

FINAL STATEMENT OF REASONS

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

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

Section 91-101.1Specific Purpose:

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

Factual Basis:

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

Section 91-101.2Specific Purpose:

This section is being adopted to define maintenance-of-effort or "MOE" in order for counties to distinguish it from county MOE as used in the proposed regulation. This

definition will help clarify the emergency penalty pass-on regulation that AB 1808 requires to be implemented.

Factual Basis:

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

Section 91-101.3

Specific Purpose:

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

Factual Basis:

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

Section 91-101.4

Specific Purpose:

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

Factual Basis:

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

Section 91-101.5

Specific Purpose:

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

Factual Basis:

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

Section 91-101.6

Specific Purpose:

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

Factual Basis:

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

Section 91-101.7

Specific Purpose:

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

Factual Basis:

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

Section 91-101.8

Specific Purpose:

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

Factual Basis:

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

Handbook Sections 91-101.81 through .815

Specific Purpose:

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

Factual Basis:

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

Section 91-101.9

Specific Purpose:

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

Factual Basis:

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

Sections 91-110.1 through .16

Specific Purpose:

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

Factual Basis:

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

Sections 91-110.2 through .23

Specific Purpose:

These sections are being adopted to establish the use of sample of county-specific and/or state cases requirements and, also, the timeframe, accuracy, and completeness of submitted

data that county welfare departments must meet in order for the Department to determine a county's performance outcome measurement.

Factual Basis:

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

Sections 91-110.3 through 91-110.4

Specific Purpose:

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

Factual Basis:

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

Sections 91-110.5 through .55

Specific Purpose:

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

Factual Basis:

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

Sections 91-110.6 through .63

Specific Purpose:

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

Factual Basis:

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

Final Modification:

Section 91-110.63 is amended in response to public testimony to clarify that any penalty pass-on will be the result of only the final county WPR, after the county has had the opportunity to submit revisions.

Second Final Modification:

Section 91-110.61 is amended in response to public testimony in order to ease the burden on the counties by amending the required time, from 10 working days to 20 working days, to respond to CDSS when there is a difference in findings during the data validation period.

This section is further amended by changing the word from "will" to "may" regarding using the CDSS findings and/or subsequent revisions to determine if a CWD failed to meet a federal requirement and to determine penalty pass-on. CDSS recognizes that the data

validation process is still in development and the word change from "will" to "may" will allow flexibility during the development phase.

Sections 91-120 through 91-120.15

Specific Purpose:

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

Factual Basis:

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

Handbook Section 91-120.2

Specific Purpose:

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

Factual Basis:

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

Sections 91-130 through 91-130.23

Specific Purpose:

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

Factual Basis:

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

Sections 91-130.3 through .334

Specific Purpose:

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

Factual Basis:

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

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

would come with a zero value. This adoption is necessary in order to determine when a county is subject to federal penalty pass-on.

Final Modification:

Section 91-130.332 is amended in response to the public testimony to clarify that the disability being referred to in this section is pursuant to the federal data reporting rules, which is found in 45 CFR 261.24.

Sections 91-130.4 through .5 and Handbook

Specific Purpose:

These sections are being adopted to establish and specify the methodology that will be used to determine the dollar amount of the penalty that will be passed on to the failing counties. The Handbook sections are included as a tool to help the counties visualize and understand the methodology involved in the calculation of a county's share of the fiscal penalty.

Factual Basis:

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

Sections 91-130.6 through 91-130.8

Specific Purpose:

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

Factual Basis:

These sections are necessary in order to meet the provision AB 1808 (Section 27.7, Chapter 75, Statutes of 2006) of Welfare and Institutions Code Section 10544 (b) requiring the state to pass on 50 percent of the federal fiscal penalty the state receives to the counties that contributed to the state's failure. Before the state can pass on the counties share of the federal penalty for not meeting the WPR, the state must first receive the federal Department

of Health and Human Services final determination of the penalty, which may have been reduced. AB 1808 (Section 27.7, Chapter 75, Statutes of 2006) amended Welfare and Institutions Code Section 10544 to include language requiring counties to offset the single allocation amount reduced by the state with county general funds so that the total funding remains equal to the county's single allocation. This requirement for failing counties to backfill funds due to the penalty is to prevent counties from reducing their welfare program services due to receiving the penalty. These provisions are based on Welfare and Institutions Code Sections 10553 and 10554, which provide the Director of the Department with the authority to adopt regulations to ensure consistency in the administration of the CalWORKs program.

Section 91-140 et seq.

Specific Purpose:

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

Factual Basis:

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

Final Modification:

Section 91-140-is being amended to remove the words "NOTICE AND" from the main title in order to clarify that the timeframe of 60 days notification applies only for the purposes of the counties' penalty relief and appeal notification and not to all notices that CDSS may send to the counties.

Section 91-140.412- CDSS has amended handbook Section 91-130.44 to clarify and explain the penalty relief criteria found in Section 91-140.412.

Section 91-140.41 is amended in response to public testimony to provide additional relief by adding Section 91-140.416 to further emphasize that counties can put forth any rationale for good cause and penalty relief.

Section 91-140.5 is amended in response to public testimony to include a timeframe of 60 days for CDSS to inform CWDs of any amounts that have been reduced or eliminated.

Section 91-140.6 is amended in response to public testimony to include a timeframe of 60 days for CDSS to notify the county of the outcome of its appeal.

Section 91-140.7 is amended in response to public testimony by replacing the word “adequate” with “sufficient relevant information and documentation” to clarify what counties must provide to establish reason for penalty relief.

b) Identification of Documents Upon Which Department Is Relying

- Assembly Bill 1542
- Assembly Bill 1808

c) Local Mandate Statement

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

d) Statement of Alternatives Considered

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

e) Statement of Significant Adverse Economic Impact On Business

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

f) Testimony and Response

These regulations were considered as Item #01 at the public hearing held on March 17, 2010 in Sacramento, California. Oral testimony was not presented; however, written comment was received during the 45-day comment period from Jodie Berger, Legal Services of Northern California, Frank J. Mecca, Executive Director, County Welfare Directors Association of California (CWDA) and Bill Taylor, Director, County of Los Angeles Department of Public Social Services.

