

INITIAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Sections 31-003(s)(2) through (s)(5)

Specific Purpose:

These sections are adopted to inform counties of the California Department of Social Services (CDSS) forms that are required to notice individuals that their names were submitted to the Department of Justice (DOJ) for listing on the Child Abuse Central Index (CACI).

Factual Basis:

These sections are necessary to clarify the CDSS forms that counties must use to notice individuals of their right to challenge their listing on the CACI, as required by the new grievance review procedures stipulated in the *Gomez v. Saenz* lawsuit settlement agreement.

Sections 31-021.1 through .13

Specific Purpose:

These sections are being adopted to include new grievance review procedures stipulated in the *Gomez v. Saenz* lawsuit settlement agreement. Specific language includes instructions for counties regarding the requirement to notice individuals whose names are being sent to DOJ for listing on the CACI. These sections further provide information regarding specific forms, which shall be utilized to adequately notify individuals of their right to challenge their listing on the CACI.

Factual Basis:

These sections are necessary as they fulfill the requirements of the *Gomez v. Saenz* lawsuit settlement agreement. The agreement made with the plaintiff stipulates that the CDSS will adopt grievance hearing procedures for settlement purposes. The *Gomez v. Saenz* lawsuit provides due process for individuals whose names are listed on the CACI where none was previously provided. The authority to adopt amended regulations can be found in Welfare and Institutions Code Sections 10553 and 10554 as well as the stipulations outlined in the *Gomez v. Saenz* lawsuit settlement.

Sections 31-021.2 through .214

Specific Purpose:

These sections are being adopted to include new grievance hearing procedures stipulated in the *Gomez v. Saenz* lawsuit settlement agreement. Language includes specific timeframes when a complainant may request a grievance hearing, and when the grievance hearing must be scheduled. Information included in this section also requires the county to assist individuals with preparing the Request for Grievance Hearing form (SOC 834), if requested.

Factual Basis:

These sections are necessary as they fulfill the requirements of the lawsuit settlement described above, in particular, the agreement made with the plaintiff that the CDSS will adopt grievance hearing procedures for due process for individuals whose names are placed on the CACI, where none was previously provided. The authority to adopt or amend regulations can be found in Welfare and Institutions Code Sections 10553 and 10554 as well as the stipulations outlined in the *Gomez v. Saenz* lawsuit settlement.

Sections 31-021.3 through .312

Specific Purpose:

These sections are being adopted to clarify the circumstances when a grievance hearing may be denied. These sections also specify the timeline that an individual has to submit a request for a grievance hearing if a court has not determined that the child abuse and/or neglect has occurred or the matter is no longer pending before a court.

Factual Basis:

These sections are necessary as they fulfill the requirements of the *Gomez v. Saenz* lawsuit settlement agreement. The settlement agreement made with the plaintiff stipulates that the CDSS will adopt grievance hearing procedures to provide due process. These procedures are only specific to individuals who challenge their listing on the CACI. The authority to adopt amended regulations can be found in Welfare and Institutions Code Sections 10553 and 10554 as well as the stipulations outlined in the *Gomez v. Saenz* lawsuit settlement.

Sections 31-021.4 through .44

Specific Purpose:

These sections are being adopted to include new grievance hearing procedures stipulated in the *Gomez v. Saenz* lawsuit settlement agreement. Language in these sections provide specific timeframes that the county must adhere to when scheduling and holding a grievance hearing. In addition, Section 31-021.44 permits counties to downgrade a finding prior to a grievance hearing and remove an individual's name from the CACI by notifying DOJ.

Information included in this section also includes an individual's right to have an attorney or other representative assist him/her at the grievance hearing.

Factual Basis:

These sections are necessary as they fulfill the requirement of the lawsuit settlement described above, in particular the agreement made with the plaintiff that the CDSS will adopt grievance hearing procedures for settlement purposes. The *Gomez v. Saenz* stipulation provided due process for individuals whose names are placed on the CACI, where none was previously provided. The authority to adopt or amend regulations can be found in Welfare and Institutions Code Sections 10553 and 10554 as well as the stipulations outlined in the *Gomez v. Saenz* lawsuit settlement.

