistent with California Health and Safety Code section 10197.105 (d).</u>” See comments in attached letter.</p> <p>The proposed regulations do not address whether the administrative law judge would be required to provide a written explanation for a decision. The relevant statute, Government Code section 11517(c)(1), provides that the administrative law judge shall prepare a proposed decision “in a form that may be adopted by the agency as the final decision in the case.” There is no particular format specified by statute.</p> <p>In other contexts, however, regulations require an administrative law judge to provide written reasons for a decision. For instance, in child support hearings, the decision must specify the reasons for the decision and must identify supporting evidence and law. 22</p>	<p>Comment acknowledged. No change made to proposed language.</p> <p>Comment acknowledged.</p> <p>Comment acknowledged.</p>

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		<p>C.C.R. § 120216. In Gambling Control Commission hearings, the administrative law judge must include written findings of fact, 4 C.C.R. § 12554. Generally in quasi-judicial administrative proceedings, the quasi-judicial body must state findings in its decision. <i>Topanga Association v. County of Los Angeles</i> (1974) 11 Cal.3d 506; <i>City of Fairfield v. Superior Court</i> (1975) 14 Cal.3d 768.</p> <p>EMSA has not proposed any regulations or guidelines dictating the format of the administrative law judge's decision. However, the judge must make a factual and legal determination under the statute that "the plan does not effectively meet the needs of the persons and is not consistent with coordinating activities in the geographical area served, or that the plan is not concordant and consistent with applicable guidelines or regulations, or both the guidelines and regulations, established by the authority." H& S § 1797.105(b). A written decision including findings of fact and conclusions of law would assist the Commission in making the final determination and provide clarity to EMSA and the local EMS agency regarding the areas of any plan that are inadequate.</p> <p>Permitting the administrative law judge to approve or disapprove EMSA's</p>	<p>Comment acknowledged.</p>

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		<p>decision without providing reasoning would abrogate the purpose of involving the administrative law judge in the first place, and it would prevent the Commission from relaying on facts and conclusions articulated by a neutral third party in making decisions.</p> <p>Therefore, the County proposes the following modification to subdivision (c):</p> <p>(c) be modified to provide: “The administrative law judge, in make a proposed decision to the Commission <u>shall make and articulate findings of fact and conclusions of law, and either grant the appeal, approving the local EMS plan as submitted to the Authority, or deny the appeal, disapproving the local EMS plan as submitted to the Authority, consistent with California Health and Safety Code section 10197.105 (d).</u>”</p>	<p>Comment acknowledged.</p> <p>Comment acknowledged. No change to language necessary. OAH provides a written decision with findings of fact and law in all matters.</p>
<p>100450.100(d) Page 1 Lines 23-25</p>	<p>County of Kern</p>	<p>The County requests that subdivision (d) be modified to provide: “Upon receipt of the Proposed Decision and Order from the Office of Administrative Hearings, the Commission shall calendar a discussion and vote of the proposed decision at the next regularly scheduled Commission meeting <u>not less than 30 days from receipt of the Proposed Decision Order.</u>” See comments in attached letter.</p> <p>Subdivision (d) provides that the</p>	<p>Comment acknowledged.</p> <p>Comment acknowledged.</p>

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		<p>Commission shall calendar a discussion and vote on the proposed decision at the next regularly scheduled meeting after receipt of the proposed decision and order. In the event the next regularly scheduled meeting is only a short time after the Commission receives the proposed decision, there will be insufficient time for the Commission and local EMS agency to consider the proposed decision fully.</p> <p>Therefore, the County proposes the following modification to subdivision (d):</p> <p>(d) Upon receipt of the Proposed Decision and Order from the Office of Administrative Hearings, the Commission shall calendar a discussion and vote of the proposed decision at the next regularly scheduled Commission meeting <u>not less than 30 days from receipt of the Proposed Decision Order.</u></p>	<p>Comment acknowledged. No change to proposed language. The commission on EMS has regularly scheduled meetings approximately every 90 days. In order to be considered as an agenda item pursuant to the Bagley-Keene open meetings act, a proposed decision must be received at least 10 days prior to a regularly scheduled meeting. If a proposed decision is received within 10 days prior to a regularly scheduled meeting, it will be calendared as an agenda item at the next meeting. This proposed regulatory framework will allow all decisions to be heard within the 100 day time limit imposed by the APA for adoption of proposed decisions. Commissioners will therefore have a minimum of 10</p>

