

## FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety or general welfare within the meaning of Government Code (GC) section 11346.1. Further, GC section 11346.1(a)(2) requires that at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provides a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the OAL, they shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in GC section 11349.6. To determine the OAL five day comment period, check <http://www.oal.ca.gov/> often.

## DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

1. The Legislature enacted the Semi-Annual Reporting (SAR) provisions of Assembly Bill (AB) 6, (Chapter 501, Statutes of 2011) on October 6, 2011 to be effective as early as April 1, 2013 and no later than October 1, 2013. These emergency regulations replace the current Quarterly Reporting (QR) System with a SAR System in the CalFresh Program. (Emergency regulations implementing SAR in the California Work Opportunity and Responsibility to Kids [CalWORKs] have been completed separately).

AB 6 simplifies and streamlines the reporting requirements in CalFresh by decreasing the number of periodic reports from five to two per year. AB 6 mandates that SAR be implemented in a cost-effective manner that promotes compatibility between the CalFresh and CalWORKs Programs.

2. Delay in the implementation of these regulations would conflict with the statutory directive found in AB 6, section 25 that emergency regulations be adopted:
  - (a) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 [commencing with Section 11340] of Part 1 of Division 3 of Title 2 of the GC), the department may implement and administer the changes made by this act through all-county letters or similar instructions from the director until regulations are adopted. The department shall adopt emergency regulations implementing these provisions no later than July 1, 2013. The department may readopt any emergency regulation authorized by this section that is the same as, or substantially equivalent to, any emergency regulation previously adopted under this section.
  - (b) The initial adoption of regulations pursuant to this section and one readoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by OAL. The initial emergency regulations

and the one readoption of emergency regulations authorized by this section shall be submitted to OAL for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations shall be adopted.

3. Pursuant to Welfare and Institutions (W&I) Code section 18910:

- (a) To the extent permitted by federal law, regulations, waivers and directives, the department shall implement the prospective budgeting, semiannual reporting system provided in Sections 11265.1, 11265.2 and 11265.3 and related provisions, regarding CalFresh in a cost-effective manner that promotes compatibility between the CalWORKs Program and CalFresh and minimizes the potential for payment errors.

And:

- (c) The department shall seek all necessary waivers from the United States Department of Agriculture (USDA) to implement subdivision (a).

While the California Department of Social Services (CDSS) had requested numerous waivers to attempt compatibility between the CalFresh and CalWORKs Programs, delays in the response of the waiver requests from USDA have substantially delayed the compilation of these emergency regulations.

- 4. The CDSS submitted waiver requests to the Food and Nutrition Service (FNS) on March 5, April 25 and June 6 of 2012, and did not receive responses until September 7, 2012 and April 26, 2013. The extraordinary delay in FNS' response resulted in CDSS having to make assumptions regarding significant policy decisions in the implementation of All County Letters, which were ultimately found to be incorrect. Several of these assumptions were based on FNS having granted similar waivers during the implementation of QR. The delayed responses from FNS (unexpectedly denying nearly all of the waiver requests) resulted in CDSS having to amend significant policy and required consultation with FNS, the Statewide Automated Welfare Systems consortia and counties. As a result of this lengthy process, CDSS did not begin drafting the regulations until October 2013.
- 5. Therefore, in order to preserve the public peace, health safety and general welfare of the State of California, these regulations are to be adopted on an emergency basis.

#### INFORMATIVE DIGEST

AB 6 replaces the current Quarterly Reporting/Prospective Budgeting (QR/PB) system with a SAR system in CalFresh and CalWORKs. The bill mandates that SAR be implemented as soon as April 1, 2013 and no later than October 1, 2013. CalFresh is California's version of the federal Supplemental Nutrition Assistance Program (SNAP). This regulation package only amends the CalFresh regulations.

AB 444 (Chapter 1022, Statutes of 2002) replace the Monthly Reporting/Retrospective Budgeting (MR/RB) with a QR/PB System in the CalFresh and CalWORKs Programs effective in 2004. AB 444 required QR/PB to be adopted in the CalFresh Program to the extent permitted

by federal law, regulations, waivers and directives and considering cost-effectiveness and compatibility between the two programs. Since the implementation of QR/PB in CalWORKs and CalFresh, the FNS has been encouraging California to move towards a simplified, six-month reporting system.

AB 6, (Chapter 501, Statutes of 2011) mandates that CalWORKs and CalFresh implement SAR in a cost-effective manner that promotes compatibility between the two programs. The FNS will not allow CDSS to require a second SAR in addition to the annual recertification of eligibility in the CalFresh Program. Consequently, CDSS has determined that rather than requiring two SARs in addition to the annual redetermination of eligibility, the annual redetermination/recertification will take the place of the second SAR. This change also reduces the reporting burden on recipients and reduces the administrative burden on county workers by not mandating duplicative reporting requirements.

In order to more closely align the treatment of income under federal SNAP prospective budgeting rules (as indicated in AB 6), recipients will no longer have to estimate their income for each month of the SAR Payment Period in order for their eligibility worker to average that income over the period. Instead, a monthly income amount will be determined for the SAR Payment Period based only on current income and reasonably anticipated income changes. This policy change aligns CalWORKs with the federal SNAP prospective budgeting rules, will simplify the process of reasonably anticipating income for both recipients and county workers and will alleviate one of the factors that has been found to be the most confusing and error-prone under QR.

In addition to the SAR provisions of AB 6, this regulation package also implements the program name change of Food Stamps to CalFresh in W&I Code section 18900.1 as added by AB 433 (Chapter 625, Statutes of 2008).

This regulation package also contains numerous clean-up and technical changes, including repealing outdated MR regulations and correcting outdated terms and references.

The benefits anticipated from this regulatory action include simplifying the reporting responsibilities for both CalFresh recipients and county eligibility workers.

The Department finds that these proposed regulations are compatible and consistent with the intent of the Legislature in adopting AB 6 and AB 433, as well as with existing federal and state regulations.

#### COST ESTIMATE

1. Costs or Savings to State Agencies: The funding was budgeted in the 2014 May Revision under the SAR premise for \$194,000 in FY 2014-2015.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With GC sections 17500 – 17630: This regulation does not affect any local entity or program.

3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: This regulation does not affect any federally funded state agency or program.

#### LOCAL MANDATE STATEMENT

These regulations impose a mandate upon county welfare departments but not on school districts. Since the county share of the program is capped at a specified maintenance of effort level, there are no state-mandated local costs in these regulations which require state reimbursement under Section 17500 et seq. of the GC. If the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the GC. If the statewide cost of the claim for reimbursement does not exceed one million dollars, reimbursement shall be made from the State Mandates Claims Fund.

#### AUTHORITY AND REFERENCE CITATIONS

The CDSS adopts these regulations under the authority granted in Sections 10553, 10554 and 18904 of the W&I Code and Title 7, Code of Federal Regulations, Part 273. Subject regulations implement and make specific Sections 10830, 11265.1, 11265.3 and 18900.1, W&I Code, AB 6, (Chapter 501, Statutes of 2011) and AB 433, (Chapter 625, Statutes of 2008)].