Ms. Berger commented in the following manner:

General Comments

1. Comment:

We only had one comment regarding new §91-100 et seq. In the TANF stakeholder meetings, the group agreed that the counties would not be penalized if the reason for not achieving the federal work participation rate was attributed to cases which were in compliance with state, but not federal law. Counties are legally required to follow the CalWORKs law, and are prohibited from assigning a welfare-to-work plan solely to comply with federal work participation requirements, and which is not also consistent with their employability assessment and the state requirements.

Response:

CDSS believes the primary differences between CalWORKs rules and TANF data reporting rules used to calculate the WPR are cases which do not have a CalWORKs work requirement, but are still included in the federal WPR calculation, which are: 1) CalWORKs cases where all work-required adults have a WTW sanction of more than 3 months, 2) CalWORKs cases where all work-required adults have a CalWORKs exemption, 3) CalWORKs safety net cases, and 4) CalWORKs one-parent cases with a Good Cause exemption.

These primary differences are accounted for in Section 91-140.412 which provides relief to counties when their combination of work-required sanction, exempt, safety net and good cause populations exceed 50 percent of the county's work-eligible population. In that situation, the county would not have the ability to achieve the required 50 percent WPR and therefore is provided penalty relief. In response to the testifier's comments, handbook Section 91-130.44 has been amended to clarify this relief criteria. Further, Section 91-140.416 is added to invite counties to claim penalty relief under this section if the circumstances of the county's failure is other than what is explicitly delineated under Section 91-140.41

Counties should continue to follow CalWORKs rules and create welfare-to-work plans based on the client's individual circumstance and assessment, as required by state law. Because good cause is specifically mentioned as a county penalty relief criteria we believe this alleviates pressure to create plans based on federal data reporting requirements.

Counties are required to meet both CalWORKs rules and TANF data reporting rules. Welfare & Institutions Code 10544 (c) allows penalty relief only to the extent of the county's degree of success in meeting state requirements, when there is a difference with federal rules. It does not offer complete waiver due to meeting state requirements.

2. Comment:

As Regional Counsel supporting the advocates in my agency, which serves 23 California Counties, I also monitor two state-wide listservs geared towards

CalWORKs recipients. It is apparent that county workers have tremendous pressure to shift to federally countable activities, and many feel compelled to create plans that are not consistent with state law, such as with caps on the time for education and training, or not allowing non-federal activities such as stand-alone ESL. In order to make it clear that the state law must be followed, and to avoid penalizing counties for doing so, the good cause provisions must be explicit regarding this issue.

Response:

CDSS agrees in part with the commenter. Good cause is already enumerated in Section 91-140 under .412. Further, counties are instructed to give good cause in Manual of Policy and Procedures Section 42-713. In order to further emphasize that counties are provided relief based on good cause, handbook section has been added. Please see response to comment #1 above.

Section 91-120

3. Comment:

Section 91-120 ("CWD REPORTING FOR CDSS' APPEAL OF ANY 91-120 FEDERAL PENALTIES") and section 91-140.4 ("NOTICE AND RELIEF FROM PASS-ON FEDERAL PENALTIES") sets out some examples of situations that could be listed in the appeal. While this list is not exclusive, good cause for complying with CalWORKs law must be specifically listed, so counties are aware this is good cause, and prepare their data to show which non-federally countable cases are compliant with state law.

Response:

Section 91-120, lists the federal good cause criteria for state appeal, not county. Therefore, complying with CalWORKs rules is not applicable. Meeting a state requirement, but not federal requirement, does not meet federal good cause requirements. The purpose of the section is to make counties aware of the federal good cause criteria so the counties can help the state qualify for a reduction or waiver of the penalty incurred, if the reason the county failed to meet the WPR was due to one of the listed criteria. Any reduction or waiver of state penalty benefits the failing counties.

Further, as stated previously, good cause is already enumerated in Section 91-140 under .412. In addition, counties are instructed to give good cause in Manual of Policy and Procedures Section 42-713. Handbook Section 91-130.44 has been amended to clarify how penalty relief is determined, please see response to comment #1 above. In addition, Section 91-140.416 is added to invite counties to claim penalty relief under this section if the circumstances of the county's failure is other than what is explicitly delineated under Section 91-140.41

Section 91-140.4

4. Comment:

Section 91-120 ("CWD REPORTING FOR CDSS' APPEAL OF ANY 91-120 FEDERAL PENALTIES") and section 91-140.4 ("NOTICE AND RELIEF FROM PASS-ON FEDERAL PENALTIES") sets out some examples of situations that could be listed in the appeal. While this list is not exclusive, good cause for complying with CalWORKs law must be specifically listed, so counties are aware this is good cause, and prepare their data to show which non-federally countable cases are compliant with state law.

Response:

Please see response to comment #1.

Mr. Frank J. Mecca and Mr. Bill Taylor commented in the following manner:

General Comments

5. Comment:

Section 91-110.6: Data Validation

While counties have and intend to continue working collaboratively with CDSS on CalWORKs work participation data validation, we have the following concerns with this section:

1. In 91-100. 62, the proposed regulations indicate that the "burden of proof rests with the CWD [county welfare department] to provide documentation and verification of why the CWD's finding differs with CDSS' finding." We note that the state does not provide specific statutory authority for this "burden of proof" requirement. Further, this "burden of proof" requirement does not exist in the similar regulations for pass-on of the penalty associated with the Food Stamp error rate, and is similarly inappropriate and unnecessary for CalWORKs data validation. Finally, this "burden of proof" is particularly onerous in conjunction with the 10 working day response requirement included in 91-110.61. We recommend elimination of this "burden of proof" statement.

Response:

CDSS thanks the testifier for the comments for consideration. W&IC Sections 10553 and 10554 gives the Director of CDSS authority to implement regulations necessary in order to administer the state's social service program. Here, the Director has found authority for Section 91-100.62 under W&IC Section 10544. The burden of proof is the responsibility of the county because the necessary data to determine whether or not the required work participation rate (WPR) is met comes from the county; therefore, the county has the burden to show CDSS whether it passed or failed to

meet the WPR should there be a difference in findings between the state and county. The burden is not unlike the burden of proof states face when disputing findings under federal law.

2. 91-110.63 is incomplete, as it only addresses the outcome if the CDSS finding after reviewing the documentation is "unfavorable to the CWD." Since this section is specifying the outcome of an "unfavorable" finding, we recommend that it also address a finding that is "favorable" or "neutral" to the CWD.

