

FINAL STATEMENT OF REASONS

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

Sections 22-001a. through z.

Specific Purpose/Factual Basis:

These sections are being renumbered from Sections 22-001a. through z. to Sections 22-001(a) through (z), respectively. The renumbering is necessary to maintain numerical consistency with other divisions throughout the Manual of Policies and Procedures.

Section 22-001(a)(1)(A)

Specific Purpose:

This section is being adopted to identify when the definition of "adequate notice" contained in Section 22-001(a)(1) is controlling.

Factual Basis:

This section is necessary to advise that the definition of "adequate notice" found at Section 22-001(a)(1) is superseded when a public social service program has specific adequate notice requirements that differ from that definition. Some programs such as Medi-Cal have their own definition of adequate notice.

**Final Modification:**

**As a result of testimony received and at the Department's discretion, the Department is withdrawing this section.**

Section 22-001(a)(3)(A)

Specific Purpose:

This section is being amended to add "Stage One Child Care, the California Assistance Program for Immigrants (CAPI), the Personal Care Services Program (PCSP), Kinship Guardianship Assistance Payment (Kin-GAP) Program, and AFDC-Foster Care" as public social services programs, within the definition of "aid." This section is also being amended to repeal "Transitional Child Care (TCC)" as a public social service program.

Factual Basis:

This amendment is necessary because Stage One Child Care, the California Assistance Program for Immigrants (CAPI), the Personal Care Services Program, Kin-GAP, and AFDC-Foster Care are new public social services programs which are subject to the state hearing process. The TCC Program is being repealed because that program no longer exists.

**Final Modification:**

**In response to public testimony, the California Food Assistance Program (CFAP) is added to the list of public social service programs.**

Section 22-001(a)(5)

Specific Purpose:

This section is being adopted to define “attorney” for purposes of Division 22.

Factual Basis:

This adoption is necessary to define who is an attorney for purposes of Division 22. These regulations include changes in the authorized representative regulation found at Section 22-085. In Section 22-085, an attorney will be permitted to represent a claimant without an authorized representative form and without the claimant being present if the attorney states on the record that he/she is representing the claimant's interests regarding the issues at the hearing.

Section 22-001(a)(5) is needed to define what is meant by an attorney so that the Administrative Law Judge (ALJ) can determine if the representative needs to obtain an authorized representative form.

Section 22-001(a)(6) -- Renumbered from Section 22-001(a)(5)

Specific Purpose:

Section 22-001(a)(5) is being renumbered to Section 22-001(a)(6).

Factual Basis:

A new Section 22-001(a)(5) is being added to define attorney. Since Section 22-001 is organized in alphabetical order, it is necessary to renumber the definition of authorized representative to Section 22-001(a)(6) for consistency in numbering.

Handbook Section 22-001(a)(6)(A) -- Renumbered from Handbook Section 22-001(a)(5)(A)

Specific Purpose:

The purpose of this change is to replace the term “legal counsel” with “attorney” in this handbook section.

Factual Basis:

This amendment is necessary so that the handbook reference is consistent with the newly defined term, attorney, in new Section 22-001(a)(5).

Section 22-001(a)(5)(C) -- Repealed

Specific Purpose:

This section is being repealed to relocate language advising the claimant that he/she may represent himself/herself and does not need to have an authorized representative.

Factual Basis:

This amendment is necessary to repeal language that is not part of the definition of "authorized representative" and to relocate it to the appropriate section in the regulations, Section 22-049 "The Hearing - General Rules and Procedures."

Section 22-001(c)(2)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to repeal the word "either" in listing the persons who may be a claimant and replace it with the phrase "any of the following" for clarity.

Sections 22-001(c)(2)(B)1. and 2.

Specific Purpose:

These sections are being amended to correct references in two regulatory citations referred to in the regulation and to clarify a person’s rights regarding foster care rates grievance procedures.

Factual Basis:

This amendment is necessary because grievance procedures are found at Section 31-020, not Section 30-078 as presently referenced. There are no state hearing procedures with the State Hearings Division (SHD) in Section 11-407 as stated in the current regulation.

The current regulation states that there is a right to a hearing on group home rates. In fact, there is no right to a state hearing with the SHD on group home rates. Instead there is an Administrative review process found at Section 11-430.

Section 22-001(c)(2)(D)

Specific Purpose:

This section is being amended to change the term "caretaker relative" to "relative caring for a child" to describe who can be a claimant in a state hearing.

Factual Basis:

This amendment is necessary to clarify who has the right to be a claimant in a state hearing. The term "caretaker relative" is specific to CalWORKs and has a specific meaning. Hearings are conducted to review issues in several programs in addition to CalWORKs.

Section 22-001(c)(2)(G)

Specific Purpose/Factual Basis:

This section is being repealed because the Transitional Child Care Program was repealed by Assembly Bill 1542 (Chapter 270, Statutes of 1997).

Section 22-001(c)(3)

Specific Purpose:

The specific purpose of this adoption is to add a regulation that defines "compliance issue."

Factual Basis:

This adoption is necessary to distinguish "compliance issue" from "compliance related issues" in the definition section of these regulations. An ALJ has jurisdiction to review a compliance related issue, but no jurisdiction to review a compliance issue.

Sections 22-001(c)(4), (5), and (6) -- Renumbered

Specific Purpose/Factual Basis:

Sections 22-001(c)(3), (4), and (5) are being renumbered to 22-001(c)(4), (5), and (6), respectively for consistency of format and ease of use.

Section 22-001(c)(6) -- Repealed

Specific Purpose:

This section is being repealed to delete the reference to "county hearing officer."

Factual Basis:

This repeal is necessary because the county hearing officer is the person who presides over a preliminary county hearing. These proposed regulations will repeal the entire preliminary hearing process contained in Sections 22-074 through 22-076 and all references to it.

Section 22-001(d)(2)(A), (B), and (C) and Handbook Section (d)(2)(A)

Specific Purpose:

The specific purpose of this amendment is to define the "decision of the director" to include language stating that such decision is an adopted proposed decision, a final decision or an alternate decision. Currently, the reference to an adopted proposed decision, final decision or alternate decision is in Handbook Section 22-001(d)(2)(A), which is being deleted.

Factual Basis:

This amendment is necessary to define "decision of the director" in the regulation as including an adopted proposed, final or alternate decision rather than unnecessarily adding a handbook section to define a "decision of the director". Handbook Section 22-001(d)(2)(A) is being restructured as Sections 22-001(d)(2)(A), (B) and (C) to more clearly define the type of decisions that are considered decisions of the director.

**Final Modification:**

**In response to public testimony, Section 22-001(d)(2)(B) has the phrase "as final" included as suggested and subsection (C) has the phrase "and has been adopted as final" included after consideration of the testifier's comment.**

Section 22-001(f)(1)(C) -- Repealed

Specific Purpose:

This section is being repealed to delete reference to the filing date in preliminary hearings.

Factual Basis:

This repeal is necessary because these proposed regulations will repeal the entire preliminary hearing process and all references to such process are therefore obsolete.

**Final Modification:**

Section 22-001(f)(1)(D) is renumbered to (C), as appropriate.

**Section 22-001(f)(2) (Post-hearing Modification)**

**Specific Purpose:**

**As a result of testimony received, the Department is amending this section by adding that a final decision "is not subject to review prior to issuance."**

**Factual Basis:**

**This change is necessary to clarify that "final decision" means a decision prepared by an ALJ that is not subject to review, as opposed to a proposed decision that is subject to review.**

Section 22-001(l)(1)

Specific Purpose:

This section is adopted to add a definition for the requirement that notices comply with Section 21-115.2.

Factual Basis:

This definition is necessary to have a simple way of referring to this regulatory requirement for notices. This reference is necessary because the Department has decided to establish a remedy in the state hearing process for failing to comply with this requirement for notices.

Final Modification:

**As a result of testimony received, the Department is revising the definition of "language-compliant" to include an interpretive services provision.**

*The regulation is being further revised in response to comments to require a rebuttable presumption concerning the choice of translated documents; to revise the language "requests interpretive services from the county for that notice of action" to clarify when the provision concerning interpretive services applies; and to add a handbook section quoting Section 21-115.2.*

Section 22-001(p)(1) -- Repealed

Specific Purpose:

This section is being repealed to remove reference to "preliminary hearings" that will become obsolete with this regulation package.

Factual Basis:

This repeal is necessary as part of a general repeal of the entire preliminary hearing process.

Section 22-001(p)(1)

Specific Purpose:

This section is being added to define a "precedent decision" for purposes of Division 22.

Factual Basis:

This adoption is necessary because the SHD will be publishing specified decisions that will state California Department of Social Services' (CDSS) policy or interpretation of law. This precedent decision will be authority for future cases with identical or similar issues.

**Final Modification:**

**Section 22-001(p)(1) is amended, as a result of testimony received, because the deleted language is not necessary to define the term. "Precedent decisions" have binding effect as specified in Government Code Section 11425.60.**

Handbook Section 22-001(p)(2)(A)

Specific Purpose:

This handbook section changes handbook language stating that a proposed decision "has no effect" instead of "will not resolve a state hearing case" unless it has been adopted by the Director or adopted by operation of law.

Factual Basis:

The change in language is necessary to more clearly state the effect when a proposed decision has not been adopted by the Director.

Section 22-002.1

Specific Purpose:

This section is being amended to state when the last "day" to perform an act required by the regulations instead of the last "date."

Factual Basis:

This amendment is necessary to be consistent with language used later in Section 22-002.1 that refers to day instead of date.

Section 22-003.13 -- Repealed

Specific Purpose/Factual Basis:

This section is being repealed. Repealing Section 22-003.13 is necessary because it has become obsolete as Section 63-605.326 has been repealed and there is no longer an alternate food stamp issuance system.

Section 22-003.14 -- Repealed

Specific Purpose/Factual Basis:

This section is being repealed because there is no longer a TCC program.

Section 22-003.15 -- Renumbered to Section 22-003.13

Specific Purpose:

This section is being renumbered from Section 22-003.15 to Section 22-003.13 because current Sections 22-003.13 and .14 are being repealed by this package. Also, language is being repealed which required a remand when a complaint of discourteous treatment was not subject to a state hearing.

Factual Basis:

The renumbering is necessary because the Sections 22-003.13 and .14 are being repealed. The repeal of language is necessary to avoid misleading and inaccurate wording. If the issue is one of discourteous treatment, the ALJ will dismiss the case but will not remand the case to the county as the current regulation states. Also, it is inaccurate to say that the dismissal will apply only if the claimant's complaint has not resulted in a denial, delay, discontinuance or reduction of services. There is no jurisdiction to review discourteous treatment whether or not there has been an adverse action. There is jurisdiction to review any adverse action which involves a denial, delay, reduction or discontinuance of services whether or not there has been discourteous treatment.

Section 22-003.14

Specific Purpose:

This section is being adopted to clarify that there is no right to a state hearing regarding any matter or issue that is properly before the juvenile court, including those matters or issues left to the discretion of the county welfare department by the juvenile court.

Factual Basis:

This adoption is necessary to clarify that while the child is under the jurisdiction of the juvenile court all issues regarding his or her custody shall be heard by the juvenile court. (See Welfare and Institutions Code Sections 245.5 and 304, and California Rules of Court, Rule 1403(c).) Furthermore, all child custody issues left to the discretion of the county welfare department or county probation department by the juvenile court may only be reviewed by the juvenile court. (See In re Jennifer G. (1990) 221 Cal. App. 3rd 752 and In re Moriah T. (1994) 23 Cal. App. 4th 1366).

**Section 22-004.21 (Post-hearing Modification)**

**Specific Purpose:**

**As a result of testimony received and at the Department's discretion, the testifier's suggested language has been added to clarify that a request for hearing may be made on the reverse side of a Notice of Action.**

**Factual Basis:**

**This section is necessary to indicate clearly that a request for hearing may be made in any form, including on the reverse side of a Notice of Action.**

Section 22-004.211 -- Repealed

Specific Purpose:

The specific purpose is to repeal this section encouraging claimants to use the reverse side of the notice of action to file a hearing request.

Factual Basis:

This amendment is necessary to repeal an unnecessary subsection that is only advisory in nature and has no force of law.

Section 22-004.212 -- Renumbered to Section 22-004.211

Specific Purpose/Factual Basis:

Section 22-004.212 is being renumbered to Section 22-004.211. This amendment is necessary because the current Section 22-004.211 is being repealed.

Section 22-004.22

Specific Purpose:

This section is being amended to repeal the reference advising counties to forward a copy of a written hearing request no later than three days after such request is received. The new language instructs the county to either forward a copy of the written request to the SHD within three days after receipt or to directly enter online the hearing request when authorized to do so by the SHD. A sentence is also added instructing counties to provide the original hearing request to the ALJ at the hearing.

Factual Basis:

The amendments to this section are necessary because there are alternative methods of forwarding a hearing request to the SHD. The added sentence is necessary so that an ALJ can review the original hearing request.

**Final Modification:**

**As a result of public testimony received, this section is amended to clarify that the CWD may enter the hearing request into the state hearing computer system online if authorized by the ALJ to do so.**

Section 22-004.41

Specific Purpose:

The specific purpose of these amendments is to change the reference to "claimant's" estate to "decedent's" estate and state that if the decedent's estate is not in probate, the representative may be an "heir" rather than a "relative."

Factual Basis:

These amendments are necessary because:

- a) Under Welfare and Institutions Code Section 10965, an authorized legal representative may file a request for hearing on behalf of a decedent. The legal representative becomes authorized when testamentary letters are issued by the Superior Court. Until such time, an heir may file a request for hearing.

- b) Welfare and Institutions Code Section 10965 permits an heir to file a hearing request on behalf of a decedent if there is no legal representative. Since an heir is not necessarily a relative, the current reference in Section 22-004.41 to a relative is too restrictive.

**Final Modification:**

**As a result of public testimony received, this section is amended to change the term "legal representative" to "representative" for clarity.**

Section 22-004.5

Specific Purpose:

The specific purpose of this amendment is to repeal the phrase “by or on behalf of the representative of the claimant’s estate” in referring to those who may file a hearing request on behalf of a prospective claimant who dies before a hearing request has been filed.

Factual Basis:

This amendment is necessary to repeal unduly limiting language. Without the repealed language, Section 22-004.5 makes clear that the rules for filing a state hearing request are the same regardless of whether a claimant dies before or after a state hearing request is filed.

Section 22-009.11

Specific Purpose:

The specific purpose of this amendment is to clarify the 90-day time limit for requesting a state hearing. This section is also amended to add the words "or given" to describe the starting date of the 90-day time limit when the claimant receives the required notice.

This section is further amended to clarify an existing remedy for any failure to provide adequate notice and to add a new remedy for any failure to comply with Section 21-115.2 (use of written translations provided by CDSS). The remedy specified in this amendment is that any hearing request shall be deemed to be a timely hearing request if adequate notice was required but not provided or if the claimant does not receive an adequate and language-compliant notice.

Factual Basis:

This amendment is necessary to clarify the 90-day time limit to request a hearing. This amendment is also necessary because the current regulation which refers to the beginning date for purposes of filing a timely hearing request says that if the claimant received adequate notice, the date of the action is the date notice was mailed to the claimant. It is common practice for a county to give a notice of action to a claimant when the claimant is in the office. This amendment would clarify that the date of the action is the date the adequate notice is mailed or given to the claimant.

This amendment is also necessary to clarify an existing remedy for any failure to provide adequate notice. The reference to a language-compliant notice is being added to provide a regulatory remedy for the requirement that notices comply with Section 21-115.2. CDSS regulations do not currently specify remedies for failure to comply with this requirement. CDSS has decided to establish a remedy in the State Hearing process in order to further the purposes of Section 21-115.2.

**Final Modification:**

**As a result of public testimony received, this section is amended to clarify that if the notice is either inadequate or not language-compliant, or both inadequate and not language-compliant, any hearing request shall be deemed to be a timely hearing request. Also, at the Department's discretion, this section is amended to add the phrase "a notice was" for clarity.**

Sections 22-009.12, .13, and .2 and Handbook Sections 22-009.21 and .22

Specific Purpose:

The specific purpose of this amendment is to repeal existing Section 22-009.12, renumber current Section 22-009.13 to .12, and adopt Section 22-009.2, to clarify the rule regarding the current amount of aid and to provide handbook examples to demonstrate how the current amount of aid rule works.

Factual Basis:

This amendment is necessary to reorganize this section in a more logical order. There are specific regulations regarding food stamp cases and those should be cited in Section 22-009.12. The rule regarding the current amount of aid applies to all programs including food stamps. It is more logical to have the regulation concerning the current amount of aid in Section 22-009.2, after the specific food stamp rule rather than before the food stamp rule and as a separate and distinct jurisdictional provision from Section 22-009.1. As presently organized, a reader could conclude that the rule concerning the current amount of aid does not apply to food stamp cases, when in fact it does apply to food stamp cases.

This amendment is also necessary because the language in the current regulation describing the current amount of aid rule is ambiguous and difficult to understand. This amendment divides the one sentence of the current regulation into two sentences. The first sentence specifically states that the claimant has a right to request a state hearing to dispute the current amount of aid. The second sentence explains that the review period begins with the date of the hearing request and extends back 90 days and includes any benefits issued during the entire first month in the 90-day period.

An additional sentence is necessary to clarify that the review applies only to facts that occurred during the review period. This is necessary to explain that while a recipient may request a hearing to dispute the current amount of aid, that review will not extend to facts that occurred prior to the review period.

Handbook Sections 22-009.21 and .22 give specific examples of how the current amount of aid rule works.

#### Section 22-045.1

##### Specific Purpose:

The purpose of this amendment is to permit the parties to agree to have a hearing conducted in a county other than the county where the claimant lives, when a claimant is a California resident.

##### Factual Basis:

This amendment is necessary for the convenience of parties to allow them to have a hearing conducted outside of the California county where the claimant lives if the claimant and the county agree to such arrangement.

#### Section 22-045.132

##### Specific Purpose:

This regulation is being amended to permit the ALJ to terminate a telephone hearing or video conference and schedule an in person hearing if the rights of either party, instead of just the claimant, are prejudiced by having a telephone or video conference hearing.

##### Factual Basis:

The amendment permitting the ALJ to terminate a hearing if either party's right to due process is prejudiced (rather than if the claimant's right is prejudiced) is necessary to assure due process to both parties to the hearing. The amendments adding references to videoconference hearings are necessary to clarify that the regulation applies to both telephone and video conference hearings.

#### Section 22-045.3

##### Specific Purpose:

The specific purpose of these amendments is to repeal reference to the SHD "delivering" notice to the parties of the date and place of the hearing and to state that the SHD will mail or provide notice to the parties "at least" rather than "not less than" ten days prior to the hearing.

##### Factual Basis:

These amendments are necessary because: 1) The SHD mails notice of hearing to the parties, but does not "deliver" the notice; and 2) It is necessary to use more precise language which describes when the SHD must mail or provide notice to the parties prior to the hearing.

#### Section 22-045.33

##### Specific Purpose:

The specific purpose of this subsection is to state that if a party does not receive written notice of the time and place of the hearing at least ten days prior to the hearing, that party shall be granted a postponement upon request.

##### Factual Basis:

This adoption is necessary to clarify that if a party that is entitled to written notice of the time and place of the hearing does not receive timely notice, that party may request and be granted a postponement.

#### **Section 22-049.1 (Post-hearing Modification)**

##### **Specific Purpose/Factual Basis:**

**At the Department's discretion, this section is amended to correct a now incorrect cross-reference.**

#### Section 22-049.111

##### Specific Purpose:

The specific purpose of this adoption is to move text concerning the claimant's right to represent himself or herself that is currently in the definition of "Authorized Representative," at Section 22-001(a)(5), to the more appropriate section of the regulations.

##### Factual Basis:

This adoption is necessary because this text is not part of the definition of "Authorized Representative," but rather concerns hearing rules and procedures, as contained in Section 22-049. This language is necessary to implement Welfare and Institutions Code Section 10955, which states that a claimant may appear at the hearing in person with counsel of his own choosing, or in person and without such counsel.

Sections 22-049.52, .521, .522, and .523

Specific Purpose:

These sections are amended to provide claimants remedies for any county failure to issue a language-compliant notice. The first remedy specified in this amendment is that the claimant shall be entitled to a postponement for good cause if the claimant contends that he or she is not adequately prepared to discuss the issues because he or she did not receive the language-compliant notice. The second remedy specified in this amendment is that retroactive aid paid pending shall be available under the provisions of Section 22-072.5.

Factual Basis:

These amendments are necessary because current regulations do not specify remedies for county failure to issue language-compliant notices, and CDSS has decided to establish remedies in the State Hearing process in order to further the purposes of Section 21-115.2.

**Final Modification:**

**At the Department's discretion, Sections 22-049.522 and .523 are amended to specify "and/or" to clarify that the same consequences apply whether a NOA is either not adequate or not language-compliant.**

Section 22-049.522(a)

Specific Purpose:

This section is adopted to specify that a postponement pursuant to Section 22-049.522 shall be deemed a postponement for good cause.

Factual Basis:

The adoption of this section is necessary to clarify the treatment of the referenced postponement for purposes of good cause.

Section 22-049.522(b)

Specific Purpose:

The purpose is to adopt a subsection stating that if the claimant waives the adequate and language-compliant notice requirements, the ALJ will conduct a hearing on the substantive issues and submit a decision on the substantive issues.

Factual Basis:

This regulation is necessary to clarify that when the claimant waives the adequate and language-compliant notice requirements, the hearing shall be conducted and a decision issued on the merits.

