

INITIAL STATEMENT OF REASONS

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

The proposed regulations are necessary to implement the mandates and changes consistent with the requirement of Section 10544, Welfare and Institutions Code, as amended by Assembly Bill (AB) 1808 (Section 27.7, Chapter 75, Statutes of 2006). Welfare and Institutions Code Section 10544 clarify and specify requirements that counties are required to meet should they contribute to the state's failure to achieve the performance outcomes required by federal law initially mandated in Assembly Bill 1542 (Section 33, Chapter 270, Statutes of 1997). Welfare and Institutions Code Section 10544 requires that when the state incurs a federal fiscal penalty for not meeting the federal work participation rate (WPR), then the counties that contributed to the state failing to make the rate will share fifty percent of the penalty, after the exhaustion of all reasonable and available federal administrative remedies. Currently, there is no existing state regulation to pass on any federal penalties incurred by the state to the counties who contributed to the state not meeting the required federal WPR. CDSS stakeholders, like the California Welfare Directors Association (CWDA), Welfare Advocates, California State Association of Counties, County Representatives, Department of Finance, Legislature, and the California Health and Human Services Agency, all contributed to the input and review throughout the crafting of the proposed regulation.

Section 91-101.1Specific Purpose:

This section is being adopted to define what constitutes an "all family" case in the proposed regulation.

Factual Basis:

The all family work participation rate determines whether or not the state will get a federal penalty for not meeting a federal requirement. The adoption of this definition is necessary to help identify what constitutes an all family case. The standard definition for an all family case is consistent with the language found in 45 Code of Federal Regulations (CFR) Section 261.22.

Section 91-101.2

Specific Purpose:

This section is being adopted to define maintenance-of-effort or “MOE” in order for counties to distinguish it from county MOE as used in the proposed regulation. This definition will help clarify the emergency penalty pass-on regulation that AB 1808 requires to be implemented.

Factual Basis:

This definition is necessary in order to identify the maintenance-of-effort the state must meet. The definition for MOE is consistent with the language found in 45 CFR Sections 260.30, 263.1 and 263.2.

Section 91-101.3

Specific Purpose:

This section is being adopted to clarify the definition for the “caseload reduction credit” in the proposed regulation.

Factual Basis:

Previously, the caseload reduction credit (CRC) reduced the state’s required participation rate each year by the percentage decline in the state’s caseload since 1995. The base year from which the caseload reduction is determined changed with TANF Reauthorization in 2005. The caseload reduction credit is determined by the caseload decrease from the previous year in comparison to the caseload in the base year. (The definition also covers the CRC associated with surplus MOE found in 45 CFR Section 261.40 through 261.44.) The definition for the caseload reduction credit is consistent with the amended language found in the final TANF rules [73 Federal Register 6772-6828 (February 5, 2008)].

Section 91-101.4

Specific Purpose:

This section is being adopted to define the term “county maintenance-of-effort (MOE)” in the proposed regulation.

Factual Basis:

A county that contributed to the state’s failure to meet the required federal work participation rate is required to offset its share of the penalty with county funds so that the total funding remains the same as prior to penalty payment. These funds are in addition to the funds required to meet the county’s MOE requirement. The definition for county MOE is consistent with Welfare and Institutions Code Sections 15200, 15204.2, 15204.25, and 15204.4.

Section 91-101.5

Specific Purpose:

This section is being adopted to define what constitutes “county work participation rates” in the proposed regulation.

Factual Basis:

The county work participation rate determines whether or not the county will share in the penalty if the state fails to meet the federal work participation rate. The definition for county work participation rate is consistent with 45 CFR Sections 261.20 through 261.24, and also in the final TANF rule [73 Federal Register 6772-6828 (February 5, 2008)].

Section 91-101.6

Specific Purpose:

This section is being adopted to identify the word “Department” and the term “CDSS” used in the proposed regulation.

