

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Labor Standards Enforcement**

**NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS
AND ADDENDUM TO INITIAL STATEMENT OF REASONS**

Subject Matter of Regulations: Farm Labor Contractors

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 13660 et seq.**

NOTICE IS HEREBY GIVEN that the Labor Commissioner, Chief of the Division of Labor Standards Enforcement, Department of Industrial Relations, pursuant to the authority vested in her by Labor Code sections 59 and 1699 proposes to modify the text of the following proposed regulations:

- I. Add new article: Article 1. Application for Farm Labor Contractor License**
 - 1. Amend section 13660 Application for New License
 - 2. Adopt section 13660.1 Character, Competency and Responsibility
 - 3. Adopt section 13660.2 Date a Denied Applicant May Reapply for Licensure
 - 4. Amend section 13661 Application for Renewal of License
 - 5. Amend section 13662 Written Examinations
 - 6. Adopt section 13663 Schedule for Processing Applications
 - 7. Adopt section 13663.5 Issuance of Replacement License
 - 8. Adopt section 13664 Surety Bonds; Establishing Annual Payroll
 - 9. Adopt section 13664.1 Payment of Wage Claims Against Bonds
- II. Add new article: Article 2. Educational Classes for Farm Labor**
 - 1. Adopt section 13665 Education Program Approval; Course Criteria; List of Approved Courses
 - 2. Adopt section 13665.5 Records of Education
- III. Add new article: Article 3. Duties of Contractors**
 - 1. Adopt section 13666 Posting Rate of Compensation
 - 2. Adopt section 13666.1 Identification Signage at Worksite
 - 3. Adopt section 13666.2 Worker Safety Training of Crew Leaders and Forepersons
- IV. Add new article: Article 4. Farmworker Remedial Account**
 - 1. Adopt section 13667 Procedure to Obtain Damages from the Farmworker Remedial Account
 - 2. Adopt section 13667.1 Hearing
 - 3. Adopt section 13667.4 Payment of Wage Claims Against the Farmworker Remedial Account

NOTICE IS FURTHER GIVEN that the Labor Commissioner is supplementing the Initial Statement of Reasons regarding each of the proposed sections, as indicated in the accompanying

document titled “Addendum to Initial Statement of Reasons” and is adding the documents identified below to the rulemaking file. A copy of the addendum and other documents will also be included in the rulemaking file and posted on DLSE’s website at:

<https://www.dir.ca.gov/Rulemaking/DIRProposed.html>

PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS REGARDING MODIFICATIONS TO TEXT

Members of the public are invited to present written comments regarding these proposed modifications **and additional documents identified below. Only comments directly concerning the proposed modifications to the text of the regulations and additional documents identified below will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Jennifer Stevens, Legislative Analyst and Regulations Coordinator
Department of Industrial Relations
Division of Labor Standards Enforcement, Legal Unit
2031 Howe Avenue, Suite 100
Sacramento, CA 95825

The Division’s contact person must receive all written comments concerning the proposed modifications to the regulations **no later than 5:00 p.m. on April 16, 2014**. Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (916) 263-2920. Written comments may also be sent electronically (via e-mail) using the following e-mail address: DSLERegulations@dir.ca.gov

Due to the inherent risks of non-delivery by facsimile transmission, the Division suggests, but does not require, that a copy of any comments transmitted by facsimile transmission also be submitted by regular mail.

Comments sent to other e-mail addresses or facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for inspection at the Department of Industrial Relations, Division of Labor Standards Enforcement, 2031 Howe Avenue, Suite 100, Sacramento, California 95825, between 9:00 A.M. and 4:30 P.M., Monday through Friday. Please contact the Division’s regulations coordinator, Ms. Jennifer Stevens, at (916) 263-3400 to arrange to inspect the rulemaking file.