Sections 31-021.5 through 31-021.53

Specific Purpose:

These sections are being adopted to provide the counties with the qualifications necessary for individuals to act as a grievance review officer. This information clarifies who is and who is not qualified to conduct grievance review hearings for individuals who challenge their listing on the CACI.

Factual Basis:

These sections are necessary as they fulfill the requirements of the lawsuit settlement described above, in particular the agreement made with the plaintiff that the CDSS will adopt grievance hearing procedures for settlement purposes. The *Gomez v. Saenz* stipulation provided due process for individuals whose names are placed on the CACI, where none was previously provided. The authority to adopt or amend regulations can be found in Welfare and Institutions Code Sections 10553 and 10554 as well as the stipulations outlined in the *Gomez v. Saenz* lawsuit settlement.

Sections 31-021.6 through .621(a)

Specific Purpose:

These sections are being adopted to include new grievance hearing procedures stipulated in the *Gomez v. Saenz* lawsuit settlement agreement. These sections outline specific discovery information, including the exchange of documents, other evidence and witness lists that all parties are permitted to review prior to the hearing. In addition, Section 31-021.621(a) provides instruction to the counties for redacting personal identifying information pursuant to applicable confidentiality laws.

Factual Basis:

These sections are necessary as they fulfill the requirement of the lawsuit settlement described above, in particular the agreement made with the plaintiff that the CDSS will adopt grievance hearing procedures for settlement purposes. The information that must be redacted is protected pursuant to Penal Code Section 11167. The *Gomez v. Saenz* stipulation provided due process for individuals whose names are placed on the CACI, where none was previously provided. The authority to adopt or amend regulations can be found in Welfare and Institutions Code Sections 10553 and 10554 as well as the stipulations outlined in the *Gomez v. Saenz* lawsuit settlement.

Sections 31-021.622 through .681

Specific Purpose:

These sections are being adopted to provide instruction regarding the information to be disclosed at the hearing, who may attend the hearing, witnesses who may testify at a hearing, the testimony given at the hearing, and information pertaining to the authority of the grievance review officer. It also defines the timeframes provided to the grievance officer to review the evidence and render a decision.

Factual Basis:

These sections are necessary as they fulfill the requirement of the lawsuit settlement described above, in particular the agreement made with the plaintiff that the CDSS will adopt grievance hearing procedures for settlement purposes. The *Gomez v. Saenz* stipulation provided due process for individuals whose names are placed on the CACI, where none was previously provided. The authority to adopt or amend regulations can be found in Welfare and Institutions Code Sections 10553 and 10554 as well as the stipulations outlined in the *Gomez v. Saenz* lawsuit settlement.

Sections 31-021.7 through .72

Specific Purpose:

These sections are being adopted to provide the counties with instructions on archiving the administrative record of a grievance hearing for individuals challenging their listing on the CACI. These sections instruct counties to allow the record to be reviewed by the individual who requested the hearing and any attorney or representative assisting that individual. These sections are necessary as they further provide due process for individuals who have been listed on the CACI.

Factual Basis:

These sections are necessary as they fulfill the requirements of the lawsuit settlement described above, in particular the agreement made with the plaintiff that the CDSS will adopt grievance hearing procedures for settlement purposes. The *Gomez v. Saenz* stipulation provided due process for individuals whose names are placed on the CACI, where none was previously provided. The authority to adopt or amend regulations can be found in Welfare and Institutions Code Sections 10553 and 10554 as well as the stipulations outlined in the *Gomez v. Saenz* lawsuit settlement.

Sections 31-021.8 through .86

Specific Purpose:

These sections are being adopted to provide the counties with specific instructions regarding rendering a decision in a grievance hearing. In addition, these sections provide specific timelines that must be adhered to by the grievance review officer as well as the county director when rendering, approving and archiving the final decision. This section also specifies who is entitled to receive the final decision.

Factual Basis:

These sections are necessary as they fulfill the requirements of the lawsuit settlement described above, in particular the agreement made with the plaintiff that the CDSS will adopt grievance hearing procedures for settlement purposes. The *Gomez v. Saenz* stipulation provided due process for individuals whose names are placed on the CACI, where none was previously provided. The authority to adopt or amend regulations can be found in Welfare and Institutions Code Sections 10553 and 10554 as well as the stipulations outlined in the *Gomez v. Saenz* lawsuit settlement.

