

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on rev. 2)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

REGULAR

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2013-1009-01	REGULATORY ACTION NUMBER 2014-0417-025	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		REGULATIONS	
NOTICE		REGULATIONS	

ENDORSED FILED IN THE OFFICE OF

2014 MAY 30 PM 2:32

DEBRA BOWEN SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY Labor Commissioner/Division of Labor Standards Enforcement, Dept. of Industrial Relations

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Farm Labor Contractors	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) Z-2013-1009-01
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	per agency request RS
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 13660, 13661, 13662, 13660.1, 13663, 13663.5, 13664, 13665, 13665.5, 13666, 13666.1, 13666.2, (see attached)
	AMEND 13660, 13661, and 13662 per agency request RS
TITLE(S) 8	REPEAL 13660, 13661, and 13662
3. TYPE OF FILING	<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)	April 1 through April 16, 2014
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____
7. CONTACT PERSON Jennifer Stevens	TELEPHONE NUMBER (916) 263-3400 FAX NUMBER (Optional) (916) 263-2920 E-MAIL ADDRESS (Optional) JStevens@dir.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 5/2/14
TYPED NAME AND TITLE OF SIGNATORY Ethera Clemons, Deputy Chief, Division of Labor Standards Enforcement	

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MAY 30 2014

Office of Administrative Law

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NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Labor Commissioner/Division of Labor Standards Enforcement, Dept. of Industrial Relations			AGENCY FILE NUMBER (if any)

2014 APR 17 PM 4:16

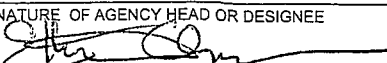
OFFICE OF
ADMINISTRATIVE LAW**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

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3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2013 432	PUBLICATION DATE 10/25/2013

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

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SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 13660, 13661, 13662 request R1 13660.1, 13663, 13663.5, 13664, 13665, 13665.5, 13666, 13666.1, 13666.2, (see attached)
	AMEND 43660, 43661, and 43662 per agency
TITLE(S) 8	REPEAL 13660, 13661, and 13662 request R2
3. TYPE OF FILING	
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
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SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 4/16/14
TYPED NAME AND TITLE OF SIGNATORY Ethena Clemons, Deputy Chief, Division of Labor Standards Enforcement	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAY 30 2014

Office of Administrative Law

OAL FORM 400 – Attachment
File No. Z 2013-1009-01

Additional Sections adopted in Title 8 (Item B.2 of Form 400):

Sections 13666.5, 13667, 13667.1, and 13667.4

Repeal and adopt Subchapter 9 of Chapter 6 of Division 1 of Title 8 as follows:

TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 6. DIVISION OF LABOR STANDARDS ENFORCEMENT
SUBCHAPTER 9. ~~LABOR COMMISSIONER'S FARM LABOR CONTRACTOR
FUND~~
FARM LABOR CONTRACTORS

Add new article, and repeal and adopt sections as follows:

Article 1. Application For Farm Labor Contractor License

~~13660. Definition of "Damages."~~

~~Damages under Section 1684(c) and (d) of the Labor Code are defined as the following:~~

~~(a) Wages including interest;~~

~~(b) Damages including interest according to proof of actual damages incurred by an employee of a farm labor contractor, by a person who has been recruited, solicited, supplied, hired, furnished or transported by the contractor on behalf of an employer engaged in the growing or producing of farm products or pursuant to a loss suffered by an employee of a farm labor contractor, or person described above, for any violation of Division 2, Part 6, Chapter 3 of the Labor Code;~~

~~(c) Damages shall not include penalties assessed pursuant to Section 203 of the Labor Code or penalties assessed pursuant to any other provision of law.~~

~~Note: Authority cited: Section 1699, Labor Code. Reference: Section 1684, Labor Code.~~

13660. Application for License

To apply for a Farm Labor Contractor license pursuant to Labor Code section 1684, the applicant shall complete, sign, and submit an online application along with required items and documents at DLSE's website (https://permits.dir.ca.gov/FLC_External/) for any initial or new license or license renewal. Alternatively, an applicant may submit to DLSE a complete and signed physical application for a new or initial license (DLSE 401-N), a regular license renewal (DLSE 401-R), or a short-form license renewal (DLSE 401-S) and provide the items and documents pursuant to the respective application requirements as specified in this article. The applicant shall certify under penalty of perjury that the information provided on the application form, any supplementary documents, and any other information submitted by the applicant in support of the application is true and correct and executed by signature. If the place of execution is outside California, the certification must be sworn before a notary public or other officer authorized to take oaths and affirmations.

(a) The application for an initial or new license (online form or DLSE 401-N) shall contain the following information to be provided by the applicant:

(1) If the applicant is an individual (sole proprietor), that individual's name, date of birth, driver's license number, and Social Security number. If applicant is a corporation, the date of incorporation. If applicant is a partnership, the date the partnership was created and the name, date of birth, driver's license number, and Social Security number of each partner. If applicant is a limited liability company (LLC) the date of filing the articles of organization.

(2) All names under which the applicant is doing business as or has done business as within the previous three years;

(3) Current physical business address (number, street, city or town, county, state, zip code) and preferred mailing address if different than physical business address, preferred email address, and home physical address of the applicant (if a sole proprietor), for each partner in a partnership, each member of an LLC, or each corporate officer of a corporation. If the current address information subsequently changes, the applicant must immediately, but no later than five (5) days thereafter, advise the Labor Commissioner of the change;

(4) Main business telephone number and mobile telephone number used in conducting business;

(5) A copy of the Migrant and Seasonal Worker Protection Act (29 U.S.C. section 1811) certificate of registration that has been issued to applicant, if the applicant is required to register as a farm labor contractor under federal law;

(6) Identity of the legal form or type of ownership of the farm labor contractor business (individual/sole proprietor, partnership, corporation, limited liability company, or other business entity).

(A) If individual or sole proprietor ownership, the full name of the owner, physical home address, mailing address, if different, business telephone and mobile telephone number of owner, and designation of an agent for service of process, if applicable, including physical address and business telephone number and mobile telephone number of the designated agent for service of process;

(B) If partnership, the full name, physical home address, mailing address, if different, and business telephone number and mobile telephone number of each partner used in conducting business;

(C) If corporation or LLC, the full name, titles, physical home address, mailing address, if different, business telephone number and mobile telephone number of each corporate officer, managing agent and LLC member, and indicate whether the corporation or LLC is in good standing with the Secretary of State;

(D) If a foreign corporation incorporated or organized outside of California, in addition to the information required under (C), provide the date a Statement and Designation by Foreign Corporation (form S&DC-STK/NP) was filed with the Secretary of State.

(7) For all persons, except bona fide salaried employees, or entities with a financial interest in the applicant's business, including but not limited to partnerships, corporations, LLCs or other business entities, the name and address of the person or entity and a statement of the person or entity's percentage of financial or profit-sharing interest in the applicant's business.

