

ADDENDUM TO INITIAL STATEMENT OF REASONS
for
PROPOSED PUBLIC WORKS CONTRACTOR REGISTRATION REGULATIONS

This is an addendum to the Initial Statement of Reasons issued with the initial regulatory text on February 15, 2019. This Addendum concerns subsection (a) of proposed section 16411 (Required Information), proposed section 16412 (Registration Fees), and subsection (c) of proposed section 16414 (Revocation of Previously Approved Registration).

Proposed Section 16411: The purpose of this section is to set forth the information that must be submitted in connection with the application process. This is information that must be submitted in the existing online application process.

Subsection (a) covers basic business structure, ownership, and contact information for the contractor or subcontractor. The text pertaining to address information is being changed to match the terminology and requirements in the online registration process, including the additional requirement to provide a “business email address.”

Proposed Section 16412: The purpose of this section is to state all fee-related requirements in one place.

Subsection (a) reorganizes all the fee and penalty requirements of Labor Code Section 1725.5 into a clearly-stated fee schedule. The second sentence of this subsection states that all fees are nonrefundable, consistent with the language in subdivision (a)(1)(A) and (B) of Section 1725.5 [application and renewal fees], subdivision (a)(2)(E)(ii) of Section 1725.5 [penalty for having previously worked in violation of registration requirement], and subdivision (c) of Section 1725.5 [penalty for late renewal]. The Director recognizes that the placement of the word “nonrefundable” in the text of Labor Code Section (a)(1)(A) and (B) might lead some to regard it as applying only to registrations and not to renewals.¹ However, the Director believes that the better construction, as well as the intent of the Department of Finance in proposing this language and the Legislature in adopting it, was that all contractor registration fees including renewal fees should be non-refundable. The Director has proposed two exceptions, in succeeding subsections noted

¹ Labor Code Section 1725.5(a)(1) reads as follows.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

below, in which the Director may suspend or delay the imposition of penalties for classes of recipients or the Labor Commissioner may refund individual penalty and fee payments that should not have been assessed or paid in the first place.

Paragraph (2) of subsection (a) states that the fee for a new application after a previous denial is \$400. This is based on and consistent with the application fee being nonrefundable, making the subsequent application the same as a new application and subject to the statutory fee of \$400 for a new application. Although this fee and the renewal amounts specified in paragraphs (3) and (5) are not expressly set by statute, they are consistent with how the Director (in consultation with the Department of Finance) has set these amounts pursuant to Labor Code Section 1771.3(c) to meet the overall goal of providing sufficient funding on an annual basis for the Department's public works program. The formula used to meet this funding goal is multiplying the number of anticipated registrants by a single annual fee amount, without distinguishing between new applicants and renewals. Consistent with this approach, the renewal fees have been the same as application fees since the inception of contractor registration during the 2014-15 budget year, and there was no modification to this approach when Labor Code Section 1725.5(a) was amended in 2017 to raise the annual fee to \$400, effective immediately, and allow for multi-year registrations and renewals beginning in June of 2019.

Subsection (b), as originally proposed, restated the Director's statutory authority to adjust fees annually in accordance with the requirements of Labor Code Section 1771.3(c). This statement was unnecessary as well as potentially misleading insofar as it implied that the statutory penalty amounts are adjustable under Labor Code Section 1771.3(c). The Director now proposes to delete this subsection and redesignate the following subsections (c) through (f) as subsections (b) through (e). The basis, necessity, and purpose of these succeeding subsections remains the same as stated in the Initial Statement of Reasons (available online at <https://www.dir.ca.gov/Rulemaking/Regulations-ISOR.pdf>).

Proposed Section 16414: The purpose of this section is to set forth criteria for the revocation of a previously-approved registration.

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Subsection (c) makes all revocations, other than those caused by a debarment, effective at 11:59 p.m. on the tenth day following the date of service, unless the Department receives an appeal within that time. This ten-day limit provides the registrant with sufficient time to file an appeal in order to forestall revocation and preserve the status of registrant, while not otherwise delaying the removal of contractors or subcontractors who are working on public works in violation of the criteria for registration. The text, as initially proposed, provided that this deadline would *not* be subject to extension for weekends or holidays. However, notwithstanding the policy reasons supporting that provision, it is contrary to Government Code Section 6707² and therefore is being deleted from this subsection.

² Government Code Section 6707 states as follows:

When the last day for filing any instrument or other document with a state agency falls upon a Saturday or holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.