Response:

CDSS agrees with the testifier and has amended this section to clarify that any penalty pass-on will be the result of only the final county WPR, after the county has had the opportunity to submit revisions.

6. Comment:

91-120.13: "Unclear" Federal Guidance

In this section we recommend adding "unclear," to address situations where a penalty may be avoided or mitigated by demonstrating that the federal guidance was vague or unclear: "Formally issued federal guidance that provided incorrect or unclear information resulting in the CWD's failure."

Response:

CDSS thanks the testifier for the comments for consideration. It is likely that the Department of Health and Human Services (DHHS) may deem "unclear" as a reason for granting good cause relief when presented. However, since 45 CFR 262.5(a) only states "incorrect", it was not appropriate to add "unclear" when it is not explicitly stated by the DHHS.

7. Comment:

91-130.3: "Complete" Data

The proposed regulations indicate that counties shall be determined to have failed to meet federal requirements if they do not submit "accurate, timely, and complete" work participation data. However, there is no statutory authority to include the word "complete" in this section. Welfare and Institutions (WIC) Code Section 10544 (d) provides that counties shall be deemed to have failed to meet federal requirements if they fail to submit "accurate and timely data." The statute does not include the requirement that county data be "complete" to avoid automatic failure. We recommend that the word "complete" be removed from the regulations.

For similar reasons, we also recommend the words "complete/completeness" be removed from Section 91-110.1, 91-110.23, and 91.110.54.

Response:

CDSS thanks the testifier for the comments for consideration. In order to appropriately assess the penalty pass-on for each failing county and not disadvantage one over another and also to determine accurately if a county is liable or not liable to incur a pass-on of the penalty, it is necessary that the state receives complete county data. The authority to request complete data is within the scope of W&IC Section 10544. Additionally, W&IC 10554 gives the Director of CDSS general and broad authority to administer and have oversight over the state welfare program. Therefore, the Director has the authority to adopt regulations to reasonably implement the collection of accurate, timely and complete data.

A “complete” data set is necessary due to the nature of the sampling methodology used to calculate the WPR. In order for the WPR to be statistically valid, a complete 12-month data set is needed. Anything less than a complete data set renders the WPR calculation statistically invalid. For example, six-months of “accurate and timely” data would result in a statistically invalid WPR.

A lack of complete data by all counties could also create an unfair playing field. For example, using the same scenario as above, a county who submits only six-months of “accurate and timely” data could potentially show an artificially higher WPR than a county who submits a statistically valid, *complete* 12-month data set. The county with the lower WPR could then be liable for an increased share of any penalty that is distributed among the counties.

8. Comment:

91-130.33 and 91-130.331: Pass-on of Federal Penalties

The proposed regulations indicates that data taken from TANF cases will be used to calculate the monthly all family (overall) WPR, however, the CWD's monthly all family (overall) WPR currently includes the E2Lite Sample cases, which are county specific. This should be clarified.

Response:

CDSS thanks the testifier for the comments for consideration. Section 91-130.33 identifies the data collection source for the reporting requirement. Section 91-130.331 clarifies how the federal WPR is calculated for the purposes of passing on the penalty. The term “TANF cases” is being used to refer to the TANF program, not the TANF sample. We feel this term is appropriate.

We have chosen to refer to the sample generically because specific terminology and automated systems change over time. For example, “E2Lite” is a new term and refers to an automated system that did not exist five years ago. Today, in the arena of WPR data reporting systems, we use several terms and systems, RADEP, E2Lite, etc., that have evolved over time, are in existence now, but may not exist, or may evolve and

be called something else, in the future. For this reason, we will refer to the sample generically as written and not make reference to specific automated systems.

Further, data used to determine the calculation of the monthly all family (overall) WPR are already referenced and clarified in current All County Letters and data instructions that are transmitted to the counties annually.

9. Comment:

91-130.332 Pass-on of Federal Penalties

The proposed regulations indicates that two-parent families with two work eligible adults, where one is disabled, will not be included in the numerator and denominator of the two-parent WPR. Please clarify whether the regulations are referring to an adult receiving SSI/SDI or , a code 05 exemption.

Response:

CDSS agrees with the testifier and has amended this section to clarify that the disability being referred to in this section is pursuant to federal data reporting rules found in 45 CFR 261.24.

10. Comment:

91-130.334 Pass-on of Federal Penalties

The proposed regulations do not adequately reflect that a combination of E2Lite and TANF sample cases are used by the State to compute county specific WPRs.

Response:

CDSS thanks the testifier for the comments for consideration. Please see response to Comment #8.

11. Comment

91-140.412: Differences Between State and Federal Requirements

The proposed regulations do not adequately reflect the statutory requirement for CDSS to provide penalty relief by taking into account differences between state and federal program requirements for work participation.

WIC Section 10544 (c) states: "A county may also be provided relief based on the degree of success or progress in meeting federal requirements, and, to the extent that there are differences between state and federal program requirements, the degree of success in meeting state participation requirements."

The proposed regulations in 91-140.412 provide penalty relief if a "combination of work-required exempt, safety-net, work-required sanction and good cause population exceed 50 percent of the county's work-eligible population." This language would establish an arbitrary and potentially unreachable threshold for penalty relief under WIC 10544 (c), without indication of how the outcome of this measurement would be used to provide penalty relief. For example, if 45% of a county's work-eligible caseload fell into one of these categories, the County's WPR would have to be 91% for the remaining caseload for the overall WPR for the county to be 50% (50% divided by 55%=91%). Is that 91% WPR threshold the level that must be met for penalty relief? The regulations are unclear.

Further, these proposed regulations seem to provide penalty relief only when a county reaches a particular threshold (50% WPR for the remaining 55% in the example above), rather than relief based on the "degree of success" in meeting state participation requirements.

Response:

CDSS believes the primary differences between CalWORKs rules and TANF data reporting rules used to calculate the WPR are cases which do not have a CalWORKs work requirement, but are still included in the federal WPR calculation, which are: 1) CalWORKs cases where all work-required adults have a WTW sanction of more than 3 months, 2) CalWORKs cases where all work-required adults have a CalWORKs exemption, 3) CalWORKs safety net cases, and 4) CalWORKs one-parent cases with a Good Cause exemption.