Section 31-410.514(a) (Handbook)

Specific Purpose:

This section is being amended to correct a cross reference in penal code specific to notification to individuals listed on the CACI.

Factual Basis:

The authority to adopt amended regulations can be found in Welfare and Institutions Code Sections 10553 and 10554 as well as the stipulations outlined in the *Gomez v. Saenz* lawsuit settlement.

Sections 31-410.514(b) through (b)(4) (Handbook)

Specific Purpose:

These sections are being changed to include detailed information regarding the temporary placement of children with relatives and non-relative extended family members when there is a substantiated CACI listing of the potential caregiver. Sections 31-410.514(b)(1) through (4) provide specific criteria for determining whether or not the CACI listing would preclude the child from being placed with the individual. Additional amendments were made to correct a cross reference of penal code.

Factual Basis:

These amendments are being made to provide clarification regarding a potential caregiver's listing on the CACI and how that may or may not impact a child's placement in that home. The authority to adopt amended regulations can be found in Welfare and Institutions Code Sections 10553 and 10554.

Sections 31-501.1 and .11 (Handbook)

Specific Purpose:

Technical amendments were made to this section regarding the manner in which cross-reports may be transmitted to other agencies. In addition, the wording "and/or neglect" was added to provide consistency in the language throughout this section of the regulations. A technical correction was made to the Penal Code reference. The addition of handbook Section 31-501.11 clarifies the definition of child abuse and neglect as found in Penal Code Sections 11165.1 through 11165.6.

Factual Basis:

The authority to adopt amended regulations can be found in Welfare and Institutions Code Sections 10553 and 10554.

Section 31-501.2

Specific Purpose:

This section is amended to provide more descriptive language in regard to child abuse and/or neglect reports that are received by a county CWS agency. The term "and/or neglect" was added to provide consistency throughout this section of the regulations. Grammatical corrections were made to this section, as well.

Factual Basis:

The authority to adopt amended regulations can be found in Welfare and Institutions Code Sections 10553 and 10554.

Sections 31-501.3 through .32

Specific Purpose:

These sections are amended to clarify the responsibilities of the CWS agency when a report of suspected child abuse and/or neglect is received for children residing in out-of-home care.

Factual Basis:

The addition of this section is necessary to ensure that the regulations adequately clarify the responsibility of the county CWS agency when reports of child abuse and/or neglect for a child residing in out-of-home care are received by the agency. The authority to adopt amended regulations can be found in Welfare and Institutions Code Sections 10553 and 10554.

Section 31-501.4

Specific Purpose:

This section is amended to add in the acronym 'DOJ' for Department of Justice. This addition is necessary for consistency throughout the section of this document. This section is also amended to replace the term 'not to be unfounded' with the language 'to be inconclusive or substantiated'. These amendments are necessary to maintain consistency with language used in the *Gomez v. Saenz* lawsuit settlement agreement as well as the definition for allegation findings in Penal Code Section 11165.12.

Factual Basis:

The *Gomez v. Saenz* lawsuit settlement agreement required CDSS to create new regulations that provide specific instruction to counties regarding CACI grievance hearings. While creating the new regulations, CDSS determined that this section should be amended to provide consistency with the new regulation Section 31-021.

Sections 31-501.41 through .421(a) Handbook

Specific Purpose:

These sections are adopted to provide procedures and handbook information defining child abuse or neglect, as well as requirements for submitting the Child Abuse Summary Report to DOJ.

Factual Basis:

This adoption is necessary because counties are required to submit the Child Abuse Summary Report (SS 8583) to DOJ once they have completed a child abuse or neglect investigation resulting in a substantiated or inconclusive finding. The Handbook sections provide guidance to the counties to accurately report suspected child abuse or severe neglect to the CACI, which may later be needed for grievance hearing requests, per the *Gomez v. Saenz* lawsuit settlement.