**Final Modification:**

**At the Department's discretion, Section 22-049.522(b) is amended to specify "and/or" to clarify that the same consequences apply whether a NOA is either not adequate or not language-compliant. Also, the phrase "as applicable" is added for clarity, given the fact that a NOA may be either inadequate or not language-compliant, or both.**

Section 22-049.53

Specific Purpose:

The specific purpose for these amendments is to require the county to "prepare a position statement" rather than to "be prepared to submit evidence" when a jurisdictional issue is raised and to require both parties to be prepared to submit evidence on both the jurisdictional and substantive issues rather than just the substantive issue.

Factual Basis:

These amendments are necessary to clarify that the county is responsible for preparing a position statement on all issues per Section 22-073.25 even if the county raises a jurisdictional issue at the hearing.

When the county raises a jurisdictional issue, both parties need to be prepared to discuss the jurisdictional issue, and if the ALJ determines it is necessary, both parties must also be prepared to discuss the substantive issue.

Section 22-049.531

Specific Purpose:

This purpose of this amendment is to revise the current Section 22-049.531 and to adopt Subsections 22-049.531(a) and (b).

Factual Basis:

These amendments are necessary because:

- 1) The authority to dismiss a hearing by written decision due to a lack of jurisdiction is already contained in Section 22-054.3.

Revising Section 22-049.531 and adopting Subsections 22-049.531(a) and (b) will permit a party to make a written request prior to the hearing to the Presiding Judge to limit the issue to the jurisdictional issue. Once such request is made, the Presiding Judge will notify the parties whether they will have to prepare just for the jurisdictional issue or for the jurisdictional and substantive issues at the scheduled hearing.

- 2) These additions permit a party to request that a Presiding Judge limit the issue to a jurisdictional issue when the party believes a case should be dismissed for lack of jurisdiction. For example, in some cases, the county must prepare extensively for a hearing such as when the issue involves a five-year-old CalWORKs overpayment. With this new regulation, the county would be able to request the Presiding Judge in advance of the hearing to limit the issue to the jurisdictional issue so that the county would not have to prepare on the merits for a hearing when it alleges there is no jurisdiction. The Presiding Judge would make a preliminary ruling advising the parties whether the county should prepare on the jurisdictional issue only or must prepare on both jurisdictional and substantive issues.

### **Final Modification:**

**As a result of testimony received, this section is amended to provide that, when a party requests in writing to the Presiding ALJ, prior to the hearing, that a hearing be limited to the jurisdictional issue, a copy of that request shall be sent to the other party.**

Sections 22-049.532 and .532(a)

### **Specific Purpose:**

The specific purpose of these amendments is to more clearly state the options available to the ALJ if the hearing is initially limited to a jurisdictional issue. Additionally, the purpose of Section 22-049.532(a) is to state that the ALJ may advise the parties orally at the hearing or in writing after the hearing whether he/she will conduct a continued hearing on the substantive issues rather than requiring the ALJ to send a written notice to the parties.

### **Factual Basis:**

These amendments are necessary because the ALJ probably will determine at the hearing whether he/she needs to conduct a hearing on the substantive issues. These amendments permit the ALJ to either inform the parties orally at the hearing, or in writing after the hearing whether a continued hearing on the substantive issues is necessary.

Section 22-049.532(b)

Specific Purpose:

This section is being amended to:

- a) Provide that the ALJ may advise the parties orally at the hearing or in writing after the hearing whether a continued hearing will be held.
- b) Repeal the phrase in Section 22-049.532(b) "unless the time is waived by both parties."
- c) Repeal the last sentence in Section 22-049.532(b) that advises that if the ALJ conducts a hearing on the substantive issue(s), the ALJ's proposed decision will address both the procedural and jurisdictional issues.

Factual Basis:

The amendment regarding how the ALJ is to communicate with the parties is necessary to allow the ALJ to communicate orally or in writing concerning whether a continued hearing will be held.

The repeal of language regarding parties waiving time is necessary because that language is inaccurate. The ALJ is required to provide the parties with time to prepare on the substantive issues regardless of whether the parties waive time. In addition, the reference to both parties waiving time is inaccurate because only the claimant, and not the county waives time.

The repeal of the last sentence of Section 22-049.532(b) is necessary because it is gratuitous to state in regulation that if the ALJ takes evidence on the substantive issue, the ALJ's decision will address both the jurisdictional and substantive issue. In addition, since most decisions are final decisions, the reference to proposed decision in this regulation will usually be inaccurate.

Section 22-049.611

Specific Purpose:

The purpose of this amendment is to clarify that the interpreter for the hearing must have no personal or economic interest in the hearing.

Factual Basis:

This amendment is necessary to ensure that both parties in an interpreter case receive due process and that the interpreter, though qualified, has no personal or economic interest in the outcome of the hearing.

Section 22-049.63

Specific Purpose:

The purpose of this amendment is to add to the interpreter's oath the requirement to respect the claimant's confidentiality.

Factual Basis:

This amendment is necessary to require the interpreter to take an oath to respect the claimant's right to confidentiality in the hearing.

Section 22-050.21

Specific Purpose:

The specific purpose of this amendment is to clarify that the ALJ shall not be bound by the rules of procedure or evidence applicable in judicial proceedings.

Factual Basis:

This amendment is necessary to be consistent with Welfare and Institutions Code Section 10955 that says the person conducting the state hearing is not bound by rules of procedure or evidence applicable in judicial proceedings.

The current regulation stating that the rules of evidence as applicable in judicial proceedings shall not be applicable in state hearings is not completely correct. While the ALJ need not follow some rules applicable in judicial proceedings such as rules regarding admissibility of evidence, the ALJ will follow other rules of evidence, such as burden of proof and credibility.

Sections 22-050.44 et seq.

Specific Purpose:

The purpose of these amendments is to:

- a) Repeal Section 22-050.441 and incorporate part of its language to Section 22-050.44.
- b) Repeal extraneous language describing the right of parties to respond to the ALJ taking official notice of some fact.
- c) Repeal Section 22-050.442 that refers to “the tenor of the matter to be noticed.”

Factual Basis:

These amendments are necessary to substitute more clear and concise language stating that the parties may be given an opportunity to respond when the ALJ takes official notice of some fact. These amendments are also necessary to repeal reference to the "tenor of the matter to be noticed" because that phrase has no clear meaning.

Section 22-053

Specific Purpose:

All of Section 22-053 is reorganized for clarity. Postponements are grouped together by type, and all aid paid pending provisions are grouped together under one heading. The section is also amended as set out below.

Factual Basis:

The reorganization amendments are necessary to clarify when postponements are available. The necessity for other amendments is set out below.

Section 22-053.1

Specific Purpose:

This section is amended to specify that postponements are subject to "the following" conditions rather than "limited" conditions.

Factual Basis:

This amendment is necessary to specify that the postponements are available as set out in Section 22-053, rather than under "limited" conditions, which is a less specific term.

Section 22-053.11

Specific Purpose:

This section is amended to add a heading for the new grouping by types of postponements, in this case, postponements upon claimant request.

Factual Basis:

This amendment is necessary for clarity.

Section 22-053.111 (renumbered from Section 22-053.11)

Specific Purpose:

This section is amended to specify that the postponement referred to in this provision is a first postponement, and that subsequent postponements are available in the Food Stamp Program for good cause, just as they are available in other programs (see Section 22-053.112).

Factual Basis:

This amendment is necessary to clarify the postponements available in the Food Stamp Program. The current provisions appear to allow only one postponement in the Food Stamp Program, which is incorrect. The Food Stamp Program allows one postponement without good cause, simply upon a claimant's request, as well as additional postponements for good cause.

**Final Modification:**

**As a result of public testimony received, this section is amended to clarify that if a hearing request includes an issue regarding the Food Stamp Program, a claimant's first request for a postponement made prior to hearing shall be granted.**

Section 22-053.112 (former Sections 22-053.112, .112(a), .14, and .141)

Specific Purpose:

This section is amended to delete the reference to "all other programs" and to specify that CDSS shall have the authority to require "written documentation" to verify good cause rather than "verification . . . to support the reason" for postponement. Former Section 22-053.141 is duplicative of the authority provided in this section and is therefore no longer listed as a separate section.

Factual Basis:

The amendment deleting "all other programs" is necessary to remove the ambiguity concerning the Food Stamp Program discussed above. The amendment concerning evidence supporting postponement is necessary to make specific what CDSS can require and to reference the specific basis for claimant-requested postponement used in this section – "good cause." Former Section 22-053.112(a) is added to Section 22-053.112, and former Section 22-053.141 is incorporated in this section as part of the reorganization of the section done for clarity.

**Final Modification:**

***This section is amended pursuant to public comments received to delete the "written documentation" language and to delete the reference to the claimant being unable to attend the hearing.***

Section 22-053.113 (renumbered from Section 22-053.16)

**Specific Purpose:**

The “good cause” provision in Section 22-053.16 is moved to the “Claimant requests” section as part of the overall reorganization of Section 22-053 for clarity. The bases for good cause listed at Sections 22-053.113(a), (b), (c), (d) and (f) are current good cause bases and are listed at former Sections 22-053.161, .162, .163, .164 and .165. Sections 22-053.113(c) and (d) (former Sections 22-053.163 and .164) include small grammatical changes.

Section 22-053.113(f) (former Section 22-053.165) is amended as follows:

- 1) to allow good cause if a county does not make a position statement available “at least” two working days before the hearing rather than “not less than” two working days;
- 2) to add the word “substantially” to describe modifications of the position statement supporting postponement; and
- 3) to delete the cross-reference to Section 22-073.252.

Section 22-053.113(e) is renumbered from former Section 22-053.142; revised to reference new provisions of Section 22-049.52 relating to language-compliant notices of action; and otherwise revised to conform to Section 22-049.52.

Section 22-053.113(g) is new and is added to specify that good cause also includes “any other substantial and compelling reason as determined by the Administrative Law Judge.”

**Factual Basis:**

The reorganization amendments are necessary for clarity, and the grammatical changes are necessary to make the language grammatically correct.

The amendments to Section 22-053.113(e) are necessary to conform to amendments to Section 22-049.52, which adds as an additional basis for postponement failure to provide language-compliant notice. Other language changes are made in Section 22-053.113(e) to conform to Section 22-049.52, which states the same bases for postponement as Section 22-053.113(e).

The amendments to Section 22-053.113(f) concerning the county’s duty to make the position statement available are necessary to correctly and clearly describe that duty. The

amendment to add the word “substantially” to Section 22-053.113(f) is necessary to clarify the type of modifications of the position statement that support postponement and to conform this provision to amended Section 22-073.253, which now also refers to “substantial” modifications. The cross-reference to Section 22-073.252 is deleted because it is incorrect, and any cross-reference is made unnecessary by the addition of the word “substantially” to Section 22-053.113(f).

The adoption of Section 22-053.113(g), which allows good cause for “any other substantial and compelling reason as determined by the Administrative Law Judge,” is necessary to give ALJs additional latitude to determine that good cause exists based on the facts presented in a particular case.

### **Final Modification:**

**As a result of public testimony received and at the Department's discretion, this section is amended to delete subsection .113(g) and to reformat Section 22-053.113 to clarify that the list of good cause reasons in .113 is illustrative, not exhaustive. Also, .113 is amended to clarify that good cause "applies" if a claimant or authorized representative establishes that he or she is unable to attend the hearing due to any of the reasons indicated. At the Department's discretion, Section 22-053.113(e) is amended to specify "and/or" to clarify that the same consequences apply whether a NOA is either not adequate or not language-compliant. *Section 22-053.113 is further amended pursuant to public comments received to delete reference to the phrase "unable to attend the hearing."* The proposed changes to Section 22-053.113(f) regarding modifications to the position statement are also deleted, in response to public comments. The cross-reference is corrected to Section 22-073.253.**

### **Section 22-053.12**

#### **Specific Purpose:**

This section is substantially the same as former Section 22-053.12. A new “County requests” heading (Section 22-053.12) is added to conform to overall reorganization changes in Section 22-053. Section 22-053.121 is amended to specify that the postponement shall be at the ALJ’s discretion.

#### **Factual Basis:**

The reorganization amendments are necessary for clarity and to conform this section to the overall reorganization of Section 22-053. The amendment to add the reference to the ALJ’s discretion is necessary to specify the basis for postponement.

**Final Modification:**

**At the Department's discretion, Section 22-053.122 is amended to correct a cross-reference and to clarify that any postponement granted under Section 22-053.121 shall be deemed a postponement for good cause "for aid pending purposes."**

Section 22-053.13 (renumbered from Sections 22-053.13 and .15)

Specific Purpose:

Former Sections 22-053.13 and .15 are grouped together as new Section 22-053.13 under the heading "Administrative Law Judge postponements" because both former sections relate to this type of postponement. Former Section 22-053.151, relating to aid paid pending for ALJ postponements, is not included in new Section 22-053.13 because it has been moved to new Section 22-053.4, "Aid Pending Hearing." New Section 22-053.14 groups together all provisions of Section 22-053 relating to aid pending a hearing.

Factual Basis:

These reorganization amendments are necessary for clarity and to conform this section to the overall reorganization of Section 22-053.

Section 22-053.14

Specific Purpose:

Former Sections 22-053.14 and .141 are duplicative of new Section 22-053.11, "Claimant requests," and are now included in Section 22-053.11. Former Section 22-053.142 pertains to claimant-requested postponements and is therefore now included in Section 22-053.11, at Section 22-053.113(e).

New Section 22-053.14 is adopted to specify that a postponement is available on request if either party is not provided the required notice of the time and place of the hearing, and to specify that the postponement shall be deemed a postponement for good cause.

Factual Basis:

The reorganization amendments are necessary for clarity, to avoid duplication, and to conform to the overall reorganization of Section 22-053.

The adoption of new Section 22-053.14 is necessary to specify that postponement is available on request if a party failed to receive the notice of the time and place of the hearing required by Section 22-045.3 and to specify how such postponements are to be treated for purposes of good cause.

#### Section 22-053.4

##### Specific Purpose:

This section is adopted to group together all provisions in Section 22-053 pertaining to aid pending a hearing. The reorganized provisions are also amended, and new provisions are adopted, as set out below.

##### Factual Basis:

This reorganization is necessary for clarity and to conform to the overall reorganization of Section 22-053. The necessity for the other amendments and adoptions is described below.

#### Section 22-053.41 (renumbered from Section 22-053.111)

##### Specific Purpose:

This section is renumbered and amended. The section is amended to refer to “a first postponement” and to cross-reference new Section 22-053.111, which also relates to first time postponements in the Food Stamp Program.

This section is also amended to clarify that in a Food Stamp case, aid pending continues until at least the earlier of the next scheduled hearing or the end of the certification period, rather than “until the next scheduled hearing,” as provided in former Section 22-053.111.

##### Factual Basis:

The reorganization amendment is for clarity. The amendment referring to a “first postponement” is necessary to conform to new Section 22-053.111.

The amendment concerning the duration of aid pending is necessary to clarify that aid pending continues until at least the earlier of the next scheduled hearing or the end of the certification period. The current regulation is inaccurate in stating that aid pending continues until at least the next scheduled hearing. In the Food Stamp Program, aid pending ends at the end of the certification period if that occurs before the next scheduled hearing.

#### Section 22-053.42 (renumbered from Section 22-053.151)

##### Specific Purpose:

This section is renumbered and grouped with other aid pending provisions in Section 22-053. The section is also amended to specify a good cause standard, as contained in new Section 22-053.113, for continuation of aid pending when a hearing is postponed under Section 22-053.133. The good cause standard is in lieu of the prior standard of “necessary to insure a full and fair hearing” and not resulting “from any act or omission” by the claimant (found in former Section 22-053.151).

Factual Basis:

The reorganization amendments are made for clarity and conformity with the overall reorganization of Section 22-053. The amendment adopting the good cause standard is necessary to have a clear, flexible standard and for uniformity with other provisions in Section 22-053 that condition continuation of aid pending on good cause for a postponement.

Section 22-053.43

Specific Purpose:

This section is adopted to specify the effect of a good cause postponement on the duration of aid pending in programs other than the Food Stamp Program. The section specifies that aid pending continues at least until the next scheduled hearing if a postponement was for good cause.

Factual Basis:

This adoption is necessary to make explicit the effect of a good cause postponement on aid paid pending and for consistency with new Section 22-072.64 (renumbered from Section 22-072.65), which provides that aid pending ceases when a postponement is granted without good cause (except for first time postponements in the Food Stamp Program).

Section 22-053.431

Specific Purpose:

This section is adopted to specify the effect of a good cause postponement on the duration of aid pending in the Food Stamp Program. The section specifies that if a postponement is granted for good cause after the initial postponement, aid pending continues until at least the earlier of the next scheduled hearing or the end of the certification period.

Factual Basis:

This adoption is necessary to make explicit the effect of a good cause postponement on aid paid pending in the Food Stamp Program, after the initial postponement. This adoption is also necessary for consistency with new Sections 22-072.64 and 22-072.641 (renumbered from Section 22-072.75 and .751), which provide that aid pending ceases when a postponement is granted without good cause, except for first time postponements in the Food Stamp Program, and for consistency with new Section 22-072.65 (renumbered from Section 22-072.76), which provides that aid pending ceases in the Food Stamp Program when the certification period expires.

## Section 22-054.221

### Specific Purpose:

The specific purpose of these amendments is to a) repeal reference to good cause in determining that a hearing request is abandoned if the claimant fails to appear in person or by authorized representative at a scheduled state hearing; and b) add that a hearing request will be dismissed if the claimant fails to appear in person or by authorized representative at the scheduled hearing.

### Factual Basis:

These amendments are necessary because: a) at the time the claimant fails to appear at the hearing, it is not known whether he/she had good cause for not appearing at the hearing, yet the hearing request is considered abandoned; and b) current Section 22-054.221 states that if a claimant fails to appear at a hearing in person or by authorized representative, the hearing request is considered abandoned, but does not specify what are the consequences of such abandonment. The consequence of an abandonment is the dismissal of the hearing request. However, the claimant's right to have a new hearing following such dismissal is established in the proposed new language of Section 22-054.222.

## Section 22-054.222

### Specific Purpose:

The current language in Section 22-054.222 provides that if the claimant fails to attend the hearing in person or by authorized representative, but within ten days of the hearing date establishes good cause for not appearing, he/she may reinstate the hearing request. The proposed new language in Section 22-054.222 provides that if the claimant fails to attend the hearing, a dismissal decision will be sent to the claimant. The claimant has the right to request a new hearing and if the claimant establishes good cause for failing to attend the initial hearing, the decision for dismissal is set aside.

### Factual Basis:

This amendment is necessary to make the state hearing process, as it pertains to nonappearances, more fair to both the claimant and the county. In the current process, if the claimant fails to attend the hearing and does not request reinstatement of the hearing within ten days, he/she receives a decision dismissing the claim. If the claimant, after receiving a dismissal decision establishes good cause for failing to attend the hearing, the Department grants a rehearing.

If the claimant attends the rehearing, a hearing on the merits is conducted for the first time. Since the merits of the case are being discussed for the first time at the rehearing, the losing party has no right to request a rehearing.

The proposed new language in Section 22-054.222 remedies this inequity for both parties by permitting the Department to grant a "new hearing" when the claimant has established good cause for not attending the initial hearing (see also Section 22-065.6). Both the county and the claimant would have a right to request a rehearing if dissatisfied with the decision in the "new hearing."

Sections 22-054.222(a)(1) and (2)

Specific Purpose/Factual Basis:

The specific purpose of these amendments is to change the tense from the present to the past in the language in Section 22-054.222(a)(1). "Is" is changed to "was" for clarity. Also, Section 22-054.222(a)(2) corrects a cross reference for clarity.

Section 22-054.222(b)

Specific Purpose:

The specific purpose of this amendment is to change language in the current regulation that indicates that if the hearing is rescheduled, any applicable aid paid pending will be reinstated to "if a new hearing is granted and the decision dismissing the claim is set aside," any applicable aid paid pending will be reinstated.

Factual Basis:

This amendment is necessary because under the proposed new language in Section 22-054.222, a decision dismissing the claim will be issued immediately upon the claimant's failure to appear at the hearing. Under the proposed new language in Section 22-054.222, a hearing is not rescheduled. Rather, a new hearing is granted. Also, since a decision dismissing the claim is issued immediately, it is necessary to state that the decision will be set aside and aid pending reinstated.

Section 22-054.222(c)

Specific Purpose:

The specific purpose of this amendment is to change language in the current regulation that states that if the hearing is not rescheduled or if the claimant does not request a reinstatement within ten days of the hearing date, the claimant will be notified of the reasons for the decision and the right to request a rehearing. The proposed new language states that if a new hearing is not granted, and the decision dismissing the claim is not set aside, the claimant shall be notified of the specific reasons the decision was not set aside and of the right to appeal to Superior Court.

Factual Basis:

The amendments to this regulation are necessary because under the proposed new language in Section 22-054.222, a decision dismissing the claim will be issued immediately upon the claimant's failure to attend the hearing. Under the proposed new language in Section 22-054.222, a hearing is not rescheduled, rather a new hearing is granted. Since a decision is issued immediately, it is necessary to state that if a new hearing is not granted, the decision dismissing the claim will remain in effect.

The prior regulation states that the claimant will be notified in writing as to the reasons for the decision, but does not clarify to what decision it referred. The prior regulation makes no reference to a decision prior to Section 22-054.222(c). It is necessary to clarify that the claimant will be notified in writing as to the specific reason the decision dismissing the claim will remain in effect.

Finally, it is necessary to change the notification to the claimant about rehearing rights to a notification that the only appeal right is to the Superior Court.