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			and a maximum of 100 days to review a proposed decision.
100450.100(d) Page 1 Lines 23-25	El Dorado County EMS Agency	Proposed regulation 100450.100(d) states that “upon receipt of the Proposed Decision and Order from the Office of Administrative Hearings, the Commission shall calendar a discussion and vote of [sic] the proposed decision at the next regularly scheduled Commission meeting.” There are time limits for Commission review of the ALJ decision pursuant to GC 11517 (within 100 days); however, the Commission only meets quarterly. Depending when an ALJ decision is received by the Commission, there could be scheduling problems both for the Commission and the LEMSA’s since the Commission meetings are held at various locations throughout the state (i.e. San Diego, Sacramento, San Francisco, Los Angeles). Special meetings may be required.	Comment acknowledged. No change to proposed language. The commission on EMS has regularly scheduled meetings approximately every 90 days. In order to be considered as an agenda item pursuant to the Bagley-Keene open meetings act, a proposed decision must be received at least 10 days prior to a regularly scheduled meeting. If a proposed decision is received within 10 days prior to a regularly scheduled meeting, it will be calendared as an agenda item at the next meeting. This proposed regulatory framework will allow all decisions to be heard within the 100 day time limit imposed by the APA for adoption of proposed decisions. Commissioners will therefore have a minimum of 10 and a maximum of 100 days to review a proposed decision.
100450.100(d) Page 1 Line 24	California Ambulance Association	Correct typo as follows: <i>Upon receipt of the Proposed Decision and Order from the Office of Administrative Hearings, the Commission shall calendar a discussion and vote of <u>on</u> the proposed decision at the next regularly scheduled Commission meeting.</i>	Comment acknowledged. Proposed language has been changed.

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100450.100(e) Page 2 Lines 26-28	California Ambulance Association	<p>Revise as follows: <i>The Commission shall not accept new evidence at the meeting. However, the Commission shall permit public comment pursuant to the Bagley-Keene Open Meeting act, and such public comment may be considered by the Commission in rendering its decision.</i></p> <p><i>The Commission shall permit Public comment pursuant to the Bagley-Keene Open Meeting act. The Commission shall not accept new evidence at the meeting, but shall rely solely on the evidence of record at the administrative hearing.</i></p> <p>The CAA agrees with the concept that no new formal evidence should be allowed, to prevent volumes of new material being submitted to the Commissioners. But, the language needs to be clarified so that it is clear the Commission may consider and weigh any public testimony it receives at its hearing on this matter.</p>	<p>Comment acknowledged. EMSA has modified the proposed regulation in response to comments to specifically allow public comment pursuant to statute.</p>
100450.100(e) Page	Patrick Powers	<p>Request that public comments permitted at the Commission meeting pursuant to the Bagley-Keene Open Meeting act are afforded consideration by the Commission. The reasoning is that if pursuant to subsection b of the proposed regulation, the administrative law judge (ALJ) shall evaluate all information submitted by the Authority and the local EMS</p>	<p>Comment acknowledged. EMSA has modified the proposed regulation to specifically allow public comment pursuant to statute.</p>

