

INITIAL STATEMENT OF REASONS
for
PROPOSED PUBLIC WORKS CONTRACTOR REGISTRATION REGULATIONS

The Acting Director of the Department of Industrial Relations (“Director”) proposes to adopt new regulations setting forth procedures and requirements for registering as a public works contractor pursuant to Labor Code Section 1725.5. These proposals include procedures for appealing a decision to deny registration or to revoke a previously-approved registration. The Director proposes to adopt these regulations as a new Article 7 (commencing with section 16410) of subchapter 3, of chapter 8, of division 1 of title 8 of the California Code of Regulations.

General Information

Chapter 1 of Part 7 of Division 1 of the Labor Code (commencing with Section 1720) regulates employment on public works projects, including the duty of contractors and subcontractors to pay their workers not less than the general prevailing wage rates as determined by the Director. California has regulated employment on public works since the 19th century and first adopted prevailing wage requirements in 1931. Since that time, the laws governing public works have been modified and refined many times to ensure proper monitoring and enforcement of prevailing wage and related requirements.

In 2014, the legislature adopted SB 854 (Stats. 2014, Chap. 28), which, among other things, established a new requirement for contractors and subcontractors to be registered with the Department of Industrial Relations in order to qualify to bid or perform work on public works. A new Labor Code Section 1725.5 set forth the qualifications and fees for registering, and new Sections 1771.1 and 1771.4 set forth related monitoring, notice, and enforcement requirements. In 2017, the legislature adopted SB 96 (Stats. 2017, Chap. 28), which, among other things, amended these laws to increase the annual registration fee, provide a limited exception to the registration requirement for small projects, and authorize the Labor Commissioner to assess penalties against contractors and awarding bodies who use unregistered contractors or subcontractors in violation of the statutory requirements.

Upon the adoption of SB 854 in 2014, the Department of Industrial Relations established an online public works contractor registration system (located at <http://www.dir.ca.gov/Public-Works/Contractor-Registration.html>) administered by the Labor Commissioner’s Office. The online system asks for basic contact and licensing information and requires the registrant to certify to meeting each of the eligibility criteria in paragraph (2) of subdivision (a) of Labor Code Section 1725.5. The system also enables a registrant to calculate and pay the required fee, including any penalty that may be due as a result of a delayed renewal or having worked on a public work without first being registered. The number of active registrations as of June 1, 2018 exceeded 30,000.

The purpose of these proposals is to standardize and make more specific the registration process as well as to provide requirements and procedures for suspending the imposition of penalties or refunding fees, for denying registration or revoking a previously-approved registration,

and for hearing and deciding appeals from a determination to deny or revoke a registration. Without a set of regulatory requirements, it is more difficult for aggrieved parties to ascertain their rights and responsibilities in the event of a dispute, and the Department is left to resolve those disputes on a case-by-case basis. These proposals have been designed to be consistent with the online registration system that has been in use since July of 2014 and to afford basic due process rights to persons who are aggrieved by any determination to deny or revoke a registration. Although some parts of the proposals are duplicative of statutory requirements, the proposals are designed to be more logical and user-friendly in their structure and presentation and to require a minimal amount of cross-referencing to the statutes.

Development and Basis for Proposed Regulations

The Director proposes to adopt nine new regulatory sections (16410 through 16418) covering the public works contractor registration process, registration requirements, and notice and appeal rights. In drafting these proposals, the Director worked in collaboration with program and legal staff in the Labor Commissioner's Office and relied upon the knowledge and experience of the Department in operating this specific registration program. The Director also relied upon the Department's knowledge and experience in operating other licensing and registration programs and in administering other due process notice and appeals processes, especially prevailing wage enforcement appeals conducted pursuant to Labor Code Section 1742 and the prevailing wage hearing regulations at sections 17201 through 17270 of title 8 of the California Code of Regulations. In addition, draft proposals were circulated for review and feedback from representatives of stakeholders (contractor organizations, employee organizations, and awarding body labor compliance programs) whom the Department knew to have a particular interest in the subject matter of these proposals.