ADDITIONAL DOCUMENTS ADDED TO THE RULEMAKING FILE

The following documents are added to the rulemaking file which may be commented upon within the 15-day time period specified in this notice:

Documents referenced in the proposed regulations:

- Application for new license (DLSE 401-N rev 3 2014-FLC NEWApplication form-Regs2014-final)
- Application for renewal license (DLSE 401-R rev 3 2014-FLC RenewalApplication-Regs2014-final)
- Application for renewal license- Short form (DLSE 401-S rev 3 2014-FLC_Short_FormRenewal-Regs2014-final)
- DE 9 rev 1 [1-12]_EDD de9
- DE 9ADJ rev 3 [7-13]_EDD de9adj
- DE-9C rev 1 [1-12]_EDD de9c
- DMV Form INF 1125 rev 11 2000_DMV inf1125
- IRS Form 8821 [rev 102012]_IRS f8821
- LLC-12 rev 01 2014_SOS llc-12
- SI-200 rev 01 2013_SOS corp_si200
- S&DC-STKNP (REV 05 2013)_SOS s&dc-sn
- Farm Labor contractor Surety Bond

Other Documents relied upon include:

- Cost sheet for replacement license
- Economic Impact Assessment
- Cost sheet for exam fee

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

The proposed text was indicated by single underlining, thus: added language. Deletions were indicated by strikeout, thus: ~~deleted language~~.

Proposed Text Noticed for 15-Day Comment Period on Modified Text:

The proposed text is indicated by double underlining, thus: added language. Deletions are indicated by double strikeout, thus: ~~~~deleted language~~~~.

SUMMARY OF PROPOSED TEXT CHANGES

Proposed Section 13660:

- The preamble is amended to clarify references to the respective applications for a license (initial or new, short form renewal, and regular renewal) which can be submitted using an on-line or physical application process with updated application form references.
- Subsection (a) is modified to make it more clearly applicable to an initial or new application submitted online or using physical form with updated form reference.
- Subsection (a)(1) is amended to delete references to an “individual” following social security number and language regarding “limited partnership,” and adds information required for “name, date of birth, driver’s license and social security number for each partner” if applicant is a partnership.
- Subsection (a)(3) is amended to delete the word “and” and adds required information pertaining to persons who operate the business under various business entities.
- Subsection (a)(4) is amended to add “mobile telephone number” in addition to the business phone number as required information for an application.
- Subsection (a)(5) is amended to add the word “registration” in reference to the federal farm labor contractor’s certificate and adds the phrase "if the applicant is required to register as a farm labor contractor under federal law."
- Subsection (a)(6) is amended to make grammatical clarifications, adds “if applicable” to clarify that designation of an agent for service is optional for individuals (sole proprietor) in (a)(6)(A), adds language regarding an applicant’s good standing status for a corporation or limited liability company with the Secretary of State in (a)(6)(C), and adds additional required information applicable to foreign corporations in (a)(6)(D).
- Subsection (a)(8)(A) is amended to add “foremen and crew bosses” to be identified where he or she will perform the regulated activities for a farm labor contractor business and adds additional information regarding such identified persons and whether an identified person previously held a farm labor contractors license. It also adds a new subdivision (8)(B) for the applicant to indicate who will perform a regulated activity for the business if no one is listed in subdivision (8)(A).
- Subsection (a)(9) is amended to add the terms “physical address” and “mailing address” for identification of growers the applicant plans to contract in the future, and deletes the word “with.”
- Subsection (a)(11) is amended to revise the proposed language pertaining to housing information for applicants intending to provide a labor camp or other worker housing, and adds required information regarding the location of the housing and any license or permit issued by a local agency if the applicant will provide or maintain worker housing.
- Subsection (a)(13) is amended to add a further description and form reference to the IRS Form 8821 required for an applicant to provide “tax information authorization.”
- Subsection (a)(14) is amended to add required information regarding automobile liability insurance carrier information for each vehicle to be used by an applicant to transport workers in (14)(A). Subsection (a)(14)(B) is removed and proposed subsection (14)(C) is renumbered to (14)(B) which also deletes the reference to the section of the Vehicle Code. Subsection (14)(D) is renumbered to (14)(C) which is amended for clarity and adds a requirement for including additional vehicles to be used to transport workers which must

be timely reported to DSLSE along with evidence of liability insurance coverage and DMV certification of operators, if applicable.