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		<p>agency, there is no allowance of the ALJ to consider public comment. LEMSAS have a tendency to device EMS plans outside of the purview of their EMS system stakeholders, and do not necessarily want local public comment on their plans. The public should be able to be heard and comments considered by either the ALJ or the Commission</p>	
<p>100450.100(f) Page 2 Lines 29-33</p>	<p>EI Dorado County EMS Agency</p>	<p>Proposed regulations 100450.100(a) states that any appeal shall be conducted in accordance with the APA, GC §11500 et seq. and associated regulations in Title 1 of the CCRs; however, this conflicts with Proposed regulation 100450.100(f) which changes the parameters of GC §11517 relating to allowed Commission action on the proposed decision submitted by the ALJ.</p> <p>Proposed regulation 100450.100(f) states that the Commission's vote on the proposed decision is limited either 1) adopting the ALJ's proposed decision, or 2) not adopting the ALJ's proposed decision, or 3) returning the proposed decision to the OAH for rehearing if the proposed decision is inconsistent with "this article or statute or regulations." This deviates from GC §11517 decision options.</p> <p>Questions: Is the Commission required to adopt the ALJ decision without changes? (i.e. not technical or</p>	<p>Comment acknowledged.</p> <p>Comment acknowledged. All the decision parameters of GC 11517 relating to actions that may be taken on a proposed decision are not available to the Commission on EMS due to the constraints contained in HSC 1797.105.</p> <p>Comment acknowledged. Pursuant to GC 11517, the Commission on EMS may adopt</p>

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		<p>minor changes or clarifications that do not affect the factual or legal basis of the proposed decision?)</p> <p>If the Commission votes to “not adopt” the ALJ’s proposed decision then is the final decision the opposing decision by default and without any changes?</p> <p>If the Commission decided to return the proposed decision for rehearing, what does “inconsistent with this article, or statute or regulations” mean?</p> <p>What article, statute or regulations?</p>	<p>as its decision the ALJ’s opinion in the proposed decision. The Commission may not modify the proposed decision, as it is constrained by the provisions of HSC 1797.105(d).</p> <p>Comment acknowledged. If the Commission on EMS does not adopt as its decision the ALJ’s opinion in the proposed decision, then the opposite conclusion is adopted. Ex: If an ALJ’s proposed decision is to uphold the Authority’s denial of the local plan, and the Commission votes to not adopt that decision, then the determination of the Authority is deemed overruled pursuant to HSC 1797.105(d).</p> <p>Comment acknowledged. EMSA has modified the language of the proposed regulation in response to comments.</p>
<p>100450.100(f)(3) Page 2 Lines 32-33</p>	<p>California Ambulance Association</p>	<p>Revise as follows: <i>(3) return the proposed decision to the office of Administrative Hearings for re-hearing if the proposed decision is inconsistent with this article or statute or regulations, <u>or the Commission determines that another basis exists for return of the decision to the administrative law judge.</u></i></p>	<p>Comment acknowledged. EMSA has modified the proposed language of the regulation in response to comments.</p>

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		<p>The Commission should have the discretion to return the ALJ decision for other compelling reasons beyond solely "inconsistencies".</p>	
<p>100450.100(f)(3) Page 2 Lines 32-33</p>	<p>County of Kern</p>	<p>The County requests that subdivision (f)(3) be modified to provide that the Commission may <u>"reject the proposed decision and refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence."</u> See comments in attached letter.</p> <p>Subdivision (f)(3) provides that the Commission may veto to "return the proposed decision to the office of Administrative Hearings for re-hearing if the proposed decision is inconsistent with this article or statute or regulations." This regulation is vague as well as inconsistent with the Administrative Procedures Act.</p> <p>The County therefore requests that subdivision (f)(3) be modified in accordance with Government Code 11517(c)(2)(D) to provide that the Commission may <u>"reject the proposed decision and refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence."</u></p>	<p>Comment acknowledged. EMSA has modified the proposed language of the regulation in response to comments.</p> <p>Comment acknowledged.</p> <p>Comment acknowledged. EMSA has modified the proposed language of the regulation in response to comments.</p>
<p>100450.100(f)(3) Page 2</p>	<p>MCRFD & SRVFPD</p>	<p>Subsections f)((1)-(3) provide the Commission with the option of either</p>	<p>Comment acknowledged.</p>