(8) Indicate whether the applicant will utilize the services of any other individual or entity to recruit, solicit, hire, furnish, employ, or transport agricultural workers, which includes but is not limited to, foremen and crew bosses.

(A) If yes, state for each individual or entity who will perform any of these activities (i) the person or other entity's name, current physical address and telephone number, Social Security number, and farm labor contractor license number, if applicable, (ii) whether each individual or entity identified has at any time within the last 10 years held a farm labor contractor license, and (iii) provide federal certificate of registration issued by the U.S. Department of Labor if the individual or entity is required to register under federal law.

(B) If no, state who will perform these activities.

(9) The names and physical addresses, mailing address, if different, and email address of all growers with whom the applicant plans to contract in the near future and, if applicable, with whom the applicant has contracted during the past three years;

(10) The name and title of the person who will take the written examination for the applicant and whether the person prefers to take the examination in English or Spanish;

(11) State whether the applicant intends to maintain a labor camp, lodging house, or other housing for workers. If yes, state the physical address of the location of the housing, the local agency which issued a license or permit to house workers, and the effective dates of such license or permit;

(12) Indicate that applicant will not sell or propose to sell intoxicating liquors, including wine or beer, on the premises where the applicant operates;

(13) Indicate whether the applicant has submitted to the Internal Revenue Service a tax information authorization form (IRS Form 8821);

(14) Indicate whether the applicant intends to provide transportation to employees, and:

(A) For each vehicle to be used for this purpose, identify the owner, make, model and year, body type and capacity, license plate number, vehicle identification number (VIN), and name, address, and telephone number of the automobile liability insurance carrier;

(B) Identify the name, address, and driver's license number of each individual who will operate any vehicle to provide transportation;

(C) For any additional vehicle which is subsequently sought to be used for the transportation of employees which is not identified on the application, the additional vehicle must be registered with DLSE not later than 7 days prior to use of the vehicle for transportation of workers. For vehicles which are subsequently registered, applicant or licensee must provide a copy of the liability insurance coverage, and DMV certification, if applicable, for operators, as required under subdivision (b)(10) and (11).

(15) Indicate whether applicant's farm labor contractor operation will be conducted in connection with any other business and, if so, the type of business and name, address, and telephone number of the other business;

(16)(A) Indicate whether any person identified under subdivisions (a)(6) and (a)(7) of this section, within the last 10 years:

(i) owes any delinquent unpaid wages;

(ii) has any unpaid judgments outstanding;

(iii) owes payroll taxes, personal, partnership or corporate income taxes, Social Security taxes, or disability insurance taxes;

(iv) has plead guilty or nolo contendere to or been convicted of a crime substantially related to working conditions or workers' health or safety, either misdemeanor or felony. The term convicted includes instances in which there was a suspension of sentence and probation granted, and where judicial dismissal proceedings under Penal Code section 1203.4 et seq. were undertaken;

(v) has had any license or permit issued pursuant to the Labor Code or Business and Professions Code, or both, that was suspended, revoked, or denied, or has had any disciplinary action of any nature whatsoever imposed upon him, her, or it in connection with the holding of a license or permit;

(vi) has violated or willfully aided or abetted any person in the violation of any law in the State of California regulating employment in agriculture, the payment of wages to farm employees, or the conditions, terms or places of employment affecting the health and safety of farm employees

which are applicable to business activities or operations of the licensee in his or her capacity as a farm labor contractor.

(B) If any person or entity identified in subdivision (A) above falls within subdivisions (i) through (vi), the applicant shall submit an explanation regarding the incident and documentation supporting the explanation, including but not limited to, description of the violation or charge, date of incident, court or agency name (federal, state or local), and the disposition, if any, of the matter.

(17) Applicant shall submit a list including the name and addresses of any of the following relatives who the applicant knows has previously applied for or held a farm labor contractor license and whether the license was denied or revoked within the last 10 years: spouse, domestic partner, brother, brother-in law, sister, sister-in-law, cousin, cousin-in-law, father, father-in-law, mother, mother-in law, son, son-in-law, daughter, or daughter-in-law, aunt, or uncle of the applicant if the applicant is an individual, of a partner if applicant is a partnership, and of an officer or shareholder if applicant is a corporation, LLC, or other business entity.

(18) Indicate the total number of employees the applicant will employ, and provide his or her state and federal tax employer identification numbers.

(19) Total gross annual revenue for the applicant.

(20) The name and address of an agent or representative designated by the applicant to speak on behalf of the applicant for purposes of communicating with DLSE personnel.

(21) Attest to express certification statements regarding obligations which are acknowledged and made when submitting an application that the applicant:

(A) Agrees to comply with the provisions of Labor Code section 3700 which require every employer to be insured against liability for workers compensation.

(B) Is aware of and agrees to comply with the provisions of Labor Code section 1684(a)(3) to deposit with the Labor Commissioner and maintain a current surety bond.

(C) Agrees, in the event the transportation is provided for employees, to carry public liability insurance on each vehicle used, as required by subdivision (b)(10) and to ascertain that all individuals providing transportation are legally licensed and competent to transport employees.

(D) Agrees, as a condition of being licensed as a farm labor contractor by the Labor Commissioner, to keep the Commissioner informed of any change in the licensee's address and other contact information.

(E) Consents, pursuant to Labor Code section 1684(a)(1)(C), to the designation of the Labor Commissioner by an appropriate civil court as the licensee's agent to accept service of summons in any action against a

licensee relating to their activities as a farm labor contractor in the event that applicant has left the jurisdiction in which the action is commenced or otherwise become unavailable to accept service.

(F) Is aware of the responsibilities as licensee and agrees to operate as a farm labor contractor in compliance with the provisions of the California Labor Code and applicable regulations, including provision of adequate safeguards for health and safety of workers and proper payment to workers; and specifically:

(i) is aware of all applicable worker safety requirements related to agricultural working conditions, including heat illness injury prevention and pesticide use and exposure, and will comply with all applicable requirements; and

(ii) will provide all protective measures, materials and equipment necessary to comply with heat illness injury prevention requirements (see Title 8, California Code of Regulations, section 3395) at each work site where work is to be performed.

(G) Certifies that applicant has provided all facts required by the Labor Commissioner to make its determination to issue a license to operate as a farm labor contractor as to the applicant's character, competency, responsibility, and the manner in which the applicant proposes to conduct operations.

(H) Is aware of the provisions of the Labor Code and applicable regulations regarding grounds for revocation, suspension, refusal to renew, or issue a license to operate as a farm labor contractor, and that a violation or failure to comply with all licensing requirements applicable to farm labor contractors, including regulations in Title 8 of the California Code of Regulations sections 13660 through 13667.4, inclusive, will subject a licensee to denial of an application, revocation, suspension, or failure to renew a license.

(I) Is aware that any material misrepresentation made in connection with the information provided on the application or other documents submitted relating to the application is grounds for denial or subsequent revocation of a license.

