

## FINAL STATEMENT OF REASONS

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

Section 63-300.41(QR)Specific Purpose:

This section is amended to direct the county to determine at the time of the initial application interview which households will be subject to Quarterly Reporting/Prospective Budgeting (QR/PB) requirements. This section is also amended to provide the county the option of not requiring households subject to QR/PB requirements to participate in a face-to-face interview at recertification. If the county does not require a face-to-face interview at recertification for QR households, the county must conduct either a telephone interview or a home visit in accordance with the regulations at 63-300.45. Further, this section is also amended to clarify what information is needed for households subject to QR/PB requirements during the certification and recertification process.

Factual Basis:

These amendments are necessary to implement the Department's approved waiver from the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) Waiver #2070014 that allows the county the option of conducting either a telephone interview or home visit in lieu of the required face-to-face interview at recertification for households subject to QR/PB rules.

**Final Modification**

**In response to public testimony, Section 63-300.41(QR) is amended to reflect the original intent of FNS Waiver #2070014, to conduct an interview by telephone if the QR/PB household is not required to have a face-to-face recertification interview, by deleting "home visit."**

Section 63-300.43Specific Purpose:

This section is amended to instruct the county to waive face-to-face interviews at initial certification and at recertification for households in which all members are 65 years of age or older, or physically disabled. This section is also amended to instruct the county to conduct either a telephone interview or a home visit in accordance with the regulations at 63-300.45.

Factual Basis:

These amendments are necessary to implement the Department's approved waiver from the USDA, FNS Waiver #2070014 that allows the county the option of conducting either a telephone interview or home visit in lieu of the required face-to-face interview for households in which all members are either elderly or disabled.

**Final Modification**

**In response to public testimony, Section 63-300.43 is amended to reflect the original intent of FNS Waiver #2070014, to conduct an interview by telephone if the QR/PB household is not required to have a face-to-face interview, by deleting "home visit." In addition, an erroneous reference to the age of an elderly household member was discovered in this section and is being corrected for consistency with Section 63-102(e)(1)(A) and 7 CFR 271.2.**

Section 63-300.45

Specific Purpose:

This section is amended to implement the option of conducting a telephone interview or home visit for those households for whom the face-to-face interview is not required. This section is also amended to require the county to conduct a face-to-face interview when requested by the household or when the county determines one is necessary. Further, this section is also amended to retain the household's verification requirements and certification period although the face-to-face interview is waived or is not required.

Factual Basis:

These amendments are necessary to implement the Department's approved waiver from the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) Waiver #2070014 that allows the county the option of conducting either a telephone interview or home visit in lieu of the required face-to-face interview at recertification for households subject to Quarterly Reporting/Prospective Budgeting rules.

Section 63-300.451 (Renumbered from Section 63-601.124)

Specific Purpose:

Section 63-601.124 is being renumbered to Section 63-300.451. This section is amended to require that eligible households certified by an out-of-office interview still must complete all necessary Statewide Fingerprint Imaging System (SFIS) requirements in accordance with current state law. This section is being further amended to instruct the County Welfare Department (CWD) to attempt to complete all SFIS requirements not completed at certification when the household member(s) is/are in the office for any reason. CWD shall not require the household member to come into the office solely for the purpose of SFIS.

However, all SFIS requirements must be completed by the household's next recertification for continued eligibility in the Food Stamp Program.

Factual Basis:

This adoption is necessary to reflect current regulations at Section 63-505.14 that require eligible household members who are not exempt or have a postponement to fulfill SFIS requirements when the household members are in the office for any reason.

**Final Modification**

**In response to public testimony, Section 63-300.451 is amended to better convey the original intent of this regulation. This section is amended to replace the word "should" with the word "shall" and to replace the phrase "all SFIS requirements must be completed by the household's next recertification for continued eligibility in the Food Stamp Program" with the phrase "a household that has not met SFIS requirements during the initial certification period must satisfy the SFIS requirements by the end of the household's initial certification period or prior to being recertified."**

Section 63-300.464(a)

Specific Purpose:

This section is amended to provide for a cross reference when the requirement for a face-to-face interview every 12 months is not required for recertification interviews.