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Line 37		<p>adopting or not adopting the ALJ's proposed decision, or returning the decision to the office of Administrative Hearings for re-hearing "if the proposed decision is inconsistent with this article or statute or regulations."</p> <p>It is respectfully requested that the just referenced language be deleted, thereby granting the Commission with wider latitude to return the matter for additional hearings, such as in the event that new evidence or changed circumstances exist that would materially impact the judge's recommendation or the Commission's review of the issues. Subsection (f)(3) should read:</p> <p>(3) return the proposed decision to the office of AdministrativeHearings for re-hearing.</p>	<p>Comment acknowledged. EMSA has modified the proposed language of the regulation in response to comments.</p>
100450.100(h) Page 2 Line 37	California Ambulance Association	<p>Delete this section: (h) The decision of the Commission is final.</p> <p>Health and Safety Code, Section 1797.105(d) clearly states that the Commission's decision is final. It is not necessary to re-state that fact in these regulations.</p>	<p>Comment acknowledged. EMSA has deleted the requested language.</p>
100450.100(h) Page 2 Line 37	County of Kern	<p>The County requests that subdivision (h) be modified to provide: "The decision of the Commission <u>shall be</u></p>	<p>Comment acknowledged.</p>

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		<p><u>deemed an exhaustion of administrative remedies.</u> See comments in attached letter.</p> <p>The County objects to subdivision (h) of Section 100450, which provides that the “decision of the Commission is final.” This subdivision may be interpreted to bar judicial recourse after an adverse administrative decision. The County requests that the subdivision be modified, as recommended by the Emergency Medical Services Administrators’ Association of California (“EMSAA”) in their letter of March 4, 2015, as follows:</p> <p>(h) The decision of the Commission <u>shall be deemed an exhaustion of administrative remedies.</u></p>	<p>Comment acknowledged. EMSA has deleted the proposed section in response to comments.</p> <p>Comment acknowledged. EMSA has deleted the proposed section in response to comments.</p>
<p>100450.100(h) Page 2 Line 37</p>	<p>El Dorado County EMS Agency</p>	<p>A final decision by the Commission should be deemed an exhaustion of administrative remedies. This request is being made out of concern that the Authority and/or the Commission may attempt to interpret proposed subdivision (h) of Section 100450.100 as a bar to judicial recourse by a LEMSA following an adverse administrative decision. The following change is proposed:</p> <p>(h) The final decision of the Commission shall be deemed an exhausting of administrative remedies.</p>	<p>Comment acknowledged. EMSA has deleted the proposed section in response to comments.</p>

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100450.100(h) Page 2 Line 37	EMS Administrators' Association of California (EMSAAC)	<p>Revise to read: "The decision of the Commission <i>shall be deemed an exhaustion of administrative remedies.</i>" (Please attached letter for further explanation of requested changes.)</p> <p>Likewise, out of concern that EMSA may attempt to interpret its proposed subdivision (h) of Section 100450.100 as a bar to judicial recourse by a LEMSA following an adverse administrative decision, EMSAAC proposes the following change to that subdivision:</p> <p>(h) The decision of the Commission <i>shall be deemed an exhaustion of administrative remedies.</i></p>	<p>Comment acknowledged.</p> <p>Comment acknowledged. EMSA has deleted the proposed section in response to comments.</p>
100450.100(h) Page 2 Line 37	MCRFD & SRVFPD	<p>As currently worded, Subsection (h) could be read to bar a judicial challenge of the Commission decision. Specifying that the Commission decision constitutes only an exhaustion of the parties' administrative remedies would avoid procedural due process concerns. Therefore, the following underlining language is proposed for addition to Subsection (h):</p> <p>(h) The decision of the Commission <u>constitutes an exhaustion of administrative remedies.</u></p>	<p>Comment acknowledged.</p> <p>Comment acknowledged. EMSA has deleted the proposed section in response to comments.</p>
100450.100(h) Page 2	Sacramento County EMS Agency (SCEMSA)	Likewise, out of concern that EMSA may attempt to interpret its proposed	Comment acknowledged.