Sections 22-059.1 and .11

Specific Purpose:

The specific purpose of these amendments is to exclude "communications to the Department after the close of the hearing record" rather than "subsequent to the hearing" and to simplify and clarify the specific wording of the regulations.

Factual Basis:

These amendments are necessary to clarify language in the current regulations. In many hearings, the record is left open in order for the ALJ to obtain additional evidence from the parties. This amendment clarifies that communications made while the record is left open are not necessarily prohibited, while communications after the record is closed are generally prohibited.

Section 22-061.2

Specific Purpose:

The specific purpose of this amendment is to provide that either the Chief ALJ "or his/her designee" shall notify both parties, not just the claimant, that the case is being assigned to another ALJ because the ALJ who conducted the hearing is unavailable.

Factual Basis:

This amendment is necessary to conform the regulation to common practice, namely that a designee of the Chief ALJ notifies the claimant that the case has been reassigned because the ALJ who conducted the hearing is unavailable.

This amendment is also necessary because the county, as well as the claimant, is entitled to be notified if an ALJ other than the one who heard the case will be writing the decision in the case.

Sections 22-063.11, .111, and .112

Specific Purpose:

The specific purpose of this amendment is to renumber Section 22-063.111 to Section 22-063.112 and Section 22-063.112 to Section 22-063.111.

Factual Basis:

This amendment is necessary to reorganize this section in a more logical order. The notice to the parties advises first of rehearing rights, then of judicial review, not vice versa as in the current regulation.

Sections 22-063.2, .21, and .22

Specific Purpose:

The purpose of this amendment is to divide the substance of Section 22-063.2 into two subsections because the current regulation involves two separate circumstances that are included in one sentence. In the proposed new first sentence, if the Director renders an alternate decision, he/she shall mail a copy of the proposed decision with the alternate decision. In the second subsection, if the Director orders a further hearing, the Director shall mail a copy of the voided proposed decision with the notice of the scheduled further hearing.

Factual Basis:

This amendment is necessary to accurately state the Director's responsibilities in two unlike situations, i.e. issuing an alternate decision and scheduling a further hearing. The current regulation includes both of these situations in one sentence and inaccurately states the Director's responsibilities regarding further hearings.

The amendment divides these two unlike situations into two sentences. The first sentence addresses the Director's duty to mail the proposed decision with the Director's alternate decision. The second sentence states that if the Director orders a further hearing, he/she shall mail a copy of the ALJ's voided proposed decision with the notice of the scheduled

further hearing. The current regulation inaccurately states that if the Director orders a further hearing, a copy of the final decision shall be mailed with the proposed decision. There can be no final decision issued because a further hearing has been scheduled.

#### Section 22-064.1

##### Specific Purpose:

The specific purpose of this amendment is to substitute "tape recording of the hearing" for "verbatim record of the testimony and exhibits" as the applicable portion of the exclusive record for the decision. Also, such materials are available to the parties for three years after "any decision issued by the Director" instead of after "the decision of the Director." The term "Administrative Law Judge's proposed decision" is changed to "decision."

##### Factual Basis:

This amendment is necessary to properly state that the tape recording is part of the exclusive record of the hearing since there is no verbatim record other than the tape recording. The language referring to "any decision issued by the Director" is more precise and grammatically correct than "the decision of the Director." The term "Administrative Law Judge's proposed decision" is changed to "decision" because ALJs in most cases do not write proposed decisions. The term "decision" may include a proposed decision.

##### **Final Modification:**

**As a result of testimony received, this section is amended to delete the term "tape" and to just refer to "recording" since there are various methods of recording a hearing. Also, at the Department's discretion, this section is amended to delete the phrase "Administrative Law Judge's proposed" because the decision could be any one of the three types of the decisions of the Director. *This section is further amended in response to public comments received to specify "any final, proposed or alternate decision" instead of "decision."***

#### Sections 22-065.111 and .112 -- Renumbered

##### Specific Purpose:

The specific purpose of these amendments is to reformat these sections and to renumber Section 22-065.111 to 22-065.112 and Section 22-065.112 to 22-065.111. Also, the word "rehearing" is being repealed from renumbered Section 22-065.112 because it is superfluous.

##### Factual Basis:

The purpose of this amendment is to reorganize this subsection in a more logical order. The fact that a rehearing request need not be on any particular form should precede the reference that the rehearing requests involving CDHS should be mailed to CDSS.

Handbook Section 22-065.112(a) -- Deleted

Specific Purpose/Factual Basis:

The removal of Handbook Section 22-065.112(a) is necessary to avoid duplication since the language is being adopted as a regulation in Section 22-065.113.

Section 22-065.113

Specific Purpose:

The specific purpose of this amendment is to adopt a new subsection that states that when a party requests a rehearing, that party shall specify the reasons for the rehearing request.

Factual Basis:

This adoption is necessary to clarify that a party needs to specify the reasons a rehearing is being requested, rather than simply asking for a rehearing.

Section 22-065.2

Specific Purpose:

The specific purpose of this amendment is to state correctly that the Director shall mail a copy of the rehearing request "to" the other party rather than "on" the other party.

Factual Basis:

This amendment is necessary to correct improper grammar.

Sections 22-065.4, .41, and .42

Specific Purpose:

The specific purpose of these amendments is to: 1) Clarify that the Director may require review of one, several or all issues regardless of whether a rehearing or a rehearing on the record has been ordered; 2) More clearly identify an oral rehearing and a rehearing on the record, to distinguish between the two; and 3) Amend Section 22-065.41 to clarify that in the case of a rehearing on the record, the ALJ must consider additional "written or documentary" evidence submitted by the claimant or county.

Factual Basis:

These amendments are necessary as follows:

- a) Section 22-065.4 is amended to clarify that the Director may order an ALJ to review, one, several or all issues presented for review in the original hearing regardless of whether an oral rehearing or rehearing on the record is ordered. This section clarifies current Section 22-065.42 and makes specific the Director's right to limit the issues regardless of whether he/she orders an oral hearing or a rehearing on the record.
- b) Section 22-065.41 refers to “reconsideration of the decision on the basis of the evidence in the record”. “Rehearing on the record” is more concise and is the language that the Department generally uses to describe the situation where there is no oral rehearing. Also evidence in a rehearing on the record will be written or documentary rather than oral. Also, the language in Section 22-065.411 is reformatted as a part of Section 22-065.41.
- c) Section 22-065.42 is amended to clarify that the Director has the right to order an oral rehearing (rather than a “new hearing”) as distinguished from a rehearing on the record established under Section 22-065.41.

Sections 22-065.5 and .51

Specific Purpose:

The specific purpose of this amendment is to clarify the language in the current Section 22-065.5, including adding a set time period for requesting an oral rehearing. It is the intent of Section 22-065.5 to permit either party to request an oral rehearing instead of a rehearing on the record.

Factual Basis:

This amendment is necessary to clarify the purpose of Section 22-065.5. The language in the current Section 22-065.5 is unclear and ambiguous.

Sections 22-065.6, .61, .62, and .63

Specific Purpose:

This specific purpose of this amendment is to revise language stating that a Decision of the Director issued upon a rehearing shall not be subject to a further state hearing.

Factual Basis:

This amendment is necessary to eliminate vague language, specifically the reference to a “further state hearing”, and to more specifically state when a rehearing will not be granted.

Revised Section 22-065.6 specifies three circumstances when a rehearing will not be granted: 1) on a rehearing decision, 2) on a hearing request that has been dismissed pursuant to Section 22-054.4, and 3) on a compliance issue.

**Final Modification:**

**In response to public testimony, the Department is amending Section 22-065.61 to permit a rehearing on a rehearing decision on an issue that was decided for the first time on the merits in the rehearing decision.**

Section 22-069.121

Specific Purpose:

This section is being adopted to specify that county responsibilities include the responsibility to provide the ALJ with a copy of the original hearing request at the hearing.

Factual Basis:

This section is necessary for consistency with amendments made to Section 22-004.22.

Section 22-069.122 -- Renumbered from Section 22-069.121

Specific Purpose:

The specific purpose of this amendment is to substitute the word "review" for "investigation" in describing the county responsibility in the state hearing process.

Factual Basis:

This amendment is necessary to more accurately reflect the county responsibility in the hearing process. The county representative in the state hearing is not an investigator and is not responsible for investigation. Rather, the county representative must first review the case to determine what the other county responsibilities are.

Sections 22-069.122 and .123 -- Renumbered

Specific Purpose/Factual Basis:

Sections 22-069.122 and .123, are being renumbered to Sections 22-069.123 and .124, respectively for consistency of format and ease of use.

Section 22-071.12

Specific Purpose:

This section is amended to add the phrase "For CalWORKs and Food Stamp cases" to both Section 22-071.12(MR) and Section 22-071.12(QR).

Factual Basis:

This amendment is necessary to clarify that Section 22-071.12(MR) and Section 22-071.12(QR) apply only to CalWORKs and Food Stamp cases. State hearings are conducted in other programs such as In-Home Supportive Services (IHSS), Medi-Cal, Adoption Assistance Program, and AFDC-Foster Care (AFDC-FC). Section 22-071.13 applies to all programs other than CalWORKs and Food Stamps.

Section 22-071.13--New

Specific Purpose:

This section is adopted to clarify when adequate notice is required in cases other than CalWORKs and Food Stamps.

Factual Basis:

This section is necessary to clarify when adequate notice is required in cases that do not involve CalWORKs or Food Stamps.

Section 22-071.131-- Renumbered

Specific Purpose/Factual Basis:

This section is renumbered from Section 22-071.121 and a reference to Sections 22-071.12 and .13 is added because this regulation relates to both sections.

Sections 22-071.14 through .19--Renumbered

Specific Purpose/Factual Basis:

Sections 22-071.13 through 22-071.18 are being renumbered because a new Section 22-071.13 has been added.

Section 22-071.19--Repealed

Specific Purpose/Factual Basis:

Current Section 22-071.19 is being repealed because there is no longer a Transitional Child Care Program.

**Section 22-072.5 (Post-hearing Modification)**

**Specific Purpose:**

**At the Department's discretion, this section is being amended to correct an erroneous cross-reference.**

**Factual Basis:**

**This amendment is necessary to correctly indicate Section 42-750.213 as the CalWORKs supportive services section.**

Sections 22-072.51 (Handbook), .52, .521 (Handbook), and .522

Specific Purpose:

These sections are being amended to add the word “hearing” to describe “request.”

Factual Basis:

These amendments are necessary to clarify what is meant by request in terms of the type of request that must be filed before aid pending is initiated.

Section 22-072.522(a)

Specific Purpose:

This section is amended to specify the grounds for a good cause finding that supports payment of aid pending in the Food Stamp Program when a hearing request is filed after the effective date of the proposed action.

Factual Basis:

Aid pending is generally not paid when a recipient files a hearing request after the effective date of the proposed action. A different rule applies in the Food Stamp Program. Under Section 22-072.522, aid pending is paid in the Food Stamp Program if good cause is established for filing a request after the effective date of the action.

Former Section 22-072.522(a) states that the criteria for good cause in this circumstance are those specified in former Section 22-053.16. Section 22-053.16 is now Section 22-053.113,

in the reorganized postponement section. Most of the criteria specified in new Section 22-053.113 (and former Section 22-053.16) do not relate to late hearing requests, but rather relate only to postponement/inability to appear on a scheduled hearing date.

Section 22-072.522(a) therefore must be amended to correctly state the criteria for good cause in this circumstance, that is, the criteria from new Section 22-053.113 (the good cause for postponement section) that relate to good cause for failing to file a hearing request before the effective date of the proposed action.

**Final Modification:**

**At the Department's discretion, Section 22-072.522(a)(1) is amended to specify "and/or" to clarify that the same consequences apply whether a NOA is either not adequate or not language-compliant.**

Sections 22-072.6 et seq. -- Repealed

Specific Purpose:

The specific purpose is to repeal the entire section referring to an aid pending issue in the Transitional Child Care (TCC) program.

Factual Basis:

This amendment is necessary because with the repeal of the TCC program effective January 1, 1998, any reference to TCC in the aid pending regulations is obsolete.

Sections 22-072.6, .61 and .611 -- Renumbered

Specific Purpose/Factual Basis:

Renumbered Section 22-072.611 is being amended to instruct counties that if aid pending was applicable, it should be reinstated if the claimant failed to attend the scheduled state hearing, but a rehearing is scheduled because the claimant established good cause for failing to attend that hearing. Aid paid pending is issued because there has been no decision on the merits.

Renumbering of these sections is necessary because of the repeal of current Section 22-072.6. Section 22-072.7 becomes Section 22-072.6, Section 22-072.71 becomes Section 22-072.61 and Section 22-072.711 becomes Section 22-072.611.

Section 22-072.72 -- Repealed

Specific Purpose:

The purpose is to repeal Section 22-072.72 that states that aid pending shall cease when the claim has been denied or dismissed by the preliminary hearing procedure.

Factual Basis:

This amendment is necessary because it is the intent of the Department to repeal the preliminary hearing process in these regulations. Any reference to the preliminary hearing process would thus be obsolete.

Sections 22-072.73 and .731 -- Renumbered to Sections 22-072.62 and .621

Specific Purpose/Factual Basis:

This renumbering is necessary for consistency of format and ease of use.

Section 22-072.732 -- Renumbered to Section 22-072.622

Specific Purpose:

The specific purpose of this amendment is to require the county to issue aid pending in a case where a further hearing is scheduled until at least the date of the further hearing. The renumbering is necessary for consistency of format and ease of use.

Factual Basis:

This amendment is necessary because the present regulation requires the retroactive reinstatement and continuation of aid paid pending where a further hearing has been scheduled, but does not address the fact that at the further hearing, the ALJ may discontinue aid pending.

Sections 22-072.74, .741, and .75 -- Renumbered to Sections 22-072.63, .631, and .64

Specific Purpose/Factual Basis:

This renumbering is necessary for consistency of format and ease of use, and correction of the cross-reference in new Section 22-072.64 is necessary to cite the correct reference in the amended regulations.

Section 22-072.751 -- Renumbered to Section 22-072.641

Specific Purpose:

The specific purpose of this amendment is to clarify that while aid pending ceases for a no good cause postponement, that provision does not apply to a "first time postponement" in the Food Stamp Program. The renumbering is necessary for consistency of format and ease of use.

Factual Basis:

This amendment is necessary to clarify that the exception to discontinuing aid pending applies only to a first time postponement in food stamps, not to all postponements in food stamps. This section is also being renumbered for consistency of format and ease of use.

Sections 22-072.76, .8, .81, .9, and .91 -- Renumbered to Sections 22-072.65, .7, .71, .8 and .81, respectively

Specific Purpose/Factual Basis:

This renumbering is necessary for consistency of format and ease of use.

Sections 22-073.123 and .124(a)

Specific Purpose:

The specific purpose of this amendment is to repeal reference to "respective" when describing the county that should be notified when the SHD receives an oral hearing request and when the SHD should send a misdirected hearing request.

Factual Basis:

This amendment is necessary to repeal extraneous language.

Section 22-073.24

Specific Purpose:

The specific purpose of this amendment is to state that the county shall "advise SHD" if an interpreter may be necessary, rather than to "determine" if an interpreter will be necessary; and if a home hearing "might be appropriate" rather than "will be necessary."

Factual Basis:

This amendment is necessary because the county does not “determine” if an interpreter is necessary, but rather advises the SHD if an interpreter is needed and the SHD schedules an interpreter. Also, the county does not establish if a home hearing is needed, but rather advises the SHD that a home hearing might be needed and the SHD then determines if a home hearing is needed and should be scheduled.

Sections 22-073.242 and .242(a)

Specific Purpose:

The specific purpose of this amendment is to add the word "known" before changes in the claimant's address or other circumstances the county is responsible to report to the SHD.

Factual Basis:

This amendment is necessary because the county can only be held responsible to report changes in the claimant's address or other circumstances if it knows of such changes.

Section 22-073.253

Specific Purpose:

The specific purpose of this amendment is to clarify that if the county does not make the position statement available “at least” two days prior to the hearing rather than "not less than" two days prior to the hearing, the hearing shall be postponed at the claimant's request. Also, the purpose of this amendment is to repeal the definitional last sentence of this subsection which defines a modification as a “substantive revision” and in the previous sentence the term “substantially” is being added prior to the word “modifies” to read “substantially modifies the position statement....”

Factual Basis:

This amendment is necessary to use more concise language in describing the county duty when to make a position statement available.

The amendment repealing the definitional last sentence and instead substituting “substantially modifies” for “modifies” in the prior sentence, is necessary to more concisely state under what circumstances the county must make a position statement available at least two working days prior to the hearing. “Substantially” is substituted for “substantively”, because it more accurately reflects the State Hearings Division policy regarding when an Administrative Law Judge should postpone a hearing at the claimant’s request.

**Final Modification:**

***As a result of public testimony received, the proposed changes regarding modification of the position statement are being deleted. Also, this section is amended to delete the adverb "substantially" and to reinsert the last sentence in Section 22-073.253.***

Section 22-073.26

Specific Purpose:

The specific purpose of this amendment is to repeal the phrase "While preparing for the hearing" in describing the duty of a county representative to determine if a county eligibility worker or other witness would be helpful at the hearing and to add a phrase stating that the county representative may have any such persons available as witnesses at the hearing.

Factual Basis:

This amendment is necessary because:

- a) The phrase "while preparing for the hearing" is self-evident and gratuitous; and
- b) Once the county representative determines any such persons may be helpful to resolve an issue, the county may choose to have such persons as witnesses at the hearing.

Sections 22-073.35 and .37

Specific Purpose:

The specific purpose of this amendment is to move the second sentence of the current Section 22-073.35, which refers to the county representative having the authority to make binding stipulations, to its own Section 22-073.37.

Factual Basis:

This amendment is necessary because the first sentence of Section 22-073.35 addresses the county representative's responsibility to have the case record available at the hearing, which is unrelated to the county representative's authority to make binding stipulations. Since Section 22-073.3 addresses all county representative responsibilities at the hearing, each individual responsibility needs its own subsection rather than combining two unrelated duties into one subsection.

Section 22-074, Section 22-075, and Section 22-076 -- Repealed

Specific Purpose:

The specific purpose of this amendment is to repeal Section 22-074, Section 22-075, and Section 22-076 that provide for preliminary hearings by the county.

Factual Basis:

This action is necessary to repeal the preliminary hearing process. There has been a preliminary hearing process in effect for over 20 years. That process has rarely been used. The initial purpose of that process was to give counties the opportunity to resolve issues at a local level hearing to reduce state hearing caseload. Since that process has rarely been utilized and has not resulted in reduced hearings, the Department has determined that these regulations should be repealed.

Section 22-077.1

Specific Purpose:

The specific purpose is to repeal reference to “the welfare department” when referring to the responsible county when the hearing is not held in that county. Also, to replace the term “choose” with the phrase “comply with.”

Factual Basis:

This amendment is necessary for clarity because not all counties refer to the county department responsible for social services as the “welfare department,” and to more accurately state the county’s duty when a hearing is held in a county other than the responsible county.

Sections 22-077.12, .121 and .122

Specific Purpose:

The specific purpose of this amendment is to clarify that at a minimum, the position statement must meet the requirements set forth in Section 22-073.251. These amendments are also being made to repeal Sections 22-073.121 and .122 because they are redundant and incomplete.

Factual Basis:

This amendment is necessary because when a county submits a position statement when it is not present at the hearing, the position statement must meet the requirements of Section 22-073.251. Sections 22-073.121 and 22-073.122 are redundant in that they repeat some of the requirements set forth in Section 22-073.251 and are incomplete in that they fail to include all the requirements of Section 22-073.251.

Section 22-077.123 -- Renumbered to Section 22-077.121

Specific Purpose/Factual Basis:

This renumbering is necessary for consistency of format and ease of use.

Section 22-077.124 -- Renumbered to Section 22-077.122

Specific Purpose:

The specific purpose of this amendment is to renumber the section for consistency and to repeal language requiring the county to provide instructions that the position statement and attachments be presented to the ALJ at the hearing. The renumbering is necessary for consistency of format and ease of use.

Factual Basis:

This amendment is necessary for consistency in numbering and to repeal gratuitous language requiring the county that mails a position statement in an out-of-county case to provide instructions that the statement and attachments be given to the ALJ at the time of hearing.

Section 22-077.125 -- Renumbered to Section 22-077.123

Specific Purpose/Factual Basis:

This renumbering is necessary for consistency of format and ease of use.

Section 22-077.13

Specific Purpose:

The specific purpose is to repeal reference to "the welfare department" when referring to the responsible county when the hearing is not held in that county.

Factual Basis:

This amendment is necessary because not all counties refer to the county department responsible for social services as the "welfare department".

Section 22-077.2

Specific Purpose:

The specific purpose of this adoption is to add a new Section 22-077.2 permitting the responsible county to participate in the hearing by telephone when the hearing is not held in the responsible county.

Factual Basis:

This adoption is necessary to permit the responsible county to participate in the hearing by telephone in lieu of only submitting a position statement when the hearing is not held in the county responsible for aid. This allows the responsible county to verbally explain its actions and also provides the claimant an opportunity to confront and cross-examine the county that took the action which the claimant is disputing.

Section 22-078.13

Specific Purpose:

The specific purpose of this amendment is to substitute the phrase “rehearing decision is issued” for “rehearing is subsequently rendered” and to refer to “that” rehearing decision instead of “such” rehearing decision.

Factual Basis:

These amendments are necessary because the prior language lacked clarity and the new language more accurately reflects the requirement that the county comply with the rehearing decision.