For the benefit of both the Department and the regulated public, these proposals will clarify, standardize, and formalize requirements of the registration process that have been in place since the online registration system was implemented in 2014. These proposals will also clarify, standardize, and formalize notice and appeal rights that have been extended and administered on an ad hoc basis (or, in the case of revocations, not yet used) since registration requirements became enforceable in 2015.

No technical, theoretical or empirical studies or reports or other documents were relied upon in drafting these proposals.

Economic Impact Assessment

The eligibility criteria and fees for public works contractor registration are established by statute at Labor Code Section 1725.5, and, as noted, the Department has been administering an online registration system in accordance with these statutory requirements since 2014. In determining the economic and fiscal impacts of these proposed regulations, the Director has focused on the costs and benefits of complying with the specific requirements of these proposed regulations rather than on the costs and benefits of the underlying statutes.

The private sector impact of these proposals is limited to contractors and subcontractors

in construction and related trades who seek to register as public works contractors, including those who are denied registration or whose previously-approved registrations are revoked. The registration system requires access to a computer, which can be an ordinary personal computer or a computer station available for use without cost at a public library or a Department office site. There is no cost for registering online aside from the requirement to pay the registration fees and any related penalties required by statute.¹

The appeal procedures created by these proposals can be utilized without material cost by receiving and sending required notices electronically and by authorizing any hearing to be conducted by conference telephone call. Based on the experience of the past four years resolving informal disputes under this registration program as well as DIR's experience with other registration programs, the Director estimates that there will be fewer than 100 registration denials or revocations in a year. The Director estimates that 10% or fewer of the appellants would choose to submit their appeals by first class mail (10 appeals a year). The estimated cost of this choice is \$3.00 per mailing for postage and copies to two locations, making the aggregate cost \$30.00 per year for an estimated 10 appeals per year.

If a contractor or subcontractor chooses to have an in-person hearing in a challenge to the Department's determination, they would also incur travel costs to a nearby location. There are no other Department fees or charges, and any other associated costs, including attorney's fees, are at a party's option in any form of appeal and not costs imposed by these proposals. In light of these estimates, the Director has made the following initial economic impact determinations.

- These proposals will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. These proposals do not alter existing statutory public works contractor registration requirements, but simply clarify those requirements and extend formal due process rights and protections to ensure that the requirements are administered fairly and consistently.
- These proposals will not have cost impacts on representative private persons or businesses, outside the minimal impacts on the small universe of contractors who receive adverse determinations and choose to incur costs in pursuing their appeal rights, as discussed above.
- These proposals will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

¹ An internet connection is also required to comply with the statutory requirement for public works contractors to submit certified payroll records to the Labor Commissioner pursuant to Labor Code Section 1771.4(a)(3)(B), and the Director unaware of any contractor who has been unable to access these online systems since their implementation following the adoption of SB 854. Applicants who are unable or unwilling to pay the required registration fees online via a credit charge or electronic funds transfer have the option of paying by a regular check or similar instrument, although this may delay completion of the registration process.

- These proposals will have no economic impact on the health and welfare of California residents, worker safety, or the state's environment.

Anticipated Benefits

These proposals will clarify, standardize, and formalize requirements of the registration process that have been in place since the online registration system was implemented in 2014. They will also clarify, standardize, and formalize notice and appeal rights that have been extended and administered on an ad hoc basis since registration requirements became enforceable in 2015. Greater certainty about the registration process will result in fewer phone calls and emails to the Department address points of uncertainty. The proposed regulations also provide an inexpensive and expedient administrative appeal process for contractors who are denied registration or whose registrations are revoked. In the absence of an administrative appeals process, a contractor who chose not to accept the Department's determination (perhaps 2 – 3 cases per year) would have to take the dispute directly to Superior Court, at a likely cost to that contractor and the state of tens of thousands of dollars for attorney's fees, court fees, and litigation-related expenses in each case.