(b) The applicant for a farm labor contractor license shall provide to the Labor Commissioner the following items and documents along with the application for a license:

(1) Fees:

(A) License fee of \$500 and a filing fee of \$10, pursuant to Labor Code section 1684(a)(4);

(B) Examination fee pursuant to Labor Code section 1684(b)(1). The applicant shall pay a one hundred dollar (\$100) fee for three attempts to pass the examination in a calendar year. Failure to pass after three attempts shall result in rejection of the application, forfeiture of the

examination and applications fees, and inability to re-apply and retake the test until the beginning of the next calendar year after rejection.

All fees may be paid online by accessing [http://www.dir.ca.gov/dlse/Online Payment](http://www.dir.ca.gov/dlse/OnlinePayment), or by submission of a certified check, cashier's check, or money order to the Division of Labor Standards Enforcement;

(2) If applicant is a corporation, a copy of the Articles of Incorporation and the most recent Statement of Information (form SI-200) filed with the Secretary of State. If the applicant is an LLC, a copy of the Articles of Organization and most recent Statement of Information (form LLC-12); and if a partnership, a copy of the written partnership agreement, if any;

(3) Two (2) current passport photos for an individual who is a sole proprietor, each partner, and a representative of a corporation, LLC, or other business entity, as applicable for the type of business entity. If the identity of a representative changes during the period of the license, the corporation or business entity shall submit two passport photographs of the new representative so that the division can issue a new license. The name of the person in the photo must be written on the back of the each photo.

(4) A copy (for online applications) or an original (for submitting a physical application) of a Farm Labor Contractor Bond (DLSE 402 or on a form issued by the surety) which complies with the requirements of Labor Code Section 1684(a)(3).

(5) Certificate of Workers' Compensation Insurance coverage or certificate of self-insurance issued to the applicant or valid contract with a third party to provide workers' compensation insurance. This certificate and documentation shall contain the name of the insured, fictitious business name ("dba"), if any, and current physical business address of the insured, effective and expiration date, amount of coverage and a policy number, if applicable. If the applicant provides a contract with a third party to provide workers' compensation insurance, the applicant shall also provide a Certificate of Workers' Compensation Insurance or certificate of self-insurance issued to that third party demonstrating workers' compensation coverage for employees of the applicant.

(6) Evidence of completion of eight hours of approved educational classes during the previous year in accordance with section 13665.5.

(7) Pursuant to Labor Code section 273 subdivision (b), a statement that applicant has satisfied all current requirements imposed in a final court judgment, Labor Commissioner order, or an accord (e.g. settlement agreement) involving an issue which relates to unpaid wages.

(8) Live scan fingerprint images for a sole proprietor, all partners of a partnership, all corporate officers of a corporation, each member of a limited liability company, as applicable.

(9) A copy of driver's license for:

(A) A sole proprietor, each partner of a partnership, each corporate officer of a corporation, each member of a limited liability company, as applicable

(B) Each person who will operate a farm labor vehicle for transportation of workers, including drivers of vehicles who transport farm laborers who are not the applicant's employees.

(C) The person taking the examination required under Labor Code section 1684(a)(5). For purposes of this subdivision (b)(9)(C), other photo identification on a legally authorized document is acceptable.

(10) Proof of applicant's vehicle liability insurance coverage in the amount set below, for each vehicle identified under section 13660(a)(14)(A) which includes the name of the insured, the name and address of coverage carrier, policy number, coverage limits, including medical coverage, the policy's effective dates for each vehicle applicant intends to utilize.

(A) For vehicles carrying 15 or fewer passengers: \$15,000/\$30,000 minimum coverage for personal injury, and \$50,000 for property damage.

(B) For vehicles carrying more than 15 passengers: \$30,000/\$60,000 minimum coverage for personal injury, and \$50,000 for property damage.

(C) For day haulers who only provide transportation: \$1,500,000 minimum coverage for personal injury for a vehicle carrying 15 or fewer passengers; \$5,000,000 minimum coverage for personal injury for a vehicle carrying more than 15 passengers.

(11) Certificate from Department of Motor Vehicles (DMV) permitting operation of farm labor vehicle if the vehicle is subject to Vehicle Code sections 322 and 12519 and where the applicant will transport farm workers who are his or her own employees or are employed by another.

(12) Evidence of clean driving license record from the Department of Motor Vehicles (DMV Form INF 1125) for any person operating a vehicle which will transport the applicant's own employees or workers who are not his or her employees.

(13) Personal record information (included in online and physical application (DLSE 401-N) which provides the following information for each sole proprietorship, each partner of a partnership, each corporate officer of a corporation, each member and managing agent (if any) of an LLC, and certified under penalty of perjury:

- (A) the full name (first, middle, and last name) of the individual, title in the business, social security number, percentage of ownership interest (if any), date of birth, driver's license number (include a copy of driver's license), spouse's name, spouse's capacity in business (if any), physical home address (post office or other mail box number not allowed), business telephone number, mobile telephone number, email address, and mailing address if different from home address.
- (B) the occupation history of the person for the last two years including commencing and ending dates, name of employer (if self-employed, indicate name and type of business), description of occupation, and business location address.

Note: Authority cited: Sections 1699 and 273, Labor Code. Reference: Sections 273, 1682, 1683, 1684, 1685, 1687, 1688, 1690, 1695, 1695.9, 1696, 1696.3, 1696.4, 1698.5, and 3700, Labor Code; Section 12519, Vehicle Code.

13660.1. Character, Competency and Responsibility.

- (a) In determining whether an applicant possesses satisfactory character, competency and responsibility, the Labor Commissioner shall consider all information submitted in connection with the application or otherwise obtained by the Labor Commissioner during the review of an application. Information regarding past conduct, including criminal history, substantially related to working conditions shall be examined to determine an applicant's character, competency, and responsibility. Conduct or conviction of a crime is substantially related to working conditions if it evidences present or potential unfitness of an applicant to perform the functions authorized by the license in a manner consistent with the requirements of the Labor Code. The conduct or convictions considered substantially related to working conditions shall include, but not be limited to, the following:
-
- (1) Any final determination regarding a violation of a provision of the Labor Code or Title 8 of the California Code of Regulations;
- (2) Crimes or acts involving dishonesty, fraud, deceit, or theft with the intent to substantially benefit oneself or another or to substantially harm another;
- (3) Crimes involving physical violence against persons within the last 7 years; or
- (4) Crimes or other acts that indicate a substantial or repeated disregard for the wages, health, safety, or welfare of employees. "Other acts" include but are not limited to, actions or conduct involving violations of law

determined to be willful, repeated, or serious within the meaning of the applicable statutory scheme and shall constitute a “substantial or repeated disregard” for purposes of this section.