Section 31-501.43

Specific Purpose/Factual Basis:

This section is amended to renumber it from Section 31-501.31 for clarity, and to add the acronym 'DOJ' for the Department of Justice, for consistency.

Section 31-501.5

Specific Purpose:

This section is adopted to provide instructions for the counties when providing written information to individuals whose names have been submitted to the DOJ for listing on the CACI. This information is necessary for the counties so that they notify individuals of their right to due process within the specified timeframes of the settlement agreement.

Factual Basis:

This process was developed per the *Gomez v. Saenz* settlement agreement. Counties must comply with the stipulations outlined in the *Gomez v. Saenz* lawsuit settlement. If the counties fail to comply, they could be at risk of being in contempt of the Court Order.

Sections 31-501.51 through .54

Specific Purpose:

These sections are adopted to provide specific instruction to the counties for notifying individuals of their listing on the CACI. This information includes the use of the forms SOC 832-Notice of Child Abuse Central Index Listing, SOC 833-Grievance Procedures for Challenging Reference to the Child Abuse Central Index, and the SOC 834-Request for Grievance Hearing. These forms notify individuals of their listing and offers individuals the right to challenge their listing through the grievance review hearing process.

Factual Basis:

The information contained within each of the forms and the process was developed per the *Gomez v. Saenz* settlement agreement. Counties must comply with the stipulations outlined in the *Gomez v. Saenz* lawsuit settlement. If the counties fail to comply, they could be at risk of being in contempt of the Court Order.

Section 31-501.6

Specific Purpose:

This section is adopted to provide instructions to the counties for individuals wishing to challenge their listing on the CACI. This section directs counties to the appropriate regulation section outlining the grievance hearing process. This section further provides the counties with the option to resolve grievances without a formalized grievance review hearing, when appropriate.

Factual Basis:

The alternative process to a formalized grievance review hearing was developed, allow an individual's grievance to be reviewed and the findings changed prior to a grievance hearing. The need for a hearing is alleviated when the county determines, during their internal review, that the individual's finding can be changed to "unfounded" and the individual's name removed from the CACI without the need for a hearing.

Sections 31-501.7 and .71

Specific Purpose:

These sections are adopted to provide instructions to the counties regarding changing an allegation finding as a result of the hearing or an internal review.

Factual Basis:

The process was developed per the *Gomez v. Saenz* settlement agreement. Counties must comply with the stipulations outlined in the *Gomez v. Saenz* lawsuit settlement. If the counties fail to comply, they could be at risk of being in contempt of the Court Order. Further, the counties must adhere to current statute regarding reporting accurate information to the DOJ for CACI listing pursuant to Penal Code Section 11170.

Section 31-501.8

Specific Purpose:

This section is adopted to provide instructions to the counties for documenting the outcome of a grievance hearing within the child's case record.

Factual Basis:

The process was developed per the *Gomez v. Saenz* settlement agreement. Counties must comply with the stipulations outlined in the *Gomez v. Saenz* lawsuit settlement. If the counties fail to comply, they could be at risk of being in contempt of the Court Order.

b) Identification of Documents Upon Which Department Is Relying

*Gomez v. Saenz* Settlement Agreement and Order, Case No: BC284896, filed October 3, 2007

*Nicholas v. CDSS and Marin County*, Case No. CIV092626 filed May 29, 2009

Penal Code Sections 11165.5, 11165.12, 11166(g), 11166.3, 11167, and 11169

c) Local Mandate Statement

The addition to Division 31, Section 31-021 (Child Abuse Central Index [CACI] Grievance Review Procedures), the amendments to Division 31, Section 31-501 (Child Abuse and Neglect Reporting Requirements), and the amendments to Division 31, Section 31-410 (Temporary Placement) will impose mandates on local county child welfare agencies.

These regulations will require additional workload for the agencies. The additional activities include noticing individuals of their listing on the CACI, preparing for and performing grievance hearings as requested, and other documentation as specified in the regulations. This will create additional costs for the local CWS agencies.

At this time, it is unknown what fiscal impact these new regulations will have on the CDSS. County CWS agencies are currently time-studying grievance hearing activities to a Program Code created specifically for this purpose.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.