Factual Basis:

This amendment is necessary to implement the Department's approved waiver from the USDA, FNS Waiver #2070014 that allows the county the option of conducting either a telephone interview or home visit in lieu of the required face-to-face interview at recertification for households subject to QR/PB rules.

Section 63-504.61(d)(1) through (d)(3)

Specific Purpose:

These sections are amended to clarify that households are required to participate in an interview rather than exclusively appearing for an interview.

Factual Basis:

This amendment is necessary to implement the Department's approved waiver from the USDA, FNS Waiver #2070014 that allows the county the option of conducting either a telephone interview or home visit in lieu of the required face-to-face interview at recertification for households subject to QR/PB.

Section 63-504.61(g)

Specific Purpose:

This section is amended to establish that the county shall provide uninterrupted benefits to any household determined eligible after a timely application is made when the household participates in an interview rather than exclusively appear for an interview.

Factual Basis:

This amendment is necessary to implement the Department's approved waiver from the USDA, FNS Waiver #2070014 that allows the county the option of conducting either a telephone interview or home visit in lieu of the required face-to-face interview at recertification for households subject to QR/PB rules.

Section 63-504.61(i)(1)(B)

Specific Purpose:

This section is amended to allow the county to interrupt the households benefits when the household fails to participate in an interview rather than exclusively appear for an interview.

Factual Basis:

This amendment is necessary to implement the Department's approved waiver from the USDA, FNS Waiver #2070014 that allows the county the option of conducting either a telephone interview or home visit in lieu of the required face-to-face interview at recertification for households subject to QR/PB rules.

**Section 63-505.14**

**Specific Purpose/Factual Basis:**

**As a result of public comment, an erroneous cross-reference was discovered in this section and is being corrected.**

Section 63-601.124

Specific Purpose/Factual Basis:

This section is being renumbered to Section 63-300.451.

b) Identification of Documents Upon Which Department Is Relying

USDA, FNS Waiver #2070014

c) Local Mandate Statement

These regulations do impose a mandate upon local agencies but not upon school districts. The mandate is not required to be reimbursed pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code or Section 6 of Article XIII B of the California Constitution because implementation of the regulations will result in savings.

d) Statement of Alternatives Considered

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

e) Statement of Significant Adverse Economic Impact On Business

CDSS has 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

These regulations were considered as Item #2 at the public hearing held on November 14, 2007 in Sacramento, California. Written testimony was received from the California Food Policy Advocates and from the Western Center on Law & Poverty during the 45-day comment period from September 28 to 5:00 p.m. November 14, 2007. The comments received and the Department's responses to those comments follow.

George Manalo-LeClair, Director of Legislation, California Food Policy Advocates submitted the following comments:

1. Comment:

While we are very pleased with this initiative, we are compelled to point out several problems with the proposed regulations:

***1.) that there is greater authority to the state to reduce in-office recertification burdens through the approved waiver than is exercised in the proposed regulations; and***

***2.) the proposed section on finger imaging, which might exceed current statutory authority.***

## **Proposed Regulations Do Not Fully Implement the Waiver Request Approved by U.S.D.A**

The first line of the April 2, 2007 letter that CDSS sent to USDA requesting the waiver said, "We are requesting a waiver of the face-to-face interview requirement at recertification for ***all*** (*emphasis added*) Quarterly Reporting/Prospective budgeting households." USDA replied, "You have proposed to solve these problems by forgoing the documentation of hardship for ***most*** (*emphasis added*) households at recertification." The problem with the proposed regulations is that they do not capture the expectation that "most households" receive a waiver from the documentation of hardship for the waiver of the face-to-face interview. Nor do the proposed regulations confirm that the intent is to waive the face-to-face interview for **all** quarterly reporting households (as originally proposed).

USDA's waiver response gives the state the broad authority to use a phone interviews at recertification with these exceptions:

- "DSS determines that a face to interview is necessary, or
- The household requests a face-to-face interview"

The proposed regulations in 63-300.45 do in fact list these exceptions; however nowhere in the proposed regulations is the broad authority, outside of the exceptions, communicated to counties.