- Subsection (a)(16)(A) is amended to add "within the last 10 years" to establish a scope of time for the required information; removes language in (A)(iii) pertaining to "liens or suits pending in court against him or her"; renumbers previous (A)(iv) to (A)(iii); renumbers (A)(iv) to (A)(iii); removes (A)(v), renumbers (A)(vi) to (A)(iv); renumbers (A)(vii) to (A)(v) and deletes "by any Agency of the State of California" which is replaced with "pursuant to the Labor Code or Business & Professions Code, or both"; and adds (A)(vi) pertaining to history of "violation or willful aiding or abetting any person in the violation of laws as specified.
- Subsection (a)(16)(B) is amended to delete reference to "(vii)" and replaces with reference to "(vi)" to conform with renumbering of provisions in (a)(16)(A).
- Subsection (a)(17) is deleted.
- Subsection (a)(18) is renumbered to (a)(17); revises the language for clarity and requires the specified information based on what the applicant knows of specified relatives who have previously applied for or held a contractor's license; and removes a duplication of "cousin."
- Subsection (a)(19) is deleted.
- Subsection (a)(18), (a)(19), (a)(20) are added required information regarding the total number of employees the applicant will employ, state and federal tax employer identification numbers, total gross annual revenue, and designated agent to speak on behalf of the applicant with DLSE, respectively.
- Subsection (a)(21) is amended to add to include in one subsection the required certifications and acknowledgements an applicant must attest at the time of application which are listed in additional items (21)(A) through (21)(I).
- Subsection (b)(1) is amended to add the word "Fees" to identify the subject of the provision, adds "License fee of \$500 and" in (1)(A); deletes the words "Application fee" in (b)(1)(A); and adds "of \$10," and renumbers (b)(2) to (b)(1)(B)
- Subsection (b)(3) is renumbered to (b)(2); deletes the word "Form", adds the form revision date; makes grammatical changes; adds "limited liability company" and "and most recent Statement of Information" with updated form name and revision date for Secretary of State form.
- Subsection (b)(4) is renumbered to (b)(3); makes grammatical changes and adds "as applicable" to more clearly provide who must provide current passport photos based on the specified business entities.
- Subsection (b)(5) is renumbered to (b)(4); adds language which accounts for providing surety bond document for online applications or physical applications; updates reference to DLSE form revision date; deletes language providing for deposit of an undertaking in lieu of bond; adds "which complies with the requirements of Labor Code Section 1684(a)(3)"; and removes incorrect reference to Section 13664.
- Subsection (b)(6) is deleted.
- Subsection (b)(7) is renumbered to (b)(5)
- Subsection (b)(8) is renumbered to (b)(6) and reference to Section "13662" is replaced with a correct reference to "13665.5" which provides more specific standards for the education requirement for applicants and licensees.

- Subsection (b)(9) is renumbered to (b)(7) and deletes the second sentence referring to Labor Code Section 273(c) to avoid duplication with the statute.
- Subsection (b)(8) is added to specify submission of fingerprints.
- Subsection (b)(9) is added to require copies of driver’s licenses for specified persons who operate the business, operate farm labor vehicles, and who will take the required examination.
- Subsection (b)(10) is deleted and replaced with a provision for required vehicle liability insurance coverage information and sets specific coverage amounts based on passenger capacities for applicants who will transport workers.
- Subsection (b)(11) is added to require Department of Motor Vehicle (DMV) certificates required pursuant to referenced Vehicle Code for operation of certain farm labor vehicles.
- Subsection (b)(12) is added to require a driver’s license record with reference to DMV form and form revision date is added for any person operating a vehicle transporting any workers.
- Subsection (b)(13) is added to require personal record information for specified persons based on the type of business entity which will operate as a contractor.
- Subsection (c) is deleted.
- In Note at end of section, Labor Code Sections 1687, 1690, 1695.9, and “1698.5” are added as citations in “Reference.” Labor Code Sections 3701 and 3701.7, and Health & Safety Code Sections 17960, 17965, 34240, and 34290 are removed from “Reference” section.