These primary differences are accounted for in Section 91-140.412 which provides relief to counties when their combination of work-required sanction, exempt, safety net and good cause populations exceed 50 percent of the county's work-eligible population. In that situation, the county would not have the ability to achieve the required 50 percent WPR and therefore is provided penalty relief. In response to the testifier's comments, handbook Section 91-130.44 has been amended to clarify this relief criteria. Current state statute requires that those who are not exempt or do not have good cause fully participate.

Further, Section 91-140.416 is added, in response to the testifier comment to consider relief based on meeting state participation requirements, and invite counties to claim penalty relief under this section if the circumstances of the county's failure is other than what is explicitly delineated under Section 91-140.41.

12. Comment:

91-140.41: Penalty Relief for Economic and Other Circumstances Beyond the Control of the County

As evidenced by the current recession, CalWORKs caseload and work participation in California is largely driven by economic and labor conditions. Since these factors are such a significant determinant of caseload and participation, and they are clearly

beyond the control of the county, the regulations should reflect penalty relief for such factors. In addition, certain situations that prevent access to records or divert staff are already included as penalty relief in the food stamp error rate penalty pass-on regulations, and are similarly appropriate for these regulations. We therefore recommend the following language be added to the regulations:

91-140.415: Other circumstances beyond the control of the county, such as state or local caseload, economic, or fiscal situations or labor actions, that, among other things, reduce or divert staff, destroy or delay access to significant records, significantly increase caseload, or limit employment opportunities.

Furthermore, the proposed regulations excluded the potential cumulative effect of various factors, e.g. multiple factors at once, and should be revised to reflect additional penalty relief for multiple factors.

Response:

CDSS agrees in part with the testifier. While the additional criteria recommended for addition are not explicitly listed, Section 91-140.41 does allow the Department to consider other reasons not listed to determine if a county's rationale for not meeting the WPR merits penalty pass-on relief or waiver. An additional Section, 91-140.416 has been added to further emphasize that counties can put forth any rationale for good cause and penalty relief.

13. Comment:

91-140.5, .6, and .7: Timeline and Information Description for Appeal and Penalty Relief

The proposed regulations are missing information about the timeline for the state to provide information to counties, and the type of information that counties must provide for penalty relief.

1. In 91-140.5, the regulations do not indicate the number of days that CDSS has to inform CWDs of "any amounts that have been reduced or eliminated."

Response:

CDSS agrees with the testifier and has amended this section to include a timeframe of 60 days for CDSS to inform CWDs of any amounts that have been reduced or eliminated.

2. In 91-140.6, the regulations do not indicate when CDSS will notify the county of the outcome of its appeal.

Response:

CDSS agrees with the testifier and has amended this section to include a timeframe of 60 days for CDSS to notify the county of the outcome of its appeal.

3. In 91-140.7, the regulations do not define the "adequate information" that counties must provide to establish reason for penalty relief.

Response:

CDSS agrees with the testifier and has amended this section by replacing the word "adequate" with "sufficient relevant information and documentation" to clarify what counties must provide to establish reason for penalty relief.

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 following the public hearing were made available to the public following the public hearing from May 27, 2010 to June 11, 2010. The following written testimony was received from Jodie Berger, Legal Services of Northern California, Frank J. Mecca, Executive Director, County Welfare Directors Association of California (CWDA) and Bill Taylor, Director, County of Los Angeles Department of Public Social Services.

Ms. Berger commented in the following manner:

General Comments

1. Comment:

We recognize that the revised regulations set out some circumstances in which the county may get relief when CalWORKs law differs from TANF law. The revised draft regulations, however, only exclude four types of CalWORKs cases under the category of when state participation rules differ from federal participation rules: 1) WTW sanction cases of more than 3 months in length and are not meeting TANF work requirements; 2) all work-required adults have a CalWORKs exemption from work requirements and are not meeting TANF work requirements; 3) all CalWORKs Safety Net cases whether meeting or not meeting the TANF work requirements; and 4) CalWORKs one-parent cases with a Good Cause exemption. These four categories are all individuals who are not participating in the welfare-to-work program or are exempt. What the redrafted regulations omit are categories of individuals who *are* fully meeting state WTW participation requirements, but who are not federally countable.

WIC § 10544(c) provides: "A county may also be provided relief based on the degree of success or progress in meeting federal requirements, and, to the extent that there are differences between state and federal program requirements, the *degree of success in meeting state participation requirements*."

Thus, the statute does not limit relief to the differing categories of individuals who not participating, but is broader, including all cases which meet the state requirements, but not the federal. Cases in which the participants perform 32-35 (one and two parent households) according to state welfare-to-work requirements also qualify as a basis for relief. An example would be SIP cases that do not otherwise meet federal requirements, and SB 1104 cases, in which the household meets a basis for "converting" non-core hours to core hours, and thus may not be meeting TANF requirements.

Counties are legally required to follow the CalWORKs law, and are prohibited from assigning a welfare-to-work plan solely to comply with federal work participation requirements, and which is not *also* consistent with their employability assessment and the state requirements.

Response:

Please see responses to comments number (f) one through four of the Final Statement of Reasons in response to your comments.

Mr. Frank J. Mecca commented in the following manner:

General Comments

2. Comment:

91-110.6 Data Validation

While counties have and intend to continue working collaboratively with CDSS on CalWORKs work participation data validation, we continue to have the following concern with this section:

1. In 91-110.62 the proposed regulations indicate that the "burden of proof rests with the CWD [county welfare department] to provide documentation and verification of why the CWD's finding differs with CDSS' finding." We note that the state does not provide specific statutory authority for this "burden of proof" requirement. Further, this "burden of proof" requirement does not exist in the similar regulations for pass-on of the penalty associated with the Food Stamp error rate, and is similarly inappropriate and unnecessary for CalWORKs data validation. Finally, this "burden of proof" is particularly onerous in conjunction with the 10 working day response requirement included in 91-110.61. We recommend elimination of this "burden of proof" statement.

Furthermore, we note our opposition to one implication of 91-110.63, that individual county work participation rates would be adjusted based on the CDSS findings for WPR data validation. Our opposition is based on the following: 1) the current process being developed for WPR data validation is only planned to be carried out in the 19 largest counties, and unless all counties are reviewed, the relative accuracy rate (and corresponding adjustments to WPR penalty amounts) of any county cannot be determined, and 2) current statute does

not explicitly authorize adjustments in county-specific rates due to CDSS data verification findings.