If CDSS's intent is to have "all quarterly reporting/prospective budgeting households" conduct a phone interview at recertification, then this procedure should be clearly established in policy by regulation. This change is too important, yet the proposed regulations are silent on this point. Simply codifying the exceptions and the alternative procedures is not enough. The "factual basis" for the regulations states that the intent of the regulations is to implement the approved waiver from USDA. If USDA and advocates are expecting this policy to apply to most, if not all, households then the regulations should be clear and unambiguous. **We propose that the regulations specify that all quarterly reporting/prospective budgeting households shall have a telephone interview at recertification unless counties determine a face-to-face interview is necessary (this issue is discussed below) or the household requests one.**

### **Response:**

The Department appreciates this comment but will not be amending the regulations. The Department requested and received approval from the Food and Nutrition Service (FNS) to waive the face-to-face interview for all households that are subject to Quarterly Reporting. Federal waivers provide states the discretion to administer the program in a manner that is different from federal rules and regulations. Therefore, waiver approval allows for Departmental discretion and county flexibility in how to best implement the waiver. Certain counties strongly regard a face-to-face interview as beneficial to clients by providing valuable and responsive customer service. Mandating that all QR households be subject to the waiver would impede county flexibility and could result in diminished customer service. Nonetheless, many

counties are in favor of waiving the recertification face-to-face interview for QR households. Therefore, the Department requested a statewide waiver to expedite the approval process and implementation efforts and provide uniformity. Additionally, to maximize the waiver, the Department is requiring counties who choose to utilize the waiving of the face-to-face interview for QR households to implement the waiver on a county-wide basis.

2. Comment:

**Finger Imaging and Section 63-300.451**

CDSS's authority to finger image food stamps applicants is clearly established in state statute. Nevertheless, there are two problems with the proposed text in 63-300.451:

The text says: "However, all SFIS requirements must be completed by the household's next recertification for continued eligibility in the Food Stamp Program."

The first problem is with the phrase "continued eligibility." The state has authority to establish SFIS as a condition of eligibility for CalWORKS but does not have the authority to make SFIS a condition of eligibility for Food Stamps. Our understanding is that only the federal government has the authority to establish eligibility conditions in food stamps, not states. This was an important distinction when SFIS was implemented, leading CDSS to clearly not establish SFIS as a condition of eligibility (but as a condition for issuance). The phrase "for continued eligibility" in the proposed regulation suggests that SFIS would indeed be a condition of eligibility for the Food Stamp Program. We believe **this phrase should be struck from the proposed regulations.**

The second problem with the finger imaging text is quite significant. The state statute that established SFIS clearly noted that clients may not be required to make a special trip to the local welfare office solely for the purpose of finger imaging. By requiring that food stamp recipients complete SFIS requirements by their next recertification, as the proposed text notes, some households would indeed be forced to make a trip solely for the purpose of meeting the SFIS requirement. Additionally, there was no time limit for meeting the SFIS requirement established in the original statute, except during the initial implementation period. As we are well beyond this period, CDSS should not establish any time-specific requirement that SFIS occur within any timeframe, as it will certainly trigger a special trip.

While CDSS has the authority to require households to come into the office for other purposes, we do not believe it has the authority to require a food stamp applicant or payee to come to the local welfare office only to provide biometric information for SFIS, as is suggested by the text.

As two USDA studies funded have demonstrated, biometrics (finger imaging) are a statistically significant barrier to food stamp participation. While the underlying goal of the recertification regulations is to improve participation, the establishment of a time

limit for meeting SFIS requirements could depress participation, resulting in the opposite impact purported in the proposed regulation. **We strongly urge you to remove the language in the proposed text requiring SFIS requirements be met by recertification.**

Response:

Regarding the comment about continued eligibility, the Department agrees with the commenter and will amend the regulations to omit the phrase "for continued eligibility."

Regarding the comment about SFIS requirements being met by recertification, the Department agrees with the commenter's comment in part. Section 63-601.124 is being renumbered to Section 63-300.451 and amended, as out-of-office certification will no longer be considered a SFIS exemption. Although a portion of existing regulatory language is being amended, the language directing CWDs to complete SFIS requirements when the household member(s) is/are in the office for any reason and not to require the household member to make a special trip into the office solely for the purpose of SFIS compliance will be retained. However, for CWDs to ensure timely and accurate issuance of benefits to certified eligible households, the household members who are not exempt shall be required to fulfill SFIS requirements prior to the issuance of food stamp benefits to that household.