- (b) When considering whether an applicant who falls within subdivision (a) has the character, competency and responsibility to be licensed as a farm labor contractor, the Labor Commissioner shall consider whether the applicant has been rehabilitated. When considering whether the applicant has been rehabilitated, the Labor Commissioner will consider the following criteria:

(1) For a felony conviction that is substantially related to the qualifications, functions, or duties of a licensee, seven (7) years have passed from the time of release from incarceration or completion of probation without the occurrence of additional criminal activity.

(2) For misdemeanor convictions that are substantially related to the qualifications, functions, or duties of a licensee, three (3) years have passed from the time of release from incarceration or completion of probation without the occurrence of additional criminal activity.

(3) For other act(s) that are substantially related to the qualifications, functions, or duties of a licensee, three (3) years have passed from the time of commission of the act(s), without the occurrence of additional act(s) substantially related to the qualifications, functions, or duties of a licensee.

(4) The amount of time needed to demonstrate rehabilitation under this subdivision may be increased or decreased by taking into account the following:

(A) The nature and severity of the crime(s) or act(s) that are under consideration;

(B) Evidence of any crime(s) or act(s) committed subsequent to the crime(s) or act(s) that are under consideration as, or that were, the grounds for denial, suspension, or revocation, which also could be considered as grounds for denial, suspension, or revocation.

(C) Evidence that applicant has successfully completed the period of parole or probation and complied with its restitution terms and all other sanctions lawfully imposed against the applicant.

(D) Consistent work history subsequent to the release from incarceration, or the completion of probation if no incarceration was imposed, subsequent to the time of commission of the act(s).

(E) Documents or testimony from credible individuals who have personal knowledge of the applicant's life and activities subsequent

to the time of commission of the crime(s) or act(s) who can attest to the applicant's or licensee's present fitness for licensure.

(F) Other relevant evidence, if any, of rehabilitation submitted by the applicant or licensee. For example, relevant evidence may include evidence of recovery from drug and/or alcohol addiction or abuse or completion of a drug and/or alcohol aversion program if the crime(s) or act(s) related to or involved drug and/or alcohol use; or evidence of completion of an anger management program if the crime(s) or act(s) demonstrated the applicant's or licensee's inability to control one's temper.

(c) No farm labor contractor license shall be issued to any applicant who has an unsatisfied final judgment of a court or a final decision of an administrative agency that would be covered by the surety bond deposited by the farm labor contractor pursuant to Labor Code sections 273(c) or 1684(a)(3).

Note: Authority Section 1699, Labor Code. Reference: Sections 273, 1684, and 1699, Labor Code.

13661. Procedure for Obtaining Damages from the Fund:

A claim for recovery from the fund must be made in writing by an employee(s), or other claimant(s), or his or her (their) representative. The claim need not be in any particular form but must contain the following:

(a) A list naming each employee or claimant for whom recovery is sought. The list shall include the name and address of each employee or claimant, the amount of the recovery sought under each of the items listed in Section 13660 above, including the particular provision of Division 2, Part 6, Chapter 3 of the Labor Code allegedly violated, and the name and address of the farm labor contractor(s) whose conduct has allegedly damaged the employee(s) or claimant(s).

(b) A copy of the written assignment of the claim(s) to the representative, if applicable.

(c) A declaration or affidavit under penalty of perjury which complies with the provisions of Code of Civil Procedure Section 2015.5 containing information regarding attempts made to satisfy the claim by demand against the surety bond provided in Labor Code Section 1684(c) and the results of that demand. The declaration or affidavit must also disclose what attempts, if any, were made to collect the recovery sought directly from the farm labor contractor and the results of those attempts. If no attempts have been made to collect either from the surety bond or the farm labor contractor, the declaration must explain the reasons for such inaction. The fact that no attempts have been made will not of itself defeat recovery from the fund, if the failure to make any attempts is reasonable. The declaration or affidavit required herein may be signed by the representative of the employee(s) or claimant(s), if the information submitted does not require the personal knowledge of the employee(s) or claimant(s).

~~(d) A copy of any judgment or award issued by a court or the Labor Commissioner, which relates to or supports the recovery sought by the employee(s) or claimant(s). If the judgment was uncontested or obtained by default or other summary procedure, the employee(s), claimant(s) or representative seeking recovery shall submit declarations under penalty of perjury signed by each employee or claimant seeking recovery setting forth the actual losses that were suffered by the employee(s) or claimant(s) including the information set forth below in subsections (1)-(6). If the judgment or award was contested, it must contain the information set forth below in subdivisions (1) to (6); if the judgment or award does not contain such information, additional declarations under penalty of perjury signed by the employee or claimant providing the missing information must be submitted. The representative of the employee(s) or claimant(s) may sign declarations submitting information to comply with this subsection, if the information submitted does not require the personal knowledge of the employee(s) or claimant(s).~~

~~(1) The name and address (if known) of the contractor;~~

~~(2) The period of time during which the wages were earned;~~

~~(3) The number of hours worked or the pieces picked or completed;~~

~~(4) The promised rate of pay;~~

~~(5) The total amount of wages owed less any amount recovered from the farm labor contractor or the surety bond and/or employer of the farm labor contractor;~~

~~(6) Proof of any actual damages suffered pursuant to the particular provision of Division 2, Part 6, Chapter 3 of the Labor Code allegedly violated.~~

~~(e) If no judgment or award has been obtained from a court or the Labor Commissioner, the employee(s), claimant(s) or his or her (their) representative seeking recovery shall submit declarations under penalty of perjury signed by each employee or claimant providing the information set forth in subdivisions (1)-(6) in (d), above. The representative of the employee(s) or claimant(s) may sign declarations submitting information to comply with subsection (d), if the information submitted does not require the personal knowledge of the employee(s) or claimant(s).~~

~~(f) If the declarations are insufficient to sustain a recovery from the fund, either due to lack of information or due to a belief that the information submitted is potentially inaccurate, the Labor Commissioner may order an investigatory hearing pursuant to the provisions of Section 13662.~~

~~(g) A claimant who contracts with a farm labor contractor may also seek recovery from the fund if he or she has been damaged by a farm labor contractor within the meaning of Section 13660. When such a claim is submitted, besides documenting the claimant's own loss, the claimant must also satisfy the requirements of subsections 13661(a)-(e) regarding the loss of the employees or other claimants.~~

Note: Authority cited: Section 1699, Labor Code. Reference: Section 1684, Labor Code.

13661. Application for Renewal of License.

(a) To apply for renewal of a farm labor contractor license, the applicant shall complete, sign, and submit the appropriate renewal application at DLSE's website (https://permits.dir.ca.gov/FLC_External/), or submit the appropriate physical application (DLSE 401-R or DLSE 401-S) to DLSE at least 60 days before expiration of a current license.

(b) A renewal applicant shall submit either a renewal application online at DLSE's website (https://permits.dir.ca.gov/FLC_External/) or submit a physical short form application (DLSE 401-S) only if each of the following conditions stated in subdivision (1) below exist. If all conditions are not met, a renewal applicant must submit an application for renewal using the regular renewal application pursuant to subdivision (c).