Response:

CDSS agrees with the testifier in part and has amended Section 91-110.612 to ease the burden onto the counties by amending the required time, from 10 working days to 20 working days, to respond to CDSS when there is a difference in findings during the data validation period. Please see response to comment number (f) 5 of the Final Statement of Reasons in response to your comment regarding other provisions of Section 91-110.62.

CDSS agrees with the testifier in part and has amended Section 91-110.63, by changing the word from "will" to "may" regarding using the CDSS findings and/or subsequent revisions to determine if a CWD failed to meet a federal requirement and to determine penalty pass-on. CDSS recognizes that the data validation process is still in development and the word change from "will" to "may" will allow flexibility during the development phase.

3. Comment:

91-120.13 "Unclear" Federal Guidance

In this section we continue to recommend adding "unclear", to address situations where a penalty may be avoided or mitigated by demonstrating that the federal guidance was vague or unclear: "Formally issued federal guidance that provided incorrect or unclear information resulting in the CWD's failure."

Response:

Please see response to comment number (f) six of the Final Statement of Reasons in response to your comments.

4. Comment:

91-130.3: "Complete" Data

The proposed regulations continue to indicate that counties shall be determined to have failed to meet federal requirements if they do not submit "accurate, timely, and complete" work participation data. However, there is no statutory authority to include the word "complete" in this section. Welfare and Institutions (WIC) Code Section 10544(d) provides that counties shall be deemed to have failed to meet federal requirements if they fail to submit "accurate and timely data." The statute does not include the requirement that county data be "complete" to avoid automatic failure. We recommend that the word "complete" be removed from the regulations.

Response:

Please see response to comment number (f) seven of the Final Statement of Reasons in response to your comments.

5. Comment:

91-140: Relief Based on Degree of Success or Progress in Meeting Federal Requirements

We note that the proposed regulations do not provide details for a how a county may be provided penalty relief "based on the degree of success or progress in meeting federal requirements" as authorized in WIC 10544 (c). Provisions describing this relief should be added to the regulations.

Response:

New comments are outside of the scope of the 15-day renote and will not be addressed at this time.

6. Comment:

91-140.412: Differences Between State and Federal Requirements

Although the revised regulations provide additional information in the Handbook regarding how penalty relief will be provided, the proposed regulations still do not accurately reflect the statutory requirement for CDSS to provide penalty relief by taking into account differences between state and federal program requirements for work participation.

WIC Section 10544 (c) states: "A county may also be provided relief based on the degree of success or progress in meeting federal requirements, and, to the extent that there are differences between state and federal program requirements, the degree of success in meeting state participation requirements."

The proposed regulations in 91-140.412 continue to provide penalty relief if a "combination of work-required exempt, safety-net, work-required sanction and good cause population exceed 50 percent of the county's work-eligible population." We have significant concerns with this language, both in the overall approach to penalty relief, as well as the specific elements used to calculate penalty relief.

As noted in our comments on the initial regulations, the overall approach of this language would establish an arbitrary and potentially unreachable threshold for penalty relief under WIC 10544 (c). As noted in the examples added to the Handbook, under the proposed relief methodology some counties (County examples B and C) with cases that are not required to participate under state rules but are required under federal rules (a difference between state and federal program requirements), would not receive any penalty relief. This is entirely contrary to the statute in WIC 10544 (c), which provides relief based on "the degree of success in meeting state participation requirements," rather than the degree of success after reaching an arbitrary level of caseload composition.

Furthermore, the four populations outlined in the propose regulations for penalty relief-exempt, safety-net, sanctioned, and good cause do not fully account for the differences between state and federal program requirements. For example, state CalWORKs participation includes activities that are not federally countable, such as job readiness

activities (job club and job search) that have exceeded the federal time limit, or specialized supportive services activities, such as in some cases services to address mental health, substance abuse, and domestic violence issues. The differences between state and federal program requirements are complex and broader than just the categories of work-required individuals.

Due to our concerns with the overall approach and specific elements of this methodology, we strongly recommend further dialogue between the Department of Social Services and counties regarding the methodology for penalty relief due to differences between state and federal requirements.

Response:

Please see response to comment number (f) eleven of the Final Statement of Reasons in response to your comments.

New comments are outside of the scope of the 15-day renote and will not be addressed at this time.

Mr. Bill Taylor commented in the following manner:

General Comments

7. Comment:

Page 4 - Section 91-110.6

This provision states "CDSS may change the review findings based on a difference in findings between CWD review and CDSS review of CWD cases."

We strongly question this language which would seem to allow CDSS to essentially adjust counties' WPR rate based on CDSS re-review even in cases when a CWD did not conduct the TANF RADEP review. For example, for FFY 2008, the CDSS Field Operations Bureau (FOB), not the CWD, conducted the TANF RADEP reviews for Los Angeles County. In the CDSS re-review of cases in this example, 21 TANF RADEP review cases that FOB previously identified as meeting the WPR, now lack adequate supporting documentation to validate that the cases did meet the WPR. In addition, there were other cases cited during the re-review as not meeting the WPR also because of lack of documentation. In this case, CDSS FOB apparently did not retain any of their quality assurance folders from the original FFY 1008 TANF RADEP review. It is unclear by the way this provision is written how it will be applied in situations such as the one described above in which CDSS FOB conducted the original review.

Response:

New comments are outside of the scope of the 15-day renote and will not be addressed at this time.

8. Comment:

Page 4 -Section 91-110.62

This section states "the burden of proof rests with the CWD [county welfare department] to provide documentation and verification of why the CWD's finding differs with CDSS' finding." We submitted similar comments on this provision during the initial public comment period and note our concern has not been addressed. The state does not provide specific statutory authority for this "burden of proof" requirement. Further, this "burden of proof" requirement does not exist in the similar regulations for pass-on of the penalty associated with the Food Stamp error rate, and is similarly inappropriate and unnecessary for CalWORKs data validation. Finally, this "burden of proof" is particularly onerous in conjunction with the 10 working day response requirement included in 91-110.61. We recommend elimination of this "burden of proof" statement.

Response:

Regarding Section 91-110.62, please see response to comment number (f) 5 of the Final Statement of Reasons in response to your comment.

9. Comment:

Page 5 - Section 91-120.13

We submitted similar comments on this provision during the initial public comment period and note our concern has not been addressed. In this section we recommend adding "unclear," to address situations where a penalty may be avoided or mitigated by demonstrating that the federal guidance was vague or unclear: "Formally issued federal guidance that provided incorrect or unclear information resulting in the CWD's failure."