Section 22-078.22 -- Repealed

Specific Purpose/Factual Basis:

This repeal is necessary because neither the CDSS nor the CDHS need the county to inform them of the claimant's right to contact the applicable department nor the claimant's right to, nor procedures for, requesting a state hearing.

Sections 22-078.23 and .231 -- Renumbered

Specific Purpose/Factual Basis:

Sections 22-078.23 and .231 are being renumbered to Sections 22-078.22 and.221, respectively for consistency of format and ease of use.

Section 22-078.4

Specific Purpose:

The specific purpose of this amendment is to specify actions CDSS is authorized to take, including seeking injunctive relief, as appropriate, when a county has failed to comply with a hearing decision.

Factual Basis:

This amendment is necessary to reference and emphasize remedies available to CDSS to ensure county compliance.

**Final Modification:**

**As a result of testimony received, the Department is adding the phrase "in Superior Court" as where the Department could seek injunctive relief if a county does not comply with a hearing decision.**

Section 22-078.62

Specific Purpose:

The specific purpose of this amendment is to state that the CDSS or CDHS "shall" send a notice to the county when its compliance is not appropriate rather than "will" send notice.

Factual Basis:

This amendment is necessary for clarity to confirm that CDSS or CDHS must send notice when the county compliance is not appropriate.

Section 22-085.1

Specific Purpose:

The specific purpose of this amendment is to permit a claimant to authorize a person "or organization" to represent him/her at a hearing.

Factual Basis:

This amendment is necessary to permit an organization, as well as a person, to represent a claimant at a hearing. This amendment is also necessary to be consistent with Section 22-001(a)(6) which defines an authorized representative as an individual or organization.

Section 22-085.12

Specific Purpose/Factual Basis:

The cross-references to Sections 22-085.22 and .221 are amended to reflect the amendments being made to this section.

Sections 22-085.2, .21, .211, .22, .221, and.222

Specific Purpose:

The specific purpose of these amendments is to permit the attorney who has not received written authorization from the mentally competent claimant to proceed with the hearing upon stating on the hearing record that the mentally competent claimant has authorized him/her to act as the representative. A non-attorney must still provide a written authorization from a mentally competent claimant. Under Section 22-085.221, the time limit for submitting the authorized representative form has been increased from five to ten days.

Factual Basis:

The current regulations require an attorney to submit a written authorization from the claimant post hearing. The new language in Sections 22-085.21 and .211 requires only that the attorney state on the record that the claimant is mentally competent and has authorized the attorney to act on his/her behalf. This will align the regulations with the practice in courtrooms and other administrative hearings. The time frame for submitting an authorized representative form contained in Section 22-085.221 has been increased to ten days because there are often delays in the authorized representative obtaining, or the ALJ receiving, the authorized representative form.

New Sections 22-085.22, .221 and .222 are reworded for clarity, but make no substantive changes to the prior regulations as those regulations apply to non-attorneys, except that they permit submission of the written authorization in 10 days rather than five days.

**Final Modification:**

**Section 22-085.211 is deleted and replaced by new Section 22-085.24. Section 22-085.24 uniformly deals with both attorneys and non-attorneys who fail or decline to state on the record that a claimant is mentally competent and has authorized the purported representative to act on his or her behalf.**

Sections 22-085.21, .22 and .221 -- Repealed

Specific Purpose/Factual Basis:

These sections are being repealed and are reworded in accordance with the specific purpose and factual basis as described in Section 22-085.2 above.

**Section 22-085.24 (Post-hearing Modification)**

**Specific Purpose:**

**This section is adopted to state the consequences when a purported authorized representative without an authorized representative form fails or declines to state that**

a mentally competent claimant has authorized him or her to act as authorized representative.

**Factual Basis:**

This section is necessary to clarify that if any purported authorized representative, attorney or non-attorney, does not state on the record that the claimant is mentally competent and has authorized the purported authorized representative to act on his or her behalf, the hearing will not proceed and the claim will be dismissed by written decision unless the claimant is mentally incompetent, in which case Section 22-085.23 will apply.

**Section 22-085.4 (Post-hearing Modification)**

**Specific Purpose:**

At the Department's discretion, this section is amended to clarify that after a county is notified of authorization of a representative, any subsequent notices and correspondence must be sent by the county to the claimant and his or her authorized representative simultaneously.

**Factual Basis:**

This amendment is necessary to clarify that all notices as well as correspondence must be mailed to the claimant and authorized representative simultaneously.

**Section 22-085.5 (Renumbered to .41 Post-hearing)**

**Specific Purpose:**

The specific purpose of this regulation is to add a new subsection requiring the county to send the authorized representative a copy of all notices and correspondence related to a conditional withdrawal or compliance with a state hearing decision.

**Factual Basis:**

Current Sections 22-085.3 and 4 require the county to provide notices, correspondence and decisions to the authorized representative concerning the state hearing. These sections do not clearly state whether the county has a duty to notify the authorized representative of any action regarding the state hearing once a conditional withdrawal is signed or once the county either submits a compliance report to the state or sends a notice of action on a compliance related issue. This adoption is necessary to clarify that the county must provide notice or correspondence to the authorized representative following a conditional withdrawal or a compliance.

**Final Modification:**

**At the Department's discretion, this section is reformatted under Section 22-085.4 and renumbered to .41. The section is amended to clarify that counties shall also send to the claimant and authorized representative any notices or correspondence related to a conditional withdrawal or compliance with a state hearing decision.**

Chapter 22-900 and Section 22-901

Specific Purpose:

This regulation is adopted to specify that the regulatory amendments referenced in the regulation only apply to notices of action issued after the date specified in the regulation.

Factual Basis:

This regulation is necessary in order to clarify the application of the referenced amendments. A date certain following filing with the Secretary of State is necessary in order to allow CDSS to give counties advance notice of the specific effective date of the provision and to allow counties to review their practices and translated forms provided by CDSS prior to that date.

**Final Modification:**

**As a result of testimony received and at the Department's discretion, the Department has amended Section 22-901.1 to provide that the amendments related to language-compliant notices shall be implemented after filing with the Secretary of State.**

b) Identification of Documents Upon Which Department Is Relying

7 CFR 273.15(a)(4), (b), (c), and (k)(2)(i)

c) Local Mandate Statement

These regulations impose a mandate upon county welfare departments but not upon school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500 et. seq. of the Government Code.

d) Statement of Alternatives Considered

The 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 as and less burdensome to affected private persons than the proposed action.

e) Significant Adverse Economic Impact On Business

The CDSS has determined 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.

f) Testimony and Response

Comments from testifiers and the Department's responses as a result of the January 25, 2006 public hearing follow. Written testimony was received from 1) Neighborhood Legal Services of Los Angeles County (NLSLAC), 2) Los Angeles County Department of Public Social Services (LACDPSS), 3) Western Center on Law and Poverty (WCLP), 4) Protection and Advocacy, Inc. (PAI), and 5) co-joined comments from Legal Services of Northern California and the Coalition of California Welfare Rights Organizations (LSNC/CCWRO). Comments are summarized and responded to in numerical order.

General Comment #1:

NCLS/CCWRO commented that "...intended to overhaul the state regulations omit the process development to provide emergency hearings (i.e. outside the regular hearing queue for the county), when emergency benefits or other emergency need requires a faster resolution of the issue." WCLP testified re: hearings for emergency benefits, "Please add a section outlining procedures for handling emergency hearings for emergency benefits. The Department recognized the need for expedited hearings in its January 19, 2004 All County Appeals Letter. Please incorporate those procedures in this regulation packet."

Response:

This comment is beyond the scope of these regulations; however, the Department is considering addressing this issue in a subsequent regulation package.

General Comment #2:

NLSLAC testified "...the proposed comments indicate (Continued) when there are no changes. However, there are omitted sections throughout. For example, under Division 22-001 – Definitions, a.4., 'Alternate Decision' is neither changed nor 'Continued.' In such instances, we assume the provisions will remain and should be identified as 'Continued.'"

Response:

The testifier's assumption is correct.

1) Section 22-001(a)(1)(A)

Comment:

LADPSS testified by recommending that this definition cite the social service programs that have a specific definition of adequate notice for that specific program.

Response:

The Department is withdrawing the proposed section, so no additional citations are necessary.

Comment:

NLSLAC testified that "[T]his section defines adequate notice. The definition of 'adequate' should always include that the notice is in the person's primary language. Please add [the italicized language] to the definition:

*"When a public social service program has a specific definition of adequate notice, the notice shall meet those requirements to be deemed adequate, provided that it is in the person's primary language when required, or has been interpreted into that primary language when requested."*

"In addition, we believe that a notice adopted in another program should not automatically be presumed adequate. Often, a notice used in a social service programs will reflect a mandate from the legislature to provide particular information to beneficiaries of the program. There is no guarantee that a notice mandated by the Legislature, for a particular social service program, will meet the requirements of section (a) (1). We suggest the section conclude with:

*"When a public social service program has a specific definition of adequate notice, the notice shall meet those requirements to be deemed adequate, provided that it is in the person's primary language when required, or has been interpreted into that primary language when requested. To be deemed adequate, a notice must "meet the requirements of [S]ection 22-001(a)(1)."*

Response:

Please see the previous response. In addition, there is no basis for revising the "adequate notice" definition to require that the notice be in the recipient's primary language. Adequate notice is a requirement of constitutional due process, and being in the recipient's primary

language has been held to not be a required element of constitutional due process. See Guerrero v. Carleson, 9 Cal.3d 808 (1973).

2) Section 22-001(a)(3)

Comment:

LSNC/CCWRO testified that this section should include the California Food Assistance Program (CFAP).

Response:

The Department agrees and is adding the California Food Assistance Program (CFAP) to the definition.

3) Section 22-001(a)(3)(A)

Comment:

PAI testified that "[T]he section should be further amended to include disputes concerning child support."

Response:

The Department disagrees because these are issues governed by the California Department of Child Support Services.

4) Section 22-001(a)(6)(A)

Comment:

NLSLAC indicated that this section defines authorized representative. For the sake of clarity, we suggest that "other spokesperson" be followed by:

"including a non-attorney or legal counsel such as a paralegal."

Response:

The Department disagrees and will not be amending the regulations because the proposed amendment is unnecessary.

5) Section 22-001(c)(3)

Comment:

NCLS/CCWRO testified that "[W]e support the agency's distinguishing issues "compliance-related issues" (those not resolved in the prior state hearing decision or which resulted from the prior hearing decision but require the county to make further determinations, and which are subject to hearing) from 'compliance issues' (those which involve enforcement of compliance with decisions, which are *not* subject to hearing).

We find the use of similar terminology to be confusing, however, in particular, since "compliance related issue" does not accurately describe unresolved issues or subsequent county actions. We recommend changing (c)(4) to "Post-Hearing Issues" for clarity."

Response:

The Department disagrees because the term "post-hearing issues" is not clear and potentially more confusing. Further, the comment is outside the scope of these regulations since the definition in Section 22-001(c)(4) has not been amended.

6) Section 22-001(d)(2)(B)

Comment:

LSNC/CCWRO testified by providing a modification to the regulation as indicated by italics: A proposed decision by an ALJ which has been adopted *as final* by the Director."

Response:

The Department agrees and is making the suggested change.

7) Section 22-001(d)(2)(C)

Comment:

LSNC/CCWRO testified by suggesting that the Department:

- a. Add a sentence: "the alternated decision is the final decision of the agency."
- b. This regulation also should have a subsection that states the Director cannot change the findings of fact. Only the ALJ present for the testimony may make findings of fact.

Response:

The Department has considered the testifier's comment and is adding the phrase "and has been adopted as final" for clarity. However, the Department disagrees with the second comment because this is a definition section only and not the proper place for substantive provisions. In addition, Welfare and Institutions Code Section 10959 authorizes alternate decisions to be decided on the record, with or without taking additional evidence.

8) Section 22-001(f)(2)

Comment:

LSNC/CCWRO testified that "[G]iven the changes to 22-001(d)(2), section (f)(2) 'Final Decision' should be deleted and consolidated with section (d). In the alternative, a definition of 'final decision' can be maintained, but should then include *all* forms of final decision (i.e. ALJ decision not subject to Director review, Director's decision and Director's alternated decision). It is confusing to have a "final decision" that does not encompass all the forms of final agency decisions."

Response:

The Department is amending this section to provide that a final decision is one that is not subject to review prior to issuance, to contrast the final decision with the proposed decision, which is subject to review before issuance.

9) Section 22-001(g)[sic] should be (a)(5)

Comment:

NLSLAC testified that "[T]his section defines attorney and should be expanded. As of November 15, 2004, new California Rules of Court 964, 965, 966 and 967 permit certain categories of attorneys not licensed in California ('non-California attorneys') to practice here to a limited extent. These include: Attorneys working for a qualified legal services provider (rule 964); attorneys working as in-house counsel for a qualifying institution (rule 965); attorneys practicing law temporarily in California as part of litigation (rule 966); and non-litigating attorneys temporarily in California to provide legal services (rule 967). These individuals should be included in the definition of 'Attorney.' Please modify this section as follows:

"active member of the California State Bar, and attorneys not licensed in California but admitted pursuant to Multijurisdictional Rules."

Response:

The Department disagrees. The term "attorney" is defined for the sole purpose of allowing an active member of the California State Bar to act as an authorized representative without obtaining an authorized representative form.

10) Section 22-001(p)(1)

Comment:

WCLP testified that "A precedent decision does not have the same force and effect as a regulation. An agency may designate a decision as a precedent decision if it contains a significant legal or policy determination of general application that is likely to recur. Govt. Code section 11425.60b. However, the designation is not rulemaking and is not subject to the requirements set forth in the adoption of regulations. Govt. Code section 11340 et seq. An agency may not by precedent decision revise or amend an existing regulation or adopt a rule that has no adequate legislative basis. Govt. Code section 11425.60. Please give 'precedent decisions' its own definition. We suggest you use language provided by the Legal Services of Northern California."

Response:

The Department has decided to delete the last sentence of Section 22-002(p)(1) because the sentence is not necessary to define the term. Precedent decisions have binding effect as specified in Government Code Section 11425.60.

Comment:

LSNC/CCWRO testified regarding giving precedent decisions an affect the same as a regulation. "Regulations are specifically subject to the state APA, and if the agency were to treat a decision as a regulation, it would have to go through public comment. Precedent decisions are just examples that can be cited in similar cases; they can be distinguished, and not followed. They interpret regulations and/or are policy determinations, neither of which can have the force and affect of a regulation. Allowing policy determinations issued as a precedent decision to be binding in the same manner as regulations would permit the legitimization of underground regulations."

Response:

Please see response immediately above.

Comment:

NLSLAC testified that "[T]his section defines Precedent Decision and we take issue with the section for two reasons.

**There are no Procedures for Designation or Publication of Decision**

"There are no instructions or standards as to how and when the Director would designate a particular decision as a precedent decision; there is only reference to the California Administrative Procedures Act. Please provide language to clarify when and how precedent decisions will be adopted, the standards to be used, and how they are to be circulated to and accessed by the public.

**Precedent Decisions do Not Carry the Weight of Regulations.**

"The section concludes with, "A precedent decision shall have the same force and effect as a regulation." Explicitly affording precedent decisions the weight of regulations is contrary to the Administrative Procedure Act and is misleading in its proposed phrasing. Precedent decisions are distinct from regulations in that they do not require rulemaking. Cal. Gov. Code § 11425.6. Precedent decisions articulate department policy and cannot involve the substantive rights found in regulations. *See Rea v. WCAB*, 25 Cal. App. 4th, 625 at 632 - 633 (2005) (proscribing use of precedent decision that conferred new procedures that "were more like regulations than precedent which contain general legal or policy determinations"). Accordingly, we urge you to omit the sentence, "*A precedent decision shall have the same force and effect as a regulation*," and instead include the following:

"A precedent decision, like all decisions, must be rendered in accordance with the law. The law includes the State and Federal Constitutions, statutes, and duly promulgated regulations, as well as the decisions of the State and Federal Courts. A precedent decision may be relied upon as an articulation of Department policy, but it cannot create new rights or procedures."

Response:

See above response. In addition, the Department is not required to specify how precedent decisions will be designated. Precedent decisions will be made available to the public as required under the Administrative Procedures Act.

11) Section 22-003.11

Comment:

LSNC/CCWRO testified that this section can be read as meaning that a person does not have a right to a *proposed* disqualification, and should be modified to read "There is no right to a state hearing regarding a *final decision imposing* a FS or CalWORKs administrative disqualification."

Response:

The comment is beyond the scope of these regulations and will not be addressed.

12) Section 22-003.13

Comment:

LSNC/CCWRO testified that "[T]he language remanding complaints of discourteous treatment should be left in. At a minimum, the ALJ's should inform the claimant's of the correct forum for resolution of these types of problems. By repealing the language, without requiring any further action, claimants may be left without any information on how to handle these types of problems."

Response:

The Department disagrees. The ALJ can provide no practical remedy for discourteous treatment. The term "remanded to the county for resolution" misleads claimants into believing they have a hearing right if dissatisfied with the county's resolution. The Department agrees that ALJs should inform claimants of the correct forum for resolution of these types of problems, but not in the form of a remand.

Comment:

WCLP testified by commenting, "Please do not delete the language regarding the remand of discourteous treatment to the CWD for resolution. Discourteous treatment is a serious issue, and an individual's rights may be impacted by such treatment. For example, I handled a case in which the discourteous treatment of an individual resulted in the violation of her civil rights. These cases should be remanded to the county for further investigation and resolution. Most counties want to resolve issues of discourteous treatment by disciplining the county employee using their own county policies. In addition, the ALJ should give the individual adequate referrals, such as the contact information to the Office of Civil Rights."

Response:

Please see previous response on this issue. Also, if the alleged discourteous treatment is an alleged civil rights violation, the ALJs will refer the matter to the Department's Civil Rights Bureau pursuant to MPP Section 21-203.

Comment:

NLSLAC testified that "[P]resently, Section 22-003.13 provides for the right to a hearing when discourteous treatment results in denial, termination, suspension, cancellation, discontinuance, or termination of aid. We do not think the clarifying language should be removed.

In addition, we urge the adoption of hearing rights when claimants are subjected to treatment that goes beyond mere discourteousness. When a county employee's behavior detrimentally infringes on a claimant's rights, that behavior should be subject to the hearings process. In Massachusetts, a recipient of aid may file an appeal based on 'coercive or

otherwise improper conduct.' The standard is set forth in the regulation, and is more objective than simply 'discourteous treatment.' Massachusetts provides:

106 CMR 343.235 Coercive or Otherwise Improper Conduct

(A Definitions

- (1) Coercive conduct means knowingly compelling an applicant, recipient or former recipient by force, threat, intimidation, or other abuse of position to take action which is injurious to his or her best interest and which he or she would not otherwise have done.
- (2) Improper conduct means reckless and unreasonable abuse of authority. Examples of improper conduct include, but are not limited to:
  - a. The worker recklessly and unreasonably violates a Department regulation or procedure in a manner which is directly injurious to the best interests of an applicant, recipient or former recipient.
  - b. The worker recklessly and unreasonably requires documents, visits or other actions by the applicant, recipient or former recipient which are not authorized by regulation or procedures of the Department.
  - c. The worker recklessly and unreasonably violates the confidentiality of the applicant, recipient or former recipient.
  - d. The worker recklessly and unreasonably fails to treat the applicant, recipient or former recipient with dignity and respect to which he or she is reasonably entitled.
  - e. The worker recklessly and unreasonably discourages the applicant, recipient or former recipient from applying for assistance or discourages the applicant, recipient or former recipient from inquiring concerning their rights or appealing.

We suggest that California adopt similar regulations."

Response:

Please see previous responses.

13) Section 22-004.21

Comment:

LADPSS provided alternate language rephrased as:

"A written request for hearing may be made in any form, including, but not limited to, the reverse side of the Notice of Action (NOA)."

Response:

The Department agrees and has made the suggested language change.

14) Section 22-004.212

Comment:

NCLS/CCWRO testified that this section "should include a provision tolling the time to request a hearing if a worker improperly fails or refuses to assist a claimant in requesting a hearing, by the amount of additional time it took for the claimant to be able to request a hearing without this assistance."

Response:

This comment is beyond the scope of the regulations, since this section is only renumbered.

15) Section 22-004.22

Comment:

NCLS/CCWRO testified that the word "enter" is missing in the phrase "...Judge to [enter] directly online the hearing request into the state hearing computer system."

Response:

The Department agrees and is amending the language for clarity.

16) Section 22-004.41

Comment:

NCLS/CCWRO testified that "legal representative" has a specific meaning in the Probate Code (Section 2632 and 10953) and recommended just using the term "representative" of the estate instead, or, to follow Probate Code, "personal representative." The correct reference, at the end of this section, should be to Section 24 of the code (not Section 44), and should include Section 58 (personal representative).

Response:

The Department agrees, in part, and is changing the term "legal representative" to "representative." The Department disagrees with the comment on the Probate Code reference. Welfare and Institutions Code Section 10965 refers to "legal representative" or "heir," and Probate Code Section 44 defines the term "heir."

Comment:

NLSLAC testified that "[T]his section should reflect federal Food Stamp regulations. In a Food Stamp case, a head of household or an authorized representative, neither of whom may be related to the decedent, should also be allowed to pursue the case. See 7 CFR §§ 273.1(d)(1), 273.1(f), and 274.5. Thus, in addition to incorporating Legal Services of Northern California's comments, we recommend adding:

"and authorized representative or head of household for purposes of food stamp cases."

Response:

The Department disagrees. The proposed revision is not necessary for consistency with Food Stamp law.