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Line 37		<p>subdivision (h) of Section 100450.100 as a bar to judicial recourse by a LEMSA following an adverse administrative decision, SCEMSA proposes the following change to that subdivision:</p> <p>(h) The decision of the Commission <i>shall be deemed an exhaustion of administrative remedies.</i></p> <p>As written, this section may limit and bar a judicial recourse by a Local EMS Agency following an adverse administrative decision. SCEMSA recommends the Section be amended to read: 'The decision of the Commission <i>shall be deemed an exhaustion of administrative remedies.</i>'</p>	<p>Comment acknowledged. EMSA has deleted the proposed section in response to comments.</p>
100450.100(h) Page 2, line 37	County of Marin and ICEMA	<p>Out of concern that EMSA may attempt to interpret its proposed subdivision (h) of Section 100450.100 as a bar to judicial recourse by a LEMSA following an adverse administrative decision, County of Marin and ICEMA proposes the following change to that subdivision:</p> <p>(h) The decision of the Commission shall be deemed an exhaustion of administrative remedies.</p>	<p>Comment acknowledged. EMSA has deleted the proposed section in response to comments.</p>
100450.100 (i) Page 2 Lines 38-39	California Ambulance Association	<p>Revise as follows: (i) Pursuant to California Code of Regulations Title 1, Section 1042 = Cost Recovery, the prevailing party may recover costs shall not be</p>	<p>Comment acknowledged. EMSA has modified the proposed regulation in response to comments. Costs of the administrative hearing will be</p>

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		<p><u><i>applicable to this appeal process.</i></u></p> <p>Parties in the dispute should be responsible for their own costs in the appeal process. Knowing that there will be costs regardless of the outcome may serve as an incentive to minimize filing of any frivolous appeals. Costs of the ALJ hearing should be split among the parties of the appeal.</p>	<p>shared equally by all the parties. Cost shall not include attorney's fees.</p>
<p>100450.100 (i) Page 2 Lines 38-39</p>	<p>County of Kern</p>	<p>The County requests that subdivision (i) be deleted. See comments in attached letter.</p> <p>The County objects to EMSA's inclusion of cost recovery to the prevailing party in subdivision (i) of Section 100450. While California Code of Regulations Title 1, Section 1042 permits the recovery of costs by a prevailing party, it also requires the prevailing party to cite "the applicable cost recovery statute or regulation." Section 1042 does not, in itself, create an entitlement to recovery of costs.</p> <p>The EMS Act (Health & Safety § 1797 et seq.), particularly Section 1979.105, does not authorize cost recovery in connection with a local EMS agency's appeal of EMSA's refusal to approve a local EMS plan. Code of Regulations Title 22, Division 9 pertaining to prehospital emergency medical services likewise does not provide for cost recovery.</p>	<p>Comment acknowledged.</p> <p>Comment acknowledged.</p> <p>Comment acknowledged.</p>

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		<p>The County objects to the attempt to enable the prevailing party to recover costs because such a measure would be punitive and would discharge a local EMS agency from appealing an arbitrary EMSA decision.</p>	<p>Comment acknowledged. EMSA has modified the proposed regulations in response to comments. Title 1, Section 1042(a) specifically says: “(a) An agency shall allege in its pleading any request for costs, citing the applicable cost recovery statute or regulation.”(emphasis added) As this is a proposed enabling regulation, the proposed language will allow for the recovery of costs. The proposed regulation has been modified to state that costs of the administrative hearing will be shared equally by all parties. Costs do not include attorney’s fees.</p>
<p>100450.100(i) Page 2 Lines 38-39</p>	<p>El Dorado County EMS Agency</p>	<p>Proposed regulation 100450.100(i) states that the prevailing party may recover costs pursuant to 1 CCR 1042. 1 CCR 1042 is not self-implementing and requires the agency requesting costs to cite the applicable cost recovery statute or regulation.</p> <p>What statute or regulation is applicable to recovery in an appeal by a LEMSA of an Authority decision on an EMS Plan? El Dorado County EMS Agency objects to the Authority’s attempt to include cost recovery in a regulation because it appears punitive in nature and an attempt to discourage the LEMSAs from exercising their</p>	<p>Comment acknowledged. EMSA has modified the proposed regulations in response to comments. Title 1, Section 1042(a) specifically says: “(a) An agency shall allege in its pleading any request for costs, citing the applicable cost recovery statute or regulation.”(emphasis added) As this is a proposed enabling regulation, the proposed language will allow for the recovery of costs. The proposed regulation has been modified to state that costs of the administrative hearing will be shared equally by all parties.</p>