Consideration of Alternatives

The Director believes that the online registration system and the option given to aggrieved contractors and subcontractors for online transmission of notices and appeals and for hearings conducted by telephone under these proposal are the most beneficial, efficient, and cost-effective procedures for private parties, including small businesses, who may be affected by these proposals. Any alternatives, including the alternative of not establishing regulatory procedures or an administrative appeals process, are likely to be most costly and cumbersome, and less effective than what is being proposed. With over 30,000 public works contractors registering with the Department annually, some number of denials and revocations is inevitable, and due process dictates that they have some process and means to evaluate and challenge those actions. The Director invites interested persons to present statements or arguments with respect to other potential alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

Rationale, Necessity, and Purpose of Each Proposal

Proposed Section 16410: This is an introductory regulation expressing the basic statutory obligation for public works contractors to register with the Department and pay the applicable fee.

Subsection (a) requires an application to completed *online*, which is a specific requirement that is not found in statute but the only means through which registration has been possible since the program was implemented in 2014. Online application is more efficient than a paper system. There is no paper to handle, transit, or store, and registrations can be processed and completed almost immediately with a credit card payment. In the three years since the registration became enforceable, there have been no complaints about the absence of a paper alternative.

Subsection (b) specifies that all registrations are for the fiscal year, or any remaining part. This clarifies and makes more specific the statutory requirement for annual registration and what specific period of time registration covers. Fiscal year rather than calendar year registration was chosen to coincide with initial adoption of SB 854 as a fiscal year 2014-15 budget trailer bill and to coincide with the state's and the Department's budget process which will drive potential fee adjustments under Labor Code Section 1771.3(c). Having all registrations cover the same time period saves administrative costs associated with tracking individual registration and renewal dates and is consistent with other (though not all) state licensing schemes such as attorney membership in the State Bar of California.

Subsection (c) specifies that registration is required for each separately licensed entity. The purpose is to clarify that registration works in tandem with a business's Contractors State License Board or other industry or professional license. This requirement is consistent with the original intent of the program. However, others have interpreted the law as requiring only one registration per owner, which in turn has led to confusion when the name of a business and license identified on a bid do not match information provided by the contractor when registering with the Department. Because the business owner is in control over how many names and license numbers it uses for purposes of bidding on or performing public works, it is appropriate to require a distinct registration for each one and avoid the confusion noted above.

Subsection (d) specifies the need for anyone hired as an independent contractor to be registered, and it clarifies a principle stated indirectly in the statute regarding the need for workers' compensation coverage for anyone who is an employee. This addresses an underground economy practice in the construction industry of claiming exemption from workers' compensation requirements, while hiring low-wage workers as "independent contractors" in order to avoid workers' compensation and other costs. This clarification will make it easier for the Labor Commissioner to identify and revoke the registration of contractors who have hired unregistered subcontractors.

Subsection (e) requires the Department to assign a unique identification number to every registrant. This is based on existing practice and makes it easier for everyone concerned to track compliance with the registration requirement. The number can also be used to export registration data, including relevant license information, to other information technology applications.

Subsection (f) clarifies that contractors must meet all of the statutory requirements for registration each time they renew. The registration requirements are minimal, and this reflects the statutory intent that those minimal requirements apply at all times in order to maintain or renew registration.

Proposed Section 16411: The purpose of this proposed regulation 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 application process in use since 2014.

Subsection (a) requires the legal name, business name, legal address, physical address,

business type, and principal owners of the business. This information is routinely required in most registration processes. The purpose and necessity are to provide the Labor Commissioner and others with essential information needed to identify employers and responsible owners for monitoring and enforcement purposes.