Proposed Section 13660.1

- Subsection (a) is amended to remove “including information lists in Section 13660 subd. (a)(16) of these regulations.”
- Subsection (a)(1) is amended to add “final determination regarding a violation of a” to clarify the nature of a violation of the Labor Code or Title 8 of the California Code of Regulations.
- Subsection (a)(3) is amended to add “within the last 7 years” to provide a scope of time for any history regarding the specified crimes.
- Subsection (c) is amended to delete the word “against” in the sentence.
- In the Note at the end of section, removes Labor Code Sections “55, 59, 61” and “Business & Professions Code section 481” and adds Labor Code Sections “273, 1684(a)(1) through (3), and 1699” as citations for Reference.

Proposed Section 13660.2

- This entire section is deleted.

Proposed section 13661:

- Subsection (a) is amended to add the manner of applying for renewal (online or referenced physical form) using the appropriate referenced application at least 60 days before expiration.
- Subsection (b) is amended to more clearly refer to an applicant’s use of a short application (online or physical form) and adds “only if the following conditions stated in

subsection (1) below exist” and adds a new sentence to specify the applicable alternative subsection for a renewal application if the specified conditions are not met.

- Subsections (b)(1) through (b)(2) are amended to clarify and state the required information a renewal applicant using the short form renewal process must provide and specifies documents and items which must be provided by the renewal applicant.
- Subsection (c) is amended to more clearly refer to an applicant’s use of the regular renewal application if he or she does not satisfy the conditions for submitting a short form renewal application.
- Subsection (c)(1) is amended to delete “Name of individual or entity applying for license renewal” and adds “Current state farm labor contractor license number.”
- Subsection (c)(2) is amended to delete “Previous license number” and add language to clarify required information which must be provided by an applicant using referenced provisions of Section 13660(a), except as provided.
- Subsection (c)(3) is amended to delete the proposed language and replace with new language specifying the required document items in specified provisions of Section 13660(b), plus additional specified items in added (c)(3)(i) and (ii).
- Subsections (c)(4) through (c)(13) are deleted.
- Subsection (c)(14) is renumbered to (c)(4) and the second sentence is deleted.
- Subsection (c)(15) and (c)(16) are deleted.
- Subsection (d) is deleted.
- In the Note at the end of the section, Labor Code Sections 273, 1682, 1683, 1685, 1687, 1688, 1690, 1695, 1695.9, 1696.3, 1696.4, 1698.5, and 1699 are added as citations in the Reference section.

Proposed Section 13662:

- Subsection (c) is amended to delete language providing, as part of the application, identification of the person who will take the exam, and add language providing that each person who will take the written exam must present photo identification to DLSE at the time of taking the exam.
- In the Note at the end of the section, adds Labor Code Sections 1684(a)(5) and 1699 as citations in the Reference section.

Proposed Section 13663:

- Subsection (a)(3)(A) is amended to delete the proposed language, and add language specifying a process for sending an applicant a notice of defect or deficiency sent by DLSE to an applicant and providing an opportunity to cure the defect or deficiency.
- Subsection (a)(3)(B) is amended to make grammatical changes and add specific language indicating issuance of a second notice of defect or deficiency providing a final opportunity to cure and specifying consequences for failure to cure the defect or deficiency.
- In the Note at the end of the section, adds Labor Code Sections 1684(a), 1684.3 and 1699 as citations in the Reference section.

Proposed Section 13663.5:

- The section is amended to spell out previous abbreviation of “FLC”, deletes word “registration” and adds the word “license.”
- In the Note at the end of the section, adds Labor Code Sections 1684(a) and 1699 as citations in the Reference section.