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		statutory right to an appeal. This section should be deleted in its entirety.	Costs do not include attorney's fees.
100450.100 (i) Page 2 Lines 38-39	EMS Administrators' Association of California (EMSAAC)	<p>Delete subsection in its entirety. (Please attached letter for further explanation of requested changes.)</p> <p>EMSAAC objects to EMSA's attempt to include cost recovery by the prevailing party. While Title 1, Section 1042 permits the recovery of costs by a prevailing party, subsection (a) of that provision requires the prevailing party to cite "the applicable cost recovery statute or regulation." Section 1042 does not, in itself, create an entitlement to recovery of costs.</p> <p>Viewing the EMS Act (Health & Saf. Code, §1797, et seq.), and Section 1797.105 in particular, nowhere is the recovery of costs authorized or even mentioned in connection with a LEMSA's appeal of EMSA's refusal to approve a local EMS plan. Similarly, Title 22 of Division 9 of the Code of Regulations pertaining to prehospital emergency medical services is devoid of any cost recovery measures.</p> <p>The attempt to enable the prevailing party to recover costs is objectionable as it appears punitive in nature, and would serve to potentially discourage a LEMSA from appealing what it may deem to be an arbitrary decision of the</p>	<p>Comment acknowledged.</p> <p>Comment acknowledged.</p> <p>Comment acknowledged.</p> <p>Comment acknowledged. EMSA has modified the proposed regulations in response to comments. Title 1, Section 1042(a) specifically says: "(a) An agency shall allege in its pleading</p>

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		EMSA. EMSAAC urges that references to cost recovery be deleted from the proposed Section 100450.100 of Title 22.	any request for costs, citing the applicable cost recovery statute or regulation. ”(emphasis added) As this is a proposed enabling regulation, the proposed language will allow for the recovery of costs. The proposed regulation has been modified to state that costs of the administrative hearing will be shared equally by all parties. Costs do not include attorney’s fees.
100450.100 (i) Page 2 Lines 38-39	MCRFD & SRVFPD	<p>Subsection (i) is ambiguous and poses potential consequences, and should be revised to specify that each party is to bear they own costs.</p> <p>First, it is noted that 1 CCR 1042 does not, by itself authorize a prevailing party to recover its costs. Rather it requires that an agency cite “cit[e] the applicable cost recovery statute or regulation.” That is recovery of costs must be otherwise authorized by law.</p> <p>Second, it is unclear whether as used in Subsection (i), the term “costs” include attorney’s fees.</p> <p>Thirdly, it is unclear whether the term “prevailing party” means. That is, who is the “prevailing party” in situations where the Commission does not adopt the ALJ’s recommendation? For</p>	<p>Comment acknowledged.</p> <p>Comment acknowledged. No change requested.</p> <p>Comment acknowledged.</p> <p>Comment acknowledged. EMSA has modified the proposed regulations in response to comments. Title 1, Section 1042(a) specifically says: “(a) An</p>

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		<p>example, assume the ALJ's proposed order is in favor of a Local EMS Agency, by the Commission determines to not adopt the judge's decision. Should the "prevailing party" be ultimately determined by Commission vote, the Commission itself is then in perilous position of controlling who is to bear costs: its own agency or a Local EMS Agency.</p>	<p>agency shall allege in its pleading any request for costs, citing the applicable cost recovery statute or regulation."(emphasis added) As an enabling regulation, the proposed language will allow for the recovery of costs. The proposed regulation has been modified to state that costs of the administrative hearing will be shared equally by all parties. Costs do not include attorney's fees.</p>
<p>100450.100 (i) Page 2 Lines 38-39</p>	<p>Sacramento County EMS Agency (SCEMSA)</p>	<p>As written, this section appears to be punitive in nature, and would serve to potentially discourage a Local EMS Agency from appealing what it deem to be an arbitrary decision of the Authority. The Authority has not cited 'the applicable cost recovery statute or regulation' that Section 1042 (a) Title 1 requires.</p> <p>SCEMSA recommends this Section be DELETED and all parties to the administrative appeals bear their own costs.</p> <p>SCEMSA objects to EMSA's attempt to include cost recovery by the prevailing party. While Title 1, Section 1042 permits the recovery of costs by a prevailing party, subsection (a) of that provision requires the prevailing party to cite "the applicable cost recovery statute or regulation." Section 1042 does not, in itself, create an</p>	<p>Comment acknowledged.</p> <p>Comment acknowledged.</p>