Subsection (b) requires the applicant to provide a Contractor State License Board (“CSLB”) license number, if required to have one for the applicant’s trade, or other state licensing information if another form of license is required for the applicant’s trade. Over 90% of public works contractors and subcontractors work in CSLB-licensed trades, and having a CSLB license for that work is a statutory requirement for registration as a public works contractor. However, other licensed trades (*e.g.* engineers and surveyors) and businesses (*e.g.* trucking) also engage in public work that makes them subject to prevailing wage and registration requirements. Providing the CSLB license number or other license or permit type and number allows for routine verification of such licensure. In time, the Department may be able to obtain data automatically from other licensing agencies to verify status or verify revocations of other licenses and permits.

Subsection (c) authorizes the Labor Commissioner to require an applicant to certify to compliance with the statutory criteria for registration, either in lieu of or in addition to direct evidence of compliance. The online registration system was designed to accept certifications made under penalty of perjury in lieu of requiring direct evidence of items that are subject to direct proof, such as workers’ compensation coverage. Making these certifications is more convenient than obtaining and submitting direct proof, and may also be the only way to prove a negative, such as the absence of any judgments for unpaid wages. A certification under penalty of perjury that later proves to be false would make the applicant subject to criminal prosecution as well as revocation of registration.

Subsection (d) expressly authorizes the Labor Commissioner to require other proof of compliance and to consult other relevant records. While the Labor Commissioner already has legal authority to do what this subsection contemplates, this clarifies such authority for contractors who may question it in this context. This will bolster the Labor Commissioner’s efforts to require additional proof when circumstances warrant, such as requiring proof of worker’s compensation coverage from a contractor whose previous coverage has expired or who employs other workers while claiming to be exempt from coverage requirements. This also expressly acknowledges the agency’s authority to consult other sources of potentially disqualifying information, such as court judgments, which may become more readily available on an automated basis in the future.

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.

Subsection (b), as matter of convenience for someone consulting these regulations, simply restates the authority of the Director to adjust fees annually in accordance with the

requirements of Labor Code Section 1771.3(c).

Subsection (c) expresses an authority implied from existing law that enabled the Director to suspend or delay the imposition of penalties when new requirements were being phased in and were not yet clearly spelled out or understood in the registration materials. This saves the Department and contractors from having to engage in penalty disputes in situations where the Department may share some responsibility for unintended delays in the registration and renewal process. This subsection authorizes the Director to suspend such penalties only on a blanket basis rather than a case-by-case, so that it will not become a vehicle for individual appeals to the Director of fee and penalty assessments (which by statute are nonrefundable).

Subsection (d) clarifies and makes more specific the statutory requirement to pay a registration application fee that is nonrefundable, even if registration is denied due to disqualification. This subsection also clarifies when and how the Department determines that a fee actually has been paid as opposed to having been tendered but then cancelled or withdrawn (such as when a credit card charge is disputed or a check is dishonored).

Subsection (e) expressly authorizes the Labor Commissioner's current practice, in individual cases, of refunding penalties that are incurred inappropriately due to "false positive" responses to certification questions on the application form, which was a particular problem with earlier versions of this form. Though registration fees are nonrefundable by statute, the Director believes the Department should not be assessing or collecting penalties that are not in fact due. Unlike the Director's authority to suspend or delay the imposition of penalties on a blanket basis under subsection (c), the Labor Commissioner's authority to refund penalties under this subsection is on an individual case-by-case basis.

Subsection (f) expressly authorizes the Labor Commissioner's current practice, in individual cases, of refunding fees incurred by contractors who show that they inadvertently registered twice due to some problem or error that occurred but could not be corrected during the initial registration process. Though fees are nonrefundable by statute, the Department should not be requiring or collecting fees for duplicate registrations. As with subsection (e), the Labor Commissioner's authority to refund penalties under this subsection is on an individual case-by-case basis.

Proposed Section 16413: The purpose of this section is to set forth the basis upon which registration may be denied and to set forth formal procedures for the appeal and reconsideration of such a denial.