Factual Basis:

This definition is necessary in order to identify who the Department is and what the acronym CDSS stands for; and both are interchangeable and mean the California Department of Social Services.

Section 91-101.7

Specific Purpose:

This section is being adopted to define what constitutes a “two-parent family” case as used in the proposed regulation.

Factual Basis:

The two-parent family cases are used in the calculation to determine a county’s two-parent work participation rate and overall work participation rate. The definition for two-parent family is referenced in 45 CFR Sections 261.23 and 261.24. Final TANF rule [73 Federal Register 6772-6828 (February 5, 2008)] amended this definition to add the word “work-eligible”.

Section 91-101.8

Specific Purpose:

This section is being adopted to define what constitutes a “work-eligible individual” as used in the proposed regulation.

Factual Basis:

The calculation of the work participation rate requires work-eligible individuals be counted in the calculation of the rate. The definition makes reference to the section of the CFR in which the definition of work-eligible is found, which is, final TANF rule [73 Federal Register 6772-6828 (February 5, 2008)], 45 CFR Section 261.2(n). A reference to Section 261.2 (n) is necessary due to the multiple times the meaning has changed over time, and may change again; therefore, in order to keep abreast with federal requirements changes and to eliminate the need to do a regulation change each time a federal requirement or definition changes, it is more prudent to simply cite the section where the definition and requirement is found in federal regulations. The adoption of this definition is consistent with the requirements of Section 10544, Welfare and Institutions Code, as amended by AB 1808. This definition will help clarify the emergency penalty pass-on regulation mandated by AB 1808.

Handbook Sections 91-101.81 through .815

Specific Purpose:

The handbook sections are adopted in order to list the criteria of a work-eligible individual as currently defined in 45 CFR Section 261.2(n).

Factual Basis:

This handbook sections are helpful in order to provide counties with a list of the characteristics of a work-eligible individual as specified in the final TANF Rule [73 Federal Register 6772-6828 (February 5, 2008)]. Since the list of what constitutes a work-eligible individual may change with the next TANF reauthorization, referencing the federal section in the Handbook, instead of codifying it in regulation, would allow the state to be in line with federal changes much quicker and would not necessitate future revisits to the state regulation to make changes.

Section 91-101.9

Specific Purpose:

This section is being adopted to clarify the federal work participation rate (WPR) and that it shall be the adjusted WPR after the caseload reduction credit has been calculated.

Factual Basis:

This section is necessary to clarify that the work participation rate is based on the federal definition and calculation, and that the final WPR will be determined after the caseload reduction credit is calculated pursuant to 45 CFR Section 261.40.

Sections 91-110.1 through .16

Specific Purpose:

These sections are being adopted to establish the requirements that county welfare departments (CWDs) must meet and the duties they must perform with regard to data collection and reporting responsibilities required by the state in order to comply with federal and state performance outcomes reporting requirements. These requirements and duties are necessary for the purpose of determining whether a county is subject to a share of the penalty pass-on the state may incur for not meeting required federal performance outcomes.

Factual Basis:

These sections are necessary to ensure that counties understand the types of data required to review and report for the purpose of performance measurements associated with determining penalty pass-on. The types of data that the state must file on a monthly basis, which includes disaggregated data is explained in 45 CFR Section 265.3. The data collected will be used to determine whether each county met the required federal work participation rate requirement. This is the current practice between the counties and the state, and the counties are providing county-specific and/or state cases each month to the Department. Inclusion of this requirement in the proposed regulation merely reinforces current practice. The phrase, “including but not limited to,” is added because the data list provided in this section is not exhaustive and the state did not want to be limited by the type of data listed in the proposed regulation in order to measure county performance. Welfare and Institutions Code Section 10554 designates that the rules of the Department shall include the essential authority by which any person, agency, organization, association or institution subject to the supervision or investigation of the Department is required to use, submit or maintain the forms, reports or records. Welfare and Institutions Code Section 10540.5 instructs that the Department shall require that performance outcomes be monitored at the county and state levels in order to meet federal law requirements. Additionally, Welfare and Institutions Code Section 10541.7 requires counties to participate in monitoring performance outcomes by collecting and reporting data. Also, the inclusion of the phrase, “include, but are not limited to,” would cover the needed data not specifically listed under Section 91-110 of this regulation.