3. Comment:

**Additional issues:**

There are two other issues with the proposal.

The proposed regulations in 63-300.43 say that for households not required to have a face-to-face interview, that "the CWD shall either conduct an interview by telephone or by home visit." However, in USDA's waiver approval response, the specific alternative procedures approved were:

8. Description of proposed alternative procedures:

Non-elderly / disabled households

When recertifying periodic reporting households, California's Department of Social Services (DSS) will:

- Conduct telephone interviews. DSS will not document hardship for these households.
- Recertify Public Assistance households using current forms.
- Recertify Non-Assistance households using the household's QR-7, the Quarterly Report Form and a recertification form.
- Conduct a face-to-face interview when either of the following occurs:

- DSS determines that a face-to-face interview is necessary, or
- The household requests a face-to-face interview.

"Home visits" do not appear anywhere in the waiver approval from USDA. Home visits are not in CDSS's original request. If the intent of these regulations is to implement the waiver, then text should directly reflect that the alternative procedure expected by USDA is a telephone interview.

The final issue is with the phrase "when the county determines it necessary to verify conditions of eligibility" with regard to when the county must conduct a face-to-face interview. A county should be able to require a face-to-face interview, when necessary. However, further clarification is needed in the proposed regulations to specify the conditions that merit, "...when the county determines it necessary...". Additionally, counties should demonstrate that they attempted to verify these conditions of eligibility through other, less cumbersome and intrusive methods, such as available databases and third party contacts before requiring a face-to-face interview.

Response:

Regarding the comment about the home visits, the Department agrees with the commenter and will be amending the regulations.

Regarding the additional clarification needed for when the county can require a face-to-face interview to verify conditions of eligibility, the Department appreciates the comment but will not be amending the regulations. Existing regulations (MPP 63-300.5) already specify standards in verifying information used to determine eligibility.

Nu Usaha, Staff Attorney, Western Center on Law and Poverty; Jodie Berger, Regional Counsel, Legal Services of Northern California; and Jessica Bartholow, Statewide Program Manager, Association of Food Banks submitted the following comments: (Copies of: 1) letter dated April 2, 2007, from Charr Lee Metsker, CDSS Deputy Director, Welfare-to-Work Division to Dennis Stewart, Director, Food Stamp Program, Western Region, Food and Consumer Services, including the Waiver Request Outline; 2) letter dated May 17, 2007, from Dennis Stewart, Regional Director, Food Stamp Program, Western Region to Charr Lee Metsker, Deputy Director, Welfare to Work Division, Department of Social Services, including the Waiver Approval; and 3) United States Department of Agriculture, Food and Nutrition Service, Administrative Notice 05-26, dated August 8, 2005 were attached.)

4. Comment:

Section 63-300.41--Waiver of the face-to-face interview at recertification

The Department requested and received approval of "a waiver of the face-to-face interview requirement at recertification for all Quarterly Reporting/Prospective budgeting [QR/PB] households" without documentation of hardship. Char Lee Metsker's letter, dated April 2, 2007 (Metsker's letter), attached as exhibit 1. Instead of fully implementing its waiver authority, the Department's proposed regulation fails to explicitly state that telephone interview shall replace face-to-face interview for all QR/PB households. In fact, the proposed regulation narrows the scope of the waiver by giving discretion to the counties to require face-to-face interview.

As the U.S. Department of Agriculture (USDA) noted in approving the waiver request, "it is important that California county welfare departments use their limited resources efficiently. These waivers [of face-to-face interviews] will also make it easier for many households to participate in the Food Stamp Program." Dennis Stewart's letter, dated May 17, 2007 (Stewart's letter), attached as exhibit 2. Contrary to USDA's statements accompanying its approval of the waiver request and contrary to the Department's own basis in requesting the waiver, the Department's failure to waive the face-to-face interview for all QR/PB households will not increase county welfare departments' efficiency and will not make it easier for household to participate.