Subsection (a) expresses the basic principle that registration will be denied when the application is incomplete or required fees are not paid. It also states and clarifies that denial on this basis is "without prejudice" to submitting a new application with all the necessary information and the required fee. This is consistent with existing practice and clarifies that an applicant need not go through the appeal process specified later in this section in order to reapply and qualify for registration.

Subsection (b) expresses the principle that registration will be denied when an applicant fails to meet the statutory qualifications for registration or pay the fees and any applicable penalties. Unlike subsection (a), this covers a completed application and would constitute a denial on the merits that would be subject to appeal rather than just a new application.

Subsection (c) provides a denied applicant 30 days following receipt of any notice of denial to appeal that denial. Notice of denial may be provided at the end of the online application process, if the information or certifications provided indicate the applicant is ineligible, or may be provided in a subsequent written notice if additional information, such as a review of past wage claims, must be considered to determine eligibility, or if a valid fee payment is not received. Thirty days is a typical and reasonable time frame for requiring an aggrieved person to take action, particularly since applicants have the option of fixing any problems or waiting until disqualifying conditions no longer exist and then reapplying. The 30 days is measured from the date of receipt by the applicant, both for the benefit of applicants and because there is no regulatory need in this situation to interpret this requirement more strictly. An appeal that requests reconsideration and a hearing anticipates the two ways that an appeal will be looked at under succeeding subsections.

Subsection (d) requires the appeal to be in writing and to identify the decision being appealed, which are essential to the agency's ability to confirm, track, and process the appeal. The appellant must also state the basis for disputing the denial and may, but is not required to, provide additional information in support of the appeal. The purpose of providing this information up front is to give the Labor Commissioner the ability to ascertain what is in dispute, and an opportunity to clarify the situation and, if appropriate, find the applicant qualified for registration without having to wait for a hearing – this is how most registration disputes have been handled (on an informal case-by-case basis) in the program's first three years of operation. This subsection also gives an appellant the option to transmit an appeal by email, which is the most efficient means of communication for obtaining a rapid response, or by first class mail.

Subsection (e) requires the hearing to be set within 30 days of receipt of the appeal. This is for the benefit of the appellant but should also be feasible for the Department since the potential issues in any dispute over eligibility to register under Labor Code Section 1725.5 are relatively simple and concrete and would require very little actual hearing time. This subsection also gives the appellant the option of authorizing the hearing to be conducted by conference telephone call or other electronic means, which often is more expeditious and convenient for the appellant and other parties. In addition, with registration eligibility disputes arising from and usually through documentation, in-person testimony will be of little value in these appeals.

Subsection (f) enables the Labor Commissioner's office to review paperwork, including new information submitted with an appeal, and correct an erroneous denial before everyone must incur the cost and inconvenience of a hearing on the appeal. This is how most eligibility disputes have been handled (on an informal case-by-case basis) in the registration program's first nearly four years of operation. The 48 hours prior to hearing time limit serves essentially the same purpose of compelling the Labor Commissioner's office

to look at the case and act before the parties and hearing officer gear up for a hearing.

Proposed Section 16414: The purpose of this section is to set forth a similar set of criteria for the revocation of a previously-approved registration, but with important distinctions based on the fact that the previously-conferred right to bid and work on public works is being taken away and potentially could have an impact on a public work project where the contractor or subcontractor is currently engaged.

Subsection (a) clarifies that registration requirements such as licensing and workers' compensation coverage are ongoing and that falsely certifying to eligibility (even if the registrant becomes eligible later) is grounds for revocation. In addition, this subsection makes the statutory violation of subcontracting out work to an unregistered contractor, when done knowingly, negligently, or by failure to inquire, a ground for revocation. While this latter ground includes an element of culpability in the hiring of an unregistered subcontractor, it also confirms the need to inquire and ascertain the subcontractor's registration status, including by using the Department's online search tool (at <https://efiling.dir.ca.gov/PWCR/Search>) before subcontracting.