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		<p>entitlement to recovery of costs.</p> <p>Viewing the EMS Act (Health & Safety Code, §1797, et seq.), and Section 1797.105 in particular, nowhere is the recovery of costs authorized or even mentioned in connection with a LEMSA's appeal of EMSA's refusal to approve a local EMS plan. Similarly, Title 22 of Division 9 of the Code of Regulations pertaining to prehospital emergency medical services is devoid of any cost recovery measures.</p> <p>The attempt to enable the prevailing party to recover costs is objectionable as it appears punitive in nature, and would serve to potentially discourage a LEMSA from appealing what it may deem to be an arbitrary decision of the EMSA. SCEMS urges that references to cost recovery be deleted from the proposed Section 100450.100 of Title 22.</p>	<p>Comment acknowledged. EMSA has modified the proposed regulations in response to comments. Title 1, Section 1042(a) specifically says: "(a) An agency shall allege in its pleading any request for costs, citing the applicable cost recovery statute or regulation."(emphasis added) As this is a proposed enabling regulation, the proposed language will allow for the recovery of costs. The proposed regulation has been modified to state that costs of the administrative hearing will be shared equally by all parties. Costs do not include attorney's fees.</p>
<p>100450.100 (i) Page 2 Lines 38-39</p>	<p>County of Marin And ICEMA</p>	<p>County of Marin and ICEMA objects to EMSAs attempt to include cost recovery by the prevailing party. While Title 1, Section 1042 permits the recovery of costs by a prevailing party, subsection (a) of that provision requires the prevailing party to cite "the applicable cost recovery statute or regulation." Section 1042 does not, in itself, create an entitlement to recovery of costs.</p>	<p>Comment acknowledged.</p>

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		<p>Viewing the EMS Act (H&SC 1797, et seq.), and 1797.105 in particular, nowhere is the recovery of costs authorized or even mentioned in connection with a LEMSAs appeal of EMSAs refusal to approve a local EMS plan. Similarly, Title 22 of Division 9 of the CCR pertaining to prehospital emergency medical services is devoid of any cost recovery measures.</p> <p>The attempt to enable the prevailing party to recover costs is objectionable as it appears punitive in nature, and would serve to potentially discourage a LEMSA from appealing what it may deem to be an arbitrary decision of the EMSA. Marin/ICEMA urges that references to cost recovery be deleted from the proposed Section 100.450.11 of Title 22.</p> <p>While Marin/ICEMA supports adoption of procedural rules for LEMSA appeals of EMSAs refusal to approve local EMS plans, it requests that portions of the proposed Section 100450.100 be revised to insure that: 1) evidence may be presented at public administrative hearings; 2) the decisions resulting from such hearings serve only to exhaust administrative remedies, and not preclude further recourse to the courts; and 3) that all parties to administrative appeals bear their own</p>	<p>Comment acknowledged. EMSA has modified the proposed regulations in response to comments. Title 1, Section 1042(a) specifically says: “(a) An agency shall allege in its pleading any request for costs, citing the applicable cost recovery statute or regulation.”(emphasis added) As this is a proposed enabling regulation, the proposed language will allow for the recovery of costs. The proposed regulation has been modified to state that costs of the administrative hearing will be shared equally by all parties. Costs do not include attorney’s fees.</p> <p>Comment acknowledged.</p>

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		costs.	