(1) The applicant for renewal attests under penalty of perjury to the following conditions.

(A) There have been no changes in the contractor business entity status or information which includes:

(i) no change in the form of the legal entity, including a change in partners, corporate officers, members of LLC, or sole proprietor; and

(ii) no change in: legal entity information previously provided, including business name(s), full name(s) of the sole proprietor, partners, corporate officers, or LLC members, whichever is applicable; address(es); telephone number(s); and percentage of interest of all persons with a financial and/or profit-sharing interest in the business;

(B) There are no outstanding civil citations, unpaid penalties, delinquent unpaid wages, or personal or employment tax liabilities, and all required tax returns have been filed; and

(C) No person who is a sole proprietor, partner, corporate officer, or LLC member has plead guilty or nolo contendere to or been convicted of a crime substantially related to working conditions or worker health or safety, either misdemeanor or felony, within the last 10 years.

(2) If the renewal applicant qualifies for renewal under subdivision (1), applicant shall provide the following required information and items

using the online application or physical application as specified in subdivision (b) of this section.

(A) At the time the application is submitted, the renewal applicant pays (i) the license fee of \$500, plus a filing fee of \$10 (only if the application is submitted later than 60 days prior to expiration of the license), pursuant to Labor Code 1684(a)(4), and (ii) the examination fee of \$100 pursuant to Labor Code section 1684(b)(1) unless the applicant is exempt from examination pursuant to Labor Code section 1684(c).

(B) The renewal applicant provides the farm labor contractor license number, applicant name(s), business name(s), physical business address, preferred mailing address, home address (no post office box allowed), business telephone number, mobile telephone number, preferred email address, number of employees, and total gross annual revenue for the business.

(C) The renewal applicant provides the following documents:

(i) An original Farm Labor Contractor Bond (DLSE 402 or on a surety's form) or a copy of the bond if submitting an online renewal application, if there has been a change in the amount of the bond based on a change in annual payroll under Labor Code section 1684(a)(3).

(ii) A copy of a valid and current workers compensation insurance policy certificate.

(iii) A copy of current proof of automobile liability insurance, if applicable. For each farm labor vehicle used to transport laborers, proof of liability insurance shall include the name and address of the coverage carrier, policy number, effective and expiration dates of the policy, coverage limits (including medical coverage) in the amounts of coverage as specified in section 13660(b)(10).

(iv) A copy of a driver's license, DMV certificate to permit operation of farm labor vehicle, and evidence of clean driving record from the DMV if there has been a change in any driver who will operate a vehicle to provide transportation to farm laborers in connection with the applicant's business activities or operations.

(v) A current list containing the name, physical address, and mailing address, if different, of each grower with whom you plan to contract in the near future and or with whom you have contracted during the past three years.

- (vi) A current list of all individuals who will be employed by the applicant to perform the following: supervise, recruit, solicit, hire, furnish, employ, pay, transport (if applicable) or otherwise directs or measures the work of agricultural employees. For each individual state their full name and physical home address and indicate where each has, at any time, applied for a state farm labor contractor license and were denied that license, or who have been, at any time, licensed by the state as a farm labor contractor, provide the federal farm labor contractor certificate of registration number issued by the Department of Labor, if applicable, and the state farm labor contractor license number for each of these individuals.
 - (vii) A current list of the full name of any relatives (specified in section 13660(a)(17)) who have applied for a farm labor contractor license and have been denied or had their license revoked within the last 10 years.
 - (viii) A copy of the current federal certificate of registration card issued by the U.S. Department of Labor, if required to register under federal law.
 - (ix) Two current passport photos for sole proprietorship, a representative of a partnership, LLC, or corporation, as applicable for the type of business of the licensee.
 - (x) Acknowledgment that the applicant has submitted a tax information authorization (IRS Form 8821) to the Internal Revenue Service.
 - (xi) A copy of each quarterly payroll and contribution filing with the Employment Development Department consisting of the Quarterly Contribution Return and Report of Wages form (DE 9) and Quarterly Contribution Return and Report of Wages-Continuation form (DE 9C) for the year preceding the pending application and any applicable adjustments filed under Quarterly Contribution and Wage Adjustment Form (DE 9ADJ).
 - (xii) A copy of the most current registration with the agricultural commissioner for each county in which you have contracted with a grower.
 - (xiii) A copy of any certificate(s) showing completion of 8 hours of relevant educational classes for each license period.
- (c) If the renewal applicant for a farm labor contractor license is ineligible to file for renewal of a farm labor contractor license under subdivision (b), the renewal applicant shall submit either an application for a regular renewal of a license online at DLSE's website (https://permits.dir.ca.gov/FLC_External/) or submit a

physical regular renewal application (DLSE 401-R). Required information on the application shall include the following:

(1) Current state farm labor contractor license number.

(2) Provide all information required in subdivisions (a)(1) through (21) of section 13660, except that, for information required in subdivisions (a)(8) (individuals or business entities employed to perform regulated activities) and (a)(16) (personal record of responsible persons) of section 13660, the applicant shall indicate whether or not there has been a change to information provided in the previous application submitted to DLSE and, if yes, provide current information.

(3) Provide the following only if there are changes since the previous application:

(A) A copy of updated Articles of Incorporation (for a corporation) or Articles of Organization (for an LLC) for changes of corporate officers of a corporation or members of an LLC, as applicable to the type of business entity, as specified in section 13660(b)(2).

(B) A copy (for online applications) or an original (for submitting a physical application) of the Farm Labor Contractor Bond (DLSE 402 or on a form issued by the surety) for changes to either the gross annual payroll for all employees or the surety, as specified in section 13660(b)(4).

(C) Live scan fingerprint images for any changes to the sole proprietorship, partners of a partnership, corporate officers of a corporation, or members of an LLC, as specified in section 13660(b)(8).

(D) A copy of driver's license for changes to (i) the person taking the required examination (other legal photo identification is acceptable), (ii) the individual owner, partners, corporate officers, or LLC members, as applicable, and (iii) any person who operates a farm labor vehicle (if applicable), as specified in section 13660(b)(9).

(4) Provide an original or copy, as applicable, of all documents specified in section 13660(b)(3), (b)(5) through (b)(7), and (b)(10) through (b)(13) plus the following additional items:

(A) A copy of the applicant business's previous year filings with the Employment Development Department of Quarterly Contribution Returns and Report of Wages (DE 9 or DE 9C).

(B) A copy of most recent registration with the agricultural commissioner for each county in which the licensee contracted with a grower during the license period prior to renewal.

(5) A statement that applicant has satisfied all requirements imposed in a final court judgment, or Labor Commissioner Order, Decision or Award.

or pursuant to an accord involving unpaid wages as required in Labor Code section 273(c).

Note: Authority cited: Sections 273 and 1699, Labor Code. Reference: Sections 273, 1682, 1683, 1684, 1685, 1687, 1688, 1689, 1690, 1695, 1695.9, 1696, 1696.3, 1696.4, 1698.5, and 1699, Labor Code; Section 12519, Vehicle Code.