17) Section 22-009

Comment:

NCLS/CCWRO testified that "[T]here should be a section that declares when a county has translated a Notice of Action into a language not issued by the CDSS, that the County is required to use such a translated notice for the notice to be considered "language compliant." ALJ's should inquire into whether counties have developed such translations when claimants speak a language not supported by the state."

Response:

The Department disagrees. The purpose of the language-compliant regulation is to further compliance with the Department's Civil Rights regulations, which only require counties to use written translations that the Department provides.

18) Section 22-009.1

Comment:

NCLS/CCWRO testified that "[T]here should be a subsection to 22-009.1 that addresses when the claimant did not have access to "appropriate bilingual services" (MPP § 21-115 .1 and .15) to translate a notice sent in English. There are many notices the state does not translate, and many languages that the state does not support. In addition, many recipients do not have a written language or are not literate in the written language. The notice would

be “language compliant” as currently defined in the regulations, but not compliant with Division 21, if there was no language access for oral interpretation in these cases. Such a circumstance similarly would toll the 90 days to request a hearing; the person lacks access to an understandable notice in the same way as someone who did not receive a notice in a language the state supports for translation.”

Response:

The Department is revising the definition of language-compliant to include an interpretive services provision as stated in Section 22-001(1).

Comment:

WCLP testified by commenting that “[W]e support the Legal Services of Northern California’s comment that there be a subsection to 22-009.1 addressing when the claimant did not have access to “appropriate bilingual services” (MPP § 21-115 .1 and .15). As a legal advocate, I have represented individuals who speak uncommon dialects. In one case the county provided a notice of action in Spanish and refused to provide a translation of the notice citing that there was no one on staff that spoke that dialect. Please make “language compliant” consistent with Division 21 regulations.”

Response:

The Department is revising the definition of language-compliant to include an interpretive services provision as stated in Section 22-001(1)(1).

19) Section 22-009.11

Comment:

NCLS/CCWRO testified that “[T]he italicized language should be clarified, to reflect that if either the notice is inadequate and/or not language compliant, the hearing request shall be considered timely regardless of when filed.”

“...If adequate notice was required but not provided, or if the notice is *not adequate and language-compliant*, any hearing request (including an otherwise untimely hearing request) shall be deemed to be a timely hearing request.”

“As written, it could be read that the notice must be BOTH inadequate AND language non-compliant to toll the 90 days. If the notice is adequate (in English) but it not language compliant, it has the same effect as an inadequate notice regarding the time to request a hearing.”

Response:

The Department agrees and is amending the regulation for clarity.

Comment:

WCLP testified that "[T]he wording of this section is confusing, and suggests that the 90 day filing deadline does not apply when notices are not adequate AND language compliant. Please amend this section to reflect that the 90 day deadline does not apply when 1) notice was required but not provided; *or* 2) the notice was provided but was not adequate; *or* 3) the notice was provided but was not language complaint."

Response:

Please see previous response.

Comment:

PAI testified that this section "should be further amended to make clear that just as the time to appeal can be extended by the failure to provide an adequate or language-compliant notice, so too will the scope of the retroactive relief be extended. Further, when "inaction" referenced in current Section 22-009.1 is the failure to provide adequate notice of program or service availability and late application for services or benefits is directly caused by such failure, then the claimants should be entitled to relief from the date they would have been entitled to benefits but for the County's or State's failure."

The testifier added that "[W]e propose the following changes (additions in italics) to clarify the scope of the ALJ's authority in appropriate cases:

- .11 If the claimant received an adequate and language-compliant notice of the county action, the request for hearing shall be filed within 90 days after the notice was mailed or given to the claimant. If adequate notice was required but not provided, or if the notice is not adequate and language-compliant, any hearing request (including an otherwise untimely hearing request) shall be deemed to be a timely hearing request *and retroactive relief shall be provided consistent with when an adequate and language-compliant notice should have been provided.*
- .12 *If the County or State fails in its obligation to inform the claimant about the availability of a program or service, and if the claimant establishes that he or she delayed applying for the service because of the failure to inform the claimant about such program or service availability and the claimant establishes that he or she was eligible for and would have received such program or services but for the State or County's failure to meet the obligation to inform, then the claimant shall be entitled to retroactive relief back to when the claimant would have been first entitled to such services or program benefits."*

".13 [same]"

Response:

The Department disagrees with the testifier's comment. The purpose of this section is to determine whether the ALJ has jurisdiction to hear the merits of the claim, not to establish the scope of substantive relief.

Comment:

NLSLAC testified that they "agree with comments submitted by Legal Services of Northern California and are pleased to see language compliance added to the adequacy of notice requirement. We would like to reiterate the point here. 22-009.11 begins, "*If the claimant received an adequate and language compliant notice... .*" The notice may be deficient if either adequacy or language compliant requirements are not met. Accordingly, we suggest you change the clause to:

*"If the claimant received a notice that was both adequate and language-compliant, the request for hearing shall be filed within 90 days after the notice was mailed or given to the claimant."*

Also, the next sentence is confusing. We propose rewording it to read:

Any hearing request, including an otherwise untimely hearing request, shall be deemed timely, if:

.111 the notice provided was not adequate; or

.112 the notice provided was not language compliant.

Response:

Please see the response to the first comment for this section by NCLS/CCWRO.

20) Section 22-009.2

Comment:

NCLS/CCWRO testified that "[T]his section should be modified to limit the 90 "look back" for a hearing review of current aid to circumstances when 1) no notice was provided regarding the change, and 2) an adequate and timely notice was issued that provides insufficient information for the claimant to have raised the issue. For example of #2: if a person receives a food stamp budget change notice, but there is no information provided that the person has a right to a excess shelter or child care deduction, and these items were not included in reducing the amount of aid, though the person could be limited to a 90 day review period for the issue (for example, increased income) that *was* listed in the notice of change, it would not be appropriate to impose such a limitation on the calculation related to

the issues on which the claimant had no notice (in this example, of allowable income deductions). We recommend providing a second example to demonstrate this:

"Example #2: The County issues a Food Stamp change notice, based on an increase in income. The budget does not list the amounts used for all the income deductions and adjustments allowed by the food stamps program. The NOA thus does not list any line item for excess shelter or childcare payments. The claimant would have a 90-day look back period for the income change amount. However, as the claimant was not advised that the county, in effect, was budgeting \$0 for the income deduction items, the claimant did not have timely or adequate notice on these issues. The date of the NOA therefore does *not* start the 90-day period of review for the issue of income deductions."

Response:

The Department disagrees. If adequate/language-compliant notice was required but not provided, Section 22-009.11 applies to allow for unlimited jurisdiction. If adequate/language-compliant notice was provided, the notice by definition is sufficient for hearing purposes, and the time limit in Section 22-009.11 applies. The purpose of Section 22-009.2 is to address a recipient's hearing rights concerning the current amount of aid, including when jurisdiction is not available under Section 22-009.11.

Comment:

LADPSS testified that this section "provides the limitations for conducting a review of the current amount of aid which may extend back as many as 90 days from the date the request is filed. This regulation also provides for a review when the claimant has not filed a request within 90 days of a notice of action which requires a dismissal of the hearing request. While the review of the current amount of aid is not disputed, for clarification of jurisdiction, it is suggested that the regulation be rephrased to limit the 90 day review to any reported change that has occurred during the review period upon which the county has failed to act."

Response:

The Department disagrees. The claimant's right to a hearing under Section 22-009.2 provides for review of the current amount of aid. This means that the claimant has the right to have the current amount of aid reviewed, as to the facts that occurred during the review period. The regulation is not limited to reported changes that occurred during the review period upon which the county failed to act.

Comment:

NLSLAC testified that "[T]his section, which limits the review period for current aid to 90 days, violates Food Stamp rules at 7 CFR § 273.17. This regulation provides for restoration of lost benefits in certain specified situations, including when the loss is a result of State agency error or through reversal of an IPV determination. An individual is also entitled to up to 12 months restoration of benefits from the date a household requests restoration or the

date the State agency discovers a loss. Accordingly, in addition to Legal Services of Northern California's comments, this section should include a provision as follows:

"With respect to Food Stamp cases, the review shall extend back as necessary to correct benefits lost as a result of State agency error or reversal of an IPV determination, and up to 12 months from the date the State agency receives a household request for restoration or the date the State agency is notified or discovers the loss to the household."

In addition, the last sentence of this section restricts the look back period as to facts to 90 days. Yet the facts at issue may have occurred prior to the effective date of the action—such as failure to turn in a QR-7 which results in a loss of aid and NOA within the 90 days. This sentence should be stricken or modified to state that occurred *or had a legal effect* during the review period."

Response:

The Department disagrees. The time limit for hearing requests regarding Food Stamp cases is addressed in Section 22-009.12 (renumbered from .13). Section 22-009.2 is in addition to Section 22-009.12. Regarding the comment on the last sentence in Section 22-009.2, the Department also disagrees. Please see the response to the first comment on this section from NCLS/CCWRO.

Comment:

PAI testified that this section "should be further amended to make clear that just as the time to appeal can be extended by the failure to provide an adequate or language-compliant notice, so too will the scope of the retroactive relief be extended. Further, when "inaction" referenced in current Section 22-009.1 is the failure to provide adequate notice of program or service availability and late application for services or benefits is directly caused by such failure, then the claimants should be entitled to relief from the date they would have been entitled to benefits but for the County's or State's failure."

The testifier added that "[W]e propose the following changes (additions in italics) to clarify the scope of the ALJ's authority in appropriate cases:

".2 A recipient shall have the right to request a state hearing to review the current amount of aid. At the claimant's request, such review shall extend back as many as 90 days from the date the request for hearing is filed and shall include review of any benefits issued during the entire first month in the 90-day period. This review shall only apply to the facts that occurred during the review period. *If adequate notice was required but not provided, or if the notice is not adequate and language-compliant, such review shall extend back to the date of the initial action establishing the current amount of aid even if the review extends back more than 90 days from the date the request for hearing is filed.*"

Response:

The Department disagrees. The added language is unnecessary. Revised Section 22-009.11 already makes it clear that if adequate/language-compliant notice is required, but not provided, any hearing request is deemed a timely request.

21) Section 22-045.33

Comment:

NLSLAC testified that "[T]his section provides that a hearing may be postponed if either party has not received notice of the hearing within 10 days prior to the hearing date. We recommend that this postponement right be prominently incorporated into the body of the notice of hearing. Also, because claimants are not likely to be aware of this right, ALJs should affirmatively inform them about this right."

Response:

The Department disagrees. The Department considers this suggestion unnecessary.

22) Section 22-049.1

Comment:

LADPSS suggested that this section on page 106 of the Department's Manual of Policies and Procedures, Confidentiality, Fraud, Civil Rights, and State Hearings (CFC) to include the changes in the definition of "authorized representative" cited in Section 22-001(a)(6)(A) to:

"Attendance at the hearing is ordinarily limited to the claimant, authorized representative (as defined in Section 22-001(a)(6)(A)), county representative, attorney, authorized interpreter, and witnesses relevant to the issue."

Response:

The Department agrees, in part, to the testimony received. The cross-reference will be corrected, as suggested. However, the term "legal counsel" will not be changed to "attorney" in order to keep the current flexibility provided by the term "legal counsel."

23) Section 22-049.52

Comment:

PAI testified that "[T]here should be the option to raise the adequacy of the notice with the Presiding Judge *before* the hearing just as proposed Section 22-049.531 provides the question of jurisdiction may be raised with the Presiding Administrative Law Judge in advance of the hearing. Whether there is a notice at all or whether the notice is adequate and language-compliant in most cases may be determined by a paper review. Further, since "[t]he purpose of notice under the Due Process Clause is to apprise the affected individual

of, and permit adequate preparation for, an impending hearing” – *Memphis Light, Gas & Water Division v. Craft* (1978) 436 U.S. 1, 16 – providing an opportunity for the County or State to be directed to provide a reason for an action or proposed inaction gives the claimant a better opportunity to tailor and present his or her case in the fair hearing. What is “adequate” is properly measured by whether it provides the kind of information that enables a claimant to present an effective case in terms of argument and evidence addressing the identified reason for the adverse action.

"Some mechanism for addressing the lack of notice before the hearing is necessary to enable claimants to go forward with the hearing and not be subject to unwanted delay. The *Jackson v. Rank* settlement provides that when a Treatment Authorization Request is denied, a notice is to go to the claimant. That never happens. Further, when claimants request an assessment to determine eligibility for protective supervision and the County determines the person is ineligible for protective supervision, our experience is that no notice is given explaining why the County determined ineligibility.

"Some mechanism for addressing the inadequacy of notice is also necessary. Again looking at IHSS notices of action, we often see as the “reason” a nonsequitor phrase that gives no useful information that could reasonably be interpreted as clue as to how that phrase relates to a reason for a reduction in services. Claimants should not have to guess as to at [sic] the reason. Claimants should not have to prepare to respond to all the possible reasons that may be put forward as grounds for the adverse action. Claimants should not [sic] It is not acceptable that claimants often have to wait until two days before the hearing – or to the day of the hearing itself in scope Medi-Cal hearings – to find out the reason for the adverse action."

Response:

The Department disagrees. An evidentiary hearing is the process for determining the adequacy of a Notice of Action.

24) Section 22-049.531

Comment:

WCLP testified that this section and Section 22-049.532 "... provide that a party may ask the ALJ to limit the hearing to jurisdictional issues, and provide that substantive issues may be heard at a continued hearing. These requirements are prejudicial to low income unrepresented individuals. First, unrepresented individuals do not know the difference between substantive and jurisdictional issues. I have had clients come into my office showing me a notice of collection for an overpayment that was assessed many years ago. However, the client never received proper notice of initial overpayment. Limiting a hearing to only the jurisdictional issue creates a situation in which the ALJ at a hearing is “forced” to consider only whether the client appealed within 90 days of the initial notice of action. Second, low income individuals cannot afford to take off multiple days of from work to travel to a hearing location. In Los Angeles County, public transportation leaves much to be desired. It can take 3 hours for a person to travel from the San Fernando Valley to

downtown Los Angeles, where hearings are held. If individuals drive, parking can exceed \$20/day. Subjecting an individual to a continued hearing taxes those who are in already in a dire situation. Please eliminate these sections."

Response:

The Department disagrees. Before a Presiding ALJ would limit the issue at hearing to the jurisdictional issue, the county would have to present a *prima facie* case that adequate notice was issued. If, e.g., the county could only present evidence that a collection notice was issued, the request to limit the issue to the jurisdictional issue would be denied. If a second hearing on the merits is required, the claimant may request a hearing by telephone or video conference, if transportation is an issue.

Comment:

NLSLAC testified that "[T]his section provides that a party may ask that the ALJ limit the hearing to the jurisdictional issues. If such a request is made, the other party should have notice of it and be given an opportunity to submit written argument in advance of the hearing on the issue. Please add such procedures to the regulations. Otherwise, claimants will be at a serious disadvantage as such requests are most likely to come from the County. Delaying hearings on the substantive issues will harm claimants more often than not, so their rights to be heard should be protected by some mechanism to challenge the ALJ's decision to limit the issues.

Response:

The Department agrees in part and is revising the regulation to require a copy of the bifurcation request to be sent to the other party. Also see the immediately preceding response.

25) Section 22-051.11

Comment:

NLSLAC testified on a regulation that is not a part of these regulations. The testifier commented that this section should be amended to provide that the County may not use evidence that has not been made available to the claimant and proposed an addition that reads:

22-051.xx"If the claimant is denied permission to see any portion of her file, the Department may not take any adverse action based on that information."

Response:

The comment is beyond the scope of the regulations and will not be addressed.

26) Section 22-051.3

Comment:

LSNC/CCWRO testified that this section "provides that a county may charge the cost of reproduction of 'the specific policy materials, including regulations, necessary for an applicant or recipient, or his/her authorized representative, to determine whether a state hearing should be requested or to prepare for a state hearing.' The county, however, must assist the claimant by providing any exculpatory evidence, and must put all evidence (free of charge to the claimant) in the position statement. It therefore makes no sense to state that the county can charge for documents which it is required to provide to the claimant for free. At a minimum, this section must be amended to provide that 1) the claimant has the right to review such materials prior to the hearing, parallel to Section 22-051.1; 2) if the county proposes to charge the claimant, that the county inform the claimant of the procedure (Section 22-051.4) to request a subpoena of the needed documents."

Response:

The comment is beyond the scope of the regulations and will not be addressed.

27) Section 22-053.11

Comment:

LSNC/CCWRO testified that "the regulations should clarify what happens if the issues relate to BOTH the food stamp and other programs, explaining that the entire hearing would be postponed once, without good cause."

Response:

The Department agrees. The regulation will be amended to indicate, "If a hearing request includes an issue regarding the Food Stamp Program, a claimant's first request for a postponement made prior to the hearing shall be granted."

28) Section 22-053.112

Comment:

LNSLAC testified that they agree strongly with Legal Services of Northern California's comments with regard to good cause for County requests of postponement.

Response:

This section relates to claimant postponements only. Please see response to comment #32.

29) Section 22-053.113

Comment:

LNSLAC testified that "[T]his section enumerates examples of good cause for claimants. Lack of 10-day notice should be included. *See* 22-054.33. We also propose adding lack of transportation and lack of safe, affordable child care as good cause grounds for postponement. In Los Angeles County, a claimant who lives in Lancaster will have to travel 75 miles to the Hearings office in downtown Los Angeles. If there is a transit strike or some other set back, such a claimant has few options."

Response:

The Department disagrees. However, to further clarify that the list of good cause reasons is not exhaustive, the Department is deleting subsection (g) and revising .113 to specifically state that good cause reasons include, but are not limited to, those stated.

Comment:

PAI testified that " [T]he prefatory language should be amended to indicate the listing is illustrative – as is done in Section 22-054.222(a). Further, now that we are more than 30 years since the enactment of Section 504 of the Rehabilitation Act, there should be some recognition of the role that a person's disability limitations may play in requiring a postponement among other things as a reasonable accommodation. *See Richard McGary v. City of Portland*, 386 F.3d 1259 (9<sup>th</sup> Cir. 2004). Finally, there should be additional real world examples of good cause grounds for postponement – such as the need to secure representation or when as a practical matter, and agreement to represent must be contingent upon someone will provide representation conditioned on the hearing being postponed."

Response:

Please see prior response above.

30) Section 22-053.113(c)

Comment:

LSNC/CCWRO testified that this section should be broader. "Sometimes the lack of availability of the AR is anticipated, and thus not "sudden and unexpected." This is still good cause. (For example, by the time the person has his/her case reviewed and accepted for representation, the AR could be unavailable for the specific hearing date, or the person can

represent, but knows s/he will be out of town during the next hearing queue. These situations would still be good cause, as it would be unfair to penalize a claimant who has obtained a representative by not allowing the postponement."

Response:

Please see response to comment #29.

31) Section 22-053.113(f)

Comment:

PAI testified that "[H]ere or at Section 22-073 there should be a handbook section inserted to address what "available" means. For instance, what is the County's obligation when the claimant is having a home hearing and could not travel cross town to the Appeals Worker's office to get the position statement? The handbook section should explain that "available" includes available by fax or, with respect to the narrative, e-mail or in rare instances possibly hand delivery. Based on our experiences, there needs to be reminders about common courtesies. These are all reasonable steps that the County is obligated to take as a reasonable modification under the ADA, section 504 and California's anti-discrimination laws."

Response:

This comment is beyond the scope of the regulations and will not be addressed.

32) Section 22-053.12

Comment:

LSNC/CCWRO testified that this section "allows the county to request a postponement, which is granted or denied at the discretion of the ALJ. There are no standards when such a request is granted, in contrast to the section on postponements for claimants. Counties are proposing the action and thus should be fully prepared; all county requested postponements therefore should require good cause, and should specifically disallow time to prepare the case for hearing."

Response:

The Department disagrees. This section relates only to postponements at the hearing by the ALJ. Both the county and the claimant may be granted a postponement at the ALJ's discretion at the hearing. See Section 22-053.133.

33) Section 22-053.2

Comment:

LSNC/CCWRO testified that "[T]he regulations should provide that the ALJ's should not request that the record be held open (22-053.2) for reasons other than those set out at .2. For example, the ALJ should not have the claimant sign a waiver of time, when the need for additional time is because of the ALJ's schedule."

Response:

The comment is beyond the scope of the regulations and will not be addressed.

34) Section 22-053.4

Comment:

NLSLAC testified that "[T]he proposed hearing regulations at 22-053.4 provide for the continuance of aid pending only until the "next scheduled hearing," and the current regulations at 22-072.75 and the proposed regulations 22-072.64 and 22-053.42 sanction discontinuance of aid pending if the ALJ determines postponement is not for good cause. These provisions violate the due process safeguards mandated by *Goldberg v. Kelly*, 397 U.S. 254 (1970) and the provisions of 45 CFR § 205.10(a)(6), which provide the exclusive bases for not granting aid pending. To be meaningful, there must be a hearing and adverse decision before terminating aid. Taking a claimant so far as the hearing room's doorstep but not through and to the conclusion of the hearing would prematurely cease aid, thereby running afoul of *Goldberg's* constitutional requirements.

"Accordingly, these sections must be amended as follows:

Proposed regulations 22-053.41 and 22-053.43, 22-053.431:

Delete, wherever the words appear: *"until at least the next scheduled hearing"* and insert, in their stead: "until the issuance of a final adverse ALJ decision."

[Section] 22-053.42 must be deleted in its entirety."