Response:

Please see response to comment number (f) 6 of the Final Statement of Reasons in response to your comment.

10. Comment:

Page 7 - Section 91-130.3

We submitted similar comments on this provision during the initial public comment period and note our concern has not been addressed. The proposed regulations indicate that counties shall be determined to have failed to meet federal requirements if they do not submit "accurate, timely, and complete" work participation data. However, there is no statutory authority to include the work "complete" in this section. Welfare and Institutions (WIC) Code Section 10544(d) provides that counties shall be deemed to have failed to meet federal requirements if they fail to submit "accurate and timely data." The statute does not include the requirement that county data be "complete" to avoid automatic failure. We recommend that the word "complete" be removed from the regulations.

Response:

Please see response to comment number (f) 6 of the Final Statement of Reasons in response to your comment.

11. Comment:

Page 8 - Section 91-130.4.42

This section indicated that one of the factors in the penalty pass-on methodology is "Determine the number of cases a CWD needed to meet the minimum WPR required by subtracting the **average monthly caseload of the CWD that met the federally required WPR** from the **average monthly caseload required to meet the federal WPR.**" It is unclear what reports or data sources would be used to determine the "average monthly caseload of the CWD that met the federally required WPR" and the "average monthly caseload required to meet the federal WPR".

Response:

New comments are outside of the scope of the 15-day renote and will not be addressed at this time.

12. Comment:

Page 11 - Paragraph (f)

The "*Note" contains an incorrect reference listed as "(e) 1 through 4." It appears the correct reference should be "(e) 1. A through D." In addition, the formula for determining CWD's penalty relief includes cases that are sanctioned, exempted, timed-out, and have Good Cause exemptions. However, cases with participants in mental health, substance abuse, and domestic violence activities for the required 30 hours also should be included as numerator cases. These cases meet the CalWORKs Welfare-to-Work requirement and according to ACL 06-42, Pay for Performance, these cases are included in the numerator for Pay for Performance.

Response:

New comments are outside of the scope of the 15-day renote and will not be addressed at this time.

13. Comment:

Page 12 - Paragraph (h)

The "*Note" has an incorrect reference, "(g)." The reference should be listed as "(a)

Response:

The department agrees and is amending this regulation.

14. Comment:

Page 14 - Section 91-140.412

The proposed regulations do not adequately reflect the statutory requirement for CDSS to provide penalty relief by taking into account differences between state and federal program requirements for work participation.

WIC Section 10544 (c) states: "A county may also be provided relief based on the degree of success or progress in meeting federal requirements, and, to the extent that there are differences between state and federal program requirements, the degree of success in meeting state participation requirements."

The proposed regulations in 91-140.412 provide penalty relief if a "combination of work-required exempt, safety-net, work-required sanction and good cause population exceed 50 percent of the county's work-eligible population." The language would establish an arbitrary and potentially unreachable threshold for penalty relief under WIC 10544 (c), without indication of how the outcome of this measurement would be used to provide penalty relief. For example, if 45% of a county's work-eligible caseload fell into one of these categories, the County's WPR would have to be 91% for the remaining caseload for the overall WPR for the county to be 50% (50% divided by 55% = 91%). Is that 91% WPR threshold the level that must be met for penalty relief? The regulations are unclear.

Further, these proposed regulations seem to provide penalty relief only when a county reaches a particular threshold (50% WPR for the remaining 55% in the example above), rather than relief based on the "degree of success" in meeting state participation requirements.

In addition, WIC Section 10544 (c) does not limit relief to the differing categories of individuals who are required to participate (which is provided for in the revised regulations), but is broader, including all cases which meet the state requirements, but not the federal. Cases in which the participants perform 32-35 (one and two parent households) according to state welfare-to-work requirements also qualify as a basis for relief. Examples would be Job Readiness Activities (e.g., Job Club, Job Search) that have exceeded the federal time limit or Specialized Supportive Services activities such as, mental health, substance abuse and domestic violence that do not otherwise meet federal requirements.

Response:

Regarding Section 91-140.412, please see response to comment number (f) 11 of the Final Statement of Reasons in response to your comment.

However, new comments are outside of the scope of the 15-day renotice and will not be addressed at this time.

15. Comment:

Page 14 - Section 91-140.41

As evidenced by the current recession, CalWORKs caseload and work participation in California is largely driven by economic and labor conditions. Since these factors are such a significant determinant of caseload and participation, and they are clearly beyond the control of the county, the regulations should reflect penalty relief for such factors. In addition, certain situations that prevent access to records or divert staff are already included as penalty relief in the food stamp error rate penalty pass-on regulations, and are similarly appropriate for these regulations. We therefore recommend the following language be added to the regulations:

91-140.415: Other circumstances beyond the control of the county, such as state or local caseload, economic, or fiscal situations or labor actions, that, among other things, reduce or divert staff, destroy or delay access to significant records, significantly increase caseload, or limit employment opportunities.

Furthermore, the proposed regulations exclude the potential cumulative effect of various factors, e.g. multiple factors at once, and should be revised to reflect additional penalty relief for multiple factors.

Response:

Regarding Section 91-140.41, please see response to comment number (f) 12 of the Final Statement of Reasons in response to your comment.

h) Second 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a second 15-day renotice and complete text of modifications made to the regulations following the public hearing were made available to the public following the public hearing from June 24 to July 9, 2010. The following written testimony was received from Bill Taylor, Director, County of Los Angeles Department of Public Social Services and Frank J. Mecca, Executive Director, County Welfare Directors Association of California (CWDA).

Mr. Taylor commented in the following manner:

General Comments

1. Comment:

91-110.6

1. We reiterate our general concern that 91-110.6 is written based on the assumption that in all cases the CWD reported the data CDSS will be reviewing to verify findings and adjust penalty pass-ons. For example, the original FY 2007-08 Los Angeles County data and findings now being reviewed by CDSS were developed by CDSS Field

Operations Bureau (FOB) with no LA County CWD involvement. In this case, CDSS FOB did not retain any of their quality assurance folders from the original FFY 2008 TANF RADEP review which means that in order to respond to CDSS' review and new findings, LA County CWD needs to try to reconstruct the original cases (now over two years old) in the sample being reviewed by CDSS. Although the entire review/response process between CDSS and LA County CWD has not been completed yet for FY 2007-08 and therefore the final outcome is not know, overall we remain concerned that 91-110.6 does not adequately address this particular situation for Los Angeles County and perhaps other counties. We are concerned that 91-110.6 may lead to unfair adjustments in the original findings based on data/evidence we (LA County CWD) did not originally provide, and that will be difficult, if not impossible to reconstruct for any cases.