13662. Hearing.

~~The Labor Commissioner shall have the authority to order an investigatory hearing to determine the amount of damages, if any, actually suffered by the employee(s) or other claimant(s) seeking recovery from the fund. Notice of the hearing shall be served on the defendant farm labor contractor and the employee(s) or other claimant(s) seeking recovery from the fund either personally or by registered mail in accordance with the provisions of subdivision (e) of Section 11505 of the Government Code. The hearing shall be conducted by a Deputy Labor Commissioner and shall be held in the District Office having jurisdiction over the area where the nonpayment of wages allegedly occurred or any other appropriate venue.~~

~~Note: Authority cited: Section 1699, Labor Code. Reference: Section 1684, Labor Code.~~

13662. Written Examinations

- (a) If the applicant for a farm labor contractor license is an individual (sole proprietor), the individual shall take the examination required by Labor Code section 1684(a)(5).
- (b) If the applicant is a partnership, corporation, LLC, or other business entity, the applicant shall appoint a representative who shall take the examination required by Labor Code section 1684(a)(5).
 - (1) If the application of a corporation, LLC, partnership or other business entity is approved, identity of a representative shall appear on the face of the license. The license containing a designation of a representative shall become void when the appointed representative leaves the business entity. In such case, the license shall be surrendered to the Labor Commissioner.
 - (2) If the authorized representative leaves the farm labor contractor business during the licensing period, the farm labor business entity must designate a new representative who shall take and pass the examination. Additionally, the business entity shall submit two passport photographs of the new representative to the Labor Commissioner and DLSE shall issue a new license.
- (c) Each person who takes the written examination is required to present photo identification to DLSE staff at the time of the examination.

Note: Authority cited: Section 1699, Labor Code. Reference: Sections 1684 and 1699, Labor Code.

13663. Schedule for Processing Applications.

(a) Within sixty (60) calendar days of receiving an application, the Labor Commissioner shall inform the applicant in writing that either:

(1) A license will be issued; or,

(2) A license will be rejected; or,

(3) Additional information will be required to meet the licensing requirements.

(A) The Labor Commissioner shall send a written notice of defect or deficiency regarding an application and specify a date, not to exceed 30 days from the date of the notice, for the applicant to deliver to the Labor Commissioner the information and/or documentation which addresses the defect or deficiency.

(B) If the applicant fails to meet the deadline specified in subdivision (A) above, a second written notice of defect or deficiency shall be sent by the Labor Commissioner and specify a date for reply, not to exceed 30 days from the date of the notice, and shall further indicate that the application will be rejected and the applicant shall forfeit all fees paid if the requested information is not submitted by date specified in the second notice. Following a rejection pursuant to this subdivision, the applicant may submit a subsequent application and shall pay the fees required in Labor Code Section 1684(a)(4).

(b) The Labor Commissioner may issue a temporary license to the applicant for a farm labor contractor's license only when the Labor Commissioner is unable to complete the determination within the time limits set out in subdivision (a) of this section and the delay is not the fault of the applicant.

Note: Authority cited: Section 1699, Labor Code. Reference: Sections 1684, 1684.3, and 1699, Labor Code.

13663.5. Issuance of Replacement License.

A request for a replacement farm labor contractor license shall be accompanied by a Declaration and Request for Replacement License, signed under penalty of perjury, which shall contain the following information: farm labor contractor license number,

name, address and telephone number of the contractor, expiration date, statement of circumstances necessitating replacement, and a \$25 license replacement fee. If an applicant provides the information required by this section, a replacement license shall be issued upon request. The replacement shall be issued only to replace a license which is lost, destroyed, or mutilated.

Note: Authority cited: Section 1699, Labor Code. Reference: Sections 1683 and 1699, Labor Code.

13664. Surety Bonds; Establishing Annual Payroll.

- (a) To comply with the duty to obtain and maintain a surety bond (see Labor Code section 1684(a)(3)), the applicant for a Farm Labor Contractor license shall file with the Labor Commissioner a bond issued by a surety company duly authorized to do business in the State of California. The bond shall be on a form issued by the surety company which complies with the requirements of Labor Code 1684(a)(3) or on a form provided by DLSE (DLSE 402).
- (b) As proof of annual payroll, the farm labor contractor shall provide to the Labor Commissioner copies of Employment Development Department's Quarterly Contribution Return and Report of Wages (DE 9), Quarterly Contribution Return and Report of Wages-Continuation (DE 9C), and Quarterly Contribution and Wage Adjustment Form (DE 9ADJ), if applicable, for each quarter for the year preceding the pending application.
- (c) If the Labor Commissioner, an employee, or an employee representative, proceeds against the surety bond and payment is made therefrom to the Labor Commissioner or to the employee or the employee representative, the employer shall take all steps and actions necessary to ensure that a surety bond which meets all of the requirements set forth in subdivision (a) of this section, including the required principal sum, is continuously in place so that there is not a break at any time in the continuity of the protection afforded by the bond. If the employer at any time fails to provide a surety bond that meets all of the requirements of subdivision (a) of this section, the Labor Commissioner shall suspend and may revoke the employer's license, or deny a renewal application for a license.
- (d) To ensure that the purpose of the bond is fulfilled, in the event a contractor closes its business and ceases operating as a farm labor contractor, the Labor Commissioner will retain the bond in his or her possession for no more than six months after the employer ceases engaging in the business in order to provide for claims arising prior to the closure of the business.

Note: Authority cited: Section 1699, Labor Code. Reference: Sections 1684 and 1699, Labor Code.

Add new article and adopt sections as follows:

Article 2. Educational Classes for Farm Labor Contractors

13665. Education Program Approval; Course Criteria; List of Approved Courses.

- (a) Any person, nonprofit organization, or educational institution may submit to the Labor Commissioner at the San Francisco Office of the Division of Labor Standards Enforcement's Licensing and Registration Unit a request for evaluation and approval of a proposed educational program in farm labor contracting. The requestor for educational program approval shall submit the written request at least sixty (60) calendar days before the initial start date of the proposed educational program. The written request shall be accompanied by:
- (1) a written outline;
 - (2) a description of the educational program;
 - (3) a copy of all instructional materials;
 - (4) a schedule of the proposed date(s), time(s), and location(s) for the proposed educational program;
 - (5) a copy of the brochure or flyer that will be distributed to proposed participants;
 - (6) the number of education hours proposed to be offered, and;
 - (7) a resume for each of the proposed instructor(s). The program provider shall attest to the instructor's competency with an accompanying statement that the proposed instructor satisfies at least one of the following qualifications:
 - (A) possession of a bachelor's degree in the subject in which he or she is to teach from an institution listed as an institution of higher learning by the U.S. Department of Education or its successor agency, or the equivalent of a bachelor's degree;
 - (B) five years of experience in the technical occupation which involves the subject in which he or she is to teach; or
 - (C) possession of a license to teach issued by an appropriate state licensing or certification agency, or federal agency for the subject in which he or she is to teach.
- (b) If the Labor Commissioner determines that insufficient information has been provided to meet the criteria specified in subdivision (c) of this section, the Labor Commissioner may investigate any facts regarding the program and request additional information before approving a program.