Subsection (b)'s notice requirements are designed to satisfy the recipient's due process interest in receiving fair notice of the alleged violation (and an opportunity for hearing under succeeding subsections) before registration is withdrawn. They require the Labor Commissioner to describe what information led to the conclusion that the registrant was ineligible – for example, that a particular agency or court record demonstrated that the registrant had an outstanding final (and unappealed) order or judgment for wages that remained unpaid, or that an agency finding or site inspection showed that the registrant had employees without having workers' compensation coverage – but do not require evidence to be included with the notice. This subsection authorizes the Labor Commissioner to serve the notice at addresses (email and physical mailing address) supplied by the registrant through the registration process, which will minimize disputes over whether the registrant was served properly. Where the registrant is engaged in ongoing public work, this subsection also requires copies of the notice to be served on the awarding body and any higher level contractor or subcontractor known to have engaged the registrant, since they may need to replace the disqualified registrant with another registered subcontractor.

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. This deadline is not subject to extension for weekends or holidays in light of the same policy considerations, the fact that an appeal can be transmitted by email and be date-stamped at any time of day or night, and the fact that public work may continue on weekends and holidays.

Subsection (d) requires the registrant to file an appeal in the same manner and subject to

the same specifications as an applicant who appeals a denial of registration under proposed section 16413. However, two deadlines are provided here: the ten-day deadline for purposes of staying revocation, and an outside deadline of thirty days from the date of receipt (not service). An appeal filed after the ten day deadline will *not* stay revocation pending the hearing and will leave the appellant ineligible to bid or work on public unless and until the revocation is reversed or rescinded or expires on its own terms and the appellant is otherwise qualified for registration. For registrants not currently engaged in public work, there will be less interest in filing an expedited appeal in order to stay revocation so long as they still have an opportunity to be heard and have their status resolved before it impedes them from obtaining other work.

Subsection (e) requires a hearing on the appeal to be set within 30 days, with priority given to appeals that stay revocations based on the same policy considerations expressed with respect to subsection (c) above. This subsection also gives the appellant the option of authorizing the hearing to be conducted by conference telephone call or other electronic means for the same reasons as those noted above for subsection (e) of proposed section 16413.

Proposed Section 16415: The purpose of this section is to set forth and clarify the mechanics for appealing either a denial of registration under proposed section 16413 or revocation of registration under proposed section 16414.

Subsection (a) requires the appeal to be served simultaneously on both the Director's Lead Hearing Officer (who will assign a hearing officer for the case) and the Labor Commissioner's Office, with the option of serving either one by email or regular mail, but clarifying the need to indicate on the appeal where or how the Labor Commissioner's copy was sent. The purpose for requiring simultaneous service on both is to expedite the processing of the appeal and the scheduling of a hearing. The requirement to further clarify where the Labor Commissioner's copy was sent is designed to minimize the possibility of appeals being lost in the system. In particular, this accounts for the fact that a revocation notice may issue from any one of several offices, and the frequent tendency of appellants in other labor enforcement cases to make the mistake of appealing or responding directly to the issuing office rather than the designated address for appeals that customarily is shown on the notice.

Subsection (b) provides the specific email addresses to use when the appellant chooses to serve by email. This is the most likely choice for appellants seeking to stay revocation.

Subsection (c) provides the specific physical addresses to use when the appellant chooses to serve by first class mail.

Subsection (d) requires the appellant or appellant's representative to provide his or her own contact information in order to facilitate the hearing officer's ability to reach the appellant in order to schedule a hearing on the appeal.

Proposed Section 16416: The purpose of this section is to clarify and make more specific the

procedural rules that will govern appeal hearings and decisions.

Subsection (a) cross-references an existing regulation that is designed to ensure the appointment of a qualified and impartial hearing officer who is not an employee of the Labor Commissioner.