Response:

The Department disagrees. The comment about "the next scheduled hearing" appears to be based on a misinterpretation of the language "at least until the next scheduled hearing." This language recognizes the fact that under Section 22-072.73, the ALJ may in specified circumstances terminate aid pending at the hearing. The comment about terminating aid pending for postponements without good cause misstates the cited law. Neither *Goldberg* nor the cited federal regulation deals with postponements. The Department's policy on this issue has a rational basis; that is, discouraging baseless postponements and avoiding stale

claims. The Department's alternative would be to deny no good cause postponement requests.

35) Section 22-054.211(b)(3)

Comment:

NCLS/CCWRO testified that this section (that is not a part of these regulations) "should provide for reinstating the hearing request when either party (county or claimant) reports a *verbal* conditional withdrawal, but then cannot agree to the terms of the written conditional withdrawal. This happens quite frequently with unrepresented claimants, who did not understand the terms of the settlement fully, until they were put in writing (or who state that the written terms do not reflect the oral agreement). In these circumstances, either party should be able to contact the FHD and request that the matter be rescheduled for hearing."

Response:

The comment is beyond the scope of the regulations and will not be addressed.

36) Section 22-054.22

Comment:

NCLS/CCWRO testified that "[I]f the only issue is a legal one, or where the factual issues are fully presented in the county's position statement, the claimant (directly or by his/her AR) should be permitted to submit the matter in writing. This should not be considered a dismissal.

Example: the county issued a notice terminating support services retroactively. The sole issue is whether the notice is adequate and timely. The county has attached the notice to its position statement, which indicates the date of the notice and the effective date of the action."

Response:

The Department disagrees. State law and departmental regulations require the claimant to appear in person or by authorized representative pursuant to Welfare and Institutions Code Sections 10950 and 10955 and MPP Section 22-049.11.

37) Section 22-054.222

Comment:

NLSLAC testified that "With good cause, dismissals may be set aside. We suggest that good cause reasons be enumerated. *See* 22-053.13."

Response:

The Department disagrees. The good cause reasons are already enumerated in Section 22-054.222(a)(2).

Comment:

PAI testified that "[T]he examples of good cause should include cognitive, mental or other disability limitations interfering with the ability to attend the hearing including disability limitations suggesting a need for a home hearing that perhaps should have been identified by the County pursuant to proposed Section 22-073.24."

Response:

Please see response to comment #29.

38) Section 22-061

Comment:

NCLS/CCWRO testified that this section "provides for the preparation of the proposed decision by an alternative judge. This section should also provide the claimant with the opportunity to have a rescheduled hearing. Only the judge present could make a determination of credibility based upon the demeanor of the witnesses."

Response:

The Department disagrees. The alternative of having a new oral hearing is already provided in Section 22-061.21.

39) Section 22-063.21

Comment:

NCLS/CCWRO testified that this section "should specify that the Director cannot change findings of fact, as s/he was not present at the hearing to make credibility determinations."

Response:

The Department disagrees. Pursuant to Welfare and Institutions Code Section 10959, after receiving a proposed decision, the Director may decide the matter on the record with or without taking additional evidence.

40) Section 22-064

Comment:

NCLS/CCWRO testified that this section "changes the recording requirement from "verbatim transcript" to "tape recording." We recommend not locking in the regulations to a tape recording, to include other technologies (digital or video recording for example). It also does not mention recording of telephone hearings."

Response:

The Department agrees and is deleting the word "tape." In addition, the Department is deleting the phrase "ALJ's proposed" to describe decision because the decision could be any of the three types of decisions of the Director.

Comment:

WCLP testified by commenting " Please do not change the recording requirement from "verbatim transcript" to "tape recording." The verbatim transcript can consist of a tape recording, video recording, and written transcripts. It does not make sense to limit this requirement to tape recordings given the new technologies that are available to us today."

Response:

See response to immediately prior comment above.

41) Section 22-065

Comment:

NLSLAC testified that "[A]advocates are routinely denied requests for rehearing. Clearer standards are necessary so that arbitrary denials may be avoided. The regulations should articulate when rehearing is appropriate and what standards the department will use in evaluating the request."

Response:

This comment is beyond the scope of the changes made to Section 22-065 and also is not required by Welfare and Institutions Code Section 10960.

42) Section 22-065.61

Comment:

NCLS/CCWRO testified that "A rehearing decision that renders the *first* decision on an issue should be subject to rehearing. For example, if the rehearing were granted because the first hearing did not address or decide an issue that was properly raised for hearing, the

rehearing actually would be the first instance hearing on the matter, and should not be barred from rehearing."

Response:

The Department agrees and has added an exception to permit a rehearing on an issue that was decided for the first time on the merits in the rehearing decision.

43) Section 22-071.12

Comment:

NCLS/CCWRO testified that [T]the list of when adequate notice is required should include circumstances involving *services*, and not just aid. Otherwise, denials, terminations, etc. of support services and reasonable accommodations would not be subject to adequate notice. "The county should issue adequate notice when 'aid and services' are denied, terminated, etc." Adequate notice would also apply to determination regarding other aspects of the welfare-to-work program, such as a request to change a plan or activity, a request for an exemption or exception, etc."

Response:

These comments are beyond the scope of the changes made to this section and will not be addressed.

44) Section 22-071.13

Comment:

NLSLAC testified that "...we again must strongly concur with the comments prepared by Legal Services of Northern California. Including "services" will make this section consistent with other statutory and regulatory provisions. For example, California Department of Social Services Manual of Policies and Procedures Division 42-750.414 requires counties to issue adequate notice whenever transportation or ancillary supportive services are approved, denied, changed, subject to overpayment collection, or terminated. Adding services would make Division 22-071.13 clear and inclusive of rights provided for by the Department.

Response:

These comments are beyond the scope of the changes made to this section and will not be addressed.

45) Section 22-072.3

Comment:

NCLS/CCWRO testified that this section " provides that if a claimant requests a state hearing within ten days of the required adequate (but not timely) notice, aid shall be reinstated retroactively, unless, “.31 Aid shall not be reinstated retroactively if the CWD has made a presumption of mismanagement of CalWORKs funds based on the claimant's nonpayment of rent."

NCLS/CCWRO continued by testifying that "Subsection .31 should be rewritten to indicate that the aid shall be reinstated, but may be paid as a vendor payment, etc. as otherwise provided by law."

Response:

The comment is beyond the scope of the regulations and will not be addressed.

46) Section 22-072.5

Comment:

NLSLAC testified that they "...concur with Legal Services of Northern California's comments. In addition, we would add that failure to pay for supportive services pending the hearing violates *Goldberg* and other due process cases. Furthermore, the welfare to work statutes also require the payment of supportive services when necessary to participate in a welfare to work activity or program. *See* Welf. & Inst. Code § 11323.2."

Response:

These comments are beyond the scope of the changes made to this section and will not be addressed.

Comment:

NCLS/CCWRO testified that "[T]his section states that Aid Paid Pending (APP) does not apply to CalWORKs support services, citing 42-750.7. The correct citation is 42-750.213. The failure to pay APP for support services does not comport with due process, as it can render meaningless the pre-termination hearing if the person then cannot participate in needed welfare-to-work activities for lack of support services. This is all the more important given that the Department takes the position that a person's 60 month time limit on aid continues to run even if the claimant is unable to participate in welfare-to-work for lack of support services. Even if such a policy were legal, however, the statement that APP does not apply to support services is not correct. The county must issue a separate notice of action to terminate, change, or reduce support services. If 42-750.213 is valid, "The participant shall be entitled to supportive services only at the level and in the form authorized by the county action under appeal." Often, the county's notice is unrelated to

the support services (i.e. a notice of proposed sanction), and the person, if appealing timely for APP generally, is required to continue participating while the hearing is pending. Another common situation is that the person welfare-to-work issue involved a *past* alleged failure, and there is no allegation that the person is not *currently* participating in the welfare-to-work activity. In this situation, the person would actually be *required* to continue the welfare-to-work activity in order to be considered in compliance with the plan, to avoid a sanction. This is a key issue that needs to be clarified in the aid paid pending regulations."

Response:

These comments are beyond the scope of the changes made to this section and will not be addressed. However, Section 22-072.5 will be amended to include the correct cross-reference citation.

47) Section 22-072.611

Comment:

LADPSS suggested that this section be rephrased as follows:

.6 Aid pending shall cease when:

.61 (Continued)

.611 "A hearing request is dismissed because the claimant failed to attend the scheduled hearing. If the decision dismissing the claim is set aside and a new hearing is granted as specified in Section 22-054.222, the county shall reinstate any applicable aid pending."

Response:

The Department disagrees. Section 22-061 precedes .611 and states the general rule for when aid pending shall cease. Section 22-072.611 is a subsection of .61 and follows the correct grammatical construction.

48) Section 22-072.64

Comment:

NLSLAC commented referencing their previous testimony on Section 22-053.4 (Comment #34) and indicated that again, "due process safeguards as well as federal regulations would not allow termination of aid pending in the circumstance of an ALJ's determination of no good cause for postponement. Accordingly, 22-072.64 must be deleted in its entirety."

Response:

These comments are beyond the scope of the changes made to this section and will not be addressed. Also see response to comment #34.

49) Section 22-072.65

Comment:

NCLS/CCWRO testified that "[I]f the subject of the hearing is the county's failure to schedule or process a food stamp recertification application prior to the expiration of the certification period, the aid paid pending should continue. Claimants should not be penalized for the county's failure to comply with the law."

Response:

These comments are beyond the scope of the changes made to this section and will not be addressed.

50) Section 22-072.71

Comment:

NCLS/CCWRO testified that this section " provides that aid pending shall cease, in the cases of a conditional withdrawal, and shall only be issued "retroactively and prospectively if the request for a hearing is subsequently reinstated, provided that the claimant has complied with conditions set forth in the agreement accompanying the conditional withdrawal." This wording does not cover the most common situation, in which the county needs to take a further or future action (to recalculate the grant, etc.), or that the claimant needs to provide verification of something that would maintain the grant at the APP amount. This section as currently written, would require the county to cease paying APP, and then issue a corrective underpayment when the relevant party complies with the terms of the conditional withdrawal. This section therefore should be amended to reflect that when the conditional withdrawal upholds the APP grant amount, that the APP shall continue, unless the claimant does not comply with the terms. In that event, the county should be required to send a notice of reduction along with the statement that the county is denying the claim because the claimant did not comply with the conditional withdrawal agreement."

Response:

These comments are beyond the scope of the changes made to this section and will not be addressed.

51) Section 22-073.24

Comment:

NCLS/CCWRO testified that this section "gives discretion to the counties to advise the state when interpreters and telephone hearings because of disability may be appropriate. However, the regulation does not have standards for these requests. For example, an interpreter (sic) should be required to request an interpreter in any case that is coded for a primary language other than English, or which has a notation of a disability that would require an accommodation at the hearing. In fact, the proposed regulation gives the State Hearings Division unfettered discretion regarding interpreters as it says state hearings "may" order an interpreter. It should instead state that if the county appeals officer determines the case meets certain standards, that s/he must request an interpreter. Also, it would be helpful to clarify, in some section, when an interpreter or home hearing would be required. The standard for granting requests for telephone hearings should at a minimum require that a request for a telephone hearing be granted whenever a telephone hearing is necessary as an accommodation for a claimant with a disability. The standard should also allow telephone hearings for other good cause including that either the claimant or the claimant's representative lives a distance from the hearing site or that the claimant is employed and cannot leave his or her job."

Response:

The Department disagrees. The primary responsibility for requesting an interpreter rests with the claimant. In fact, the back of the Notice of Action (Form NA Back 9) provides space for the claimant to request an interpreter. This section was amended to clarify the county's responsibility to advise the State Hearings Division if an interpreter may be necessary in case the claimant fails to identify the need for an interpreter. The comments concerning telephone hearings and home hearings are beyond the scope of the regulation and will not be addressed.

52) Section 22-073.243

Comment:

NLSLAC testified that "[T]here are a number of actions that County Representatives take prior to the hearing that require contact with the claimant or the participant. County representatives advise the State Hearings Division on the need for interpreters, changes in claimants' circumstances, and they provide claimants or Authorized Representatives with statements of position. This section should direct County Representatives in regard to communication with claimants that would be necessary to go forward with the hearing. Also, this section should advise County Representatives to communicate only with Authorized Representatives when claimants have made such designations or appointments."

"We propose the addition of the following:

.243 When a claimant appoints an Authorized Representative (AR), the County should cease direct contact with the claimant and direct all inquiries to the AR."

Response:

These comments are beyond the scope of the changes made to this section and will not be addressed.

53) Section 22-073.253

Comment:

NLSLAC testified that "[T]his section addresses the County's responsibility to provide a position statement to the claimant 2 days before the hearing. In addition to the position statement, the County should provide copies of all documents that support the county position as well as a list of any witnesses expected to testify. Please add:

*"If the county, when required, does not make the position statement, and copies of all documents that support the county position as well as a list of any witnesses expected to testify, at least two... ."*

We also urge you to specify the means by which claimants may obtain copies of position statements and other documents and witness lists. In Los Angeles, due to geography and transportation, fax or email are essential. Please add:

Upon request, the County will make position statements and supporting exhibits available by fax or email.

Response:

The Department disagrees. Section 22-073.251 already requires the position statement to include copies of documentary evidence and witness lists. In addition, these comments are beyond the scope of the changes made to this section.

Comment:

PAI testified that the Department should refer to Comment #31 made at Section 22-053.113(f) about the need for a handbook section on making the position statement available.

Response:

This comment is beyond the scope of the regulations and will not be addressed.

54) Section 22-073.35

Comment:

NCLS/CCWRO testified that "[T]he proposed regulation does not define the term “case record.” Because of file access problems attributable to automation systems, the regulations should have such a definition. The term "case record" should be defined to include both the paper record of the case and any case records contained in the computer system used by the county but not included in the paper record of the case. An example would also be helpful. We recommend one that indicates that a case record is not a list of documents that were sent, but must include a copy of the actual documents. If the notice was sent in a language other than English, and actual copy of the non-English notice must be provided. They should also provide more detail specifying the type of records in a computer system is needed. Also, the regulations do not specify what action the ALJ should take if the case record is not available but the claimant is prepared to go forward. In this circumstance, the ALJ should rule in favor of the claimant, as the county would have not met its burden of proof, unless the county has good cause for not having the case file. In that situation, the ALJ should document the good cause in the appeals file, and give the county a one-time extension of time."

Response:

These comments are beyond the scope of the changes made to this section and will not be addressed.

55) Section 22-073.52 (sic) should be .253

Comment:

NCLS/CCWRO testified that "[T]his section should have a subpart which states that the county is required, upon timely request (i.e. prior to the 2 days before the hearing), to fax or email the text portion of the position statement (i.e. not the attachments) to the claimant or an AR within 2 days of the hearing. Otherwise, it may be difficult, if not impossible for claimants and AR's to obtain the position statement in time to prepare a defense."

Response:

These comments are beyond the scope of the changes made to this section and will not be addressed.

56) Section 22-077.122

Comment:

NCLS/CCWRO testified that a provision similar to this section "should exist to provide a copy of the position statement to a person with an impairment that prevents them from obtaining the position statement from the county in person."

Response:

These comments are beyond the scope of the changes made to this section and will not be addressed.

57) Section 22-078.4

Comment:

NCLS/CCWRO testified that this section "states CDSS is authorized to seek "injunctive relief" should a county not comply with a hearing decision that requires no further issues (compliance issue). They should specify where the agency would seek injunctive relief, i.e. in Superior Court."

Response:

The Department agrees and is adding the phrase "Superior Court" to the section.

58) Section 22-085.2

Comment:

NCLS/CCWRO testified that they "support the change enabling attorneys and to represent in hearings without an authorized representative form, and as specified non-attorneys. This will help those needing assistance get it, as sometimes there is an oral appointment but insufficient time to get the AR form prior to the hearing."

Response:

This testifier does not recommend a change, and no response is necessary.

59) Section 22-085.5

Comment:

NCLS/CCWRO testified that "[T]he regulations should specify a remedy for when the county does not mail the AR conditional withdrawal or compliance information, as provided in 22-085.5. This remedy should be a tolling of the time to request the hearing be

reopened (for a dispute over the language in the conditional withdrawal) or a new hearing (compliance related issues)."

Response:

The Department disagrees. The remedy for failure to send correspondence to the authorized representative is determined by the ALJ on a case-by-case basis.

Comment:

WCLP testified by commenting that "We agree strongly with the comments provided by the Legal Services of Northern California on this point. The regulations should specify a remedy to address the county's failure to mail the conditional withdrawal or compliance information, as provided in 22-085.5. Many times, an oral conditional withdrawal differs from the final written conditional withdrawal. I have received written conditional withdrawals after the hearing date has passed, only to discover that the language of the conditional withdrawal is not what I agreed to. The remedy should be a tolling of the time to request the hearing be reopened (for a dispute over the language in the conditional withdrawal) or a new hearing (compliance related issues)."

Response:

Please see response immediately above.

60) Section 22-900

Comment:

NLSLAC testified that "Along with Legal Services of Northern California, we object to the delay in making effective changes involving language compliance. Language accessibility is not a new requirement, so there is no justification for delay."

Response:

The Department disagrees. Language access is not a new requirement, but the regulations in this package concerning language-compliant notices of action impose a new regulatory requirement. This section is necessary to clarify that this new requirement does not have retroactive effect. However, the Department has amended this section to provide that the amendments related to language-compliant notices shall be implemented after filing with the Secretary of State, rather than the first of the month 30 days after that date.

Comment:

### **Expedited hearings**

NLSLAC also testified that "As the Department takes this opportunity to update its regulations, now would be a good time to add a section on Expedited Hearings into Division 22-000. The Department provides for them in All County Appeal Letter, January 19, 2004. The All County Letter explains that Expedited Hearings are available for 'hearings requests involving denial of Expedited Food Stamps, Immediate Need, Homeless Assistance, and any other issue of urgency that CDSS deems necessary will be scheduled on an expedited basis.'

"New regulations will need to specify how claimants make requests for Expedited hearings and the criteria for acceptance of requests that do not involve denials of Expedited Food Stamps, Immediate Need, Homeless Assistance which are automatically set for Expedited Hearing. New regulations will also need to provide for how long it will take to get decision implemented. It should be expedited to a shortened timeline.

"We propose new regulations include:

#### 22-XXX:

- (a) The Department will provide for Expedited Hearings when the hearing request involves denial of Expedited Food Stamps, Immediate Need, Homeless Assistance, or any other issue of urgency that CDSS deems necessary.
- (b) Claimants may request Expedited Hearings for appeals involving urgent issues that pose economic hardship or time sensitive matters.<sup>1</sup>
- (c) The Presiding Judge will schedule the hearing within 10 working days of the date the request is received.
- (d) If the Presiding Judge denies a request for Expedited Hearing, he or she will:
  - (1) Notify the claimant and provide an explanation for the denial; and
  - (2) Schedule the hearing as a regular hearing.

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<sup>1</sup> Aid Paid Pending alleviates the economic hardship claimants face in reductions. However, when claimants appeal delays or denials of supportive services, they may be faced with a loss of job or training. Or they may be forced to use cash grants to pay for childcare or other services instead of paying for rent and utilities. Such events may lead to eviction and homelessness.

(e) Decisions from Expedited Hearings will issue within 5 working days from the date the record closes.

(f) Counties will have 7 working days to implement decisions from Expedited Hearings."

Response:

These comments are beyond the scope of the changes made to this section and will not be addressed. However, the Department is considering addressing this issue in a subsequent regulation package.

61) Section 22-901.1

Comment:

NCLS/CCWRO testified that they " strongly object to 22-901.1, limiting the effective date of the language-compliant notice remedies to a period after the filing of the final regulations with the Secretary of State. Those provisions codify an existing civil remedy for notices that are not "adequate" because they fail to comply with the regulations in Division 21 regarding communication with applicants and recipients. By specifically limiting the effective date of the remedy, the state is implying that ALJ's may not make a finding that the claimant did not receive proper notice. Furthermore, the stated need for the postponement of the effective date of the language-compliant notices is "to give counties advance notice of the specific effective date of the provision and to allow counties to review their practices and translated forms provided by CDSS prior to that date." Counties [have] long been required to provide language access (orally when no translation is available and to use state translated notices regardless of the size of the language population in the specific county. There is no need to "allow" them more time to comply with pre-existing requirements."

Response:

Please see first response to comment #60 regarding Section 22-900. Also please see the response to comment #1. As stated in that response, a notice is not required to be in the recipient's primary language to be "adequate." In addition, ALJs already address language-compliance issues. The purpose of the new language-compliance regulations is to provide a rule that ALJs will be required to follow prospectively. The new rule does not prevent ALJs from providing appropriate remedies, based on the facts of a particular case, for notices issued before the effective date of the new provisions.

Comment:

WCLP testified by commenting that "We strongly object to 22-901.1, limiting the effective date of the language-compliant notice remedies to a period after the filing of the final regulations with the Secretary of State. Current civil rights law provides for language appropriate notices and communication for public benefits recipients. Limiting the

effective date will put ALJs in the difficult position of making decisions finding that recipients received “adequate” notices, even if not language compliant. The law regarding language-compliant notices is not new. The Civil Rights Act dates back to 1964. Please do not defer the language compliance remedies to a period after the filing of the final regulations.”