Sections 91-110.2 through .23

Specific Purpose:

These sections are being adopted to establish the use of sample of county-specific and/or state cases requirements and, also, the timeframe, accuracy, and completeness of submitted data that county welfare departments must meet in order for the Department to determine a county's performance outcome measurement.

Factual Basis:

Welfare and Institutions Code Section 10544(d), as amended by AB 1808 (Section 27.7, Chapter 75, Statutes of 2006), requires a county to submit accurate and timely data, or otherwise be deemed to have failed to meet federal and state requirements, unless the county has good cause for not meeting the reporting requirement. This helps ensure that any penalty passed on to the county is accurately determined within the required time. Additionally, the counties are informed that they are required to provide statistically valid data to the Department which is necessary for the purpose of determining state and federal performance measurements. These are current practices that are merely being reinforced in the proposed regulations. The Department has the authority to collect statistical data as prescribed by Welfare and Institutions Code Sections 10809, 10852, and 10853. Furthermore, Welfare and Institutions Code Section 10540.5 designates that the Department shall require that performance outcomes be monitored at the county and state levels in order to meet federal law requirements. Welfare and Institutions Code Section 10541.7 requires counties to participate in monitoring performance outcomes by collecting and reporting data. This adoption is necessary in order to determine if a county is subject to federal penalty pass-on.

Sections 91-110.3 through 91-110.4

Specific Purpose:

These sections are being adopted to impose a requirement that counties are to provide data from county-specific and/or state cases that are consistent with state and federal standards, and establishes when the review of the cases will occur.

Factual Basis:

A sample of county-specific and/or state cases is required in order to determine if the state achieved the outcomes required by federal and state laws. These are current practices that are merely being reinforced in the proposed regulations. The Department has the authority to collect statistical data as prescribed by Welfare and Institutions Code Sections 10809, 10852, and 10853. Furthermore, Welfare and Institutions Code Section 10540.5 designates that the Department shall require that performance outcomes be monitored at the county and state levels in order to meet federal law requirements.

Sections 91-110.5 through .55

Specific Purpose:

These sections are being adopted to establish and specify what is considered substantial noncompliance with regard to data submission to the state associated with determining if a county is subject to sharing the state's federal fiscal penalty.

Factual Basis:

These sections are necessary so counties are aware of what constitutes substantial noncompliance associated with data submission for the purposes of penalty pass-on. The word "chronically," shall mean a continuing pattern or practice, as documented by the Department, as it relates to data collection for the purpose of determining county performance measurement. AB 1808 (Section 27.7, Chapter 75, Statutes of 2006) amended Welfare and Institutions Code Section 10544 to include language that failure to submit accurate and timely data without good cause shall subject that county to have failed state and federal reporting requirements.

Sections 91-110.6 through .63

Specific Purpose:

These sections are being adopted to establish that if there is a conflict in the findings of the data to determine whether or not the county met the required state and/or federal performance outcomes, then the burden of proof shall rest on the county to provide documentation that the Department's finding is incorrect. This section also prescribes the number of days the county has to submit its dispute regarding the difference in findings.

Factual Basis:

Should a difference in findings occur based on the data reported and submitted by the county on the county-specific and/or state sub-samples, then the county shall be responsible for submitting documentation and verification showing why the county's findings differ from the Department's findings. The ten (10) working days requirement for the county to dispute the difference findings identified by CDSS is a number CDSS has determined to be a reasonable time frame for counties to dispute CDSS findings. This provision is implemented under the authority of Welfare and Institutions Code Sections 10554, 10809, 10852, and 10853.