(c) The Labor Commissioner may approve an educational program submitted which satisfies the following approved core and alternative topics and hours requirements which applicants and licensees shall take and complete for each license period.

(1) For new contractors (applicants), current contractors with less than five (5) years in the business, and contractors with two (2) or more violations within the last two (2) years of any provision of the Labor Code or Title 8 of the California Code of Regulations:

(A) Farm Labor Contractor Requirements (3 hours) which shall include (i) wage and hour (minimum wage, overtime, piece rate, meal/rest breaks), (ii) worker's compensation requirement, (iii) labor costing under Labor Code section 2810, (iv) proper information to employees (Labor Code sections 226 and 2810), (v) transportation and housing, (vi) child labor; and (vii) other requirements as directed by recent legislation.

(B) Health & Safety (2 hours) which shall include (i) injury and illness prevention program, (ii) heat illness (including first aid), (iii) pesticides, (iv) field sanitation, (v) electrical hazards, (vi) agriculture equipment and operation, and (vii) other requirements as directed by legislative action.

(C) Management and Supervision Education for FLCs and supervisors (1 hour) which shall include (i) how to be a good manager, create a positive work environment, and proper role of supervisor; (ii) communication skills; (iii) how to do an adequate investigation into labor law violations reported to you at your workplace; (iv) sexual harassment prevention; and (v) hiring, discipline, and termination issues.

(D) Retaliation Laws and Prohibitions on Retaliation (1 hour) which shall include (i) Labor Code section 98.6 and discrimination in the workplace in general; and (ii) stability in labor relations, collective bargaining, and concerted activity.

(E) Good Grower Relations for a Successful Business (1 hour).

(2) For contractors with at least five (5) years or more in the business without any violation of any provision of the Labor Code or Title 8 of the California Code of Regulations:

(A) Overview of Changes in Farm Labor Contractor Requirements (1.5 hours).

(B) Overview of Changes in Health and Safety (1.5 hours).

(C) Advanced Effective Management and Supervision (1.5 hours).

(D) Best Practices for Good Grower Relations (1.5 hours).

(E) Alternate topics (must have two hours) which may include any of the following: (i) immigration issues in the agriculture industry (including H-2A visa responsibilities); (ii) criminal provisions of the Labor Code; (iii) healthcare reform: what does it mean for you? (iv) landlord and tenant rights, (v) Americans with Disabilities Act, (vi) discrimination in the workplace and hostile work environment, (vii) overview of changes in retaliation laws and prohibitions on retaliation.

(d) Within thirty (30) calendar days of receiving a written request for evaluation and approval of an education program in farm labor contracting, the Labor Commissioner shall inform the requestor in writing:

(1) the request for evaluation and approval is complete and accepted for filing;

(2) the request for evaluation and approval is denied, or;

(3) the request for evaluation and approval is incomplete, specifying the information required to correct the deficiency.

(e) The approval of an educational program pursuant to this section shall be valid for two years from the date of the Labor Commissioner's written notification that the educational program has been approved so long as there is no material change in the program. Persons, nonprofit organizations, or educational institutions must reapply to the Labor Commissioner for approval to offer a program once the period of approval has expired by resubmitting updated documentation items as specified in subdivision (a) of this section.

(f) The Labor Commissioner and the entity providing the education program shall make a list of approved programs available to any member of the public upon request.

(g) Any person, nonprofit organization, or educational institution offering an approved program shall report to the Labor Commissioner in advance of any of the following changes to a program presentation:

(1) a change in the approved program, outline, or program materials;

(2) any substitution of instructional staff which has not been previously approved.

(h) The Labor Commissioner, or his or her authorized representative, shall be entitled to attend any approved program to monitor class presentations at no charge.

(i) The Labor Commissioner may, at his or her discretion, disapprove any educational program for purposes of crediting a class(es) for an applicant seeking a license.

Note: Authority cited: Section 1699, Labor Code. Reference: Section 1684, Labor Code.

13665.5. Records of Education.

- (a) The instructor, nonprofit organization, or educational institution shall maintain a record of persons who have successfully completed the course of instruction for a period of two years following completion of the curriculum.
- (b) Each licensee shall maintain a record for three years of all continuing education that he or she acquired during each license period.
- (c) The records specified in subdivisions (a) and (b) of this section shall include:
 - (1) the license holder's name;
 - (2) license number, if applicable;
 - (3) name of the instructor, nonprofit organization, or educational institution; and
 - (4) dates of the class instruction.
- (d) A certificate of program completion or written statements containing all the information specified in subdivision (c), issued by the instructor, nonprofit organization, or educational institution, shall be sufficient to constitute the records specified in subdivisions (a) and (b).
- (e) The approved program provider shall submit the records specified in subdivision (c) to the Labor Commissioner within thirty (30) days after each program is completed.
- (f) At the time of renewal, each licensee shall submit to the Labor Commissioner a record of all continuing education that he or she acquired during the preceding license period.

Note: Authority cited: Section 1699, Labor Code. Reference: Section 1684, Labor Code.

Adds new article and adopts new sections as follows:

Article 3. Duties of Contractors

Section 13666. Posting Rate of Compensation

The rate of compensation that a licensee is paying his or her employees must be displayed pursuant to Labor Code section 1695(a)(7) in a format no smaller than 8-1/2 x 11 inches and in bold lettering no smaller than 16-point font. The name of the licensee shall be identified on this posting.

Note: Authority cited: Section 1699, Labor Code. Reference: Sections 1684 and 1695, Labor Code.

13666.1. Identification Signage at Worksite.

- (a) A licensee shall erect a temporary sign at each worksite where workers are working which prominently and legibly identifies the licensee's name, license number in the top-half portion of the sign, and a name and working phone number for the licensee's field supervisor in the bottom-half portion of the sign.
- (b) The sign required in subdivision (a) shall be placed initially within 30 feet and be clearly visible from the access road nearest the worksite and where workers enter the worksite for the workday and shall not be obstructed by vehicles, other signs, trees, or other objects. The sign shall be no smaller than four (4) feet by four (4) feet and have contrasting colors for the background and lettering for legibility. The sign may be either staked in the ground or be fixed on a fold-out frame (A-frame when folded out) but the bottom of the sign shall be at least 12 inches above the ground.

Note: Authority cited: Section 1699, Labor Code. Reference: Sections 1682.8, 1690, and 1699, Labor Code.