Response:

Please see the immediately preceding response.

g) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. Written testimony on the modifications renoticed for public comment from June 26, 2006 to July 11, 2006, was received from the following:

Stephen E. Goldberg of Legal Services of Northern California (LSNC) faxed comments on July 10, 2006 and submitted an additional comment as an addendum to the original comments on July 11, 2006; Kate Meiss of Neighborhood Legal Services of Los Angeles County (NLS) faxed comments; Dora Luna of Western Center on Law and Poverty (WCLP) e-mailed comments and Diane Aslanian of the Coalition of California Welfare Rights Organizations (CCWRO) e-mailed comments. The testifiers' general comments and specific comments and the Department's responses follow numerically.

62) General comment:

Comment:

WCLP commented that the Department “[p]lease reconsider adding a section outlining procedures for handling expedited hearings for emergency benefits. The Department recognized the need for expedited hearings in its January 19, 2004 All County Appeals Letter. Please incorporate those procedures in this regulation packet.

Response:

Please see the response to the second comment under #60 above. This comment is beyond the scope of the regulations, but the Department is considering addressing this issue in a subsequent regulation package.

63) Section 22-001(a)(1)(A)

Comment:

NLS commented by indicating “Thank you for deleting this section. A notice adopted in another program should not automatically be presumed adequate for DSS' purposes.”

Response:

The Department appreciates the comment. No further response is necessary.

64) Section 22-001(a)(5)

Comment:

NLS commented by reiterating "that this section be clarified so that attorneys admitted under the new provisional rules for out of state attorneys are included. Many claimants are represented by public interest or legal aid groups which often employ attorneys from outside California who can represent individuals, but might not be considered active members of the bar."

Response:

The Department disagrees. Please see the response to comment #9 above. The purpose of defining "attorney" is to permit the "attorney" to represent a claimant without an authorized representative form in the same manner as in Superior Court. The Department has determined to extend this courtesy to active members of the California State Bar.

65) Section 22-001(g) [should be (l)(1)]

First Comment:

CCWRO commented "In reviewing the revised regulations we came across §22-001(g)(1) which provides that a "Language-Compliant Notice- A written notice that complies with the requirements of Section 21-115.2 for claimants who asked to receive written translations in the claimant's primary language."

"This language means that if a Russian only speaking person gets a notice of action in English, the notice will be found to be 'language complaint' [*sic*] unless the claimant offers proof that he or she expressly asked to receive written translations of the notice or notices in the claimant's primary language. If he or she fails to prove that he or she asked to receive written translations in his or her primary language, then the notice will be found to be language complaint [*sic*]. This is a major change. This is not a technical change. This will decimate Limited English Speaking persons rights to due process of law in California.

"Current law is that if the person's primary language is Russian and there is a Russian notice available, then the notice has to be that Russian notice to be language complaint [*sic*]. This major policy change against Limited English Speaking person is very disturbing without going through the California Administrative Procedures Act explaining why are you making this change.

"We have tried to trace the roots of this language that was added 'for claimants who asked to receive written translations in the claimant's primary language.' and cannot find it. We looked at Page 6 of the 15 day renote which states that this modification was a result of

testimony and CDSS is revising the definition of 'language-compliant' to include an interpretive services provision.

"Including interpretive services provisions is good, but sneaking in language to decimate the civil rights of Limited English Speaking persons by making them prove that they asked for written materials in their own language is disturbing. Often Limited English Speaking persons are asked for complete forms in English asking for interpretive services and now CDSS is proposing to deny them due process because they cannot prove that they asked for written translations?"

"We did ask to see the analysis of the comments that you kindly e-mailed us. Again, there was nothing on page 52 or 53, which cover the comments for this section that was amended.

"We strongly recommend the deletion of the following language form (*sic*)§22-001(g)(1):

'for claimants who asked to receive written translations in the claimant's primary language.'"

Response:

Please see the response to the fourth comment under #65 below.

Second Comment

LSNC commented that "[T]he changes to the proposed regulations add 'for claimants who asked to receive written translations in the claimant's primary language' to proposed section 22-001(1)(1) defining language compliant notices. In comments on the initial proposed regulations. Legal Services of Northern California praised this section. The change to add the requirement that claimants must ask for translations from something positive to something both useless and illegal (*sic*).

"As a practical matter claimants who do not speak English cannot request translated documents because their language barrier precludes effective communication with county workers, and claimants are not informed that they can request notices in their primary language. Moreover, in a hearing, there is no way for a claimant to prove that he or she requested translated notices. There is no form for a claimant to request translated notices, and no requirement for workers to document when claimants request translated notices. Unless a worker chooses to document a request for translated notices, a claimant will not be able to prove such a request was made.

"As a legal matter, the requirement that a claimant request notices in their primary language in order to trigger a requirement for translated notices is national origin discrimination in violation of Title VI of the Civil Rights Act of 1964, its implementing regulations and implementing guidance from the federal Office of Civil Rights of the United States Department of Health and Human Services (hereinafter OCR). In particular, the OCR guidance states that "written notices of eligibility criteria, rights, denial, loss or decreases in benefits or services" are "vital written materials" that should be translated. (OCR Guidance:

atp.14, [http://www.hhs.gov/ocr/lep/\\_ocrlepguidance.htm](http://www.hhs.gov/ocr/lep/_ocrlepguidance.htm).) The OCR guidance is particularly applicable in this situation because only already existing translated documents are required to be used and no new translations are required.

"The requirement that a claimant request notices in their primary language in order to trigger a requirement for translated notices is also discrimination on the basis of ethnic group identification in violation of Government Code § 11135. The regulations implementing Government Code § 11135 define "Color or ethnic group identification" as including "linguistic characteristics common to a racial, cultural or ethnic group or the country or ethnic group from which a person or his or her forebears originated." 22 Cal. Code of Regs. § 98210(b). The regulations further state that failure to provide translations into a client's primary language is a discriminatory practice that violates Government Code § 11135. In addition, the requirement that a claimant request notices in their primary language in order to trigger a requirement for translated notices violates the settlement in *Association MIXTA v. California Department of Social Services* that mandates translated documents.

"Finally, the change to proposed section 22-001(1)(1) is not "sufficiently related" to the initial proposed regulation because a member of the public could not have predicted the change to the proposed regulation from the notice. The (sic)violates the Administrative Procedures Act Government Code § 11346.8 and 1 Ca1. Code Regs § 42 because a new 45 day notice and comment period was not provided for the new regulation."

[Addendum received July 11, 2006]

The comments faxed on July 10, 2006 referenced guidance from the Office of Civil Rights for the United States Department of Health and Human Services (OCR). The comments neglected to specify that the OCR guidance applies to CalWORKs cases.

The comment also neglected to cite statutes and regulations for the food stamp program regarding translation of notice. 7 U.S.C. § 2020(C)(e)(1) and (C)(e)(2)(A), 7 C.F.R. §§ 272.4(b)(2)(iii) and (b)(3)(I) and 272.5(b)(4) require translated documents in food stamp cases. The client is not required to request translated documents for the translations requirement in these statutes and regulations to apply. The requirement in proposed Manual of Policy and Procedure Division 22 Section 22-001(1)(1) that a claimant request notices in their primary language in order to trigger a requirement for translated notices violates these mandatory federal food stamp statutes and regulations.

Response:

Please see the response to the fourth comment under #65 below.

### Third Comment

NLS commented that "[T]he new language in §22-001(1) which indicates that interpretive services are available to individuals who have 'asked to receive written translations' or 'requests interpretive services' will unnecessarily limit the interpretation of English language NoAs. We suggest that the language be rewritten to create a presumption that interpretive services will be provided unless declined. Our suggested approach is consistent with civil rights laws which require DSS and the County Welfare Departments (CWDs') to ensure access to services and benefits for Limited English Proficient individuals (LEPs')." [sic]

### Response:

Please see the response to the fourth comment under #65 below.

### Fourth Comment

NLS also commented that "[T]hey support the change in this section regarding interpreting NoAs.

"However, we are concerned by the addition of the phrases '..for claimants who asked to receive ' and '...the claimant requests Interpretive services...'. This seems to shift the burden of Title VI and other civil rights laws from the fund recipients-County Welfare Departments (CWDs") to the individual LEP. That is a violation of Title VI and State laws. While we recognize that DSS has CWDs use language identification forms, often workers fail to have applicants complete them. Also, it appears that some CWDs may not even use language designation forms. Limiting the availability of interpretive services to those who have already "requested" or "request" now could have unforeseen consequences and limit the availability of interpreter services. The assumption should be that NoAs should be interpreted in the person's native language unless designated otherwise. This would put the burden of compliance with civil rights protections where it properly belongs-with the CWDs.

"Similarly, if a person calls to inquire about an English NoA, this should trigger an automatic interpretation of the NoA. Saying the person must request interpreter services may well lead to the type of situation that used to exist with immediate need. If the person did not say the specific words "immediate need" ("IN"), there was no exploration of that payment and need, even when the person disclosed facts indicating eligibility for immediate need. This language should be deleted or modified to make it clear that when an LEP inquires about an English NoA that is a sufficient request to trigger the duty to interpret it. Please modify the text to make it clear that language services must be provided when an NoA is not provided in the person's native language whenever the person makes any inquiry regarding the NoA."

Response:

The Department disagrees with the comments contending that the proposed regulation is inconsistent with federal and state law. Counties are required to determine a claimant's preferred language for written communications under Section 21-116.21. A claimant whose primary language is other than English may prefer to receive written communications in English rather than in his or her primary language. If a claimant requests English language documents, he or she is entitled to receive those. If a claimant requests written translations and those are available, he or she is entitled to receive those. This is consistent with Section 21-116.21, which allows a claimant to choose the language in which he or she prefers to receive written communications.

If individuals whose primary language is not English request English-language forms, counties must be able to rely on that request in providing written documents.

However, the Department is revising the regulation to require a rebuttable presumption that a claimant accepted written communications offered in the claimant's primary language if the claimant identified a primary language other than English to the county pursuant to Section 21-201.211.

In cases where notices are not provided by the California Department of Social Services in the claimant's primary language, the Department is revising the regulation to require counties to offer and provide interpretive services in two circumstances for the notice of action to be language-compliant. The first circumstance is when a claimant contacts the county about the particular notice of action prior to the deadline for a timely request for hearing on an adequate notice of action and indicates a need for interpretive services. The Department has deleted the language "requests interpretive services" and substituted "indicates a need for interpretive services." The second circumstance is when a claimant has previously identified a primary language other than English to the county, and then contacts the county about the particular notice of action prior to the deadline for a timely request for hearing on an adequate notice of action.

66) Section 22-001(p)(1)

Comment:

NLS commented by saying, "Thank you for deleting the last sentence of this proposed regulation. The explanation more accurately reflects the power of precedent decisions. As a matter of good public policy, we renew our request that the Department adopt standards for the publication of precedent decisions."

Response:

The Department appreciates the comment. As to the standards comment, the Department has adopted procedures to issue precedent decisions. The current revision of those procedures was made available to the public by a letter from the Director to interested

parties dated September 26, 2001. The Department is also in the process of putting the procedures on its website.

67) Section 22-003.13 [Repealed]

Comment:

WCLP reiterated "concerns regarding the proposed removal of the language regarding the remand of discourteous treatment to the CWD for resolution. At a minimum, please provide that ALJs should inform claimants the next steps in resolving these issues. Counties generally have their own policies regarding the investigation of discourteous treatment. The information may be provided in any manner, including giving the claimant a flyer or a brochure."

Response:

Please see the responses to the first two comments under #12 above.

Second Comment

NLS reiterated their earlier comments regarding discourteous treatment and renewed their request for consideration of the Massachusetts approach.

Response:

Please see the responses to comment #12 above.

68) Section 22-004.41

Comment:

NLS commented by reiterating their suggestion that "this section should reflect federal Food Stamp regulations. We also note that the Department's response fails to state why the revision is deemed to reflect food stamp law."

Response:

Please see the response to the second comment under #16 above. The Food Stamp regulations cited in the comment do not deal specifically with deceased claimants.

69) Section 22-009.11

First Comment:

WCLP requested the addition of "a section providing good cause when a claimant files for a hearing beyond the 90 day deadline. Good cause should be granted in cases where the individual is ill or disabled, there is a death in a family, there are conflicting court appearances, or there are other circumstances beyond the claimant's control. Good cause for late filing of an appeal is granted in other benefits programs such as social security benefits. At a minimum good cause for late filing must be granted in cases involving disabilities that prevent the claimants from making timely hearing requests in order to comply with Government Code § 11135, the American with Disabilities Act (42 U.S.C. § 12132), and the Federal Rehabilitation Act (29 U.S.C. § 794). Specifically, an agency cannot deny individuals benefits to which they are entitled solely because of their disability. This means that an individual who may be hospitalized for months at a time may lose his/her right to a fair hearing solely because s/he was disabled during the period in question. This violates both federal and state disability law. Please incorporate the good cause provisions of § 22-053.13 (a), (b), (c), and (d) into this section."

Response:

These comments are beyond the scope of the 15-day renote and will not be addressed.

Second Comment:

NLS commented by thanking the Department "for modifying the language of this section to clarify that a notice must be both adequate and language compliant. We reiterate our suggestion regarding specific language which we believe would be clearer. We propose:

"Any hearing request including an otherwise untimely hearing request shall be deemed timely, if:

.111 the notice provided was not adequate: or

.112 the notice provided was not language compliant."

Response:

The Department's position is that the regulations are clear as written.

70) Section 22-009.2

Comment:

NLS commented that they were reiterating their "objections to this section and in particular our comments regarding the last sentence, which the Department failed to adequately address in the response. The last sentence of this section restricts the look back period to 90

days. Yet the facts at issue may have occurred prior to the effective date of the action-such as failure to turn in a QR-7 which results in a loss of aid and NoA within the 90 days. This sentence should be stricken or modified to state that occurred *or 'had a legal effect'* during the review period."

Response:

The Department disagrees. Please see the responses to comment #20 above.

Also, Section 22-009.2 does not apply to the example of a QR 7 discontinuance. Section 22-009.2 applies to the "current" amount of aid. It was intended to provide the claimant with hearing rights in continuing cases such as a Medi-Cal share of cost or a CalWORKs grant where the claimant did not file a hearing request within 90 days of receiving an adequate Notice of Action. In such cases, the claimant may file a request for hearing on the current amount of aid, and an Administrative Law Judge may review facts that occurred during the review period.

The review of facts that occurred during the review period is not necessarily 90 days but may be up to 120 days. For example, when Section 22-009.2 applies, a hearing request made on April 28th would permit review of the facts retroactive to January 1st.

71) Section 22-049.522

Comment:

NLS commented by thanking the Department "for modifying this language to make it clear that language compliance is required before a hearing may go forward."

Response:

The Department appreciates the comment. No further response is necessary.

72) Section 22-049.531

First Comment:

WCLP commented that "[T]his section provides that a Presiding ALJ may limit a hearing to the jurisdictional issue. However, the regulations do not specify what types of cases may warrant this limitation. This section should include a list of possible reasons for limiting the hearing to jurisdictional issues. At a minimum, please include a handbook section giving the five year-old CalWORKs overpayment example provided in your Statement of Reasons. This will help explain this new regulation, seemingly harsh to low income claimants (as explained in our January 25, 2006 comments on this issue)".

Response:

The Department disagrees. Please see the first response to comment #24 above. The Department has determined that a "handbook" section is not necessary.

Second Comment:

NLS commented by thanking the Department "for adding the provision which will provide notice to the other party when any jurisdictional issue is raised before the hearing.

"As noted before, however, we believe that restricting the issues at a hearing, and( thereby requiring a second hearing, may seriously disadvantage low income recipients. Despite DSS response to earlier comments, telephone and video hearings (where available) are not an adequate substitute for in person testimony. In addition, in LA where transportation (and outrageous parking costs) can create a barrier such rescheduling can be prejudicial to our low income clients, especially disabled clients with transportation barriers."

Response:

The Department appreciates the comment, but continues to believe that bifurcation should be allowed in appropriate cases.

73) Section 22-051.11

Comment:

NLS commented that by renewing their suggestion that "this section be amended to provide that the County may not use evidence that has not been made available to the claimant."

Response:

As stated previously, the comment is beyond the scope of the regulations and will not be addressed.

74) Section 22-053.112

First Comment:

WCLP commented that "[T]his section provides that the Department shall now have the authority to require written documentation to document good cause for a postponement. Changing the more flexible "verification" requirement to "written documentation" will unduly punish many low-income claimants and may deny them their right to a fair hearing. In my nine years as a legal aid attorney, I assisted many individuals who were either late to their hearing or could not attend at all because of circumstances beyond their control. Some individuals live remotely, and have to board multiple public transportation buses en route to the hearing office. One bus arriving late, or not arriving at all, can throw a person's transportation schedule off by hours. The transit system does not provide written

verification when a bus is late. I tried to get written verification from the transit system once when the bus made me late for school and late for a final. The bus driver and the transit system operator both laughed at me and told me they could not provide such a thing. In addition, some claimants have unreliable cars (given the auto resource limit of \$4650) that break down often. Who is supposed to provide written verification when a claimant's car battery dies and the claimant gets a "jump" from a good samaritan on the streets? And who issues written documentation when the claimant cannot attend the hearing because s/he must care for a child with the flu, who is too sick to go to school but not sick enough to go to the doctor? Please do not change "verification" to "written documentation." In the alternative, please provide that written documentation can include a self-declaration."

Response:

The Department agrees and is revising the regulation to delete the "written documentation" language. However, the Department reserves the right to request written verification in appropriate cases.

Second Comment:

NLS commented that "Our third major concern also involves postponements. The interplay between §22-053.112 which requires a written excuse for a postponement (for good cause), and § 22-053.42 which allows APP to end if a postponement is not for good cause, could well result in denial of APP when a person has good cause but no written verification of it. This would be a violation of *Goldberg v Kelly* and the person's due process rights."

NLS further added, "We are concerned that the department has added a requirement that verification be in writing. This may not be possible to obtain, especially for low income clients. Without a standard defining when such verification is necessary, the requirement could be misused. This change should be stricken as it unduly burdensome for claimants. Furthermore, it may result in the loss of aid paid pending when good cause exists but there is no written verification of it. This would violate a person's due process rights."

Response:

Please see the response to comment #34 and the response to the first comment under #74 above.

75) Section 22-053.13 [Should be .113]

Comment:

NLS commented that they "are also concerned that the change in the prefatory language of §22-053.13 (*sic*) may limit the availability of postponements to situations in which a person is physically unable to attend the hearing. NLS suggests the original language of the regulations be retained."

NLS further added correctly citing Section 22-053.113, "Thank you for clarifying that the list of good cause reasons is not exhaustive. However, the modification of the language that indicated that it is based on an inability to attend the hearing is unduly restrictive. Good cause can include (and often does) the need to obtain counselor representation. This would seem to be excluded under this new phrase. Please delete the phrase: '*unable to attend the hearing*' and retain the original language '*the case should be postponed due to*'."

Response:

The Department agrees and is substituting "the hearing should be postponed" for "he/she is unable to attend the hearing."

76) Section 22-053.13(f)[Should be .113(f)]

Comment:

WCLP commented by asking that the Department "define or explain what 'substantially modified' means. "I have handled cases in which the appeals worker modifies the position statement by adding two or three issues. Repeatedly, when I ask for a postponement, the ALJ will say that there is no good cause to continue the hearing. Please give some parameters to this term."

Response:

The proposed changes regarding modification of the position statement are being deleted.

77) Section 22-053.141

Comment:

NLS reiterated their previous request "that ALJs inform claimants that they have a right to a continuance if they did not get 10 days notice of the hearing."

Response:

The Department has determined that the proposed change is unnecessary.

78) Section 22-053.21

Comment:

WCLP commented that "[t]his section provides that an ALJ may hold the record open for 30 days to allow additional evidence to be submitted. Please clarify that the opposing party has an opportunity to rebut the evidence per §22-049.78. I have seen cases in which the county is given an opportunity to submit evidence post hearing. The county submits the evidence but does not serve the claimant with a copy of the evidence submitted, and the claimant is not given an opportunity to rebut the evidence. The claimant is then left with the limited

options of requesting a rehearing (and most rehearings are currently being denied by operation of law) or filing a writ in Superior Court. Please add a section clarifying that when the ALJ leaves the record open to allow additional evidence one party must serve the other party with the evidence submitted, and the party served may then submit rebuttal evidence."

Response:

This comment is beyond the scope of the regulations and will not be addressed.

79) Sections 22-053.42 (and 22-072)

Comment:

NLS commented that, "We reiterate our concerns regarding aid paid pending and §053.42 in particular as a violation of Goldberg v. Kelly, 397 U.S. 254 (1970) and the provisions of 45 CFR §205.10(a)(6). The department's response that the only alternative would be to deny such postponements is short-sighted---the better alternative is to pay aid paid pending until an adverse decision.

"In addition, the requirement in §22-053.112 that written verification may be required, combined with this section, may well result in valid postponements being deemed for "no good cause" just because there is not written verification of the reason for the postponement. The fact that the postponement occurred at the hearing is of no legal consequence, since an adverse determination has not yet occurred. Allowing APP to be terminated on that basis would violate Goldberg. At a minimum, it should be clarified that APP can't be terminated for lack of verification of good cause."

Response:

Please see the first comment under #74 regarding verification of good cause. Please also see the response to comment #34.

80) Section 22-064

Comment:

LSNC commented that "[T]he changes to proposed section 22-064 include deleting that requirement that a proposed Administrative Law Judge decision is part of the hearing record. However, in situations where a proposed Administrative Law Judge decision is alternated by the Director, the proposed decision should be part of the record. The proposed decision should be available to the claimant and must be part of the administrative record if a decision is challenged by writ of administrative mandate. The regulation should be changed to specify that if the final decision is different than the proposed decision that both decisions are part of the hearing record.