Proposed Section 13664:

- Subsection (a) is amended to delete the word “subd.” in the first sentence. In the second sentence, the words “provided by the Labor Commissioner” is deleted and adds “issued by a surety company which complies with the requirements of Labor Code 1684(a)(3) or on a form provided by DLSE (DLSE 402 rev 3/2014) pertaining to the required bond. The entire third sentence is deleted.
- Subsection (b) is amended to delete the word “either” and modifies the descriptive name, form number, and form revision date regarding DE 9 and DE 9C forms. The subsection also adds description, form number, and revision date regarding DE 9ADJ as a document to be provided, if applicable (i.e., if any adjustments were made and filed).
- Subsection (c) is amended to delete references to “or undertaking” and makes grammatical change for clarity.
- Subdivision (d) is amended to add for clarity the clause “in the event a contractor closes its business and ceases operating as a farm labor contractor” to more specifically state applicability; delete the words “original of the” and “or undertaking”; replace “less” with “more”; and replace “three years” with “six months”; and add “in order to.”
- In the Note at the end of the section, adds Labor Code Section 1699 as a citation in the Reference section.

Proposed Section 13664.1:

- The entire section is deleted.

Proposed Section 13665:

- Subsection (a)(7) is amended to add language establishing qualifications of instructors (initially located in (c)(2) and modified from initial proposed text).
- Subsection (b) is amended to delete reference to subdivision (1) of (c) and words “making a determination.”
- Subsection (c) is amended to make grammatical changes; delete “for evaluation which meets the following criteria:” and add “which satisfies the following approved core and alternative topics and hours requirements which applicants and licensees shall take and complete for each license period.”
- Subsection (c)(1) is amended to delete the proposed language and add language which more specifically states the class subjects/topics and respective hours requirement for new applicants, current contractors with less than five years in the business, and contractors with violations, as specified.
- Subsection (c)(2) is amended to delete the initially proposed language (moved to (a)(7) with modifications) and add language which more specifically states the class subjects/topics and respective hours requirements for contractors with at least five years in the business without any violations, as specified.
- Subsection (c)(3) is deleted.

- Subsection (e) is amended to remove the word “one” and replaces it with “two” in specifying the duration of an approved education program and adds “so long as there is no material change in the program.” In the second sentence, the word “updated” is added and the words “the” and “above” are deleted for clarity.
- Subsection (g)(2) is deleted.
- Subsection (g)(3) is renumbered to (g)(2) and is amended to add the words “substitution of” and “which has not previously been previously approved” regarding a circumstance where the education provider must inform the Labor Commissioner of changes in their program.
- In the Note at the end of the section, the word “and is deleted, and subdivisions (b)(2) and (c)(3) is added to Labor Code Section 1684 as citations in the Reference section.

Proposed Section 13665.5:

- Subsection (a) is amended to remove the word ”licensees” and replaces with “persons” regarding those who successfully complete the course of instruction; and deletes the word “three” and replaces it with “two” regarding the number of years the educational provider must keep records.
- Subsection (c)(4) is amended to add “dates of the class instruction” as information to be included in records maintained by the educational provider and a licensee.

Proposed Section 13666:

- In the Note at the end of the section, the abbreviation “subd.” is removed.

Proposed Section 13666.1:

- Subsection (b) is amended to add the words “nearest the worksite and” in the first sentence for more specific location of the required sign.
- Subsection (c) is deleted.
- In the Note at the end of the section, Labor Code Sections 1695.6 and 1695.7 are removed as citations in the Reference section.

Proposed Section 13666.2:

- Subsection (a) is amended to make grammatical changes for clarity and to add a sentence which more specifically describes the required training in terms of training time and provides alternatives for meeting the supervisor training requirement.
- In the Note at the end of the section, Labor Code Sections 1682.8, 1690, and 1699 are added as citations in the Reference section.

Proposed Section 13666.5:

- This section is amended to add express language regarding the agency’s implied authority to revoke, suspend, or refuse to renew a contractor’s license for a licensee’s failure to comply with the regulations in this subchapter, including the duties of contractors specified in the article.
- The Note at the end of the section is added for specification of citations for Authority and Reference.

Proposed Section 13667:

- Subsection (c)(5) is amended to add the word “final,” delete the word “court” and add the words “filed in a court” for clarity and makes punctuation changes.
- Subsection (c)(6) is amended to add the words, including parentheses “(if the contractor was licensed)” in the first sentence for clarity.
- The Note at the end of the section adds subdivisions (a)(3)-(4) to the citation for Labor Code Section 1684 and adds Labor Code Section 1699 as a citation in the Reference section.