13666.2. Worker Safety Training of Crew Leaders and Forepersons.

- (a) A licensee shall provide periodic worker safety training to each crew leader, foreperson or other employee whose duties include the supervision, direction or control of any agricultural worker on behalf of a licensee. The training shall pertain to season-appropriate subjects covering worker safety which includes, but is not limited to, implementing programs and practices for heat illness injury prevention and response (see Title 8, California Code of Regulations, section 3395) and pesticide use and exposure (see Food and Agricultural Code sections 12980-12988). The training shall be conducted at least once during each quarter of a calendar year that a licensee operates. A quarterly period commences on January 1, April 1, July 1, and October 1 of each calendar year. The training required under this section may be a single quarterly training of at least 15 minutes, or more frequent periodic training monthly during the quarter of a calendar year that a licensee operates which achieves at least 15 minutes total during the quarter.
- (b) The licensee shall maintain a record of all training and information provided to each crew leader, foreperson, or other supervisor of workers under subdivision (a). This record shall: (i) state the date(s) on which the training and information were provided; (ii) identify the crew leaders, forepersons, or other supervisors to whom the training and information were provided; (iii) describe the training and information provided and, if written materials were provided, include a copy of such materials; and (iv) contain the licensee's certification that the foregoing is true and complete. The licensee shall maintain these records for two years and shall make them available, upon request, to the Labor Commissioner.

Note: Authority cited: Section 1699, Labor Code. Reference: Sections 1695, 1682.8, 1690, and 1699.

13666.5 Failure to Comply with Requirements; Revocation, Suspension, Refusal to Renew

A licensee who violates or fails to comply with the provisions of this subchapter applicable to licensees which implement the requirements of Chapter 3 of Part 6 of Division 2 of the Labor Code (Labor Code Sections 1682 et seq.), including the duties of contractors specified in this subchapter, is subject to revocation or suspension of their license pursuant to Labor Code 1692 or refusal to grant an application for renewal pursuant to Labor Code Section 1686.

Note: Authority: Section 1699, Labor Code. Reference: Sections 1686, 1690, 1692, and 1699, Labor Code

Add new article and adopt new sections as follows:

Article 4. Farmworker Remedial Account

13667. Procedure to Obtain Damages from the Farmworker Remedial Account.

- (a) An employee of a licensed farm labor contractor or an unlicensed farm labor contractor who has been recruited, solicited, supplied, hired, furnished or transported by the contractor on behalf of an employer engaged in the growing or producing of farm products and who has suffered damages in the form of non-payment of all or part of the wages owed to the employees may seek recovery from the Farmworker Remedial Account.
- (b) A claim for recovery from the Farmworker Remedial Account must be addressed to the Labor Commissioner by an employee(s), or his or her (their) representative or a farm labor contractor on behalf of his or her employees or their representatives. The history and current status of the claim submitted against the Farmworker Remedial Account will determine what additional information, if any, will be required by the Labor Commissioner. Information necessary to satisfy this section does not need to be in any particular format. Claims may originate from an Order, Decision or Award, the judgment of a civil court or other tribunal, or from other final determinations. For claims originating from an Order, Decision or Award of the Labor Commissioner, civil court, or other tribunal, a copy of the final decision and findings may satisfy the requirements of this section.
- (c) To file a claim for recovery from the Farmworker Remedial Account, the following information is required:

- (1) a list naming each employee or claimant for whom recovery is sought and the time period for which recovery is sought;
 - (2) the name and address of the farm labor contractor(s), grower(s) or packer(s) whose conduct has damaged the employee(s) or claimant(s);
 - (3) valid form of identification, including a Social Security or taxpayer identification number, if available, of each employee for whom recovery is sought;
 - (4) a copy of the written authorization of claimant to his or her representative authorizing the representative to act on his or her behalf that bears the claimant's signature, if applicable, and mailing instructions for payment of the claim;
 - (5) a copy of a final Order, Decision or Award of the Labor Commissioner, or final judgment filed in a court or other tribunal, if applicable; and,
 - (6) a declaration or affidavit under penalty of perjury which complies with the provisions of Code of Civil Procedure Section 2015.5 containing information regarding attempts made to satisfy the claim by demand against the surety bond (if the contractor was licensed) as provided in Labor Code Section 1684(a)(3) and the results of that demand. The declaration or affidavit must also disclose what attempts, if any, were made to collect the recovery sought directly from the farm labor contractor, grower or packer and the results of those attempts. If no attempts have been made to collect either from the surety bond or the farm labor contractor, grower, or packer, the declaration must explain the reasons for such inaction. The fact that no attempts have been made will not of itself defeat recovery from the Farmworker Remedial Account, if it is shown that any attempt would have been futile. The declaration or affidavit required herein may be signed by the representative of the employee(s), claimant(s), or farm labor contractor if the information submitted does not require the personal knowledge of the employee(s), claimant(s), or farm labor contractor.
- (d) If the declarations submitted in support of application for recovery are insufficient to sustain a recovery from the Farmworker Remedial Account either due to lack of information or due to a belief that the information submitted is potentially inaccurate, the Labor Commissioner may order an investigatory hearing.
- (e) Subject to the discretion of the Labor Commissioner, a farm labor contractor may seek recovery on behalf of his or her employees from the Farmworker Remedial Account if he or she is unable to pay the employees due to the failure of a grower or packer to pay the contractor. When such a claim is submitted, the farm labor contractor must also satisfy the requirements regarding the loss to employees or other claimants and must first exhaust remedies against his or her bond before applying to the fund on behalf of his or her employees.

(f) In exercising discretion under Labor Code section 1684(a)(4), the Labor Commissioner may review the following criteria: all materials submitted pursuant to section 13667(a) and (b); any evidence submitted by the farm labor contractor which can establish a grower or packer's failure to pay for farm labor contracting services as defined in Labor Code section 1682(b); and any evidence which reflects upon a farm labor contractor's character, competency, or responsibility.

Note: Authority cited: Section 1699, Labor Code. Reference: Sections 1684 and 1699, Labor Code.

13667.1. Hearing.

The Labor Commissioner shall have the authority to order an investigatory hearing to determine the amount of damages, if any, actually suffered by the employee(s), or other claimant(s), seeking recovery from the Farmworker Remedial Account. Notice of the hearing shall be served on the farm labor contractor and the employee(s) or other claimant(s) seeking recovery from the Farmworker Remedial Account either personally or by certified mail. The hearing shall be conducted by a Deputy Labor Commissioner and shall be held in the District Office having jurisdiction over the area where the damages allegedly occurred or any other appropriate venue.

Note: Authority cited: Section 1699, Labor Code. Reference: Sections 1684 and 1699.

13667.4. Payment of Wage Claims Against the Farmworker Remedial Account

The Labor Commissioner shall pay all valid claims against the Farmworker Remedial Account in the order received. If there are insufficient funds in the Farmworker Remedial Account to pay a valid claim, the valid claim shall be held until adequate funds are deposited into the Farmworker Remedial Account to pay the valid claim.

Note: Authority cited: Section 1699, Labor Code. Reference: Sections 1684 and 1699, Labor Code.