Subsection (b) requires prior notice of the hearing, which is a standard requirement to protect the due process interests of parties to a hearing. Ten days is a standard minimum notice requirement for administrative adjudicative hearings, where a speedy decision is desired and the issues and evidence are relatively uncomplicated. Conducting initial pre-hearing conferences by telephone is already a standard practice of the Director's hearing officers in most cases, and it greatly facilitates the exchange of information, narrowing of issues, settlement, and the scheduling of a hearing on the merits on a date and time when all parties and representatives will be available.

Subsection (c) incorporates an existing set of regulations that govern hearings on contractor appeals from civil wage and penalty assessments for prevailing wage and public works apprenticeship violations. These rules are familiar and non-controversial and answer the common procedural questions that may arise in an administrative adjudication. The use of existing rules also saves the Department and parties from having to develop and become familiar with a distinct set of rules for these proceedings. These rules do *not* authorize prehearing discovery in expectation that the evidence relevant to either side's position will already be available to both, either prior to or upon issuance of a notice of revocation, and will rarely if ever depend on testimony that parties would first want to test in a deposition.

Subsection (d) requires expedited decision-making for the same reasons as having short time limits for appealing and scheduling the hearing, as discussed above. Though these time limits and others imposed on the Department are, by law, only directory (as opposed to mandatory and enforceable), so that delays do not create legal entitlements for appellants without meritorious claims, the specification of time limits creates an appropriate expectation of expedited decision-making that policy-makers and the public can use to evaluate performance. The last sentence of this subsection addresses the circumstance of revocation based on a past act rather than present ineligibility, and the need to impose a concrete sanction, in the form of a period of disqualification, for that violation. (These regulations do not authorize or address the imposition of monetary penalties under Labor Code Section 1771.1, which instead will be subject to the civil wage and penalty assessment appeals process in Labor Code Section 1742 and the corresponding prevailing wage hearing regulations at sections 17201 and following of Title 8.)

Subsection (e) makes the hearing officer's decision final rather than requiring approval by the Director. Because most cases will be fact-driven and routine and not involve policy development, this eliminates delay involved in the pro forma step of having the Director review and sign decisions. Eliminating this step and a specific procedure for requesting reconsideration, does not prevent the Labor Commissioner and appellant from

stipulating to correct obvious errors, and, if appropriate, allowing the appellant's eligibility to be reconsidered without needing to commence or prosecute a formal court appeal. This subsection also clarifies further court appeal rights that otherwise must be inferred from governing legal standards. It sets a specific short time limit for any such appeal, consistent with the limited factual and legal issues involved in these cases and the temporary status of most disqualifications. In addition, this subsection cross-references existing rules regarding service requirements and producing the administrative record.

Proposed Section 16417: The purpose of this section is to make the notice and appeal rights in these regulations inapplicable to any disqualification based on debarment under Labor Code Section 1777.1. The reason for this exception is that debarments are subject to their own set of standards and procedures that fully protect the due process rights of the subject contractor or subcontractor. Debarment automatically disqualifies a contractor or subcontractor from registering or continuing to be registered as a public works contractor under Labor Code Section 1725.5, and thus any additional notice and hearing rights that could be afforded by these proposed regulations would be redundant to the debarment process and futile in terms of being able to change the effect of a debarment determination.

Proposed Section 16418: This section serves as a disclaimer that distinguishes between the denial or revocation of registration under Labor Code Section 1725.5, and the assessment of penalties or issuance of a stop order against a contractor or subcontractor for violating the requirements of Labor Code Section 1771.1, which require resort to different sets of procedures. All of these procedures serve related but distinct purposes that warrant different treatment from a procedural standpoint and different time limits. These proposed regulations address either the ability or continuing ability of contractors and subcontractors to bid and work on public works, making them less urgent than a stop order that shuts down work, but deserving more expedited attention than the appeal of a monetary penalty assessment.