Sections 91-120 through 91-120.15

Specific Purpose:

These sections are being adopted to inform all counties that the state can appeal the incurring of the federal fiscal penalty under a federal good cause provision. These sections establish that only the counties that contributed to the state's failure to meet the required federal work participation rate are required to provide to the state information and

documentation that will help the state appeal the imposition of the federal penalty, and prevent the pass-on of the penalty to the failing counties. Counties that met the required WPR are not required to provide appeal information, but may voluntarily do so if they have data to help the state's appeal of the penalty. These sections will help counties identify what situations qualify for federal good cause, and notify the failing counties that they are required to provide this information to the state. By providing good cause basis for the state's federal appeal, the failing counties benefit because any penalty reduction or waiver the state receives will be passed on to the counties not meeting the required federal work participation rate.

Factual Basis:

Per 45 CFR Sections 262.4 and 262.5, states can appeal the imposition of the federal fiscal penalty for failure to meet the work participation rate on specific, federally-recognized good cause bases. Since the state's ability to meet the required federal work participation rate is the result of counties' failure to meet the required rate, then the state's appeal shall be dependent upon information and documentation from the counties to establish federally-acceptable good cause for not meeting the required performance outcome. This provision is based upon provisions of Welfare and Institutions Code Section 10554, which provides the Director of the Department with the authority to adopt regulations to ensure consistency in the administration of the CalWORKs program.

Handbook Section 91-120.2

Specific Purpose:

This section is being adopted to describe the penalty pass-on process to the counties in an easy and understandable step-by step format.

Factual Basis:

This Handbook section is necessary as an aid for and in order that the counties are aware and clear of the process when a federal penalty pass-on is imposed on the county for not meeting the federal work participation rate requirement. It also informs the failing counties the number of notifications and the type of notifications the Department will send out to the counties during the penalty pass-on process. These steps are established in other sections of the proposed regulations.

Sections 91-130 through 91-130.23

Specific Purpose:

These sections are being adopted to establish that if the state receives a federal fiscal penalty for not meeting the required federal outcomes, then that penalty will be passed on to all counties who contributed to the state's failure. These sections also specify the penalty associated with failing the all family rate and the two-parent family rate.

Factual Basis:

AB 1808 (Section 27.7, Chapter 75, Statutes of 2006) requires the state to pass on 50 percent of the federal fiscal penalty it receives to the counties which contributed to the state's failure. One of the federal penalties subject to pass-on is the failure to meet the federal work participation rate requirement. The word, "but not limited to," is added under Section 91-130.1 of this regulations as a place holder for the other federal penalties that are subject to pass-on to the counties but were not included in these proposed regulations. There are plans to add the other federal penalties under this section in the future. Per 45 CFR Sections 261.20 and 261.51, the state's penalty may vary on the type of work participation rate (all family, two-parent family, or both rates) it fails to meet. These federal criteria for the state are adopted to determine a county's penalty.

Sections 91-130.3 through .334

Specific Purpose:

These sections are being adopted to establish how the department will determine whether the county failed to meet the required federal work participation rates requirement.

Factual Basis:

AB 1808 (Section 27.7, Chapter 75, Statutes of 2006) requires the state to pass on 50 percent of the federal fiscal penalty it receives to the counties which contributed to the state's failure. One of the federal penalties subject to pass-on is the failure to meet the federal work participation rate requirement. Additionally, a county that does not submit accurate, timely, and complete data is deemed to have failed to meet required applicable work participation rates. However, AB 1808 allows a county good cause for not submitting accurate and timely data, and good cause is defined as, but not limited to, the lack of accurate, timely and complete instructions from the Department.

Per 45 CFR Sections 261.20 through 261.24 provides how the federal work participation rate is determined. These sections mirror the federal calculation of the WPR. These sections also establish a standard that a county that does not submit data in a given month shall be assigned a zero numerator in the determination of its participation for each month that the county does not submit any data to determine its rate for the purpose of meeting federal data reporting requirements. The outcome of assigning a zero value would result in counties submitting the data in order not to receive a larger share of the penalty amount that would come with a zero value. This adoption is necessary in order to determine when a county is subject to federal penalty pass-on.