Response:

The Department agrees. In pertinent part, reference to any "decision" has been modified to say that "any final, proposed or alternate" decision will constitute the exclusive record.

81) Section 22-064.1

Comment:

WCLP commented that "In cases where there is an alternated decision, both the hearing decision and the alternated decision should be included in the record. Please add this qualification to this section."

Response:

Please see the response to the immediately preceding comment.

82) Section 22-065.2

Comment:

NLS commented by reiterating its previous comment that "standards should be developed for granting or denying rehearing requests."

Response:

Please see the response to comment #41 above.

83) Section 22-071.13

Comment:

NLS commented by reiterating its previous suggestions and those of LSNC that adding "services" to the language of the regulations would be clearer.

Response:

Please see the response to comment #44 above.

84) Section 22-072.64

Comment:

NLS reiterated its argument that "due process safeguards as well as federal regulations would not allow termination of aid pending in the circumstance of an ALJ's determination of no good cause for postponement. Accordingly, 22-072.64 should be deleted in its entirety."

Response:

Please see the response to comment #79 above.

85) Section 22-073.243

Comment:

NLS reiterated "the need to advise County Representatives to communicate *only with* Authorized Representatives when claimants have made such designations or Appointments."

Response:

This comment is beyond the scope of the 15-day renote and will not be addressed.

86) Section 22-073.253

Comment:

NLS reiterated their comments regarding "the need to specify the means by which claimants may obtain copies of position statements, other documents and witness lists. In Los Angeles, due to geography and transportation, fax or email is essential. Similarly, disabled individuals may have difficulty traveling to CWDs to obtain such documents."

Response:

Please see the responses to comment #53 above.

87) Section 22-078.4

Comment:

WCLP commented that "[t]his section provides that the Department may seek injunctive relief in Superior Court when the Department receives notification that the county has failed to comply with a hearing decision. We are concerned that this section may be read to mean that, under these circumstances, only the Department can seek injunctive relief in Superior

Court. Please clarify that the claimant may also seek injunctive relief in Superior Court when the county fails to comply with a hearing decision.

Response:

The Department disagrees. The regulation is intended to set forth the Department's compliance options, not the claimant's. The regulation does not preclude the claimant from going to Superior Court.

88) Section 22-085.5 (should be .4)

Comment:

WCLP commented by reiterating their comment that "regulations should specify a remedy to address the county's failure to mail the conditional withdrawal or compliance information, as provided in 22-085.5. For example, what does a claimant who receives a written conditional withdrawal, with language that differs from the oral conditional withdrawal, do if s/he receives it after the hearing date? Does s/he request another hearing? But what if the 90 day period to request a hearing, based on the original Notice of Action, has passed? Sometimes oral conditional agreements may reflect one thing (e.g. "agree to reinstate benefits"), and the conditional agreement arriving in the mail much later may reflect another thing (e.g. "agree to send case back for recomputation of benefits). You respond to our January 25, 2006 comments with "[t]he remedy for failure to send correspondence to the authorized representative is determined by the ALJ on a case-by-case basis." But it is unclear what ALJ makes such a determination if an ALJ never heard the case to begin with. The remedy should be a tolling of the time to request the hearing be reopened (for a dispute over the language in the conditional withdrawal) or a new hearing (compliance related issues)."

Response:

Please see the response to comment #59 above. Also, if the claimant is not satisfied with a conditional withdrawal as described, the claimant is entitled to reinstate the hearing request. The hearing request relates back to the original request for purposes of timeliness.

Additionally, Section 22-054.211(b)(3)(B) and Section 22-071.14 provide that in the case of a conditional withdrawal, the county must issue a new adequate notice of action when it takes action following a conditional withdrawal.

In WCLP's example, if the county recomputes benefits as written in its version of the conditional withdrawal, it must issue a new notice of action. The new notice of action would recompute benefits based on the date in the original notice of action.

The claimant would have 90 days from the new notice of action (or more if the new notice of action was not adequate or language-compliant) to request a hearing that would permit review back to the date impacted by the original notice of action.

89) Section 22-900

Comment:

NLS commented by thanking the Department for "amending this section to provide for earlier implementation of the regulations."

Response:

The Department appreciates the comment. No further response is required.

90) Section 22-901.1

Comment:

WCLP reiterated their objection to Section "22-901.1, limiting the effective date of the language-compliant notice remedies to a period after the filing of the final regulations with the Secretary of State. The effect will be that non-language-compliant notices of action issued before the filing of these regulations will be found adequate. Please do not impose such a limitation."

Response:

Please see the response to comment #61 above.

h) Second 15-Day Renotice

As a result of further changes to the regulations following the original 15-day renotice from June 26, 2006 to July 11, 2006, a second 15-day renotice was held from November 1, 2002 to November 16, 2006.

Comments were received from representatives of Legal Services of Northern California (LSNC), the Western Center on Law and Poverty (WCLP), Neighborhood Legal Services of Los Angeles County (NLSLAC), and the County of Los Angeles Department of Public Social Services (LADPSS). Those comments and the Department's responses follow.

91) Section 22-001(l)(b)

Comment:

LSNC commented that "CDSS has attempted to address our concerns regarding when a Notice of Action is language compliant if not translated by CDSS. However, the modified language is not sufficiently clear to cover the scope of the issue. Subsection (b) states that the CWD must "offer and provide" interpretive services." It does not, however, define the offer or provision of interpretive services. It is key to clarify these issues, so the claimant has the burden of requesting interpretive services only when informed and actually able to

access them, and that the time to request a hearing only runs from an actually provided interpretation.

"Our concern about the 'offer' of services, listed in our initial comments, is when a Limited English Proficient (LEP) claimant, who has previously identified his/her primary language, is not told how to request interpretive services and is thus unable to communicate with the English-only speaking worker, or the County acts in a way as to 'cancel' its information about access to interpreters.

"The issue with the provision of services comes from [sic] stems from the frequent failure [of a county worker who] improperly interprets the front of the notice (such as providing a summary, but leaving out key information), or to interpret the NA 9 Back, which sets forth the information on how to request the hearing.

"We therefore request that the modified language be clarified as follows:

*“The county must offer and provide interpretive services for the notice of action if either (1) or (2) below applies. “Offer” means that the county informed the claimant how to obtain interpretive services. If the county informed the claimant, but then later failed to provide interpretive services when requested, not limited to the notice of action at issue, it shall be presumed that the county did not offer interpretive services. A county shall not be deemed to have “provided” interpretive services if, when interpreting the notice, the interpreter does not fully translate the front of the notice and/or does not explain the back of the notice in the claimant’s primary language.*

*(Handbook Example: The county told the claimant that she could get interpretive services by calling her worker and leaving a message in her primary language. The claimant had tried this, but the worker never called her back with an interpreter. It shall be presumed that the county did not offer interpretive services for the notice of action at issue for the fair [state] hearing.)”*

Response:

The state hearing regulations are being revised to include a remedy for non-compliance with the civil rights regulations specified in the definition of "language-compliant" that is being added to the state hearing regulations. The civil rights regulations, at Division 21 of the Manual of Policies and Procedures, control the counties' provision of written translations and interpretive services, not the state hearing regulations. The state hearing regulations therefore do not and should not specify what the counties obligations' are under the civil rights regulations. It is not necessary or appropriate to define the counties' language services obligations in the state hearing regulations because those obligations are set out in the civil rights regulations.

92) General Comment:

NLSLAC commented that it "supports the comments of Legal Services of Northern California ("LSNC") and Western Center on Law and Poverty ("WCLP"). In addition, we offer the following comments:

The Advocates Comments are Within the Scope of the Regulations Package

Many times in the response section of the statement of reasons, DSS states that the suggestions of the advocates are "beyond the scope" of this regulation package. We disagree. The Department's informative digest states that the revisions are being made:

"... to make the process *more efficient* and *improve the existing regulations used in preparing, scheduling and conducting State Hearings...*"  
(Updated Informative Digest @ Page 1; Emphasis added.)

In the original digest, efficiency and clarity were dual goals of the package (Informative Digest /Policy Statement @ Page 2). The advocates' suggestions are designed to clarify and improve the process of scheduling and providing fair hearings (e.g. NLS' comments with respect to expedited hearings; WCLP's comments with respect to good cause for late filing of hearing requests).

Other comments relate to efficiency such as NLS' comments requiring faxing of position statements and forbidding use of undisclosed evidence (22-051.11) which may ameliorate the need to postpone a hearing or to keep the record open. Similarly, requiring CWD hearing representatives to contact the AR rather than the claimant, will improve the efficiency of the hearing system by avoiding mistakes and the possible need to reschedule hearings due to inappropriate communication outside the AR's presence.

These suggestions are all consistent with the purpose of the regulation package and therefore within the scope. DSS should reconsider the objection "beyond the scope" with respect to all comments.

Response:

See the responses to the other comments received after the 2nd 15-Day Renotice.

Government Code Section 11346.8(c) clearly indicates that Department must respond to all comments regarding post-hearing amendments made that are within the scope of the informative digest. Once a comment has been responded to, the Department has met its responsibility and is not required to continue to respond further, unless the regulation is further amended.

The Department's position is unchanged as to those comments the Department has determined are beyond the scope of this regulations package.

93) Section 22-001(l)(b)

Comment:

NLSLAC commented further by thanking the Department for modifying this section, but continue to have concerns regarding the wording. NLSLAC urges the Department to adopt LSNC's recommendations in this section to clarify the terms "offer" and "provide."

NLSLAC continued by adding, "as written the new language of section (b) appears to shift the burden to the LEP by creating a deadline in which the LEP must contact the CWD. The new language suggests that if the LEP fails to contact the Department within the time stated, then the NoA is valid even if it isn't sent in the person's language.

"Civil rights laws are clear that the burden is the CWDs—they have the duty to provide adequate language compliant NoAs or to interpret English NoAs. This duty exists under both state and federal law, whether or not the LEP's language is a "threshold" language, and regardless of whether DSS translated the NoA. If the LEP doesn't receive a language compliant NoA, then the time to request a hearing shouldn't run until they do. The LEP won't know that they have a duty to call within 90 days—since they haven't gotten any notice telling them to do so that they can understand. Until an adequate NoA or interpretation is received, regardless of the timeframe of the LEP's request, no adequate notice has been provided.

"The proposed language should be clarified so that an English NoA is not considered language compliant if the LEP fails to contact the CWD within the 90 days. The updated digest (regarding § 22-009.11) suggests that is the intent—to allow any request to be timely—but this language undercuts that and, at best, is confusing. Please remove the language: "prior to the deadline for a timely request for a hearing" or clarify the intent. I assume that DSS does not intend to allow an otherwise non-compliant notice to become compliant because the person doesn't call, but only to allow the NoA to become compliant if the *person calls and it is interpreted for them* within the 90 days. Please revise the language to reflect this.

Response:

Please see response to Comment #91. In addition, the Department has determined that it is reasonable and necessary to require a claimant to seek help from the county on an English language notice of action within 90 days of the notice in order to avoid stale claims, both as to the merits of the claim and the county's conduct in either providing or not providing interpretive services. If the claimant seeks such help within 90 days and the county fails to provide it, both as required in the proposed regulation, the notice of action is not language-compliant, and the 90 day statutory deadline for requesting a hearing does not run.

94) Section 22-004.41

Comment:

LA County recommended the following change to Section 22-004.41.

The ~~legal~~ representative of a ~~claimant's~~ decedent's estate is the executor/executrix or administrator/administratrix of the estate. If ~~there is no~~ there is no estate or the decedent's estate is not in to be probated, the representative may also be an relative heir (e.g., parents, spouse, children, siblings, grandparents or grandchildren of the ~~deceased~~ decedent claimant).

The county added that "This change is to preserve the County Welfare Department's determination of whether or not an estate exists, based on the application for assistance and any property listed therein. The proposed revision to the regulation would allow for a hearing in those cases where no estate exists."

Response:

This comment is beyond the scope of the second 15-day renote. However, the Department will review this issue in a subsequent regulation package.

95) Section 22-009

Comment:

WCLP commented that "Our comments are within the scope of the re-issued regulation packet, as we are commenting on sections changed since the close of the prior regulation packet. Advocates previously commented on the issue of tolling the 90 day deadline to request a hearing when the Notice of Action is not language compliant; the California Department of Social Services ("CDSS") accepted an incorporated some of these comments—our comments build on this.

"WCLP asks that you adopt similar tolling language for other cases in which individuals, in practice, do not receive notice of the proposed action. Since CDSS is modifying the Division 22 regulations to provide for tolling of the 90 day hearing request deadline under certain circumstances, CDSS should also modify it's regulations to reflect it's current policy (implementing *Morales v. McMahon*, 223 Cal.App.3d 184 (1990); All County Letter 92-42) that the 90 days does not run if the individual does not receive the Notice of Action or is discouraged from asking for a hearing.

"Our experience is that in practice certain individuals do not receive notice of the proposed action. For example:

- A person may not receive the Notice of Action because s/he is hospitalized for an extended period of time;
- An ill person may go to recuperate at a family member's home and may not receive his/her mail;
- An individual with mental disabilities or dementia may receive the Notice of Action, but may not have the capacity to understand the notice<sup>2</sup>;
- For victims of domestic abuse, the abuser may take the mail and the affected individual may not receive the Notice of Action timely or at all;
- In cases of natural disaster or home invasion, the notice may not reach the intended individual;
- In other cases, the individual may ask her County Eligibility Worker about the Notice of Action, and the Eligibility Worker may respond that the issue is taken care of and that the Notice of Action should be ignored.<sup>3</sup>
- A person may have to travel out of town due to sudden or unexpected emergencies, such as a death in the family. The person may not receive the notice because s/he is not at home to receive the notice.

"All of the scenarios above are real cases. In all of these cases individuals were not able to appeal the Notice of Action timely. Different Administrative Law Judges in different counties found that there was no jurisdiction to hear the cases. This happened to recipients receiving a range of government benefits such as CalWORKs, Food Stamps, In Home Supportive Services, Medi-Cal, and Cash Assistance Program for Immigrants (CAPI).

"The denial of jurisdiction is a denial of justice and can be costly and inefficient for the state. For example, the case involving the victim of domestic abuse has been appealed as a writ of mandate in Superior Court. In other cases the individual, and not the state, is prejudiced when the Administrative Law Judge denies jurisdiction. For example, the individual with dementia lost six months worth of CAPI benefits because jurisdiction was denied. Notably, the denial of jurisdiction cost one disabled individual her In Home Supportive Services for

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<sup>2</sup> Disability law provides that individuals with disabilities be provided reasonable accommodations. Government Code § 11135; American with Disabilities Act, 42 U.S.C. § 12132; Federal Rehabilitation Act, 29 U.S.C. § 794. This includes tolling the 90 day deadline to request a hearing.

<sup>3</sup> The various automation systems in California (LEADER and CalWIN, for example) often send out Notices of Action that Eligibility Workers say are sent in error. When recipients inquire about these notices, the Eligibility Workers may simply say to ignore the Notice of Action. This answer ignores that "...public assistance recipients are often less capable than other people of taking affirmative actions to protect their interests [citation]. The result of requiring claimants to make phone calls to obtain adequate notice would be that only the aggressive would receive due process, whereas the applicable regulations require the state to provide due process for all claimants." *Morales v. McMahan*, 223 Cal. App 3d at 189, quoting *Ortiz v. Eichler*, 616 F. Supp 1046, 1062 (1985). Indeed, individuals who miss the 90 day deadline to appeal because they ignore the Notice of Action at the Eligibility Worker's request are deprived of their due process rights and their day in court.

three months. However, she was able to preserve her Supplemental Security Income (SSI) benefits even though she requested a hearing beyond the deadline to appeal the proposed SSI termination. The reason for this is that she was able to avail herself of the “good cause” criteria provided in the Social Security Regulations. See 20 CFR § 416.1411.

"The Social Security regulations allowing good cause for missing the deadline to request review recognize that there are special circumstances under which certain individuals may not be able to request a hearing within the time allotted. These regulations recognize that just because a Notice of Action is mailed by the government agency to the correct address, the intended recipient may nonetheless not receive the notice for various reasons.

"Including non-receipt or good cause criteria in the regulations would also ensure the uniform application of the *Morales* case. Currently, whether or not a judge inquires or entertains arguments to find jurisdiction depends on the familiarity of the Administrative Law Judge with disability accommodation and language access issues, for example.

"WCLP asks that you standardize the regulations to conform to other laws that provide a tolling of the 90 day deadline. You have done so already for non-language compliant Notices of Action. Adding “good cause” criteria to toll the 90 day deadline will make the regulations complete; will make it easier for Administrative Law Judges to comply with other laws even when they are not specialists in disability laws, for example; and will protect claimant’s rights to due process.

"WCLP proposes that you amend MPP § 22-009 as follows:

#### 22-009 TIME LIMIT ON REQUEST FOR A STATE HEARING 22-009

- .1 The request for a state hearing shall be filed within 90 days after the date of the action or inaction with which the claimant is dissatisfied unless the claimant did not receive an adequate notice or there is good cause for filing beyond 90 days.
- .11 If the claimant received adequate notice of the action (see Section 22-001a.(1)), the date of the action shall be the date on which the notice was mailed to the claimant.
- .12 Where a request for a state hearing concerns the current amount of aid the request shall be filed within 90 days, but the period of review shall extend back to the first of the month in which the first day of the 90 day period occurred.
- .13 In the Food Stamp Program, the time limits for state hearing requests are set forth in Sections 63-802.4 and 63-804.5. However, the good cause criteria, as provided below, applies to requests for hearing in the Food Stamp program.
- .14 Non-receipt of the notice or good cause shall be established if the claimant or authorized representative establishes that the deadline was missed due to one of the following bases, which resulted in the claimant not receiving the notice or being unable to appeal within the 90 days:

- .141 Death in the family.
- .142 Personal illness or injury.
- .143 Sudden or unexpected emergencies.
- .144 Physical, mental, educational, or linguistic limitations (including lack of facility with the English language) which prevented the claimant from filing a timely request or from understanding the need or how to file a timely request for hearing.
- .145 An action by or information received from the CWD employees or CDSS employees that misled the claimant.
- .146 A CWD or CDSS employee discouraged the claimant from requesting a hearing.
- .15 Examples of circumstances where good cause may exist include, but are not limited to, the following situations:
- .151 The claimant was seriously ill and was unable to file for a hearing within 90 days.
- .152 There was a death or serious illness in the claimant's family.
- .153 Important records were destroyed or damaged by fire or other accidental cause.
- .154 The claimant tried to find necessary information to support his or her claim but did not find the information within the stated time periods.
- .155 The claimant asked the CWD or CDSS for additional information explaining the action against the claimant within the time limit, and within 90 days of receiving the explanation the claimant requested a state hearing.
- .156 The CWD or CDSS employees gave the claimant incorrect or incomplete information leading the claimant to believe the problem was resolved or about when and how to request administrative review or to file a civil suit.
- .157 The claimant did not receive notice of action proposing the action in question or the notice of action was not adequate.
- .158 The claimant sent the request to another Government agency in good faith within the time limit but the request did not reach CDSS until after the time period had expired.

.159 Unusual or unavoidable circumstances exist, including the circumstances described in 22-009.144 of this section, which show that the claimant could not have known of the need to file timely, or which prevented the claimant from filing timely.

.16 Non-receipt of the Notice of Action or good cause shall have the effect of tolling the 90 day deadline to file the appeal.

"We have taken most of the proposed language from the Social Security Regulations. 20 CFR § 416.1411. As is the case with the Social Security Regulations, having "good cause" criteria in the CDSS regulations does not provide an automatic extension of the 90 day deadline. Rather, claimants still have the burden of proving that the good cause criteria applies to their cases. The good cause criteria merely affords claimants the due process protections guaranteed to them by law."

Response:

The requirement that the notice of action be "received" is already in the state hearing regulations at Section 22-009.11. The regulations therefore do not need to be revised to add that requirement.

The comment concerning adding a good cause exception to the statutory provision limiting state hearing jurisdiction to requests for hearing made within 90 days of an adequate notice of action is outside the scope of this regulation package.

Further, some of the commenter's concerns can be resolved by an administrative law judge based on the requirement that a notice of action be "received" -- such as when the claimant's mail is stolen or the claimant was in the hospital. The concerns related to adequate and language-compliant notice are also already addressed in the regulations.

In addition, the Department may not have authority to add a regulatory good cause exception to the statutory 90-day time limit, when the statute does not contain one.

However, the Department is planning to review the good cause issue in connection with a subsequent regulation package.

96) General Comments:

NLSLAC also thanked the Department for clarifying the intent in the Department's response to their prior comments to Section 22-009.2 and thanked the Department for modifying Section 22-053.13 alleviating their previous concerns.

Further, NLSLAC renewed earlier comments for Section 22-001(a)(5), Section 22-003.113, Section 22-049.531, Section 22-051.11, Section 22-053.141, Section 22-053.42, Section 22-065.2, Section 22-071.13, Section 22-072, and Section 22-073.253.

Also, NLSLAC commented that they "do not believe that adopting regulations on expedited hearings are beyond the scope of this regulations package for the reasons articulated above. In any case, we are pleased to see the Department is considering a new package to deal with this and urge the Department to release it soon."

Finally, NLSLAC urged the Department to adopt WCLP's language on good cause for late filing of appeals.

Response:

The Department thanks NLSLAC for their supportive comments and reemphasizes that the earlier comments referred to have been addressed and are beyond the scope of the second 15-day renote pursuant to Government Code Section 11346.8(c).

No further changes are made to the regulations as a result of comments received during the November 1, 2006 to November 16, 2006 second 15-day renote.