Response:

Please see response to comment number (f) five and (g) two of the Final Statement of Reasons in response to your comments.

New comments are outside of the scope of the second 15-day renote and will not be addressed at this time.

2. Comment:

2. Section 91-110.62 states "the burden of proof rests with the CWD to provide documentation and verification of why the CWD's finding differs with CDSS' finding." We submitted similar comments on this provision during the prior two public comment periods and note our concern has not been addressed. The state does not provide specific statutory authority for this "burden of proof" requirement. Further, this "burden of proof" requirement does not exist in the similar regulations for pass-on of the penalty associated with the Food Stamp error rate, and is similarly inappropriate and unnecessary for CalWORKs data validation. We recommend elimination of this "burden of proof" statement.

Response:

Please see response to comment number (f) five of the Final Statement of Reasons in response to your comments.

3. Comment:

91-130.3 "Complete" Data

We submitted similar comments on this provision during the prior two public comment period and note our concern has not been addressed. The proposed regulations indicate that counties shall be determined to have failed to meet federal requirements if they do not submit "accurate, timely, and complete" work participation data. However, there is no statutory authority to include the word "complete" in this section. Welfare and Institutions (WIC) Code Section 10544 (d) provides that counties shall be deemed to have failed to meet

federal requirements if they fail to submit "accurate and timely data." The statute does not include the requirement that county data be "complete" to avoid automatic failure. We recommend that the word "complete" be either removed from the regulations or be defined more clearly as to what constitutes "complete work participation data".

Response:

Please see response to comment number (f) seven of the Final Statement of Reasons in response to your comments.

4. Comment:

91-130.4 Computing Penalty Pass-On

This section indicates that one part of the penalty pass-on methodology is, "Determine the number of cases a CWD needed to meet the minimum WPR required by subtracting the average monthly caseload of the CWD that met the federally required WPR from the average monthly caseload required to meet the federal WPR." We agree with the intent expressed in the State's Final Statement of Reasons (FSOR) in response to concerns counties raised over the phrase "average monthly caseload", but we believe it is important to clarify in the regulations that this generic phrase does not literally mean that the State plans to use the "caseload", but rather, the State plans to use the most appropriate numbers such as combined E2Lite/TANF RADEP sample.

Response:

New comments are outside of the scope of the second 15-day renote and will not be addressed at this time.

5. Comment:

91-140 Relief Based on Degree of Success or Progress in Meeting Federal Requirements or Other Circumstances Beyond Counties' Control

1. Overall, this section does not sufficiently address how counties would be provided penalty relief based on "the degree of success or progress in meeting federal requirements" as specified in WIC 10544(c). The intent of this statutory provision is to provide that counties increasing their work participation rate one year to the next (but that still do not meet the required rate) should be provided some penalty relief based on the degree of improvement. 91-140.415 does seem to tie the possibility of penalty relief for a county improving its WPR during the State's Corrective Action period, but limits the possibility of relief to the narrow parameters of the State's Corrective Action Plan. Some relief for counties improving from one year to the next should also be provided to meet the fuller intent of WIC 10544(c).

Response:

New comments are outside of the scope of the second 15-day renote and will not be addressed at this time.

6. Comment:

2. 91-140.412 does not adequately reflect the statutory requirement in WIC 10544(c) to provide penalty relief based on... "the extent that there are differences between state and federal program requirements, the degree of success in meeting state participation requirements." 91-140.412 provides penalty relief if a "combination of work-required exempt, safety-net, work-required sanction and good cause population exceed 50 percent of the county's work-eligible population." But these four types of cases listed in 91-140.412 do not include all types of cases not required to participate under state law/regs. 91-140.416 which allows counties to introduce information about "other circumstances the county believes were beyond their control" does not sufficiently guarantee that any county can introduce additional data, to the extent it is available, that includes other types of cases not required to participate under state law/regs, such as some cases incorporating job readiness activities,(e.g., job club, job search) that have exceeded the federal time limit or specialized supportive services activities such as, mental health, substance abuse and domestic violence that do not otherwise meet federal requirements.

Response:

Please see response to comment number (f) eleven of the Final Statement of Reasons in response to your comments.

New comments are outside of the scope of the second 15-day renote and will not be addressed at this time.

7. Comment:

3. 91-140.416 allows counties to introduce information about "other circumstances the county believes were beyond their control" for consideration by the state, but it does not clarify for the State or counties the types of factors that are indeed reasonably beyond counties' control. For example, as evidenced by the current recession, unemployment rates impact counties differently and contribute significantly to work participation rates. Another example, already included in the food stamp error rate penalty pass-on regulations are certain situations that prevent access to records or divert staff. Specifying these types of circumstances is similarly appropriate for these WPR penalty pass-on regulations. We therefore recommend the following language (or similar language) be added to 91-140.416:

91-140.416: Other circumstances beyond the control of the county, such as but not limited to significant state or local caseload increases, severe economic or fiscal situations, high unemployment rates, labor actions that among other things reduce or divert staff, destroy or delay access to significant records.

Response:

Please see response to comment number (f) twelve of the Final Statement of Reasons in response to your comments.

New comments are outside of the scope of the second 15-day renote and will not be addressed at this time.

Mr. Mecca commented in the following manner:

General Comments

8. Comment:

91-110.6: Data Validation

We appreciate the amendments made in response to our comments on 91-110.6. However, we continue to have concerns with this section, primarily because the data validation review process is still being developed and refined by a collaborative state and county workgroup, and changes or additions may need to be made to this section as a result of those discussions. We therefore recommend that this subsection be considered draft regulations until the review process has been fully developed. Issues currently being discussed in the workgroup include changes to the work verification plan, interpretation of the state's initial findings, the use of electronic records for data validation, the validation process if the state performed the initial participation documentation review, and, most importantly, the development of a process to resolve disputes between the state and counties for specific findings.