Response:

The Department appreciates this comment but will not be amending the regulations. Federal waivers provide states the discretion to administer the program in a manner that is different from federal rules and regulations thus allowing for Departmental discretion and county operational flexibility. Certain counties strongly regard a face-to-face interview as beneficial to clients by providing valuable and responsive customer service. These counties are strong advocates that this face-to-face contact with clients increases and maintains program participation. Therefore, mandating that all QR households be subject to the waiver would impede county flexibility and could result in diminished customer service.

5. Comment:

Section 63-300.44

Although this section was not amended, the Department should amend it to provide certain hardship waivers on a blanket basis for non QR/PB households that are not covered by the blanket waiver discussed in Metsker's letter and Stewart's letter (exhibits 1 and 2). For example, a blanket waiver of the face-to-face interview should be provided to all households with earned income or living in remote areas. The Department should conduct telephone interviews for all households who meet these and other specified hardship criteria for a blanket waiver and conduct a face-to-face interview only upon the households' requests. The Food and Nutrition Service's waiver

(see Administrative Notice 05-26, dated August 2005, attached as exhibit 3) indeed allows this. Adopting such a blanket waiver and conducting a face-to-face interview only upon the households' requests will reduce the amount of time necessary to make a case-by-case determination of whether a waiver should be granted and therefore increase county efficiency.

Response:

The Department appreciates this comment but will not be amending the regulations. This comment is outside the scope of the waiver request and is not allowable in federal and state regulations.

6. Comment:

Section 63-300.45

The amended section 63-300.45 allows the CWD to require the face-to-face interview "when the county determines it is necessary to verify conditions of eligibility." This should be limited to situations where the county has attempted to but cannot verify conditions of eligibility through all other means available.

Response:

The Department appreciates the comment but will not be amending the regulations. Existing regulations (MPP 63-300.5) already specify standards in verifying information used to determine eligibility. If verification of information to determine eligibility has not been satisfied under existing regulations, the county has the right to conduct a face-to-face interview.

7. Comment:

Section 63-300.451

Section 63-601.124 exempts households that are certified out-of-office from all Statewide Fingerprint Imaging System (SFIS) requirements. Although section 63-601.124 requires the county to obtain fingerprint and photo images when the household is in the office for any reason, it prohibits the county from requiring the household to make a special trip solely for purposes of complying with SFIS requirements. Welfare and Institutions Code (WIC) section 10830 also provides that "fingerprint imaging . . . shall be scheduled during the application appointment or other regularly scheduled appointments. No other special appointment shall be required."

Unless the county has mobile equipment and is willing to go to the household's home to obtain the fingerprint and photo images, requiring that "all SFIS requirements [] be completed by the household's next recertification for continued eligibility" amounts to requiring all households, including those who are certified out-of-office, to make a

special appointment solely for purposes of meeting the SFIS requirement. This is contrary to section 63-601.124 and WIC section 10830.

Additionally, fingerprint and photo images are not verification requirement of eligibility. Rather they are the means of preventing duplicate issuance. Therefore, they cannot be required as a condition of "continued eligibility" for food stamps as suggested. (if they were considered verification requirements, 7 C.F.R. sections 273.2(f)(4) and (5) would require alternatives.)

Response:

Regarding the comment about Section 63-601.124 exempting households that are certified out-of-office from all SFIS requirements and the comment about SFIS requirements being met by recertification, the Department agrees with the commenter's comments in part. In the proposed regulations, Section 63-601.124 is being renumbered to Section 63-300.451 and amended, as out-of-office certification will no longer be considered a SFIS exemption. Although a portion of existing regulatory language is being amended, the language directing CWDs to complete SFIS requirements when the household member(s) is/are in the office for any reason and not to require the household member to make a special trip into the office solely for the purpose of SFIS compliance will be retained. However, for CWDs to ensure timely and accurate issuance of benefits to certified eligible households, the household members who are not exempt shall be required to fulfill SFIS requirements prior to the issuance of food stamp benefits to that household.

Regarding the comment about continued eligibility, the Department agrees with the commenter and will amend the regulations to omit the phrase "for continued eligibility."

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. No written testimony on the modifications renoticed for public comment from April 9 to April 24, 2008 was received.