Sections 91-130.4 through .5 and Handbook

Specific Purpose:

These sections are being adopted to establish and specify the methodology that will be used to determine the dollar amount of the penalty that will be passed on to the failing counties.

The Handbook sections are included as a tool to help the counties visualize and understand the methodology involved in the calculation of a county's share of the fiscal penalty.

Factual Basis:

These sections are necessary to inform and show the methodology of passing on the counties' share of the penalty. The methodology provided was created through efforts and agreements between the Department, the California Welfare Directors Association and other stakeholders, and is based on an acceptable statistical practice. Welfare and Institutions Code Section 10544 requires the state to pass on 50 percent of the federal fiscal penalty the state receives to the counties which contributed to the state's failure. One of the federal penalties that is subject to pass-on is failure to meet the federal work participation rate requirement. The authority for the methodology provision also comes under the provision of Welfare and Institutions Code Section 10554.

Sections 91-130.6 through 91-130.8

Specific Purpose:

These sections are being adopted to establish how the fiscal penalty will be passed on to the counties that contribute to the state's failure to meet the federal requirement. These sections establish a method and a procedure for the imposition of the county penalty. In addition, these sections inform the counties of the requirement to replace the monies used to pay their share of the penalty with county general funds, so that the funding remains equal to the county's single allocation amount.

Factual Basis:

These sections are necessary in order to meet the provision AB 1808 (Section 27.7, Chapter 75, Statutes of 2006) of Welfare and Institutions Code Section 10544 (b) requiring the state to pass on 50 percent of the federal fiscal penalty the state receives to the counties that contributed to the state's failure. Before the state can pass on the counties share of the federal penalty for not meeting the WPR, the state must first receive the federal Department of Health and Human Services final determination of the penalty, which may have been reduced. AB 1808 (Section 27.7, Chapter 75, Statutes of 2006) amended Welfare and Institutions Code Section 10544 to include language requiring counties to offset the single allocation amount reduced by the state with county general funds so that the total funding remains equal to the county's single allocation. This requirement for failing counties to backfill funds due to the penalty is to prevent counties from reducing their welfare program services due to receiving the penalty. These provisions are based on Welfare and Institutions Code Sections 10553 and 10554, which provide the Director of the Department with the authority to adopt regulations to ensure consistency in the administration of the CalWORKs program.

Section 91-140 et seq.

Specific Purpose:

This section is being adopted to establish the criteria for the penalty relief options for the failing counties and adds a protection that prevents passing the penalty share of a county that is granted relief to the other failing counties. This section also specifies that the counties will be notified if its appeal for penalty relief is successful or unsuccessful, and that counties must provide adequate information to help CDSS determine if it meets the requirement for penalty relief.

Factual Basis:

This section is necessary to implement the objectives of Welfare and Institutions Code Section 10544 (c), which states that a county may be given relief, in whole or in part, if the Department determines that a county failed the rate due to a circumstance beyond the county's control, the degree of success in meeting federal requirements, and the degree of meeting state participation requirements. This section informs the failing counties the conditions that the Department shall determine are justifiable reasons for not meeting the required federal WPR in order to receive either a penalty waiver or penalty reduction. The 60 days to provide the Department appeal information requirement mirrors the federal timeframe found in 45 CFR Section 262.4 (b). Additionally, Welfare and Institutions Code Section 10544 (c) requires that the share of the penalty of the county granted relief shall not be passed on to the other counties that failed to meet the federal requirements.

b) Identification of Documents Upon Which Department Is Relying

- Assembly Bill 1542
- Assembly Bill 1808

c) Local Mandate Statement

These regulations do not impose a reimbursable state mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under Section 17500 et seq. of the Government Code.

d) Statement of Alternatives Considered

CDSS must determine 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 as 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.