Our previously noted concern with 91-110.62 remains, due to the pending workgroup discussions. 91-110.62 indicated that the "burden of proof rests with the CWD [county welfare department] to provide documentation and verification of why the CWD's finding differs with CDSS' finding." This burden of proof requirement represents only one piece of a larger process currently under development for resolving differences between state and county findings, and is an incomplete description of the process of reconciling and validating documentation. For example, if the state does not provide sufficient information or justification to explain the rationale for a difference in finding, it would be difficult for a county to provide documentation sufficient to satisfy this burden of proof. We recommend that this language be deleted pending development of a more complete process for reviewing cases and resolving disputes.

Furthermore, while we appreciate the amendment to 91-110.63 that CDSS "may" rather than "will" use the results of the validation reviews to determine if a county failed to meet a federal requirement and to determine penalty pass-ons, we recommend that this provision not be finalized until workgroup discussions on the validation process are completed. The preliminary validation reviews and subsequent workgroup discussions have uncovered a number of unanticipated technical complexities in the measurement and validation of work participation rates, and it is possible that the language in 91-110.63 may need further

amendments to reflect the results of the workgroup. As previously noted, the current process being developed for WPR data validation is only planned to be carried out in the 19 largest counties, and unless all counties are reviewed, the relative accuracy rate (and corresponding adjustments to WPR penalty amounts) of any county cannot be determined. Further, current statute does not explicitly authorize adjustment in county-specific rates due to CDSS data verification findings.

Response:

Please see response to comment number (f) five and (g) two of the Final Statement of Reasons in response to your comments.

New comments are outside of the scope of the second 15-day renote and will not be addressed at this time.

9. Comment:

91-130.3: "Complete" Data

The proposed regulations continue to indicate that counties shall be determined to have failed to meet federal requirements if they do not submit "accurate, timely, and complete" work participation data. However, there is no statutory authority to include the word "complete" in this section. Welfare and Institutions (WIC) Code Section 10544 (d) provides that counties shall be deemed to have failed to meet federal requirements if they fail to submit "accurate and timely data." The statute does not include the requirement that county data be "complete" to avoid automatic failure. We recommend that the word "complete" either be removed from the regulations or defined more clearly as to what constitutes "complete" data. We suggest that this issue be discussed by the data validation workgroup.

Response:

Please see response to comment number (f) seven of the Final Statement of Reasons in response to your comments.

New comments are outside of the scope of the second 15-day renote and will not be addressed at this time.

10. Comment:

91-130.42 Computing Penalty Pass-On

This section indicates that one part of the penalty pass-on methodology is, "Determine the number of cases a CWDA needed to meet the minimum WPR required by subtracting the average monthly caseload of the CWD that met the federally required WPR from the average monthly caseload required to meet the federal WPR." We agree with the intent expressed in the State's Final Statement of Reasons in response to concerns counties raised over the phrase "average monthly caseload," but we believe it is important to clarify in the regulations that this generic phrase does not literally mean that the State plans to use the

"caseload," but rather, the State plans to apply the most appropriate numbers such as the combined E2Lite/TANF RADEP sample results to the caseload.

Response:

New comments are outside of the scope of the second 15-day renote and will not be addressed at this time.

11. Comment:

91-140: Relief Based on Degree of Success or Progress in Meeting Federal Requirements

We note that the proposed regulations continue to not provide details for a how a county may be provided penalty relief based on the degree of progress in meeting federal requirements as authorized in WIC 10544(c). The meaning and intent of the statutory provision in 10544(c) is to provide that counties increasing their work participation rate from one year to the next (but that still do not meet the required rate) should be provided some penalty relief based on the degree of improvement. 91-140.415 does seem to tie the possibility of penalty relief for a county improving its WPR during the state's Corrective Action period, but limits the possibility of relief to the narrow parameters of the state's Corrective Action Plan. Some relief for counties improving from one year to the next should also be provided to meet the full meaning and intent of WIC 10544(c).

Response:

New comments are outside of the scope of the second 15-day renote and will not be addressed at this time.

12. Comment:

91-140.412: Differences Between State and Federal Requirements

The proposed regulations still do not accurately reflect the statutory requirement for CDSS to provide penalty relief by taking into account differences between state and federal program requirements for work participation.

WIC Section 10544 (c) states: "A county may also be provided relief based on the degree of success or progress in meeting federal requirements, and, to the extent that there are differences between state and federal program requirements, the degree of success in meeting state participation requirements."

The proposed regulation in 91-140.412 continue to provide penalty relief if a "combination of work-required exempt, safety-net, work-required sanction and good cause population exceed 50 percent of the county's work-eligible population." We continue to have significant concerns with this language, both in the overall approach to penalty relief, as well as the specific elements used to calculate penalty relief.

As noted in our comments on the initial and revised regulations, the overall approach of this language would establish an arbitrary and potentially unreachable threshold for penalty relief under WIC 10544 (c). As noted in the examples added to the Handbook, under the proposed relief methodology some counties (County example B and C) with cases that are not required to participate under state rules but are required under federal rules (a difference between state and federal program requirements), would not receive any penalty relief. This is entirely contrary to the statute in WIC 10544(c), which provides relief based on "the degree of success in meeting state participation requirements." The proposed regulations provide relief only after reaching an arbitrary level of caseload composition, a requirement that is not at all suggested, intended, or authorized by statute. We also note that there may be very little difference in the work participation rates between a county that has 51 percent of its caseload in the four state categories, and a county that has 49 percent of its caseload in those categories, yet the former county is provided relief and the latter county is not this does not reflect the intent of the Legislature or the meaning of the statute.

Furthermore, the four populations outlined in the proposed regulations for penalty relief-exempt, safety-net, sanctioned, and good cause- do not fully account for the differences between state and federal program requirements. For example, state CalWORKs participation includes activities that are not federally countable, such as job readiness activities (job club and job search) that have exceeded the federal time limit, or specialized supportive services activities, such as in some cases services to address mental health, substance abuse, and domestic violence issues. The differences between state and federal program requirements are complex and broader than just the categories of work-required individuals.

Although 91-140.416 allows counties to introduce information about "other circumstances the county believes were beyond their control," this does not sufficiently guarantee that any county can introduce additional data or include additional cases that meet state requirements but not federal. This section also does not clarify for the state or counties the types of factors that are indeed reasonably beyond counties' control. We recommend that this section to clarified to add further examples.

Response:

Please see response to comment number (f) eleven of the Final Statement of Reasons in response to your comments.

New comments are outside of the scope of the second 15-day renote and will not be addressed at this time.